

COURT MARTIAL.

PROCEEDINGS

OF

A GENERAL COURT MARTIAL,

HELD AT FORT INDEPENDENCE, (BOSTON HARBOR,)

FOR THE

TRIAL

OF

MAJOR CHARLES K. GARDNER,

OF THE THIRD REGIMENT INFANTRY.

UPON

CHARGES

OF

MISBEHAVIOR, COWARDICE IN THE FACE OF THE ENEMY, &c.

PREFERRED AGAINST HIM

BY MAJOR GENERAL RIPLEY.

PRINTED....1816.

PROCEEDINGS

OF

A GENERAL COURT MARTIAL,

HELD AT FORT INDEPENDENCE, HARBOR OF BOSTON,

BY VIRTUE OF THE FOLLOWING ORDER.

“ *Head Quarters, Castle Island,
26th September, 1815.*

“ GENERAL ORDER.

“ A General Court Martial will convene at Fort Independence, on Wednesday, the 4th of October next, for the trial of major *Charles K. Gardner*, of the third regiment of Infantry. All the field officers present in the department, with sufficient captains to make the number of nine officers, will form the Court.

Colonel M'NEIL, *President.*

MEMBERS.

Lieut. Col. EUSTIS,

Major HARRIS,

Capt. M'DOWELL,

Capt. BENNETT,

Major CRANE and Capt. IRVINE, *Supernumeraries.*

Lieut. JAMES L. EDWARDS, of the corps of Artillery,
Judge Advocate.

Lieut. Col. WALBACH.

Major BROOKS,

Capt. MANIGAULT,

Capt. CRAIG.

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“ The Court will convene at Fort Independence on the day abovementioned, will hear the charges, the plea of the prisoner, and will then adjourn for the purpose of convening the witnesses.

“ By order of Major General RIPLEY.

(Signed)

“H. F. EVANS,

“ Lieut. Lt. Art. and Actg. Brig. Inspector.”

“MILITARY DEPARTMENT, No. II.

“ *Head Quarters, Castle Island, 4th Oct. 1815.*

“GENERAL ORDER.

“ Captain Thornton, of the Light Artillery, will sit as member of the Court Martial which is to convene to-day, in lieu of captain Manigault, who is prevented attending by indisposition.

“ By order of Major General RIPLEY.

(Signed)

“H. F. EVANS,

“ Lieut. Lt. Art. and Actg. Brig. Inspector.”

OCTOBER 4, 1815.

The court met pursuant to the above order.

PRESENT.

Colonel M'Neil, president ; lieut. col. Eustis, lieut. col. Walbach, major Harris, major Brooks, captain M'Dowell, captain Thornton, captain Bennett, captain Craig, members ; lieutenant Edwards judge advocate.

The prisoner being asked if he had any objection to the members named in the General Order,

replied, that no objection rested with him personally, against any gentleman before him, but he objected to the court proceeding to be organized for the trial of his case, until he had the usual and necessary notice of the prosecution. He said he had received no notice whatever, of any charge or accusation against him—and he, therefore, was not prepared to take any step relative to his trial. The court overruled the prisoner's objection, and were duly sworn. The prisoner then objected to hearing the charges against him read, on the ground, that he had not been furnished with them previous to the trial ;—and moved that the promulgation of them in open court, might be postponed to some future period. The court acceded to his motion ; and postponed the reading of them till another day.—The prisoner requested, that during his trial, he might be allowed to remain in Boston, he being at that time restricted to Governor's Island. The court decided, that it was proper to address a note to major general Ripley, soliciting him to permit the prisoner to reside in town, during his trial.—The general complied with the request of the court.

The court then adjourned to meet at Earle's Coffee House, in Boston, to-morrow morning at 9 o'clock.

OCTOBER 5, 1815.

The court met pursuant to adjournment.

PRESENT.

Colonel M'Neil, president ; lieut. col. Eustis, lieut. col. Walbach, major Harris, major Brooks,

captain M'Dowell, captain Thornton, captain Bennett, captain Craig, members ; lieutenant Edwards, judge advocate.

The prisoner being asked, if he was prepared to hear the charges against him read, replied in the negative, on the ground that he had been furnished with them but a few minutes since ; and requested that another day might be assigned for reading them. The court postponed the reading of them till to-morrow ; and then the court adjourned till to-morrow morning at 9 o'clock.

OCTOBER 6, 1815.

The court met pursuant to adjournment.

PRESENT.

Colonel M'Neil, president ; lieut. col. Eustis, lieut. col. Walbach, major Harris, major Brooks, captain M'Dowell, captain Thornton, captain Bennett, captain Craig, members ; lieutenant Edwards, judge advocate.

The prisoner being asked if he was ready for trial, replied that he was not ; that he had, since the adjournment of yesterday, received a letter from major Fraser, aid-de-camp to general Brown, requiring his presence at Brownsville or Plattsburg. The letter was superscribed "*Col. Gardner, Adj. Genl.*" The court decided that the trial should proceed. The prisoner then requested that he might be allowed the further indulgence of twenty-four hours to prepare himself, to make objections relative to the jurisdiction of the court. The court

granted him the further indulgence of another day previous to his being arraigned. The judge advocate laid before the court the correspondence between major general Ripley and the prisoner, which follows :

(COPY.)

Fort Warren, October 1, 1815.

SIR—I do myself the honor to protest against your proceedings, to constitute a general court martial, in my case, on your own authority.

I belong to the staff of the commanding general of the division. I came here with a leave of absence, and on business with you, which was unofficial. My station is announced in the General Order of the first of June last, duplicates of which were sent to you, from the head quarters of the division at Albany.

I wish to give you notice, that the court martial for my case, which you have ordered to convene on the 4th inst. and your arrest of me, on charges not of immediate occurrence, and which admit of reference to your commanding general, are *illegal*: and that it will become the subject of an additional accusation against you, if persisted in.

A trial I shall demand on the charges you prefer : but it will be a trial instituted by the proper authority.

I have the honor to be,

Sir, your most obedient servant,

(Signed)

C. K. GARDNER,

Maj. 8d Inf. and Aetg. Adj. Gen. North. Division.

Tq Maj. Gen. Ripley, comdg.

2d Mil. Dept. North. Division.

(COPY)

*Head Quarters, Boston, October 1st, 1815.***MAJOR GARDNER,**

SIR—I received your note in the form of a protest, against the proceedings I have instituted in relation to myself, and have given it all the consideration it requires.

Your views of martial law are erroneous—any officer commanding a department, of as high a grade as colonel, can arrest an inferior officer within his command, and order a court martial on him. When a deputy quarter master general was arrested by a junior general, on the Niagara frontier, he objected to the arrest as illegal, he being an officer of the general staff. The court, however, decided that the arrest was a legal one; and found, if I mistake not, that officer guilty, among other allegations, of refusing to deliver up his sword to the junior general's aid. Those proceedings were approved by an old and accomplished soldier, major general Gaines. This precedent alone, is an answer to your protest. But, in the present case, you are not at all in the staff. There is, in the first place, no adjutant general recognised by our law; no authority from the war department to general officers to appoint one.— You could not pretend it would be in my power to appoint acting third lieutenants and ensigns of infantry, when there are no such officers recognised by law; neither would it be in the power of the war department to appoint an acting lieutenant general.

Again—if adjutants general were authorised by law, you were only appointed an acting adjutant general; now you must be fully sensible, this kind of appointment continues only as long as the person acts. The moment he leaves head quarters, by permission, or orders, it ceases. It only operates while there, to authorise the person so appointed to do the duties of the office, but gives no permanent staff character. The moment he ceases to act, the staff character is destroyed. No one ever supposed it was necessary to issue an order to say, such an officer was no longer acting in a staff capacity.—The moment he ceases to perform those specific duties, he resumes his rank in the line. I could advert to numerous instances of this kind, but they will at once occur to your recollection. From these premises, you can easily draw the following deductions :

1st. That it was settled in the case of major C. that an officer attached to the general staff, was subject to the arrest of an officer of superior rank to him, like all other officers; although the officer making the arrest was not the general commanding.

2d. That whatever might be your situation, were you now acting at the head quarters of major general Brown, or in pursuance of his orders, that, absent from there, you can be regarded only as the major of the third infantry.

3d. That even if you were a regular appointed adjutant general, yet when you came to this department, unless you were on specific duties, you are subject to the orders of the general com-

manding it, in the same manner as any inferior officer.

It was at first my intention, not from a claim of right on your part, but from motives of delicacy on mine, to have referred your case either to the war department, or to major general Brown ; but, feeling sensible that you would, from your character, possess a disposition to quibble, I found it the best way to pursue the course I have.

The articles of war makes provision, that no officer shall be held in arrest more than eight days, or until a court martial can be assembled ; now, if I had referred the subject to either the war department or major general Brown, it would require at least sixty days to summon a court martial. In which event, I have no doubt, you would have cavilled, and said the arrest was unreasonable ; for it was in my power to have summoned a court martial at any time.

I now write you on an official subject. In relation to subjects not connected with our public duties, it is my determination to have no written correspondence with you.

I am, &c.

(Signed)

EL. W. RIPLEY,

Major General, Comdg. 2d Military Dept.

N. B.—There is one view of the subject that I think proper to place before you. By the law fixing the military peace establishment, your staff rank and duties were abolished, agreeably to the opinion of the attorney general, sanctioned by the president ; you became nothing but major of the third

regiment. In this state of things, without any staff duties or appointment, you issued an order, purporting to be by order of major general Brown, appointing yourself acting adjutant general of the northern division. Even if there was such an officer, what evidence is there that general Brown ever appointed you? Suppose that the situation of adjutant and inspector general should become vacant, and the secretary of war were to verbally appoint colonel King to discharge those duties, would an order from colonel King, signing it by order of the secretary of war, be binding on the army?—Or take it in a more familiar case: I have a right to appoint a brigade inspector—I appointed major Romayne, and promulgated it, in orders, signed with my own hand. If, instead of that course, major Romayne had issued an order for his own appointment, and signed it with his name, purporting to be by order, could the army have recognized him as one of my staff?—what evidence would they have had that the appointment was not recognised by me? at this moment major general Brown is communicating his orders through the medium of his aid-de-camp.

(COPY.)

Fort Warren, 4th October, 1815.

SIR—I feel indebted to you for your condescension in addressing to me the arguments you have drawn up, to oppose the grounds of my protest.—But the unfair advantage of giving me no notice of them until this morning, in order that I might not

be prepared to obviate them before the convention of the court, is but a continuation of the others, which have been adopted since my arrest.

I think it proper here to state, that the whole case of major C. is wrong in the application.

1st. His offence was the open disobedience and defiance of your orders, and justified his arrest by you, at the moment or on the evening that he committed it. My submission is proved by my being here. My sword was delivered at your order.

2d. The court for his trial was instituted by brigadier general Gaines commanding, on your application. I expect to be allowed to be present when the question of the jurisdiction of my case is laid before the court.

I think the president of the United States can be justified under the law, in the provisional retention of colonel Hayne, (who remains with permission at Carlisle) and of general Parker, in the station of adjutant and inspector general, though you have laid down the position that no adjutant general is recognised by our law, and that, neither would it be in the power of the war department to appoint an acting lieutenant general.

Nor do I admit your position with respect to any officer appointed to act in a staff station, that the moment he leaves head quarters, by permission, or orders, it ceases.

And on your feeling sensible that I would, from my character, "possess a disposition to quibble,"

a suppositious case, not of the subject in discussion; and on your supposing another case, which is extraneous, and remarking, "In which event you have no doubt I would have cavilled."

I have to reply, that these insults and reflections on my supposed actions, are unbecoming an officer of any command, and, inasmuch as they are addressed to an officer under the restrictions in which I am—they are, what I will leave those who may read, to determine. Those remarks were handed to me in an open communication, not even folded as a letter, by a clerk of the brigade inspector's office.

I wish that this may also be laid before the court, and that it may be drawn up, if you think proper, in an additional charge.

I am, &c. &c.

(Signed)

C. K. GARDNER,

Major 3d Inf. and Actg. Adjt. Gen.

N. B.—The order of organization of the new establishment, took effect the 15th of June. The order of general Brown directing me to continue to officiate as adjutant general, was dated the 1st of June.

Major General Ripley, commanding, &c.

The prisoner then laid before the court the following order, relative to his arrest :

(COPY.)

MILITARY DEPARTMENT, No. II.*Brigade Inspector's Office, Head Quarters,
Custle Island, Sept. 25th, 1815.***GENERAL ORDERS.**

Major Charles K. Gardner, of the army, is placed in arrest. He will be confined to Fort Warren, and will have the liberty of Governor's Island.—The charges will be filed at the war office, and a court martial will be organized from them. The commanding general being the prosecutor, and wishing major Gardner every benefit of a fair trial, prefers, from motives of delicacy, that the court should be organized from that source. Major Gardner will deliver his sword to major Romaine, brigade inspector.

By order of major general RIPLEY.

(Signed) **JAMES T. B. ROMAYNE,**
Brigade Inspector.

And the court adjourned till to morrow morning, at 9 o'clock.

OCTOBER 7. 1815.

The court met pursuant to adjournment.

PRESENT.

Colonel M'Neil, president; lieut. col. Eustis, lieut. col. Walbach, major Harris, major Brooks, captain M'Dowell, captain Thornton, captain Bennett, captain Craig, members; lieutenant Edwards, judge advocate.

The prisoner, on being asked if he was ready for trial, addressing himself to the court, asked permission, if he might proceed to obey the orders of

major general Brown, which he received the day previous, a copy of which follows :

(COPY.)

Brownsville, Sept. 18th, 1815.

DEAR SIR—Some time since I wrote you, directing your being at Brownsville, on the 15th ; not having arrived, he has ordered me to write again, and still it is his desire that you repair to this place with all possible dispatch. We leave here about the first of October for Plattsburg. The general's orders are, for you to join us at this post. I thought, however, as well to mention that was our route, in case you should not receive it in time. We have just returned from Detroit, and made a treaty with the Indians.

In haste, yours with respect, esteem, and friendship,

(Signed)

D. FRASER,

Brigade Major and A. D. Camp.

The court decided that the trial should proceed. The prisoner asked leave to lay before the court a general order, dated at Albany, 1st June, 1815, from which it appeared, he was appointed by gen. Brown, an acting adjutant general ; on this order of the commanding general of the division, and the orders from his aid-de-camp, just submitted to the court, and the prisoner's verbal statement in answer to the argument of major general Ripley, of the 4th of October ; the prisoner submitted his objection to the proceedings entered upon against him, by the commanding general of the second department, and to the trial instituted by his order, if an officer of the staff of major general Brown, and therefore

objected that the jurisdiction of the court was insufficient for his trial. The court was then cleared, and on the question being put—"Is this court competent to the trial of major Charles K. Gardner, acting adjutant general?" it was decided in the affirmative. The court was then opened. The judge advocate asked the prisoner, after informing him of the decision of the court, whether he was ready for trial. He then objected to col. M'Neil's sitting in judgment on him, suggesting that colonel M'Neil had expressed an opinion prejudicial to him, but appealed to him for the proof of it. Colonel M'Neil declared that he had not formed, nor expressed any opinion relative to him—he did not know the nature of the charges against him. The court was then cleared to deliberate on the validity of the prisoner's challenge. It was decided that the challenge was not valid.

The prisoner was then arraigned on the following charges preferred by major general Ripley.

CHARGE I.—*Misbehavior in the face of the enemy.*

Specification 1.—For that the said Charles K. Gardner, at Chippeway, in the province of Upper Canada, on or about the 5th July, 1814, he then and there being adjutant general of the American forces, and his duty as such being to form and lead the men into action, to animate them with his presence as chief of the staff, and arrange and direct the whole staff duties of the field, he, the said Charles K. Gardner, did wholly omit and neglect

his duties aforesaid ; did not appear at all on the field, when the troops were engaged, and where his duty required him to be—but did then and there hide and conceal himself behind a barn ; and when a shell from the enemy's artillery burst upon the barn, the said Gardner galloped to the rear, and farther from the enemy.

Specification 2.—For that the said Charles K. Gardner, at a place called Lundy's lane, in Upper Canada, on or about the 25th July, 1814, he then and there being adjutant general of the American forces, then engaged with the enemy, and his duty then and there being, as chief of the staff, to form and organize the troops ; to lead them into action, and to direct and arrange all the staff duties and proceedings of the field, did then and there wholly omit to perform these duties, but did take up his position in the rear of the American forces wholly out of danger.

Specification 3.—For that the said Charles K. Gardner, at a place called Fort Erie, in Upper Canada, on or about the 17th September, 1814, he then and there being adjutant general of the American forces, as aforesaid, and it being his duty to assist, to form, and to direct the troops, and to be with them in the heat of the action, did take his position in or near a ravine, between Fort Erie and the woods, and wholly out of danger ; and in this situation, when directed by major general Brown, commander in chief of the American forces on that occasion, to communicate certain orders to general Ripley, then engaged with the enemy—he, the said Charles K.

Gardner, did employ another officer, to wit, captain Newman S. Clark, to expose himself to the fire of the enemy, and to communicate the said orders, while he, the said Charles K. Gardner, took special care to keep out of danger.

CHARGE II.—Cowardice in the face of the enemy.

Specification 1.—For that the said Charles K. Gardner, at Chippeway, in the province of Upper Canada, on or about the 5th day of July last, he then and there being adjutant general of the American forces, and his duty as such, being to form and lead the men into action, to animate them with his presence as chief of the staff, and to arrange and direct the whole staff duties of the field, he, the said Charles K. Gardner, did wholly omit and neglect his duties aforesaid ;—did not appear at all on the field, when the troops were engaged, and where his duty required him to be ;—but did then and there hide and conceal himself behind a barn ;—and when a shell from the enemy's artillery burst upon the barn, the said Gardner galloped to the rear, and farther from the enemy.

Specification 2.—For that the said Charles K. Gardner, at a place called Lundy's-lane, in Upper Canada, on or about the 25th July, 1814, he then and there being adjutant general of the American forces, then engaged with the enemy, and his duty then and there being, as chief of the staff, to form and organize the troops, to lead them into action, and to direct and arrange all the proceedings of the field, did then and there wholly omit to perform

these duties—but did take up his position in the rear of the American forces.

Specification 3.—For that the said Charles K. Gardner, at a place called Fort Erie, in Upper Canada, on or about the 17th September, 1814, he then and there being adjutant general of the American forces, as aforesaid, and it being his duty to assist to form and direct the troops, and to be with them in the heat of the action, did take his position in a ravine, between Fort Erie and the woods, and wholly out of danger—and in this situation, when directed by major general Brown, commander in chief of the American forces on that occasion, to communicate certain orders to general Ripley, then engaged with the enemy, did employ another officer to expose himself to the fire of the enemy, and communicate the said orders, while he, the said Charles K. Gardner, took special care to keep out of danger.

CHARGE III.—*Neglect of duty in the face of the enemy.*

Specification 1.—For that the said Charles K. Gardner, at Chippeway, in the province of Upper Canada, on or about the 5th July last, he then and there being adjutant general of the American forces, and his duty as such, being to form and lead the men into action, to animate them with his presence as chief of the staff, and to arrange and direct the whole staff duties of the field, he, the said Charles K. Gardner, did wholly omit and neglect his duty aforesaid; and did not appear at all on the field, when

the troops were engaged, and where his duty required him to be—but did, then and there, hide and conceal himself behind a barn, and when a shell from the enemy's artillery burst upon the barn, the said Gardner galloped to the rear, and farther from the enemy.

Specification 2.—For that the said Charles K. Gardner, at a place called Lundy's-lane, in Upper Canada, on or about the 25th July, 1814, he, then and there, being adjutant general of the American forces, then engaged with the enemy, and his duty then and there being, as chief of the staff, to form and organize the troops, to lead them into action, and to direct and arrange all the proceedings of the field, did, then and there, wholly omit to perform these duties—but did take up his position in the rear of the American forces, and wholly out of danger.

Specification 3.—For that the said Charles K. Gardner, at a place called Fort Erie, in Upper Canada, on or about the 17th September, 1814, he, then and there, being adjutant general of the American forces, as aforesaid, and it being his duty to form and direct the troops, and be with them in the heat of the action, did take his position in a ravine, between Fort Erie and the woods, and wholly out of danger—and in this situation, when directed by major general Brown, commander in chief of the American forces on that occasion, to communicate certain orders to general Ripley, then engaged with the enemy, did employ another officer to expose himself to the fire of the enemy, and communicate

the said orders—while he, the said Charles K. Gardner, took special care to keep out of danger.

CHARGE IV.—*Conduct unbecoming an officer and a gentleman.*

Specification 1.—For that the said Charles K. Gardner, at Boston, in the county of Suffolk, on or about the 14th September, did address a note to major general Ripley, a copy of which is hereunto annexed, and instead of sending the said note by some officer of the army, or some gentleman who could receive an answer to it—did, then and there, leave the same with the bar-keeper of a public house, in said Boston, to be by him delivered to said major general Ripley.

(COPY.)

Boston, 14th September, 1815.

SIR—I have within but a few days past, at Philadelphia, and on enquiry at New York, heard of abusive expressions, which you have applied to me at Fort Erie, and elsewhere.

Why in so long a period I have not been informed of them before this, I can only impute it to the opinion of those who may have heard them, that the malice of the expressions defeated themselves. That you have used them principally before your friends, but in frequent instances; I now have all the evidence which is requisite—though you have taken me by the hand whenever occasion occurred, as if nothing of that nature had happened. This injury is entirely a personal one, and I conceive it

wholly distinct from any difference which you may have with any other officer.

The memorandum of an officer of distinction who was present, that you "expressed a perfect willingness to bring the difference to a personal issue," and that you intended the expressions for my ear, I have in my possession.

I now demand redress. My friend, a field officer of the line, requires an assurance of being safe in a military point of view, when he will wait on you. To this one point I request your reply.

I have the honor to be, sir,

Your very obedient servant,

(Signed)

C. K. GARDNER.

Gen. ELEAZER W. RIPLEY.

I request the reply may be sent to the Exchange.

(Signed)

C. K. G.

Specification 2.—After the said note was returned, to wit: at Boston, aforesaid, although it was publicly rumored in Boston, that the said Gardner had come on for the purpose of fighting said major general Ripley, and although in returning the said note, major general Ripley had expressly stated the reason why it was not received, was because it was not communicated by said Gardner, through the medium of some friend, in a gentlemanly way, or to that effect; he, the said Gardner, transmitted the same again by captain Deacon, of the navy, who then and there informed said Gardner, he could not, from his engagements, appear as the friend of said Gardner, but would consent to bear the letter

as a stranger, but to make no arrangements in consequence of it.

Specification 3.—For that the said Gardner, at Boston, aforesaid, on or about the twentieth of September last, did suffer lieutenant Lee, of the army, to inform him personally that general Ripley's opinion of him was so low and contemptible that he should think it degrading for any gentleman to enter into a correspondence with him, the said Gardner, without in any manner resenting it.

Specification 4.—For that the said Gardner, at Boston, aforesaid, on or about the fourteenth day of said September, did attempt to open a correspondence with said general Ripley, in manner before stated, when he, the said Gardner, had been called by said major general Ripley, a scoundrel or coward, on the frontier, more than a year since; which he, the said Gardner, then and there well knew, but of which he took no notice.

By command of Major General RIPLEY.

(Signed) REYNOLD M. KIRBY,

Capt. and Aid-de-Camp.

Castle Island, Oct. 4th, 1815.

SUPPLEMENTARY SPECIFICATION.

Conduct unbecoming an officer and a gentleman.
—For that the said Gardner, at Boston, aforesaid, on or about the 25th September last, and while he was under arrest by the order of major general Ripley, did shew to colonel Aspinwall, late of the army, a work in manuscript, purporting to be a narrative of the last campaign, in which said Gard-

ner had grossly and outrageously censured the conduct of the said major general Ripley ; and he, the said Gardner, did, then and there, instruct said Aspinwall, to propose to major general Ripley, that if he should discharge the arrest of the said Gardner, and let the business drop, he, the said Gardner, in consideration thereof, would entirely suppress the said work, and be quiescent.

CHARGE V.—*Disrespectful conduct and language.*

Specification 1.—For that the said Gardner, at a place called Fort Warren, on the first day of October, 1815, did address a note to the said major general Ripley, in the form of a protest against the legality of the proceedings instituted by said major general Ripley, against the said Gardner, and in the said note, the said Gardner has the following paragraph :

“ I wish to give you notice, that the court martial for my case, which you have ordered to convene on the 4th inst. and your arrest of me, on charges not of immediate occurrence. and which admit of reference to your commanding general, *are illegal*, and that it will become the subject of an additional accusation against you, if persisted in.”

The same being intended to threaten the said major general Ripley, with an accusation, if he persisted in doing his duty.

By command of Major General RIPLEY.

(Signed)

REYNOLD M. KIRBY,

Capt. and Aid-de-Camp.

Castle Island, Oct. 4th, 1815.

To all of which charges and specifications, the prisoner pleaded "*Not Guilty.*" He, however, admitted the fact of writing the letter of the 14th September, 1815, referred to in the first specification of the fourth charge; he also admitted the fact of writing the paragraph quoted from his protest, and inserted in the first specification of the fifth charge.

The prisoner presented to the court the following note: "Major Gardner alleges that he has had but two days notice of the charges, and asks of the court, on the enormity of the accusations against him, the time of three weeks, to prepare for trial, except the evidence of colonel Aspinwall, about to depart for Europe."

The court postponed the consideration of the subject until Monday, the 9th inst. to which day it adjourned, to meet at 9 o'clock in the morning.

OCTOBER 9, 1815.

The court met pursuant to adjournment.

PRESENT.

Colonel M'Neil, president; lieut. col. Eustis, lieut. col. Walbach, major Harris, major Brooks, captain M'Dowell, captain Thornton, captain Bennett, captain Craig, members; lieutenant Edwards, judge advocate.

Colonel *Aspinwall*, late of the army, a witness on the part of the prosecution, being sworn, says—

Colonel Gardner, after much desultory conversation, requested me to go to general Ripley, and, if

possible, to effect his release from arrest. He stated points, which it would be desirable to him, that I should urge to general Ripley, to effect that object—among these motives were the illegality of the arrest, colonel Gardner being then the acting adjutant general of the northern division ; another was, that he had in his possession *a manuscript pamphlet, which detailed the events of the last campaign on the Niagara frontier, in a manner very unfavorable to general Ripley, which he was willing to suppress, if the arrest was taken off,* and colonel Gardner permitted to go away. This pamphlet he shewed me. These, as far as I can recollect, formed the basis of the argument *which he wished me to use.* Previously, however, to assenting to go at all to general Ripley, I let him distinctly understand, that in this instance, I was equally indifferent to both parties, influenced only by a sense of the evil consequences which I had for some time perceived to flow from the quarrels of the army—and that of course I should take such part of his message as would tend to prevent another quarrel. Under these impressions, I went to general Ripley, at Fort Independence, and stated to him on my first seeing him, that colonel Gardner, if general Ripley would release him from his arrest, was willing to drop every thing relative to their mutual difference here and hereafter. This the general in the most positive manner declined. I asked him if he was aware that colonel Gardner was acting adjutant general of the northern division ? He said, no. I was, from his conversation, led to believe that it

was useless to attempt to put a stop to the continuance of the difference, and here ceased the conversation for that time. Sometime afterwards, the general asked me to walk into his office; and in the course of a desultory conversation, I mentioned to him the existence of the aforementioned manuscript. I did not urge it as a reason why, on that account, he should withdraw colonel Gardner's arrest, because I thought it would be indelicate in me to do it, and inconsistent with the views with which I had entered into the business; which were merely to prevent another quarrel. I stated it to general Ripley, on my first seeing him, that I came in the capacity of a mediator, and not a messenger of colonel Gardner's particularly.

Question by the court. Did you read the manuscript?

Answer. I read a part of it, not the whole.—Colonel Gardner read the greater part of it; and I did not pay much attention to it.

Question by the court. Did the manuscript pamphlet “grossly and outrageously censure the conduct of major general Ripley”?

A. It assumed to be a narrative of facts, which were highly injurious to the reputation of general Ripley; but it was not gross in manner.

Question by the court. You say, you delivered such parts of the message from major Gardner to general Ripley as would tend to prevent another quarrel—what was the whole message?

A. That is a great deal more than I could tell in half a day; amongst other suggestions made to

me by colonel Gardner, which I did not think proper to communicate to general Ripley, was, that *if the general did not accede to the proposition for a compromise, a publication would be made by colonel Gardner, in the nature of a posting of general Ripley.*

Question by the prosecution. Did you not expressly understand from major Gardner, that if general Ripley would discharge the arrest, that in consideration thereof, major Gardner on his part, would suppress the pamphlet ?

A. Yes.

Question by the prisoner. The evil consequences to the army of dissensions spoken of, were they not warmly assented to by me ? and was not this previous to any suggestion of dropping all publications in print ?

A. Yes.

Question by the prisoner. Was not my elucidation of every thing made to you, that you might state what views you thought proper to effect the object ; and stating, that I relied on you, or on your sentiments of honor, to make none injurious to me ?

A. Every thing which colonel Gardner expressed to me, seemed to conform to his sense of propriety ; he left me to act according to my own sense of propriety, cautioning me generally *not to commit his honor.*

The court then deliberated on the propriety of granting the prisoner's request, to adjourn for three weeks—which was not acceded to. They, how-

ever, agreed to allow the prisoner two weeks, to prepare for his trial—and then adjourned to meet at 9 o'clock, A. M. on the 24th inst.

OCTOBER 24, 1815.

The court met pursuant to adjournment.

PRESENT.

Colonel M'Neil, president ; lieut. col. Eustis, lieut. col. Walbach, major Harris, captain M'Dowell, captain Thornton, captain Bennett, captain Craig, members ; major Crane and captain Irvine, supernumeraries ; lieutenant Edwards, judge advocate.

A note was received from major Brooks, informing the court, that in consequence of the severe indisposition of his father, and of his attendance on him being requisite, he wished to be excused from sitting, and requested that one of the supernumeraries might fill his seat. Major Crane accordingly took his seat, and with captain Irvine, was duly sworn, and the proceedings of the court during the whole session read to them.

The judge advocate laid before the court a letter from captain John R. Bell, of the light artillery, informing them, that the public service required his presence at Castine, that he had not the means of transportation thither, and requested that his evidence might be taken by deposition.

The prisoner laid before the court the following extract of a communication, addressed "Col. C. K. Gardner, acting adjutant general, division of the

north, Boston, Massachusetts," and endorsed major general Brown, dated :

Portsmouth, N. H. Oct. 18, 1815.

I at least two months since sent you an order to join general Brown's staff, as adjutant general of the division of the north.

(Signed)

DONALD FRASER,

Brigade Major and A. D. C. to General Brown.

(Directed) **C. K. GARDNER, acting adjt. gen. D. N.**

I certify on honor, that the above is a true copy of the address, direction, date, and signature, and of the extract of a letter received by me.

(Signed)

C. K. GARDNER,

Acting Adjt. General.

He then presented to the court the following note :

On the ground of the recurrence to the orders of major general Brown, by authority, from Portsmouth, of a date subsequent to general Brown's knowledge of my arrest, I request (as general Brown has not received any application from me) that the court will deem it proper to postpone its proceedings until an order may be received in the case, conveying general Brown's wishes—say ten days.

(Signed)

C. K. GARDNER,

Acting Adjt. General.

The court decided that it was inexpedient to postpone its proceedings.

Captain *Newman S. Clarke*, of the sixth regiment infantry, a witness on the part of the prosecutor, being sworn, says—

I saw colonel Gardner on the 17th September, 1814, near the battery commonly called No. 3, one

of the enemies batteries on their extreme right, opposite Fort Erie. Col. Gardner enquired of me for general Ripley—I pointed out the direction in which I last saw the general, and he observed that he might possibly not be able to find the general, and desired me to convey an order to him ; he immediately left me, after communicating the order, and from the direction that he took, I concluded that he was about to return to the rear. I did not see col. Gardner again during the action, to my recollection.

Question by the court. Did you belong to gen. Ripley's staff on the 17th September, 1814?

A. Yes.

Question by the court. What situation did you hold in the staff?

A. Brigade major.

Question by the prosecution. When you saw colonel Gardner, was it within musket range of the enemy?

A. I hardly think it was within point blank musket shot of the enemy; the firing that was heard at this time, appeared to be incessant, particularly on the left; the musket balls that fell among our column appeared to have been spent. This column was advancing on the enemy, and we had not at that time fired a musket.

Question by the court. When colonel Gardner gave you the order for general Ripley, was he calm and collected, or did he exhibit any appearance of dismay?

A. Colonel Gardner, when he made the enquiries of me, made them in a very hasty manner, and appeared to be very impatient. I don't recollect the particular color of his face, whether it was white or red, but *he appeared to be anxious that some other person should carry the order.*

Question by the court. Was there any more danger in seeking general Ripley in the direction you pointed out, than in coming to the place where you met him, colonel Gardner, or than in returning to the rear ?

A. I found general Ripley in about five or ten minutes after I left colonel Gardner. There was much difficulty in getting to the general, on account of the under brush. The fire was much more severe than it was when I received the order from colonel Gardner.

Question by the court. Did you make any reply to colonel Gardner, after he requested you to convey the order to general Ripley—if so, what ?

A. I believe I did make a reply, but don't remember the particular words ; *I hesitated about carrying the order.*

Question by the court. Why did you hesitate ?

A. *Because I felt an impropriety in carrying the orders of the commander in chief.*

Question by the prisoner. What was the order given you to general Ripley ?

A. The substance of the order which he requested me to convey to general Ripley, was, that general Ripley should take the general direction of the troops.

Question by the prisoner. Did you not start immediately to carry the order ?

A. After colonel Gardner left me, I carried the order.

Question by the prisoner. Did you, (or did you not) express any objection to carry the order ?

A. I have answered that question as nearly as I could, already.

Question by the prisoner. How long was it after the first engagement, and after general Miller's column had advanced, when the reserve entered the wood ?

A. The reserve was posted in Fort Eric, until the firing commenced, and was ordered to go into the action, but by some want of intelligence in communicating the order, the reserve took a direction different to what was intended, as was understood at the time, and received a second order to enter the wood ; the exact number of minutes in doing this would be difficult for me to say, as I was employed in communicating orders from one end of the column to the other, but should not suppose it exceeded twenty-five minutes, from the first firing in the woods.

Question by the prisoner. What conversation (if any) have you had with general Ripley, relative to the subject of your testimony, or with his staff ?

The judge advocate objected to the witness answering the question, it being irrelevant to the case.

The court decided that it was an improper question to be put to the witness.

Question by the court. Was col. C. K. Gardner, adjutant general of general Brown's division, on the 17th September, 1814?

A. Yes.

Question by the court. What was the distance, from the place where colonel Gardner asked you to carry the order, to that where you found and delivered the order to general Ripley?

A. I cannot say exactly; I suppose it could not exceed 10, 15, 20, or 25 rods.

Question by the court. Did you think at the moment that colonel Gardner directed you to carry the order because he was afraid to carry it himself?

A. I do not know that he was, but *my impression was, that he was so*; he was evidently endeavoring to find general Ripley.

And then the court adjourned till to-morrow morning at nine o'clock.

OCTOBER 25, 1815.

The court met pursuant to adjournment.

PRESENT.

Colonel M'Neil, president; lieut. col. Eustis, lieut. col. Walbach, major Crane, major Harris, captain M'Dowell, captain Thornton, captain Bennett, captain Craig, members; captain Irvine, supernumerary; lieut. Edwards, judge advocate.

The prisoner suggested to take the sense of the court, whether questions to witnesses are proper, which require *his impressions* relative to what does not enter into any specification against him, and re-

spectfully suggested, *that the record might be altered.*

The court decided that *the record should remain as it was.*

The prisoner requested the sense and decision of the court, on what he considered of importance to his defence, whether he should be permitted to examine the witnesses, or bring *collusion between his prosecutor and any witness*, or as to improper means taken to give impressions injurious to him in conversations with any witness.

The court decided that the prisoner should produce *evidence to invalidate the testimony* on the part of the prosecution, but not until he entered into his defence.

Lieutenant *Elisha Brimhall*, late of the ninth regiment infantry, a witness on the part of the prosecution, being sworn, says—

At the battle of Chippeway, I was wounded in the commencement of the engagement, before we had got into line—while we were marching over the bridge, which obliged me to retire into the rear.—I went into a house on our left, as we marched down towards the enemy; as the enemy's artillery were directed that way, two of their shot went through the house; I then left the house and went into a barn, about 30 or 40 rods in the rear—while I was in the barn and binding up my wound, a shell passed through the roof of the barn and exploded; I went to the door, intending to go still farther to the rear; I saw colonel Gardner on horseback, with a

number of Indians and teamsters about him ; at the time I went to the door, *they were all retiring farther to the rear.*

Question by the prosecution. Did you at the battle of Chippeway, see colonel Gardner *within musket range of the enemy ?*

A. I did not.

Question by the prosecution. When you saw col. Gardner retiring to the rear, *was he in haste ?*

A. He appeared to be.

Question by the prosecution. What were your *impressions* at the time you saw the prisoner, *when he was galloping to the rear ?*

The prisoner wished the decision of the court, as to whether questions, might be asked witnesses to obtain their *impressions*, relative to what is not specified against him ?

The court decided that no irrelevant question should be put to the witnesses ; but that questions *should* be asked relative to the *impressions of witnesses, which do relate to the case of the prisoner.*

The witness then answered—*to get out of the reach of the enemy's shot, as at that time their artillery was directed that way.*

Question by the prosecution. Were you near enough to the prisoner to observe his countenance ?

A. I was.

Question by the prosecution. Did he appear to be under the influence of fear ?

A. I could not tell exactly ; *that was my impression at the time.*

Question by the court. At the time you saw

colonel Gardner retiring from the barn, were our troops closely engaged with the enemy ?

A. They were.

Question by the court. How long did colonel Gardner continue in your sight, and which course did he take ?

A. He went towards the second brigade, which was still in farther in the rear ; I should say he continued in my sight from one to two minutes.

Question by the court. Where was gen. Brown at that time ?

A. I do not know.

Question by the court. How long did you remain in the barn ?

A. Two or three minutes.

Question by the court. What distance was the enemy from the barn at the time the shell exploded ?

A. I cannot tell exactly ; I should say from 60 to 80 rods.

Question by the court. Had the engagement become stationary, or was the enemy retreating ?

A. The engagement was stationary at the time.

Question by the prisoner. What house did you first enter near the creek ?

A. The white house ; I don't recollect who owned it.

Question by the prisoner. Was this white house in front of the creek ?

A. It was, I believe.

Question by the prisoner. Were you, or were you not, in the rear of the barn, or at the rear sill of the opening, when I came up ?

A. I did not see the prisoner come up.

Question by the prisoner. Was the barn open, and a free passage through?

A. There was a passage through by doors, the doors at that time open.

Question by the prisoner. Were you slightly wounded, or in what manner?

A. I was reported slightly wounded, but it proved to be very severe; I was wounded in the face or head.

Question by the prisoner. After the time that the shell you speak of burst, and when you came to the rear of the barn, did you, or did you not, see me pass to the end of the barn, in the road?

A. I do not recollect; I saw the prisoner pass up the road that was *towards the rear*.

Question by the prisoner. Was there *any shot flying* from the enemy, at the time you saw me gallop towards the second brigade?

A. *There was.*

Question by the prisoner. Are you certain, whether you did not see me approach from the direction of the creek to the left?

A. I did not.

Question by the court. How do you know that our troops were closely engaged—could you see them?

A. I could not see them—I knew they were engaged by the sound of the musquetry.

Question by the prisoner. *Have you, or have you not, been promised by general Ripley, his interest in favor of your being continued in the army?*

The judge advocate objected to this question being put, on the ground of its irrelevancy.

The court decided that it should not be put to the witness in the present stage of the trial.

Lieutenant *Horace Story*, of the corps of engineers, and acting adjutant to that corps, a witness on the part of the prosecution, being duly sworn, says—

I saw colonel Gardner the afternoon of the sortie from Fort Erie, in the skirts of the woods, between battery No. 3, and battery No. 2, a British battery, in company with general Brown, and suite, colonel Jones, captain Austin, and lieutenant Armstrong; I had gone up with captain Kirby, who complained of being exhausted with running, and at his request to carry an order from general Brown to general Ripley, by order of colonel M'Kee; I afterwards remained near the person of general Brown; I conversed with colonel Gardner, 10 or 15 minutes, in front of the third battery, (the enemy's;) general Brown was not stationary at any particular place, but moved from the right to the left, as occasion required; during the whole time that I was with colonel Gardner, and I never was more than forty or fifty yards distant from him, to my recollection, he appeared perfectly cool and collected.

Question by the prosecution. Were you not on the point of going into action yourself with a musket? and what did colonel Gardner say to you?

A. While in front of the third battery, in company with colonel Gardner, I had stopped a soldier

returning with a British musket, which he had taken prize, and was carrying into camp ; I sent him back again, and took his musket from him. I afterwards said to colonel Gardner—I had a good mind to go into the battery : he told me, it was very foolish, as I had no command, and advised me to stay where I was—I accordingly took his advice.

Question by the prosecution. Were you in danger when with colonel Gardner, and at the time he spoke to you ?

A. At that time I think the firing did not reach us ; I, however, advanced towards the third battery, until the explosion of the magazine, by lieutenant Riddle, and the falling of the timber, warned me to retire ; this was the only time I recollect to have lost sight of colonel Gardner. When I joined him again, he had accompanied general Brown a little on our right ; a very severe fire had begun in that quarter, I presume from a reinforcement of the enemy—the musket balls, as I passed towards colonel Gardner, flew over my head and struck in the grass, and continued to do so after I had come up with him ; I spoke at intervals to colonel Gardner, a number of times, and he always appeared the same, perfectly collected.

Question by the prosecution. Was there a ravine near the skirts of the wood, which you have mentioned ?

A. There was a ravine at about 150 yards from the skirts of the wood, in the cleared ground towards Fort Erie.

Question by the court. Do you recollect colonel Gardner being sent by general Brown, with orders to general Ripley ?

A. I know nothing of it; I stood in front of the third battery, sending the men back, as they came out occasionally, looking at general Brown, and his suite; so that an order might have been given, without my knowing any thing about it.

Question by the court. Where was the column of reserve, during the time you were with colonel Gardner ?

A. The column of reserve had proceeded up the ravine, at the time I was overtaken by captain Kirby, and found general Brown in company with his suite, in the skirts of the wood.

Question by the prisoner. When you saw me near battery No. 3, of the enemy, and at other times, was I in front of the general situation of general Brown ?

A. When we were in front of the third battery, general Brown was, I think, about 50 feet on our right, and I should judge about fifteen or twenty feet in our rear.

Brevet brigadier general *J. Miller*, a witness for the prosecution, of the fifth regiment infantry, being sworn, says—

I know nothing of the charges against colonel Gardner.

Question by the prosecutor. Were you at the battle of Bridgewater, and if so, did you see colonel Gardner in the engagement ?

A. I was in the battle of Bridgwater, but don't recollect to have seen colonel Gardner in the action.

Question by the prosecution. Were you in the action of the 17th September, 1814, near Fort Erie, and did you see colonel Gardner in that action?

A. I was in that action; I don't recollect to have seen colonel Gardner in the action.

The prisoner admitted that he was not *engaged with the enemy*, at the battle of Bridgwater; that he was sick, and confined to his bed through the day, and had been ill for a number of days, and was unable then to do justice to himself, in the discharge of his duties in action.

The court adjourned, to meet to-morrow at nine o'clock.

OCTOBER 26, 1815.

The court met pursuant to adjournment.

PRESENT.

Colonel M'Neil, president; lieut. col. Eustis, lieut. col. Walbach, major Crane, major Harris, captain M'Dowell, captain Thornton, captain Bennett, captain Craig, members; captain Irvine, supernumerary; lieut. Edwards, judge advocate.

Colonel *Jacob Hindman*, of the corps of artillery, a witness on the part of the prosecution, being sworn, says—

I have no knowledge of the conduct of colonel Gardner, at the battle of Chippeway.

Question by the prosecutor. Were you at the battle of Chippeway ?

A. I was on the field at the commencement, but took no part until about the end.

Question by the prosecution. Did you in that action see colonel Gardner ?

A. I did not.

Question by the court. What was your command at the battle of Chippeway ?

A. The artillery.

Question by the court. Did you receive any orders during the action ?

A. Previous to the action, I received orders from general Brown personally, and in the action, orders from general Scott, and lastly from general Brown personally.

Question by the prisoner. Were you with the heavy pieces of artillery, on the bank of the Niagara, and did you then see me ride up and say, that the artillery should advance, without giving it as an order ?

A. Sometimes I was with the heavy pieces of artillery, but have no knowledge of such a request being made by colonel Gardner.

Question by the prosecution. Did not colonel Gardner, on the morning after the battle of Bridgewater, deliver you an order ?

A. I am not certain that he did.

Colonel Hindman, was then requested to testify, as to any knowledge he might possess relative to the fourth specification of the fourth charge ?

Question by the prosecution. Did you, while on the Niagara frontier, ever hear the epithets, coward or scoundrel, applied to colonel Gardner by general Ripley?

A. Not personally to colonel Gardner; he has been called by general Ripley, in my presence, by such epithets.

Question by the prisoner. Did you ever hear general Ripley say, that he made them to me? and did you ever understand that I knew of these expressions?

A. I have heard general Ripley say, that he had pronounced colonel Gardner, to his face, or within his hearing—coward, or scoundrel, or words to that effect; but have no knowledge of colonel Gardner's being further acquainted with this declaration; my impression was, that he (col. Gardner) had not heard of such expressions from any other source, at the time I heard general Ripley make use of those expressions.

Question by the prisoner. Can you recollect who was present at any time, when you have heard these expressions?

A. I cannot recollect the persons on the Niagara frontier; but at Washington, to the best of my recollection, lieut. col. Selden, major M'Donald, (of general Ripley's staff,) and, I think, Dr. Bro-nough.

Question by the prisoner. At what time did you hear these remarks from general Ripley?

A. In August, September, and October, last year, when we were at Fort Erie; I cannot say precisely.

Question by the prisoner. Was it subsequent to general Ripley's return into Erie from furlough?

A. I cannot tell with certainty.

Major *Thomas Harrison*, of the late forty-second regiment of infantry, a witness on the part of the prosecution, being sworn, says—

I was at the battle of Chippeway, on the 5th of July, 1814; I did not see colonel Gardner in the action—but as we were marching on the field, I saw general Brown ride up to general Scott, and I presume he gave him some order; I do not know the amount of the order.

Major *Benjamin Watson*, of the sixth infantry, a witness on the part of the prosecution, being duly sworn, says—

I saw colonel Gardner but once at the battle of Chippeway; he was then enquiring for general Ripley's brigade, as he stated, for the purpose of communicating an order; I knew nothing of his getting behind a barn.

Question by the prosecution. At what period of the action did you see colonel Gardner?

A. It was while the enemy were retreating.

The court adjourned, to meet to-morrow morning, at nine o'clock, in consequence of the absence of witnesses.

OCTOBER 27, 1815.

The court met pursuant to adjournment.

PRESENT.

Colonel M'Neil, president ; lieut. col. Eustis, lieut. col. Walbach, major Crane, major Harris, captain M'Dowell, captain Thornton, captain Bennett, captain Craig, members ; captain Irvine, supernumerary ; lieut. Edwards, judge advocate.

Captain *Newman S. Clarke*, of the sixth regiment, was again called to testify relative to the prisoner's conduct at the battle of Bridgwater, (or Lundy's Lane.)

Question by the prosecution. Did you not see colonel Gardner, on the evening of the battle of Bridgwater, near the field of action ?

A. I did.

Question by the prosecutor. Was he not on horseback, and in rear of the line, and out of danger ?

A. He was on horseback, and in rear of the line, 100 or 150 yards, I should say,—and out of danger. I don't know that he was not in the action previous to this.

Question by the prosecution. Did col. Gardner appear, when you did see him, in the exercise of his duties as a staff officer, or was he unemployed ?

A. He was unemployed ; his horse was standing still. I don't know whether he was ordered to remain there or not.

Question by the prisoner. Do you recollect whether any musket shot were striking the trees, and the road, in which we stood together, at that moment ?

A. I don't know that there were any musket shot; I heard some rattling in the bushes—I concluded that they were musket or grape; they were not far from us. I supposed at the time they were spent shot; there was very little firing at the time.

Question by the prisoner. Do you recollect of my advancing on the road, and meeting the adjutant of the twenty-fifth, who was complaining under a severe wound?

A. Yes.

Question by the prosecution. How far did colonel Gardner advance?

A. I should think not more than five rods?

Question by the prosecution. Did you consider that there was any danger from the fire of the enemy, in the position you then occupied?

A. I did not.

Captain Clarke was then examined relative to his knowledge of the prisoner's conduct at the battle of Chippeway.

Question by the prosecution. Did you see col. Gardner at the battle of Chippeway?

A. I did.

Question by the prosecution. Was he not with the second brigade during a part of the action, and during that time was he at all exposed to the fire of the enemy?

A. At the time colonel Gardner came to the second brigade, there were cannon shot passed over the line of the second brigade; two shot passed through the second brigade—I don't know that it was precisely at the time colonel Gardner came that way, but near that time. Colonel Gardner

came to the second brigade, I suppose, to give orders, as the brigade immediately put itself in motion. Colonel Gardner forded the creek with the brigade, and marched with the column, until it entered the woods—the column was not engaged; the enemy were retiring as the column came into the field. If I recollect right, colonel Gardner left the column soon after it entered the wood, for the purpose of ascertaining the position of general Scott—don't recollect whether colonel Gardner returned again or not, but believe he did.

Question by the prisoner. From what direction did I come to the second brigade ?

A. I suppose colonel Gardner came from the field of action, or from the bridge—he came from that direction; the bridge was near the scene of action.

Question by the prisoner. Do you recollect of my going down the creek from the brigade, and re-joining it, as it was crossing the creek ?

A. I do not.

Question by the prisoner. Did this creek form an acute angle with the river ? and was it, or was it not, difficult to ford, at the point where the brigade forded it ?

A. Yes, it formed nearly an acute angle; it was very difficult to ford it at the point where the brigade forded it.

Question by the prosecution. Was not general Brown in the rear of general Scott's brigade, and in the direction from which colonel Gardner came, at the time he first joined your brigade ?

A. I don't know where general Brown was.

Lieut. col. *Nathan Towson*, of the regiment light artillery, a witness for the prosecution, being sworn, says—

At the battle of Chippeway, I don't recollect to have seen colonel Gardner at all. At the action of Lundy's Lane, I saw colonel Gardner; he was communicating orders to some officers at the foot of the hill; 'twas at some distance from where the action was. I do not recollect to have seen him at any other time near the field.

Question by the prosecution. At what period of the action did you see colonel Gardner; and was he at that time out of danger?

A. It was after the enemy's batteries had been carried—I believe there was no firing at the time.

Question by the prisoner. Do you conceive that from the manner in which the action at Chippeway commenced, that my duties were to form, and lead the men into action?

A. I do not, under the circumstances which that action commenced.

Question by the prosecution. Would not the duties of colonel Gardner, as adjutant general and chief of the staff, require his presence with the troops composing the army, during an action?

A. I do think it the duty of an adjutant general to be present, and very active at the time of an action. I will state to the court, the reasons why I think it was not necessary for colonel Gardner to form the troops at the battle of Chippeway. The brigade of general Scott, which fought the battle,

was already formed for drill, as they marched off for battle—of course it was not necessary for col. Gardner to form them.

Captain *Reynold M. Kirby*, of the corps of artillery, and aid-de-camp to general Ripley, a witness for the prosecution, being sworn, says—

I received a sealed note, in the hand writing of col. Gardner, directed to general Ripley, which I knew, from having seen his hand writing repeatedly. I received it from the bar-keeper of Earle's coffee-house; I gave it to general Ripley—he shewed me the note very soon afterwards, that evening—and it was the same in purport as the note in the specification. He directed me to return it to colonel Gardner. I called at the Exchange coffee-house, to enquire for colonel Gardner, supposing that he lodged there—the bar-keeper immediately spoke, and said that if I had any note for col. Gardner, he would receive it, and see that col. Gardner had it. I enquired where colonel Gardner was, and found him, and gave him the note myself. There was an endorsement on the back of the note I gave colonel Gardner, in the hand writing of general Ripley.

Question by the prisoner. Did you hand the note, with the endorsement, to me, as a message from general Ripley?

A. I gave it to colonel Gardner from general Ripley.

Question by the prisoner. Do you know that I left the note with the bar-keeper at this (Earle's) house, and how far do you know of it?

A. I received the note from the bar-keeper; from whom he received it, I don't know.

The court adjourned until to-morrow morning, at nine o'clock.

OCTOBER 28, 1815.

The court met pursuant to adjournment.

PRESENT.

Colonel M'Neil, president; lieut. col. Eustis, lieut. col. Walbach, major Crane, major Harris, captain M'Dowell, captain Thornton, captain Bennett, captain Craig, members; captain Irvine, supernumerary; lieut. Edwards, judge advocate.

Captain *David Deacon*, of the United States navy, a witness for the prosecution, being sworn, says—

Some time in the month of September, colonel Gardner came to me, and mentioned the circumstance of his wishing to communicate with general Ripley, and mentioned the circumstance of a letter being left in the hotel by him—that general Ripley received it, but had returned it, objecting to the manner in which it had been handed to him. Col. Gardner then mentioned to me, that his friend was not here, and asked me if I had any objection to handing general Ripley a sealed letter, to do away the objection that he had made previous. I told colonel Gardner, that I was very much engaged; I could not enter fully in the business—but, that if he would write on the envelope, the reason or cause of my coming, which was to do away the former objection, I would consent to carry it. Colonel

Gardner expressed to me, at this time, that he would not call on me at the time, but that he wished to do away the objection immediately—that was his only object in calling on me. I accordingly delivered the letter to general Ripley; he read the envelope, and accepted the letter—our business there ended, after some explanation relative to the envelope.

Question by the prosecution. Did you read the letter which you bore from colonel Gardner?

A. No. Colonel Gardner read the outlines to me; I don't recollect the particular parts of it.—The envelope I read two or three times over.

Question by the prosecution. Was the letter the same in purport with the letter recited in the specification?

A. I cannot say—there are some parts that appear similar.

The prisoner admitted that it was the same.

Question by the prisoner. Was it, or was it not, our understanding, that the favor you were so good as to do for me, was merely to deliver the letter, and ascertain its acceptance?

A. Yes.

Question by the prisoner. Will you state the acceptance understood, and whether the objection was admitted to be done away?

A. The letter was accepted from my hands—I cannot say whether the objection was done away.

Question by the prisoner. Was the substance of the envelope you speak of, the same with this?—(which follows):

Boston, 18th Sept. 1815.

SIR—That this letter, signed by me, may become entitled to be the subject of your consideration, I have requested captain Deacon, a master and commander in the United States navy, to hand it to you.

As the objection, agreeably to your endorsement, was only to the disrespect of the manner in which the letter was communicated, (by the keeper of the tavern at which you put up, to the hands of your aid, and under seal, into your hands,) and not to the letter itself, I now anticipate your speedy consideration and reply.

I have the honor to be,

With very respectful intention,

Sir, your obedient servant,

(Signed)

C. K. GARDNER.

Major General RIPLEY.

A. I believe it was the same.

The judge advocate informed the court, that several witnesses were absent—the following is a list of their names; annexed to which is the substance of their testimony—and respectfully submitted to the court, whether their evidence was, or was not, of importance.

Captain *J. R. Bell*, to support fourth specification of fourth charge.

Captain *N. N. Hall*, (at New York,) to prove what gen. Ripley said to major Gardner, as stated in fourth specification of fourth charge.

Major *Crooker*, to testify that he never saw the prisoner in action.

Lieut. col. *Snelling*, to prove general Ripley's remarks, as stated in the fourth specification of fourth charge.

Colonel *Leavenworth*, to testify his not seeing the prisoner in action.

Colonel *G. M. Brooke*, same evidence as colonel Leavenworth.

Major *Marston*, prisoner's position at Niagara.

Major *Orne*, same testimony as major Marston.

Major *Harrison*, to corroborate the testimony of lieutenant Brimhall.

The prisoner addressed the court in the following words :

I wish the evidence of major Marston, to prove that after giving orders to general Ripley to advance with the second brigade, I left it to see the situation of the action ; went down the creek, which ran for some distance nearly parallel with the river ; that the barn was connected with the creek on which it stood, by high board fences, and prevented the possibility of my passing in front of the barn ; that after I had observed the engagement from the road which passes the barn, on the bank of the river, I returned to the twenty-first, (the only regiment taken by general Ripley) found it passing the creek in a mode not the most expeditious, and made a suggestion to major Marston, or some captain of the twenty-first regiment, which was adopted, and which gave it expedition ; that I continued to lead that regiment of the brigade, agreeably to my instructions, until the enemy retreated—that

my conduct and language was such as to animate the men of this brigade.

I wish to obtain in evidence, the impressions of colonel Brooke, major Marston, and all the others who are absent, to rebut the impressions of lieutenant Brimhall, late in the army, and captain Clarke, late brigade major to general Ripley.

I wish the evidence of lieutenant Lee, aid-de-camp to my prosecutor, to prove that he used no such expressions as those alleged in the third specification of the fourth charge, when he called upon me with a verbal message from major general Ripley ; that what he did say, I answered as coming from general Ripley, and to state my verbal reply.

I wish also the deposition of general Gaines, and the evidence of major Worth, with respect to my general character, whether they saw me in the action, and their present *conviction* of my conduct.

I wish major Orne's evidence, that he never saw me, during the action of Lundy's-lane, (as it is called by my prosecutor.)

Very respectfully,

(Signed)

C. K. GARDNER,

Major and Acting Adjt. General.

Major *Azor Orne*, of the late twenty-first regiment, and late assistant inspector general, a witness on the part of the prosecution, being sworn to testify as to the prisoner's conduct at the battle of Bridgewater, says—

All that I can state about colonel Gardner is this : I was ordered to remain in camp by general Brown, with general Porter, to see to the defence of the

encampment ; and when I returned from the camp towards the field, I met colonel Gardner near the field of action, near Mrs. Wilson's ; he was giving directions relative to prisoners, (those taken with general Riall,) which fell within my department—I observed to colonel Gardner at the time, that he had taken my duty out of my hands, or to that amount ; and I could dispense with his services any farther. I do not recollect of there being any firing at that time, and don't know which way colonel Gardner went.

The court adjourned till Tuesday, the 31st of October inst. at 9 o'clock, A. M. in order to afford the judge advocate and the prisoner, an opportunity of making arrangements relative to the obtaining of testimony by deposition.

OCTOBER 31, 1815.

The court met pursuant to adjournment.

PRESENT.

Colonel M'Neil, president ; lieut. col. Eustis, lieut. col. Walbach, major Crane, major Harris, captain M'Dowell, captain Thornton, captain Bennett, captain Craig, members ; captain Irvine, supernumerary ; lieut. Edwards, judge advocate.

Major Harris informed the judge advocate, that since the adjournment of the court on the 28th, he had received a commission which gave him the brevet rank of lieutenant colonel, from the 25th of July, 1814. He accordingly took his seat agreeably to his rank.

It being a desirable object to obtain the remaining evidence on both sides, with as much expedition as possible, the judge advocate and the prisoner, agreed to propound the subjoined questions to witnesses at a distance, in order to obtain their written instead of oral testimony.

ON THE PART OF THE PROSECUTION.

To captain *Bell*.—Did not colonel Gardner, at Albany, last winter, tell you that general Ripley had done every thing, on the Niagara frontier, to pick a quarrel with him ?

To captain *Hall*.—Did not general Ripley always pronounce colonel Gardner, a coward, at Fort Erie ? and was not this done in presence of the general staff, and without disguise, or wish for concealment ?

To lieut. col. *Snelling*.—The same question as to captain Hall.

To colonel *Leavenworth*, colonel *Brooke*, major *Crooker*, and lieut. col. *Jones*.—Did you ever see major Gardner expose himself to the musketry of the enemy ?

To major *Marston*.—Where was the position of colonel Gardner, during the battle of Niagara, and what was his conduct ?

THE PRISONER WISHES

Lieut. col. *Snelling*.—To state all he knows of the fourth charge and specifications.

Major *Marston*.—To state what he saw of colonel Gardner's conduct at Chippeway.

Major general *Gaines*.—1st. Did you ever see colonel Gardner in action ?

2nd. What was your conviction, and now is your conviction, of his conduct at such time ?

3rd. Have you had an opportunity of becoming acquainted with his sentiments as a man of honor ? How great an opportunity ?

4th. What is your opinion and conviction of his character as a man of honor ?

Of major *Wortb.*—The same questions as to general Gaines.

ON THE PART OF THE PROSECUTION.

To major general *Wilkinson.*—1st. Did you not say, in the hearing of colonel Gardner, last winter, at Albany, that he was a scoundrel and coward, and did he resent it in any way ?

2nd. What was the affair between col. Gardner and lieutenant Johnson, of the old sixth ; and was it not considered disgraceful to colonel Gardner ? and did not all the officers of the sixth, petition to the secretary of war, to have him struck from the rolls of the army ?

ON THE PART OF THE PRISONER.

The third and fourth specifications, and also the second question to general *Wilkinson*, to the lieutenant Johnson referred to, (I suppose) now a merchant, at Pittsburg, (Penn.) The second question of the prosecutor to general *Wilkinson*, also to said capt. Johnson.

To general *Wilkinson*—

1. Did you ever state that you did so ?
2. Did you ever state this ?

The prisoner declared that the presence of lieutenant Lee, was necessary to his defence, and

requested that he might be summoned to appear before the court.

The court adjourned till to-morrow morning, at 9 o'clock.

NOVEMBER 1, 1815.

The court met pursuant to adjournment.

PRESENT.

Colonel M'Neil, president; lieut. col. Eustis, lieut. col. Harris, lieut. col. Walbach, major Crane, captain M'Dowell, captain Thornton, captain Bennett, captain Craig, members; captain Irvine, supernumerary; lieut. Edwards, judge advocate.

Major general *Jacob Brown*, commanding the northern division of the United States army, a witness for the prisoner, being sworn, says—

I can state to the court, at the battle of Chippeway, colonel Gardner was with me, in advance of Street's creek, previous to my having certainly ascertained that a general engagement would take place. Previous to this point of time, I had ordered general Porter, with his volunteers, to break off for the rear of our general encampment, march to the left through the woods, out of view, and endeavor to get between the enemy's light parties and their main camp, on the Chippeway. This being the state of the troops, and of the orders given, I was in advance of Street's creek, with my staff, of which number colonel Gardner was one, and present. I directed the advance picket to fall back to a log-house, near Mrs. Street's, in hopes

that the light parties of the enemy would close up, so that general Porter, with his command, could place himself in their rear, and cut them off from their main camp. The American picket fell back accordingly, and the light part of the enemy in the strait, advanced ; when some firing took place between the pickets of the two armies. At this moment, I heard a heavy firing on our extreme left, in the wood, and from the report, I knew that Porter had not advanced sufficiently for to take ground to the right, so as to enclose the enemy's light parties ; from which, I inferred, that the enemy had advanced in force, and from the dust that was rising near the Chippeway, I was induced to believe that the enemy were advancing with their whole force ; I so stated to those around me, and immediately mounted, with my staff, rode rapidly to general Scott's tent, he being the commanding officer of the first brigade, to which was attached Towson's company of artillery, and ordered him to advance with his command. At the moment I gave him the order, he was standing before his tent, his horse prepared for him to mount, and his command turning out for drill ; the order was obeyed with great promptness and ability. Within ten minutes from this time, and I most clearly believe within fifteen, I ordered colonel Gardner, we then being within the space occupied as a camp, and but a few rods in front of the second line, which general Ripley commanded, to go to general Ripley, and order him to advance by the left, through the skirt of the woods, and if possible, gain a position in rear of

the enemy's right flank, whilst he was engaged with Scott in front ; and I ordered colonel Gardner to remain with general Ripley, and his command, and to aid in conducting his column to the ground, as I had ordered. I saw no more of colonel Gardner, until I passed colonel Jessup, who commanded the left battalion of Scott's brigade, at which moment, Scott's command and the British army, were engaged in close and desperate conflict ; having spoken with colonel Jessup, I inclined still further to the left, in hopes of meeting the head of general Ripley's command ; going a few rods, I observed colonel Gardner in the bushes, called to him—he was on horseback, in advance of the troops, led on by general Ripley ; he promptly informed me that general Ripley was near, with his command—and would in a few minutes, be able to close with the enemy, as I had directed. Before, however, gen. Ripley's command came up, Scott's command, aided by the deep and deadly wounds that general Porter's volunteers had inflicted, defeated and drove in the enemy in great confusion.

Relative to the prisoner's conduct at the battle of Niagara, (or Lundy's-lane) the witness says :

I saw colonel Gardner, previous to the action of Niagara ; he was very unwell, and part of the time in his tent. I saw him lying down on his bedding and he complained of being unwell. I did not expect much from colonel Gardner in the battle of Niagara ; I considered him a sick man.

Scott had been ordered to advance with his brigade, Towson's artillery, and major Harris, with

the mounted regular and militia dragoons. After they had been some time in advance, I heard a very considerable firing, from which I inferred, that Scott had met the enemy. My staff were immediately assembled around me, with the exception of major Jones and major Wood, who had advanced with Scott ; I ordered colonel Gardner, with my aids, to put the troops that were in camp, on the march as promptly as possible ; all the regulars to proceed directly on to Scott's support ; the militia, under general Porter, to advance to the old work of the enemy, on the east, or lower side of the Chippeway creek. Having confided to colonel Gardner, as chief of my staff, the order for all the troops in camp, to advance—I rode as rapidly as possible, with colonel M'Ree, towards the scene of action ; the first distinct information that I recollect, was from colonel Jones, that I met near the Chippeway. He informed me, that Scott was engaged with the enemy, and that they appeared in force. I instantly ordered him to proceed, and order up gen. Porter with his volunteers also.

Colonel Gardner, was within the field of action ; he communicated with my aids, and I considered his conduct correct and honorable under the circumstances. I did not give him personally, any order on the field.

During my absence, for the recovery of my wound, after the battle of the Falls, col. Gardner joined me for the recovery of his health, by permission of general Gaines. After being with me for a few days, he asked permission to return, which

I refused ; he repeated his application different times, which was as often refused.

Relative to the prisoner's conduct at the sortie from Fort Erie, the witness further states :

The first colonel Gardner knew of the sortie of the 17th of September, was on the morning of that day. I had, the evening previous, intimated to col. Jones, my intentions, as his tent was near mine, and I had to make use of him in my arrangements. When I informed colonel Gardner of the plan of the sortie, I put him upon the performance of certain duties, to which he attended with zeal and cheerfulness ; though he did appear to me, to be hurt, that I had not sooner informed him of my intentions. When sufficient time had elapsed, as I supposed, for general Porter to gain a little path way, that led from the rear of Fort Erie, past the front of the enemy's right, being anxious to see him, I passed out upon this path way, to meet him, with five or six soldiers, and my aid, lieut. Armstrong ; as we were passing out, at this moment colonel Gardner hastily came up to me, with a view of proceeding out in company ; as I did not consider any additional aid could be useful for such a purpose, I ordered him within the lines of our camp, to attend to duties that I deemed important.

After general Porter had turned the enemy's right, and general Miller had pierced his line, between battery No. 3, and battery No. 2, colonel Gardner I saw near me, as I was standing in front of battery No. 3, and sent him with an order to general Ripley. This was before the reserve under

general Ripley had advanced across the ravine, between the enemy's position and ours. As general Ripley and his command, were entering the enemy's lines, near battery No. 3, I again sent colonel Gardner to general Ripley, to order him to move with his command, as rapidly as possible, to support general Miller on our extreme right.

Question by the prisoner. Do you conceive col. Gardner, during his service with you, ever to have misbehaved in view of the enemy?

A. I do not.

Question by the prisoner. Ever to have faltered from the execution of his duty?

A. I do not.

Question by the prisoner. And what do you conceive his conduct to have been?

A. Good.

Question by the prisoner. As commanding general, with the knowlege you have had of my ability, were you satisfied with the discharge of my duties, during the campaign?

A. Yes.

Question by the prisoner. Did you ever trust me with the responsibility of a command, during the campaign on the Niagara? and in such case, what was the manner in which you observed me to execute the trust?

A. Observing on the morning of the third of July, that the troops destined to land above Fort Erie, at the same time with those that landed below, would not gain their position in time to secure the troops in the garrison—I ordered colonel Gardner

to take command of that part of the second brigade that crossed from Black-rock, to form them on the beach as they landed, and march up to Scott's right, where I would give him further orders—upon his advancing with his command, I ordered him to penetrate the woods, in the rear of Fort Erie, and place his right flank upon the Lake shore, above the Fort, so as to completely enclose it; and if possible, secure all it contained. This duty he performed with zeal and gallantry.

Question by the prisoner. Was, or was not, this the only instance of your charging me with a command?

A. I have no recollection of ever having given colonel Gardner, during the campaign, any other command.

Question by the prisoner. Did you ever hear general Ripley, pronounce me the epithets mentioned in the fourth specification of fourth charge?

A. No, I never did—I never heard a word of the kind.

Question by the prisoner. Did you ever hear that he had pronounced me so? and when did you first hear of it?

A. The first I ever heard of it, was at Buffalo, on my way to Detroit.

Question by the prisoner. Will the witness please to state, whether he has ever heard my courage doubted, and when first?

A. At the city of Washington, sometime towards the close of last April. I have no recollection

tion of ever hearing his courage doubted until I was at Washington.

Question by the prisoner. Did you see a brevet commission signed by the president, and secretary of war, which was sent me ?

A. Colonel Gardner was in company with me, and shewed me an envelope, which he observed, contained a brevet.

Question by the prisoner. Did I return it ?

A. I have no recollection of having taken the trouble to look at it ; but I read a letter that he had drafted to the war department, declining its acceptance.

Question by the prisoner. Will the witness please to state, whether he considered the brevet as *voluntarily* sent me, as far as respects any agency or wishes of mine ?

A. Colonel Gardner never expressed to me, a wish to have a brevet ; but on the contrary, desired that he might not be noticed in that way.

The court adjourned till to-morrow morning, at 9 o'clock.

NOVEMBER 2, 1815.

The court met pursuant to adjournment.

PRESENT.

Colonel M'Neil, president ; lieut. col. Eustis, lieut. col. Harris, lieut. col. Walbach, major Crane, captain M'Dowell, captain Thornton, captain Bennett, captain Craig, members ; captain Irvine, supernumerary ; lieutenant Edwards, judge advocate.

Lieut. col. *Jones*, of the corps of artillery, a witness on the part of the prosecution, being sworn, says—

I remember but one occasion that afforded me a distinct opportunity of observing the manner of colonel Gardner, when engaged with the enemy—it was on the 17th of September, (the day of the sortie from Fort Erie,) I was with him, some distance between the ravine and the enemy's battery No. 3. I particularly observed his activity in carrying some orders, I presume from general Brown. All that I saw and observed that day, gave me not the smallest idea, but the conduct of colonel Gardner, was cool and deliberate, and becoming an officer—he was within the wood, certainly within musket shot of the enemy. I do not recollect of seeing him at all in a ravine.

Question by the prisoner. From your situation with general Brown, could I have received an order from him, in the ravine, without your knowledge?

A. I did not see general Brown in the ravine at all.

Question by the prisoner. Were you under the necessity of issuing orders from the adjutant general's office, at Queenston, in consequence of my illness?

A. Yes—on the 24th of July, the day before the battle of Niagara.

Question by the prisoner. Did you ever hear general Ripley, pronounce me the epithets scoundrel and coward?

A. No.

Question by the prisoner. Did you ever hear that he had done so ; and when first did you hear of it ?

A. Yes. The first I heard of it, was at Sackett's harbor, in the month of May or June last—but it was very different from the information given me by colonel Snelling, and much more to the prejudice of colonel Gardner, when I saw him at Buffalo, on my way to Detroit, in July last.

Question by the prisoner. Have you ever communicated it to me ?

A. I have not ; because this is the first time I have seen colonel Gardner, since I heard of the charge.

The prisoner requested that general Miller, and captain Clarke, witnesses in his behalf, might be examined, before the evidence was closed on the part of the prosecution, as they were anxious to leave town, the public service requiring that they should be with their respective commands.

The request was granted by the court.

Brevet brigadier general *James Miller*, of the fifth regiment infantry, a witness for the prisoner, was examined.

Question by the prisoner. Did you ever hear general Ripley, pronounce me the epithets scoundrel and coward ?

A. Not that I recollect.

Question by the prisoner. Did you ever hear that he had done so ; and when first did you hear of it ?

A. I never heard that he had done so, until lately ; and whether it was at Buffalo, or Albany, I don't recollect.

Question by the prisoner. Did you ever hear my courage doubted—if so, when ?

A. I have no recollection of ever hearing his courage doubted, until since the war.

Question by the prisoner. Will you please to state how long you commanded the old sixth regiment ?

A. I commanded it about a year.

Question by the prisoner. What was my standing with the officers of that regiment, with respect to the manner in which they spoke of me ?

A. I don't recollect to have ever heard the reputation of colonel Gardner, called in question, by any officer of that regiment.

Captain *Newman S. Clarke*, a witness for the prisoner, was then examined.

Question by the prisoner. Have you ever heard general Ripley speak injuriously of me ?

A. I don't recollect to have ever heard him.

Question by the prisoner. When did you hear that he had done so ?

A. I heard at Fort Erie, that general Ripley had said some things injurious to him—I don't recollect at what time, or from whom. It was, I think, previous to the sortie of the 17th September, 1814.

The court adjourned, to meet again on the 10th of January, 1816, at 10 o'clock, A. M. in order to afford sufficient time to obtain the testimony of absent witnesses, particularly from major Marston, at Detroit.

JANUARY 10, 1816.

The court met pursuant to adjournment.

PRESENT.

Colonel M'Neil, president; lieut. col. Eustis, lieut. col. Harris, lieut. col. Walbach, major Crane, captain M'Dowell, captain Thornton, captain Bennett, captain Craig, members; captain Irvine, supernumerary; lieut. Edwards, judge advocate.

A letter, of which the following is a copy, was laid before the court.

Washington City, 2d January, 1816.

SIR—I am directed by major general Ripley, to desire you to defer the trial of major Gardner, for two days, provided general R. does not arrive in Boston by the 10th of January.

Most respectfully,

R. M. KIRBY,

A. D. Camp.

To Colonel M'NEIL.

In consequence of the above letter, and the absence of the prosecutor, the court adjourned till tomorrow morning, at 9 o'clock.

JANUARY 11, 1816.

The court met pursuant to adjournment.

PRESENT.

Colonel M'Neil, president; lieut. col. Eustis, lieut. col. Harris, lieut. col. Walbach, major Crane, captain M'Dowell, captain Thornton, captain Bennett, captain Craig, members; captain Irvine, supernumerary; lieut. Edwards, judge advocate.

In consequence of the absence of the prosecutor, the court adjourned till to-morrow morning, at 9 o'clock.

JANUARY 12, 1816.

The court met pursuant to adjournment.

PRESENT.

Colonel M'Neil, president; lieut. col. Eustis, lieut. col. Harris, lieut. col. Walbach, major Crane, captain M'Dowell, captain Thornton, captain Bennett, captain Craig, members; captain Irvine, supernumerary; lieut. Edwards, judge advocate.

The judge advocate laid before the court, the following depositions.

Copy of a letter from captain Hezekiah Johnson, late of the second regiment United States infantry, to the judge advocate.

Pittsburg, (Penn.) Nov. 20th, 1815.

SIR—I have this moment had the honor to receive your letter of the 7th inst. My answers are annexed to the subjoined transcript of the interrogatories, of the prosecution and the prisoner.

* *“ Question by the prosecution. What was the affair between major Gardner, (then a subaltern) and lieutenant Johnson, of the old sixth, and was it not considered disgraceful to Gardner? and did not all the officers of the sixth, petition to the secretary of war, to have him struck from the rolls of the army?”*

* This question was at first addressed to general Wilkinson, and the prisoner requested it might be copied, and sent to capt. Johnson.

A. I do not know, nor did I ever hear of any such affair, between major Gardner, (then a subaltern) and lieutenant Johnson, of the old sixth; nor did I know there was a lieut. Johnson, of the old sixth, until the interrogatory came before me.

2d. The affair, and the idea of disgrace, were equally unknown to me.

3d. I never before heard of a petition to have the _____ struck from the rolls of the army.

Question by the prisoner. Did you ever state this? (alluding to the above question on the part of the prosecution.)

A. Never.

(Signed)

II. JOHNSON.

The above answer to the foregoing questions, was sworn and subscribed to before me, Philip Gilland, esq. a justice of the peace, in and for Alleghany county, and state of Pennsylvania, this 20th day of November, 1815.

(Signed)

P. GILLAND.

Copy of a letter from captain N. N. Hall, to the judge advocate.

Fort Columbus, Harbor of New York, 22d Nov. 1815.

To the following question, to wit—"Did not general Ripley, always pronounce major Gardner, a coward, at Fort Erie, and was not this done in presence of the general staff, and without disguise or wish for concealment?" I answer, that general Ripley did pronounce major Gardner, (then colonel Gardner) a coward, at Fort Erie; I cannot positively say that it was in presence of the general

staff, but it was said openly before officers of the army, and I feel confident from the public manner in which the remarks were made, that the general had no wish to disguise or conceal them.

(Signed)

N. N. HALL,

Captain Corps Artillery.

THIRD MILITARY DEPARTMENT.

Head Quarters, New York.

On the twenty-second day of November, 1815, personally appeared before me, Henry Wheaton, judge advocate of the northern division of the army, captain Nath'l N. Hall, of the corps of artillery, and made solemn oath to the truth of the foregoing deposition, by him subscribed and reduced to writing.

(Signed)

HENRY WHEATON,

Army Judge Advocate.

THIRD MILITARY DEPARTMENT,

Head Quarters, New York.

On this tenth day of November, A. D. 1815, before me, Henry Wheaton, judge advocate of the northern division, personally appeared lieut. col. Josiah Snelling, of the sixth regiment of infantry, and made solemn oath to the truth of the deposition hereunto annexed, by him subscribed and reduced to writing.

(Signed)

HENRY WHEATON,

Army Judge Advocate.

Question by the prosecution, to lieut. col. Snelling.

Did not general Ripley always pronounce colonel Gardner, a coward, at Fort Erie, and was not this done in the presence of the general staff, and without disguise or wish for concealment ?

A. Sometime in the month of September, 1814, while the left division of the northern army was in the entrenched camp near Fort Erie, I heard major general Ripley say, that colonel C. K. Gardner, was a liar, a scoundrel, and a coward ; it was in a tent belonging to some officer of the twenty-first regiment, whose name I do not recollect ; and there were present several officers, but none of the general staff, except myself. I asked the general if he was aware, that he would be bound in honor, if called upon, to fight a gentleman to whom he had applied such epithets ; he replied, that if col. Gardner thought proper to call upon him, he would fight him, without hesitation. I then observed, that I believed colonel Gardner was in the next tent, and might possibly have heard him ; he replied, he hoped he had—his remarks were meant for his ear. At this distance of time, I cannot be positive that I have quoted the words correctly, but of their truth in substance I am certain. I afterwards looked into the next tent, and saw colonel Gardner on the bed, lying on his face, and apparently asleep. That was the only time I heard major general Ripley, pronounce colonel Gardner a coward.

In reply to the request of colonel Gardner, relative to the fourth charge, first, second, third, fourth, and supplementary specifications, lieut. colonel Snelling, testifies as follows :

At the time of the conversation above referred to, I was but little acquainted with colonel Gardner, and felt reluctant to report to him expressions which I knew must lead to unpleasant consequences,

particularly as I was on terms of friendship, at least of civility, with the other party ; but afterwards, finding that it was the subject of general conversation, I mentioned it to an officer, who I thought would repeat it to the colonel ; and on the presumption that he did, I must confess my opinion of colonel Gardner's courage, was much lessened, and I did not hesitate to express it. I have since, however, ascertained, that the information was never given him, and have not failed to do him justice in that particular.

Early in the month of September last, I met col. Gardner, in New York ; he stated to me, that on his way from the city of Washington, he had seen colonel Mitchell, of the artillery, who first informed him of the reports in circulation, injurious to his reputation ; that since his arrival in the city, he had conversed with colonel Hindman on the subject, who had referred him to me for further information. I then told him what I have stated in reply to the question of the prosecutor ; he expressed his regret that he should have remained so long in ignorance of the slander, but observed, that notwithstanding the late period at which it had come to his knowledge, he should not hesitate to call major general Ripley to a personal account for it ; the next day, he requested me to accompany him to Boston ; this I at first declined, but I afterwards consented to join him there in a few days. Colonel Gardner proceeded to Boston, and I shortly after received a letter from him which induced me to

follow. On my arrival, I found him a prisoner at Governor's island.

Of the first specification of the fourth charge, I know nothing.

Of the second specification, I know nothing, but from the information of colonel Gardner.

Of the third specification, I can say nothing from my personal knowlege; but I have been informed that such an attempt was made to shift the quarrel from major general Ripley, to third lieutenant Lee of the artillery. Colonel Gardner viewing lieut. Lee as the messenger of general Ripley, with whom a discussion was then pending, did not resent it.

On the fourth specification, I can only say, that it is not within my knowlege that colonel Gardner had ever been informed that he was called a scoundrel, liar, and coward, or that his character had ever been called in question by general Ripley, or any other individual, until he had heard of it from me, in the month of September last.

On the supplementary specification, it is in my power to testify with regard to a certain manuscript, purporting to be a history of the last campaign, "that I have perused it;" it was some time in my possession, and that the object of it was to ridicule the bombastic, inflated, and ridiculous publications which have recently made their appearance in the Port Folio, and some eastern newspapers, under the title of biographical sketches, &c. and that so far from major general Ripley's being "grossly and outrageously censured," the work was written (so far as I am able to judge) with a due regard to his-

toric truth, and can be supported by evidence before a military tribunal.

(Signed)

J. SNELLING.

Lieut. Col. 6th U. S. Regiment Infantry.

GENERAL WILKINSON'S DEPOSITION.

Question A. (by the prosecution.) Did you say in the hearing of major (then colonel) Gardner, last winter at Albany, that he was a scoundrel and coward, and did he resent it in any way?

Question by the prisoner. Did you ever state that you did so? (alluding to the above question on the part of the prosecution, marked A.)

Question B. (by the prosecution.) What was the affair between major Gardner (then a subaltern) and lieutenant Johnson of the old sixth? and was it not considered disgraceful to Gardner? and did not all the officers of the sixth petition to the secretary at war to have him struck off the rolls of the army?

Question by the prisoner. Did you ever state this? (alluding to the question by the prosecution marked B.)

Answer of James Wilkinson, late a major general in the service of the United States, to the above questions, transmitted to lieutenant James L. Edwards, judge advocate.

To question A. he answers, that he does not recollect having said to major Charles K. Gardner, he was "a scoundrel or a coward;" but believing from his general character, and the information received from Dr. William M. Ross,* stated below,

* The court ordered that the letter of doctor Ross, should be struck from the record, as not being considered evidence.

that he was the one, and the other ; he has given the opinion frequently, and without reserve ; and this reply will satisfy the interrogatory by the prisoner.

To the question B. he answers, he has no recollection of the facts stated.

Personally appeared before me, James Wilkinson, who having been duly sworn, on the holy evangelists of Almighty God, deposes as follows : that the answers by him given to the preceding questions, are just and true, to the best of his knowledge and recollection.

(Signed)

JAS. WILKINSON.

Sworn and subscribed before me, the 15th November, 1815.

(Signed)

PETER BAYNTON,

One of the Justices of the Peace in and for the county of Philadelphia.

CAPTAIN BELL'S DEPOSITION.

Question by the prosecution. Did not major Gardner, at Albany, last winter, tell you that general Ripley had done every thing on the Niagara frontier to pick a quarrel with him ?

A. At Albany and Troy, last winter, I had frequent conversations with general Ripley and major Charles K. Gardner, on the subjects of controversy between several officers of the Niagara army : colonel Gardner appeared not to be insensible of the dislike entertained by general Ripley toward him—but the exact expressions used by col. Gardner are not recollected.

(Signed)

JOHN R. BELL,

Captain Lt. Artillery.

*Hancock, ss. Commonwealth of Massachusetts,
Town of Castine, Nov. 11th, A. D. 1815.*

Personally appeared the within named John R. Bell, and made solemn oath, that the answer to the question contained in the within, is true, according to the best of his knowlege and belief.

Before me,

(Signed)

B. HALL,

Justice of the Peace in and for the said county of Hancock.

Copy of a letter from colonel G. M. Brooke, to the judge advocate.

Norfolk, October 15th, 1815.

SIR—In answer to your question (by the prosecution,) “ Did you ever see major Gardner expose himself to the musketry of the enemy ?” I say, to the best of my recollection, I never did.

I am, very respectfully, your obedient servant,

(Signed)

GEO. M. BROOKE,

Colonel U. S. A.

This answer was sworn to on oath, by colonel Geo. M. Brooke, this 11th day of Nov. 1815.

(Signed)

WILLIAM B. LAMB,

An Alderman of the borough of Norfolk.

(COPY.)

Sackett's Harbor, November, 1815.

On my return from Kingston, Upper Canada, I had the honor to receive the interrogatories of major Charles K. Gardner, of the third regiment U. States infantry, communicated by you as judge advocate to the court, before which he appears to be accused.

To the first interrogatory, “ have you ever seen me in action ?” it affords me pleasure to state, that

I saw major Charles K. Gardner, then of the 25th regiment of infantry, frequently during the action of the 11th November, 1813, Chrystler's Field. The period I particularly allude to, was just before and during the retreat of our troops before the enemy, when I observed major Gardner making great and zealous exertions to re-form and correct the line of his regiment; I say his regiment, because he appeared to me, to be in the absolute command of it. I did not see lieut. col. Cutting, and was ignorant of the arrival of general (then colonel) Gaines, whose person I did not know.

The 25th was warmly engaged and closely pursued by the enemy, consequently major Gardner, who was at the head of it, (at the time I allude to,) much exposed. His conduct, so far as I had an opportunity of observing it, was perfectly unexceptionable.

At the close of the battle of Chippeway, I was ordered by major general Scott, as an officer of his staff, to find the second brigade, which he supposed to occupy a wood in the rear of his left—inform its commanding officer, that he was in close pursuit of the enemy, who had broken in every direction; and to communicate other information, by which he might be guided in his movements. On discovering the second, or general Ripley's brigade, I found colonel Gardner, adjutant general, leading it towards the scene of action, in his staff capacity. I presume. If I mistake not, I first communicated with colonel Gardner, who appeared to be executing orders with his usual zeal and abilities.

The second interrogatory is answered, I conceive, in my reply to the first—to recapitulate, I will observe, that wherever I have had an opportunity of observing the deportment of major Gardner, as a soldier, he has evidenced great zeal and bravery.

With respect, &c. &c.

I am your most obedient,

(Signed)

W. J. WORTH,

Brigade Major 2nd Infantry.

To Lieut. EDWARDS, judge advocate, &c. &c. &c.

Jefferson County, Hownsfield, ss.

William J. Worth, major of the second regiment U. S. infantry, being duly sworn, saith—that the matters and things in the foregoing statement made, and by him subscribed, are in fact true, and further saith not.

(Signed)

W. J. WORTH,

Brigade Major 2nd Infantry.

Sworn and subscribed to, at Sacketts' Harbor, the 24th day of November, 1815, before me—

ENOCH ELY,

Justice of the Peace.

MAJOR CROOKER'S DEPOSITION.

Question by the prosecution. Did you ever see major Gardner expose himself to the musketry of the enemy?

Washington City, Nov. 11th, 1815.

In answer to the above question, I say *no*.

(Signed)

T. CROOKER,

Major late 9th Infantry.

Washington county. Dist. Columbia.

Personally appeared major Turner Crooker, who made oath on the holy evangelists, that the answer

he has given to the query above stated, is true; and further saith not.

Sworn to this 13th November, 1815, before

WILLIAM THORNTON,

Justice Peace.

Lieutenant *Richard H. Lee*, a witness for the prosecution, being duly sworn to give evidence relative to the third specification of the fourth charge, says—

So much time has elapsed since the occurrence, that I have an imperfect recollection of the conversation that transpired—but that I used an observation towards major Gardner, to this effect: that it was my opinion, that *general Ripley held his character too contemptible to enter into any written correspondence with him*. I recollect having made a repetition of this observation—this is all that I at present recollect. This conversation took place in major Gardner's room.

Question by the prisoner. Were you the aid-de-camp of general Ripley?

A. I was.

Question by the prisoner. Had you ever any difference with me?

A. I don't recollect of any; I never had.

Question by the prisoner. Was the occasion of your calling on me, to communicate a message from major general Ripley—and when you arrived at my quarters, did you take me by the hand, and say that you wished to speak to me in private?

A. The reception I met with from major Gardner, was a very gracious one, which I very stiffly

received, by a formal salutation of my hand. I did say that I wished to speak to him in private.

Question by the prisoner. After going with me to my room, did you not, holding the message of general Ripley in your hand, observe in general Ripley's name, these words—general Ripley has such an opinion of your character, that he will give you none but verbal messages; not hold a written correspondence with you, or words to that effect?

A. I did, with the addition of the word despicable, or some epithet equally degrading; and it was my opinion that general Ripley did believe that his character was so despicable; that he would hold no correspondence with him.

Question by the prisoner. Did I not reply to the remark as coming from general Ripley, saying that if general R. supposed that I wished to avail myself of a written correspondence with him, to make it public, he very widely mistook my intentions, and that I deprecated the resort to the public prints in the differences of officers of the army?

A. Yes.

Question by the prisoner. Did you use such an expression to me, as it is my opinion? I wish the witness to be precise in his recollection.

A. I did.

Question by the prisoner. Did you not read the message, which you said was a verbal message, from a paper?

A. I did three times.

Question by the prisoner. Did you not call upon me, as the aid of gen. Ripley, and on his part only?

A. I called upon him as the aid of general Ripley. The latter part of the question requires explanation.

Question by the prisoner. What was the message you read to me—or the amount of it?

A. I do not recollect.

Question by the prisoner. Were you induced to suppose from the reply I made to your observation, or from any part of our conversation, that I replied to it, as coming from yourself?

A. I did not make any suppositions on the subject. I can only say, that *the observation originated in me.*

Question by the prisoner. Were these the words as near as you can recollect, of the message you read to me as a verbal one? “If the friend of major Gardner, alluded to in his letter of yesterday, will call on major general Ripley, on the subject of that letter, general Ripley will give him an answer thereto, to the question contained therein.”

A. I think they were words to that effect.

Colonel *Moody Beedel*, of the late eleventh regiment U. S. infantry, a witness on the part of the prosecution, being duly sworn to testify as to the third specification of the first, second, and third charges, says—

I don't recollect seeing colonel Gardner at all on that day.

Question by the prosecution. Were you in the sortie from Fort Erie, on the 17th Sept. 1814?

A. Yes.

Question by the prosecution: Did you see colonel Gardner in that action ?

A. I did not, to my recollection.

The court adjourned till to-morrow morning at nine o'clock.

JANUARY 17, 1816.

The court met pursuant to adjournment.

PRESENT.

Colonel M'Neil, president; lieut. col. Eustis, lieut. col. Harris, lieut. col. Walbach, major Crane, captain M'Dowell, captain Thornton, captain Bennett, captain Craig, members; captain Irvine, supernumerary; lieut. Edwards, judge advocate.

Captain *David Deacon*, of the United States navy, was again examined to testify relative to the second specification of the fourth charge.

Question by the prisoner. How far was the letter enclosed in the envelope, which mentioned you as the bearer, considered received ?

A. I saw general Ripley by himself, and delivered the letter—he made some observations, and asked if I had any objections to a third person being present. He called in major Harris, and after some conversation, it was accepted. It was not immediately understood what part I was to take in the business, until I explained.

Doctor *Joseph Lovell*, hospital surgeon of the U. S. army, a witness for the prisoner, being duly sworn, to testify relative to the fourth specification of the fourth charge, was asked the following—

Question by the prisoner. Did you ever hear of the epithets injurious to me, used by general Ripley, on the frontier, and when ?

A. I never heard of them until I arrived in Boston, after colonel Gardner's arrest. I was on the Niagara frontier during the whole of the campaign of 1814 ; I was with the remaining officers of general Brown's division, during the last spring and summer—but heard nothing of the epithets alluded to.

Brevet major *Josiah H. Vose*, of the sixth infantry, a witness for the prisoner, was sworn, to testify relative to the prisoner's conduct at the battle of Chippeway—

Question by the prisoner. Did you see me at the battle of Chippeway, and what did you observe of my conduct ?

A. The second brigade was formed, waiting for orders, when major Gardner, the adjutant general, rode up—he rode up and spoke with general Ripley, and then rode off again, down the river towards the battle ground. We made a movement to cross Street's creek—I was at the head of the column, and just as I was crossing myself, major Gardner rode up and attempted to cross on horseback, but he was obliged to dismount and cross the creek on foot toward the enemy ; the brigade then marched toward the wood in a direction to flank the enemy—major G. preceded the column and moved rapidly on ; after penetrating the woods a considerable distance, it was ascertained that the enemy had retired beyond Chippeway. We halted for a

moment, and then took up our march for camp ; soon after which major G. left us, and I don't recollect to have seen him afterwards. Major G. was not out of danger at any time while he was with the second brigade.

The subjoined note was laid before the court by the prisoner, as evidence in his behalf, relative to the second specification of the fourth charge :

(COPY.)

This letter was received from a bar-keeper of a tavern in Boston. This course was manifestly improper—it should have been sent by some gentleman. The course taken to deliver it to a bar-keeper, was degrading to the army. The rank of major general Ripley entitled him to more respect. The letter on this account is returned—when it is communicated in a gentlemanly manner, it will be entitled to be the subject of consideration.

The judge advocate admitted that it was the one sent by general Ripley to the prisoner, he having been a witness to captain Kirby's acknowledging that it was the same.

Brevet lieut. col. *S. D. Harris*, of the regiment light artillery, a witness for the prisoner, was then sworn.

Question by the prisoner. What is your recollection of the situation of the barn, in rear of Street's creek, relatively to that creek ?

A. I believe it extended to the creek, and formed a part of the enclosure to the garden.

There being no more testimony offered to the court, the prisoner was asked when he would be prepared to make his defence, and answered on Wednesday next. The court was then adjourned to the 17th instant, with an understanding, that if evidence which had been called for, should arrive previous to that day, it should be received before the prisoner made his defence.

JANUARY 17, 1816.

The court met pursuant to adjournment.

PRESENT.

Colonel M'Neil, president ; lieut. col. Eustis, lieut. col. Harris, lieut. col. Walbach, major Crane, captain M'Dowell, captain Thornton, captain Bennett, captain Craig, members ; captain Irvine, supernumerary ; lieutenant Edwards, judge advocate.

Brevet major *J. H. Vose*, of the sixth infantry, was examined on the part of the prosecutor.

Question by the prosecution. Was there any musketry which reached the second brigade at the battle of Chippeway ?

A. I believe not.

Question by the prosecutor. Had not the enemy been repulsed in front when the second brigade was put in motion ?

A. I cannot answer positively as to that—but I think that was the case. The enemy were repulsed, but were throwing their cannon shot.

Colonel *Moody Beedel*, of the late eleventh U. S. infantry, was examined—

Question by the prosecution. When did you first know, that a sortie from Fort Erie was contemplated ?

The prisoner objected to the question as being irrelevant.

The court decided that the question should be put to the witness.

The witness answered—At the council of war which was held about eight days prior to the sortie.

Question by the prosecution. Was gen. Brown present at the council of war ?

A. He was.

Question by the prosecution. What was general Brown's position at the sortie, and was it near the troops, as they were engaged ?

The prisoner objected to the question being put to the witness, as irrelevant.

The court decided that the question *should not be put.*

Question by the prosecution. What position did colonel Gardner occupy at the sortie ?

A. I did not see him during the day.

Question by the prosecution. What brigade did you serve with ?

A. The first, under general Miller.

Question by the prosecution. If he, colonel Gardner, had been present with general Miller's brigade, at any time during the action, should you not have noticed it from your position ?

A. I think that I should.

Brevet captain *R. M. Kirby*, of the corps of artillery, and aid to major general Ripley, a witness for the prosecution, was examined.

Question by the prosecution. Did you ever hear general Ripley pronounce major Gardner a coward, and under what circumstances ?

A. I heard that expression made use of by general Ripley, in 1814, in the camp at Fort Erie, in different conversations.

Question by the prosecution. Do you recollect of its taking place in a tent when colonel Snelling was present—if so, state the circumstances ?

A. I recollect a conversation one evening, in general Ripley's tent—there were a number of officers present, and I think he was. General Ripley pronounced him a coward, and colonel Snelling replied, that colonel Gardner lay in the next tent, and would probably hear the expression ; general Ripley replied, that he intended it for his ear. I have repeatedly heard general Ripley make use of the expressions.

Question by the prosecution. Did I make them openly, and not with an apparent view for any concealment or disguise ?

A. I heard those expressions made use of at different times, and in different companies—they never were made to me alone, I believe, at any time.

Question by the prosecution. When did you first know of the sortie, and by whom ?

A. The sortie was expected at the time the militia crossed. I first knew of it on the 15th, from major Brooke of the 23d regiment.

Question by the prosecution. Was the circumstance that a sortie was meditated known to the principal officers of camp ?

A. It was a subject talked about among the officers for about four or five days—not that I knew from any intimation from head quarters ; with the exception of the information I have received from major Brooke. Major Brooke told me that he received the information from general Brown. It was a subject of expectation in camp from the time the militia crossed.

Question by the prosecution. Did you perform the duty of aid-de-camp to major general Ripley, at the sortie ?

A. I did.

Question by the prosecution. Did colonel Gardner bring any order from major general Brown to major general Ripley ?

A. Not that I know of.

Question by the prosecution. Did you see him with the second brigade, during the action ?

A. I did not, while the second brigade was together—it was together but a few minutes.

Question by the prosecution. Did general Ripley remain with the twenty-third, after the twenty-first marched from the brigade—and did you see colonel Gardner at any time with the twenty-third ?

A. General Ripley remained with the twenty-third regiment, until after he was wounded ; and I did not see colonel Gardner during that period.

Question by the prosecution. Was colonel Gardner's position when you passed him, within the musketry of the enemy ?

A. The only time I saw colonel Gardner, if I saw him at all, was near the ravine, with general Brown, and I should think, not exposed. General Brown was surrounded by his staff.

Question by the prosecution. After the batteries were carried, was not the situation of the troops such as to require the presence of an adjutant general, from their dispersed and deranged situation ?

A. It would have been necessary for the immediate commanding general to have had a sufficient staff about him, to organize the different corps—I think that an adjutant general would have done it more readily, than aids-de-camp, from their superior rank.

Question by the prisoner. Were you at the time you say you heard these expressions of general Ripley, his aid-de-camp ?

A. Yes.

Brevet lieut. col. *Samuel D. Harris*, of the light artillery, was examined on the part of the prosecution.

Question by the prosecution. At the battle of Niagara, after the capture of the enemy's artillery, could not its removal have been effected at once, if there had been a chief of the staff to attend to it ?

A. If we had had harness for the dragoon horses, we might have brought them off.

Question by the prosecution. After it was captured, and before the troops rallied, was there not time to obtain harness from Chippeway, or from our own artillery ?

A. I should suppose there was sufficient time to obtain harness from Chippeway. At the termination of the action, I received an order from general Ripley, by an officer whose name I do not recollect, ordering me to collect as many of my troop as I could, to remain on the field as a rear guard, or party of observation, to watch the movements of the enemy. I remained on the field, and colonel Towson passed by me ; I asked him if we could not get off the captured artillery—he replied, that he had no horses. I observed to him, he might take mine—he asked me, if I had harness ; I replied in the negative—and he said it was impossible to get them off.

Question by the prosecution. Were you in the battle of Chippeway, and engaged in advance with general Scott's brigade during the action ?

A. Yes.

Question by the prosecution. Did you see colonel Gardner on the field ?

A. I do not recollect that I did.

Colonel *Beedel* was again called in.

Question by the prosecution. Did general Brown on the 15th of September, inform you particularly of the meditated sortie ?

A. He did, on the evening of the 15th ; the reasons why he made it known to me, was because he wanted some non-commissioned officers to send into the enemy's lines. He requested me not to mention it to any one ; and I accordingly did not.

Question by the prosecution. When did colonel Snelling arrive on the frontier ?

A. He arrived at Buffalo, on the 19th August, 1814, and crossed on the 25th or 26th to Fort Erie.

Lieutenant *Richard H. Lee*, of the corps of artillery, was examined relative to the sortie of the 17th September, 1814.

Question by the prosecution. Did you see major Gardner during the sortie—and what was your situation?

A. My situation was aid-de-camp to brevet brigadier general Miller. I did not see major Gardner, in the action.

Question by the prosecution. Before the action commenced, and during it, what was his situation?

A. With general Brown, I believe—some part of the time in the ravine, and on the hill near the Fort. I had not an opportunity of seeing him during the action, having been engaged where the trees would prevent my observing his position, either on the hill, or in the ravine.

Question by the prosecution. What occurred at a dinner given to a number of officers, in relation to major Gardner, at general Miller's quarters, after the sortie?

The prisoner objected to the question on account of its being a general one.

The court decided that it should not be put to the witness.

Question by the prosecution. When did colonel Snelling arrive at Fort Erie?

A. As well as I can recollect, the 25th or 26th of August, 1814.

The court adjourned, till 9 o'clock to-morrow morning.

JANUARY 18, 1816.

The court met pursuant to adjournment.

PRESENT.

Colonel M'Neil, president; lieut. col. Eustis, lieut. col. Harris, lieut. col. Walbach, major Crane, captain M'Dowell, captain Thornton, captain Bennett, captain Craig, members; captain Irvine, supernumerary; lieut. Edwards, judge advocate.

Doctor *J. Lovell*, hospital surgeon U. S. army, was examined relative to the prisoner's illness, at the battle of Niagara.

Question by the prosecution. Did you know of major Gardner's being more indisposed than the officers of the army generally, at the battle of Niagara?

A. I did not know any thing of his being indisposed, nor did I hear of it. I was attached at that particular time, to general Scott's brigade; I should not have been likely to have heard of it, except by common report. Doctor Bell was the surgeon at head quarters.

Captain *Armstrong Irvine*, of the light artillery, a witness for the prosecution, was sworn.

Question by the prosecution. Did you serve in advance of the volunteers, under general Porter, at the sortie?

A. I was in advance of the volunteers at the sortie; I considered myself under the command of colonel Gibson, who commanded the rifle regiment.

Question by the prosecution. Did you see major Gardner at any time with that brigade, at the sortie ?

A. Not that I recollect of.

Question by the prosecution. Did not the riflemen to which you were attached, march from our extreme left to our extreme right, and did you see colonel Gardner on your whole route ?

A. We marched from the extreme left of Fort Erie, to the enemy's batteries—I did not see col. Gardner during the whole route.

Brevet lieut. colonel *S. D. Harris*, of the light artillery, was examined.

Question by the prosecution. Did you see colonel Gardner after the battle of Niagara ?

A. Yes.

Question by the prosecution. Did he appear more indisposed than the officers of the army generally ?

A. I had no knowledge of major Gardner's indisposition.

Brevet major *Josiah H. Vose*, of the fifth regiment U. S. infantry, was again examined.

Question by the prosecution. How far was gen. Scott's brigade in advance of the second brigade, previous to the moving of the second brigade, at the battle of Chippeway ?

A. I cannot answer that question, as there were trees and houses between the first and second brigade. I can say, that I think, they were from one-half to three-fourths of a mile.

The *prisoner* laid before the court the following order :—

MILITARY DEPARTMENT, No. II.

*Brigade Inspector's Office,
Casile Island, Sept. 24th, 1815.*

SIR—You will not leave Boston without the permission of the commanding general.

By order of Major General E. W. RIPLEY.

(Signed)

H. F. EVANS,

Lieut. Lt. Art. and Aets. Brig. Inspector.

Major C. K. GARDNER, of 3d regt. infantry.

The subjoined orders were received from the brigade inspector's office.

*Head Quarters, Northern Division,
Boston, 6th Nov. 1815.*

DIVISION ORDERS.

The general court martial ordered by major general Ripley, commanding the second military department, for the trial of major C. K. Gardner, acting adjutant general of the division, will proceed in his trial, on the charges preferred by major general Ripley, as already commenced. The president of said court will report the proceedings thereof to the major general commanding the division, as he deems his authority necessary to confirm the result of the investigation.

Major general Ripley will direct the sword of major Gardner, to be delivered to lieut. col. Jones, aid-de-camp to the commanding general, and will consider the court in the same manner, as if ori-

ginally constituted by the commanding general of the division.

By order of major general BROWN.

(Signed) DONALD FRASER,
Major and A. D. Camp.

True Copy.

(Signed) JAMES T. B. ROMAYNE,
Brigade Inspector.

Head Quarters, Boston, Nov. 6th, 1815.

GENERAL (DEPARTMENT) ORDER.

The brigade inspector will deliver over the sword of major Gardner, to lieut. col. Jones, who is authorized to receive it. The arrest of major Gardner is not to be effected by this arrangement.

(Signed) E. W. RIPLEY,
Major General.

True Copy.

(Signed) JAMES T. B. ROMAYNE,
Brigade Inspector.

The evidence, both on the part of the prosecution and the prisoner being closed, the prisoner made his defence in the following address :—

MR. PRESIDENT, AND

GENTLEMEN OF THE COURT—

As this trial originated in my seeking personal redress of the major general, who is prosecutor—I conceive it justifiable to commence in my defence, with a statement of those occurrences, which have made their appearance occasionally through the trial, connected with this personal application.— That this is the origin of my prosecution, is evinced from the list of charges themselves—in which a copy of my letter containing the personal demand, is brought before the court, attached to an accusation of conveying to major general Ripley that letter or note, in an improper manner.

All the specifications to the fourth charge, relate to my personal difference with the prosecutor, and contain the epithets coward and scoundrel, which he alleges that he applied to me, more than a year since.

I never knew of but one instance in which any difference, or the accusation of a difference, arose between general Ripley and myself, until in the month preceding my arrest. That instance occurred, relative to an order, about to be issued by major general Brown, on his return to the command at Fort Erie, in the office tent of my department.

General Ripley wished me to change the order, in which he complained of injustice to himself, and brigade, and appeared to be angry at my declining to do so ; but he was careful to drop no expression

within my hearing, or knowledge, which would subject him to a personal demand.

It is now charged against me, that I knew of these epithets which he expressed of me, and the knowledge is deduced from the probability, that I must have heard of them. Those who testify that general Ripley used the expressions in conversation with them—also say, that they never did communicate them to me. Now what is the strength of this probability, on which general Ripley appears to ground his exculpation for refusing my demand at this place—and with which I am to be inculpated for the weak and cowardly spirit, of tamely resting under such indignity, without an effort for redress? Is not the probability this, that these words would have first come to the ears of some of the officers who served in the commanding general's family, or in the staff, and by their means have been communicated to me? Lieut. col. Jones, who was associated with me in the same department, and was as familiar with the officers generally, as any officer in the army, testifies that he never heard of them, until after the organization of the peace establishment, on his return to Sackett's Harbor; that after this, he never saw me, until here in Boston; and being on the route to Detroit, never had communicated with me.

Major general Brown, brigadier general Miller, (who served in general Ripley's brigade), and hospital surgeon Lovell, have also given to the court, the same conclusion in their evidence. The probability, therefore, is against the inference intended by the specification.

No, gentlemen—I never heard them, nor of them—until the moment when it appears on your record, that I was informed of them. My claim to a regard for the principles of frankness and truth, which is dearer to me than my commission; and my reputation for veracity, which has never been impeached, would be liable to be destroyed by the obscurest individual of the late or the present army, were this declaration untrue. Instead of avoiding the information, I obtained it of colonel Snelling, at New York, *by enquiry*. It was immediately on my arrival from Philadelphia, where colonel Mitchell had given me intimation of them, by asking me if colonel Jones had written me of some remarks injurious to me, which had gained circulation, previous to his leaving the frontier. But colonel Mitchell declined stating himself, their nature, or source. I never could have avoided being informed of expressions. A redress for which, by the rules of honor held in the army, I should have been supported in the army, in demanding of a brigadier general.

At inofficial conversations, all those of whatever rank, who voluntarily engage in them, are subjected to the same laws of politeness, and the same rules for the redress of personal injury. The case is different where an injury is received, however gross, from an official act, or an official report—the becoming redress in such case, for a military man, is an appeal to a superior. But if an officer of high rank, descends to use abusive expressions of any other, in company, he also descends to an equality of personal responsibility.

Whatever remarks may have been made in this town, on the subject, this distinction, I conceive, cannot be questioned.

On the occasion of these injurious epithets, gen. Ripley was reminded by colonel Snelling, of this responsibility—and the general making a merit of the obligation, avowed his readiness to give me personal satisfaction. It was *now too late* to fulfil his extorted promise, but it was *not too late* to arraign me on the accusation of having heard of these boasted epithets without redress.

I determined to give general Ripley immediately an opportunity to cancel the obligation. By having an officer of rank as my friend, I wished to afford general Ripley, the least possible objection. I suggested it to a field officer at New York, lieut. col. Snelling, who, after some remarks upon the situation of his family, consented to accompany me.— He was present when the promise was given by general Ripley ; he is an officer of the most correct sentiments of propriety, and of the most honorable standing, through a long service. On conferring with him again, he conceived—aware of the principles and disposition of general Ripley, that it would be uselessly exposing himself to an arrest, and to the appearance of folly, in taking the journey with me directly to the station of general Ripley— before ascertaining the course general Ripley would adopt ; though convinced that the principles of honor, and the disposition of a noble mind could admit of no other course than a fulfilment of the pledge. Colonel Snelling found sufficient evidence

from his conversation with me then, that I had been traduced by the supposition, that I had known of these expressions before. He engaged on my obtaining an answer from general Ripley, to the enquiry contained in the note which is attached to the specification, at my request, to join me immediately in Boston. (See passage marked A. appendix.)

I knew no field officer at the time, in the harbor of Boston, to whom I could apply—but my intention was, should the tenor of general Ripley's reply admit of it, to resort to any friend at this place who could do me the service. Colonel M'Neil arrived here (previous to general Ripley's return from New Hampshire,) whom I found, on our first conversation, to be friendly to general Ripley. I conceived, however, that the course I had adopted, would be unobjectionable; I gave general Ripley a full view in this letter, of the evidence I possessed of his promise, and his expressions.—(See passage marked B.) This explained to him the little room he had to retreat—and I conceive was a source, not only frank but generous. The little room that was left him, however, he imagined after twenty-four hours consideration, he had discovered. He could not deduce an objection from his superior rank, nor allege that my character had changed, since he gave the pledge, (for it was given at the end of the campaign in Fort Erie,) nor deny that it was given. But, though I carried this letter myself, to the house in which he stopped, on his arrival from New Hampshire, and sent it immediately into his room,

by a person attending, and under seal ; yet, on this circumstance, the manner of its delivery, he founded an objection. This was so little, that I had not anticipated it—though I was addressing general Ripley. What does he allege in the specification constituted the objection ? That no officer or gentleman gave the letter, by whom he could send the reply.

He sent a reply, however, by an officer, his aide-camp.

The court will pardon me in calling their attention, for a moment, to the absurdity comprehended in this little subject. If I had sent an officer to him, with the letter—would he have sent by that same officer, at the moment, his reply ? or, would he not have waited, to send by some friend, or an officer of his staff, as he did, his deliberate determination ? I had no aid or assistant, whom I could charge with my letter ; and if I had so sent it—I do not conceive it would have made any difference, except in subjecting the officer who delivered it, to an arrest. I asked a reply to one question only—whether an officer fully authorized to act as my friend, in all respects, would be received by him, charged with such a message, as was described—without holding him subject to an infraction, by the act of any military obligation, or any military law.

His avoiding to give this assurance, until my friend should present himself, proves that if he had presented himself, he would have been arrested.

I then, with a view to take from general Ripley, this small ground of objection, requested an officer of the navy, captain Deacon, who was not within his immediate power, to wait upon him at Fort Independence, with the same letter, making the same application with respect to my friend, the field officer.

I enclosed it, in the letter of the 18th September, which was regularly laid before the court; and I will ask leave to read, both the note of general Ripley, and this, which was sent in reply.—(See C. and D.)

To the officer who presented this, general Ripley asserted, that the objection which existed against the letter, from the former manner of delivering it, was, *in this instance* removed. Yet, he inserts an accusation against me, for communicating the letter, again, in this manner. In the first instance, the objection was (according to the note,) to its not being conveyed in a respectful manner—that it should have been carried by some gentleman—and, now he charges me with having conveyed it by this gentleman of the navy; alleging as the evidence of its impropriety, that he carried it as a stranger. Independent of the untruth of this, the first objection was expressly, to the manner only, of making this communication; which is made to appear so important a formality, as to involve the dignity of the army. I had only requested captain Deacon, to be the bearer of the letter; but, he was apprized (as he states) of the subject of both letters. With a reference to the testimony of capt. Deacon,

I will leave these frivolous specifications, of the prosecutor, intended only to give consequence to his evasive objections to a disagreeable demand.

I will venture to say, that no precedent can be found in the history of courts martial, for accusations like these, unless it be where the prosecutor has been the officer ordering the trial. (See extract E.)

On the evening of the second day from this, I received from major general Ripley, a farther evasive reply, to the letter as delivered by captain Deacon. It is a verbal message, as it was called, read to me from a paper, by his aid-de-camp, lieutenant Lee, and furnishes a specimen of the most witty and adroit equivocation—which might do him credit as an attorney, for suits at common pleas.

The message is this—(See F.)

He carefully avoids conveying a word from which the least assurance could be deduced relative to my friend—but says, if my friend, the field officer alluded to, will call on him, he will give him an answer to the question. This was the disguised court proceeding of an officer of the elevated rank of major general, toward a major whom he had injured. Why did he not openly warn me of my misconduct in the affair; and state to me his intention, to arraign me on these or other grounds?

I determined to afford him the opportunity for the fullest exercise of his inclination, and of the qualities of his mind. As the field officer alluded to, was required—I wrote to colonel Snelling,

whom I had apprised of all the circumstances, to join me immediately.

On the fifth day from this message, which was read to me, I received from general Ripley, the order of the 24th September, exercising over me his authority as commanding general of this department. In this character he was enabled on a safer stage of action, to perform the part he intended.— (See G.)

But there is connected with this verbal message, a circumstance which furnishes a more extraordinary ground to major general Ripley, for an accusation against me, than any of those that preceded it. I am accused of suffering his aid-de-camp, lieutenant Lee, when he called on me officially with a message from his general, on this occasion, to use toward me the abusive expressions detailed in the specification. After requesting to speak to me in private, (though he found me in company with an officer only,) and when alone in my room, holding the message in his hand, he states, that he made the observation alluded to, using the name of general Ripley. The inference that I was necessarily obliged to make, I will leave to suggest itself to the court. Though the lieutenant may be ignorant of a staff officer's connection with his general, the members of the court are not.

Some inconsistency may be observed in the tenor of Mr. Lee's evidence. He commences with remarking, that the particular circumstances of the occasion, he cannot bring to recollection. An affair which after being reported to his general, and

in other places, was considered of so much importance as to be made the subject of an accusation, (with a want of wisdom, and of experience in military duties, equal to that of the lieutenant.) You will then observe Mr. Lee's precision in recollecting that he used the expression, "*it is my opinion.*"

From the circumstances of the case, as well as the tenor of his evidence, I shall not venture much for veracity, with the court, in venturing to differ with him, in this—and that he does not recollect, from the bearing of my reply to the observation, or from any part of our conversation, whether I appeared to consider it as coming from him, or from general Ripley. I had not expected from general Ripley any thing but abuse, in his treatment of me—and I as little expected, or thought of any observation, good or bad, from lieutenant Lee, on his own part.

On the bearing of this specification, let me ask the court to be so curious as to compare the ingenuity of its false representation, with the statement brought to the recollection of lieutenant Lee, in a question of mine, to which he assented. The statement reads—(See H. and L.)

The character of the aid is suppressed, and the occasion on which he called on me, and the observation made, is transformed from one, relating to and accounting for, that mode of general Ripley's communication with me—into an insulting remark, as if made at some inofficial or accidental conversation, by a lieutenant Lee, of the army—having general reference to the correspondence of all officers with me.

On the next day after the order detaining me in Boston, I was served with a copy of a general order, containing my arrest. I had been informed by a friend, of the course which general Ripley would take to exonerate himself, refusing to meet me at this time ; which was to accuse me of *cowardice before the enemy*. The object was no less than to sustain his reputation, by effecting with the force of his station and authority, the *destruction of mine*. I confess, gentlemen, though conscious of no misdeed, that I thought of this alternative of vindictiveness *with horror*. What I felt on the anticipation of having my name coupled with accusations of such a nature, from whatever interested source they should originate, with whatever evidences of oppression be attended, I will leave, gentlemen, to your feelings, faintly to picture to yourselves—for they cannot be realized or comprehended by the force of language. The fame of a military man, can be as easily defaced, as the honor of a female. If the man can be found, who will wantonly make an attack upon either—the contest, however favorable its result, must leave an indelible stain, upon his or her reputation ; and its fairness with all delicate minds, is destroyed, while its memory survives.

The proposition made through colonel Aspinwall, for my release from arrest, and a manuscript pamphlet shewn to him, are made the subject of an accusation.

The proceedings I had entered upon towards general Ripley, were from the injunctions of usage,

and what was due to myself only. I had no sentiment or care with respect to the individual, who had made himself my opponent in the case, further than to obtain the redress such usage required.

There is a consideration and view of contempt, in which an individual may be held by honorable minds—from a life of intrigue, and a character barren of principle—that, though he may be the instrument of much mischief, he can never become the object of *revenge*. Such a person is to be attacked and avoided like a serpent, when he comes in your way.

By virtue of the authority, with which general R. was fortuitously clothed, and the exercise of which he assumed over me, I was placed in arrest. Any farther proceedings to obtain the redress, I sought in this way, were closed. I knew the army would duly estimate the conduct of my opponent, and do me justice in the affair, on a simple knowledge of the fact. I could entertain personally but one sentiment toward general Ripley.

With respect to any agency of mine in correcting the factitious elevation of general R. with the public, I knew that the artifices and false reports by which his military character had been sustained, must without my means, be eventually understood; and that the misrepresentations relating to him, and injurious to other individuals of great character and influence, would, notwithstanding the efforts of a few newspapers, be shortly dissipated and exposed.

On the day of my arrest, on which I saw colonel Aspinwall in this town, after having a long conver-

sation with him on the subject of the degrading differences and publications which had occurred since the war, relative to a campaign which had so greatly elevated the army. I did not hesitate to make any proposition, not degrading to me personally, which could have the effect to release me from my participation in a further shameful difference with general R. I requested colonel Aspinwall only to appear as a mutual friend, or mediator, for the good of the army—and confided to him, to make no proposition from me, until after conversing with gen. Ripley—found him previously disposed to accede to such a measure. Colonel Aspinwall holds that honorable standing, that I would have entrusted any request to his charge, connected with my honor.—He did not go as a messenger, which he alleges to general Ripley, from me ; I could have as little consented to it, as he could to have been such an agent.

From the court's wish to shorten the time of the evidence, and its injunction to colonel Aspinwall ; the abrupt commencement which he makes in his statement, would seem to give a different aspect to the transaction. He, however, at the termination, states, that I left him to act according to his sense of propriety ; and that I frequently charged him not to commit my honor—(the word *generally* is used in the record, but, from my recollection, he said *frequently, or repeatedly.*)

I will here notice the queries which have been made concerning my general character. I would think it unnecessary to make any remark upon the

slanders in relation to my standing in the old sixth regiment—as they stand in questions to which a disavowal has been given by the witness of the prosecution—but the fabrications have been circulated out of court, and I am induced to believe, with knowledge that they were such. The standing I held as an officer, before my prosecutor entered the service, is known to a majority of this court.

The copy of a letter from doctor Ross, furnished by general Wilkinson, in his deposition, as a ground for his sentiments—I think it necessary to annex to my defence, to account for his personal feelings towards me—(See K.) I am surprized, that gen. Wilkinson should consider this as the best foundation for an opinion on oath; when he possesses another copy of a letter from the same doctor Ross, which proves him to the view of general Wilkinson, a villain, a wretch, destitute alike of spirit and principle. It is a letter to general Armstrong, then secretary of war, representing of general Wilkinson every thing that is foul, in his conduct down the St. Lawrence.

On the grossness of censure passed upon general Ripley, in a manuscript narrative of the last campaign, the testimony of colonel Aspinwall is explicit. If there be any crime in this manuscript, it should be made to appear in the untruth of some statement which is injurious to general Ripley's reputation. To assume the ground, that if it censure general R. it must therefore be criminal and *untrue*, is so far from being correct, that I allege, a narrative of the truth and of the facts, cannot be written without censuring general Ripley.

With respect to the freedom to write such a pamphlet, many other inofficial narratives, and partial extracts of narratives, applauding some and censuring others, have been written as well as printed, under the authority of an officer, whose rank would lead us to expect a better example. They are all unmilitary—but where the names of the narrators are given, I conceive it reflects most seriously upon the discipline of the army.

The next act of mine, which came within the knowledge of general Ripley, forms the next accusation against me. It is for writing the protest contained in the minutes of the proceedings. It may be an offence in common law, to use a *threat*, toward a civil officer, in the execution of his duty ; but the attempting to intimidate a military man, has seldom, I imagine, been the subject of a charge for a military trial.

My sentiments in the illegality of general R's proceedings against me, have been explained to the court ; but I conceive the court's decision on their being competent to my trial, does not involve a decision on the illegality of my arrest.

I trust the court will appreciate the motion of my subsequent objections to the trial—as being directed against the oppression displayed in the origin of the arraignment. Though the authority was legally vested in general Ripley, to order general courts martial, yet I was by an undue exercise of authority, put in arrest. But being in arrest, and placed under the jurisdiction of a court constituted by proper authority, the court could not, without the

intervention of that authority, or of a superior one, release me from the order when issued for my trial, nor avoid its effect. The question of jurisdiction lay with the officer, instituting the trial—and with him rests the responsibility.

But the enormous charges were now laid before the court, after concealing from me until twenty-four hours before it, the substance of them, and concealing from me until the court convened, the order for its convention. I will leave the court to weigh the evidence which has been produced to substantiate these heavy charges, without reference to any summary on my part. I cannot assent to the court's receiving a recital of testimony on this subject, from me, which from its deep connection with my character, would naturally excite suspicion, and be subjected to discredit.

The court will not fail to observe from the distance of time, and the distance from witnesses, that I was not enabled to obtain in evidence so many particular facts, as the strength of general testimony. But who were better capable of giving them evidence of my general conduct, than my *commanding general*, and lieut. col. Jones, who was associated with me in the same department, through the campaign. The statements given by major gen. Brown, are related to the court, with that frankness which marks his character. Whenever he speaks, he gives conviction to the hearer; he bears himself with the independence of truth, for he has nothing to disguise, and, fearless of censure, for his motives are honest.

The court will remark the want of precision in different parts of Mr. Brimhall's testimony ; though he gives his first relation, as if the circumstance occurred but yesterday. They will observe some inconsistency in his speaking of the situation of the houses into which he retired from the bridge.

They will not be surprized at the impression of lieut. Brimhall, not having any knowlege of the instructions under which he acted ; and they will observe his dullness of recollection, in answering my questions—as to how I came into the road, on which he saw me riding away ; and whether he saw me at a position on the road in view of the enemy. They will also observe that he could recollect nothing of my appearance on such an occasion, though he was quite near enough to observe me ; and he also does not remember that I spoke to him when I approached, and they will make their own deductions from the lieutenant's subsequent retention in the army.

The court will no doubt perceive the object of the prosecutor, in suppressing the staff character of captain Clarke, in that specification, in the same manner he has practised it in relation to his aid, *lieut. Lee*. They will find an origin in captain Clarke's *impressions*, in the reports he had heard in company with his general, previous to the sortie ; and will duly appreciate the value of his military opinion—that the brigade major was an improper person to communicate an order to his *brigade*, from which also he must have drawn his inference, that it was some other motive than a correct

one, which could induce me to give the order to him.

Beyond the testimony which has been produced to the court, immediately connected with my conduct through the Niagara campaign—an inference having a forcible application to my prosecutor, may be fairly drawn, from one relative situation, then, and subsequent.

At Fort Erie, after his return from furlough, and after he had seen the printed report of the battle of Niagara—general Ripley applied the abusive epithets to me, it would appear, from motives of personal animosity only. He supposed, as I am informed, he has frequently declared, that I had an agency in the injury done him in that official report.

The campaign closed, and general Ripley had gone to the interior. Nothing is heard of any accusations against me. At Washington, he is seen the member of a board of general officers, constituted by the executive, for the important duty of selecting the officers of the army most worthy to be retained on a permanent establishment.—What was my situation with respect to my chance for retention? From all the majors of infantry and riflemen, (which corps were consolidated for the selection,) nine were to be chosen—and as it was stated, the board adopted a rule to give precedence to those having brevets; by which means, eight of the nine places were at once supplied. I had not then been noticed by a brevet.

What is the dilemma which now involves major general Ripley's conduct on that occasion? Did he

make to the board a communication of my pretended misdeeds? If he did, the board discredited his assertions. I was appointed to the remaining vacancy. If he did not, either he was faithless in the discharge of a most momentous duty, or he knew the whole to be fabrications of his own production. Yes, gentlemen, the impression of lieut. Brimhall, never would have gained the consideration of a rumor, had it not been seized and cherished, by the animosity of my prosecutor.

There is a closer application of this dilemma to major general Ripley, than the strong one which already stands apparent. In his charges against me, he openly alleges that he called me by these disgraceful epithets on the frontier, and that I well knew of them more than a year before; and I have sufficient proof that he has stated that he had called me so to my face, or told it to me personally. If he had made this statement to the board, from his own knowledge, would he have been overruled? If he supposed that with such a character of infamy, as this allegation involves, I was worthy of continuance in the army, of what materials must he have imagined, our army was composed?

If he had expressed to the government any of these things against me, would the president, and Mr. Dallas, have subsequently signed a brevet for me—which was sent to me subsequent to that time, and unsolicited on my part.

From either position that the slanders *were false*, on which he now arraigns me before this court—or if true, that he knowingly withheld them

from the board—the inference of corruption is inevitable.

Whatever may have been his motives at Washington, to bring the application of this to the question before you—how clearly does his object appear in my present arrest and arraignment ; the gratification of personal views.

He denounces me on the frontier, from a motive of personal animosity only ; which also appears from the company and manner in which he is described to have done it—and he uses this very denunciation, as the ground of my arrest here, for an object of personal safety. That the public good is his aim, is scarcely pretended—and there is not an occurrence that preceded my arrest, in which the dignity of the army was any way compromised.

I will close with a reference to my own conduct, as connected with that of my prosecutor, in what he calls the essential cause of the principal charges, and which appears in accompanying accusations.

I put it now to you, gentlemen, as honorable and high minded soldiers—what you may believe my situation then was, and what, under similar circumstances, your conduct would have been.— Assertions deadly to my fame—false as the fabrications of a demon—and circulated with a spirit as cunning, had been made and reported, a year ago, by an officer, whose station enabled him to edge with poison every arrow of his slander. They are so circulated, that all those who hear them, think, I also knew their existence—and wonder at the

tattness of my spirit, which could sit down under such imputations, infamous and contented.

A twelve month elapses, and I hear from a friend, for the first time, how greatly I am wronged, and the high authority of the man who has ventured to do me the injury. Whatever might have been my chance for satisfaction, had I received an original communication of the aspersions, a difficulty was incurred, of which you, gentlemen, are fully sensible—in the authority which my opponent had acquired. The panoply of rank, was a much safer shield to him, than the honor of a gentleman; yet, through this shield it was necessary for me to penetrate. I was here a stranger—my friend, anticipating by what principles the general would be governed, though he was willing to accompany me to the field, had no wish to be my companion before a military court.

It was, as he foresaw. This great man wraps himself in the warmth of power—quibbles at the manner of address—a want of respect—a deficiency in form, and every contrivance of falsehood is resorted to, to preserve his irresponsibility, till he consummates it by my arrest, and renews the injury, which his authority enables him securely to repeat, in arraiging me on a prosecution of his own.

Not to have defended my honor, by my own hand—would, it is confessed, have been disgraceful. I attempted to do so, and am sent a prisoner to Fort Warren. If in the manner of seeking redress, you perceive any little deviation from etiquette, you will find an apology from the situa-

tion in which I was placed. But I dare proudly contrast the manner in which I bore myself deeply injured, and seeking satisfaction as soon as the injury was known—with that of my prosecutor, contriving pitiful pretences to avoid a demand which was hazardous ; and shrinking behind the barrier of his official rank, from the just resentment of an injured—deeply injured, fellow officer.

The court adjourned till nine o'clock, on Saturday morning, the 20th inst. to afford the prosecutor time to make a reply to the prisoner's defence.

JANUARY 20, 1816.

The court met pursuant to adjournment.

PRESENT,

Colonel M'Neil, president ; lieut. col. Eustis, lieut. col. Harris, lieut. col. Walbach, major Crane, captain M'Dowell, captain Thornton, captain Bennett, captain Craig, members ; captain Irvine, supernumerary ; lieut. Edwards, judge advocate.

The prosecutor replied to the defence of the prisoner, in the following address :—

TO THE PRESIDENT AND MEMBERS OF THE COURT.

GENTLEMEN—

It becomes my duty to reply to the defence of the prisoner. In the remarks I may have occasion to make, I totally disclaim any wish to create an impression on your minds, unfavorable to him, any farther than the evidence supports it. If upon the testimony, as adduced in the case, you can acquit him of the charges, I shall be perfectly satisfied. But the honor and reputation of the army are identified with the purity of trials by courts martial.— It is the only tribunal to which a soldier can resort for the vindication of his conduct. Let then, passion and prejudice be foreign from your deliberations ; let the testimony adduced in the cause, be fairly weighed, and as that operates, so I trust will be your decision.

The prisoner in his defence, has resorted to facts which appear on the record ; he has also adverted to explanations of particular points from his own statements. Thus far, in one or two instances, I shall follow his example. The court are honorable men—they will analyse the testimony, they will receive neither the statements of major Gardner, nor myself, any farther than they are supported by argument. The prisoner has also referred to the conduct of the prosecutor ; so far as that conduct has been involved in the testimony adduced, so far it is the subject of discussion and animadversion.

But when general epithets have been applied, which have no support from the testimony; when instead of resorting to a fair and correct exposition of facts, it has been the course of the prisoner to advert to imputations which in fact have no foundation, it is unnecessary to disclaim them.

The prisoner has simply in his defence, taken a view of the last charge and specifications, embracing the transactions here. He has not even glanced at the long story of the Niagara campaign. I admire his discretion; he could not advert to it. Turn it, pervert it as he might, still its touch to him would be perdition. I shall in the first instance, resort to the circumstances which occurred here—but it is my intention to develop thoroughly the facts of the campaign, so far as they are applicable to him. Let the true state of things be properly impressed on your minds; and as military men, as men of chivalry, you will say the course I pursued was proper, and that it seals the prisoner's condemnation.

“CHARGE IV.—*Conduct unbecoming an officer and a gentleman.*

Specification 1.—For that the said Charles K. Gardner, at Boston, in the county of Suffolk, on or about the 14th September, did address a note to major general Ripley, a copy of which is hereunto annexed, and instead of sending the said note by some officer of the army, or some gentleman who could receive an answer to it—did, then and there, leave the same with the bar-keeper of a public house, in said Boston, to be by him delivered to said major general Ripley.

(COPY.)

Boston, 14th September, 1815.

SIR—I have, within but a few days past, at Philadelphia, and on enquiry at New York, heard of abusive expressions, which you have applied to me at Fort Erie, and elsewhere.

Why in so long a period I have not been informed of them before this, I can only impute it to the opinion of those who may have heard them, that the malice of the expressions defeated themselves. That you have used them principally before your friends, but in frequent instances; I now have all the evidence which is requisite—though you have taken me by the hand whenever occasion occurred, as if nothing of that nature had happened. This injury is entirely a personal one, and I conceive it wholly distinct from any difference which you may have with any other officer.

The memorandum of an officer of distinction who was present, that you “expressed a perfect willingness to bring the difference to a personal issue,” and that you intended the expressions for my ear, I have in my possession.

I now demand redress. My friend, a field officer of the line, requires an assurance of being safe in a military point of view, when he will wait on you. To this one point I request your reply.

I have the honor to be, sir,

Your very obedient servant,

(Signed)

C. K. GARDNER,

Gen. ELEAZER W. RIPLEY.

I request the reply may be sent to the Exchange.

(Signed)

C. K. G.

Specification 2.—After the said note was returned, to wit: at Boston, aforesaid, although it was publicly rumored in Boston, that the said Gardner had come on for the purpose of fighting said major general Ripley, and although in returning the said note, major general Ripley had expressly stated the reason why it was not received, was because it was not communicated by said Gardner, through the medium of some friend, in a gentlemanly way, or to that effect; he, the said Gardner, transmitted the same again by captain Deacon, of the navy, who then and there informed said Gardner, he could not, from his engagements, appear as the friend of said Gardner, but would consent to bear the letter as a stranger, but to make no arrangements in consequence of it.

Specification 3.—For that the said Gardner, at Boston, aforesaid, on or about the twentieth of September last, did suffer lieutenant Lee, of the army, to inform him personally that general Ripley's opinion of him was so low and contemptible that he should think it degrading for any gentleman to enter into a correspondence with him, the said Gardner, without in any manner resenting it.

Specification 4.—For that the said Gardner, at Boston, aforesaid, on or about the fourteenth day of said September, did attempt to open a correspondence with said general Ripley, in manner before stated, when he, the said Gardner, had been called by said major general Ripley, a scoundrel or coward, on the frontier, more than a year since; which he, the said Gardner, then and there well knew, but of which he took no notice.

SUPPLEMENTARY SPECIFICATION.

Conduct unbecoming an officer and a gentleman.
 —For that the said Gardner, at Boston, aforesaid, on or about the 25th September last, and while he was under arrest by the order of major general Ripley, did shew to colonel Aspinwall, late of the army, a work in manuscript, purporting to be a narrative of the last campaign, in which said Gardner had grossly and outrageously censured the conduct of the said major general Ripley; and he, the said Gardner, did, then and there, instruct said Aspinwall, to propose to major general Ripley, that if he should discharge the arrest of the said Gardner, and let the business drop, ~~he~~, the said Gardner, in consideration thereof, would entirely suppress the said work, and be quiescent.

CHARGE V.—*Disrespectful conduct and language.*

Specification 1.—For that the said Gardner, at a place called Fort Warren, on the first day of October, 1815, did address a note to the said major general Ripley, in the form of a protest against the legality of the proceedings instituted by said major general Ripley, against the said Gardner, and in the said note, the said Gardner has the following paragraph :

“I wish to give you notice, that the court martial for my case, which you have ordered to convene on the 4th inst. and your arrest of me, on charges not of immediate occurrence, and which admit of reference to your commanding general, *are illegal*, and that it will become the subject of an additional accusation against you, if persisted in.”

The same being intended to threaten the said major general Ripley, with an accusation, if he persisted in doing his duty."

I had pronounced the prisoner a coward, on the Niagara frontier. Was there for me sufficient justification for the epithet? It was about the period the report of the battle of Niagara, made its appearance in the camp at Erie. In that report, I found my own reputation assailed, and major Gardner's extolled. I knew, and the army were sensible that if the report was not the production of major Gardner, still he gave a direction to it. His conduct was the subject of investigation. His attempts to form a cabal, hostile to me, were perfectly manifest. That the report was incorrect, so far as it respects myself, has been perfectly evinced by the acts of the government, and the subsequent conduct of major general Brown. In this state of things was the character of colonel Gardner made the subject of discussion. Was it to be expected, when he was extolled for conduct which would have disgraced others, that it should not awaken the feelings of the army? Is an individual to be hunted down, and not to raise an arm in his defence? Is an army to be so organized, that an officer of it is to be attacked, and his reputation assailed, when the conduct of the individual, although junior in rank, who thus seeks, makes the base attempt, cannot be the subject of investigation? I did pronounce major Gardner, a coward, publicly and in the face of officers who associated with him. He

knew it ; it was impossible it should be otherwise. Reports of that kind are never circulated, but that they immediately reach the ear of the individual for whom they are intended. Look at the facts in this case, and see if any other deduction can be drawn. Colonel Snelling says, at one time when the expressions were used, Gardner was in the next tent ; he says that my remark was intended for colonel Gardner's ear ; he immediately took the pains to see whether he was asleep ; he saw him lying on his face, but he cannot tell whether he was asleep or not. Captain Kirby states, that a number of officers were present, both at this, and other times. Colonel Hindman states, that the same remarks were made at Washington, in presence of doctor Bronaugh, and colonel Selden. Major Gardner was at Washington at the time. Before the board of officers at Washington, I particularly objected to the retention of major Gardner ; his character was not perfectly understood by two of the general officers present. I was frank, open and unequivocal in my remarks.

Look at the testimony of captain Bell. He states particularly, that " colonel Gardner while at Albany, last winter, was well informed of general Ripley's dislike to him." But his particular expressions he does not remember. In connection with the other testimony, gentlemen, take this into consideration. What did general Ripley's dislike originate from ? How was it expressed ? You have the evidence. It was expressed by the epithets which are related in the specification. Major

Gardner himself does not attempt to explain it in any other manner; there is no pretence that I ever expressed my dislike in any different way. From this fair construction of the testimony—situated in camp with major Gardner, giving perfect liberty to every one to state to him the facts; with the positive testimony of captain Bell, that he well knew my dislike to him, and there not being a pretence that, that dislike was ever manifested in any other manner, can you for a moment doubt that major Gardner was aware of the statements I had made.

Gentlemen, there are witnesses, who, if they could have been compelled to attend this court, would have brought the testimony more home to major Gardner. They are deranged officers of the army—I can satisfy you as soldiers, though not as a military tribunal, of their existence. It is not my fault that the lapse of time and the derangement of the army, should have scattered these witnesses to the four winds of Heaven. In a moral view, they will satisfy; in a legal view, this remark is to have no effect at all. What then is the course major Gardner sees fit to pursue, knowing my dislike to him—gathered in no other possible mode than from my having called him by the epithet, coward. He suffers the affair to slumber; he calls upon me for no explanation of the cause of my dislike; he remains perfectly passive. After more than a year had elapsed, he repairs to Boston. The rank of the two individuals had become changed. On the Niagara frontier, major Gardner was adjutant general; his rank was that of a colonel;

but in point of station, he was second only to the commander in chief, and could be controlled by no other. I was the junior brigadier general. In September last, the relative state of things was changed. Colonel Gardner had reverted to the situation of a major, and I had received promotion to the rank of major general, commanding a separate department.

He arrives in Boston; he avows his object is to have a personal rencontre with me. The daring soldier who had gained no reputation during a sanguinary campaign, now intends to acquire it by blustering with, but not by fighting, a major general.

I say he had no intention to fight. Look at the facts in the case, and then say whether his conduct manifested any such disposition. If he had come on for the purpose of fighting, he would not have come without his friend. The pretence that colonel Snelling did not shew himself for fear of being arrested, is totally absurd. The obvious course for colonel Gardner to pursue, would have been to keep his project secret; to have come with his friend; and then to have addressed to me a note, requesting me to waive my rank. Bearing this letter on the part of colonel Gardner, would have subjected colonel Snelling to no military tribunal, for it would not have been a challenge under the articles of war. If colonel Snelling had made his appearance with such a letter, I could at once have told him what course I should pursue. I should either have waived my rank; or should have remarked to him

that colonel Gardner's character was such as to render it improper for me to meet him. If colonel Snelling appeared as the friend of colonel Gardner, under such circumstances, he would have been bound to make it a personal affair, and my aids who solicited that they might make it their own affair, would have been bound to meet him. This, gentlemen, would have been the ordinary course of the transaction, upon every principle of chivalry. It is obvious and apparent ; a departure from it in essentials was unofficerlike. I will now exhibit to you the real representation of major Gardner's conduct, and you will determine whether it comports with the usage of honorable men.

Major Gardner arrived in Boston during my absence. On my return he had been here several days ; it was rumored that he had arrived with a view to call me to a personal account, for remarks which I had made on the Niagara frontier, one year before. I received the letter bearing date 14th September, 1815, requesting an answer might be sent to the bar of the Exchange coffee-house. I presumed the object was to draw me into a written correspondence, where every expression should be liable to misconstruction ; and that it would be given to the world through the medium of the newspapers. I could not answer his letter ; he had sent no friend to receive any verbal communication. The idea of making the bar-keeper at Earle's, and the bar-keeper at the Exchange coffee-house, the reciprocal organs of our correspondence, on a subject that required verbal communications

and statements, was degrading and unofficerlike. I returned the note with an objection to its mode of delivery, and a remark relative to its being forwarded in a gentlemanly way. To any man of honor the objection was reasonable, and could not be misunderstood. It was not simply that it should be forwarded by a gentleman; but that it should be forwarded in a manner that an honorable man ought to do it; through the medium of a friend, who could receive my verbal answer on the question, whether I would wave my rank. The next organ of communication was through the medium of captain Deacon of the navy. He handed me the letter, under an impression that he came as the friend of major Gardner. I commenced some observations in relation to the subject, when captain Deacon apprized me, he had not come as the friend of major Gardner, but simply to deliver the letter as a stranger. The letter was in my hands, and the same difficulty occurred. Major Gardner seemed determined that his friend should not call so as to furnish me with the means of giving him at once a verbal answer. Thus, gentlemen, was this famous letter put into my hands a second time. Who the friend of major Gardner was, I could not conjecture; he had not even condescended to put me in possession of his name. Little did I think at the time, that this redoubtable champion had not passed the barrier of New York. Little did I imagine that he had left this business to be conducted by invisible spirits, till all the arrangements were made by his principal for taking the field. The reasons

of colonel Snelling's conduct are sufficiently apparent; he knew very well what my answer would be to his request of colonel Gardner. He was perfectly aware from what he knew of his character, that I could not meet him. If he had presented himself according to all honorable usage, and asked the simple preliminary question, whether I would wave my rank, which could have subjected him to no military tribunal, that I should have answered at once, I cannot to Gardner. Under these circumstances, he felt assured, his reputation would have been gone, or he must make himself a principal in the affair. He well knew my staff, and he was well aware if he had made himself the principal, he would have been gratified in his wishes. Under these circumstances, he contrives with the utmost adroitness to push Gardner on to Boston, to involve himself in a most unpleasant dilemma, while he, like some modern cavalier, is enjoying quiet and repose at Fort Columbus.

The court will now see what situation the affair is placed in. A second time the letter is placed in my hands—there is however no friend to whom can be communicated my verbal answer. The only mode of communication is still the keeper of the bar of the Exchange. What under these circumstances was to be done? On a simple question whether I would wave my rank, no military responsibility could be involved. It would however involve a responsibility of another kind, for if my reply should be that I would not wave it to Gardner, but would to the second—such second would

be compelled to fight either myself, or my aids.— Captain Deacon was probably aware of this, and did not wish to interest himself in the quarrel; but let me say there was an impropriety in his bearing a letter of this kind as a stranger. Such communications ought only to be borne by the friends of the parties, and who have power to settle arrangements.

The letter was thus obtruded upon me in a way perfectly unofficerlike, a second time, so far as it respects major Gardner. What course could I pursue? I had no doubt the friend of major Gardner was in Boston. I was desirous to see him, for to him could I state the objections I had to meeting major Gardner. I returned an answer, which like the former one, was reduced to writing, so that it could not be liable to misconstruction. Lieut. Lee, my aid, of whom I will only say, he is in character the very reverse of major Gardner in every respect—whose gallantry has been twice the subject of notice from the government, bore this message. And here, gentlemen, let me advert to the singular predicament in which the prisoner is placed. He had repaired from New York to Boston, determined—

“To cry havoc, and let sleep the dogs of war.”

He had been a long time negotiating, but nothing was effected. Where a major general commanding an army, or department, has been assailed in this manner, it is common for his staff to make it a personal affair. I will only advert to one celebrated instance in the revolutionary war—major general

Lee challenged general Washington ; his aid, colonel Hamilton, accepted the challenge, and actually fought general Lee, notwithstanding the disparity of rank. In the present instance, no challenge had actually been given ; to that point major Gardner could not be brought.. Lieut. Lee, my aid, called upon major Gardner with a written message from me. There can be no misconception as it respects my message and the language of lieut. Lee. The former was reduced to writing ; the latter was verbal. The former was in answer to the note stating an answer would be given to major Gardner's letter, whenever his friend should apply to it. The latter was the verbal remark of lieut. Lee, "that in his opinion, the view which general Ripley had of major Gardner's character, was too contemptible and despicable to have any written correspondence with him."

And what does this redoubtable hero do with these expressions. He tamely pockets them.— Lieut. Lee had applied to me to allow him to make it a personal affair ; I had prohibited it. Still he does every thing in his power to accomplish it ; he repeats the assertion twice. Major Gardner calls for no explanation ; he does not even bristle up in anger. This champion of his own reputation hears expressed as the individual opinion of lieut. Lee, remarks which no man of honor could submit to for a moment. Under these circumstances one of my staff made every effort to bring Gardner to a point, but it was unavailing.

I knew not who the friend of major Gardner was.

I presumed that he was with him in Boston ; his letter was such as to lead to that conclusion. I remained six or seven days awaiting his appearance ; it then became my determination to place him in arrest. With this view, I sent an order for him not to leave Boston until I gave him permission.

The next day, I placed him in arrest, and sent him to Governor's island. My view in doing it was two fold—I intended it should have an effect on the discipline of the army, and at the same time lead to a development of all the facts connected with the case before a military tribunal. This had become necessary for my own vindication, as well as to remove the mask from a person whom I deemed a military impostor. The tongue of rumor is so busy—she operates in so invisible a manner, that I was satisfied, perverted statements would meet the public ear, and it was my intention by a development of facts, to put every thing on the basis of truth.

After the arrest and confinement of the prisoner to Governor's island, his tone was changed. He there became tame and humble. No longer was he disposed to growl like the bull dog, but he degenerates into the passiveness of the spaniel.

Scarcely had he received his orders when he calls upon colonel Aspinwall, whom no person can respect more than myself, not for the purpose of being his champion in battle, but his mediator in peace. He shews to colonel Aspinwall a manuscript narrative of the campaign, and makes through

him a proposition, that if the arrest could be discharged, he would drop all discussions and suppress the work, adding, that if it were not done he should "post me." Colonel Aspinwall makes the first part of the proposition, but the latter he considered so extremely unofficerlike, that he would not advert to it. Now this is, the sum of the testimony under this specification. It is not my purpose to enquire whether the view alluded to, be correct or incorrect ; I shall not stop to ask whether censure be gross or outrageous. These words in the specification are simply descriptive. Major Gardner is not to be tried for a libel against me, for I care no more about his views and his narratives, than I do about the idle wind which I regard not. The substance of the specification is, the causing a proposition to be made to an officer of superior rank, the terms of which are, *if you will discharge me from arrest—I will suppress a publication relative to you.* And is not this unofficerlike ? A prisoner under such circumstances might as well offer a pecuniary consideration, a bonus, as to offer the bargain which was made in the present instance. It goes with a bribe in one hand, and a menace in the other. Discharge my arrest, and I will suppress. Persevere in your duty, and I will publish. Is this subordination and discipline ? If this be a fair example of the state of the army, well may its situation be considered deplorable. The closing specification of this charge I shall simply advert to. It is a menace too, on a subject which was regularly a part of my official duties. If at all to be allowed

on the part of an inferior officer, it would at once strike at the foundation of all military discipline.

I have now, gentlemen, presented you with an analysis of the evidence applicable to the fourth charge, and its specifications. You will decide upon it as honorable men. I believe it to be a fair one, and a correct exposition of the conduct of the prisoner. I do not ask you for his conviction. Consult your own judgments, and pursue a course which shall conform to your own honorable reputations and the interests of the army. If the facts are liable to doubt, incline in favor of the prisoner; but where there can be no other alternative, but to convict him, or consider honorable men as perjured; a view to your own reputation, will point out the course to pursue.

If you are of opinion, that sending the first note to a bar keeper, with a request that it should be answered, through a similar medium, was proper; that forcing the second note upon me through the medium of captain Deacon, when he explicitly stated he could not appear as the friend of the prisoner, was proper:

If you consider the declining to make the affair personal, with my aid, lieut. Lee, when he gave an express provocation, as proper:

If you view the conduct of major Gardner in coming to Boston, and making the object of it a matter of public notoriety, as proper:

If you deem the proposition made through the medium of colonel Aspinwall, as proper:

And if you should consider the menace to me in relation to an affair of official duty, as decorous and civil, consistent with subordination and military usage—then you will find the prisoner not guilty on all the specifications.

I shall now, gentlemen, advert to the facts of the Niagara campaign. Painful as is the task to analyse the conduct of the prisoner, yet the duty becomes necessary. General invective, reasoning upon facts which have no existence, but in a dis-tempered imagination, will have no effect in forming your judgment. Sober, serious facts, elicited in the course of the testimony alone, can guide you. In this campaign, pregnant with so much of interest to the American people, and so much renown to those engaged, what was the situation of the prisoner? High in rank, enjoying the confidence of his commanding general; placed in a situation the most enviable to the young and daring soldier—as adjutant general, confined to no corps, but from the very nature of his duty, allowed to range the whole field of battle for glory and renown. With such prospects in view, how did he discharge his duty? Did he meet danger in the face on every sanguinary field?

Let me before I bring before you the facts relative to his career, state as a preliminary position—that according to the usages of war, the duties of an adjutant general place him proverbially in exposed situations; while the duties of a commanding general are of a reverse nature. The one places himself in the van, as a matter of course, to assist in

the formation of the troops ; to rally them if they break ; to encourage and array them in the clash of conflict ; while it is the duty of the general to survey all from the rear. The one is borne on the tide of war ; the other directs it. Under these circumstances, nothing but a positive order of the commanding general can in any service keep an adjutant general from danger. And if a commanding general were to give such an order, it would be considered as absurd by every competent military man.

To apply these principles to the conduct of the prisoner, at the battle of Chippeway, he is charged with—

“ CHARGE I.—*Misbehavior in the face of the enemy.*

Specification 1.—For that the said Charles K. Gardner, at Chippeway, in the province of Upper Canada, on or about the 5th July, 1814, he then and there being adjutant general of the American forces, and his duty as such being to form and lead the men into action, to animate them with his presence as chief of the staff, and arrange and direct the whole staff duties of the field, he, the said Charles K. Gardner, did wholly omit and neglect his duties aforesaid ; did not appear at all on the field, when the troops were engaged, and where his duty required him to be—but did then and there hide and conceal himself behind a barn ; and when a shell from the enemy’s artillery burst upon the barn, the said Gardner galloped to the rear, and farther from the enemy.

CHARGE II.—*Cowardice in the face of the enemy.*

Specification 1.—For that the said Charles K. Gardner, at Chippeway, in the province of Upper Canada, on or about the 5th day of July last, he then and there being adjutant general of the American forces, and his duty as such, being to form and lead the men into action, to animate them with his presence as chief of the staff, and to arrange and direct the whole staff duties of the field, he, the said Charles K. Gardner, did wholly omit and neglect his duties aforesaid ;—did not appear at all on the field, when the troops were engaged, and where his duty required him to be ;—but did then and there hide and conceal himself behind a barn ;—and when a shell from the enemy's artillery burst upon the barn, the said Gardner galloped to the rear, and farther from the enemy.

CHARGE III.—*Neglect of duty in the face of the enemy.*

Specification 1.—For that the said Charles K. Gardner, at Chippeway, in the province of Upper Canada, on or about the 5th July last, he then and there being adjutant general of the American forces, and his duty as such, being to form and lead the men into action, to animate them with his presence as chief of the staff, and to arrange and direct the whole staff duties of the field, he, the said Charles K. Gardner, did wholly omit and neglect his duty aforesaid ; and did not appear at all on the field, when the troops were engaged, and where his duty required him to be--but did, then and there, hide and conceal himself behind a barn, and when a shell from the enemy's artillery burst upon the barn, the

said Gardner galloped to the rear, and farther from the enemy.”

To prove the general allegations, witnesses are called who served with general Scott's brigade, and who from their position, must have known the fact—who testify, that during the action with his brigade, major Gardner was not on the field. Where and how was he employed during this period? During the whole action, he was not within the range of the enemy's musketry—and nothing was he exposed to excepting some chance cannon shot (and those very few) that were directed at general Scott's brigade in front, and re-echoed through our camp. Major Vose has testified that the second brigade occupied a position from half to three quarters of a mile in rear of the battle ground. As military men, you can easily form an opinion as to the exposure at that distance with six pounders.

General Brown tells you, that at this time, the general staff occupied a position in front of the second brigade; he further states, that within ten minutes time, or at most fifteen minutes from the period, the first order was given to Scott, to advance—he sent colonel Gardner to direct the second brigade to be put in motion. As to time, *this statement is not correct.* Major Vose testifies to you that the enemy had given ground in front before the order to the second brigade to advance. Of consequence the whole action was over with Scott's brigade. How long the period was from the time Scott was first ordered to move out, until the enemy was finally repulsed by his brigade, is

not for me to determine—the period was probably nearly one hour. During the whole of this action, it appears from the statement of all the witnesses, major Gardner was not once within the range of the enemy's musketry. He was exposed to nothing but their random shot. Once indeed he attempted to go to the front.

“ Lieutenant *Elisha Brimball*, late of the ninth regiment infantry, a witness on the part of the prosecution, being sworn, says—

“ At the battle of Chippeway, I was wounded in the commencement of the engagement, before we had got into line—while we were marching over the bridge, which obliged me to retire into the rear.—I went into a house on our left, as we marched down towards the enemy ; as the enemy's artillery were directed that way, two of their shot went through the house ; I then left the house and went into a barn, about 30 or 40 rods in the rear—while I was in the barn and binding up my wound, a shell passing through the roof of the barn and exploded ; I went to the door, intending to go still farther to the rear ; I saw colonel Gardner on horseback, with a number of Indians and teamsters about him ; at the time I went to the door, *they were all retreating farther to the rear.*”

Such was the conduct of the adjutant general of the American forces at the battle of Chippeway. To do away this testimony, the prisoner has not even pretended he was in the action. He has not tried in any way to repel the testimony of a single witness. General Brown, major Jones, and major

Worth, do not intimate that he otherwise exposed himself than I have already stated. Of the disposition of these persons to serve major Gardner, there can be no doubt. The first in *his official report*, with these facts known to him, extolled his conduct. Major Gardner in return, on every occasion in his power, in views of campaigns and defences, *eulogises the former*. He is bound to do it by every obligation which can be imposed on man.

Is there any attempt on the part of the prisoner to invalidate the testimony of lieut. Brimhall. No such attempt has been made. If it had it would have been fruitless ; the reputation of lieut. Brimhall as a soldier, and as a man, stands too high in comparison for a moment's doubt to be entertained. If you believe it, you must convict the prisoner of cowardice at Chippeway. You cannot upon your oaths and your honor, as men and as soldiers, dispense with its full force, for it stands unimpeached.

I have now finished the analysis of the testimony applicable to the prisoner's conduct at Chippeway. I shall now present you a more forcible instance. Repair with me to the field of Niagara, where the forces of the contending nations met in a more deadly strife.

CHARGE I.

“*Specification 2.*—For that the said Charles K. Gardner, at a place called Lundy's-lane, in Upper Canada, on or about the 25th July, 1814, he then and there being adjutant general of the American forces, then engaged with the enemy, and his duty then and there being, as chief of the staff, to form

and organize the troops; to lead them into action, and to direct and arrange all the staff duties and proceedings of the field, did then and there wholly omit to perform these duties, but did take up his position in the rear of the American forces wholly out of danger.

CHARGE II.

Specification 2.—For that the said Charles K. Gardner, at a place called Lundy's-lane, in Upper Canada, on or about the 25th July, 1814, he then and there being adjutant general of the American forces, then engaged with the enemy, and his duty then and there being, as chief of the staff, to form and organize the troops, to lead them into action, and to direct and arrange all the proceedings of the field, did then and there wholly omit to perform these duties—but did take up his position in the rear of the American forces.

CHARGE III.

Specification 2.—For that the said Charles K. Gardner, at a place called Lundy's-lane, in Upper Canada, on or about the 25th July, 1814, he, then and there, being adjutant general of the American forces, then engaged with the enemy, and his duty then and there being, as chief of the staff, to form and organize the troops, to lead them into action, and to direct and arrange all the proceedings of the field, did, then and there, wholly omit to perform these duties—but did take up his position in the rear of the American forces, and wholly out of danger.”

The adjutant general of the army had marched with it from Queenston. When the action com-

nced he mounted his horse, and gave orders for some of the brigades to move to the field. He rides a distance of nearly three miles; his commanding general deems it necessary to rush into closest combat. Major Gardner halts at the distance of sixty or eighty yards in the rear, and out of danger, till the action is over; he retires with the army to camp. The next morning he is early seen distributing orders to the several corps, and he finally takes up his line of march with the army to Fort Erie, where he remains until the enemy invest it, when he is directed to repair to major general Brown. True, he states to his commanding general that on the *afternoon previous to the action*, he was *indisposed!* Gentlemen, I appeal to you as soldiers, whether this excuse can be admitted as an apology? It is not every species of indisposition which will justify an officer in remaining from the field. It is not a slight head-ache, a palpitation of the heart, or a trifling cold, that can warrant an officer of high rank in avoiding a field, on which depended the safety and honor of the American arms. But let me ask if it was any thing but mere pretext? How could colonel Gardner ride such a distance to the field? How could he remain so long in the rear? These facts in my view, are conclusive. If a brave man were placed in such a position, would he not wish for action? Would not the excitement of battle remove his pains and his agonies more than by remaining in a position where he could be of no earthly service? and when he could hear nothing but the groans of the dying. Where

is the report of the surgeon that he was sick? You have no evidence but his own declaration to major general Brown, and his own declarations are not evidence for him. He complained of being sick—*it is the common pretext of cowards when danger is nigh.* Should a soldier in the ranks make the same pretext, when arriving within one hundred yards of the enemy, and fall to the rear without orders, he would be shot for it? And is an officer second in importance to none but the commander in chief, to avoid danger with impunity, when under the same circumstances a subordinate officer would be punished? The facts shortly stated, with reference to this specification, that major Gardner pretending to be sick, rides to the field; when there, he perhaps expected his general would take up his position in the rear, and under those circumstances he intended to perform the same part he did at Chippeway: General Brown, however, went into the action, and fear prevented major Gardner from following.

Gentlemen, some of you are old soldiers, and have seen a variety of service. I appeal to you for the correctness of the remarks I am about to make. Did you ever know an officer of any rank conduct himself as major Gardner did on this occasion, without being deemed a coward? Were you ever acquainted with an instance where an officer of rank in a severely contested action, and whose duties required him in the thickest of the fight, that remained on horseback a short distance in the rear, upon a pretext of illness, who did not by such acts loose all pretences to military reputation?

Have you not, on the other hand, known repeated instances of officers leaving their sick beds and repairing to the field? The battle ended, they have again retired to their litter or their tents.

How was it on this very occasion with a host of gallant men? With Brady, with Jessup, and Leavenworth, and others I could allude to, if delicacy allowed it. The two first were severely wounded, and in excruciating pain, the latter was also wounded; but *they* scorned to retire. Their blood flowed freely, but their honor retained them. At that very moment the adjutant general of the forces was skulking from danger under pretence of indisposition, and riding about in the rear!!!

If major Gardner was sick, why repair to the field? If he was unable to perform his duties in the fight, why not return to camp? A stronger case of cowardice, of neglect of duty, and of misbehavior could not well be imagined. General Brown and colonel Jones to be sure, testify they never knew any misbehavior or faltering on his part in the presence of the enemy. There is a conclusive answer to their testimony. They never saw him in the face of the enemy and exposed to his fire—when I say in the face of the enemy, I mean within striking distance of him. I do not allude to spent cannon shot at the distance of half a mile—nor do I allude to the spent balls of musketry. Every military man knows that these are not sufficient to frighten an old woman.

The intermediate period of the campaign is not made a matter of charge. Major Gardner during

the pressure of the siege at Fort Erie, was absent with general Brown. Although attached to the army, and not to the person of the commanding general, he left the army and passed his recess at a distance from it. I do not pretend to censure him for it. It was, it appears, the direction of general Brown, and major Gardner was not responsible.

CHARGE I.

“ *Specification 3.*—For that the said Charles K. Gardner, at a place called Fort Erie, in Upper Canada, on or about the 17th September, 1814, he then and there being adjutant general of the American forces, as aforesaid, and it being his duty to assist, to form, and to direct the troops, and to be with them in the heat of the action, did take his position in or near a ravine, between Fort Erie and the woods, and wholly out of danger; and in this situation, when directed by major general Brown, commander in chief of the American forces on that occasion, to communicate certain orders to general Ripley, then engaged with the enemy—he, the said Charles K. Gardner, did employ another officer, to wit, captain Newman S. Clark, to expose himself to the fire of the enemy, and to communicate the said orders, while he, the said Charles K. Gardner, took special care to keep out of danger.

CHARGE II.

Specification 3.—For that the said Charles K. Gardner, at a place called Fort Erie, in Upper Canada, on or about the 17th September, 1814, he then and there being adjutant general of the American forces, as aforesaid, and it being his duty to

assist to form and direct the troops, and to be with them in the heat of the action, did take his position in a ravine, between Fort Erie and the woods, and wholly out of danger—and in this situation, when directed by major general Brown, commander in chief of the American forces on that occasion, to communicate certain orders to general Ripley, then engaged with the enemy, did employ another officer to expose himself to the fire of the enemy, and communicate the said orders, while he, the said Charles K. Gardner, took special care to keep out of danger.

CHARGE III.

Specification 3.—~~For that the said Charles K. Gardner, at a place called Fort Erie, in Upper Canada, on or about the 17th September, 1814, he, then and there, being adjutant general of the American forces, as aforesaid, and it being his duty to form and direct the troops, and be with them in the heat of the action, did take his position in a ravine, between Fort Erie and the woods, and wholly out of danger—and in this situation, when directed by major general Brown, commander in chief of the American forces on that occasion, to communicate certain orders to general Ripley, then engaged with the enemy, did employ another officer to expose himself to the fire of the enemy, and communicate the said orders,—while he, the said Charles K. Gardner, took special care to keep out of danger.~~

The affair of the 17th next forms the subject of investigation. The facts involved in it so far as they are applicable to Major Gardner, evince the

same spirit and feelings which have thus far marked him during the campaign. I disclaim all idea of bearing upon the prisoner, excepting so far as the facts shall warrant me. Let him employ invective, it is seldom the language of truth. Let him pursue the course of idle declamation—I shall coolly march forward in that path where the testimony directs the way.

The testimony of major general Brown, as I understood it, when delivered in court, was that the intention of a sortie was not communicated at all excepting to colonel Jones, the evening previous to its taking place. If I am incorrect in quoting it, the court will set me right. This, nevertheless, was a mistake in point of fact—for it was known to most of the officers a long time previous. General Porter and colonel Wood had been engaged in arranging the plan of it, and the testimony of colonel Beedel and captain Kirby both coincide in establishing the fact, that the officers were generally apprized of it. Under these circumstances, general Brown has testified to you that the *chief of the staff* his *first confidential officer*, was not apprized of it. He does not attempt to disclose the reason why a neglect of so cutting a nature to the feelings of a soldier, was practised towards colonel Gardner. Facts speak more loudly than testimony—they are irresistible in their nature. We see on the one hand, a general officer disclosing his plans to the officers of the camp, and at the same time keeping them secret from the officer, who from his situation was most entitled to confidence, and whom he had eulogised

in the highest manner. On the other, at a critical moment of the action, we beheld the same major Gardner surrendering up the immediate command of the army to an officer who but a short time before had been the object of censure. This mark of confidence at the time, was hailed as the pledge of harmony—dangerously wounded in conflict—borne from that field oscillating between life and death, little did I imagine that through the medium of negative approbation, an attempt would be made to injure my memory if I fell, and my reputation if I survived.

I return to the subject of the sortie. The position of the enemy's batteries was in the woods; general Brown with his staff, took up their position in the first place, in the open ground between Fort Erie and the woods. The attack commenced by the volunteers on our left; general Miller's brigade entered the woods, nearly perpendicular to Fort Erie. The twenty-first regiment received orders to enter the woods near battery No. 3, the chain of works and batteries extended some distance into the woods. Under these circumstances as the troops advanced, the general staff moved forward. Where was major Gardner at the time? In his usual station in the rear. General Brown gave him two orders to communicate to general Ripley. Was not here occasion for an adjutant general to go forward? Did this not afford an opportunity to major Gardner to expose himself? He communicates neither order. Captain Kirby's testimony is express to this point. He procures colonel Snelling, if I do not forget, to transmit the

one, and captain Clarke the other, and immediately retires to the rear ! Captain Clarke tells you there were some spent balls which flew at the time ; this probably had an effect in producing the retrograde movement ! I say nothing upon the manifest impropriety of committing orders to the brigade major. An adjutant general is not only bound to transmit the order, but to see it executed. To take off the staff of brigades for that purpose, would be to destroy the whole army organization. But this is of trifling consequence in comparison with other circumstances. Captain Clarke states that after battery No. 3, was carried, and the enemy repulsed, colonel Gardner came to him with an order, he being in rear of me, and requested him to convey it to me—that at this time, nothing but spent balls fell in the spot where they stood, but the firing was heavy and incessant on their left. That colonel Gardner appeared hasty and impatient, and anxious that some other person should carry the orders, and that according to the witness's impression, he was under the influence of fear. That on soliciting captain Clarke, he hesitated, because he thought it improper to convey the orders of the commander in chief. That he finally complied, and colonel Gardner returned to the rear. That this order was sent while general Ripley was moving with a column to the attack. Is not this statement true and unimpeached ? General Brown in his report states that he gave such an order ; so far, therefore, does the statement of the commanding general corroborate the testimony of captain Clarke. If you be-

Save him, you must convict the prisoner of cowardice in the battle of the sortie. The order to me was to assume the direction of the troops.— Major Gardner not only ought to have brought the order, but it was necessary he should report to me, being invested with the immediate command. Captain Kirby tells you that the troops were dispersed and deranged. An adjutant general and his assistants were peculiarly necessary to assist in their reorganization. It was his special duty. By the command of the whole devolving on me, I had no staff but my aid; for my brigade major was attached to the brigade, and not to my personal suite. But, gentlemen, do you not see that this order which was sent, was in consequence of the adjutant general having neglected his duty, and his commander being apprised of it.— Who is to take the general direction of troops in action but the adjutant general, subject to the orders of the commander in chief? If it were not a principle as universal, and as old as the office, in every army, still it would be a duty, since it is so laid down in your own regulations, to which I refer the court. It is the duty of the adjutant general to assist in forming columns, in leading them, in rallying fugitives, in bringing up second lines, reserves, and all the vast variety of duties of the field. Did he perform any of them at the sortie? General Miller, colonel Bedel, and lieutenant Lee, tell you he was not with the first brigade. Captain Kirby and colonel Brooke did not see him in action. Captain Irvine, who traversed the whole line, never met with major Gard-

ner. General Brown, colonel Jones, and colonel Snelling, never pretended he was in the action—excepting col. Jones, who testifies he was in battery No. 3, after it was carried, when some spent balls fell around it. But according to the testimony of captain Clarke, he soon retreated. I shall only make one remark in relation to the testimony of major Worth. He was in two actions with major Gardner on the Niagara frontier. He does not pretend he was ever in danger, or exposed. But major Worth refers to the conduct of major Gardner at Chrystler's fields.

He then states that the twenty-fifth regiment was warmly engaged, and *pursued* by the enemy, and that major Gardner was making great exertions to reform and correct the line of his regiment, or in other words *it was broken and retreating in confusion before the enemy, with major Gardner at the head of it!* This is not a very enviable description of the only time major Gardner was seen by major Worth on the field, at the head of his corps. It would seem that this *retreating* at Chrystler's field was so serious a thing to major Gardner, that *it has kept him out of the range of musket shot ever since.*

He does not state that he rallied the regiment, and again led it against the enemy. If such were the fact, from his friendship for the prisoner, he would not have omitted it. So the fair presumption is, that major Gardner and his troops retreated together.

I have now, gentlemen, gone through with the different actions of the campaign, in which major Gardner was in *the rear of the army.* I wish for

its honor, and from sympathy to the prisoner, that there was some solitary fact to brighten up the cheerless gloom which surrounds his military character. But it is all dark and desolate. Every disposition has been evinced to assist him with testimony; but still it is futile and unavailing. At Chippeway, where colonel Towson tells you he ought to have been on the field, he took up his position from *half to three quarters of a mile in the rear*. He here intended to cover himself under the shelter of his commanding general. That pretext will not avail him, for his duty was in the van. At Niagara, where his general went closer into action, major Gardner, on the pretext of illness, remained in the rear, and under the cover of the hill. At the siege of Fort Erie, he was absent. At the sortie, where his duty required him to lead the columns, to direct the field, and to reorganize the troops, he takes up his position out of danger. And to crown the whole, when his duties were assigned to a junior general, and he was directed to carry the order, he could not gather nerve enough to perform it.

This is the state of the testimony. For myself, I commiserate this man. I can regret as much as any one, that he should have been bolstered up by artificial praise, to fall at once so low.

Major Gardner in his defence, has adverted to many topics, which have not arisen from the evidence. He has indulged in invective, for reasoning was impracticable. I have endeavored to shun his example, and I trust there is not a single remark injurious to the prisoner, which has not naturally grown out of the testimony.

The story of the prisoner's achievements in the

Niagara campaign, is brief and replete with ignominy. We nowhere find him performing his appropriate duties:—to lead a detachment through the woods at the investment of Fort Erie:—to keep quietly three quarters of a mile in rear of the army at Chippeway, until the enemy had retreated, excepting in one solitary instance:—in going to the front and taking shelter with fugitive Indians and teamsters behind a barn:—and at the explosion of a shell, galloping rapidly to the rear:—to remain under cover at Niagara during the carnage of that dreadful conflict, out of danger and unexposed: simply advancing five rods to a wounded officer, who was retiring to our rear:—to dispute with the Inspector General relative to the right to superintend the prisoners in the rear:—to leave Fort Erie after that fortress was invested, and pass his recess pleasantly in the country, beyond the sound of its cannon:—to keep again in the rear of the troops at the sortie, and out of danger:—when ordered to carry orders into the fight, employing subordinate officers to perform it:—neglecting at Niagara to secure the captured cannon, and at the sortie to reorganize, and reform, and precipitate the troops upon the enemy's camp in their moment of panic.

This is the glorious galaxy of his actions! These are the splendid monuments of his renown.—I forgot myself. He attempted to throw upon others the responsibility for his own neglects:—he endeavored to pilfer from them, the fair exposition of their renown! These objects could not be accomplished without a struggle, and the dissensions it has produced, have distracted the army.

Gentlemen of the Court,

I have now closed the analysis of the testimony; I shall simply address one remark to you. As it regards myself, I have made out the case I stated. I asserted that major Gardner was a coward --I have proved him so. To me your decision is perfectly indifferent. For aught that concerns myself, I should be perfectly willing he should be acquitted. But let me tell you that the passions of the day are temporary; truth is eternal. As well might you attempt to convulse all nature, as to impede her march; for it is as steady as time, and durable as eternity. Simply then have a care to yourselves in making your decision. Acquit the prisoner if possible. Let all the best sympathies of your nature be enlisted in his behalf. Give to the testimony which operates in his favor, if there be any, the best possible construction for his interests. But gentlemen, act righteously. Look to future consequences, as well as to the present moment. If you condemn the prisoner without sufficient testimony, your own reputations will be involved. If you acquit in a case where the evidence is strong, irresistible and conclusive; it will hereafter become the subject of the sincerest regret. Weigh well then the testimony in the case. You are bound by the most solemn ligaments which can be imposed, between the soldier and his country; --the man and his God; --your honor and your oaths.

THE END.