THE HAZEN COURT-MARTIAL:

THE RESPONSIBILITY FOR THE DISASTER TO THE LADY FRANKLIN BAY POLAR EXPEDITION DEFINITELY ESTABLISHED,

WITH

PROPOSED REFORMS IN THE LAW AND PRACTICE OF COURTS-MARTIAL.

BY

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"Here we are, dying like men! Only seven left. We came to beat the best record, and we've done it."—*The words of Lieutenant A. W. Greely when rescued at Cape Sabine, June 22, 1884.*

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INTRODUCTION.

"These Lincoln washes have devoured them."
—SHAKSPEARE.

THE recent trial of Brigadier-General William B. Hazen, Chief Signal Officer, United States Army, has attracted very general attention, due not only to the high rank of the officers composing the Court-Martial, but to the official station of the accuser and the distinguished character of the accused.

The popular interest in the trial was deepened by the well-known fact that it grew out of a controversy as to who was really responsible for the final disaster to the Lady Franklin Bay Expedition commanded by Lieutenant A. W. Greely, U. S. A.

The magnitude of that disaster had not only challenged the attention of many foreign nations, as well as that of the American public, but it had awakened everywhere, among thoughtful men who knew of its achievements, a profound desire to have the responsibility for the appalling tragedy in which it terminated authoritatively traced.

Those achievements not only included the collection of facts of great scientific value and of practical utility as bearing upon the interests of commerce, by adding to our knowledge of winds, and of ocean currents and terrestrial magnetism, but they were crowned by an act that reflected renewed lustre upon the annals of our country.

The expedition achieved a nearer approach to the North

Pole—the crown jewel of the Arctic dome—than had ever been attained by man.

On the 15th day of May, 1882, it planted the standard of the republic in latitude 83° 24′ 5″ N. and longitude 40° 46′ W.—a point farther to the north than the ensign of any nation had ever been unfurled. It thus, by the hands of Lieutenant James B. Lockwood, U. S. A., wrested from England the honor of achieving the farthest northing, which she had deservedly worn for nearly three hundred years.

When disaster came to the expedition it had already done its appointed work. The twenty-five officers and men who composed it had resided for two years at the permanent station (Camp Conger) in latitude 81° 45′ N., and, under the excellent sanitary administration of their commander, had prosecuted their work in perfect health, in a region where the forces of nature have so often proved themselves superior to the resources of man.

Their station was literally "in thrilling regions of thick-ribbed ice," two hundred miles north of the most northerly igloo, or snow-hut, of the far-wandering Eskimo.

They arrived there August 11, 1881, and Lieutenant Greely, in obedience to his instructions, departed from it August 9, 1883, sailing southward with his command in a small steam-launch and three whale-boats, carrying supplies for about sixty days.

After threading his way through the grinding ice of Robeson and Kennedy Channels for two hundred and fifty miles with unexampled toil, the launch was crushed by the ice in Smith Sound a few miles north of Cape Sabine. He arrived in that vicinity with his party September 29, within the very time indicated by his instructions.

Cape Sabine was the most southerly depot of supplies on the east side of Grinnell Land, Lieutenant Greely's designated line of retreat. He brought his command there intact, although travel-worn and exhausted, without the loss of a single life or limb, and with its organization and discipline unimpaired.

And there it lay until famine had eaten it up. Out of a total of twenty-five a broken and shattered remnant of only seven survived (and one of these limbless and beyond recovery) when rescued by the relief expedition of 1884 under Commander W. S. Schley, U. S. N., who for more than two thousand miles ran a race with death, and, braving every peril, reached Cape Sabine on June 22, and there beheld a ghastly spectacle of dead and dying which plainly told, that had this splendidly-led forlorn hope of rescue arrived a single day later, the International Polar Expedition might have left not one survivor.

Its commander, Lieutenant Greely, had done his whole duty with faultless sagacity and unselfish heroism, and its undeserved fate, as these pages will clearly establish, was due in the first instance to a violation of orders on the part of one officer, and in the last to the untimely inaction of another whose personal animosity to the Chief Signal Officer blinded him to the requirements of a great public trust, and led him to disregard the supreme exigency, the one critical moment, upon which hung the fate of brave men who were acting in the line of their duty. That Mr. Robert T. Lincoln, late Secretary of War, on the 15th of September, 1883, held in his hands the awful balances of life and death for Greely and his men, and decided every chance against them, is now a proposition morally certain, and as convincingly demonstrable as any fact which depends for proof on an unbroken chain of circumstantial evidence.

I proceed to state briefly the undeniable facts and the irresistible deductions which prove the derelictions of duty that first made the Arctic disaster probable, and then made it certain.

Lieutenant Greely, after his arrival at the designated international polar station on the western shore of Lady Franklin Bay, transmitted to General Hazen, Chief Signal Officer of the Army, by the return ship, a plan to govern the proposed relief expeditions of 1882 and 1883.

Lieutenant Greely was familiar with the approaches to his

advanced position, had studied the exigencies of his situation, and he submitted that plan in the assurance that it would be approved and strictly observed.

General Hazen was morally bound to regard it as imposing upon him an obligation as sacred as any that could spring from a solemn compact, upon the faithful execution of which depended the safety of human life. The plan for 1882 contemplated the sending of a steam-sealer, under the command of a captain of experience as an ice-master, the relief party to take with it five enlisted men of the Army to replace men invalided or found unfit otherwise for Arctic work. In case the vessel could not reach the station at Lady Franklin Bay, a depot of two hundred and fifty rations, with a wall-tent, whale-boat, etc., was to be made at or near Cape Hawks ; a whale-boat was to be deposited at Cape Prescott, and a duplicate of the rations left at Cape Hawks placed in depot at Littleton Island, the vessel then to leave a record of its proceedings at Cape Sabine and depart southward.

The relief party, under the command of Colonel William M. Beebe, General Service, U. S. A., sailed from St. John's on July 8, 1882, and reached its highest point, latitude 79° 20′, about twelve miles south of Cape Hawks, on August 10, when the vessel (*Neptune*) was forced back by the ice-floes that were driven by a severe gale from the north. It subsequently made a depot of two hundred and fifty rations and whale-boat with wall-tent, at Cape Sabine, the most northerly landing attainable, and a depot of the same number of rations at Littleton Island, and deposited a whale-boat at Cape Isabella. After making repeated efforts to penetrate the ice-barriers of Smith Sound the vessel started homeward from that vicinity on September 5, 1882, after all chances for the ice to open that season had passed.

That expedition did everything required of it by Lieutenant Greely's instructions, except that it established its most northern depot at Cape Sabine instead of at Cape Hawks, which was

not attainable—a most providential circumstance, as the event proved. Had that depot been placed at Cape Hawks it would not have been available to Lieutenant Greely, while it was of priceless value to him and his companions in their famine-stricken camp at Cape Sabine. General Hazen has been criticised by some for not having had a larger amount of stores deposited by the expedition of 1882. Such critics are probably not aware of the fact that Lieutenant Greely (See appendix) had definitely specified in his instructions the quantity and kind of stores that he wished deposited by that expedition in case the vessel failed to reach him at Lady Franklin Bay, and his instructions were complied with. General Hazen placed the relief ship of 1883 at Cape Sabine before Lieutenant Greely could be affected by any depot in that vicinity, whether great or small.

The most thorough preparation was entered upon by the Chief Signal Officer to organize and equip the relief expedition of 1883. As early as November 1, 1882, he forwarded the plan of the expedition to the Secretary of War, who returned it without the shadow of dissent, suggesting that the men of the relief party might be obtained from the Navy. That change General Hazen had no authority to make, for, by virtue of the power vested in him by Act of Congress approved May 1, 1880, the President had already decided that the personnel of the expeditions for Arctic work should be drawn from the Army, and all subsequent acts of Congress conformed to that decision.

The following is an extract from his letter transmitting the plan of relief to Secretary Lincoln:

"I have the honor to enclose herewith copy of plan for relief expedition of next year for the Arctic party at Lady Franklin Bay, which plan Lieutenant Greely wished followed in the event of a failure to reach him this year. This seems to leave us only to follow his plans. . . . In sending the expedition next year every possible contingency must be provided for, and I request, therefore, your approval of this (Greely's) enclosed plan."

With the view to the selection of a suitable officer to command the relief expedition and of men to compose it from some

of our extreme Northwestern posts, General Hazen made application to the Adjutant-General, under date of November 10, 1882, and thus outlined the qualifications required in such officer and men:

"This will be an expedition requiring the very best manly character on the part of the persons composing it, and it is for this reason I now ask aid in fixing upon the proper persons. There should be no possible doubt of the character of the officer, who should possess manly qualities of the first order. Sobriety, high intelligence, unflagging energy and zeal, and faculty to command are but a small part of these indispensable qualities."

Lieutenant Ernest A. Garlington, Seventh Cavalry, volunteered for this duty, and, being recommended by General Terry, commanding the Department of Dakota, he was accordingly detached for Arctic service, February 6, 1883.

The steam-sealer *Proteus*, of St. John's, Captain Richard Pike commanding, was chartered for the expedition. She was the same vessel that had borne Lieutenant Greely so speedily to Lady Franklin Bay, and he had highly commended her commander, who was recognized universally as the foremost captain and ice-master in Newfoundland.

General Hazen decided to supplement the plan of Lieutenant Greely on the line of additional safety, and therefore made application to the Navy Department, through the Secretary of War, to have a suitable vessel of the United States Navy detailed as a tender or reserve ship to the *Proteus*. The *Yantic*, third-rate, commander Frank Wildes, was accordingly assigned to that duty. She was placed in dock at New York for proper repairs. Her battery was taken off, all her ordnance stores landed, and she was sheathed with oak planking from three to six inches in thickness, spiked on the outside of her copper from a little abaft the foremast to her bow, and extending from her water-line to about seven feet below.

In his instructions to Commander Wildes to prepare the *Yantic* for that special Arctic service Rear-Admiral Cooper used the following admonitory language:

"In making your preparations you will bear in mind that your vessel may be absent a long time from port and from depots of supplies, and that she may encounter severe and stormy weather and ice."

On June 9 Commander Wildes—the *Yantic* being still in dock—received his instructions from Admiral Nichols, Acting Secretary of the Navy, directing him to proceed to St. John's, Newfoundland, etc., "when in all respects in readiness for sea."

Despite these mandatory admonitions, Commander Wildes has since stated, over his signature and in his sworn testimony, that his early separation from the *Proteus* after leaving St. John's was due mainly to the fact that he had sailed from New York before the repairs on the boilers of the *Yantic* had been completed. And to excuse his precipitate departure from the coast of Greenland on September 2, when he had at least, according to his own view, twenty-nine days of the navigable season in Melville Bay before him, and was only three days' steaming from Cape Sabine, where lay Greely and his party, whom Wildes could have rescued with certainty, he states that "his men were only provided with a tropical outfit." Never before did a commander deliberately start on an Arctic cruise with his men equipped for the tropics.

Lieutenant J. C. Colwell, U.S.N., an officer of the *Yantic*, was detached at St. John's on application of General Hazen, through the Secretary of War, to the Navy Department, at the instance of Lieutenant Garlington, and ordered to report to the latter for duty as a member of the relief expedition.

Lieutenant Colwell, who had volunteered for this service, proved himself always and everywhere fully up to the highest standard of the American naval officer. The instructions to Commander Wildes required him to fill up the *Yantic* with coal at St. John's, and "proceed to the northward through Davis' Straits in company with the steamer *Proteus*, if practicable." . . . "In view of the possibility of the destruction of the *Proteus*, it is desirable that you should proceed as far north

as practicable, in order to afford succor to her officers and men in the event of such an accident." He was enjoined further not to proceed beyond Littleton Island, or enter the ice-pack, or place his ship in a position to prevent her return that season.

The following clause appears in the instructions issued by the Chief Signal Officer to Lieutenant Garlington:

"A ship of the United States Navy, the *Yantic*, will accompany you as far as Littleton Island, rendering you such aid as may become necessary, and as may be determined by the captain of that ship and yourself when on the spot."

The two ships thus tied together, as was supposed, by the mandate of their instructions, and required to proceed as consorts in company to Littleton Island, the *Yantic* to be there "on the spot" when the *Proteus* sailed northward in Smith Sound, left St. John's June 29, and, by agreement between Lieutenant Garlington and Commander Wildes, voluntarily separated on the same day.

They reunited at Godhaven July 12, and the *Proteus* on July 16 again sailed northward alone, leaving the *Yantic* in that harbor engaged in repairing her boilers and taking on coal.

On the afternoon of July 22 the *Proteus* was at Payer Harbor, Cape Sabine.

At 3.30 P.M. of that day the solid ice of Smith Sound, according to Lieutenant Garlington's own report, "presented an unbroken front—no leads to the north." He landed with his party, as he states, "to examine cache there, leave records, and await further developments." At 6.30 P.M. same day he returned hurriedly to the ship and stated to Captain Pike that while observing from the cliff he had discovered an open lead, or water-channel, trending far to the northward through the ice, and directed him to get under way and enter it. Captain Pike objected that the water seen was "no good"; that they were "there too early," and that he wished to remain in harbor until he filled his coal-bunkers, which would have taken him

about two days. Lieutenant Garlington insisted, and declared that the captain would be false to his duty to the United States if he did not proceed at once. Thus urged, and threatened with the charge of violating his charter-party, the veteran ice-navigator yielded to the lieutenant of cavalry on the question of ice-navigation. The *Proteus* entered the lead at about 8 P.M., July 22, and soon found herself, as her captain had vainly predicted, enveloped by the solid ice. After every effort to extricate her she was crushed, and sunk at 7.15 P.M. on the following day at a point about five miles off Cape Sabine. Before the ship went down some three thousand or more rations were landed on the floe, together with twenty-two Eskimo dogs. Of the rations landed at least two thousand were saved and conveyed to Cape Sabine, where Garlington and party, with the crew of the *Proteus*, repaired and encamped after the wreck. About two boat-loads, estimated at seven or eight hundred rations, were suffered to drift away on a floe, Garlington refusing to lend Captain Pike one of his whale-boats to save them. The dogs were also abandoned on the floe, although seven of them were harnessed to a sledge and the means of saving them were ample, Garlington having two whale-boats and a twelve-foot cedar dingy, together with three stout boats of the *Proteus*.

Of his two thousand rations or more, Garlington deposited but five hundred for Greely and his party at Cape Sabine, the point at which he knew they would arrive in September.

Garlington sailed southward from Cape Sabine on July 25, and encamped that night near Life-Boat Cove with his party, the *Proteus* crew proceeding to Pandora Harbor, about ten miles farther south.

Garlington's instructions contained the following mandatory clause:

"If it should become clearly apparent that the vessel cannot be pushed through, you will retreat from your advanced position and land your party and stores at or near Life-Boat Cove, discharge the relief vessel with orders

to return to St. John's, N. F., and prepare for remaining with your party until relieved next year. As soon as possible after landing, or in case your vessel becomes unavoidably frozen up in the ice-pack, you will endeavor to communicate with Lieutenant Greely by taking personal charge of a party of the most experienced and hardy men equipped for sledging, carrying such stores as practicable to Cape Sabine. . . . "

Lieutenant Garlington had with him also a copy of the plan of relief drawn by Lieutenant Greely, in which, after stating the contingency of the relief ship of 1883 being unable to pass through Smith Sound, it provided for establishing a relief station, with men and supplies, at Life-Boat Cove, in the following words :

"The party should then proceed to establish a winter station at *Polaris* winter quarters, Life-Boat Cove, where their main duty would be to keep their telescopes on Cape Sabine and the land to the northward. . . . No deviation from these instructions should be permitted."

With the wreck of the vessel the expedition to Lady Franklin Bay ended, and the duty of establishing the winter station at Life-Boat Cove began. That was the post of rescue for the explorers, and the means to establish and maintain it amply were at hand. Game was abundant at Life-Boat Cove, Littleton Island, and Pandora Harbor, but none on Cape Sabine side.

Garlington saw hundreds of seal and walrus—the staple food of the Arctic—around him basking in the sunlight on the rocks and ice-foot, within easy range of his guns, and their nutritious flesh was as certainly attainable by him as if thousands of pounds of it had been already canned and deposited in his camp.

Birds also abounded and filled the air with their deafening chatter. He was bountifully supplied with arms and ammunition. The friendly Eskimo lived in that neighborhood. His own party had three rifles, a shot-gun, a navy and army revolver, with over one thousand rounds of ammunition, while the crew of the *Proteus* had five shot-guns and six rifles and were well supplied with ammunition.

It was midsummer, and sixty days before the Arctic night would set in. Garlington professed to be, and doubtless was, well read on Arctic work and the resources and expedients of explorers in that region.

He had at least on hand forty days' rations for himself and party, numbering fifteen in all, and Captain Pike had rations for the same number of days for his crew. In addition to this Garlington knew that there were two hundred and fifty rations, and a tarpaulin, and six and a half tons of coal in depot at Littleton Island; and on the day before the wreck he examined the British depot at S. E. Carey Island, and reported that seventy-five per cent. of the provisions there stored, or twenty-seven hundred rations, were in good edible condition. The last-named depot was about one hundred miles south of Life-Boat Cove, within three days' travel by whale-boat. In addition to the supply of game with which he could readily have stocked the station, he thus had within easy access, canned and boxed provisions sufficient for his party for eight months, and enough to supply the Greely party, combined with his own, full rations for three months without resort to native food. He knew the situation impending over Greely and his men on their expected arrival at Cape Sabine in September. He knew that they would find themselves there, after an exhausting and perilous journey of several hundred miles, with only about forty days' rations to face an Arctic winter. Garlington knew that they would come into a barren and gameless desert, and that in the month of September Smith Sound, twenty-six miles in width, stretching between them and Life-Boat Cove, would be a torrent of whirling ice, and probably impassable for several months by enfeebled men. Yet, turning a deaf ear to the dictates of duty, disregarding his imperative orders, he announced his purpose to retreat southward, stating that he intended to seek the *Yantic* and return with her and establish a winter station. Garlington knew that the commander of that vessel was bound by his orders to reach Littleton Island, if practicable. He had been

assured by Commander Wildes, when they separated at Upernavik ten days before, that he "would get to Littleton Island if possible." Garlington knew that his presence with the *Yantic* could not add to her means of effecting the passage of Melville Bay, or to the stringency of the orders directing her commander to proceed to Littleton Island with her as the reserve ship of the expedition; and Garlington knew that she was then en route, or lying near Upernavik, only four or five days' steaming from Life-Boat Cove. The *Yantic*, indeed, actually made the trip between those points in three days.

Lieutenant Colwell offered to take a whale-boat and sail south in search of the *Yantic*, while Garlington should remain at his post of duty and establish the winter station at Life-Boat Cove; but the offer was rejected.

Captain Pike on July 28, at Pandora Harbor, assured Garlington that he knew by experience that the *Yantic* would certainly cross Melville Bay, and urged him to await her arrival for a few days at least. This advice was also rejected, and Garlington sailed southward the same day. Five days later, August 3, the *Yantic* arrived at Littleton Island and Life-Boat Cove, touching first at Pandora Harbor. Garlington and his party were then distant about one hundred miles, heading for Cape York. At that point, on August 16, Lieutenant Colwell was detached at his own request, and started to cross Melville Bay for Godhaven to communicate with the *Yantic*, his boat being manned in part by a portion of the crew of the *Proteus*.

Garlington's boat, in charge of Boatswain Taylor, of the *Proteus*—Captain Pike leading in his boat—was steered for Upernavik.

Garlington was commended by the Proteus Court of Inquiry for his skill and energy displayed in conducting the retreat of his command across Melville Bay, when the facts prove that on such retreat he was a mere passenger, and was helplessly dependent upon Captain Pike and his officers for guidance. This is the first time in military history that an officer was ever com-

mended for the celerity with which he effected his flight from his post of duty to "a place of safety." He arrived at Upernavik August 24, and there learned that the *Yantic* had returned from Littleton Island and gone to Godhaven. Lieutenant Colwell reached her at that point on August 31, and she started the same day for Upernavik, where she arrived on the 2d of September.

Garlington in his report thus notes his departure from Upernavik on that day:

"My own party and the crew of the *Proteus* were soon aboard, and, 1 P.M., steamed out of the harbor for St. John's, where we arrived on the 13th of September."

In the record that Garlington deposited at Cape Sabine, July 24, the day of the wreck, he stated:

"The United States steamer *Yantic* is on her way to Littleton Island with orders not to enter the ice. A Swedish steamer will try to reach Cape York during this month. I will endeavor to communicate with these vessels at once, and everything within the power of man will be done to rescue the brave men at Fort Conger from their perilous position."

On July 26 he left a second record at Littleton Island, in which he stated:

"I am making for the south to communicate with the United States steamer *Yantic*, which is endeavoring to get up. Every effort will be made to come north at once for the Greely party. The *Yantic* cannot come into the ice, and she has a crew of one hundred and forty-six men. So will have to get another ship. Everything will be done to get as far north as possible before the season closes."

On July 27 he deposited a third record at Pandora Harbor, in which he stated:

"Will go south—keeping close into shore as possible and calling at Carey Islands—to Cape York, or until I meet some vessel. Hope to meet United States steamer *Yantic* or the Swedish steamer *Sofia*, which should be about Cape York."

It is proper at this point to emphasize the fact that Garlington did not stop at Carey Islands, as he was not only bound to

do in accordance with his purpose declared in this record, but it was one of the points of rendezvous designated in his agreement with Commander Wildes on the eve of their separation at St. John's.

Garlington, when at Cape Parry, only twenty-five miles from the Carey Islands, at nine o'clock on the morning of August 2, decided not to proceed to the Carey Islands, and at nine o'clock on the night of that very day the *Yantic* arrived at those islands, where Garlington would certainly have met her had he not abandoned his previously-expressed intention of calling there on his way south. Garlington's Pandora Harbor record was found by Commander Wildes on August 3, and on the following day he returned to the Carey Islands, and, finding that Garlington had not called there, he headed the *Yantic* for Cape York after making a further search to the northward. The *Yantic* was within forty miles of Cape York on August 10, the very day that Garlington and his party arrived at that point, and where they remained for six days; but, unhappily, Commander Wildes, deterred by the appearance of the ice, made no effort to reach Cape York, but steamed southward for Upernavik. Had either Garlington called at the Carey Islands on the 2d of August, or Wildes at Cape York on any day between the 10th and the 16th of August, the expeditionary force would have returned to Life-Boat Cove, and the Cape Sabine tragedy would have been averted. Both of these officers thus fatally disregarded the agreement that they had entered into before their departure from St. John's.

In his fourth and final record, deposited at Immeelick Bay, near Cape York, on the 12th day of August, he states no purpose to return; and although the Swedish steamer *Sofia* was expected by him to arrive in that vicinity, he failed to state, for the information of her officers, that Greely and his men would, under his instructions, probably arrive at Cape Sabine early in September, and would be in great need of supplies. He did not leave one line to invoke the aid of any passing vessel in

behalf of the men whom he was commissioned to rescue, and who he had every reason to know were even then working their way down to Cape Sabine, distant only about two hundred and sixty miles from Cape York.

That record of August 12 virtually announced the termination of the relief expedition in the middle of the navigable season, at least sixty days before it usually came to a close, and gave not the faintest intimation of any further effort to rescue Greely. I cite the following paragraph from it as fully sustaining this view :

"From this point Lieutenant Colwell with second whale-boat goes direct to Disco, as it is probable that United States steamer *Yantic* will be in that vicinity, the ice having prevented her progress north, and the harbor at Upernavik not permitting a long stay at that place. I, with Pike's party, will go hence to Upernavik (his party not being well equipped with boats), keeping as close into shore as possible, but on the outside of the ice. In the event of no ship coming to my relief I will winter at Upernavik, and divide my party among the neighboring settlements. Everybody well and in good spirits. With God's help we all hope to reach port in safety in good time."

He refers now only to the safety of his own party. His desire to succor Greely had faded out.

It is important to observe that the obligation resting upon Lieutenant Garlington to return at all hazards, if possible, to carry succor to Lieutenant Greely and his command, was increased, if anything could add to it, by his solemn pledge deposited at Cape Sabine declaring that "everything within the power of man will be done to rescue the brave men at Fort Conger from their perilous position." That record also stated that the *Yantic* was on her way to Littleton Island, and a Swedish steamer would try to reach Cape York that month.

Lieutenant Greely, as his official report shows, was fatally misled by this assurance. Relying upon Garlington's pledge to return with a relief ship, he felt bound to await the promised rescue at Cape Sabine, instead of pushing his retreat southward

before October 20, when the Arctic night set in. That violated pledge lured him to bitter disaster.

On September 2 Garlington stood on the deck of the *Yantic*. The time had come to translate into action his declared purpose of returning on her to Life-Boat Cove, and there establish the winter station for the rescue of Greely and his party. There was no longer any doubt of the capacity of that ship to navigate the ice-fields of Melville Bay, for she had already twice made the passage.

According even to the timorous estimate of Commander Wildes, navigation would not close in those waters until October 1, or for twenty-nine days, and the *Yantic* had a sufficiency of provisions on board, with the means of adding to them at Upernavik, to spare safely nine months' supply for the combined parties of Garlington and Greely. She in fact returned to New York with sufficient rations to have supplied both parties for an entire year. But Garlington made no demand upon Commander Wildes to return with him and his party to their designated post of duty. Had he made such demand, representing Greely's "perilous position," as he had termed it in the Cape Sabine record, Wildes could have refused it only at the manifest hazard of being cashiered.

Garlington had brought away three-fourths of the rations saved from the wreck, taking fifteen hundred, when five hundred would have been amply sufficient for all emergencies, while the rest should have been deposited for the explorers and would have saved them. He carried away and wasted a half-barrel of alcohol—a vital necessity in the Arctic. He could have shot and cached the twenty-two dogs he abandoned on the floe, averaging not less than fifty pounds, and they alone would have saved Greely and his men from danger of starvation. He appropriated the stores sent for Greely, when he was going into a land of sunlight and plenty, with the Cary Island cache but one hundred miles distant in his path, and knowing that Greely was coming into a region of darkness and famine.

Garlington and Wildes having failed in their plainest duty, the Secretary of War failed likewise in his. The same apathy

which prevented his mastering the subject when, in 1882, he reported to the President that he knew of no understanding that the International Polar Expedition was to be visited each year, also prevented his mastering it in 1883.

The same unreasoning hostility to the Chief Signal Officer and his work which marked his entire official course caused him to disregard that officer's wisely-matured plans and sound advice, which had the single purpose to rescue the explorers. These were the indirect but certain causes that led to the astounding disaster.

Garlington, in his official report, thus describes the abundance of food-supply on his line of retreat, and unconsciously emphasizes his cold-blooded wantonness in appropriating to his own use Greely's scanty supplies :

"On the small islands about Cape Sabine there were ducks and gulls, and from Life-Boat Cove to Cape York the shore and islands were alive with ducks, lummes, and auks. About Littleton Island we saw at least one thousand walrus and some seal, in Pandora Harbor a white whale, and, in the hills back of the harbor, reindeer. . . . I am of the opinion that if Lieutenant Greely should reach Littleton Island this season he will divide his people among the different Eskimo settlements, and the stores he will find on his line of retreat, supplemented by the game of that region, will be sufficient food for his party during the coming winter."

Here is a positive admission, by Garlington himself, that he had around him at Life-Boat Cove abundant means to stock and maintain the winter station that he was sent to establish.

I invite the attention of the reader to the statements of Signal Corps observers Lamar and Ellis, two of Lieutenant Garlington's most efficient subordinates in the relief expedition, as unfolding such a wanton disregard of duty on the part of that officer, and such an improvident waste of food on his retreat, and general unfitness to command, as must fatigue the indignation of every civilized man who peruses them.

Sergeants Lamar and Ellis are witnesses in every way worthy of the highest degree of credit, and Garlington's own report attests their efficient and honorable service as members of the expedition.

Sergeant Lamar testified before the Proteus Court of In-

quiry, but was directed by the counsel for Lieutenant Garlington, and by the Court, along a line of examination not calculated to elicit the facts contained in those statements.

The scheme of the inquiry was manifestly to refer the *Proteus* disaster and the failure to establish the relief station to General Hazen's instructions, and not to develop the real facts, which would have placed the responsibility where it properly belonged.

Upon receiving this information General Hazen promptly preferred charges against Lieutenant Garlington. The Secretary of War, however, refused to permit him to be brought to trial before a court-martial, alleging that he was already exonerated by the Court of Inquiry from all criminal responsibility, it having found that he had only "erred in judgment."

General Hazen protested against this view of the case, which was unwarranted either by law or practice, as the specifications plainly showed, and he had solemnly alleged, that the charges were founded, in great part, upon newly-discovered evidence, material to the issue, and not elicited by the Court of Inquiry.

There was no precedent for refusing a court-martial for the trial of charges preferred by an officer of high rank who alleged that he had proof sufficient to convict, especially where the derelictions of duty specified had resulted in great loss of life.

There can be no doubt that, had Secretary Lincoln been satisfied that the charges could not be sustained, he would have ordered the Court-Martial, that they might recoil disastrously upon the head of the Chief Signal Officer, who had preferred them, and persisted that the accused should be brought to trial, despite the finding of a Court of Inquiry.

These statements, for the first time given to the public, add to the already abundant proof that Lieutenant Garlington was amply supplied with the means of establishing the winter station, and that, unmindful of the succor due to the Lady Franklin Bay Expedition, and which it was his sole mission to furnish, he carried away from Cape Sabine an amount of provisions so far beyond what the exigencies of his proposed retreat demanded that after the most wasteful excess for thirty-nine days, and

feeding his huge dog to repletion daily on those precious stores, he still had rations for many days on hand.

That Garlington left Cape Sabine with a great deal more than forty days' rations is indicated by his having refrained to state the amount of food on hand when he arrived at Upernavik.

But it has been stated that even had the winter station been established at Life-Boat Cove it would have been, as the result proved, of no practical value to Greely and his party, as they were unable to cross Smith Sound to reach it.

It is true that Greely, with his enfeebled and dispirited men, broken down with hunger and toil, could not battle successfully with the swift current, twenty-six miles in width, that separated Cape Sabine from Life-Boat Cove ; but Garlington, it is certain, with his excellent whale-boats and stout crews, could have crossed to Greely during the winter and brought the whole party over in safety, and no life would have been lost by starvation. Upon this point the testimony of Lieutenant Greely, as given in the Appendix to this work, is conclusive. Yet, great as was the fault of Garlington, it only rendered the tragedy at Cape Sabine probable. It was reserved for a higher official to make it certain and shut the gates of hope upon Lieutenant Greely and his companions.

Garlington's flight from the Arctic had some merit in its precipitancy. It brought him to St. John's in time for a ship of rescue to steam from that port to Cape Sabine and return with Greely and his party before the navigable season closed.

On September 13 the Secretary of War was informed by telegraph of the arrival of the *Yantic* with the relief expedition. General Hazen was then in Washington Territory, and on receiving a dispatch from Captain Samuel M. Mills, Acting Chief Signal Officer, announcing the failure of the expedition, he sent the following telegram :

"New Tacoma, W. T., September 15, 1883.

"To Captain Mills, Washington:

"It may be necessary to send men with money and authority to Upernavik to organize and send sledging parties with food north to meet Greely, who is now probably at Littleton Island on his way south. See the Secretary about it, and, if the President can authorize the money, Congress will

approve. It will have to be done by telegraph to St. John's, Molloy sending man and money by small steamer. It will cost but a few thousand dollars. Give the subject careful study."

That telegram was laid before the Secretary of War on the day of its date. On the day before Captain Mills, by authority of the Secretary of War, had telegraphed Lieutenant Garlington as follows :

"Is the following project feasible? That a steam-sealer be chartered to take your party northward, provisioned for crew, passengers, and twenty additional men, for one year, to be purchased at St. John's and elsewhere en route. Outfit completed, all despatch and steam to Upernavik, thence to northernmost attainable harbor west coast of Greenland, or to Littleton for winter quarters. To pick up dogs, sleds, and native drivers in Greenland, and lead small party and as much supplies as possible to Littleton Island, or to meet Greely if Littleton Island is attained."

This sagacious and only feasible plan of rescue was what General Hazen intended. To this despatch Garlington replied on September 15 as follows :

". . . The ultimate result of any undertaking to go north at this time extremely problematical; chances against its success, owing to dark nights now begun in those regions, making ice-navigation extremely critical work. There is no safe winter anchorage on west shore of Greenland between Disco and Pandora Harbor, except perhaps North Star Bay, winter quarters of Saunders. However, there is a bare chance of success, and if my recommendations are approved I am ready and anxious to make the effort. My plan is to buy a suitable sealer, take the crew from volunteers from crews from *Yantic* and *Powhatan*, now in this harbor, paying them extra compensation. Lieutenant J. C. Colwell to command the ship ; two ensigns and one engineer to be taken from those who may volunteer from same ship ; also employ competent ice-pilot here. The ship must be under United States laws and subject to military discipline. I believe nothing can be done with foreign civilian officers and crew."

This plan was also feasible, although far more costly and involving much longer delay than the first.

Those who know the splendid work that has been done in the Arctic by the sealing captains and crews of Newfoundland will, however, put the foot of their utmost scorn upon Garlington's imputation that our government could not trust them to act faithfully and efficiently under a charter-party.

On the same day that Garlington's telegram was received

George W. Melville, Chief-Engineer, U. S. N., the foremost authority on Arctic navigation in this country, telegraphed the Secretary of the Navy, urging that "a vessel should be sent at once from St. John's, N.F., to Cape Athol or Cape York, which, after landing a rescue party with supplies, tents, boats, and sledges, could return immediately before the ice began to make too rapidly." He followed that, on the same day, with a letter fully elaborating his plan of rescue, from which I make the following extract, as it appears in Melville's admirable work, recently published, entitled "The Lena Delta," etc., p. 418 :

"If landed at Cape York I will undertake to lead a party to Littleton Island to communicate with Greely, and, if his men are able to travel, conduct them to the new base of supplies at Cape York, and encourage them to hold on."

Melville's telegram and letter were both laid before Secretary Lincoln, and he treated them both as he did the urgent appeal of the Chief Signal Officer—with indifference.

On September 15 Captain Mills announced the fatal decision of the Secretary of War in the following telegram addressed to Garlington :

"Dispatches received. Expedition this year not considered advisable. Will ask for return of your party by naval vessel."

These two lines compose the death-warrant of the nineteen members of the International Polar Expedition who died by starvation at Cape Sabine.

General Hazen was at once notified of that decision, but, having a clear forecast of the disaster impending over Lieutenant Greely and his party, he still urged that means for their rescue should be sent at once. On September 17 he telegraphed to Captain Mills as follows :

"It is very important to get a capable man with money, as high up in Greenland as possible, to send sledge parties with native food and clothing, under pay and bounties, to meet Greely. See the Secretary and do it, if possible, by telegraph to Molloy."

And on September 19 :

"Get orders from Danish legation, for men going to Greenland, for all Danish authorities to give all possible assistance it can. Telegraph it to St. John's."

On September 20 he sent the following telegram :

"If it is too early for sledges, parties must start up in boats."

On September 22 he sent the following :

"Has question been asked St. John's, Can vessel reach at or near Upernavik? Greely will retreat south."

He sent the following telegram, as his final appeal for the rescue of the apparently doomed explorers, on the same day as the above :

"Do all in your power to prevent delay of preparation. What I want done requires no preparation. Time is more valuable than all else."

These appeals were all ignored by Secretary Lincoln.

It is in proof that, at most, he gave but one day to the consideration of this momentous question, on the true solution of which the lives of many brave men depended. He did not attempt even to inform himself through an authoritative source as to whether it was practicable for a steam-sealer to reach Cape Sabine, starting from St. John's between the 15th and the 20th of September.

That source was pointed out to him by the telegrams of General Hazen, as the United States Consul at St. John's, T. N. Molloy, Esq.

That officer had been honorably connected for more than twenty years with the outfitting of American Arctic expeditions. Through him the *Neptune* was selected and chartered for the relief expedition of 1882; and he was the agent by whom her supplies were inspected and passed upon. The thanks of the War Department had been extended to him in 1881 for the efficient aid given by him in the outfitting of the Lady Franklin Bay Expedition.

On October 31, 1882, Secretary Lincoln, over his own signature, at the instance of General Hazen, addressed a letter to the Secretary of State, requesting "that the thanks of the Department be appropriately tendered to Mr. Molloy, Consul at St. John's, Newfoundland, for the valuable assistance ren-

dered by him in the outfit of the supply expedition to Lieutenant Greely of this year." The Secretary of War also knew that it was through that officer that the *Proteus* was selected and supplies purchased for the relief expedition of 1883.

Consul Molloy was *en rapport* with the sealing captains and the owners of steam-sealers at St. John's. A single telegram to him would have resulted in furnishing the Secretary information of the fact that at the date of his decision there were four steam-sealers lying at St. John's, already coaled, and that could have steamed out of the harbor for Cape Sabine, fully provisioned, within forty-eight hours.

The evidence now given to the public also shows that he would have been informed that every ice-pilot at St. John's regarded it as certain that a steam-sealer starting as late as September 20 could reach Cape Sabine before the navigable season closed in Melville Bay. He would also have learned that the cost of such steam-sealer, even if she wintered in the Arctic, would not have exceeded fifty-four thousand dollars, the charter-rate being six thousand dollars per month.

Thus every life would have been saved, and at a cost of seven hundred thousand dollars ($700,000) less than was incurred for the relief expedition of 1884, which arrived at Cape Sabine after nineteen members of the Lady Franklin Bay Expedition had starved to death.

The opinions of Lieutenant Garlington and Commander Wildes were manifestly of no value as to the practicability of a steam-sealer reaching Cape Sabine at that period of the navigable season, for they were known to be without any experience on that special subject, and had actually retreated without giving succor when the opportunity was in their hands.

The Secretary states that he consulted Captain Greer, who commanded the *Tigress* in the *Polaris* search of 1873; Captain George E. Tyson and Dr. Emile Bessels, both connected with Captain Hall's last expedition, which sailed on the *Polaris*

in 1871. He fails, however, to state that he did not consult them on the only practical question, which was, whether a steam-sealer despatched from St. John's by the 18th or 20th of September could reach Cape Sabine or Littleton Island that autumn? Captain Greer's knowledge of that region was limited to a single cruise; but even he could have informed the Secretary of War that he had sailed from Igvituk, on the west coast of Greenland, in latitude 60° 40′ N., as late as October 4, cruising northward and across Davis Straits, and that he remained in the vicinity of Melville Bay, without danger of being frozen in, as late as the 9th day of October. He could also have informed the Secretary that his consort, the *Juniata*, commanded by Captain Braine, U. S. N., a vessel only sheathed, as was the *Yantic*, and, like her, a third-rate, started from St. John's, N. F., to resume her search for the lost crew of the *Polaris*, sailing from that port for Melville Bay as late as September 18, but was overtaken by a British steamer chartered by Consul Molloy, which conveyed to him the information that the *Polaris* crew had been rescued by a Scotch whaler, the *Ravenscraig*.

Captain Tyson had a more extended Arctic experience, but which had in no degree qualified him as an authority upon that special question. Dr. Bessels is high Arctic authority, as he was not only the scientist with Hall on the *Polaris* expedition, but had explored the polar regions under the auspices of Peterman, the renowned Arctic geographer. He certainly did not advise the Secretary that it was too late on September 15 to reach Littleton Island with a steam-sealer sailing from St. John's, for Dr. Bessels, but three months after that date, testified before the board convened to organize the relief expedition of 1884, in reply to a question by General Hazen, that "a vessel can secure safe transit south starting from Littleton Island as late as October the 15th."

Chief-Engineer Melville, referring to the rejection of his proposition to rescue Greely, submitted September 15, 1883, says:

"But, alas! a board to whom the matter was referred adjudged my scheme an impracticable one for several reasons, mainly the lateness of the season, albeit whalemen have been known to cruise as far north as Cape York so late as October 20. Thus my project for relief was not accepted, though the effort could certainly have been made without difficulty or danger, it being simply a question of seamanship."

Chief-Engineer Melville will learn, by reading the proceedings of the Hazen Court-Martial, that not "a board," but Secretary of War Robert T. Lincoln, as he himself asserts, decided to send no ship of rescue for Greely in September, 1883, and rejected all propositions submitted to that end.

The statements of Lieutenant Greely and of ice-navigators of Newfoundland, supporting the view of Chief-Engineer Melville, will be found in the testimony before the Court-Martial.

I add with confidence that there is not one Arctic authority to the contrary.

It can now be asserted as a proved fact that Melville Bay was navigable throughout the entire month of October, 1883, or for a period of forty-five (45) days after the date of Secretary Lincoln's decision that it was too late to despatch a steam-sealer across its waters to Cape Sabine. The importance of this fact will be appreciated when it is known that the voyage from St. John's to Littleton Island, twenty-six miles from Cape Sabine, is readily made by a steam-sealer in fifteen (15) days. The *Proteus* made the trip with Lieutenant Greely and his party, in 1881, in fourteen (14) days, although she encountered two strong northerly gales, and heavy fogs delayed her thirty-two hours. She made the return trip from Cape Sabine to St. John's in twelve (12) days. On her second voyage, in 1883, she made the trip to Cape Sabine in thirteen (13) days from St. John's.

The *Neptune* in 1882, carrying the relief expedition of that year, made the trip from St. John's to Littleton Island in fifteen (15) days, and the return trip from same point in twelve (12) days. The time given is exclusive of stoppages in harbors en route, but includes all delays by fogs and ice.

Thus it appears that if a steam-sealer had been despatched from St. John's for the relief of Lieutenant Greely and his party even as late as September 20, she would have had not less than twenty-five days of the navigable season before her in which to make a voyage to Cape Sabine that was usually made in fifteen days.

Although, as Dr. Bessels testifies, such vessel could secure "safe transit south starting from Littleton Island as late as October 15," it was not material that she should have returned that season. She could have wintered in that vicinity, as was well known, in perfect safety, either at Life-Boat Cove or Pandora Harbor, and her arrival with supplies would have enabled the International Polar Expedition to Lady Franklin Bay to close its splendid record unmarred by the loss of a single human life, even had the relief vessel been subsequently lost.

The Secretary of War asserts, as the prime reason controlling his decision, that to have despatched a relief ship in the autumn would have been "hazarding more lives in 1883 in a nearly hopeless adventure."

This was lowering a great public duty to the base standard of a mere commercial venture.

Twenty-five men, three of them commissioned officers of the United States Army and nineteen enlisted soldiers, were known to be in extreme danger of death by starvation. Those officers and soldiers were assigned to a perilous field of duty by order of the President of the United States, issued through the War Department. They had volunteered for that duty upon the solemn assurance, and in the sincere belief, that all the resources of their government would be exhausted, if need be, to rescue them. Their location was known, and brave men were eagerly volunteering for their rescue from impending death, and yet the Secretary of War refused even to attempt to save them, on the ground that such attempt would involve hazard to the rescuers.

Doubtless this was true, and it might have been, as the Secretary alleges, "perilous in the extreme," but the honor and

good faith of the government were alike pledged to make the effort to save the explorers who without such effort were probably doomed.

It required no heroic spirit to arrive at the conclusion that lives must be "hazarded" often to save life. A mere humanitarian motive would have impelled to such an effort, even though success were "nearly hopeless"; but when it was demanded by the highest considerations of public duty the refusal to make the effort became an act of criminal neglect.

The late Secretary of War, being confronted by this inevitable deduction, and seeing that the logic of events points directly to him as the responsible author of the Arctic tragedy, alleges that, even had the effort been made, it would have been unavailing; and in support of this line of defence he cites the following from Commander Schley's official report of the relief expedition of 1884:

"The winter began earlier than usual and continued with great severity late into the spring of 1884. About the equinox (September 21) cold weather set in, and the temperature steadily fell at Disco, Upernavik, and Tessuisak, until 60° below zero (Fah.) was reached. This continued for a period of sixty (60) consecutive days. Melville Bay was frozen over as far as could be seen from these three points early in October. As the season of continual darkness had come on by October, the navigation of this region would have been well-nigh impossible even if the bay had been open. Under the circumstances any vessel attempting this navigation would have come to grief, if she had not been totally lost. It can be seen now, in the light of this new information, that the action of last year was wise and proper."

It does not appear that Commander Schley derived this information from any official source. He states in his work, recently published, on the "Rescue of Greely," that it was "gained at the Greenland ports by the relief expedition of 1884."

That gallant officer of the Navy is incapable of an unworthy act, but he has by the above statement unconsciously thrown a false weight into the scale of controversy. That he has done so will be indubitably proved.

I cite upon this point from the tables of temperatures furnished by the Bureau of Meteorology at Copenhagen, Denmark, and which are given in full in the Appendix. They are duly certified as a correct transcript from the official record.

By reference to these tables it will be seen that on October 1, 1883, the temperature at Upernavik was 33°.6 above zero; on October 9, 21° above zero; on October 15, 23°.7 above zero; and on October 31, 23°.9 above zero. These temperatures are Fahrenheit, reduced from Centigrade. The observations were all taken at 8 A.M., London time.

It is shown by this table that the mean temperature for the month was + 24°.3, or more than 24° above zero, and that the mean temperature for November, 1883, at Upernavik was 15°.8 above zero. The mean temperature at that point for December was 5°.3 below zero.

Upernavik is situated in latitude 72° 47′ N.

To "pile Pelion upon Ossa" in crushing disproof of Commander Schley's extraordinary statement, I append the tables of temperatures as observed and recorded by Lieutenant Greely at Cape Sabine for September, October, and November, 1883. It should be here stated that Camp Clay, Cape Sabine, where these observations were taken, is in latitude 78° 54′ N. It appears from these tables that the mean temperature at Cape Sabine for September was 53° above zero.

On the first day of October, 1883, the temperature at Cape Sabine was 25° above zero; on the 9th of October, 12° above zero; on the 15th of October, 1° below zero; and on the 31st of October, 2° above zero. The mean temperature for October was −2°.5. Bearing in mind that Upernavik is over 6°, or in round numbers 420 miles, south of Cape Sabine, and that they are about the same altitude, it is simply incredible that the temperature of the more southerly point should have been on the 31st day of October 62° lower than at the more northerly, even if we did not have the exact Upernavik temperatures.

Lieutenant Greely's tables of temperatures at Cape Sabine

for November, 1883, furnish still further disproof of the statement made in Commander Schley's report.

On the 1st day of November the temperature at Cape Sabine was 3° below zero; on the 9th, 23°.5; on the 15th, 35° below zero; on the 21st, 14° below zero; and on November 30, 3° above zero. The lowest temperature for the month was on November 15, and the mean for November was 18°.4 below zero.

These tables of temperatures from Copenhagen and those by Lieutenant Greely, the result of the most careful observations with the very best thermometers, will be regarded as authoritative everywhere, while the temperature as given for Upernavik by Commander Schley, in the statement cited so confidently by Secretary Lincoln, will be apt to suggest the remark of the astute De Quincey: "Well, there is nothing that lies so much as figures, unless it is facts."

Commander Schley was equally unfortunate in accepting as true the information that "Melville Bay was frozen over as far as could be seen from these three points [Disco, Upernavik, and Tessuisak] early in October." The tables of temperatures above cited show that this was not true; but I cite from a statement of the heroic Sergeant Brainard, given in the testimony, which proves by actual observation that Melville Bay was open even along its northern limit as late as the 4th day of November. I quote from the statement as follows:

"The practicability of a well-equipped steam-sealer reaching Cape Isabella, and thus rendering efficient aid to our forlorn party, was never for a moment doubted by those most capable of judging the dangers and difficulties which attend ice-navigation at that season of the year. Our opinion in this matter was confirmed by the observations of Sergeants Rice and Fredericks during the early days of November. Standing near the summit of Cape Isabella, they had an uninterrupted view for many miles to the southward, and within range of their vision not a piece of ice capable of offering the slightest obstruction to a vessel appeared. The waves rolling in from Melville Bay and dashing against the cliffs at their feet gave ample evidence of the scarcity of ice in the North Water and the feasibility of its successful navigation."

This extract is taken from a letter addressed by Sergeant D. L. Brainard to General Hazen December 9, 1884.

Cape Isabella is on the west side of Smith Sound, directly opposite Life-Boat Cove, and about twenty-eight miles below Cape Sabine.

It should be added that Tessuisak and Disco, the two other points named above, are respectively fifty miles north and two hundred and twenty-five miles south of Upernavik.

Commander Schley's fictitious temperature being exposed, and shown to vary from the true temperature about eighty (80) degrees, his October sea of ice melts into thin air.

He is equally at fault as to the time the Arctic night begins. He says it begins in the region under discussion in October, while in the northernmost part it does not begin till the middle of November, and in the southern portion scarcely at all.

It will be readily conceded that Secretary Lincoln did not intend the disaster of which his decision was "the direful spring"; but yet, as the adoption of General Hazen's plan would have averted it, it is pertinent, in fixing the degree of the Secretary's responsibility, to show that he cherished such a deep-seated feeling of antagonism to General Hazen as to lead him to turn his face away from every proposition, however meritorious, that bore the sanction of that officer, who, on the contrary, was amazed at a spirit of hostility that he deeply regretted and never intended to provoke.

As instances of conduct on the part of Secretary Lincoln which must be referred to that antagonism, I cite the following:

While General Hazen was urging an appropriation by Congress for the first annual relief expedition of 1882, in accordance with the view stated by President Hayes in his order of April 28, 1880, directing the establishment of the station at Lady Franklin Bay, Secretary Lincoln addressed a letter to the President, from which I make the following extract, which

plainly shows that his purpose was to defeat such appropriation and to deny to Lieutenant Greely all succor in that year :

"Observing that mention is made by the Acting Chief Signal Officer of an understanding had that the party composing the expedition of last year would remain at the point of their destination, to be visited year by year whenever the state of navigation rendered it possible, until finally recalled, I have to remark that I know of no such understanding."

General Hazen replied to this under date of May 25, 1882, showing conclusively that the plan of an annual relief expedition "was thoroughly understood by the President and by Congress," as appeared by the Congressional proceedings and by the act of March 3, 1881, relating to the Lady Franklin Bay Expedition, and Lieutenant Greely had sailed with that understanding.

Secretary Lincoln had evidently decided, as in 1883, without due investigation ; but, happily, in the former case his view was promptly overruled, for without the supplies deposited by the relief expedition of 1882 at Cape Sabine every man of the Lady Franklin Bay Expedition must have perished. Although meagre, they constituted one-third or more of the rations that were placed there.

On April 1, 1883, General Hazen addressed a letter to the Secretary of War for the purpose of showing that the expedition to Lady Franklin Bay was not, in fact, a part of the Signal Service, and, as it was composed in great part of enlisted men detailed from the line of the Army, the payment of its personnel should be made from the appropriations for their support, and not out of the appropriations for the Signal Service. He also respectfully requested that such branches of the public service as the President might designate would furnish such supplies in their possession as might be suitable for this special Arctic duty. Secretary Lincoln wrote the following endorsement on that letter : "The Arctic expeditions originated in the Signal Office, and no other Bureau seems to have taken the slightest interest in them." This was sent while General

Hazen was diligently engaged in preparing the relief expedition of 1883.

Not to multiply too greatly instances of the real animus of the Secretary of War, I cite the following facts :

Captain Olmsted, an officer of the Army, had been dismissed the service under the sentence of a court-martial for fraudulently duplicating his pay accounts. Through adroit management he secured his restoration by Act of Congress.

Captain Olmsted's reputation was well known, and for five years he had not been assigned to a regiment. The Chief Signal Officer, learning that the Secretary of War intended to assign Captain Olmsted to the Signal Corps, respectfully protested against it, upon the ground that the officers of the Signal Bureau were all disbursing officers, and that Captain Olmsted would not be a safe custodian of public funds. This protest was disregarded, and Captain Olmsted was assigned to the Signal Service by Secretary Lincoln. As predicted, he embezzled a considerable amount of public money, and in less than a year was cashiered upon charges preferred by General Hazen.

Subsequently a negro made application to be enlisted in the Signal Corps, and was rejected upon the ground that by the act of July 28, 1866, Congress had provided for two regiments of cavalry and two of infantry, to be composed of colored troops, and, in the judgment of General Hazen, colored persons could only be enlisted in those regiments. This had been the practical construction of the act by the War Department for seventeen years. Notwithstanding this declared policy of the government and the solemn protest of the Chief Signal Officer, Secretary Lincoln foisted this negro recruit upon the Signal Corps, a select organization, which had always been composed exclusively of white soldiers. Both by his forced construction of existing laws and by urging hostile legislation he had, during his entire four years of official life, endeavored to cause the transfer of the Signal Service out of the Army.

These issues, some of which involved the very existence of

the Signal Service, were commenced by Secretary Lincoln soon after he entered office, and were kept up offensively to the end. General Hazen was thus placed on the defensive from the beginning, and many have been led to mistake this forced defence against continuous attacks, for unwarranted and captious criticism of his official superior by the Chief Signal Officer.

This action on the part of the Secretary of War, both unnatural and opposite to what his predecessors had done, and entirely at variance with the views of the President who called him into the Cabinet, began before, in the ordinary course of duty, he could have known anything about these matters.

The Secretary of War refers in his last annual report with ill-concealed exultation to the Proteus Court of Inquiry as having condemned General Hazen's plan for the relief expedition of 1883. That court could with more propriety cite Secretary Lincoln as authority for its findings than he can cite it to support his conclusions. On the very day, October 31, 1883, that he issued the order for its detail, he addressed a letter to General Hazen containing an elaborate critical review of the very matters that the Court of Inquiry was appointed to consider. That letter was given to the press from the Secretary's office, and widely published, and all of its conclusions were substantially conformed to by the court, which in several of its findings actually used much of the language in which the Secretary of War, who was the real accuser, had already embodied his promulgated judgment. It presents the most extraordinary case of judicial complacency on record, suggesting strongly the mental sympathy between the courtier Polonius and his master, the moody Prince of Denmark :

"HAMLET. Do you see yonder cloud that's almost in shape of a camel ?
"POLONIUS. By the mass, and 'tis like a camel, indeed.
"HAMLET. Methinks it is like a weasel.
"POLONIUS. It is backed like a weasel.
"HAMLET. Or like a whale ?
"POLONIUS. Very like a whale."

The court was nominally appointed by the President, but

the Secretary of War who thus formulated its findings in advance was really the officer who created it and detailed its three members.

It is well known that the then President felt no interest in Arctic matters, and that he would not have crumpled a single rose-leaf upon his couch, if by turning his body he could have discovered the north pole.

As Secretary Lincoln's letter is comparatively brief, and substantially presents the conclusions of the Court of Inquiry, which it anticipated, and which are exceedingly diffuse, the letter is given in the Appendix. The real facts affecting the late Secretary of War are that he was unconsciously moved in matters relating to General Hazen by a party of men who were bitterly hostile to General Hazen but friendly to himself. This was a great and serious impediment to that officer in all his official duties during the entire four years.

It is proper, however, that I should briefly notice the findings of the court, that it may be shown that they neither spring from the evidence, as I have correctly stated it, nor do they present any rational grounds for imputing the slightest error to the Chief Signal Officer of the Army. The Court of Inquiry pronounced the opinion that Lieutenant Garlington, after the sinking of the *Proteus*, erred in not waiting longer for the arrival of the *Yantic*, and thus obtaining from her supplies to establish the winter station at Life-Boat Cove, which, it states, "should have been established at all hazards." But the Court held that this was only an "error of judgment," and they commended him for his zeal and energy displayed "in successfully conducting his command through a long, perilous, and laborious retreat to a place of safety." They note as "grave errors and omissions" in the action of General Hazen:

First—"That he did not submit to the Secretary of War for the action of Congress, in the fall of 1882, a sufficient plan with corresponding estimates for the organization of a relief expedition to be conveyed in two vessels fitted for ice-navigation."

The all-sufficient answer to this is that the documentary evidence was before the Court showing that on November 1, 1882, General Hazen laid before the Secretary of War for his approval the plan for the relief expedition of 1883, and the Secretary returned it without dissent, with the suggestion that the personnel might be drawn from the Navy. The President, however, had previously decided that the expedition should be composed of volunteers from the Army.

The Chief Signal Officer of the Army, under the steady opposition that he encountered from the Secretary of War, had great difficulty in securing an appropriation to charter and fit out even one vessel, which was all the prearranged plans approved by the government ever contemplated. Two vessels fitted for ice-navigation were, in fact, sent.

The *Yantic* proved herself equal to every exigency of her Arctic voyage. She traversed the ice-fields of Melville Bay, and made the quickest run on record from Upernavik to Littleton Island, accomplishing the distance of seven hundred and fifty miles in three days. The fault lay in her dilatory commander, who lost six precious days by a useless visit to Upernavik to inquire of the authorities how the ice was probably moving in waters many hundred miles away from that point. If he had sailed directly northward on July 21, instead of making an unnecessary trip to the Kudlisit coal-mine, he would have intercepted Garlington before he left Life-Boat Cove, and that officer would have then been unable to evade the duty of establishing the winter station, thus insuring the safety of Lieutenant Greely and his command.

Second—"In objecting strongly in the fall of 1882 to a proposed endeavor by the War Department to obtain from the Navy the men for the relief party of 1883."

This is answered in part above. The Secretary of War never proposed to make any "endeavor." It was a mere suggestion, as to which the views of the Chief Signal Officer were requested. The use of sailors for this service was never con-

templated by any one at any stage of the work, and Lieutenant Greely, for the best of reasons, objected in the strongest possible manner to their use. Having in view the conduct of Commander Braine, who, when sent to discover the lost *Polaris* party in 1873, retreated from Littleton Island on the day that he arrived there, Lieutenant Greely said to General Hazen: "If the Navy engages in this work it will certainly fail you."

The after-conduct of Commander Wildes stamps that utterance as prophetic.

The expeditionary force was required to serve on land—sledging, hunting, etc.—and for such service the soldier was better suited than the sailor.

There is no evidence that the men of the relief expedition were not fully equal to every requirement. Lieutenant Garlington, in his report, thus refers to their excellent conduct at the time of the wreck: "The men of my detachment worked as I never saw men work before, and were as cool and collected as if it were an every-day exercise."

Third—"In sending an independent command upon a most perilous and responsible as well as distant expedition with only one commissioned officer."

This is neither pertinent nor true. As the officer sent continued in command throughout, it does not appear that a subordinate officer associated with him, and having no control, could have averted the result. As a matter of fact, there were two commissioned officers, Lieutenant Colwell, of the Navy, having been detached for that service on the application of General Hazen.

Fourth—"In informing Lieutenant Garlington in his instructions that Lieutenant Greely's supplies would be exhausted in the fall of 1883, when, according to the records in the Signal Office, his command was fully provisioned for more than three years from the summer of 1881; the natural effect being to urge Lieutenant Garlington to undue impatience and haste to reach Lady Franklin Bay with all the stores entrusted to his charge, and to obscure from his mental vision after the wreck the desirability of advancing as far as possible northward notice of the disaster, in

order that Lieutenant Greely, before coming down too far to go back, might, being so warned, retire again to his well-provided station at Lady Franklin Bay."

The reply to this is that Lieutenant Greely was actually provisioned for only two years and a half from July, 1881 ; and allowing for accidents and probable deteriorations, his supplies would have been exhausted, in due course, by the winter of 1883. Even if provisioned for full three years, if he were obliged to remain at Lady Franklin Bay by the failure of the relief expedition to reach him, his supplies would certainly have been exhausted before he could be relieved by an expedition sent in 1884.

But, according to this finding of the Court of Inquiry, even if Lieutenant Greely's supplies had been already exhausted, it would have been a grave error in General Hazen to have stated the fact in Lieutenant Garlington's instructions, for it was the "informing Lieutenant Garlington" that "obscured his mental vision" and urged him to undue haste, etc.

It is indeed singular that ten words in Garlington's instructions should so incite his sympathies for Lieutenant Greely and his party as to impel him to separate from the *Yantic*, overrule the practised judgment of the ice-master, and urge the ship to wreck in the ice-pack, through his impatient desire to advance to their relief, and yet have had no influence to arrest his flight from his appointed post of duty, where alone he could have served them, or to induce him to deposit for them in the day of their need a few hundred additional rations, with which he could have dispensed, as he well knew, with perfect safety.

Fifth—"His persistent rejection of the wisest measure possible for him to adopt in the spring of 1883, and which was repeatedly urged upon his consideration—to wit, the making, on the northward voyage of the relief ship, of a large depot for a winter station at or near Littleton Island (the objective point of the projected retreat of Lieutenant Greely), whereby the ship would have been lightened of stores which it was in nowise necessary to carry to Lady Franklin Bay or to expose to the dangers of Smith Sound, and whereby the subsequent loss of the vessel would have been of comparatively trivial consequence."

This refers to General Hazen's rejection of a scheme framed, in his absence, by one of his subordinates, and placed with other papers in the envelope containing Lieutenant Garlington's instructions, and since known as "Enclosure No. 4," and which was unsigned.

It was first brought to General Hazen's attention by Lieutenant Garlington, who himself very properly objected to it, and was at once informed that it would constitute no part of his instructions. Lieutenant Garlington so testified upon this point before the Proteus Court of Inquiry, and added: "We then had some conversation about the expedition, in the course of which he (General Hazen) told me that he had the utmost confidence in me, and that while I should make the attempt to follow, as nearly as possible, the plan laid down in the letter of Lieutenant Greely which had been written at Fort Conger, that I must be governed to a great extent by my own judgment on the spot."

The "Enclosure No. 4," which the Court of Inquiry pronounces "the wisest measure possible," required that the *Proteus* "should land her stores, except supplies for more northerly depots (five hundred rations), at Littleton Island on her way north."

It would have been an act of midsummer madness in General Hazen if he had given such instructions.

It is well known to all who are familiar with the history of Arctic explorations that after passing the seventy-eighth degree of latitude the danger of being unable to return is immeasurably increased by every degree that the explorer advances northward.

The Act of Congress required that the relief expedition of 1883 should proceed to Lady Franklin Bay, and, if practicable, return, with Lieutenant Greely and his party, on board the *Proteus* to the United States.

The contingency had to be provided for of the *Proteus* reaching Greely's station near the eighty-second parallel, and

there being detained with her crew and the combined parties, an aggregate of sixty-two (62) persons, for a year or more, before they could escape southward or be reached by another relief expedition.

The report of Lieutenant Greely from Fort Conger under date of August 15, 1881, had already given admonition of the extreme danger of such detention. The *Proteus* was stopped by the ice when within eight miles of that point, and it took her seven days to advance that distance. It appears, further, that on her southward trip it took her six days to traverse about the same distance through the ice-floes of Lady Franklin Bay, and she was extricated with great difficulty.

That contingency was recognized by General Hazen in his "Instructions for closing the scientific work at Camp Conger," under date of June 4, 1883, and which were placed in Lieutenant Garlington's hands for delivery to Lieutenant Greely. The eleventh paragraph of those instructions contains these words: "Should your combined party be held in the ice at Camp Conger, or remain during the winter of 1883 and 1884 at Life-Boat Cove," etc.

This contingency could only be provided against by the relief ship carrying with her the supplies adequate to meet it. Even with all the relief stores carried to Lady Franklin Bay they would have supplied the combined parties for less than ten months.

This contingency was entirely ignored by the plan which the Court of Inquiry so complacently designates as "the wisest measure," while it makes the remarkable statement that to have landed the stores on the way north would not have been a departure from Lieutenant Greely's instructions, when, in fact, no departure could have been more radical.

No Arctic expedition had ever pursued the course which that plan proposed.

The last British expedition to Lady Franklin Bay and beyond, under Sir George Nares, had taken all of its supplies

northward, except those which had been placed in a few small depots as it advanced. Those depots, established in 1875, were still in existence, and Lieutenant Garlington was instructed to examine them on his way north, and replace all articles of damaged food found therein. That duty he failed to perform at S. E. Carey Island, where thirty-six hundred rations were deposited, thirty (30) per cent. of which he found damaged, but replaced none.

He also neglected it at Cape Sabine, although he landed in the vicinity before the wreck, the two hundred and forty rations originally deposited in the British depot there being afterwards found by Lieutenant Greely in a state of decay and utterly useless. This was a fatal violation on the part of Garlington of the plan of relief.

With reference to this neglect of duty Lieutenant Greely wrote, under date of April 30, 1884, at Cape Sabine, when he believed himself dying, in a letter addressed to General Hazen, as follows: "I cannot refrain from saying that had Lieutenant Garlington carried out your orders and replaced the two hundred and forty rations rum and one hundred and twenty alcohol in English cache here, and the two hundred and ten pounds mouldy English bread, spoiled English chocolate and potatoes, melted sugar, and the two hundred and ten pounds rotten dog-biscuit, we would, without doubt, be saved."

The contingency of the *Proteus* being wrecked in Smith Sound General Hazen had the right to assume was fully provided for when, upon his application, the *Yantic* was detailed as a reserve ship to meet any emergency that might arise in those waters, and, in the language of Commander Wildes' instructions, "in view of the possibility of the destruction of the *Proteus*, to afford succor to her officers and men in the event of such an accident."

That Lieutenant Garlington voluntarily separated himself from the *Yantic*, and that she was a thousand miles away when the *Proteus* was wrecked, and that Garlington started south-

ward without awaiting the arrival of his reserve ship, that was then steaming to Littleton Island as fast as her engines could drive her, were events certainly not due to the plan of the relief expedition, and clearly beyond rational anticipation.

The scheme of leaving the stores of the relief expedition two hundred and fifty miles south of its objective point, where the greatest hazard was to be met, could only be commended on the absurdly untenable ground that those events, so evidently beyond all forecast, should have been foreseen by General Hazen.

Had he conformed to that scheme, and had the combined parties come to grief at Lady Franklin Bay, General Hazen's conduct, being without precedent and in violation of the plan of Lieutenant Greely, would have placed him in an attitude utterly indefensible and left him "open to his enemies."

Sixth—"In failing to perceive a necessity for a second vessel until nearly the middle of May, 1883, or to advise the Navy Department of what such tender was wanted to do or how far it was wanted to go until a fortnight later, whereas a definite and explicit request ought to have been made immediately after the enactment of the appropriation which authorized the expedition two months sooner, and that much longer notice given to enable a more complete fitting of a ship for the purpose."

The reader would naturally conclude, from the language of this finding, that General Hazen had, in disregard of the dictates of common prudence, failed to make requisition for the reserve ship until the day fixed for the sailing of the expedition was so near that it was impossible to properly prepare such ship for the special Arctic work required of her.

The incontestable facts to the contrary stamp this finding as a marked illustration both of the *suppressio veri* and the *suggestio falsi*. The requisition for the naval tender was made on May 14, and the *Yantic*, being detailed for that service, was placed in dock at the New York Navy Yard to be specially fitted therefor. There was no suggestion from any quarter that it was too late to fit and equip her for a voyage to Littleton Island.

Indeed, except from General Hazen, there was no suggestion that there should be any reserve ship at all.

Lieutenant Greely had sailed in the *Proteus* in 1881 for Lady Franklin Bay without a reserve ship, and there was no reserve ship detailed to accompany the *Neptune*, that bore the relief expedition of 1882, nor did the original plan approved by the President contemplate any.

The plan of the expedition for each of those years was submitted to Secretary of War Lincoln and approved by him, as was the original plan for the relief expedition of 1883; and, although each plan contemplated the use of only one ship, he made no suggestion that she should have any consort. It was a measure of prudence that sprang from General Hazen's judgment alone.

While the *Yantic* was in dock, on the 9th day of June, 1883, her commander (Wildes) received his instructions. In those instructions, as already cited, it is seen that he was directed to sail "when in all respects in readiness for sea." No day had been fixed for the sailing of the expedition from New York, and Commander Wildes was not hurried in his preparations by General Hazen, who could exercise no authority over that officer. Certain it is that Commander Wildes, on or about the 10th day of June, had the *Yantic* taken out of dock, and he sailed from New York on June 13 for St. John's, N. F., without giving the slightest intimation that she was not "in all respects in readiness for sea."

That it afterwards appeared that Commander Wildes had sailed before he was in readiness for sea, and that the repairs on the boilers of the *Yantic*, not being completed when she left New York, conduced to her separation from the *Proteus*, and to her absence when that vessel was wrecked, cannot be truthfully charged as "a grave error and omission" on the part of General Hazen. It was simply a violation of orders by Commander Wildes. Certainly, if the commander of the *Yantic* had reported that he required a week or two weeks longer to

complete the repairs upon her boilers, there was no exigency that would have denied him that additional time before he sailed from New York.

The following letter of General Hazen's shows where the delay in preparing these expeditions was. In this connection it should be noted that the act making an appropriation for this relief expedition was not approved until March 3:

"OFFICE OF THE CHIEF SIGNAL OFFICER,
WASHINGTON, D. C., April 6, 1881.

"*To the Honorable the Secretary of War:*

"SIR: I am unable to take the action at once necessary in the matter of the Lady Franklin Bay Expedition until I am furnished with the formal approval of the Secretary of War.

"It is now twenty-seven days since this action was asked, and, although I have since twice written for it after it was formally given by Secretary Ramsey, it has not been furnished me, although copies of the papers on which it was given have been furnished.

"Authority to use the appropriation of $25,000, when available, which has also been asked, is imperatively necessary before any steps can be taken in the way of preparation. This is needed at once, since the St. John's steamer, which leaves New York but semi-monthly, sails the 8th inst., and it is necessary to send letters by her, by which we will save two weeks of time.

"My great desire to expedite this work, so dependent for success on early action, must be my excuse for what might otherwise appear unnecessary haste.

"I am, very respectfully, your obedient servant,

"W. B. HAZEN,
"*Brig. and Bvt. Maj.-Gen., Chief Signal Officer, U.S.A.*"

The following shows that the Court of Inquiry was also at fault in stating that General Hazen failed to state in his requisition for the naval tender on May 14, 1883, the special service for which she was required:

"OFFICE CHIEF SIGNAL OFFICER,
WASHINGTON CITY, May 14, 1883.

"*To the Honorable the Secretary of War:*

"SIR: In relation to the relief ship to be sent to reach and bring back the party now at Lady Franklin Bay, since it is impracticable under the present provision by Congress to have but one vessel, and as it will limit

the safety of Arctic parties to the contingency of the successful voyage of this one ship, it is respectfully requested that the Secretary of the Navy be communicated with, with a view to his sending a ship of that branch of the service as escort, to bring back information, render assistance, and take such other steps as may be necessary in case of unforeseen emergencies.

"She need not enter the ice-pack nor encounter any unusual danger. I believe this step to be in the interest of careful and humane policy.

"I am, very respectfully, your obedient servant,

"W. B. HAZEN,

"*Brig. and Bvt. Maj.-Gen., Chief Signal Officer, U.S.A.*"

Seventh—"The omission of proper directions and measures for stowing the cargo of the *Proteus*, in order that the most important material for the purposes of the expedition should be readily accessible in an emergency, owing to which omission it was unknown to either Lieutenant Garlington or the master of the ship where the arms and ammunition provided for the party were stowed, and upon the loss of the ship the command was left with only the few arms and comparatively small amount of powder and shot that had been kept in their personal possession. The instructions to Lieutenant Garlington were insufficient, while he was denied permission to proceed in advance to St. John's to attend to the matter, which was committed to the sole care of a non-commissioned officer, who wholly failed to attend to it, not even going to St. John's for the purpose. If a sufficient quantity of arms and ammunition had been saved a cache of them might have been made for the use of Lieutenant Greely, the amount of whose supply of this indispensable material has not been made known to the Court, and, however ample it might have been originally, by this time may be entirely exhausted."

One would conclude from this finding that General Hazen had purposely neglected to have the relief stores so marked and stowed as to be readily accessible and that each parcel might be identified in the emergency of an impending wreck, and that he unwarrantably denied to Lieutenant Garlington all knowledge of the stowage of the relief ship, and thus prevented a larger amount of supplies being saved from the wrecked *Proteus*.

Yet no conclusions could be farther from the truth. The uncontradicted testimony before the Court of Inquiry shows that Sergeant Wall, who had served efficiently as supercargo on the relief expedition of 1882, was ordered by General Hazen to proceed to St. John's and attend to the stowing of the relief

stores, marking each parcel properly, as was done in the case of the *Neptune*, and make an exact list of the same, designating its locality in the ship. Sergeant Wall proceeded as far as Halifax and returned, reporting that he had been injured by a fall. This afterwards proved false, and he was tried and convicted by a court-martial upon charges preferred by General Hazen, and is now undergoing sentence.

When Lieutenant Garlington applied for leave to precede his command to St. John's, in order that he might attend to the stowage of the relief stores, Sergeant Wall's dereliction was not known ; and as there was danger of the command being greatly reduced by desertions, two men detailed from Lieutenant Garlington's own company having already deserted from the expedition, it was not deemed prudent to detach that officer to perform a duty which Sergeant Wall could have efficiently executed.

The proof was before the Court of Inquiry that the expedition suffered no detriment on this account, and that the facts stated in this finding had no influence on the result.

Lieutenant Garlington during his eight days of detention at St. John's unloaded and restowed a large part of the relief stores ; and during his nine days' stay at Godhaven he again broke out and examined the stores, and made up and marked the packages for depots that he was to establish *en route*. He had ample opportunity to unload and load all his stores several times over while at those two points. He does not allege that he could have saved a single ration more than he did save had he personally superintended the stowage of the relief stores. He does not claim that the alleged paucity of arms and ammunition after the wreck influenced his conduct in any respect, or that if he had saved those that were stowed in the ship he would have cached them for Lieutenant Greely's use.

The fact is that Lieutenant Garlington had at his command, after the loss of the *Proteus*, a much larger supply of arms and ammunition than he had originally made requisition for, as he

had only called for four (4) carbines and three thousand (3,000) rounds of ammunition.

Lieutenant Colwell testified that after the wreck Garlington's own immediate party had in their possession a shot-gun with eighty-six cartridges, a Hotchkiss rifle with five hundred rounds, two Winchester rifles with probably a thousand rounds, and an army and a navy revolver, while "the crew of the *Proteus* had eleven guns—five shot-guns and six rifles—with a good supply of ammunition."

It is well known that Lieutenant Greely when at Cape Sabine was amply supplied with arms and ammunition. He needed food and not firearms. Had arms been deposited there for his use he might well have exclaimed: "I asked for bread and ye gave me a stone."

Eighth—This relates to Enclosure No. 4, and has already been replied to, in part, in considering the fifth finding. It censures General Hazen for not withdrawing that unsigned paper when Lieutenant Garlington brought it to his attention, although the proof is that he promptly repudiated it and stated to that officer that it formed no part of his instructions. General Hazen is further censured in this finding for alleged negligence in keeping the records of his office, because the subordinate who intruded that scheme into Garlington's papers had, without General Hazen's knowledge, recorded it as an enclosure to the instructions.

Ninth—This imputes it to General Hazen as a grave omission that he did not have Lieutenant Garlington furnished with a copy of the instructions of the Navy Department to the commander of the *Yantic*.

The proof is that Garlington before leaving St. John's had full knowledge of Commander Wildes' instructions, and entered into a written agreement with him on the basis of those instructions. They were also sufficiently indicated in the instructions issued by General Hazen to Lieutenant Garlington.

It has never been claimed by Lieutenant Garlington that his

action in the premises was at all affected by the fact that he was not furnished with a copy of the instructions that were issued to Commander Wildes.

These are the much-vaunted findings of the Proteus Court of Inquiry.

General Hazen was not represented by counsel before it, and hence no exposure of its untenable positions appears in its proceedings.

It is well said in the one hundred and fifteenth Article of War that "courts of inquiry may be perverted to dishonorable purposes, and may be employed, in the hands of weak and envious commandants, as engines for the destruction of military merit."

I have correctly stated the facts that were in proof before that Court, and the reader who peruses the findings, in the light of the evidence, will be apt to conclude that they will take about the same rank in military jurisprudence that Commander Schley's reported Upernavik temperatures occupy in meteorology.

It is not intended to impute to the Court of Inquiry anything more than an "error of judgment"—that new method of granting official absolution.

The letter of Secretary Lincoln was well calculated "to obscure from" its "mental vision" the true deductions to be drawn from the facts in evidence before it.

Lieutenant Garlington was certainly fortunate in having a tribunal so benign to pass upon his conduct. Its judgment has shielded him thus far from the hazard of a court-martial for his trial on charges which General Hazen has preferred against him.

The student of naval history will recall the fact that Admiral John Byng, of the British Navy, after his failure to engage the French fleet with his entire squadron off Minorca in 1756, demanded a court of inquiry, which found that he "may have erred greatly in his judgment," but that he was "not blameworthy."

He was, notwithstanding, brought to trial before a court-martial, which, while it held that he had not been guilty either

of cowardice or treachery, found him guilty of "having *failed to do his utmost* to relieve the garrison of Minorca, as it was his duty to have done," and sentenced him to be shot to death with musketry.

The court-martial, composed of officers eminently humane, pronounced this sentence as in accordance with the mandates of military law, while at the same time earnestly recommending the accused to mercy. Their appeal for clemency, however, was unavailing, and Admiral Byng was executed pursuant to sentence.

The Proteus Court of Inquiry by its findings, and Secretary Lincoln by his subsequent refusal to order a court-martial for the trial of Lieutenant Garlington, have erected a much lower standard of duty for the American officer.

The letter of General Hazen to Secretary of War Robert T. Lincoln, and its enclosures, together with the alleged newspaper criticism which led to the Court-Martial, are given in the text.

I prepared challenges to seven of the thirteen members of the Court, on the ground of prejudice against the accused, but, under instructions from General Hazen, I finally challenged but one, and that challenge was sustained, although the officer challenged (Brigadier-General Robert Macfeely) declared, and doubtless with perfect sincerity, that he could do impartial justice to the accused.

The Court-Martial, we are bound to assume, did its duty as it saw it, impartially, and with an eye single to what it deemed the best interests of the military service.

That General Hazen did his duty also, fearlessly, faithfully, and sagaciously, in all things committed to his administration as the Chief Signal Officer of the Army, the unimpeached evidence clearly establishes.

That Court adjudged that he should be censured, and the penalty has been inflicted.

Its infliction has not in anywise diminished the just self-respect of the accused, nor has it vindicated the accuser. It

were far better that an honorable officer of the Army should incur a thousand official censures, or even forfeit his well-won commission, than rest under the imputation that through his neglect or mistakes the agonies of starvation, and death in its most excruciating form, were visited upon a large number of brave men who were worthily engaged in the service of their country.

It would have been gracious and truthful, and befitting his high office, if Secretary Lincoln had said: "In all things man is fallible, and his best-laid plans may prove faulty. I erred in not dispatching a vessel for the relief of Lieutenant Greely and his party after the return of the *Yantic*, and it is but just to state that General Hazen did his utmost to have it sent, but it then appeared to the War Department that there were sufficient reasons why it should not be sent."

Instead of this the Secretary engaged in a malign endeavor to fix culpable neglect upon that officer, imputing to him responsibility for a disaster that he (General Hazen) clearly foresaw and had distinctly pointed out the true means of averting.

Although not in evidence before the Court-Martial, it is now an open secret, derived from official sources, that on the return of the *Yantic* the President requested the Secretaries of the War and Navy Departments to take concurrent action in the matter of sending an expedition for the relief of Lieutenant Greely and his party.

The Secretary of the Navy was absent when that request was made, and the Secretary of War assented to General Hazen's plan of dispatching a steam-sealer as a ship of rescue from St. John's. On the return of the Secretary of the Navy it was determined that a naval expedition should be sent in the following spring, and the plan that looked to immediate relief was abandoned, and the Arctic explorers starved that the Navy might be glorified. This was indicated in the remonstrance sent by the two Secretaries to Congress against offering a general bounty to any one who would effect the rescue.

To silence criticism after famine had done its deadly work at Cape Sabine, the Secretary of War sought to discredit and crush General Hazen, and as a last resort Commander Schley's Munchausen report on temperatures was invoked.

There is no principle of good morals that calls for silent acceptance of injustice, but, on the contrary, every dictate of true manhood urges to prompt and efficient remonstrance.

To the end of self-vindication the Chief Signal Officer incurred the hazard of a Court-Martial. While this Court-Martial could not pass judgment upon the question whether Secretary of War Robert T. Lincoln was responsible for the final disaster to the Lady Franklin Bay Expedition, yet it could not, under the rules of evidence, exclude the documentary proof enclosed in General Hazen's letter, which has made the fact of that responsibility apparent.

In this regard General Hazen may gratefully say of his trial by court-martial :

> "Sweet are the uses of adversity,
> Which, like the toad, ugly and venomous,
> Wears yet a precious jewel in his head."

While this trial, however, has served to vindicate the truth of history by disclosing the really responsible authors of the Arctic tragedy, it is believed that it will have a still wider scope by conducing to greatly-needed reforms in the law and practice of courts-martial. It came at a time when public attention had been attracted to the methods of this class of tribunals, as illustrated in the case of Brigadier-General David G. Swaim, Judge Advocate-General of the Army, and was had before a court-martial composed, in great part, of the officers who sat upon that trial.

That those officers were in character and attainments eminently worthy of their high rank tends only to make more apparent the evils of the system which they reflected in their organic action.

The term court-martial, although it relates to a military code, suggests judicial functions, and when such a tribunal disregards the forms of law, and by its procedure departs from the judicial character, it offends against that exalted idea of impartial justice which the American citizen is wont to associate with the very name of "court."

This springs from that inherent respect for judicial authority which is the great conservative force of organized society.

Hence it is that, among every free and enlightened people, the altitude of the judge measures the moral elevation of the community. While it is true that a court-martial is not in any statutory sense a part of the judiciary, its members perform judicial functions, and, to this extent, are properly held amenable to the judicial standard. Although of special and limited jurisdiction, it is called into existence by force of express statute law, and is vested with all the attributes of a court, administering oaths, hearing and deciding issues of law and of fact, recording its proceedings, and pronouncing sentence. For this reason a court-martial is held bound by the common law of the land in regard to the rules of evidence, as well as other rules of law, so far as they are applicable to the manner of proceeding. (Adye on Courts-Martial, 45 ; 2 McArthur on Courts-Martial, 33 ; and 3 Greenleaf on Evidence, 468.)

A court-martial, however, in its recognized relation to executive authority, differs from all other judicial bodies, as its judgments do not take effect until confirmed by the officer who convened it. As such officer is also vested with the power to refer its findings back for its own revision, and may, by the custom of war, censure the court for what he deems grave errors in its proceedings, it follows that the safeguards which protect every other class of judicial tribunal from being swerved from the strict line of duty by executive dictation are, in this respect, denied the members of a court-martial. The danger of dictation or undue influence is immeasurably increased when the accuser is a high officer of the government, such as the Secre-

tary of War, who, as to the military establishment, is the special adviser and organ of the President, the Commander-in-Chief of the Army and Navy.

Mr. Tytler, in his essay on Military Law, in which he treats of the practice of courts-martial in England, says upon this point: "The members of a court-martial cannot boast the same independence of the Crown, and consequent immunity from influence, as the judges in the ordinary courts of law. The officers who compose a military tribunal are all necessarily dependent for their preferment on the Crown and its ministers; they are even in some degree under the influence of their general-in-chief—powerful motives of opinion, and which might sometimes lead astray a weaker mind from the direct path of justice."

To this may be added that the habit of mind in the military service, and especially with mature officers of high rank, is eminently one of respect for authority, reaching naturally from the office even to the person of the officer. This idea of loyalty impels to faithful service, and is generally inseparable from it.

But it tends to make the members of a court-martial partial judges, and this unconsciously and without even the color of impure motive, when the highest official is the accuser and practically selects the court.

Under such circumstances there cannot be an impartial court. A junior officer expressing his opinion in good faith as to a matter vital to his reputation, and in respectful terms, is thus made liable to a court-martial, if his superior had previously expressed a contrary opinion, and conviction would follow almost to a certainty, as in our practice a bare majority can convict.

As illustrative of the practical operation of the present system, it will be instructive to refer to a feature that marked the recent trial of General D. G. Swaim above referred to.

This reference is made without regard to the merits of that case and the justice of the findings therein, as to which there

are widely divergent opinions among those who have carefully considered the evidence.

The Court-Martial, after due deliberation, which involved the consideration by them of a record covering several thousand pages, rendered its findings and pronounced its sentence.

The proceedings were forwarded in due course through the War Department to the President, who was, in law, the reviewing authority, although it was an open secret that Secretary of War Robert T. Lincoln, who was actively interested in the prosecution, did in fact review them.

The sentence of the Court was the final judicial act which determined the penal grade of the offence.

The power to graduate the penalty to the nature of the offence, and its proved degree, was vested by law in the Court-Martial, and once exercised it was legally exhausted.

The President's functions were limited solely to approving or disapproving the findings, with the power to pardon absolutely or to remit the sentence in part.

These limitations, however, which the law would appear to have prescribed, had been extended by custom, by the practice of the Horse-Guards, derived originally from the British military system, which, without any express sanction of law, permitted the reviewing authority to except to a sentence and refer it back to the court-martial with his objections and a recommendation that it should be changed, so as to conform it to the grade of the offence as it appeared to such authority.

The practice had received legislative recognition in England for the purpose only of restricting it.

The Mutiny Act, enacted by Parliament in the year 1750, limits the power of the reviewing authority, and imposes its restriction even upon the king himself. I cite from the fifteenth section of that act, as follows:

"No sentence given by any court-martial, and signed by the president thereof, shall be liable to be revised more than once."

In the case of General Swaim the President, through the Secretary of War, returned the sentence with the requirement that it should be made more severe, and the Court increased the penalty and again forwarded its proceedings for executive approval.

The sentence was again returned with the view to have the penalty further increased, and again the Court conformed to the demand of the reviewing officer.

The varying record is thus made to show three distinct sentences pronounced upon the same officer in one case, for the same offence, and by the same Court, on the same state of facts.

That there was not a fourth sentence we must attribute to the fact that a fourth was not demanded.

The president of that Court, Major-General J. M. Schofield, and his co-members, would have added new lustre to their honorable records as soldiers if they had proved themselves equal to their duty as judges, and refused to yield to a dictation which they could not obey, contrary to their own convictions, without confessing themselves the mere servitors of the executive in a cause that they were solemnly sworn to judge "according to the evidence." But if the scales of justice are thus made to lose their balance under the direct pressure of the executive hand, the aberrations of a court-martial may be scarcely less apparent when its action is controlled by an undue deference to the official station of the accuser.

This would seem to appear by reference to the proceedings in the case of General Hazen.

The second specification alleged that the Chief Signal Officer of the Army "addressed and sent the letter in question to the Secretary of War, without having been requested or authorized by the Secretary of War so to do."

The Court refused to strike out this specification on motion of counsel for the accused, although it was made evident that, admitting it to be true, it was not an offence, either under the

Articles of War or by the custom of the service. The question was an embarrassing one to the Court, for the Secretary of War had himself formulated the charge and specifications, and to strike that out was to declare, in effect, that the head of the War Department was profoundly ignorant of military law and usage.

Yet the Court, when it came to make up its finding on this specification, was constrained to declare that the facts stated therein could attach no criminality to the accused.

The third specification was the gravest of all. It alleged a publication in the newspapers of a criticism upon the Secretary of War, and Mr. Lincoln referred to such publication as the real cause that moved him to prefer the charge, for he had already condoned the matter of the letter by returning it with the assurance that he would take no action thereon.

To find the Chief Signal Officer not guilty upon this specification was to declare that the Secretary was without justification for having preferred the charge.

Yet every essential averment of the specification had been disproved by the uncontradicted testimony.

The Court accordingly found that General Hazen did not "intentionally make a statement with a view to its publication," or "cause the same to be published"; and that he did not state that he "had written and sent to the Secretary of War such a letter as was described in the interrogation of the said reporter," and did not "state that his, the said Hazen's, recommendation had been entirely ignored."

The specification, being thus disintegrated and all its criminating averments expunged, as an actionable count, was dead.

The Court, seeing this, immediately proceeded to blow the breath of life into its nostrils. It thereupon decided, of its own motion, in secret session, to substitute a word of its own in the place of two material words in the specification, and thus records its self-moved action: "Substituting, however, for the words 'entirely ignored' the word 'negatived,' and of the substituted word 'guilty.'"

It does not require a profound study of military law to learn that the Court-Martial had no authority for such a procedure.

This is a very different power from the right to amend a specification.

The judge-advocate no doubt possesses this right, but it can only be exercised before the accused has pleaded to the specification (De Hart's "Military Law," page 102). The court can in no case amend a specification, and least of all can it substitute a term of its own for words alleged in the specification, and then find the accused guilty as to the substituted term, which, it is nowhere suggested in the evidence, he ever used, either in that or any other connection.

The power to substitute one word carries with it the power to substitute any number, and thus to convict the accused upon a specification that he was never required to plead to.

Practices less repugnant to the plain dictates of justice and common sense than those I have detailed led Sir William Blackstone to write of the system of military administration, as illustrated by courts-martial in his day, in terms of severest reproach.

Says that learned author (Blackstone's "Commentaries," book i. chapter 13): "Martial law which is built upon no settled principles, but is entirely arbitrary in its decisions, is, as Sir Matthew Hale observes, in truth and reality no law, but something indulged rather than allowed as law."

The Mutiny Act, first enacted in the reign of William III., and since annually re-enacted with many successive amendments, has relieved the martial law of England of the above severe reproach.

That act relates to the discipline of the Army and prescribes the constitution and powers of courts-martial. It is the supreme military code, and, while the king claims and exercises the right to make Articles of War, any such article is to be held void if in conflict with the Mutiny Act, and the legality of Articles of War can be made the subject of examination in a court-martial.

(Grose, "Military Antiquities"; Adye, "Military Law"; and Major-General C. J. Napier, "Remarks on Military Law.")

It is to be lamented that many of the abuses derived from the ancient practice at the Horse Guards (War Office), and which have been corrected by the Mutiny Act in the British system, are still retained in our own. The Army of the United States is practically without a military code prescribing the powers and duties of courts-martial and the authority of the reviewing officer. Our courts-martial and reviewing authorities, constantly required to deal with grave questions affecting the honor and rights of officers of the Army, are remitted for their guidance to a few imperfect statutes, of which they know little, and to undefined usage, of which they know less.

This is all the more intolerable in this country, where courts-martial are practically courts of last resort, than it would be in England, where appeals lie from their sentences to the supreme civil courts of law, as the Courts of King's Bench and Common Pleas.

The evils of the existing system can only be remedied by the special enactments of a Military Code, that shall define and limit by positive law rights and powers that are now the subjects of arbitrary and fluctuating decisions by courts-martial and reviewing officers, who have become in effect a law unto themselves.

Some of the most flagrant of those evils, leading to gross injustice to the accused, may be indicated by the following proposed reforms in the system from which they spring:

First—The officer who prefers the charge, or who has in anywise conduced to the preferring of the same, shall in no case detail the members of the court-martial for the trial of the accused.

Second—The President shall not have power to order a general court-martial to be convened, except when the General of the Army, or a general officer commanding a department or in command of an army in the field, is the accuser.

Third—Whenever an officer inferior in rank to the accused is detailed as a member of a court-martial, it must appear, by a certificate annexed to the order making the detail, that it could not be avoided without manifest injury to the service, such certificate to be signed by the officer who appointed the court.

Fourth—The judge-advocate shall not be present at the secret deliberations of the court, during any stage of the trial, or when it retires to make up its findings and sentence.

Fifth—The court-martial shall exhaust each specification by its findings, and shall find the accused either guilty or not guilty of the fact alleged therein, each specification to be passed upon as an entirety; and the court shall have no power to find as to any separate part thereof, or in any manner to amend a specification, by substitution or otherwise, after the accused has pleaded to the same; and if he is not proved guilty as charged he shall be acquitted.

Sixth—No officer or enlisted man shall be adjudged guilty in any capital case, except all the members of the court-martial concur in the finding of guilty, and in every other case it shall require the concurrence of two-thirds of the members in order to convict.

Seventh—When the findings and sentence of a court-martial are duly recorded and signed by the president thereof, he shall announce the same in open court, in the presence of the accused, who may then, by himself or by counsel in his behalf, give notice of his exceptions to such findings and sentence, and shall be entitled to three days after the promulgation of sentence to file with the judge-advocate the grounds of such exceptions, and the same shall be transmitted with the record of the proceedings to the reviewing authority.

Eighth—A court-martial shall not have power in any case to revise either its findings or sentence after the same shall have been promulgated or transmitted to the reviewing authority.

Ninth—Should the accused voluntarily fail to appear for sentence the proceedings shall be forwarded to the reviewing

authority, and the findings and sentence shall be promulgated after the same have been approved or disapproved.

Tenth—The reviewing authority shall certify in every case that he has carefully read the evidence before the court, and fully considered all exceptions filed in behalf of the accused.

It may be suggested that the second proposal above is already provided for in the seventy-second Article of War.

But that article has been variously construed.

Secretary of War Stanton, in the case of General Fitz-John Porter, gave it the construction which it is now proposed to fix by positive law; while in the case of General Swaim it was held that the President may appoint a general court-martial whoever may be the accuser or prosecutor, as it was formerly held by Attorney-General Devens in the case of Major Runkle in 1877 (15 Opinions Attorney-General, 291).

It may be suggested further that the third proposal above is met by the seventy-ninth Article of War, which provides that "no officer shall, when it can be avoided, be tried by officers inferior to him in rank." It has been invariably held under this article that the mere fact that an officer inferior in rank to the accused is detailed as a member of the court furnishes a conclusive presumption that such detail could not be avoided (Martin *vs.* Mott, 12 Wheaton, 10).

The object of the proposed change is to require that the facts which prove that it could not be avoided shall be made to appear.

The fourth proposal is intended to prohibit the existing practice of the judge-advocate, who attends the court whenever it retires for deliberation, and may there address an argument to it as to questions already discussed at bar, and inform himself, at every stage, of the views of respective members of the court, thus giving him an immense advantage over the accused and his counsel.

It is manifest that the proper functions of a prosecuting officer are to be exercised at the bar of the court, and not in the council-chamber of its judges.

Mr. Tytler, like writers generally on the law of courts-mar-

tial, commends this unfair practice. He, with equal impropriety, suggests that in all cases the judge-advocate should confer with the accused before trial, and thus make himself master of all points that will be urged for the defence, in order that he may prepare to meet them. That learned author, when he wrote his essay on military law, had not achieved the eminence which made him one of the lords of the Sessions of Scotland. He had been, however, a judge-advocate for eight years—an office that appears to sharpen the mind, as a grindstone sharpens a knife, by making it narrower.

As to the tenth proposal, it may be objected to as superfluous, inasmuch as it is manifestly the duty of the reviewing authority, as the law now stands, to read and consider all the proceedings of the court-martial before acting thereon.

This duty at present, however, is only implied, and it goes without saying that it is rarely done. It certainly was not done in the case of General Hazen. The purpose is to make it mandatory, so that it shall no longer be "more honored in the breach than in the observance."

The average bureaucrat, whose mind, "like the dyer's hand, is subdued to what it works in," will of course antagonize the proposed reformatory legislation; but it is confidently believed that the military profession generally will perceive the need of reform in the law and practice of courts-martial, and will cordially welcome its judicious application.

NOTE.—As illustrating the idiosyncrasy of the late Secretary of War, Mr. Robert T. Lincoln, and his hostile temper to all who were associated with General Hazen in Arctic work, I state the following facts, which cannot be disputed:

On the return of the relief expedition of 1884, bringing with it the six heroic survivors of the Lady Franklin Bay Expedition, extensive preparations were made to receive them at Portsmouth, N. H., and also to do deserved honor to Commander Schley and the officers of the Navy who had with such skill, energy, and daring effected the timely rescue of Lieutenant Greely and his companions.

Invitations were issued to many eminent persons, and the Governor of the State (Samuel W. Hale) took an active personal interest in making the pageant worthy of the occasion.

The Secretary of the Navy, Hon. William E. Chandler, who was always equal to, and observant of, every requirement of his high station, also actively promoted it, and bore a most conspicuous and honorable part in the ceremonies.

Among the distinguished persons and high officials in the assemblage Secretary Lincoln was "conspicuous by his absence."

As Lieutenant Greely and his command were of the Army, it was expected, as a matter of course, that the Secretary of War would be present to receive them. They had become honorably renowned for their brilliant achievements and unexampled endurance of suffering through their unfaltering execution of orders issued from the War Department; and whatever might have been the shortcomings of others, they were blameless, for they had done their duty unto death.

Mr. Lincoln responded to the invitation sent him with the following telegram, in which it will be seen that, with invidious discrimination, he does not refer to Lieutenant Greely, the hero whom he was especially invited to honor. This omission can only be explained on the theory of "*Odimus quem laesimus*"—We hate the man whom we have injured:

"WAR DEPARTMENT, WASHINGTON CITY, August 1, 1885.

"I regret that I am not able to accept your invitation to join at Portsmouth in the greeting to Commander Schley and his command upon their return. I beg you to express to him my appreciation of the energetic and thorough manner in which everything possible was accomplished by his expedition, and to tender him the thanks of this Department for his inestimable services to the survivors of Lieutenant Greely's party.

"ROBERT T. LINCOLN."

In striking contrast with this I cite the following from the brief but admirable address of Hon. Samuel J. Randall, which shows how the great American statesman caught the spirit of the occasion:

"Those who have perished in the Arctic wilds have died martyrs to duty; and if, as we all believe, knowledge is power, they have enriched their country by adding largely to the sum of human knowledge. So long as civilization shall last the names of these heroes and martyrs of the Greely expedition will be in men's mouths as household words. I am here by my presence to give proof how deeply I sympathize with every movement to honor these brave and long-suffering men."

Secretary Lincoln, it should be stated, however, attended a few days later, on the earnest telegraphic request of General Hazen, at Governor's Island when the remains of those who had perished in the expedition were received at that point.

A member of the Lady Franklin Bay Expedition when dead and coffined in a boiler-plate casket, securely riveted down, ceased to be obnoxious to Secretary Lincoln.

But not so with the living.

While scientific bodies throughout the world were doing honor to Lieutenant Greely a series of paragraphs depreciating his character and conduct as commander of the International Polar Expedition appeared in the Washington City newspapers. They contained statements and deductions that were grossly unwarranted by the facts and most unjust to that officer, which were generally copied in contemporary journals.

General Hazen traced those statements to Colonel Chauncey McKeever, an Assistant Adjutant-General in the War Department, and then the immediate Adjutant of the Secretary of War. He at once preferred charges against Colonel McKeever, and, although the proof of guilt was undeniable, the request of General Hazen that the offender should be placed on trial before a court-martial for such flagrant breach of military discipline was refused.

The object of those aspersions, generated in the atmosphere that enveloped the Secretary of War, was soon made apparent.

A bill was pending in Congress to create the office of Assistant Chief Signal Officer of the Army with the rank of colonel, the purpose being, although not expressed in the bill, to confer that deserved position on Lieutenant Greely.

Secretary Lincoln actively and openly opposed the measure,

although unable to assign any valid reason for his hostility, and succeeded in preventing its passage at the last session of Congress.

He, in like temper, prevented the promotion of Sergeant D. L. Brainard to a lieutenancy in the Army, although the fact is recognized by all who know that officer that by his high mental and moral qualities and his gentlemanly bearing he would reflect credit upon the service in a much higher grade than a second lieutenancy.

It is earnestly hoped that these acts of public justice, which would almost universally meet with the approving sanction of the people, will not be much longer delayed.

As Sergeant Brainard was subjected to the smirching process by Secretary Lincoln and Colonel Chauncey McKeever by unwarrantable published aspersions, in which that excellent non-commissioned officer was represented as "making a lay figure of himself" and "exhibiting his person for hire in a low dime museum at Cleveland," I deem it proper to present the following facts:

Soon after his return from the Arctic, Sergeant Brainard, while on leave, accepted a lucrative offer to lecture at the Cleveland, Ohio, Museum. While so engaged in an honorable effort to add to his limited income for the support of his family, he was ordered by the Secretary of War to cancel his engagement and return instantly to his station. Upon learning of the above imputation upon Sergeant Brainard the Hon. Amos Townsend and other eminent citizens of Cleveland wrote General Hazen, protesting against it as utterly false, and stating that the museum in which Sergeant Brainard lectured was a highly respectable lyceum, and that his lectures were most instructive, and were attended by the best people, ladies and gentlemen, of that beautiful city.

T. J. MACKEY,
Late Counsel for General Hazen.

WASHINGTON, D. C., May 12, 1885.

LETTER

OF

GEN. W. B. HAZEN TO THE SECRETARY OF WAR

WHICH LED TO THIS TRIAL.

SIGNAL OFFICE, WAR DEPARTMENT,
WASHINGTON CITY, February 17, 1885.

HON. ROBERT T. LINCOLN, *Secretary of War:*

SIR: The Secretary of War, in his annual report for the year 1884, was pleased to make me the subject of severe strictures because, in my official report of the final disaster to the International Polar Expedition, I expressed the conviction that such disaster would have been averted had a ship of rescue been despatched from St. John's, N. F., after the return of Lieutenant Garlington to that port, or as late as September 15, 1883, as urged by me but not adopted by the Secretary of War.

As my silence in view of those strictures might be construed as implying my assent to their justice, I beg leave to place on record the evidence that supports the correctness of my judgment in the premises.

I respectfully submit that this evidence embraces the only expert testimony that has been adduced upon the vital question whether a steam-sealer of the first class, such as the *Bear* or *Neptune*, starting from St. John's, N. F., as late as September 15, could have made the passage of Melville Bay and reached Cape Sabine or Life-Boat Cove, or its vicinity, in the autumn of 1883, and rescued Lieutenant Greely and his party.

This testimony consists of statements of Captain Richard Pike, late commander of the steam-sealer *Proteus*, the vessel

that conveyed Lieutenant Greely and his party to Lady Franklin Bay, and other ice-navigators of St. John's, N. F., whose experience in the waters on the coast of Greenland extends over periods ranging from five to thirty-five years.

These statements were transmitted to me on December 22, 1884, by Thomas N. Molloy, Esq., United States Consul at St. John's, whose name has been honorably associated with more than one Arctic expedition sailing from that port, and especially with the *Polaris* relief expedition of 1873, for which he received the thanks of the State Department.

2d. Letter from Chief-Engineer Melville, U. S. N., an officer who stands among the foremost authorities in all matters relating to Arctic navigation, dated December 5, 1884.

3d. Letter from Lieutenant A. W. Greely, late commander of the Lady Franklin Bay Expedition, dated December 10, 1884.

4th. Letter from Sergeant D. L. Brainard, who was in command of the survivors of the Lady Franklin Bay Expedition, by assignment of Lieutenant Greely, when rescued on June 22, 1884, dated December 9, 1884.

I respectfully invite the attention of the Secretary of War to the following extracts from this testimony.

Captain Richard Pike states, December 18, 1884:

"I have been engaged seal-hunting in the northern ice-fields for the past thirty-five years. . . . From my knowledge of the Arctic regions, and navigation amongst heavy northern ice-fields, I did expect a vessel would have been dispatched from St. John's immediately on arrival of *Yantic* steamship there, for the purpose of continuing the effort to succor Lieutenant Greely and his companions, and I volunteered to Lieutenant Garlington to take charge. I most unhesitatingly affirm, if a steamer such as the steamship *Bear* or *Neptune* had been fitted out and dispatched up to even September 20, Cape Sabine would have been reached without any trouble, and this I expressed to Consul Molloy. . . . Had a steamer got to Littleton Island even, of which, humanly speaking, there would have been a certainty, such men as our seal-hunters would, in any season, either with drift or frozen ice to overcome, have been able to cross over to Cape Sabine."

Captain Samuel Walsh, of St. John's, N. F., states under same date:

"I have been engaged in the seal and whale fishery, the former for many years, and have commanded some of the best steamers engaged in

these perilous ventures amongst the heavy northern ice-fields. In the summer of 1883 I occupied the position of pilot to steamship *Yantic*, which accompanied the steamship *Proteus* as relief ship to the Greely expedition.

"On my return to St. John's I am positively certain, had a suitable vessel, such as the steamship *Bear*, been fitted out (without loss of time), she would have reached Cape Sabine, or in that neighborhood, before navigation had closed up to that point, and I should have unhesitatingly and gladly volunteered my service as pilot. . . . There were three or four vessels available for the work, which could have been dispatched within forty-eight hours after arrival of steamship *Yantic*, and, the idea of it being abroad amongst seamen acquainted with ice-navigation, several men applied to be engaged."

William Carlson states under same date :

"I have been engaged at the Newfoundland seal-fishery for thirteen years, and have seen all the roughs and smooths in the navigation of heavy northern ice during that time. . . . Even after the *Yantic's* return to St. John's, had a vessel such as the *Bear* or *Neptune* been fitted out, there is not the shadow of a doubt in my mind but the vessel would have succeeded in reaching Cape Sabine or the neighborhood.

"A crew could have been got in St. John's of first-class men to have manned the ship, either to return or stay over the winter, and there are many good harbors on the west coast of Greenland where a vessel could have wintered, and in May month no doubt the vessel would have been released.

"There is no doubt it was a fatal mistake not to send a vessel down after arrival of *Yantic*."

Peter McPherson states, December 20, 1884 :

"I have been for ten years acting in the capacity of engineer on sealing steamers, and have a large experience in the management of steamers amongst the ice-fields of the frozen north.

"I had charge of the engine department of steamship *Proteus* when that vessel landed the Greely party at Discovery Harbor in 1881. . . .

"From the knowledge so acquired I feel confident there would have been no difficulty in such vessels as steamships *Bear*, *Eagle*, *Falcon*, or *Ranger* reaching Cape Sabine or neighborhood last fall, had any one of them been dispatched within two or three days after arrival of steamship *Yantic* in St. John's; and the vessels just named were coaled and ready for immediate employment. . . . Even supposing the relief ship only reached Pandora Harbor, which to my mind was a certainty, a crew of Newfoundland sealers would, during the fall or winter, have communicated with Cape Sabine; for these men are in their element either in boats amongst drift-ice or on frozen ice or snow."

Thomas White, of St. John's, N. F., states December 20, 1884:

"I have been engaged from boyhood in the general seafaring business of the colony—viz., seal-hunting, fishing, and foreign-going—and have occupied positions of responsibility in the seal-hunting line. I have been a master of watch with Captain Pike, of Newfoundland, and Captain Fairweather, of Dundee, both of whom are famous for their knowledge of navigation amongst the northern ice-fields, as well as for the work done by them in the Arctic seas.

"In the year 1881 I was selected by Captain Richard Pike to fill the position of second officer in the steamship *Proteus*, and the success of that expedition in landing Lieutenant Greely at Lady Franklin Bay, and the speedy return of the ship to St. John's, has passed into history. . . . When the steamship *Yantic* arrived back with the *Proteus*' shipwrecked crew I was so fully impressed with the belief that a steamer, fitted out immediately and dispatched to Cape Sabine, would have reached that point before the northern waters got frozen up that I expressed the opinion that the authorities had missed the chance of rescuing the explorers. . . .

"It was a fatal mistake not to dispatch a steamer on arrival of *Yantic*, as all who have a knowledge here of Arctic navigation expressed the same opinion."

Chief-Engineer Melville says:

"I am of the opinion that a good sealer or steam-vessel, not too large, of average strength and a speed of seven or eight knots an hour, leaving St. John's September 15, could have gone, and can go every year, as far north as Cape Sabine or Littleton Island, near the mouth of Smith Sound. . . ."

Lieutenant Greely states:

"I concur fully and entirely in the views and opinions of Engineer Melville, save on certain immaterial points. . . ."

Sergeant Brainard states:

"The practicability of a well-equipped steam-sealer reaching Cape Isabella, and thus rendering efficient aid to our forlorn party, was never for a moment doubted by those most capable of judging the danger and difficulties which attend ice-navigation at that season of the year.

"Our opinion in this matter was confirmed by the observations of Sergeants Rice and Frederick during the early days of November.

"Standing near the summit of Cape Isabella, they had an uninterrupted view for many miles to the southward, and within the range of their vision not a piece of ice capable of offering the slightest obstruction to a

vessel appeared. The waves rolling in from Melville Bay, and dashing against the cliffs at their feet, gave ample evidence of the scarcity of ice in the North Water, and the feasibility of its successful navigation. The plan proposed, to land a relief party on the Greenland coast at or near Cape York, with the intention of affording succor to our expedition, in the early spring of 1884, would, without doubt, have been successful under the energetic and experienced officer—Chief-Engineer Melville—who suggested it. There were many days during the month of May when the channel between Cape Sabine and the Greenland coast was so nearly cleared of ice that small boats from the opposite coast could have reached us in safety. It was a matter that was under almost daily discussion in our miserable hut at Camp Clay, even when death's shadows were hovering darkly above us, and I now reiterate what I had said then: 'The plan of relief from that source is practicable, and, if undertaken, it will be the means of averting a disaster which now appears imminent.' In the views of Chief-Engineer Melville relative to this plan I heartily concur in every particular."

Dr. Emil Bessels, the scientist of the *Polaris* expedition, who had also an extended experience in the polar zone under the auspices of Petermann, the celebrated Arctic explorer, testified before the board of officers who planned the Schley relief expedition, of which board I was president, that a vessel can secure a safe transit south leaving Littleton Island as late as October 15.

The *Juniata*, a vessel far inferior to the average steam-sealer in her capacity for Arctic navigation, started from St. John's, N. F., to renew her search for the missing crew of the *Polaris*, on the 18th of September, 1873, by order of the Secretary of the Navy, and she was steaming northward to make the passage of Melville Bay when she was overtaken by a steamer chartered by Consul Molloy with the announcement that the *Polaris* party had been rescued.

I have yet to learn of a single Arctic authority that negatives the testimony above cited.

In view of that testimony I respectfully submit that I am justified in the conclusion that the tragic termination of the International Polar Expedition was finally due to the decision not to dispatch a steam-sealer to effect its rescue on the 15th of September, 1883, which I did all in my power to have done; such sealer, starting from St. John's, N. F., only thirteen days' steaming from Cape Sabine, in all human probability could

have reached and rescued the party before there was any interruption to navigation by ice, and would have resulted in a saving to the United States, as it terminated, of a half-million of money.

In view of the conduct of Commander Wildes and Lieutenant Garlington, I would not consider their opinions upon the subject of further service that year in the Arctic of any possible value, but, on the contrary, to be misleading; while Captain Tyson's long experience on an Arctic ice-floe in winter in the Arctic regions, under the most distressing circumstances, invalidated his opinions upon the subject also.

The Secretary of War, it appears, reached his conclusion after having personally consulted Captain Greer, U. S. N., who went to Littleton Island in 1873, in command of the *Tigress*, in search of the wrecked *Polaris* party, and Dr. Emil Bessels, the scientist of the *Polaris* expedition, and some others.

It is presumed that Dr. Bessel's view was the same as that which he expressed four months later, under oath, as above cited, and which fully sustained my own judgment as to the feasibility of navigating Melville Bay in the month of October. Captain Greer was not in any sense an authority on Arctic navigation, as his experience has been limited to a single summer cruise made ten years before in these waters, while Chief-Engineer Melville, who was among the highest Arctic authorities, earnestly urged the sending of a ship of rescue from St. John's in September, 1883. Captain Greer and Commander Schley, whose opinions the Secretary cites as confirmatory of the opposite theory, are simply in error, neither being experts in Arctic navigation. Nor is it easily understood how Commander Schley could have been so misled about the character of the winter and temperature at Upernavik in 1883–4.

I enclose copy of his statement as published in the report of the Honorable Secretary of War for 1884, together with a copy of the official record of temperature at Upernavik from October, 1883, to March, 1884, both inclusive, which show how much in error he was on this point. The weather there during that winter did not differ materially from what it is now and has been for the past thirty days in Manitoba and northern Dakota.

A single telegram to United States Consul Molloy at St. John's would have elicited information from professional ice-navigators, showing conclusively that it was then feasible to reach Littleton Island with a steam-sealer, and thus have averted the impending disaster.

While the action of the Secretary of War in the premises was dictated by his sincere convictions of public duty, I believe it can be established beyond question that such action made certain that final disaster to Lieutenant Greely's Arctic party which the violation of their orders by Lieutenant Garlington and Commander Wildes had rendered highly probable.

I am, very respectfully, your obedient servant,

(Signed) W. B. HAZEN,

Brig. and Bvt. Maj.-Gen., Chief Signal Officer, U. S. A.

(12 enclosures.)

LETTER FROM GENERAL HAZEN TO THE SECRETARY OF WAR, REQUESTING THAT HIS (HAZEN'S) TRIAL SHOULD PROCEED AS ORDERED.

WASHINGTON, D. C., 1601 "K" STREET,
March 7, 1885.

To the Honorable the Secretary of War:

SIR: Referring to the charges recently preferred against me by ex-Secretary Lincoln, I respectfully request that nothing be permitted to interfere to prevent trial as ordered.

The action of friends in their zeal to serve, in doing what they believe a kindness, may sometimes, and especially in this case, have a contrary effect.

I am, sir, very respectfully, your obedient servant,

W. B. HAZEN,

Brig. and Bvt. Maj.-Gen., Chief Signal Officer.

[A true copy.]

B. M. PURSELL,

Second Lieut. Signal Corps, U. S. A.

Proceedings of a General Court-Martial

Convened at the Ebbitt House, in the City of Washington, D. C., on the eleventh day of March, eighteen hundred and eighty-five, by virtue of the following order:

[Special Orders, No. 50.]

Headquarters of the Army,
Adjutant-General's Office,
Washington, March 3, 1885.

Extract.

. . . . . .

22. The following order has been received from the War Department:

War Department, Washington,
March 3, 1885.

By direction of the President a General Court-Martial is appointed to meet in this city at 11 o'clock A.M., on Wednesday, the 11th day of March, 1885, or as soon thereafter as practicable, for the trial of such persons as may be brought before it.

Detail for the Court.

Major-General Winfield S. Hancock.
Major-General John M. Schofield.
Brigadier-General Oliver O. Howard.
Brigadier-General Alfred H. Terry.
Brigadier-General Christopher C. Augur.
Brigadier-General Robert Macfeely, Commissary-General of Subsistence.
Brigadier-General William B. Rochester, Paymaster-General.

Brigadier-General SAMUEL B. HOLABIRD, Quartermaster-General.

Brigadier-General ROBERT MURRAY, Surgeon-General.

Brigadier-General JOHN NEWTON, Chief of Engineers.

Colonel GEORGE L. ANDREWS, Twenty-fifth Infantry.

Colonel WESLEY MERRITT, Fifth Cavalry.

Colonel HENRY M. BLACK, Twenty-third Infantry.

Captain JOHN W. CLOUS, Twenty-fourth Infantry, Judge-Advocate.

The Court is empowered to proceed with the business before it with any number of members present not less than the *minimum* prescribed by law.

Upon the final adjournment of the Court the members will return to their proper stations.

ROBERT T. LINCOLN,
Secretary of War.

The journeys required of the members of the Court in complying with this order are necessary for the public service.

. . . . . .

BY COMMAND OF LIEUTENANT-GENERAL SHERIDAN:

R. C. DRUM,
Adjutant-General.

OFFICIAL:

Assistant Adjutant-General.

ROOMS OF THE GENERAL COURT-MARTIAL,
EBBITT HOUSE, WASHINGTON, D. C.,
Wednesday, March 11, 1885, 11 A.M.

The Court met pursuant to the foregoing order.

Present:

1. Major-General WINFIELD S. HANCOCK, U. S. A.
2. Major-General JOHN M. SCHOFIELD, U. S. A.

3. Brigadier-General OLIVER O. HOWARD, U. S. A.

4. Brigadier-General ALFRED H. TERRY, U. S. A.

5. Brigadier-General CHRISTOPHER C. AUGUR, U. S. A.

6. Brigadier-General ROBERT MACFEELY, Commissary-General of Subsistence.

7. Brigadier-General WILLIAM B. ROCHESTER, Paymaster-General.

8. Brigadier-General SAMUEL B. HOLABIRD, Quartermaster-General.

9. Brigadier-General ROBERT MURRAY, Surgeon-General.

10. Brigadier-General JOHN NEWTON, Chief of Engineers.

11. Colonel GEORGE L. ANDREWS, Twenty-fifth Infantry.

12. Colonel WESLEY MERRITT, Fifth Cavalry.

13. Colonel HENRY M. BLACK, Twenty-third Infantry; and

Captain JOHN W. CLOUS, Twenty-fourth Infantry, Judge-Advocate of the Court.

Brigadier-General WILLIAM B. HAZEN, the accused, and his counsel, T. J. MACKEY, Esq.

. . . . . .

The Court then proceeded to the trial of Brigadier-General William B. Hazen, Chief Signal Officer, United States Army, who thereupon came before the Court, and, having heard the foregoing orders convening the Court read, was asked if he had any objection to any member present named in the detail as above, to which he replied as follows:

Gen. HAZEN—I have; I object to Brigadier-General Robert Macfeely, Commissary-General, on grounds which will be stated by my counsel.

The JUDGE-ADVOCATE—As I presume the accused would like to be assisted, in the matter of challenge, by his counsel, I ask permission of the Court that they be now introduced.

The accused then, with the permission of the Court, introduced as his counsel Judge T. J. Mackey.

Mr. Mackey then addressed the Court as follows:

Mr. President and Gentlemen of the Court: I beg leave to submit to the consideration of the Court, on behalf of Brigadier-General William B. Hazen, Chief Signal Officer of the Army, the following:

CHALLENGE.

WASHINGTON, D. C., March 11, 1885.

Brigadier-General William B. Hazen, Chief Signal Officer, United States Army, being charged with "conduct to the prejudice of good order and military discipline, in violation of the sixty-second Article of War," comes before the General Court-Martial convened in the city of Washington, D. C., on this 11th day of March, 1885, pending his trial on said charge, and challenges Brigadier-General Robert Macfeely, Commissary-General of Subsistence, a member of said Court, and for cause of challenge shows as follows :

1. That in the year 1876, and for many years prior thereto, the said Brigadier-General William B. Hazen was engaged in an active effort to relieve the enlisted men of the Army from the pernicious system of post-traderships, under which they were charged extortionate prices for every article purchased by them from such traders ; and to that end he reported to the Secretary of War that the Subsistence Department had failed and neglected to comply with the Act of Congress approved July 28, 1866, which requires that the officers of the Subsistence Department shall procure and keep for sale to officers and enlisted men, at cost prices, such articles as may be designated by the Inspectors-General of the Army.

2. That, the War Department failing to remedy the evil complained of, the said Brigadier-General Hazen, then Colonel of the Sixth Infantry, addressed a letter, of date June 4, 1876, to the Attorney-General, with the view to have the said act duly enforced.

3. That the said letter was subsequently forwarded to the General of the Army, who transmitted it to the said Brigadier-General Robert Macfeely, Commissary-General of Subsistence, who made an endorsement thereon, assailing the said Brigadier-General Hazen in terms of gross insult ; accused him of having committed a breach of discipline by writing the same, and denied that the Subsistence Department had failed to comply with the said act.

4. That in consequence of the facts above recited the rela-

tions between the said Brigadier-General Robert Macfeely and Brigadier-General William B. Hazen have been ever since unfriendly, and such as usually pertain between those who are avowed enemies.

Wherefore it is respectfully submitted that the said Brigadier-General Robert Macfeely ought not, in fairness and good conscience, to sit as a member of this honorable Court, as, in view of his known hostility to the said Brigadier-General Hazen, he might unconsciously fail to weigh impartially the evidence for the defence.

W. B. HAZEN,
Brig. and Bvt. Maj.-Gen., Chief Signal Officer, U. S. A.

T. J. MACKEY,
Counsel for Gen. Hazen.

The PRESIDENT (addressing General Macfeely)—Do you desire to make any statement to the Court in connection with the matter which has been referred to by the counsel for the accused?

General MACFEELY—I merely wish to state to the Court, in reply to the challenge of the accused, that it became my duty some nine years ago to call the attention of the Secretary of War, my superior officer, to a certain communication which appeared in public print over the signature of Colonel Hazen, which statement I characterized at that time as untrue and not in accordance with the facts; and I have seen no reason to change my opinion then formed in regard to those statements since. By reason of this opinion then formed I choose to have no personal or social relations with General Hazen since. I believe I have no hostile or unfriendly feelings towards the accused, and no prejudice, and that I could act impartially and in accordance with the oath as a member of this Court on his trial; but while the Court and the accused, probably not knowing or understanding clearly the feelings which actuate me in this matter, may differ with me in opinion, I do not object to being excused as a member of this Court.

The Court was then cleared for deliberation. When the doors were reopened, and the accused and his counsel had re-

sumed their seats, the Judge-Advocate announced the decision of the Court on the matter of the challenge of General Macfeely as follows:

The JUDGE-ADVOCATE—I am directed by the Court to announce that the challenge by the accused is sustained, and that Brigadier-General Macfeely is excused from sitting as a member of the Court in the trial of this action. (To General Hazen:) Have you any objection to any other member of the Court present named in the detail?

Mr. MACKEY—Mr. President and gentlemen of the Court, I am instructed by the accused to state that he waives his right to any further challenge.

The PRESIDENT—I believe it is in order now to swear the Court.

The members of the Court were then severally duly sworn by the Judge-Advocate, and the Judge-Advocate was duly sworn by the President of the Court, all of which oaths were administered in the presence of Brigadier-General William B. Hazen, the accused.

The JUDGE-ADVOCATE—Under the authority given, I have appointed Mr. James L. Andem as reporter of the Court.

The reporter was then duly sworn by the Judge-Advocate, in the presence of the Court, faithfully to perform his duty as such reporter.

The accused was then duly arraigned upon the following charge and specifications:

CHARGE.

Conduct to the prejudice of good order and military discipline, in violation of the sixty-second Article of War.

Specification 1st—"In that Brigadier-General *William B. Hazen*, Chief Signal Officer, United States Army, knowing that the Secretary of War had, in the performance of his official duty, decided, in the month of September, A.D. 1883, that it was not practicable to send in the year 1883 an expedition to the Arctic regions for the relief of Lieutenant A. W. Greely, an officer of the Army, and his party then

in those regions, did, in his official annual report as Chief Signal Officer bearing date October 15, 1884, criticise the said official action of the Secretary of War and impugn the propriety thereof, by saying of and concerning the sending of a relief expedition to the Arctic regions for the relief of Lieutenant A. W. Greely and his party in the year 1883 as follows :

"'On the return of the escort ship bringing the relief party to St. John's, September 13, there was still time, as known from previous experience and shown by subsequent facts, to send effective relief.'

This at Washington, D. C."

Specification 2d—"In that Brigadier-General *William B. Hazen*, Chief Signal Officer, United States Army, knowing that the Secretary of War had, in the performance of his official duty, decided in the month of September, A.D. 1883, that it was not practicable to send in the year 1883 an expedition to the Arctic regions for the relief of Lieutenant A. W. Greely, an officer of the Army, and his party then in those regions, did, without having been requested or authorized by the Secretary of War so to do, address and send to the Secretary of War a communication written by him, the said Chief Signal Officer, bearing date the 17th day of February, 1885, concerning the said official action of the Secretary of War, containing, among other statements, the following :

"'I respectfully submit that I am justified in the conclusion that the tragic termination of the International Polar Expedition was finally due to the decision not to dispatch a steam-sealer to effect its rescue on the 15th of September, 1883, which I did all in my power to have done; such sealer, starting from St. John's, N. F., only thirteen days' steaming from Cape Sabine, in all human probability could have reached and rescued the party before there was any interruption to navigation by ice. . . .'

This at Washington, D. C."

Specification 3d—"In that Brigadier-General *William B. Hazen*, Chief Signal Officer, United States Army, knowing that the Secretary of War had, in the performance of his official

duty, decided, in the month of September, A.D. 1883, that it was not practicable to send in the year 1883 an expedition to the Arctic regions for the relief of Lieutenant Greely, an officer of the Army, and his party then in those regions, and having written and sent to the Secretary of War an official communication, bearing date the 17th day of February, A.D. 1885, containing, among other things, the following language :

"'The Secretary of War, in his annual report for the year 1884, was pleased to make me the subject of severe strictures because, in my official report of the final disaster to the International Polar Expedition, I expressed the conviction that such disaster would have been averted had a ship of rescue been dispatched from St. John's, N. F., after the return of Lieutenant Garlington to that port, or as late as September 15, 1883, as urged by me, but not adopted by the Secretary of War.

"'As my silence, in view of those strictures, might be construed as implying my assent to their justice, I beg leave to place on record the evidence that supports the correctness of my judgment in the premises. . . .

"'I respectfully submit that I am justified in the conclusion that the tragic termination of the International Polar Expedition was finally due to the decision not to dispatch a steam-sealer to effect its rescue on the 15th of September, 1883, which I did all in my power to have done; such sealer, starting from St. John's, N. F., only thirteen days' steaming from Cape Sabine, in all human probability could have reached and rescued the party before there was any interruption to navigation by ice. . . ."

and said communication having been returned by the Secretary of War to said Chief Signal Officer with an endorsement thereon, in words and figures as follows :

"War Department, February 27, 1885.

"'The within paper, bearing date of February 17th inst., was received at the War Department February 26, and is respectfully returned to the Chief Signal Officer.

"'The correctness of the judgment of the Chief Signal Officer in the expression made by him in his last annual report of his views as to the propriety of the action of the Secretary of War in not sending a ship in September, 1883, to the Arctic regions, is not a proper subject of discussion between the Chief Signal Officer and the Secretary of War.

The strictures made by the Secretary of War in his annual report, and now referred to by the Chief Signal Officer, were addressed to the extraordinary conduct of the Chief Signal Officer as a military officer in publicly controverting the propriety of previous official action of his official superior, the Secretary of War, and that, too, in a matter in which the Chief Signal Officer had no official responsibility.

"'It was at that time thought unnecessary to take any official action upon the violation of military propriety beyond observing that it had been committed. The present official expression of opinion to the effect that the failure of the Secretary of War to organize in two days and dispatch to the Arctic regions a new expedition, at a season which made it certain that it must, under the best circumstances, encounter all the rigors of an Arctic winter, was a neglect of duty, is therefore returned with the remark that a breach of military discipline which could not be overlooked may be avoided by the retention by the Chief Signal Officer of the within paper in his own hands.

"ROBERT T. LINCOLN,
"'*Secretary of War.*'

he, the said Brigadier-General *William B. Hazen,* Chief Signal Officer, United States Army, did, in response to an inquiry made by a newspaper reporter, as to whether he, the said *Hazen,* had written a letter to the Secretary of War throwing the blame of the loss of the Greely party upon his shoulders, intentionally make a statement, in answer to said newspaper reporter, with a view to its publication, and did cause the same to be published, on the 2d day of March, 1885, in a newspaper printed and published in the city of Washington, D. C., called the *Evening Star,* which statement was in substance as follows: That he, the said *Hazen,* had written and sent to the Secretary of War such a letter as was described in the interrogation of the said reporter, containing a criticism and imputation of blame upon the Secretary of War for his official action in not complying with the recommendation of the Chief Signal Officer to send, in the month of September, 1883, an expedition for the relief of Lieutenant A. W. Greely and his party, immediately after the return of the party which brought the news of the loss of the steamer *Proteus* in the said month of September, and did further state that his, the said *Hazen's,* said recommendation had been entirely

ignored. This at Washington, D. C., on or about March 2, 1885."

ROBERT T. LINCOLN,
Secretary of War.

MARCH 3, 1885.

[Endorsed.]

WAR DEPARTMENT, WASHINGTON,
March 3, 1885.

By direction of the President the within charge and specifications are hereby referred for trial (through the Adjutant-General) to the General Court-Martial appointed by special orders of the War Department of this date, to assemble in this city on the 11th instant, of which Major-General *W. S. Hancock* is president.

The Adjutant-General will cause a copy of the charge and specifications to be furnished to the accused.

ROBERT T. LINCOLN,
Secretary of War.

The JUDGE-ADVOCATE—Before pleading to the specifications and the charge the accused desires to make a motion to strike out certain of the specifications.

Mr. MACKEY—Mr. President and gentlemen of the Court, I beg leave to submit, in behalf of the accused, Brigadier-General William B. Hazen, a motion to strike out the first and second specifications, and will present the argument to the Court as to each specification in its proper order.

The charge against the accused is "conduct to the prejudice of good order and military discipline, in violation of the sixty-second Article of War." I submit the following:

MOTION.

Before a General Court-Martial, appointed by direction of the President, to meet in the city of Washington, D. C., on the 11th day of March, 1885, or as soon thereafter as practicable, comes

the said Brigadier-General William B. Hazen, Chief Signal Officer of the United States Army, and moves this honorable Court that the first and second specifications set forth in support of said charge be stricken out, the same being irrelevant to the charge and insufficient in point of law.

T. J. MACKEY,
Counsel for General Hazen.

After argument heard this motion was denied.

ARRAIGNMENT.

The accused was then arraigned on the charge and specifications preferred, to which he pleaded as follows:

To the first specification, not guilty.

To the second specification, not guilty.

To the third specification, not guilty.

To the charge, not guilty.

SECOND DAY.

ROOMS OF THE GENERAL COURT-MARTIAL,
EBBITT HOUSE, WASHINGTON, D. C.,
Thursday, March 12, 1885, 11 A.M.

JUDGE-ADVOCATE—The paper I referred to is as follows:

ADMISSIONS OF FACT.

The accused, Brigadier-General William B. Hazen, Chief Signal Officer of the Army, having pleaded not guilty to the specifications and to the charge herein, now comes before this honorable Court, and, fully affirming said plea, makes the following admissions of fact:

First—He admits that in his annual report, bearing date October 15, 1884, he used the language set out in the concluding portion of the first specification to said charge; but as such language only forms about one-half of the sentence which the specification purports to give entire, he craves reference to the said report in full.

Second—He admits that, without having been requested or specially authorized by the Secretary of War so to do, he did address to the Secretary of War a communication bearing date February 17, 1885, containing the language set forth in the second specification, but not in the form therein set forth; for the specification purports to give the sentence in full, while it omits five words at the beginning and twenty words at the close of the sentence from which it is taken. He, therefore, craves reference to the full text of said letter.

He admits the venue, as laid at Washington, D. C., in said specifications.

The JUDGE-ADVOCATE—Mr. President, I now desire to introduce in evidence the annual report of the Chief Signal Offi-

cer of the Army to the Secretary of War for the year 1884. The document submitted to the Court is admitted, for the purposes of this cause, to be the report spoken of by the accused, as I understand it.

The PRESIDENT—Admit it.

The JUDGE-ADVOCATE—With the permission of the Court I will read from that report (the entire report will be in evidence) the portion of the specification, or rather the extract referred to in the first specification, which is found on page 19, and is as follows :

"On the return of the escort ship bringing the relief party to St. John's, September 13, there was still time, as known from previous experience and shown by subsequent facts, to send effective relief, and my six telegrams from Washington Territory, where I then happened to be, attest the earnestness of my efforts to have this done."

It only includes so much of the report as I have read. Of course the entire report is in evidence.

The PRESIDENT—Where does it end—at what word ?

The JUDGE-ADVOCATE—At the word "done"; at the period. This report which I have submitted will be appended to the record and marked Exhibit A.

I now ask the accused to produce the letter of February 17, 1885, referred to in the second and third specifications in this case.

The accused produced the letter called for.

The JUDGE-ADVOCATE—The specifications Nos. 2 and 3 plainly show that only extracts from this letter are quoted in those specifications. I presume it will be proper for me to read the entire letter; and if there is no objection I will proceed to read the letter.

The PRESIDENT—There seems to be no objection.

Mr. MACKEY (to the Judge-Advocate)—You introduce the entire letter, I understand ?

The JUDGE-ADVOCATE—Yes, I will read it.

The Judge-Advocate then read the letter referred to, dated February 17, 1885, together with the endorsement thereon, which is appended to the record and marked Exhibit B.

The JUDGE-ADVOCATE (to the accused)—I suppose you admit the endorsement ?

General HAZEN—Yes.

The JUDGE-ADVOCATE—Now, Mr. President, for the purposes of this trial I submit in evidence so much of this letter as is quoted in the second and third specifications. The entire letter is before the Court, but I only submit so much as I refer to in evidence.

The JUDGE-ADVOCATE—I have a witness to present to the Court.

RUDOLPH KAUFFMANN, a witness called by the prosecution, then came before the Court and was duly sworn by the Judge-Advocate.

By the JUDGE-ADVOCATE :

Q. Please state your name, your occupation, and your residence. A. Rudolph Kauffmann; newspaper reporter connected with the *Evening Star ;* residence, 205 New Jersey Avenue, Northwest, Washington, D. C.

Q. Do you recognize the accused before this Court—General Hazen ? A. I do.

Q. About how long have you known him ? A. I have no means of fixing the date when I became acquainted with him.

Q. Approximately ? A. About two years; in that neighborhood.

Q. In what capacity have you known him ? A. As Chief Signal Officer of the Army.

Q. As far as you are personally concerned—I mean as a reporter ? A. Yes, sir ; as a reporter.

Q. During that period have you seen General Hazen frequently in your capacity as a reporter ? A. No, sir ; not particularly so ; occasionally.

Q. For what purpose—items of news or what ? A. Items of news and general information.

Q. Did you see General Hazen on or about the 1st or 2d of this month—the month of March, 1885 ? A. Yes, sir.

Q. Did you have an interview with him then or talk with him on that occasion? A. I had a conversation with him.

Q. Where did it take place? A. It was in the office of this hotel.

Q. Will you be kind enough to tell the Court what paper this is? (handing a newspaper to the witness). A. It is a copy of the *Evening Star*, of Washington, D. C.

Q. Of what date? A. March 2, 1885.

Q. Will you please indicate to the Court whether or not there is any article in that paper written by you in reference to your interview with General Hazen on the 1st or 2d of March? A. Yes, sir.

Q. Where is it? (The witness indicated the place in the paper.)

Q. Did you write the original of that? A. I did.

Q. Is it correctly reproduced in the paper here? A. Yes, sir.

The JUDGE-ADVOCATE—With the permission of the Court I will now read the article referred to:

"THE GREELY PARTY DISASTER—GENERAL HAZEN THROWING THE BLAME ON THE SECRETARY OF WAR.

"'Is it true,' asked a *Star* reporter of General Hazen, 'that you wrote a letter to the Secretary of War throwing the blame of the loss of the Greely party upon his shoulders?'

"'I did write such a letter,' was the reply. 'It was a straightforward statement of facts in regard to the matter. I produced evidence to show that, had my recommendation of having another expedition start from St. John's immediately after the loss of the *Proteus* not been entirely ignored by the War Department, the Greely party could all have been saved. I felt it my duty to myself to make this statement after the severe manner in which the Secretary of War spoke in his report of my alluding to the matter in my annual report. My intention to go South was in no way connected with the letter.' (It was reported that General Hazen had asked to be allowed to go South, so as to be away when the letter was received and until Secretary Lincoln's term ended.) 'I intended, and still intend, to start toward the last of the week on an inspection tour of the Southern signal stations, to be gone ten days or so. I had not the slightest intention of going away before the inauguration.'"

I submit this extract, as read, in evidence.

The PRESIDENT—What dates would the last of the week involve in that newspaper statement—what day of the week ?

The JUDGE-ADVOCATE—The newspaper was published on the 2d of March, on Monday, and the last of the week would have been the 7th. (To Mr. Mackey:) I suppose there is no objection to the admission of this extract in evidence ?

Mr. MACKEY—The rule is to authenticate the paper, and then to authenticate the extract. The paper has been authenticated.

The JUDGE-ADVOCATE—So has the extract.

Mr. MACKEY—As to whether that was the language used by the reporter is one thing, and whether it is the language used by the accused is another.

The PRESIDENT—That question should be asked, whether he truthfully reported General Hazen in that interview.

The JUDGE-ADVOCATE (addressing the witness)—Does that language just read to you from this paper, as you have written it out, truly represent the language, or the tenor and effect of the language, used by General Hazen to you on that occasion at the interview ?

A. It represents the tenor of the language. I would not testify that every word was reported. I wrote it from memory ; took no notes. If I may be allowed to say, the sentences were not given in exactly that order. Part of it was in answer to questions I asked him.

Q. It represents, however, the tenor and effect of your questions and his answers ? A. Yes, sir.

Q. Was there any injunction or not on the part of General Hazen to you not to publish this interview or the statements made ? A. No, sir.

Q. There was not ? A. No, sir ; there was nothing said about it.

Q. How soon after you saw General Hazen did you write the article in question ? A. The next morning, if I remember correctly.

Q. About what time in the day before had you seen him ? A. I should say it was about half-past seven or eight o'clock.

Q. In the evening ? A. Yes, sir; I do not remember exactly the time.

Q. About what time next morning did you write the article? A. About nine o'clock.

The JUDGE-ADVOCATE—I have no further questions to ask the witness.

Cross-examination.

By Mr. MACKEY:

Q. Will you please state, as nearly as you can now recollect, the first question that you propounded to General Hazen to introduce the conversation on that occasion on the 1st of March? A. It was not a question.

Q. What was it? what did you say? A. I told him that I wished to ask him about a paragraph that I had seen in a Western paper.

Q. Then what further took place? A. He said he had not seen it, and asked me what it was.

Q Now try and recollect your response to that inquiry of his in substance. A. In substance it was that I had seen in a copy of the Chicago *Tribune* a paragraph which stated or said it was understood, or something of that character, that General Hazen had written a letter to the Secretary of War in which he threw the blame for the loss of the Greely party upon his shoulders; and the paragraph went on to say, and I went on to say or intimate, that General Hazen's intention was to send this letter just before Secretary Lincoln went out of office, and that he also intended to be away about the time when this should be sent to the Secretary, so as not to be here at that time when the Secretary received it.

Q. Was your statement, then, to the effect that there was a paragraph in the Chicago *Tribune* assailing General Hazen in connection with an alleged letter to the Secretary of War—the paragraph in the Chicago *Tribune* assailing General Hazen? A. Well, not assailing him.

The JUDGE-ADVOCATE (to Mr. Mackey)—Please confine yourself to what he said to General Hazen, and not to what the paragraph in the paper was; that is not the point.

Mr. MACKEY—I am directing my attention to the point.

The JUDGE-ADVOCATE—If the paragraph is to be introduced the original must be produced, and not his recollection of it.

Mr. MACKEY—I am aware of that. (To the witness:) I ask you whether you did not state to General Hazen that he was attacked in the Chicago *Tribune* in a paragraph in connection with the letter alleged to have been written by him to the Secretary of War? A. I do not remember that.

Q. You do not? A. No, sir, I do not.

Q. Now please recollect, as near as you can, at least the substance of General Hazen's reply to you when you introduced the conversation in that form. A. As near as I can remember he said that it was nonsense; that there was no truth in it; that he had intended going away at this time, but there was no connection whatever between the letter and his intended trip to the Southern signal stations for inspection, as near as I can remember.

Q. State as near as you can remember, what further reply General Hazen made touching the alleged letter. A. In reply to a direct question of mine, he said that he had written a letter, but, as I said, there was no connection between that letter and his intention to go away.

Q. Now the direct question to which you refer—if you can, please recall it and repeat it. A. The direct question was regarding the letter throwing blame for the loss of the Greely party upon the shoulders of the Secretary of War—a letter to the Secretary of War.

Q. Speak in the first person, and, if you can, recollect the language of your question. A. It was, "Was there such a letter," if I recollect right, as I had referred to in the Chicago paper? I will not say those were the exact words, or "Did you write such a letter?"

Q. Give, as near as you can, the reply of General Hazen to that question. A. "I did write the letter."

Q. "The letter," or "a" letter? A. "Such a letter"; or he gave me to understand that the statement that he had written a letter of that tenor to the Secretary of War was correct.

Q. Did he say, "I have written such a letter," or "I wrote the letter," or "I wrote a letter"? Can you swear to either of

those positively? A. No, sir; I would not swear to either one of them.

Q. Can you state positively whether General Hazen used the words "Secretary of War" or not? A. Either "Secretary" or "Secretary of War."

Q. You state that positively? A. Yes, sir; as near as I can remember. It was some time ago.

Q. As near as you can remember, then? A. Yes, sir.

Q. Now please state what General Hazen said in substance, as near as you can recollect, and in the terms, if you can recollect. A. I do not remember whether I asked him what was the character of the letter then or not, but he said that the letter he felt in duty bound to write on account of the severe manner in which the Secretary had handled him in his annual report for having previously alluded to this matter in his, General Hazen's, annual report.

Q. How long did this conversation last, or about how long, as far as you can recollect? A. About a minute; perhaps less —just enough to say these things.

Q. Did you inform General Hazen at the time, or intimate to him, that he was being interviewed for publication? A. No, sir.

Q. You did not? A. No, sir; I did not.

Q. Please state the circumstances under which you met General Hazen on that occasion—whether in a chamber at a set interview, or whether it was a passing interview. A. I accidentally met him in the lobby of this hotel, the Ebbitt House.

Q. Were you seated with him? A. No, sir.

Q. Was he in motion or not? A. Yes, sir; he was.

Q. Walking up and down? A. Yes, sir; and I stopped him.

Q. Can you state whether General Hazen had any knowledge from you, or intimation, that you intended to publish that conversation? A. No, sir.

Q. He did not? A. No, sir.

Q. Would you swear that the statements published under the title of an interview with General Hazen, or under the

heading, "General Hazen throws the blame of the failure to relieve the Greely expedition on the shoulders of the Secretary of War," embody the language of General Hazen, his exact language? A. No, sir; not his exact language.

Q. Did General Hazen seek you, or did you seek him, or was it a mere chance meeting? A. It was a mere chance meeting on my part.

Q. In giving such a conversation, according to your own practice and the custom of reporters, would you profess to give it in the exact words of the person interviewed, when you took no notes at the time? A. I would if I felt satisfied that I remembered.

Q. And taking no notes? A. Yes, sir; taking no notes.

Q. Did you state that you cannot swear that the report, under the heading stated, in the *Evening Star* of the 2d of March was in the language of General Hazen—in the exact language? A. It may not have been in the exact language. I say I would not be willing to swear to that word for word. Part of it was in answer to questions which I put. I asked him a question and he acknowledged it. Thereupon I said that he said so.

Q. May not a reporter for the press—may you not as a judicious reporter (and I assume that only a judicious person occupies that honorable position)—magnify an item of news beyond the language of the person interviewed?

The JUDGE-ADVOCATE—Will you please repeat the question?

Q. May you or do you not, as a reporter for the press, sometimes magnify an item of news relating to an interview with a prominent man beyond the language used by the person interviewed?

The JUDGE-ADVOCATE—I object to the question. It has nothing to do with the case. The question is whether he magnified the language in this case. It has nothing to do with other occasions.

Mr. MACKEY—May it please the Court, the purpose of the cross-examination is to apply to the witness proper mental and, it may be, moral tests, and those tests are eminently appropriate where a charge affecting an officer of the Army of high rank is

professedly based, in one of its specifications, on the assumed correctness of an alleged published interview. The practice of the witness, who declares himself the reporter who indited the alleged interview, is surely relevant. It relates to the reporter's practice as to whether he does not sometimes magnify interviews and the language of an interview, or whether it is his practice to limit the report severely to what transpired.

I shall, then, pass to the further question as to whether he did not magnify this alleged interview in his ardor and zeal as a reporter for the press. And I submit to the court it is entirely unwarranted, it is not usual, to impose a restriction upon cross-examination where it tends to develop a material fact in the case.

The JUDGE-ADVOCATE—The witness has already stated, Mr. President, that he, to the best of his ability, gave the purport, tenor, and effect of General Hazen's conversation in the news paper article in question. The other side has to limit itself to the scope of the matter brought out in the examination-in-chief. What the practice of this reporter may have been in other cases has nothing to do with this. He has already, under oath, stated that the report submitted to this Court contained the tenor and substance of General Hazen's language.

The PRESIDENT—As the decision of the Court on this matter appears necessary, a vote will be taken by ballot. The question is, Shall the objection of the Judge-Advocate to the question propounded by the counsel for the defence be sustained ?

A vote was then taken by ballot.

The JUDGE-ADVOCATE—I am directed to announce as the decision of the Court that the objection is not sustained.

The question was then read by the reporter as follows :

Q. May you or do you not, as a reporter for the press, sometimes magnify an item of news relating to an interview with a prominent man beyond the language used by the person interviewed ? A. No, sir ; not intentionally.

Q. Is it your practice to give the exact language, where notes are not taken of what was said by the person interviewed? A. Yes, sir, if I am satisfied that I remember it.

Q. You have stated that you gave the conversation according to its tenor. What do you mean by the word "tenor" in that connection? A. I mean that I abbreviated it somewhat, and, in asking General Hazen about the letter, referred to it as the letter spoken of in this Chicago *Tribune* paragraph.

Q. You do not mean, then, that you gave it literally? A. No, sir. I asked General Hazen if he had written such a letter. He said he had. Therefore I said he had written such a letter throwing blame on the Secretary of War; that is, I put that in my question to him, in the question that I drew from the Chicago *Tribune* paragraph.

Q. Did he incorporate your language in his reply, do you know, or in his own terms? A. I would not care to state as to that.

Q. You will not swear that he did not repeat your language and then answer you? A. I do not think he repeated my language. If I remember correctly, he acknowledged having written the letter.

Q. How late did you sit up that night, Mr. Kauffmann? A. Until about half-past nine or ten o'clock.

Q. Did you retire at ten o'clock? A. I did, sir.

Q. Did you take anything that evening—take supper, or from sundown until ten o'clock take anything in the way of stimulants? A. What do you mean, sir?

Q. A glass of champagne or sherry with your friends? A. No, sir. I took a glass of ginger-ale, if you call that a stimulant.

Q. Do you limit yourself to that beverage? A. I do, and to lemonade.

Q. No higher grade than ginger-ale or lemonade? A. No, sir.

Q. Can you state whether General Hazen published the alleged interview in the *Evening Star?* A. I do not understand your question exactly.

Q. Did General Hazen publish the alleged interview in the *Star*, or procure you to publish it? A. Did General Hazen publish the interview in the *Star?*

Q. Yes; I am reciting the language of the specification.

A. No, sir; he had nothing whatever to do with publishing it in the *Star*.

Q. Did he procure the publication to your knowledge? A. No, sir.

Q. He did not? A. No, sir.

Q. Did he seek the publication through you, if you can state? A. No, sir; I sought him.

Q. You have stated that you did not intimate a purpose to publish? A. As near as I can remember, I said nothing about publishing it.

Q. Is it your practice to publish all conversations that may be had at a chance meeting with a gentleman in public position? A. Oh! no, sir.

Q. Not at all? A. No, sir; not at all.

Q. What meaning do you give to the word "interview"? I ask you as an expert. The Judge-Advocate asked you with reference to an "interview" which you had. A. I regard an interview as the result of question and answer.

Q. You reply that you had a conversation with him? A. Yes, sir.

Q. Is there not a definite meaning, in the profession of journalism, attached to the word "interview"? A. No, sir; I think not.

Q. Meaning a set and understood questioning and answering with a view to publication—has it not that meaning? A. I do not look upon it as such, as having any such meaning.

Q. Or with a view to publication? A. No, sir.

Q. Have you not had interviews with General Hazen for the purposes of publication, as to other matters known to him, where your declared purpose was to obtain information for publication? A. No, sir; there was no declared purpose about it, that I remember, on any occasion.

Mr. MACKEY (to the witness)—You stated in your direct examination that in opening the alleged interview with General Hazen you stated that you had seen in the Chicago *Tribune* a paragraph in reference to a letter alleged to have been written by him to the Secretary of War. Can you state whether this is the paragraph to which you referred (handing a newspaper to

the witness)? A. (after an examination of the paper). That is the paragraph. I have not seen it since then until now.

Mr. MACKEY—With the permission of the Court I will read it to the witness.

The counsel read as follows:

[From the Chicago *Tribune* of February 25, 1885.]

"THE GREELY PARTY—HAZEN CHARGES THE SECRETARY OF WAR WITH ABANDONING THE EXPLORERS.

"WASHINGTON, D. C., February 24.

(Special.)

"General Hazen recently applied for permission to inspect the signal stations on the Southern coast. Before doing this he prepared a letter to the Secretary of War in which he directly charged that officer with the failure to relieve the Greely party. He sent to St. John's and obtained affidavits to the effect that there was ample time after Lieutenant Garlington's return to have sent a second relief expedition, and that the boats and men for such an expedition could have been obtained at St. John's. By doing this, General Hazen says in his letter, every life would have been saved; and this step, he adds, he urged upon the Secretary of War, who, according to General Hazen, refused to act, and therefore General Hazen charges him with being responsible for the death of Greely's men. This letter was kept back by General Hazen for two reasons, it is said. It was to be sprung upon the Secretary after General Hazen left the city on his tour of inspection South. The other reason for delay was to allow no time before the 4th of March for the Secretary to take any action in his own defence, and to strike a last blow at the retiring Cabinet officer. A week only remains in which Mr. Lincoln will be Secretary of War, and during that period the Chief Signal Officer will be required to stay in Washington, and will not be permitted to go on a tour of inspection South."

Q. Did you show that to General Hazen at your alleged interview? A. No, sir.

Q. But this is what moved you? A. Yes, sir.

The witness was then further examined as follows:

Redirect Examination.

By the JUDGE-ADVOCATE:

Q. General Hazen knew you to be a reporter for the *Star;* you had seen him frequently as a reporter for the *Star?* A. Yes, sir.

Q. What had been your practice with reference to previous statements made by General Hazen to you when you saw him on previous occasions—did you or not publish them in the *Star?* A. Yes, sir, if they were of interest.

The JUDGE-ADVOCATE—That is all I have to ask. Have the Court any questions?

The PRESIDENT—None are heard. The witness is discharged from further attendance.

The WITNESS—I would like to make a statement in the nature of a correction of my testimony, if I may be allowed.

The PRESIDENT—You may proceed.

The WITNESS—I simply want to state that I said that the article in the *Star* was mine. It was all mine except the headlines; I had nothing whatever to do with the heading.

THIRD DAY.

ROOMS OF THE GENERAL COURT-MARTIAL,
EBBITT HOUSE, WASHINGTON, D. C.,
Friday, March 13, 1885, 11 A.M.

The Court met pursuant to adjournment.

The JUDGE-ADVOCATE—Mr. President, I now desire to introduce a document purporting to be the annual report of the Secretary of War for the year 1883. As I understand it, the defence is willing to admit that this is the report of the Secretary of War for the year 1883, and that the same was received from the War Department at the office of the Chief Signal Officer in the usual course of business, with the stamp at the bottom of this pamphlet—that is, December 11, 1883. (To Mr. Mackey :) Is that correct ?

Mr. MACKEY—Yes, with the addition that the admission is made because of the stamp being upon it.

The JUDGE-ADVOCATE—I should like the admission to be made without that qualification.

Mr. MACKEY—But no admission will be made without that qualification. We admit it because of the stamp being upon it.

The JUDGE-ADVOCATE—That will necessitate my calling a witness. There is no use of accepting it with that qualification.

The PRESIDENT—You may call the witness, if you desire.

JAMES D. MCLOUGHLIN, a witness called by the prosecution, then came before the Court and was duly sworn by the Judge-Advocate.

By the JUDGE-ADVOCATE :

Q. Please state your name. A. James D. McLoughlin.

Q. Where do you live? A. At No. 804 Eighth Street, N. W., Washington, D. C.

Q. Where are you employed? A. At the Signal Office.

Q. Were you employed in that office in December, 1883? A. I was.

Q. Do you recognize this document (handing a document to the witness)? A. Yes, sir.

Q. State to the Court when it was received at the Signal Office. A. It came to my desk at the Signal Office on December 11, 1883.

Q. You are a clerk in the Signal Office? A. Yes, sir.

The JUDGE-ADVOCATE—This is the document that I introduced to the Court a little while ago, and which was admitted by the other side.

Mr. MACKEY—We have no questions to ask.

There being no questions by the Court, the witness was excused.

The JUDGE-ADVOCATE—In order that the purpose of the introduction of this document may be clear to the Court, and to the defence as well, I desire to call the attention of the Court to a portion of the report of the Secretary of War in which certain matters in reference to the relief of Lieutenant Greely were discussed by the Secretary of War—matters pertaining to the allegations before this Court in the first, second, and third specifications.

At the conclusion of the report of Mr. Lincoln, the Secretary of War, there is a memorandum which reads as follows:

"The Secretaries of War and the Navy *have decided* that it is not practicable to send another expedition to the relief of Lieutenant Greely this year."

This memorandum is dated September 19, 1883. I offer the entire matter in evidence, but I only read so much as is pertinent to the allegation. I do not care about giving the remainder, if the Court does not wish it. If the Court desires the entire memorandum to be read I will read it all.

The PRESIDENT—We do not particularly desire anything about it. You can read what you want to have received.

The JUDGE-ADVOCATE—I will, then, rest content with what I have read. This will be appended to the record and marked Exhibit C.

Mr. MACKEY—Mr. President and gentlemen of the Court, I object to the admission of that memorandum. The rule is, I submit to the Court, that the evidence must be confined to the issue, and the issue is as to whether the accused, knowing that the Secretary of War had decided that it was not practicable to send an expedition to the Arctic regions in the month of September, 1883, did criticise and impugn the action of the Secretary of War.

There is a memorandum proposed to be introduced in evidence which sets forth, not the decision of the Secretary of War, but the joint decision of the Secretary of War and the Secretary of the Navy. It may be suggested that if it was the decision of the Secretary of War and of the Navy, as the Secretary of War entered into it as a component part, the requirement of law is satisfied as to the evidence being confined to the issue; for it is the decision of the Secretary of War and also the decision of the Secretary of the Navy.

But the reason of the rule that the evidence must be confined to the issue is that the accused may be fully apprised as to what he is to answer. Neither in terms nor in effect is the joint decision of the Secretaries of War and the Navy the decision of the Secretary of War. The joint decision of the Secretary of War and of the Navy may be of higher authority than the decision either of the Secretary of War or the Secretary of the Navy simply. But it cannot be said of the joint decision of the Secretary of War and the Navy that it is the decision of the Secretary of War, any more than it can be said that it is the decision of the Secretary of the Navy.

Suppose that, instead of having here recited a joint decision of the Secretary of War and of the Navy, that it were proposed to read a decision of the Secretary of War and of the Navy, and of the Secretary of the Treasury, the Secretary of the Interior, and of the Attorney-General? With the same reason might that be put in evidence, the joint decision of five members of the Cabinet, and the prosecution could allege whereas the Secretary

of War was one of the number, the Court must hold that it was the decision of the Secretary of War.

But we are not called to plead to any such averment; and the rule, I submit to the Court, is that the allegation limits the proof. This is, as to the rules of evidence, a court of common law, although a court-martial; and the distinctive difference between a court of common law and a court sitting under the code civil is that under the civil law matters that do not belong to the issue may be introduced in evidence, but at common law the evidence must be confined to the issue.

And we respectfully submit to the Court, under the rules of evidence, that the specification recites the decision of the Secretary of War, and it is not germane to the issue to submit in evidence a decision which recites upon its face that it is the decision of the Secretaries of the War and Navy Departments.

The JUDGE-ADVOCATE—Mr. President, to me the language of this memorandum seems to be very plain. It says: "The Secretaries of War and the Navy have decided"—there being two, they both must have agreed to that decision. Therefore there were two individual acts jointly expressed in this memorandum. If the Secretary of War had not so decided, and the Secretary of the Navy had not so decided, it would not have been so recited here. It required the individual act of each to come to a conclusion upon that paper, and it seems that both agreed upon the subject. Inasmuch as the Secretary of War is the official superior, according to the 1195th section of the Revised Statutes, of the Chief Signal Officer, I presume only so much was considered in the specification as refers to the Secretary of War; because this memorandum plainly shows that the Secretary of War did so desire not to send an Arctic expedition. It was just as much his individual act as it was the joint act of the two. I do not know how the memorandum containing those conclusions came about, but I simply judge from the language.

I would also call the attention of the Court to the fact that, if there is any variance between the proof and the allegation, the Court, under the rules of military law, is perfectly at liberty to substitute or strike out and correct any variance, if it chooses.

I do not think, however, it is any material variance, and I think the accused, having already admitted this report in evidence before this Court, comes with little grace now to object to part of it.

Mr. MACKEY—We admitted nothing as to that report. We offered to admit that it bore the stamp of the Signal Office.

I invite the attention of the Court further to the fact that this is an unsigned memorandum. It does not profess to be a part of the report, and, for aught I know, is not referred to in the report of the Secretary of War. It is an unsigned memorandum. It may have been placed there by the election of some clerk. It opens with the words, "The Secretaries of War and the Navy have decided"—there may be some record of that decision beyond this. This may not be the true record. It only professes to be a memorandum of some decision that precedes it, unsigned, not incorporated in the report of the Secretary of War. The signature of the Secretary of War appears, and then follows the memorandum. I am not aware that the memorandum is referred to in the report. It may be. That would connect it with the report. This was submitted to me a few minutes ago.

We make no admissions as to the report whatsoever. It is proved that it was filed in the Signal Office on December 11, 1883. Our proposed admission was rejected, and we submit to the Court that this is a memorandum of the decision of the Secretaries of War and the Navy.

The document referred to was then submitted to the members of the Court for their inspection.

The JUDGE-ADVOCATE—Mr. President, in addition to what I have already said, I desire to call attention to page 20 of the report of the Secretary of War introduced here in evidence, where it states: "A copy of a memorandum of the views of the Secretary of the Navy and myself, made at the time, is appended."

He speaks in reference to the relief party to be sent out in September, 1883, and refers to the *Proteus* disaster in the same report.

The PRESIDENT—There is no doubt that the officiality of

this paper could be determined by bringing here the Adjutant-General of the Army, if no other person; and, therefore, it is a question only whether it is necessary, and that will depend somewhat upon the admissions.

The JUDGE-ADVOCATE—I understood the other side admitted that it was the report of the Secretary of War.

The PRESIDENT—I do not know. The question will come up in a moment, when you are ready for the main question.

The JUDGE-ADVOCATE—I am ready for the question.

The PRESIDENT—Gentlemen, the question is, Shall the objection to the admission of the memorandum be sustained?

Mr. MACKEY—Will the Court permit me to submit in writing, in two lines, the question upon which I ask its decision, which is, whether proof of the decision of the Secretary of War and of the Navy shall be admitted to support the charge?

The PRESIDENT—You may submit the question directly, but that is not the question we are now considering.

A vote was then taken by ballot.

The JUDGE-ADVOCATE—I am directed by the Court to announce that the objection of the accused to the admission of the paper in question is not sustained.

The PRESIDENT—Now, if there is any different understanding on the part of the defence as to what the intention of the question was, they can resubmit the question and give their ideas of it.

Mr. MACKEY—We desire to submit the question alone whether, assuming that the memorandum is sufficiently proved, it is admissible in evidence, as upon its face it shows a joint decision of the Secretaries of War and of the Navy, and the accused is charged with reference to the decision of the Secretary of War alone, and not with reference to the joint decision of the Secretary of War and of the Navy. We object to its admission as evidence, assuming it to be proven.

The JUDGE-ADVOCATE—Mr. President, as I understand it, that is precisely what the Court has just now ruled upon. The original objection was to the introduction of this document because it recited a joint decision of the Secretary of War and

of the Navy, while the accused was simply charged in the specification with having criticised the action of the Secretary of War.

A member of the Court—That was not my understanding when I voted.

The PRESIDENT—The question was whether the paper should be admitted. Now, if the question is put in writing and presented to the Court, we will have a decision upon that.

The counsel for the defence then prepared a written objection, which was read by the Judge-Advocate as follows:

"We object to the admission of the paper entitled 'Memorandum,' on the ground that it purports to be a joint decision of the Secretaries of War and the Navy that it was not practicable to send another expedition to the relief of Lieutenant Greely in September, 1883.

"The accused is not charged with having impugned such joint decision. He is charged with having criticised the decision of the Secretary of War, and the proof must be confined to the issue."

The PRESIDENT—It must not be put on that ground. I only meant to say that if the accused thought the question had not been properly stated in the previous decision, that a new question might be made to cover the point. But I did not request it at all.

Mr. MACKEY—That is the question.

The PRESIDENT—That is what the counsel for the accused presents as what he thinks the question was.

The JUDGE-ADVOCATE—I would like to be heard a moment on this question.

Mr. MACKEY—I should like to read my own objection to the Court. That is the proper professional way of doing it.

The JUDGE-ADVOCATE—I have no objection to that at all.

Mr. MACKEY (reading)—"We object to the admission of the paper entitled 'Memorandum,' on the ground that it purports to be the joint decision of the Secretaries of War and the Navy that it was not practicable to send another expedition to the relief of Lieutenant Greely in September, 1883. The accused is not charged with having impugned such joint decision. He is charged with having criticised the decision of the Secretary of War, and the proof must be confined to the issue."

The JUDGE-ADVOCATE—As I have said before, Mr. President, I consider the objection here made as a most remarkable one. I stated before that, in order that the Secretary of War and the Secretary of the Navy should be able to come to a joint conclusion on the matter at issue, it required the complete assent of each one of them, and that, therefore, this joint action is as much an individual act of the Secretary of War as it is an individual act of the Secretary of the Navy. Their thoughts, their ideas in the matter happened to agree. They expressed their decision in this memorandum jointly, I presume to preserve the record of it. The Secretary of War says in his report, "A copy of the memorandum of the *views* of the Secretary of the Navy and myself, made at the time, is appended." It is as much the action of the one as it is the action of the other.

Now, if we go to other matters to seek information in the criminal law on the joint action of people, we find that, though one may commit an offence or a crime of a certain character, and another person may stand by and see him do it and aid him in doing it, though he may not have done the exact act that the other party did, yet both are indicted as principals and can be tried for the principal act. But should they desire a severance, each one can be tried separately, though he may not have done the exact act that the other is charged with having committed. That is to say, the proof may be at variance; they may have done it jointly.

Applying that rule to this case, there was in this case an individual act, an individual acquiescence of the Secretary of War in these views, an individual acquiescence of the Secretary of the Navy, but they expressed them jointly. There could not have been any such decision had either one or the other disagreed.

For the purposes of this case it makes no difference whether it was the joint decision or whether it was so announced or not.

The specification simply recites that the Secretary of War had so decided. The Secretary of War was the official superior, under the law, of the Chief Signal Officer. And I earnestly ask the Court to take this matter into serious consideration before they make their final decision.

Mr. MACKEY—I shall occupy the time of the Court but a moment. If I correctly translate the language of the learned Judge-Advocate, his proposition is that if the offence be jointly charged as committed against one, even though the proof show that it was committed against two jointly, the requirement of law is satisfied.

The JUDGE-ADVOCATE—I beg your pardon ; I said by one.

Mr. MACKEY—Suppose a party indicted charged with the larceny of goods, of a certain article, the property of John Doe and Richard Roe. We come into court and it is proposed to prove that it is the separate, sole, and distinct property of John Doe. Why, the rulings are innumerable upon the principle there involved that there is a fatal variance in such a case between the indictment and the proof. But, it may be suggested, that may do in a criminal court, where you are dealing with counts in an indictment. But the authorities who have written upon the law of courts-martial say that precisely the same principles that govern the rulings of criminal courts of common law must govern a court-martial. There is no variance among the authorities on that point.

In this case it is urged upon the Court that a joint decision made by the Secretary of War and of the Navy in relation to a naval expedition must be regarded as the sole decision of the Secretary of War. If the two Secretaries are to be separated at all with reference to this decision, it being a decision in regard to a naval expedition, we could more rationally assume that it was the decision of the Secretary of the Navy alone, and not the decision of the Secretary of War. Upon its face it related to a matter not ordinarily within the jurisdiction of the War Department, but of the Navy Department. It was an expedition by sea, and it would not be assumed for a moment, from the language of the specification, that that is the decision as to which we are charged with criticising and impugning.

I state in good faith, may it please the Court, that I expected the production of some decision of the Secretary of War as the Secretary of War, deciding in the line of his duty. We are not furnished that, but are presented here, as the very foundation of the prosecution, with the joint decision of the two Sec-

retaries. The prosecution might as well present us the joint decision of the Secretary of War and of the Navy and of the Attorney-General of the United States upon this question, and say, That is what we meant in the specification : we meant the joint decision of the two Secretaries that General Hazen impugned. But the rule is that the prosecution must identify the matter of the charge, and the proof must be directed to that.

The learned Judge-Advocate states that the Court may admit it and consider it hereafter. That is true. But if an objection is made to the introduction of evidence on the ground that it is irrelevant, the Court passes upon it in the first instance, and does not burden the record with what is not pertinent to the issue. In other words, the Court will do at the beginning what in law and in justice and good conscience is demanded at the end.

The JUDGE-ADVOCATE—Mr. President, the nice and fine distinctions permitted in civil courts in matters of this kind do not pertain in courts-martial, according to the books of reference which we have ; and courts-martial, when the proof and the allegation are at variance, have full and ample power to correct that variance in their findings. I submit that the fine and nice distinctions applicable in the civil courts, which the counsel brings in here, are not applicable in military courts, according to our military law-books.

Mr. MACKEY—I have here an authority, if the Court desires to consider it, upon which my remarks rest as to the laws of evidence governing this Court in the admission of testimony. I refer to 3d Greenleaf, sections 476 and 477. The whole subject is there treated as to these courts being bound by the same rules that govern in courts of common law.

The PRESIDENT—Does any member of the Court desire that the Court be cleared for deliberation ?

A member of the Court—I desire to have the Court cleared.

The PRESIDENT—The doors will be closed.

The Court was then cleared for deliberation. When the doors were re-opened, and the accused and his counsel had resumed their seats, the Judge-Advocate announced the decision as follows (a short recess in the meantime having been taken) :

The JUDGE-ADVOCATE—I am directed by the Court to announce as its decision that the objection made by the defence is not sustained.

Mr. President, I would now ask that the accused produce before this Court the telegram alleged to have been sent to him by Captain Mills on September 19, 1883, from this city to Port Townsend, Washington Territory.

Mr. MACKEY—If it is in our possession we shall do so; and I think we have it.

After a few moments spent in consultation with the defence the Judge-Advocate said:

The JUDGE-ADVOCATE—I desire to state that in response to the notice served on the other side for the production of the telegram in question, the defence say, if I understand them correctly, that it is not in their possession now.

Mr. MACKEY—Not now. But I will state that the defence would not demand that the original of that telegram should be produced if Captain Mills, the Acting Chief Signal Officer, can identify the alleged copy as a true copy. In that case we will dispense with the introduction of the original. But General Hazen has not borne it in memory, and cannot remember.

The JUDGE-ADVOCATE—And you will consent to give this copy the same force and effect as if the original had been produced?

Mr. MACKEY—Yes; that is the force and effect of my statement.

The JUDGE-ADVOCATE—I want it understood, so that there will be no misunderstanding about it hereafter.

Mr. MACKEY—We have saved the necessity of that.

SAMUEL M. MILLS, a witness called by the prosecution, then came before the Court, and was duly sworn by the Judge-Advocate.

By the JUDGE-ADVOCATE:

Q. Please state your name, rank, station, and duties. A. Samuel M. Mills; Captain Fifth Artillery; at present stationed in Washington; Acting Chief Signal Officer of the Army.

Q. Do you know who the Chief Signal Officer of the Army was during the month of December, 1883? A. Yes, sir; General Hazen.

Q. You were on duty in the office during that month as Signal Officer? A. I think so; I cannot say positively. I will have to refer to the reports—the morning report.

Mr. MACKEY—Please do not state it unless you know.

The WITNESS—In December, 1883? General Hazen may have been temporarily absent; I cannot answer.

Q. Were you the next in rank to him? A. Yes, sir.

Q. If he had been absent would you not have acted in his place? A. Yes, sir.

Q. Do you know whether you acted in his place during December or not? A. I could not state from memory whether I was acting. It frequently occurred during the year that I was acting, but I could not say positively whether I was acting during the month of December, 1883, or not, without referring to the records.

Q. Have you any means of refreshing your memory as to whether you acted at that time or not? A. Not without consulting the records of the office. It frequently happened that I was acting for a few days at a time during the temporary absence of the Chief Signal Officer, but I could not recall it from memory.

Q. We will leave that subject for the present and go to another one. Do you remember anything about a telegram sent by you to General Hazen somewhere about the 19th of December, 1883? A. Yes, sir.

Q. What is that paper you have in your hand? A. That is what it purports to be—a copy of a telegram sent by me to General Hazen on or about the 19th of September, 1883.

The JUDGE-ADVOCATE—With the permission of the Court I will read it.

The Judge-Advocate read as follows:

"September 19, 1883.

"To General W. B. HAZEN, Port Townsend, W. T.:

"Secretaries War and Navy, after patient consultation with Arctic ex-

plorers, conclude nothing further possible this year. No chance to put vessel sufficiently north to reach Greely either by boat or sledge.

"(Signed) MILLS.

"A true copy of the original on file in the Telegraph Division, Office of the Chief Signal Officer of the Army.

"B. M. PURSELL,

"*Second Lieutenant Signal Corps, U. S. A.,*

"In charge of the correspondence and records in the Office of the Chief Signal Officer of the Army."

(The foregoing paper is appended and marked Exhibit D.)

The JUDGE-ADVOCATE—I understand that the other side admits this copy to have the same effect as though the original had been produced here.

Mr. MACKEY—That is the admission, and no more.

The JUDGE-ADVOCATE—The defence now admits that the accused received a telegram to the effect as stated in this paper. Is that correct?

Mr. MACKEY—That is correct; that which led to the admission being the consideration that the prosecution could not prove that General Hazen received it unless we admit it. We admit it.

The JUDGE-ADVOCATE—Mr. President, I can speak for myself on that subject. The counsel on the other side does not know whether I could prove it or not, and I ask him to confine himself to his own side of the house in that respect. I think I am perfectly capable of telling whether I can prove it or not.

Mr. MACKEY—We will endeavor not to follow the example of the Judge-Advocate hereafter, may it please the Court.

The JUDGE-ADVOCATE (to the witness)—You are not able to tell whether General Hazen was Chief Signal Officer or not during the month of December, without consulting the records? A. I could not tell whether I was Acting Chief Signal Officer during the month of December or not, without consulting the records.

The JUDGE-ADVOCATE—I am afraid if the other side will not admit that General Hazen was the Chief Signal Officer on the 11th of December last, I will have to delay this Court in

order to enable the witness to refresh his memory on that subject by referring to the records.

Mr. MACKEY—We admit that he is the Chief Signal Officer of the Army now and was then. The question as to whether he was acting there on duty on that date is another question.

The PRESIDENT—I presume it is very probable that Captain Mills was acting at the date he wrote that dispatch, but it is quite certain that he can, by inquiring of his own office, ascertain what dates he was Acting Signal Officer. If he cannot do it this afternoon before the adjournment of the Court, he can produce the record to-morrow morning.

Mr. MACKEY—General Hazen is unable to recall the special fact.

The PRESIDENT—The witness has the record at his office, and by morning can produce it.

The JUDGE-ADVOCATE—That, however, Mr. President, delays the close of my case until such time as this witness is able to come before this Court and positively testify on that subject.

The PRESIDENT (to the witness)—How long would it take you to ascertain this afternoon ?

The WITNESS—I could ascertain in half an hour.

The JUDGE-ADVOCATE—I cannot proceed without it.

The PRESIDENT—We will take a recess, then, for a half an hour.

A recess was then taken to enable the witness to procure the necessary information.

The recess having expired, all being present as before, the examination of the witness was resumed.

By the JUDGE-ADVOCATE :

Q. Will you please state to the Court whether you now know if General Hazen was on duty as Chief Signal Officer during the month of December, 1883 ? A. On consulting the records, the return which is made to the Adjutant-General of the Army at the end of every month, which shows the days absent of any officer—a return which is made from all bureau officers and headquarters—General Hazen does not appear to have been absent any day during the month of December.

Q. What is that paper you have in your hand? A. This is the monthly return that is made to the Adjutant-General of the Army of the officers and their stations, and their absence, if any.

Q. Who is it signed by? A. It is signed by General Hazen, the Chief Signal Officer.

Q. Is that his signature? A. Yes, sir.

The JUDGE-ADVOCATE—I offer this report in evidence.

The report referred to will be found in the appendix, marked Exhibit E.

The PRESIDENT—I presume if General Hazen was absent at any time during that month, on account of your rank you would have been announced in orders as Acting Signal Officer?

The WITNESS—Yes, sir.

The JUDGE-ADVOCATE—This would for the present conclude the case of the prosecution; but I would not now like to announce formally that the prosecution here rested, for I desire to have an opportunity, before making that formal announcement, to examine the record of the Court which has not yet been written up. I hardly think it would be fair that I should be required now to announce the close of the prosecution, because after the examination of the record I might find some slight omissions which I have overlooked, and I would not like to be cut off from supplying them. Therefore I would like an opportunity until to-morrow morning to examine the record, and then, if I am satisfied, to make the formal announcement of the close of the prosecution.

Mr. MACKEY—The counsel for the government makes that statement probably on the assumption that the counsel for the accused does not propose to cross-examine the witness.

The JUDGE-ADVOCATE—I beg pardon. You may cross-examine, if you desire.

Mr. MACKEY—May it please the Court, I propose to propound some questions to Captain Mills which would not of right be allowed in cross-examination, the cross-examination being restricted to matters as to which the witness has been examined in chief. But, to save the necessity of again requiring

the appearance of Captain Mills, I will propound the questions and ask leave of the Court to permit them to be answered at this stage.

The PRESIDENT—You may proceed.

Cross-examination.

By Mr. MACKEY:

Q. A memorandum has been introduced here purporting to be a memorandum of the decision of the Secretaries of War and the Navy, contained in a pamphlet bearing the stamp of the Signal Office. Can you inform me whether any manuscript paper containing the matter of that memorandum was filed in the Signal Office?

The JUDGE-ADVOCATE—It is hardly necessary for me to quote to this Court the elementary rules that govern the examination of witnesses. The cross-examination has of necessity to be restricted to matters embraced in the examination-in-chief. I have not called this witness for the purpose of establishing any memorandum. I have not asked him a question upon it. The question now propounded is entirely foreign to the examination-in-chief. If the defence desires Captain Mills as a witness they can call him. But I do not now wish that the defence should inject into the prosecution its defence. If it has anything to say on that subject let them call Captain Mills. He can be brought here at any time. I ask the Court to proceed regularly, in accordance with the rules of evidence; for if it once goes beyond them there is no knowing where the matter may end.

MR. MACKEY—It is not necessary, at this stage of the case, to argue the question, but the authorities show that it is purely a matter within the discretion of the Court.

The JUDGE-ADVOCATE—I would like to remind the counsel of his own statement, made a little while ago, that courts-martial are governed by the common-law rules of evidence, and I would like to hold him down to that.

Mr. MACKEY—That is a rule of evidence.

The PRESIDENT—Is it understood that Captain Mills is now

a witness for the defence, in case the examination should commence by the defence ?

Mr. MACKEY—If the prosecution announces that it has closed we will make Captain Mills a witness for the defence.

The PRESIDENT—The question, then, will only be as to whether the Court, without objection from the defence, will permit this examination to proceed in the morning on the part of the prosecution, after the record is read, notwithstanding your action with the witness at present as proposed.

Mr. MACKEY—I will assent to that.

The JUDGE-ADVOCATE—I do not quite understand the proposition.

The PRESIDENT—The proposition is this : If the defence commences the examination of Captain Mills now as their witness, I ask whether there is any objection on the part of the defence to your reserving the right to continue your examination in the morning after the reading of the record, if you so desire ?

The JUDGE-ADVOCATE—I have no objection to that, provided that Captain Mills is not now cross-examined, but is considered as giving original testimony for the defence.

The PRESIDENT—The defence will please state whether they will consider him their witness or not.

Mr. MACKEY—We will consider him as our witness.

The PRESIDENT—Then the decision of the Court is that, with the understanding that the Judge-Advocate may continue his examination in the morning, the defence may commence to examine the witness as their witness.

Mr. MACKEY—Yes, the defence not being bound to proceed in the morning, unless the Judge-Advocate states that he has closed.

The direct examination of the witness was then proceeded with on the part of the defence.

By Mr. MACKEY :

Q. Please state, after examining that memorandum, if any paper or manuscript containing the matter of that memorandum is on file in the Signal Office to your knowledge. A. From

memory, I do not think that a signed copy of the memorandum was furnished to the office of the Chief Signal Officer by the Secretary of War or of the Navy at the time the decision was rendered, and, in looking through the records recently, I could not find a copy of it there, although I do believe that there were a number of hektograph copies of it struck off at the time, but they were unsigned and were for general distribution.

Q. By whom were they struck off? A. It was done at the War Department or somewhere in the War or Navy Departments. I do not know where.

Q. It may have been in the Navy Department. Could it not have been that they were struck off there? A. Yes, it may have been so. I simply saw them in hektograph form after reading the decision.

Q. That memorandum bears date September 19, 1883? A. Yes, sir; it was about that time.

Q. Were you acting as Chief Signal Officer at that date? A. I was.

Q. Was General Hazen in the city or absent from the city? A. He was absent.

Q. Can you state, as a matter of fact, whether that memorandum was a memorandum officially furnished to the Signal Office, or a memorandum furnished to the press for circulation through the newspapers? A. The Secretary of War sent for me and showed me a copy of this memorandum. He may have given me a copy at the time, but my recollection is that it was intended more especially to be given to the Associated Press as an answer to all questions that had been raised by parents and friends and other persons suggesting this or that relief party. But I am under the impression that he gave me a hektograph copy of it; at any rate I saw it. He announced it to me, and told me that that was the decision.

Q. That memorandum purports, as you see, to be the decision of the Secretaries of the War and of the Navy. Do you know of any decision of the Secretary of War, separate and apart from that, on file in your office? A. No, sir.

Mr. MACKEY—That will do. I have no further question.

Cross-examination.

By the JUDGE-ADVOCATE:

Q. Who do you say communicated this decision of the Secretary of War and the Navy to you as to this relief expedition? A. The Secretary of War, I think, in person.

Q. He communicated it to you? A. He sent for me, and either handed me a copy or asked me to read it, or something to that effect. I got it through the Secretary of War.

Q. From the Secretary of War? A. Yes, sir; from the Secretary of War.

Q. Do I understand you to say also that this decision of the Secretary of War was generally disseminated throughout the country through the Associated Press, and scattered broadcast everywhere? A. Yes, sir; that was purposely done, I think, because there were so many anxious inquiries as to what would be done, and so many suggestions had been made, that I think it was purposely done as an answer to all suggestions and all inquiries.

Q. Therefore it was generally known, and more particularly in your office? A. Oh! yes, sir; it was well known. It was a well-established fact.

By Mr. MACKEY:

Q. Did this decision of the Secretaries of War and the Navy relate to a military or naval expedition?

The JUDGE-ADVOCATE—One moment.

Mr. MACKEY—It is unnecessary to answer that; the paper shows for itself.

By the COURT:

Q. I would like to ask the witness what relation exists in point of time and substance between the telegram sent to General Hazen and the report submitted to the witness by the Secretary of War? A. It was the same date—September 19.

Q. And the one sent in consequence of the other? A. Yes, sir. It was September 19, and my dispatch to General Hazen was of the same date, September 19.

Q. For what reason was the dispatch sent? A. Because of this decision.

Q. Did the Secretary of War say that the decision was his own? A. Not specially.

Mr. MACKEY—I would like to ask another question.

The JUDGE-ADVOCATE—I presume it can be considered as a question by the Court.

Mr. MACKEY—Yes, assuming that the witness has been recalled for the purpose of this question. (To the witness:) Did or did not the Secretary of War state to you at that interview that the Secretary of the Navy and himself had come to this conclusion?

The JUDGE-ADVOCATE—Do I understand, Mr. President, that the Court adopts the question?

The PRESIDENT—There has been no objection to it. I cannot tell.

Mr. MACKEY—It is assumed that he is recalled. (To the witness:) Did or did not the Secretary of War state to you at that time, if you can bear in memory his answer, that "the Secretary of the Navy and myself have come to the conclusion," etc.? A. I do not think the Secretary of War premised the statement with that. He handed me the decision and said, "This is the decision," or "This is my decision"—I am not certain which; but he handed me the paper, which of itself showed that it was the decision, or, what it purports to be, the decision of the Secretary of the Navy and himself.

The JUDGE-ADVOCATE—The accused's telegram shows that.

There being no questions by the Court, the witness was excused.

The PRESIDENT—Have the defence any more witnesses to present at this time?

Mr. MACKEY—We might call Mr. Hudson, if the Court please.

The PRESIDENT—The defence may proceed by calling Mr. Hudson as a witness.

The JUDGE-ADVOCATE—Before proceeding with the next witness for the defence, if the Court will permit I would like to submit a letter which I have just received from the defence. I will read it:

'COURT-MARTIAL CHAMBERS, EBBITT HOUSE,
March 13, 1885.

"*In the matter of the trial of General W. B. Hazen.*

"CAPTAIN J. W. CLOUS, JUDGE-ADVOCATE:

"Please have summons issued for the following witness: Charles S. Sweet.

"T. J. MACKEY,
"Counsel for General Hazen."

I submit this application of the accused to the Court, unde the same circumstances that I submitted a like application to the Court this morning, and the remarks I then made I desire to apply to this case, without now repeating them and unnecessarily taking up the time of the Court.

Mr. MACKEY—We invoke the same decision, may it please the Court, as was made this morning. The witness resides in the city and is a material witness.

The PRESIDENT—The decision of this morning applies to this case. That will be the action.

The JUDGE-ADVOCATE—Very well; the witness will then be summoned.

I presume it is the purpose of the defence to go on with their witness, with the permission of the Court.

The PRESIDENT—I presume so, after he has been sworn.

EDMUND HUDSON, a witness called by the defence, then came before the Court and was duly sworn by the Judge-Advocate.

By Mr. MACKEY:

Q. Please state your name, your place of residence, and occupation. A. Edmund Hudson; I have so many occupations in connection with newspapers that I can hardly state, but I am editor of the *Capital;* residence, 134 Pennsylvania Avenue, S. E., Washington.

Q. Please state whether you were the editor of the *Capital* on the first day of March, 1885. A. I was.

Q. Is this a copy of the issue from your office of that date, March 1, 1885 (handing a copy of the paper in question to the witness)? A. Yes, sir, it is.

The JUDGE-ADVOCATE—I would like to ask the defence to state their purpose in the introduction of this paper.

Mr. MACKEY—It will be very rapidly developed, if the learned Judge-Advocate will wait. (To the witness :) Can you state who wrote that paragraph enclosed with blue lines? I will read the paragraph to the Court, if there is no objection.

The counsel read as follows :

"*From the Washington Capital of March* 1, 1885, *under the title of 'Sub Rosa.'*

"I am told that General Hazen has prepared a letter in which he undertakes to lay the whole responsibility of the failure to relieve the Greely expedition in 1883 on Secretary Lincoln's shoulders. Efforts have been made to collect evidence to prove that another expedition might have been sent after the *Proteus* disaster in 1883. It is said that Secretary Lincoln's attention has been called to the existence of this letter, and that it may not be published. I cannot believe the story that General Hazen asked for leave to go South on an inspection tour, intending to have the letter published in his absence, and not be here on the day when Secretary Lincoln shall take leave of the Department. I regret to hear that any such motive should have been attributed to him."

(To the witness :) Did you write that ?

The JUDGE-ADVOCATE—Mr. President, I object to the introduction of any newspaper articles like that read by the defence just now, as immaterial and not relevant to the issues in this case. This case is to be tried upon the facts involved. What newspaper reports may have been written or composed by this witness or any other person have, so far as I can see, no relevancy to this case. While it is my earnest desire to assist the defence as much as possible in bringing out all the material facts in this case—in fact, I consider it my duty to do so—yet I cannot sit by here in the discharge of my duties and permit collateral and foreign matter to be dragged in here on this trial. There is no telling where it is going to end if we once commence to investigate the newspapers. There are thousands of them in this country, and many of them, perhaps, have written about these matters (I do not know whether they have or not), and I do not see what this Court has to do with any newspaper articles published in the *Capital*, or in any other newspaper, in

reference to the accused. Therefore I object to the introduction of this article.

Mr. MACKEY—May it please the Court, I regret to hear the authority of newspapers questioned by the learned Judge-Advocate. The gravest specification attached to these charges is based upon a newspaper paragraph, written not by the hand of the accused, and not charged to have been written by his hand. The purpose of introducing that is, first, to fix the authorship upon this witness as the assumed author. The main object or fact has not been disclosed. Second, to trace, by gradual and well-connected proof, this paragraph back to the source that inspired it. We propose to follow by a chain of well-connected links this paragraph, and the paragraph in the Chicago *Tribune* perhaps, and we propose following them to the door of the Secretary of War's chamber, follow them to his desk, follow them to his hand, and to show that the War Secretary who has charged an officer of the Army of the United States with a violation of duty, or an alleged criticising of his action in the public prints, the seeking of a public forum to review official action—that the Secretary of War sat at his desk and coined libel like a mint; that he inspired that paragraph.

The Court has admitted the Chicago *Tribune*, a dispatch in which was the inducement that led the reporter of the *Evening Star* to question the accused. It appeared that the accused himself had been assailed, by whose hand he could not tell. We will show that it was by the hand of authority; that the hand that drew the charge and specifications against him for publishing was the hand that indited a publication first that touched his honor and conduct as a soldier.

It may be suggested that such a great breach of official duty by the Secretary of War would not justify an officer of the Army, in retaliation or for the vindication of himself, to seek the public press and make that the vehicle of his thought. And I admit that. It would not justify him, even with so great a wrong. For the Secretary of War is but for a day, and the officer of the Army is for all time, for he bears with him in part the honor of the Army, and he may safely appeal to the just judgment of his government in proper form against libels in-

dited or inspired by the Secretary of War. It is not for justification, but it is for mitigation.

Suppose—which I do not apprehend, but it is one of the safeguards that counsel should erect to prepare for the worst—suppose this Court should come to the conclusion, on weighing the evidence impartially (as it will weigh it impartially), that the accused has done the thing set forth in the specifications. This would be considered in mitigation ; and, as a safeguard, in mitigation we offer it, not conceding that the accused has done what he is charged with having done, or performed any act violative of the duty of an officer of the Army. But assuming that he had, we present this in mitigation, and by strong circumstance we will go directly to the door of truth in this matter, and we will touch the Secretary of War with it; we will reach him by the circumstances and the proof, we believe, may it please the Court.

The JUDGE-ADVOCATE—The defence is veering around the question by trying to prove the justification of General Hazen in speaking to the reporter. In order to get around the third specification, the evidence sought to be elicited from this witness is now offered for the purposes of mitigation. Mitigation of what ? There cannot be any mitigation when the matter has been established. They have denied it ; consequently they cannot justify it.

Mr. MACKEY—We are not justifying it.

The JUDGE-ADVOCATE—Consequently they cannot justify it. Seeing that that proposition would be ridiculous, they shift their ground very conveniently and say that this evidence was to be introduced in mitigation should the fact be established.

In the first place, they have denied the fact—have strenuously denied it—and if they desire to justify General Hazen's action in talking to that reporter they should first admit that he did talk to him and did cause the publication.

The first specification is, I presume, the one that this controversy refers to. I would like to say to the Court that no matter what may have been published by anybody, by the Secretary of War or his subordinates, that did not justify in the slightest degree the accused's seeking the journals of the public

press for redress. If he had any evidence or any idea that the Secretary of War or any of his subordinates had assailed him in the papers, there was a channel open for him through which he could seek redress—a legitimate channel, a legitimate process—through his superiors in the Army.

How could he right himself by appealing to the tribunal of the public press or to public opinion? Had they any control of the question? Not at all. If he believed himself aggrieved it was his duty to seek redress from his legitimate superior, to appeal to him respectfully. There is no evidence that he did so. Therefore I consider the introduction of these newspaper articles as entirely immaterial to this cause.

In the first place, I deny most emphatically that the Secretary of War himself had anything to do with any of these publications. And admitting, for the purposes of the argument, that he had, would it have justified the accused in going to the *Star* reporter and seeking the columns of the *Star* to right himself? There is no authority in such a tribunal. Why did he not go to his legitimate superiors? He wants to establish by these newspapers a provocation. An officer can have no provocation for disrespect to his superiors on account of any newspaper articles that may have been written about him.

I still insist upon my objection, and leave the matter to the Court.

Mr. MACKEY—May it please the Court, the learned Judge-Advocate has argued the admissibility of this as justification. I distinctly disclaim that it was introduced to that end. The learned Judge-Advocate has recited that the accused sought the *Star* reporter, when the *Star* reporter testifies that he sought the accused.

The allegation as to publication is not in the first specification, as stated by the learned Judge-Advocate, but in the third, which alleges that General Hazen did "intentionally make a statement, in answer to said newspaper reporter, with a view to its publication." The Court will recollect that the reporter testified that the inducement to him to seek General Hazen was certain publications in Western newspapers, and one in the Chicago *Tribune*, and so on. Now, it enters into the matter of the

charge against the accused that he did publish. Language, indeed, has been imputed to him which was the language of the very publication that assailed him—language in the specification. And the purpose of this, as stated, is to show that the Secretary of War, who charges the alleged publication upon the accused, inspired the publication, indited it we hope to prove, but we propose to prove certainly that he inspired the publication that led to that interview—not conceding that the prisoner at the bar has performed any act in violation of the sixty-second Article of War, as charged, but presenting them so that, if perchance this Court should hold the specifications established, it may consider any fact in mitigation if we trace that publication to the Secretary of War.

The Judge-Advocate states that the Secretary of War did not do that. That is not evidence. I state my conviction that he did do it, and that is equally without the force of testimony.

The PRESIDENT—What is understood to be the question?

Mr. MACKEY—We understand the paper was offered in evidence. There was no objection to the admission of the paper, but when I came to the question as to who wrote that paragraph the objection was made. Then the paragraph was read by me. The Court cannot anticipate what the answer of this witness will be and rule it out.

The JUDGE-ADVOCATE—I object to the introduction of the paper and the article in it.

The PRESIDENT—The Court will now be closed for the consideration of this question, and after the doors are reopened it will adjourn until to-morrow morning at eleven o'clock.

The Court was then cleared for deliberation. Upon the reopening of the doors, the hour of three P.M. having arrived, the Court adjourned until to-morrow, Saturday, March 14, 1885, at eleven o'clock A.M.

FOURTH DAY.

ROOMS OF THE GENERAL COURT-MARTIAL,
EBBITT HOUSE, WASHINGTON, D. C.,
Saturday, March 14, 1885, 11 A.M.

The JUDGE-ADVOCATE—I am directed by the Court to announce that the objection of the Judge-Advocate which was pending at the close of yesterday's session is sustained.

The JUDGE-ADVOCATE—I will now announce to the Court that the prosecution here rests.

TESTIMONY FOR THE DEFENCE.

Mr. MACKEY—Mr. President and gentlemen of the Court, the defence proposes to introduce so much of the report of the Secretary of War for the year 1884—the annual report—as is embraced in red lines, commencing on page 22 and ending on page 26. It may not be read now, but I desire to introduce it in evidence. It has been shown to the Judge-Advocate, and it is pertinent.

The JUDGE-ADVOCATE—I would ask the counsel for the accused to be kind enough to state the purpose in introducing it, so that I may offer any objections I may have.

Mr. MACKEY—One of the purposes for which it is introduced is in explanation of the meaning and intent of the paragraph cited in one of the specifications—in the first specification—from the annual report of the Chief Signal Officer, in which the Chief Signal Officer referred, in the opening of the letter which has been read to the Court, to certain harsh strictures made upon him by the Secretary of War. This is the portion of the annual report that relates to the Arctic work, and I propose to introduce in evidence all that the Secretary of War said in his

annual report. It covers four pages, and is in reference to his connection with the Arctic work, his action and the obnoxious action of the Chief Signal Officer. That is one of the purposes, and I presume that is sufficient to make it relevant.

The PRESIDENT—Has the Judge-Advocate anything to say on the subject?

The JUDGE-ADVOCATE—For the purpose as just stated by the counsel, and for that purpose only, I have no objection to the admission of the document.

Mr. MACKEY—If the Court desire to hear argument I am prepared to enter upon it, to show that we are entitled to use it for all relevant purposes in this case. You will find it useful for many purposes in this case far beyond that. Shall I read it?

The PRESIDENT—Wait a moment and we will see whether there is any necessity of proceeding in that direction further. (After consultation with the members of the Court:) That paper will be admitted.

Mr. MACKEY—I will read so much of it as is necessary.

The counsel read as follows:

(This report is fully reviewed in the argument, and hence, to economize space, it is not given here.—T. J. M.)

The JUDGE-ADVOCATE—That document, the annual report of the Secretary of War for the year 1884, will be appended to the record and marked Exhibit F.

Mr. MACKEY—Mr. President and gentlemen of the Court, the second specification and the third specification cite principally a letter alleged to have been written by the Chief Signal Officer, the accused, addressed to the Secretary of War, on the 17th day of February, 1885, and that letter has been read in evidence.

It appears in the text of the letter that there were enclosed with the letter certain statements made by Arctic navigators, Chief-Engineer Melville and others, extracts from which appear in the letter itself.

I now propose to introduce the documents to which the letter refers, and from which the extracts are made. I submit to the Court that it should be introduced as an entirety, because these are the enclosures sent with the letter.

The PRESIDENT—What has the Judge-Advocate to say on that subject?

The JUDGE-ADVOCATE—I have no objection, Mr. President, to admitting that twelve enclosures belong to this document that was introduced by the prosecution. I have no objection that those enclosures might accompany this letter for the purpose of showing that those twelve enclosures belong to the letter, but for no other purpose.

Mr. MACKEY—I propose reading these enclosures. They are intensely interesting.

The JUDGE-ADVOCATE—I do not wish it to be understood that I admit as true the papers submitted in every particular. I simply wish to admit that they are the enclosures that accompany that letter to the Secretary of War.

The PRESIDENT—The Court will be cleared for the purpose of determining the question in closed session, after which there will be a recess of fifteen minutes.

The Court was then cleared for deliberation. When the doors were reopened (a recess having been in the meantime taken), and the accused and his counsel had resumed their seats, the Judge-Advocate announced the decision of the Court as follows:

The JUDGE-ADVOCATE—I am directed by the Court to announce as its decision that it decides to admit the enclosures.

The PRESIDENT—I would say to the counsel for the accused that it has been suggested that possibly if these papers were filed, to be used by the counsel when they come to the argument, it might save the time of the Court which would be consumed in hearing them read now.

Mr. MACKEY—I will state to the Court that I can best preserve the proper order of the defence by reading them now, but will not read them again, and merely refer to them in passing. They are generally brief, with the exception of one of them.

A member of the Court—I move that the papers be filed.

The PRESIDENT—Upon consultation the Court have directed that the exhibits be filed, and used hereafter as suggested by the counsel, but that they be not read now, so that the court may proceed without delay, believing it not to be material to

a correct judgment of this case that they should be read at this time.

Mr. MACKEY—The Court does not, by its decision, preclude the reading at a later stage, however? This is a dumb witness, that speaks only through counsel.

The PRESIDENT—The Court thinks that the accused has a right to use these papers, but the Court does not desire at present to hear them read, because the progress of the case may be somewhat delayed thereby. The papers are before the Court, and can be used by the defence as other papers are used. The Court prefers that the reading of them should be deferred for the present.

Mr. MACKEY—May I be permitted to read them by their titles, so as to identify them?

The PRESIDENT—There is no objection to the reading of the titles, I suppose.

Mr. MACKEY—I propose to file as an exhibit one of the enclosures in that letter of February 17, 1885, of the Chief Signal Officer of the Army to the honorable Secretary of War—a letter from Chief-Engineer George W. Melville, U. S. N., dated December 5, 1884, and addressed to the Chief Signal Officer of the Army.

(The paper referred to is appended to the record, marked Exhibit G.)

Also a letter of December 10, 1884, from Lieutenant A. W. Greely, U. S. A., to the Chief Signal Officer of the Army.

(Appended to the record, marked Exhibit H.)

Also a letter of date Washington, D. C., December 19, 1884, from D. L. Brainard, Sergeant Signal Corps, addressed to the Chief Signal Officer of the Army.

(Appended to the record, marked Exhibit I.)

Also a letter, dated St. John's, N. F., December 22, 1884, from T. N. Molloy, United States Consul, addressed to the Chief Signal Officer of the Army, authenticating certified statements of sealing-captains therewith enclosed.

(Appended to the record, marked Exhibit J.)

Also a letter from Captain Richard Pike, from St. John's,

N. F., or a statement of Captain Richard Pike, of St. John's, N. F., dated St. John's, N. F., December 18, 1884, addressed to the Chief Signal Officer of the Army.

(Appended to the record, marked Exhibit K.)

Also a statement of Thomas White, Arctic navigator, of St. John's, N. F., of date December 20, 1884.

(Appended to the record, marked Exhibit L.)

Also the statement of the Hon. John Syme, St. John's, N. F., certifying to the character and standing of certain parties as Arctic navigators, dated December 20, 1884.

(Appended to the record, marked Exhibit M.)

Also the statement of Samuel Walsh, ice-master and Arctic navigator, of St. John's, N. F., of date December 18, 1884.

(Appended to the record, marked Exhibit N.)

Also statement of William Carlson, ice-navigator, of St. John's, N. F., dated December 18, 1884.

(Appended to the record, marked Exhibit O.)

Also a statement of Peter McPherson, ice-navigator and late chief-engineer steamer *Proteus*, dated December 20, 1884.

(Appended to the record, marked Exhibit P.)

Also tabulated statement in eight columns, showing the temperature Fahrenheit at Upernavik, Greenland, in latitude 72° 47′ N., and longitude W. 56°, in the winters of 1883 and 1884.

(Appended to the record, marked Exhibit Q.)

Also letter of the Hon. John Syme, of St. John's, N. F., with reference to the same subject, of date December 22, 1884.

(Appended to the record, marked Exhibit R.)

Mr. MACKEY—The official annual report, may it please the Court, of the Chief Signal Officer of the Army for the year 1884 has been introduced by the Judge-Advocate. I propose to present specially, and call the attention of the Court to, so much of that report as commences at the fifteenth line of page 16, with the word "up," and ends with the words "the entire party saved," on page 19. The portions which have been marked

on the original copy introduced contain the matter which was made the subject of the alleged harsh strictures embodied in the report of the Secretary of War for 1884, which I read just before the Court took a recess; and for that reason I beg leave to read so much of it, so that the order may be preserved in the regular sequence. This is the subject of the Secretary's strictures. It is not very long.

The counsel then read as follows :

"Up to the return of the expedition this year I had hoped there would be no occasion for raising the question of blame at this or any future time. But new light has been cast upon the subject, and with it my duty becomes plain, and the truth of history, and justice to all, call for such impartial inquiry and authoritative judgment as a tribunal broad enough to embrace the whole question shall institute and pronounce, and the Congress of the United States is manifestly such tribunal.

"The International Polar Expedition was organized and set in motion by the direct order of the President of the United States, pursuant to the authority vested in him by an Act of Congress. Its progress and achievements have commanded the attention and challenged the admiration of foreign countries, and reflected new lustre upon our own.

"The magnitude of those achievements has only been paralleled by the disaster in which it terminated. That such disaster could have been averted, and that it was in no respect due to the commander of that expedition, can be established by indubitable evidence. The causes that co-operated to produce a tragedy that has appalled the civilized world, and the responsibility for such dire result, can be traced with certainty.

"I therefore trust that this whole matter of the Lady Franklin Bay Expedition, and the expeditions organized for its relief, will be deemed worthy of a thorough investigation by Congress—a body that will perform its duty and stand above the suspicion of being swayed by partisan considerations.

"This expedition will stand among the foremost of its kind. It carried its work further north than any other. It gained detailed geographical knowledge of greater breadth in that region than any other. It brought back more complete data upon physical problems than any other. It dispelled the myths and superstitions of Arctic living, and completed in a masterly way all the services it was sent to do, in the exact manner as it was arranged, having made a clear addition to the sum of human knowledge, and returned to the place of rendezvous intact and perfect, and it is proper that the fault of failure afterwards be fully understood. Both Lieutenant Greely in the Arctic, and the Signal Bureau in Washington, carried out their parts of the prearranged plan of rescue literally and successfully in every particular. This plan seemed to be a good one, and Lieuten-

ant Greely reiterated it after reaching his station and seeing what he wanted, and it proved to be good.

"The sinking of the *Proteus*, which terminated this success, which to that time was complete and faultless, was an accident for which there may or may not have been blame. But means to substantially restore the losses so incurred had been provided and were at hand. The *Proteus* was the best ship with the best captain for the purpose to be had, both being the same employed by Lieutenant Greely in 1881, and she was very perfectly supplied and well equipped. She was sent at the exact season then believed to be the best for the fullest chances of success, and she was accustomed to Arctic navigation. But when she sank the full responsibility for what followed rested with those on the spot, and it becomes necessary, in the fuller lights, to discuss it, that censure may not be misplaced. Besides the duty that necessarily reposed in the commander present, Lieutenant Garlington's orders read: 'A ship of the United States Navy, the *Yantic*, will accompany you as far as Littleton Island, rendering you such aid as may become necessary and as may be determined by the captain of that ship and yourself when on the spot.' This was all any commander so situated, imbued with a just appreciation of his duties and responsibilities, could wish.

"Lieutenant Garlington failed, when at Cape Sabine, July 22, to replace the spoiled parts of the cache of food previously left at Cape Sabine, as he was ordered in his instructions to do. Lieutenant Greely says of this in a letter written by him for the Chief Signal Officer, April 30, supposing himself at the point of death: 'Had Lieutenant Garlington carried out your orders and replaced the two hundred and forty rations rum and one hundred and twenty alcohol in English cache here, and the two hundred and ten pounds mouldy English bread, spoiled English chocolate and potatoes, melted sugar, and the two hundred and ten pounds rotten dog-biscuit, we would, without doubt, be saved.' Lieutenant Garlington saved from the wreck about twenty-one hundred rations—they being but a part of those put upon the ice and could have been saved—which he landed at Cape Sabine. These rations for Lieutenant Greely's party were priceless; they were worth many human lives. Of these rations he left for them about one-fourth part, and of this but about one hundred and fifty pounds of meat, taking the remainder away in his boats for his own use—seeming only to limit the quantity taken by the capacity of his boats, when his men were strong and well, in the summer season, had suffered no hardships, were abundantly supplied with guns and ammunition, in a region full of game and walrus, in the neighborhood of the friendly Esquimaux, and with their faces set towards plenty. A proper appreciation of a sacred duty and of his obligations to his trust and to Lieutenant Greely would have shown him that two-thirds of these stores ought to have been left, and had this been done Lieutenant Greely says his party 'would all have been saved.' With one-third of the rations taken away and other resources at hand, the retreating party would have been reasonably safe. Besides, the food improvidently

used and wasted—used for fuel, used to feed to repletion a dog, and left to waste in his camps—would have saved human lives . . . at Camp Clay.

"On reaching Littleton Island it was found that its shores were literally lined with walrus, while there were in the hands of the party fifteen guns and some four or five thousand rounds of ammunition—a better supply than any expedition ever before had in those regions.

"There is scarcely any room for doubt that in a few days the party could have killed and packed in the snow, as is often done with fresh meat in Dakota, walrus-meat enough, with stores in caches in the vicinity and saved from the *Proteus*, to have supplied the combined party of Lieutenants Garlington and Greely a wholesome and abundant ration for a year.

"Lieutenant Ray says that at Point Barrow, under like circumstances, his party killed walrus enough in one day to have supplied his party a year.

"Lieutenant Garlington reports that he left Littleton Island with his party for the south for the purpose of finding the escort ship and returning with it with supplies for Lieutenant Greely. But when he did reach it, only three days' steaming away from Littleton Island, he made no demand to her captain for her return, while she had on board, as also had Governor Elborg at Upernavik, ample food available for this purpose.

"The order of the Secretary of the Navy to the captain of the escort ship gave him latitude to remain at Littleton Island until near the close of the season, about September 30; yet, with a full knowledge of the distressing condition Lieutenant Greely would find himself in, and the whole plan of his rescue being familiar to him, he turned southward at once, a month earlier than required by the season, leaving nothing for Lieutenant Greely, and so intent was he to get south that he appears to have had the intention of leaving Lieutenant Garlington's party behind, if not found in his path. The tone of this officer's utterances upon these subjects has impressed me with a want of efficient effort or intent on his part to perform his duties, disqualifying him for their loyal performance.

"No language could be more just, and yet more severe, than that addressed by the Secretary of the Navy to Commander Wildes after that officer had written a supplementary report to justify his conduct. I beg leave to cite the letter of the Secretary of the Navy as follows :

"'NAVY DEPARTMENT, WASHINGTON,
November 2, 1883.

"'The receipt of your letter of October 16 is acknowledged. In the present aspect of the case the Department condemns (1) the agreement enclosed in your letter of June 25 between Lieutenant Garlington and yourself contemplating the separation of the *Yantic* and the *Proteus* until August 25; (2) your failure to accompany the *Proteus* from Disco Island after you had there rejoined her; (3) your unnecessary visit to Upernavik on July 25 to inquire of the Danish authorities how the ice was probably moving between yourself and the *Proteus*, the six days of your delay at which point would

have brought you to Littleton Island before the party of the *Proteus* went south; and (4) your failure, when you found at Littleton Island that the demoralized party of the *Proteus* had gone south in search of the Swedish steamer *Sofia* at Cape York, to land materials for a habitation, clothing, and some food for the forgotten Greely party. What action, if any, will be taken by the Department has not yet been determined.

"'Very respectfully,

"'WM. E. CHANDLER,

"'*Secretary of the Navy.*

"'Commander FRANK WILDES, U. S. Navy,

"'*Commander U. S. S. Yantic, Navy Yard, New York.*'

"On the return of the escort ship, bringing the relief party to St. John's, September 13, there was still time, as known from previous experience and shown by subsequent facts, to send effective relief, and my six telegrams from Washington Territory, where I then happened to be, attest the earnestness of my efforts to have this done. Besides this, Captain Melville and others volunteered to go, giving their full plans for the relief.

"There is scarcely a doubt, had any one of these five means I have pointed out been availed of, the untold sufferings at Camp Clay last winter would have been prevented and the entire party saved."

Mr. MACKEY—I would like to inquire of the Judge-Advocate whether the printed slip included in the report I have been reading from is in the copy of the report already put in evidence?

The JUDGE-ADVOCATE—The slip is in the copy introduced in evidence as Exhibit A.

Mr. MACKEY—As it only occupies a few lines, I will read it.

The counsel read as follows:

NOTE TO CHAPTER ON ARCTIC WORK.

"At no time after reaching Cape Sabine could Lieutenant Greely's party have crossed Smith Sound to Littleton Island. While his men were strong, the current was so swift and so filled with masses of drifting ice that there was not the slightest prospect of success, and any attempt could only have ended in drifting helplessly on some ice-floe—a condition from which, after thirty days, the party had just been rescued.

"At Carey Islands, directly in Lieutenant Garlington's path, one hundred miles south of Cape Sabine, there were eighteen hundred rations in the Nares cache in good condition, which he had inspected but six days previously. This made it unnecessary to take from Cape Sabine of Lieutenant Greely's stores more than four days' rations for his own party. This would have left for Lieutenant Greely at Cape Sabine nineteen hundred rations, and placed his safety beyond question."

We propose now to introduce in evidence the six telegrams from Washington Territory that form an integral part of the narrative. They are referred to in the annual report, and they serve at least to reflect the purpose and temper of the accused in reference to the matter. It will be proper for me to state that if the Judge-Advocate pleases to require it and demands strict proof, I must summon a witness from the Signal Office, the Acting Chief Signal Officer, to authenticate those telegrams, if it is desired.

The JUDGE-ADVOCATE—Do I understand you to say that those telegrams are a part and parcel of the report of the Chief Signal Officer as introduced here ?

Mr. MACKEY—They are referred to here.

The JUDGE-ADVOCATE—But do I understand you to say that those telegrams are a part and parcel of the report of the Chief Signal Officer as introduced here ? Were they exhibits ?

Mr. MACKEY—No, sir ; they are not exhibits.

The JUDGE-ADVOCATE—Then I object to their introduction, as foreign matter. They were not part and parcel of the Chief Signal Officer's report for 1884, and it is presenting a new issue with which we have nothing to do. The Secretary of War had, perhaps, that matter in consideration, and the accused in his annual report as quoted in the first specification ; from the language stated there it would appear that the Secretary of War had all this before him then. The matter is adjudicated, and this Court has nothing to do with it. It is a foreign issue ; a collateral matter. If you once open the door to matters of that character there is no telling where it will end. I do not suppose, Mr. President, that it has anything to do with any of the allegations before this Court.

Mr. MACKEY—I think there is, may it please the Court, a telling where this will end. I beg leave to submit to the consideration of the Court that the learned Judge-Advocate himself presented a telegram, authenticating it by the testimony of Captain Mills, the Acting Chief Signal Officer, responding to these very telegrams, in response to these six telegrams. It would be a singular view of the law of evidence if, in the connected nar-

rative of a transaction, the record of the events that transpired in the matter of the sending of a relief expedition in the autumn of 1883, the heroic operation should be performed of amputating that in the centre, or, as it were, at the hip-joint, and that the Court should admit the telegram sent by the Acting Chief Signal Officer in response to these telegrams that I propose to offer in evidence, and not to admit in evidence the telegrams to which that was a reply.

These telegrams serve to fix the relations of the Chief Signal Officer to the question of dispatching a relief expedition in December, 1883, and reflect his purpose and intent. They are not an assault upon the Honorable Secretary of War—not to that end. They fix his status there, and the Judge-Advocate has not stated any reason for his objection, except that there is no telling where this will end if the telegrams are introduced.

Well, if they are to be so potential as that in one direction or another, if they are to press upon the balance-wheels of the case at all as material evidence, that is a reason why they should be admitted. It is not argued that they are not material. The response to them is evidence in the Court. We ask, in order that that response may be fully understood, that these may be read. These are telegrams—one of them requesting that the matter shall be laid before the President of the United States and the Secretary of War.

The JUDGE-ADVOCATE—I clearly and plainly object to the telegrams as being immaterial and foreign to the issue before the Court. The telegram sent by Captain Mills to General Hazen was introduced by me for the purpose of showing simply that the Chief Signal Officer had information of the decision of the Secretary of War not to send a relief expedition in September, 1883, and for no other purpose, as is set forth in the first and second specifications.

A member of the Court (to the Judge-Advocate)—Is there any reference in the telegram that has been introduced in evidence to telegrams received from General Hazen?

The JUDGE-ADVOCATE—The telegram introduced in Captain Mills' testimony reads as follows:

"September 19, 1883.

To General W. B. HAZEN, Port Townsend, W. T.:

"Secretaries War and Navy, after patient consultation with Arctic explorers, conclude nothing further possible this year. No chance to put vessel sufficiently north to reach Greely either by boat or sledge.

"(Signed) MILLS."

Mr. MACKEY—I will state that I only wish to file these telegrams, and not to read them.

The JUDGE-ADVOCATE—I have objected to them.

The PRESIDENT—The question is on their admission. They would be in evidence if they were filed.

A member of the Court—Was there a question asked the witness yesterday in regard to that telegram, whether these were received in answer to Captain Mills' telegram ?

The JUDGE-ADVOCATE—The record of the testimony shows that the following question was asked :

"By the COURT :

"Q. For what reason was the dispatch sent ? A. Because of this decision."

Nothing is referred to concerning telegrams received by him, so far as I can see, in the testimony.

Mr. MACKEY—This was a part of the correspondence by telegraph between the Acting Chief Signal Officer and the Chief Signal Officer in relation to the expedition itself. It enters into the history of the proposed expedition in the fall of 1883.

The PRESIDENT—The question is whether these telegrams shall be received in evidence, or whether the objection of the Judge-Advocate shall be sustained. A vote will be taken by ballot, unless some member desires the court-room to be cleared.

A vote was then taken by ballot.

The JUDGE-ADVOCATE—I am directed by the Court to announce as its decision that the objection of the Judge-Advocate is sustained.

I desire to announce to the defence that Mr. Kauffmann, the witness summoned for the defence, is now present.

Mr. MACKEY—Mr. President and gentlemen of the Court, the ruling of the Court which excludes the offered testimony

on the part of the accused to trace newspaper paragraphs assailing him to the Secretary of War, requires us to state that we dispense with the further attendance of Mr. Kauffmann.

The PRESIDENT—The witness is discharged.

Mr. MACKEY—Mr. President and gentlemen of the Court, the defence has some further documentary evidence to introduce which is not at hand immediately, but we will present it at the hour of the opening of the Court on Monday. It is now half-past two o'clock, and I ask that indulgence.

The PRESIDENT—Is there any objection to the adjournment of the Court until eleven o'clock on Monday morning ?

The PRESIDENT—The Court will now adjourn until eleven o'clock Monday morning.

FIFTH DAY.

ROOMS OF THE GENERAL COURT-MARTIAL,
EBBITT HOUSE, WASHINGTON, D. C.,
Monday, March 16, 1885, 11 A.M.

The Court met pursuant to adjournment.

Mr. MACKEY—Mr. President and gentlemen of the Court, I propose to submit in evidence, on behalf of the accused, two certain telegrams. The counsel for the defence is too well aware of his duty to the Court to persist in offering in evidence matter that has been excluded by the former ruling of the Court. But when the telegrams were offered on Saturday —a series of telegrams—the attention of counsel had not been called to the fact that they had in their possession two telegrams addressed by the Chief Signal Officer of the Army to the Acting Chief Signal Officer, Captain Mills, after the date of the telegram of the 19th which was in evidence.

These two telegrams will distinctly disclose to the Court that Captain Mills' telegram was not received in Washington Territory by the Chief Signal Officer on the 19th or on the 20th or the 21st or the 22d. Whatever the proof may be, or whatever the admissions may be, as to the knowledge of the accused that the Secretaries of the Navy and of War did render a decision in the premises, we submit to the Court that these two telegrams, that are Department records—official records coming from the accused to Captain Mills after the telegram of the 19th sent by Captain Mills, which has been admitted—are evidence in the case. They serve to interpret the mind of the accused, and whatever serves to reflect light upon his intent is admissible.

It is certainly clear that the accused can state, when on the witness-stand, that he did send telegrams of this purport. It

would be impossible to exclude that. It is a legitimate part of the evidence.

Therefore it is submitted respectfully to the Court that as the telegrams are better evidence than the statement of the accused, his memory of them, they should be admitted as a part of the narrative which has been entered upon by the prosecution exhibiting a telegram from Captain Mills of the 19th, and these are telegrams of the 21st and 22d from the Chief Signal Officer to Captain Mills in regard to the same subject-matter.

We submit to the Court that they are relevant to the case, and respectfully ask that they be placed on file. The Court may examine them. I will hand them up for examination before approval.

The counsel then handed the telegrams in question to the President of the Court for inspection.

The JUDGE-ADVOCATE—Mr. President, before the papers are submitted to the Court I beg leave to state that I have a right to know their purport, their tenor, and now be permitted to examine them before the Court takes any action, so that I may respectfully enter my protest to their reception. At present I am unable to say anything on the subject, because I do not know what they are.

The PRESIDENT (to the counsel for the accused)—You will let the Judge-Advocate see them.

The counsel handed the papers in question to the Judge-Advocate for his inspection.

The JUDGE-ADVOCATE—Having examined these telegrams, Mr. President, I have come to the conclusion that I must enter my protest against their reception. They form no part or parcel of the inquiry necessary by this Court into the allegations against the accused.

These papers refer to the decision of the Secretaries of War and the Navy in reference to sending out another relief expedition for Lieutenant Greely, or rather to the merits of that question. That question having been decided upon by the Secretaries of War and the Navy in the legitimate exercise of their duties, the matter has become *res adjudicata*, and is not now a matter for this Court or the accused to inquire into. This

Court is not now sitting to try the propriety of the decision of the Secretary of War and the Secretary of the Navy not to send a relief expedition for Lieutenant Greely in September, 1883. And these papers now introduced are calculated to open the door of an investigation into the propriety of the conduct of the Secretary of War and of the Navy. This matter was decided by those two gentlemen, and is not now one open for discussion before this Court in connection with the allegations against the accused, and I therefore object to the introduction of these documents.

Mr. MACKEY—Mr. President and gentlemen of the Court, I have probably handed to the Judge-Advocate the wrong papers. (After an examination of the papers:) May it please the Court, these are the right papers with the wrong construction. These are the papers.

The counsel then handed the papers in question to the Court for its inspection.

The JUDGE-ADVOCATE—Mr. President, in order to settle that question, and that the Court might be able intelligently to decide upon the matter, I will state that I have no objection to the Court's knowing the purport of these telegrams or their tenor. How can the Court decide unless it does know?

The PRESIDENT—I think they might be read.

Mr. MACKEY—It would do no harm.

The PRESIDENT—Not read to go into the record, but read for the Court's information.

The papers referred to were then read for the information of the Court by the counsel for the accused, but, by direction of the President, not made a part of the record.

Mr. MACKEY—I will state that we offer three—two from General Hazen and one from Captain Mills. I think they are manifestly admissible.

The JUDGE-ADVOCATE—Before going further I desire to call the attention of the Court to the dates of these telegrams. The Court has in evidence before it a telegram from Captain Mills dated the 19th of September, 1883, in which Captain Mills informed the Chief Signal Officer, then at New Tacoma, Washington Territory, that the Secretary of War and the Sec-

retary of the Navy had decided not to send a relief expedition for Lieutenant Greely in September, 1883. These telegrams are dated, respectively, one the 21st and the other two the 22d of September, which is after the decision of the Secretary of War and the Secretary of the Navy had been communicated to General Hazen that his recommendation for another Arctic expedition was not concurred in.

These telegrams have been read to the Court. It is evident they relate to the very self-same subject—to the subject of sending out another relief party after Lieutenant Greely. As I said before, the Secretary of War and the Secretary of the Navy having decided that subject several days before these telegrams were sent, it did not become the accused to seek new evidence in other efforts or to lay any foundation to find fault or quarrel with a decision made by his superior in the legitimate discharge of his duties. I say, therefore, that the introduction of these telegrams is for no other purpose than to call in question the propriety of the official action of the Secretary of War and the Secretary of the Navy on September 19, 1883, and hence, as the Court has nothing to do with that question, in my opinion, it is my duty as Judge-Advocate to enter my respectful protest against their reception.

Mr. MACKEY—These, may it please the Court, we submit because they were sent after Captain Mills' telegram of September 19. We think they ought to be admitted for the very reason that the learned Judge-Advocate holds that they ought to be excluded ; and we will establish by proof that these telegrams of the 21st and 22d, sent by General Hazen, were sent before Captain Mills' telegram of the 19th was received, and hence do not bear the construction that the Chief Signal Officer intended them as strictures upon the conduct of the Secretaries of War and of the Navy. And the accused will be requested, and he has an absolute right, absolute, supreme right, to give his narrative, and he will embrace in that narrative the matter that led to them, always, however, within the ruling of the Court with reference to what has been decided. And we submit the telegram of Captain Mills ; I understand that no objection is made to that ?

The JUDGE-ADVOCATE—I object to the whole subject—not only to one, but to the entire subject I object.

Mr. MACKEY—It would be curious indeed that the telegram of record of the Acting Chief Signal Officer, announcing that Lieutenant Garlington and Commander Wildes had advised against the expedition, and that it was impracticable to reach Cape Sabine—that it should not be admitted, may it please the Court. I would suggest to the Court that these telegrams must necessarily, being offered, enter into the record; for if the Court rules that they are not to be considered, it may be still important to the reviewing authority that what was excluded, as well as what was admitted, should appear in the record.

The JUDGE-ADVOCATE—I can conceive of no possible necessity on my part to submit any testimony from Lieutenant Garlington or Commander Wildes to bolster up or justify any decision that the Secretary of War may have made in the discharge of his duties. That is not my duty. That decision stands by itself, and is not now here to be assailed, and I am not required even to bring documents here to justify the wisdom of that decision. That is not my duty. The matter has been adjudicated and was settled long ago.

Upon motion the Court then retired to an adjoining room for consultation with closed doors, no one being present but the members of the Court and the Judge-Advocate.

After deliberation the members of the Court and the Judge-Advocate returned to the court-room, and the Judge-Advocate was directed to announce the decision of the Court as follows:

The JUDGE-ADVOCATE—I am directed to announce as the decision of the Court that the objection of the Judge-Advocate is sustained.

Mr. MACKEY—Mr. President and gentlemen of the Court, the accused, Brigadier-General William B. Hazen, Chief Signal Officer of the Army, will now testify.

Brigadier-General WILLIAM B. HAZEN, the accused, then came before the Court as a witness, and was duly sworn by the Judge-Advocate.

By Mr. MACKEY:

Q. Will you please state your rank in the Army of the United States? A. I am a Brigadier-General in the Army of the United States, and Chief Signal Officer of the Army.

Q. How long have you served as an officer in the Army of the United States? A. Since 1855.

Q. Did you hold any command in the late war? If so, state what it was. A. I held in 1861 the rank of colonel of volunteers. Beginning in 1862, I was a brigade commander until 1864, when I was division commander until near the close of the war, when I was a corps commander.

Q. What corps did you command? A. The Fifteenth Army Corps.

Q. Over what period of time did your service in the Army of the United States extend? A. Including my cadetship, over a period of thirty-three years.

Q. Were you ever before arraigned before a court-martial? A. No.

Q. I shall not ask whether you desire to be again. What was the date of your commission as Chief Signal Officer? A. I was appointed on the 6th day of December, 1880.

Q. By whom? A. By President Hayes.

Q. Please state under what authority the Lady Franklin Bay Arctic Expedition, and by whom, was set in motion.

The JUDGE-ADVOCATE—Wait one moment. I simply call attention to the fact that we have already had a chapter on the International Polar Expedition in the reading of General Hazen's report, and it would take up the time of the Court to go into that subject again verbally while it is already on record.

Mr. MACKEY—The question of time has often been urged upon the Court, Mr. President. But there is something more valuable than time in this case—the character of an honorable officer of the Army of the United States, and justice itself. If this cannot be answered, when and where shall the seal of silence be taken from the lips of the witness?

It is eminently material, Mr. President, as to who set this expedition in motion. At the proper time I shall exhibit the statute by authority of which it was set in motion, and we will

proceed to show that the alleged decision of the Secretary of War was, as to a matter made by public statute, beyond his jurisdiction. This goes to the very vital point in the case—whether the Secretary of War had rendered a decision upon a question within his jurisdiction—without admitting in any degree any act of impropriety on the part of the Chief Signal Officer of the Army or assailing the decision.

It is pertinent to ask the accused by what authority the Arctic expedition was set in motion. It is stated in the annual report of the Chief Signal Officer for the year 1884 that it was set in motion by the President of the United States. That may leave the inference, however, that the President of the United States had set it in motion through the Secretary of War. The purpose is to show that the President of the United States, in compliance with the authority vested in him by Congress, set it in motion by an executive order signed by his own hand and not transmitted through the Secretary of War; that one President directed its organization and another appointed its commanding officer by an executive order, and that on this field the Secretary of War was an intruder, save and except to disburse the funds upon the requisition of the Chief Signal Officer of the Army. When it was to start was not to be determined by him. Where it was to sail he was not to decide.

Thus the Court perceive it is eminently pertinent; and if the objection of the Judge-Advocate prevails, then the witness must be silent and let the law speak for him. But I do not apprehend that.

May it please the Court, it is respectfully submitted that a most liberal construction is to be given to the rules of evidence in a case of this character, and it is the settled practice of the civil courts, whose rules of practice are mandatory here, that where counsel declare it is material to have a certain matter admitted, it is admitted. If counsel fail to connect it by what would seem a natural or reasonable relation to the issue before the Court, the Court may not consider it in its final judgment.

We are dealing, Mr. President, not with a jury, but with a tribunal of judges, and with something more than a tribunal of judges—with a tribunal of judges each of whom has written his

honorable page upon the annals of the country. And we are dealing with the character of an officer of the Army of the United States; and we offer this evidence to show that, being here charged with conduct to the prejudice of good order and military discipline, and it being specified in each of the three specifications that the Secretary of War did render a decision in the performance of his official duty—we offer this on the line of proof that the Secretary of War had no duty in the premises; that, upon the record as it stands, he did not have a duty to perform, and that he was an intruder. We submit it to that end, and we will follow at the proper time by the statutes.

But the understanding of the accused of his relation to this subject can surely be unfolded. Suppose that the Chief Signal Officer of the Army was sincerely convinced, upon his natural and reasonable construction of the statutes and of his orders, that the Secretary of War had no jurisdiction in the premises? Suppose that were so? Even if it were not so in fact, if that was the consideration that influenced the judgment of the accused in presenting a respectful protest against the action of the Secretary of War, then it is a material fact in the case; and if we go further and show, as a matter of law, that he had no jurisdiction, it ends the case. We submit those points.

The JUDGE-ADVOCATE—I am glad that the counsel has finally disclosed the fact that he intends to assail the decision of the Secretary of War in the premises as set out in the different specifications. Having done so, I enter my objection now against any further inquiry into the International Polar Expedition, its inception, or anything connected with it prior to this decision, because I do not believe it has anything to do with this case. I therefore respectfully object to the question asked. We are not trying the Secretary of War just now, but we are trying an issue between the United States and this officer for criticising the Secretary of War in the matter.

A member of the Court—I would like to have the pending question read.

The reporter read the question as follows:

Q. Please state under what authority the Lady Franklin Bay Arctic Expedition, and by whom, was set in motion.

The PRESIDENT—The question is, Shall the objection of the Judge-Advocate to this question be sustained? A vote will be taken by ballot, unless some member of the Court desires the court cleared.

A vote was then taken by ballot.

The JUDGE-ADVOCATE—I am directed by the Court to announce as its decision that the objection of the Judge-Advocate is sustained.

Mr. MACKEY—I am not permitted, then, to bring out the fact that the President of the United States ordered this expedition, I understand? (To the witness:) Did you ever, upon any occasion, knowingly fail in respect to the Secretary of War or any of your superior officers?

The JUDGE-ADVOCATE—Please repeat that. I did not hear it.

Mr. MACKEY (to witness)—Did you ever, on any occasion in the course of your military career, knowingly fail to render due respect to any of your superior officers?

The JUDGE-ADVOCATE—I do not like to rise so often and object, but this question is making the accused the judge and the jury. The question is now here being tried whether he ever knowingly, knowing certain things, criticised or failed to pay proper respect to the Secretary of War. It is for this Court to decide. This question makes the accused the judge on that subject. I shall have to object to the question.

Mr. MACKEY—Mr. President and gentlemen of the Court, the question is, "Have you ever knowingly failed, during your military career, to render due respect to your superior military officer?" The question is upon that line which is always open to an accused to throw his character into the scale—his record. It is objected to. We expect every matter to be objected to which is essential to this prosecution.

May it please the Court, this case presents many novelties, and not the least is this character of objection. The accused has been placed at great disadvantage in presenting his defence, by reason of the fact that the accuser has not met him face to face, that the accuser shrinks from the face of the accused. In addition to that, may it please the Court, a liberal construction

should be given to the right of the accused to testify. The Court weighs his testimony or statement for what it is worth. What better reinforcement can he give his statement against a charge that touches his soldierly character in the matter of alleged disrespect to a superior officer, than to be allowed to answer the question whether, in the course of a military career extending over thirty-three years, he ever knowingly failed in rendering due respect to his superior officer ?

A member of the Court—Is that word "knowingly" in the question ?

Mr. MACKEY—Yes, sir ; "knowingly"—"knowingly failed." No man, may it please the Court, is guilty unless he is guilty in intent, in the mind ; and that is the question. The accused here has thrown against him the great weight of the War Office, the great weight of a name once honored by an illustrious citizen. A Secretary of War who frames the charges is the accuser, and shall the shroud of iron still close in upon the accused and his lips be sealed that he cannot throw his character into the scale ? Why, may it please the Court, we have a right to summon any reasonable number of witnesses to establish what I ask of the accused. And if we can establish it by the testimony of another, we can establish it by his own testimony. We do not please to bring up witnesses to his character, for that forms a part of the honorable annals of the country. But we ask him this question to explore his own mind, and say, upon a charge of knowingly acting with disrespect to the Secretary of War, whether he ever knowingly failed to render due respect to his superior officer of any grade. That is the question.

The JUDGE-ADVOCATE—I leave it to the Court, Mr. President.

The PRESIDENT—We will take a vote on the matter. The question is, Shall the objection of the Judge-Advocate be sustained ?

A vote was then taken by ballot.

The JUDGE-ADVOCATE—I am directed by the Court to announce as its decision that the objection of the Judge-Advocate is *not* sustained.

Mr. MACKEY (to the witness)—During your entire military

career have you ever knowingly failed to render due respect to the person and the orders of your superior officer? A. Never.

Q. For what period during your administration of the Signal Bureau was the accuser in this case, Mr. Robert T. Lincoln, Secretary of War—for about what period? A. For all of the period, during four years, excepting a few months, four or five months, at the beginning, and a few days of the last of the period.

Q. State whether you had frequent occasion to address the Secretary of War directly, and whether you did address him as to matters affecting your bureau. A. Very frequently during the entire time.

Q. Very frequently? A. Yes, sir.

Q. Did you ever have occasion to address him as to a decision already made upon a question, or as to his views stated upon a question, regarding the administration of your bureau? A. I think I have. I do not remember any particular cases.

Q. I can refresh your memory. As to the matter, for instance, of annual expeditions? A. Upon that subject I have addressed several communications to him.

Q. Before or after his views were expressed upon the subject? A. After.

Q. After they were officially expressed you addressed him communications upon the subject? A. Yes, sir.

Q. State the effect of your address—whether you maintained your position.

The JUDGE-ADVOCATE—I exceedingly regret to be obliged to make so many objections. I would like to give the defence all proper latitude in conducting their case, but it is my duty to keep out matter that is foreign to the issue. It does not appear to me, Mr. President, that the actions of the Secretary of War prior to September, 1883, enter into this issue. Whatever the Secretary of War may have done prior to that time in relation to other matters has no place here. I therefore object to any inquiry from the accused as to the Secretary's action upon other official matter prior to September, 1883. The question here is the Secretary's action of September, 1883, and the accused's letters in reply thereto, but not any other matter. Any matter

that may have occurred a year or two before or beyond his administration is not the question here. If we are to reopen the entire administration of the Secretary of War and his relations with the accused prior to that time, the Court can sit here until September, perhaps.

Mr. MACKEY—I regret, Mr. President, that the learned Judge-Advocate still keeps in the objective case in this issue. The second specification alleges that the accused, Brigadier-General William B. Hazen, Chief Signal Officer of the Army, "did, without having been requested or authorized by the Secretary of War so to do, address and send to the Secretary of War a communication written by him," etc. A specification must proceed on matters of law. We admit the addressing of that letter. It is either a question of law or a custom. If there be law it is not discovered. We will show, as to the custom, that there was no requirement that the Chief Signal Officer of the Army should first obtain leave from the Secretary of War for asking a review of the Secretary's own decision or respectfully protesting against it. We will show case after case, as the memory of the witness is refreshed, where the Secretary of War has announced decisions touching this very Arctic work, and upon the respectful protest of the Chief Signal Officer of the Army he has reviewed them, he has changed them, and, where he did not change them, the more learned opinion, upon questions of law, of the Attorney-General of the United States was invoked, and then the change came through the Chief Signal Officer of the Army.

So it is directly responsive to the second specification, as to whether he had not upon occasion addressed the Secretary of War a communication as to one of the Secretary's own announced decisions touching the administration of the Signal Bureau, without first asking leave, and without objection on the part of the Secretary of War. That is directly responsive.

The JUDGE-ADVOCATE—Each one of these acts of the Secretary of War may perhaps stand on a different basis. We are not called upon to investigate the conduct of the Secretary of War in reference to other matters. The question of the second specification is simply whether or not he did address that letter

of February 17, 1885, to the Secretary of War or not, without having been requested or authorized so to do. The question is not as to similar transactions on other occasions. The accused does admit that he was not requested, nor was he authorized, to send that letter to the Secretary of War. He has admitted that, and the admission is before the Court. I must still insist upon the objection.

Mr. MACKEY—Does the Court desire any authority on this point? But it is on the face of the specification. How are we to answer that, may it please the Court, except by showing that it was the custom of the Chief Signal Officer of the Army to ask review of decisions without being requested, and that his action was sanctioned by the Secretary of War for four years—nearly four years?

The PRESIDENT—Is the Court ready for a vote, or does any member wish to hear the authority suggested?

A member of the Court—I should like to have the pending question, and a few of the questions that preceded it, read.

The reporter read as follows:

"Q. State whether you had frequent occasion to address the Secretary of War directly, and whether you did address him as to matters affecting your Bureau. A. Very frequently during the entire time.

"Q. Very frequently? A. Yes, sir.

"Q. Did you ever have occasion to address him as to a decision already made upon a question, or as to his views stated upon a question, regarding the administration of your bureau? A. I think I have. I do not remember any particular cases.

"Q. I can refresh your memory. As to the matter, for instance, of annual expeditions? A. Upon that subject I have addressed several communications to him.

"Q. Before or after his views were expressed upon the subject? A. After.

"Q. After they were officially expressed you addressed him communications upon the subject? A. Yes, sir.

"Q. State the effect of your address—whether you maintained your position."

Mr. MACKEY—My meaning in the question is, whether the Secretary of War did change his views after this.

The PRESIDENT—Gentlemen, you have heard the question.

If you are prepared to vote you will do so by ballot. The question is, Shall the objection of the Judge-Advocate be sustained ?

A vote was then taken by ballot.

The JUDGE-ADVOCATE—I am directed by the Court to announce as its decision that the objection of the Judge-Advocate is not sustained. Will the reporter read the question ?

The reporter read the question, as amended by counsel, as follows :

Q. State the effect of your address—whether you maintained your position ; whether the Secretary of War did change his views after this. A. He did.

Q. In referring to annual expeditions, what was the question then between you and the Secretary of War? Did the question of construction upon which you addressed the Secretary of War after his decision was rendered, arise ? A. What point do you refer to ?

Q. I refer to this : that the Secretary of War was alleged to have addressed a letter to the President to the effect that he knew of no understanding that the relief expedition party should be sent at all for Lieutenant Greely. A. The occasion was that in 1882 it was necessary to send a relief expedition to Lady Franklin Bay. I addressed a letter to the Secretary of War to that effect, and in my communication it stated that the plan which was approved by Congress contemplated that annually there would be a relief expedition sent up. In forwarding this letter to the President the Secretary endorsed upon it that he knew of no such understanding, and he rather claimed that I had passed beyond my authority in spending all of the appropriation of the year before.

The JUDGE-ADVOCATE (interposing)—I object to any statement as to the contents of written records, or to any matter of decision by the Secretary of War. The best evidence obtainable, if the question is to be at all inquired into, is to be produced. What is the best evidence of that fact ? The Secretary of War's own handwriting, or the handwriting over his signature ; not the recollection of the witness, but the Secretary's own action.

Mr. MACKEY—If that is pressed, Mr. President, we shall have to get the original record.

The PRESIDENT—I think we had better get the original records for that purpose.

Mr. MACKEY—We will return to that hereafter. Perhaps when the Court takes a recess to-day we will be able to send for it, and not delay the Court.

The JUDGE-ADVOCATE—At the same time I desire to say that I shall be obliged to object to any statement of the accused as to records of that character—that is, where he gives his own recollection of the contents of a record.

Mr. MACKEY (to the witness)—In relation to what was it? A. It was in relation to the sending of a relief expedition in the year 1882.

Q. What was the view expressed by the Secretary of War as to that special matter, as far as you can recollect?

The JUDGE-ADVOCATE—One moment. Was it verbal or in writing? I want to know that first before the question is put.

Mr. MACKEY—Both.

The JUDGE-ADVOCATE—If it is in writing I object, and I refer the counsel to the former ruling of the Court on this point.

Mr. MACKEY—I will refer to it, and after the recess of the Court I will refer to an appendix to the volume which I hold in my hand, in which that appears. It is issued by the War Department, but it is not the original record. It is issued under the seal of the War Department, however, as containing it. (To the witness:) That was in reference to one matter—the annual expeditions. In reference to any other matter about which the Secretary of War presented his views and your action thereon by a communication, if there be such, please state. A. There were several others.

Q. The question as to whether the Signal Corps was a part of the Army of the United States—was that a question, and whether you were an officer of the Army of the United States or not? A. That question was raised by the Secretary of War, and there were many questions raised.

Q. What was the question? Please repeat it. A. The ques-

tion was whether the Signal Corps belonged to the Army of the United States. There were many communications upon that subject, and the matter was finally decided by the Attorney-General.

Q. How was it decided?

The JUDGE-ADVOCATE—Wait a moment. I object to any decision being brought in here in the language of the accused. If there is any decision that is pertinent at all, bring the decision itself. The accused is under the same rules as any other witness; the same rules of evidence apply to him as to any other witness, and we cannot safely depart from them.

The PRESIDENT—Any documents that can be produced in that connection had better be produced.

Mr. MACKEY (to the witness)—That was with reference to the question you have stated, I believe, whether the Signal Corps was itself a part of the Army of the United States? A. It was.

Q. You have stated that that was decided in the opinion of the Attorney-General? A. Yes, sir.

Q. Did you obtain leave of the Secretary of War to address him a communication with reference to a matter decided by him? A. No, I did not.

Q. Did you first obtain leave to address the Secretary of War a communication as to these matters already decided by him? A. No, sir; I did not.

Q. State whether any objection was made by the Secretary of War to receiving and considering communications of that class from you after he had decided. A. I never received any.

Q. Now, as to another matter—a protest against his action, addressed without leave. They are so numerous I presume that you cannot recall them. Take up the Olmsted matter. A. I recall one—the assignment of Captain Olmsted to the Signal Corps. I made serious objections to it on the ground that he was not competent, and had been once dismissed for embezzlement and reinstated by Act of Congress, and I did not believe him to be an officer with whom funds should be trusted. I made that objection as strongly as I could.

Q. In writing? A. Yes, sir; in writing.

Q. What was the result?

The JUDGE-ADVOCATE—I would like to know whether the answer was in writing.

Mr. MACKEY (to the witness)—What became of Captain Olmsted? A. He was afterwards assigned to me, and afterwards made an embezzlement, as I told the Secretary of War he would, and was dismissed from the Army.

Q. Did you ask leave to protest against his appointment of Captain Olmsted to the Signal Corps? A. I did not.

Q. Did you protest against it? A. I did protest against it.

Q. Did the Secretary of War object to your protesting without leave? A. Not at all.

Q. He did not? A. No, sir.

Q. Are you aware of any law or custom requiring the Chief Signal Officer of the Army to first obtain leave from the Secretary of War before addressing him upon matters relating to his bureau? A. I am not.

Q. Now, as to the first specification. It is alleged in the first specification that in your annual report for 1884 you used the following language:

"On the return of the escort ship bringing the relief party to St. John's, September 13, there was still time, as known from previous experience and shown by subsequent facts, to send effective relief."

Did you use that language? A. I did.

Q. It is charged that you used that language to criticise the official action of the Secretary of War and impugn the propriety thereof. Was that your intent in using that language? A. It was not.

Q. Please state your intent. A. I had been held to a most serious responsibility for not effectively rescuing the Greely party. It was published all over the world that I was in fault. I merely wished to state that fact—a fact which I knew—that Mr. Greely could have been rescued, and I did all in my power to have him rescued, and that I was not responsible for its not being done. That was all my intent.

Q. Did you intend, either directly or by innuendo, by that language to charge or imply that the Secretary of War had been

guilty himself of a neglect of duty in the premises? A. Not at all.

Q. Now we will pass to the second specification. The second specification alleges that you did address to the Secretary of War a communication, bearing date the 17th day of February, 1885, concerning the official action of the Secretary of War, and containing, among other statements, the following:

"I respectfully submit that I am justified in the conclusion that the tragic termination of the International Polar Expedition was finally due to the decision not to dispatch a steam-sealer to effect its rescue on the 15th of September, 1883, which I did all in my power to have done; such sealer, starting from St. John's, N. F., only thirteen days' steaming from Cape Sabine, in all human probability could have reached and rescued the party before there was any interruption to navigation by ice. . . ."

This at Washington, D. C.

Did you obtain leave first to address that to the Secretary of War? A. I did not.

Q. Were you aware of any law or custom that required you to obtain leave to address such a communication to the Secretary of War? A. I was not.

Q. That disposes of that. The third specification alleges a writing of the same communication recited in part in the second specification, and containing, among other things, the following language:

"The Secretary of War, in his annual report for the year 1884, was pleased to make me the subject of severe strictures because, in my official report of the final disaster to the International Polar Expedition, I expressed the conviction that such disaster would have been averted had a ship of rescue been dispatched from St. John's, N. F., after the return of Lieutenant Garlington to that port, etc."

To save the time of the Court, if you will let me have the letter, Mr. Judge-Advocate, we can economize time, because I can just ask as to the whole letter without reciting that.

The letter of February 17, 1884, was handed by the Judge-Advocate to the counsel for the accused.

Mr. MACKEY (submitting the letter in question to the witness)—Did you write that letter to the Secretary of War? A. I did.

Q. Is that the original letter? A. That is the original letter.

Q. That is your signature? A. That is my signature.

Q. Did you believe, at the time that you wrote that letter, that each and every statement contained therein was true? A. I did.

Q. Did you or did you not possess the proof of each and every statement contained therein? A. I did.

Q. Did you intend to criticise and impugn the Secretary of War or his action, by these words in the letter:

"I respectfully submit that this evidence embraces the only expert testimony that has been adduced upon the vital question whether a steam-sealer of the first class, such as the *Bear* or *Neptune*, starting from St. John's, N. F., as late as September 15, could have made the passage of Melville Bay, and reached Cape Sabine or Life-Boat Cove or its vicinity, in the autumn of 1883, and rescued Lieutenant Greely and his party"?

A. I did not.

Q. You did not so intend? A. I did not so intend.

The JUDGE-ADVOCATE—He is not charged with having done so. That language is not part of the specification.

Mr. MACKEY—The endorsement is introduced, and the endorsement which is projected into the case does, and that is evidence. (To the witness:) When you used the words in that paragraph, "I respectfully submit," did you mean them? A. I did.

Q. As to the closing paragraph of the letter, did you intend to criticise or impugn, or evidence any disrespect to, the Secretary of War by the following language:

"While the action of the Secretary of War in the premises was dictated by his sincere convictions of public duty, I believe it can be established beyond question that such action made certain that final disaster to Lieutenant Greely's Arctic party which the violation of their orders by Lieutenant Garlington and Commander Wildes had rendered highly probable"?

A. I did not.

Q. What was your intent in writing that letter? A. The Secretary of War in his annual report had largely confirmed the opinions expressed in the press that I was responsible for the

death of those men. His report made me either wilfully culpable or neglectful and inefficient in my work. Neither was true. He had also been misled with regard to facts which he stated. He had come to the conclusion, on inaccurate information, that it was not practicable to send an expedition in that autumn after the return of the *Yantic*. My knowledge of the facts made it certain to me that it was practicable. He also added, as the last closing portion of that paragraph, a statement of Captain Schley with regard to the winter in that section of country, and particularly at Upernavik, stating that the temperatures had fallen for three months during the winter to 60, sometimes below, Fahrenheit, and that the season was the most severe known in thirty years. I believed that I had in my possession and could get the exact full data upon those subjects, and I felt certain that the Secretary of War had been misled with regard to those facts.

I then wrote to the Danish government, and received from that government the official record of the temperatures during all that period of time for that section. I found that I was right and that Commander Schley was entirely wrong. The temperatures, as shown in evidence in one of the twelve enclosures, were nowhere nearly as low as he had given. Where he had given it —60, it was from about +20 or 25 to —30 all through those months.

I also secured from the best Arctic navigators I knew—Mr. Melville, and Mr. Greely who was on the spot, and several of the very best Arctic authorities who had been engaged in sealing in those waters all their lives from ten years upwards to twenty or thirty—what they knew of the subject, and I found that in every case where the testimony was expert and of value and reliable, that they fully confirmed my opinion. It took me nearly all of that autumn and winter to get that information together. It was very late when I did get it, but when gotten together I assembled them and wrote a letter stating the simple, plain facts as I had proven them by my investigations. I did this to relieve myself of that blemish upon my record which his report had wrongly placed there. I had no other purpose in the world.

Q. Did you intend to assail the Secretary of War as to his motives or his action, or assail the authorities upon which he based his action—which did you intend to assail? A. I intended to assail the facts as he had stated them.

Q. Stated them of his own knowledge or upon authority? A. Upon authority. He knew nothing of that subject of his own knowledge, never having had any experience in regard to it.

Q. Who was your issue with, then, with the Secretary of War or with the authorities? A. The authorities. I plainly state as much in the opening and the ending of my letter.

Q. How many officers of the Signal Corps and enlisted men of the Army were in the Greely expedition—commissioned officers and enlisted men? A. There were three commissioned officers, a contract surgeon, and twenty enlisted men.

Q. And what others in addition in the expedition, besides? A. There were two Eskimos, and altogether there were twenty-five of Eskimos and enlisted men.

Q. I mean what was the size of the party including the officers? A. There were twenty-five altogether.

Q. How many of them perished, according to the official record? A. Nineteen.

Q. As to the commissioned officers, how many of the three commissioned officers survived? A. Only one.

Q. Name him. A. Lieutenant Greely.

Q. Who were those who perished? A. Lieutenant Kislingbury, Lieutenant Lockwood—

The JUDGE-ADVOCATE (interposing)—I must object, Mr. President. We are getting up to the Arctic expedition and are about to investigate the disaster to Lieutenant Greely's party, if that line is kept up any further. I do not think that is a question to this issue, and therefore I respectfully object to any investigation as to what the disaster was, who did and who did not die, or anything about it.

Mr. MACKEY—May it please the Court, we have been in the Arctic from the beginning. The charge and specifications relate to the Arctic, although the prosecution has not been wanting in some torrid heat whenever we have attempted to present our evidence in the case.

We submit to the Court that it is proper to show that this disaster was one of great magnitude. We know that the prosecution does not wish to touch Cape Sabine. That is monumental. They wish to shrink from that. The accuser does not wish to see those horrors at all.

But I am asking the Chief Signal Officer of the Army as to the disaster and the detail made for this work in the International Polar Expedition of 1881, as to the number of officers and men who perished, and it is material to the argument in this cause. The Secretary of War himself has referred to the fact, in his official report for 1884, which is in evidence, that it ended in disaster. He does not mention the two commissioned officers of the United States Army and the seventeen enlisted men who perished there—he does not name them. Oh! no. Never were heroes unnamed before. They are not named! We want to hear their names from the officer whose immediate order dispatched them, sent them up to sunless shores where they died in the line of their duty, and have not had their names mentioned in official reports.

We propose to show the animus of the accuser: that he was impelled step by step with a malice so deep and deadly against the Chief Signal Officer of the Army that he became blind upon any question touching Arctic matters that General Hazen suggested. We want to show his deep, tireless hate; that, indeed, his very body exhaled malice wherever the Chief Signal Officer was named. We want to show that the magnitude of this disaster was such that its reflection upon him, the weight of it upon the mind of the Chief Signal Officer of the Army, as in public rumor and by press paragraphs the responsibility of the disaster was imputed to him, challenged him to the proof, or rather to the disproof, of the aspersions cast upon him; that it was a disaster of such magnitude as to properly command his attention.

It cannot be hidden from the country. The Secretary of War has referred to it. I am now asking the names of the men who died in the line of their duty, and who in obedience to their orders went there, sent out by an order signed by the Chief Signal Officer of the Army. That is the only ques-

tion—their names; the names of these commissioned officers and men; the result to them of doing their duty.

We do not propose, may it please the Court (the Court have sufficiently indicated its view on that matter), to enter into this whole question of Arctic work and thus fatigue the indignation of the Court as well as waste its time. We do not propose that. We just want to know their names, and we will pass on and leave that particular branch. Just their names is all we ask. He has stated that nineteen perished.

The JUDGE-ADVOCATE—Mr. President, the prosecution does not shrink from having anything brought forward in this case that is material. The country is very anxious to have it brought forth. But it is my duty to confine this inquiry, as far as lies in my ability, to its proper bounds. I think there is no issue here upon the Arctic expedition and Lieutenant Greely's disaster—that is, it is not pertinent to any of these specifications. I therefore still insist upon the objection.

Mr. MACKEY—I call the attention of the Court to the third specification, which alleges that the accused did throw the blame of the disaster on the Secretary of War. We are going to show what that disaster was.

The JUDGE-ADVOCATE—It is, that he did tell the reporter so; that is the gist of it.

The PRESIDENT—It is now one o'clock. The Court will be closed for deliberation, and afterwards a recess will be taken.

The Court then retired to an adjoining room for deliberation, and afterwards a recess was taken.

The recess having expired, all being present as before, the Court resumed its session.

The JUDGE-ADVOCATE—I am directed by the Court to announce as its decision that the objection of the Judge-Advocate is sustained.

Mr. MACKEY—Mr. President and gentlemen of the Court, I stated to the Court before the recess that I would produce the appendix to a volume, which I present for the sole purpose that it contains in official form certain statutes and communications to which reference will be made. It is issued by the War Department, and printed at the Government Printing-Office. It

is the appendix containing the records produced before the Proteus Court of Inquiry. With no purpose to refer to that court, it simply happens to appear there. We do not wish to mutilate the work by cutting out the pages, or we would have presented them alone.

The JUDGE-ADVOCATE—I would like to know what those documents are.

Mr. MACKEY—This is a memorandum of a communication taken in person to the Secretary of War, without letter of transmittal, about the 1st of April, 1883, with reference to the Arctic expedition.

The JUDGE-ADVOCATE—Please let me look at it before you use it in evidence.

Mr. MACKEY (to the witness)—I hand you that communication for you to identify it, and I will then question you as to the endorsement on that communication. You can state what it relates to. (Handing the document referred to to the witness.)

The JUDGE-ADVOCATE—When the answer is made I should like to have an opportunity to examine the record from which the accused testified.

Mr. MACKEY—That is the alleged record. I can authenticate the appendix as part of the records of the Signal Office.

The JUDGE-ADVOCATE (after examining the document in question)—May I ask in what connection this is to be introduced?

Mr. MACKEY—I call the attention of the witness to it to authenticate it as a correct print of the memorandum which it professes to be a copy of.

The JUDGE-ADVOCATE—And you desire to introduce it in evidence here?

Mr. MACKEY—That far I have gone, for him to authenticate it as correct.

The JUDGE-ADVOCATE—Is it for the purpose of producing this in evidence or not, if you please?

Mr. MACKEY—Yes, to this extent—not the whole of it, but to authenticate that with a view to call his attention in the next question to an endorsement on it by the late Secretary of War.

The JUDGE-ADVOCATE—Mr. President, this document sought to be introduced in evidence here seems to be part of the exhibits to the proceedings of the Proteus Court of Inquiry and the Greely relief expedition. It seems that this printed exhibit, No. 152, is an official copy of some of the records of the Signal Office.

The PRESIDENT—I do not understand that the counsel produces it with reference to that Court of Inquiry, but that he produces it for the purpose of showing the order of the War Department which recites the law—for the purpose of showing what the law is.

The JUDGE-ADVOCATE—It is just there that my objection comes in. That part sought to be introduced does not speak of the law. It is a memorandum of the Chief Signal Officer.

The PRESIDENT—We can read it in a moment. It seems to me that that question has been decided; that we decided we would receive it in that form. If it is a different document from what was promised to be introduced, we should like to know it.

The JUDGE-ADVOCATE—The part sought to be introduced relates to the Arctic expedition, and it is for that reason, Mr. President, that I enter my respectful objection to it. It is not a matter appertaining to this Court.

Mr. MACKEY—I beg leave to call the attention of the Court to the fact that we proposed in this form to present the record, or a printed transcript of the record duly authenticated, showing the memorandum taken by the Chief Signal Officer of the Army on the 1st of April, 1883, to the Secretary of War, for the purpose of having the Chief Signal Officer, now on the stand, testify as to the endorsement of the Secretary of War which appears in this reprint—the endorsement upon that memorandum. I submit to the Court that in applying the rules of evidence to the point before the Court it must be borne in mind that the party who made the memorandum is himself the accuser; that he is not only the accuser, but he has succeeded in standing afar off, and yet exporting into this case his testimony. The Court will take judicial notice of the fact that the endorsement upon the letter of the Chief Signal

Officer of the Army, which is recited in the third specification, is a matter foreign to the specification. What the Secretary of War endorsed upon the letter of the Chief Signal Officer is not evidenced. But it contains aspersions upon the accused, foreign matter infused into the specification, and that the accuser is virtually impugning the accused through matter that does not move in support of the specification—merely language of his own.

We propose to show a record here to show the animus of the accuser. We do not have him here on the witness-stand. That issue we have challenged in every possible form. We limited our admissions in the case in order to get him here, and, as we will show, the case has been virtually surrendered in law rather than place the late Secretary of War, Mr. Robert T. Lincoln, on this witness-stand. This interprets his animus. He gives his construction of the language of a letter addressed to him by the accused—a construction carrying with it the weight that a construction given to an official paper by the Secretary of War would naturally carry.

But, may it please the Court, as accuser he is not Secretary of War. He stands upon the same plane as any other accuser, subject to the very same tests. We cannot have him here. We propose to trace the spirit and temper of the accuser which has led to his construction upon which he bases the charge—trace it through his acts; not to have this Court determine to sit in judgment upon the Secretary of War, or by its judgment, if it should be favorable to the accused, declare that the Court thereby condemns the action of the Secretary of War; that is not the issue.

But we desire, moving within the lines prescribed by the laws of evidence to assail the construction put by the accuser upon the acts of the accused, to guard against undue weight being given to that construction. It is admissible, may it please the Court, in all cases to show the animus of the accused. This is what we propose to read. It need not go into the record until the Court decides. This is the point:

"Endorsement of the Secretary of War: The Arctic expeditions originated in the Signal Office, and no other bureau seems to have taken the slightest interest in them."

That is true. We want to show it by the Secretary of War himself—that he did not take the slightest interest in them. That is the point. That is only a part of the paragraph. That is the point to which my question will be directed, that part of the paragraph, and I will read the whole paragraph when I come to read the paper.

The JUDGE-ADVOCATE—Mr. President, this memorandum seems to be dated April 9, 1883. It is not the original. The initials R. T. L. are affixed to it. If it is sought at all to introduce before this Court any writing or any matter of decision by the late Secretary of War, Mr. Lincoln, the proper avenues for subpœnaing or for producing such a document are open to the accused as well as to the prosecution. If he desires to bring that document in here, the original should first be produced, not what purports to be a copy made in the Signal Office by the accused. That is one objection that I have.

The other objection that I have is that the matter is not pertinent to this issue. It occurred long before the matters alleged in these specifications occurred. The memorandum was made six months previous to the decision of the Secretary of War of December 19. It has nothing whatever to do with this case, and, being not relevant to the issues before the Court, I desire to object to its introduction.

Mr. MACKEY—It is a record issued by the War Department that we exhibit.

The PRESIDENT (to the Judge-Advocate)—Will you inform the Court what the record says on the question which called for the production of this paper ?

The JUDGE-ADVOCATE—I apprehend, Mr. President, that nothing of this kind came up before.

The PRESIDENT (to the Judge-Advocate)—Do you object to the relevancy of the document or to the form of its presentation ?

The JUDGE-ADVOCATE—I object to it because it is not the original paper, and also because the subject is not relevant to this issue.

A member of the Court—I should like to have that portion of the record which refers to this matter read.

The reporter read as follows, beginning with the latter portion of the answer of the witness:

"The WITNESS—In forwarding this letter to the President the Secretary endorsed upon it that he knew of no such understanding, and he rather claimed that I had passed beyond my authority in spending all of the appropriation of the year before—

"The JUDGE-ADVOCATE (interposing)—I object to any statement as to the contents of written records, or to any matter of decision by the Secretary of War. The best evidence obtainable, if the question is to be at all inquired into, is to be produced. What is the best evidence of that fact? The Secretary of War's own handwriting, or the handwriting over his signature; not the recollection of the witness, but the Secretary's own action.

"Mr. MACKEY—If that is pressed, Mr. President, we shall have to get the original record.

"The PRESIDENT—I think we had better get the original records for that purpose.

"Mr. MACKEY—We will return to that hereafter. Perhaps when the Court takes a recess to-day we will be able to send for it, and not delay the Court."

Mr. MACKEY—I then offered that as a volume issued by the War Department. It is an appendix, rather, to that volume. It contains a number of public statutes and orders on page 109 of the appendix.

The PRESIDENT—Is the Court ready for the determination of the question? The vote will be taken by ballot, unless some member desires the Court to be cleared. The question is, Shall the objection of the Judge-Advocate be sustained?

A vote was then taken by ballot.

The JUDGE-ADVOCATE—I am directed by the Court to announce as its decision that the objection of the Judge-Advocate is sustained.

Mr. MACKEY (to the witness)—Will you state by whose order Lieutenant Arthur W. Greely was appointed to the command of the Lady Franklin Bay Polar Expedition?

The JUDGE-ADVOCATE—Mr. President, at the early part of this inquiry—that is, at the early part of the examination in chief of this witness—the question was asked in reference to the International Polar Expedition. It was objected to by the Judge-Advocate, and the Court sustained the objection.

Mr. MACKEY—I beg pardon on that point. The Court did not. The Court overruled it very promptly.

The JUDGE-ADVOCATE—Then I have not remembered the action correctly.

Mr. MACKEY—Undoubtedly.

The JUDGE-ADVOCATE—I would like to have the reporter read the record on that point.

The reporter read the decision of the Court upon the point as follows :

"The JUDGE-ADVOCATE—I am directed by the Court to announce as its decision that the objection of the Judge-Advocate is sustained."

Mr. MACKEY—That went to the jurisdiction of the Secretary of War, and the Court certainly sustained that. We are charged with impugning his decision ; and if we cannot show that he had no authority to make it, we cannot show what the defence thinks is germane to the question, and every question of that kind.

The JUDGE-ADVOCATE—The record must speak for itself in this case. The Court refused to enter into any investigation as to how or by whom the expedition was set on foot. If I understand the ruling of the Court correctly, they disposed of that subject and the subject as to by whom Lieutenant Greely was sent there.

The PRESIDENT—The Court decides that the record as read on that point is correct.

Mr. MACKEY—And the Court thereby excludes the defence from questioning the jurisdiction of the Secretary of War to make that very decision. I ask that that go upon the record—the particular question that the Court has ruled on.

The JUDGE-ADVOCATE—It is an entirely different question that the counsel now argues. He must draw his own inferences from the decision of the Court.

Mr. MACKEY—I will now ask this question : Whether it was under this statute, "An act to authorize and equip an expedition to the Arctic seas," that the Lady Franklin Bay Expedition was authorized, and the Chief Signal Officer of the Army charged with certain duties in relation to the expedition—the act of

May 1, 1880? We have the right to introduce a public statute. That is an absolute right. We now introduce the act of May 1, 1880. Whether that was the act or not, that is the question. We introduce it to show that the Secretary of War had no jurisdiction to decide as to whether an expedition should sail or not sail; that he was an intruder into a field beyond his jurisdiction.

The JUDGE-ADVOCATE—There is no doubt, Mr. President, that the Court is obliged to take judicial cognizance of all Acts of Congress. It is perfectly natural, but I deny the purpose for which it was introduced as stated by the counsel. The Secretary of War is the lawful organ of the President of the United States. He is the medium of communication. The acts of the Secretary of War are, in contemplation of law, the acts of the President of the United States. An authority on this subject can be very easily produced.

Mr. MACKEY—I simply ask if that is the act under which the expedition sailed. I do not ask leave to introduce the act, but only whether that is the act under which the expedition sailed.

As to the Secretary of War being the organ of the President of the United States, may it please the Court, if it is meant by that that to charge an officer with impugning the decision of the Secretary of War means impugning the decision of the President of the United States, that is not true, either in law or in fact—there is no question of that: that in the ordinary administration of the War Department in its relation to the military establishment, and the ordinary and regular administration of the Secretary of War, it is assumed he acts with the sanction of the President of the United States, unless the contrary appears. But when the duty relates to a matter beyond the sphere and normal powers and duties of the Secretary of War—an expedition in foreign lands, sailing from a foreign port towards the North Pole, an expedition commercial in its nature as well as scientific, as the statute shows, or a scientific expedition to discover new whaling grounds—and the statute says that the authority shall be vested in the President of the United States, it cannot be held that the contravening of an order of the Sec-

retary of War is the violation of the order of the President of the United States, where the President appears upon the scene, frames an executive order, signs it, and sets the expedition in motion. And if we were charged here with impugning and criticising the official action of the President of the United States, according to the view of the learned Judge-Advocate, it would be sufficient to maintain that charge if we criticised and impugned the action of the Secretary of War, as he is the organ of the President. But they are two different persons, and the only question I put to the witness is: "Is that the statute under which the expedition sailed?"

The PRESIDENT (to the counsel for the accused)—There is no doubt that you have a right to refer to these statutes in your argument, but the question is now whether it is customary or proper to receive those statutes in evidence.

Mr. MACKEY—I only ask the witness whether that is the statute.

The PRESIDENT—I will ask you whether it is customary to receive statutes of that kind in evidence before courts, or whether the practice is not merely to refer to them in the argument?

Mr. MACKEY—It is not necessary or customary to do so, for the Court takes notice of a public statute. I propound the question, "Is that the statute under which the expedition sailed?" The statute does not answer that question.

The JUDGE-ADVOCATE—I do not object to the question as much as I do to the counsel's statement. He distinctly states that he introduced that statute for the purpose of showing that the Secretary of War had no jurisdiction in the matter. That is what I object to. Let him ask the naked question, and then let the Court draw its own inferences. But do not let him force on the Court his own views, so that hereafter he can claim that he introduced the book for such and such a purpose, and claim that you allowed him to produce the statute for the express purpose by him stated. That is what I object to, Mr. President. The Court must judge, not he, of the effect of that statute.

Mr. MACKEY—I simply stated the object of asking the question, and the exact reason why the Court should admit it: that the accused has always a right to assail the jurisdiction

of an officer whose decision he is charged with having violated. Cases frequently occur under the ninth Article of War where a soldier is charged, for example, with assailing an officer in the execution of his office. It becomes a material question to know whether he was, in the execution of his office, within his jurisdiction, and in response to the question of the learned Judge-Advocate I stated that the purpose was, in asking the question about that statute, to the end that we were ascertaining the jurisdiction of the Secretary of War to make the order that we are charged with criticising.

The PRESIDENT (to the Judge-Advocate)—You object to the question. In what form is your objection?

The JUDGE-ADVOCATE—To state the subject anew, I will simply say that I object to any inquiry by this Court into the question of by whom or how the International Polar Expedition was set afoot; that this question is part and parcel of the same subject heretofore sought to be introduced by the counsel and overruled by the Court. The statutes speak for themselves.

The PRESIDENT—If there is no objection the vote will be taken by ballot. The question is, Shall the objection of the Judge-Advocate be sustained?

A vote was then taken by ballot.

The JUDGE-ADVOCATE—I am directed by the Court to announce as its decision that the objection of the Judge-Advocate is sustained.

Mr. MACKEY—May it please the Court, the annual report of the Chief Signal Officer for the year 1884, I understand, is in evidence, and I introduced so much of the report as is comprised between the marked lines on page 16 and as marked down to page 19. I now call the attention of the witness to that. (To the witness:) Read that, if you please—a part of your annual report.

The witness read from the annual report of the Chief Signal Officer of the Army to the Secretary of War for the year 1884, page 11, as follows:

"The general plan received the signature of the President the 28th of April, and the expedition was established by Act of Congress approved May 1, 1880."

Mr. MACKEY—That is sufficient. (To the witness:) Is that true? A. It is.

Q. Now further as to the third specification. It is stated by the accuser in this case, Mr. Robert T. Lincoln, the Secretary of War, in his endorsement upon the back of your obnoxious letter of date February 17, that your letter is returned with the remark "that a breach of military discipline which could not be overlooked may be avoided by the retention, by the Chief Signal Officer, of the within paper in his own hands." Did you retain it in your own hands after that? A. I did.

Q. They exhibit a copy of it in this paper after giving you that information. Did you furnish them with a copy? A. I did not.

Q. Did your office furnish a copy? A. It did not.

Q. Did you exhibit it for publication in any form? A. I did not.

Mr. MACKEY (to the Judge-Advocate)—Let me see the date of the extract from the Chicago *Tribune*, if you please; the paper has disappeared. I think it was February 25.

The JUDGE-ADVOCATE—That is my recollection. (After referring to the record:) Yes, it is February 25.

Q. It appears in the opening of the endorsement of the Secretary of War on your letter of date February 17, 1885, as follows:

> "The within paper, bearing date of February 17th instant, was received at the War Department February 26, and is respectfully returned to the Chief Signal Officer."

Now, here is the paper received at the War Department on the 26th of February, addressed to the Secretary of War, while in the Chicago *Tribune* of the 25th, the day before the letter was actually received by the Secretary of War, a notice of it appears in which you are assailed. How did you keep that letter?

A. It was kept in my desk.

Q. Has it not happened, or has it happened, within the recent past, that letters have been purloined from desks of the Signal Office and taken to the Secretary of War? A. They have been.

The JUDGE-ADVOCATE—Mr. President, I do not think this Court has anything to do with the matter of the purloining of letters from the Signal Office. The purloining of letters is not an issue in this case. The question is not relevant, it is foreign in its issue, and I am in duty bound to object to it.

Mr. MACKEY—The purpose, Mr. President and gentlemen of the Court, is this: To negative the presumption that the accused circulated the contents of this letter either before or after it had been received by the Secretary of War. The presumption is raised against the accused that he exhibited the letter because a paper of date one day prior to the reception of the letter contains a notice of the letter.

I propose to show that letters have been purloined. I propose to show that they have been purloined, taken to the Secretary of War by the person purloining them, and that that person received special employment after the purloining. I want to show the general course of administration with reference to the Chief Signal Officer of the Army; that nothing was safe or sacred in the Signal Bureau from the hand of the Secretary of War, by day or by night. And I have a right at least to show that letters have been purloined, to rebut the presumption that an extract of this very letter should have been published the day before it was delivered to the Secretary of War. For if this presumption lies upon the accused, it may indicate that he was seeking the newspapers as the forum in which to adjudicate controversies between himself and the Secretary of War. We introduce it to repel that presumption, if we go no further.

The JUDGE-ADVOCATE—Mr. President, the accused has himself, in the cross-examination, raised that issue about the Chicago *Tribune*—in the cross-examination of Rudolph Kauffmann. It was a collateral matter, a collateral issue. The answer to that question in the cross-examination bars him from further investigation of the matter. He is bound by it, and that is the end of that inquiry.

The Secretary of War sets out, in his endorsement upon the letter of February 17, that the letters of date of February 17 had not been received in his office until the 26th day of February. There can be no question here in this cause as

to whether letters have been purloined from the Chief Signal Officer's office or not. I have, however, no objection should the accused or his counsel ask whether that letter had been purloined from his office or not. I should not object to that. But it is a general question which he asks, not in reference to this issue, but in reference to something else—something that has nothing to do with this case.

I must still insist upon my objection. I do not reply to the gentleman's insinuations as to the conduct of the Secretary of War. The late Secretary of War needs no defence from me on that subject, and I think attacks of that character, coming from the other side, are not, to say the least, in very good taste.

Mr. MACKEY—This is not a forum for adjudicating questions of taste. May it please the Court, as to the objection made by the Judge-Advocate that the paragraph in the Chicago *Tribune* was brought out by the cross-examination, I beg reference to the record, which I submit will show that Mr. Kauffmann, on his examination in chief, mentioned the Chicago *Tribune;* at least I think so. At least there has been an examination upon that point, and that objection would apply if we were cross-examining Mr. Kauffmann. But it does not apply here. We are asking the simple question as to whether letters were not sometimes purloined. That is preliminary to the specific question as to where that letter was placed.

It must strike the attention of the Court as a matter worthy of explanation that the Honorable Secretary of War, in his endorsement upon the letter of the Chief Signal Officer of the Army, returned it to his hands, stating to him that if retained he might be compelled to regard it as a breach of military discipline. That implied that he retained no copy. It was not to be assumed that so extraordinary an act of official magnanimity as returning the evidence of an officer's assumed guilt to his own custody would be marred in its moral beauty by the retention of a copy at the same time. It is not like the Caucasian race. And there is the hiatus. How did the accuser get the copy? This bears against the accuser, his credibility. It is intended to break the force of his construction of that letter,

which he has attached to the specification, by setting up his endorsement.

The JUDGE-ADVOCATE—An examination of the record shows that in the examination in chief of Mr. Rudolph Kauffmann not one word is mentioned about the Chicago *Tribune*. The question about the Chicago *Tribune* was raised by the other side later in the cross-examination.

Mr. MACKEY—I would like to look at that matter before the Court passes upon it.

A member of the Court—Is there anything said in it about a Western paper ?

Mr. MACKEY—Yes ; the very interview recites the Chicago *Tribune* which has been put in evidence. The interview in the *Evening Star*, I think, mentions the Chicago *Tribune*. I am not positive ; I have not the paper.

The JUDGE-ADVOCATE—No, sir ; not a word that I can find.

Mr. MACKEY—The fact is in, it matters not how it comes. (After referring to the record :) May it please the Court, it appears that in the cross-examination the witness for the government, to prove the alleged interview published in the *Star*, answered on cross-examination:

> "Q. Now try and recollect your response to that inquiry of his in substance. A. In substance it was that I had seen in a copy of the Chicago *Tribune* . . ."

and the Chicago *Tribune* was introduced in evidence, or that paragraph of the Chicago *Tribune*. We ask with reference to that matter ; it matters not how it comes in—it is in.

The JUDGE-ADVOCATE—My statement is made good by the record, that the prosecution did not bring in the fact of the Chicago *Tribune*.

Mr. MACKEY—But it is brought in by the government witness.

The JUDGE-ADVOCATE—I shall not yield my objection, but I leave the matter to the Court.

The PRESIDENT—It has been thought possible that the counsel of the accused might think it not hostile to the interests of their case if they put the question to General Hazen

whether, from his own knowledge or by his own act, this paper had ever gotten out of his possession. Perhaps if the question is put in that form it would save further discussion.

Mr. MACKEY—Very well, I will put that question. (To the witness:) General Hazen, you have stated that you did not exhibit that paper for purposes of publication or otherwise. Do you know, of your own knowledge, whether this paper passed out of your possession between the time when you wrote it and the time when you addressed it to the Secretary of War? A. It went out of my possession to the Adjutant to be engrossed.

Q. Into whose possession did it return then? A. To mine.

Q. Did it go to any employee of your office? A. It probably went into the hands of the Chief Clerk. That would be the usual course.

Q. Did you give it out, in whole or in part, before its delivery to the Secretary of War? A. To no one, except as I just explained.

Q. We come now to a material point. It is alleged in the third specification of Mr. Robert T. Lincoln, the accuser in this case, that you did, in response to an inquiry made by a newspaper reporter as to whether you, the said General Hazen, had written a letter to the Secretary of War throwing the blame of the loss of the Greely party upon his shoulders, "intentionally make a statement, in answer to said newspaper reporter, with a view to its publication, and did cause the same to be published, on the 2d day of March, 1885, in a newspaper printed and published in the city of Washington, D. C., called the *Evening Star*," etc. Will you please state whether that is true? A. It is not.

Q. State, as near as you can recollect, exactly what transpired between you and Mr. Kauffmann, the reporter of the *Evening Star*, on the evening of March 1—the evening of the alleged interview—as to this matter. A. On the occasion in question, the evening of March 1, I was in the lobby of this hotel. Passing through a very dense crowd of people, I was accosted by Mr. Kauffmann, who asked me if what was in a Chicago paper of some previous date, the 25th, was true. I told him I had seen nothing in a Chicago paper, and knew nothing

about anything in it; and as I had not, I asked him to describe to me what was there. He then went on to say that the Chicago paper stated that I had written a letter in which I had thrown the blame of the Greely disaster upon the shoulders of the Secretary of War; and that it also stated that I had put off this letter until just before the close of the administration, in order to be away from Washington when the letter should be printed, and also to be away from Washington until the Secretary of War should go out of office. I told him that I had written a letter in which I had enclosed evidence to support my statements in my annual report, as the Secretary of War had attacked me for it in a way which made it necessary, I thought, for my own record and for the truth of history, that I should support my statements with these facts. I did not mention the Secretary of War; I did not mention any name. I merely referred to it as a decision. I also told him that the story about my wishing to go South to be away when the letter was published was false in every particular, as I had no intention of publishing the letter, and I had no intention of being away at the time the Secretary should receive it or at the time the Secretary might go out of office. That I had asked to go South on official duty, but it had no relation whatever to that letter, and I did not intend to go until about the middle of the month. Mr. Kauffmann was mistaken in saying that I said about the middle of the week. The fact is, it was the 14th of the month that I had set to go.

SIXTH DAY.

ROOMS OF THE GENERAL COURT-MARTIAL,
EBBITT HOUSE, WASHINGTON, D. C.,
Tuesday, March 17, 1885, 11 A.M.

The Court met pursuant to adjournment.

The direct examination of Brigadier-General William B. Hazen, the accused, was resumed as follows :

Brigadier-General WILLIAM B. HAZEN then resumed the witness-stand, and his direct examination was resumed.

By Mr. MACKEY :

Q. Referring to the point at which your testimony closed on yesterday, will you please state whether there was anything said by the reporter Kauffmann to lead you to infer that he desired to interview you as to this matter ? A. There was nothing of that kind said, nor did I suppose for a moment that it was an interview. I knew Mr. Kauffmann pretty well, and we never passed without having a pleasant word. I have met him ten times where there was nothing published, where there was one time that anything was published; and, in fact, it never occurred to me at the moment that he was a newspaper correspondent at all. I cast no blame upon him for publishing it, but I had no idea that it was for publication.

Q. This is the publication referred to in the specification, though not recited (reading):

"THE GREELY PARTY DISASTER.

"GENERAL HAZEN THROWING THE BLAME ON THE SECRETARY OF WAR.

"'Is it true,' asked a *Star* reporter of General Hazen, 'that you wrote a letter to the Secretary of War throwing the blame of the loss of the Greely party upon his shoulders ?'

"'I did write such a letter,' was the reply."

State whether the question was asked you and your reply made in the connection stated in this paragraph.

The WITNESS—Please repeat the question.

Q. I recite from the *Evening Star* of March 2, referred to in the third specification, the following :

"'Is it true,' asked a *Star* reporter of General Hazen, 'that you wrote a letter to the Secretary of War throwing the blame of the loss of the Greely party upon his shoulders ?'

"'I did write such a letter,' was the reply."

Please state whether the question and the reply were made in the connection stated in this publication. A. It was not made as there reported. I answered, as I have already stated, without mentioning the Secretary's name, and stating that I had written a letter in which was embraced the evidence of the truth of my statements in my official report.

Q. The reporter proceeds to state as your language :

"'I did write such a letter,' was the reply. 'It was a straightforward statement of facts in regard to the matter."

Did you use that language ? A. I used the latter part of that language, that it was a straightforward statement of facts in regard to the matter.

Q. But not the former. Again he professes to cite your language :

"I produced evidence to show that, had my recommendation of having another expedition start from St. John's immediately after the loss of the *Proteus* not been entirely ignored by the War Department, the Greely party could all have been saved."

Did you use the words published as I have read them ? Did you use every one of those words ? A. I did not. I used the portions which said that if an expedition had been sent immediately after the loss of the *Proteus*, as I had recommended, the Greely party would have been saved.

Q. State whether you used the term "ignored" in your interview. A. I did not.

Q. What term did you use, if you can recall it ? This says, "Had my recommendation of having another expedition start from St. John's immediately after the loss of the *Proteus* not

been entirely ignored by the War Department," etc. A. I used the words, "if the decision had not been made not to send."

Q. Then, to read further from the publication in the *Star:*

"I felt it my duty to myself to make this statement after the severe manner in which the Secretary of War spoke in his report of my alluding to the matter in my annual report. My intention to go South was in no way connected with the letter."

Did you use that language, or any language reflecting upon the Secretary of War? A. I used in substance that language, but not any language intended to reflect upon the Secretary of War.

Q. The specification alleges that you did intentionally make a statement in answer to said newspaper reporter with a view to its publication. Had you any view to its publication? A. None whatever.

Q. Did you cause the same to be published? A. I did not.

Q. Please state whether, after this publication on the 2d of March, and between that time and the preferring of the charge and specifications in this case, any inquiry was made of you by the Secretary of War as to whether you authorized that publication. A. There was not.

Q. No inquiry was made of you? A. None whatever. The first intimation I had was the order placing me in arrest.

Mr. MACKEY—That was your first information that it had been brought to his attention. (Addressing the Court:) Mr. President, the course of the examination of the accused which I now propose entering upon may be determined by the view that the Court holds as to whether the recital, in the third specification, of the endorsement made by the Secretary of War on the letter of the 17th of February, 1885, is to be considered as a part of the specification. It is a recital of the views of the Secretary of War himself—quite a voluminous recital. It is manifest that it does not belong to the specification, but is an argument. The rule is that all argumentative matter must be excluded from the specification. If the Court holds that that is to be considered by the Court as matter belonging to the specification properly, then we must address evidence to it.

But that, may it please the Court, could hardly be held. The Court may very properly strike out what is manifestly redundant—strike it out on motion. Here is an argument entered into by the accuser in the case, and his deductions presented, whereas the subject of the third specification is the letter itself. It must speak for itself, and it is respectfully submitted to the Court that the deductions of the accuser, based upon that letter, ought not to be blended with the letter itself.

It is not alleged in the specification proper that the Chief Signal Officer of the Army had imputed to the Secretary of War a "neglect of duty." It is not alleged in either of the specifications that the Chief Signal Officer of the Army had used terms of disrespect to the Secretary of War, or that he intended to impugn the Secretary of War.

No intent is charged of disrespectful conduct and language, except in the endorsement, which it was clearly not necessary to recite, because the letter has been quoted and contains the endorsement, and the endorsement could not have been put in evidence. If the endorsement had contained an injunction which the Chief Signal Officer had violated after receiving it, it would have been material. But the endorsement consists itself of the Secretary's construction of the letter. He is the accuser. We desire to know whether the accuser is to testify in this form in the Court. The rule is that he must be present, if his statements are to be considered, he standing upon the same plane as any other accuser, the charge to be made good by proof.

If the Court holds that that is not specially to be answered—the mere endorsement—then I will not examine the accused as to the Secretary of War's construction, which is not properly matter of charge here and does not belong to the specification.

The JUDGE-ADVOCATE—Mr. President, it is rather unusual, at this stage of the proceedings, to ask the Court to strike out and not consider certain parts of the specification already before the Court and pleaded to by the accused. The endorsement referred to by the counsel on the other side has been admitted in evidence by the accused. The whole document is before the Court, and that endorsement forms part of the gist of the offence,

as I take it. In that endorsement upon this letter the Secretary of War returns the whole correspondence to the accused "with the remark that a breach of military discipline which could not be overlooked may be avoided by the retention by the Chief Signal Officer of the within paper in his own hands."

That endorsement is set out as a descriptive averment of the offence alleged to have been committed. It is put there evidently for the purpose of showing that after the accused had this opportunity to bury the correspondence, and not to ventilate it before the public and elsewhere, he nevertheless, notwithstanding that opportunity, did say to a *Star* reporter this, and thus it is alleged in the specification.

Therefore that part of the matter set out in the specification becomes very important. It is alleged, in other words, that notwithstanding this offer of the Secretary of War to allow him to bury the correspondence, to keep it to hi nself, the accused did publish its purport to a *Star* reporter.

I therefore ask that the Court will not take any action upon the request of the accused or his counsel, as it is a most unusual one to ask a court beforehand as to whether it will consider part and parcel of the proceedings before the trial has reached a final conclusion. I therefore ask that no action be taken upon this remarkable and unusual request by the other side.

Mr. MACKEY—It may appear unusual to the Judge-Advocate, but the opinions of the Judge-Advocate-General of the Army as published, and the writers upon courts-martial, all lay down the proposition that the court may at any stage, upon motion, strike out or quash the specification or any part of it where it appears to be wrong. Indeed, the authorities go further and hold that the court, without motion, may retire, whether at the beginning of the trial or at any stage of it, and, after considering matters in the specification, may decide that they are irrelevant and that evidence need not be addressed to them.

If the writing of the letter to the Secretary of War was not in itself an offence, if the matter of the letter did not render the accused obnoxious to this charge, if the publication alleged did

not render him obnoxious to the charge, then the fact that that endorsement was put upon the letter would not make him obnoxious to the charge of conduct to the prejudice of good order and military discipline. That endorsement may be introduced in evidence, as it was a part of the letter. But the question I submit to the Court is, whether it is proper as a part of that specification. It recites the action of the Secretary of War, his opinion as to the letter, whereas we are entitled to have that letter considered by the Court, unclouded by the opinion or the construction of the Secretary of War. The Court must construe the letter, while this endorsement is simply a construction of the letter itself by the accuser.

As to the act of magnanimity referred to by the Judge-Advocate, I will, at the proper time, review that very fully.

The JUDGE-ADVOCATE—Mr. President, the counsel for the other side has not advanced anything that would change my purpose or my statement that I have heretofore made on the subject, and I will again, if the Court will permit, reiterate that that endorsement of the Secretary of War is as much in evidence before this Court as the letter itself. It was admitted by the accused in evidence. It was not questioned when the prosecution brought the letter out, and I will again say, gentlemen, that that endorsement of the Secretary of War is an important link in the specification, the third specification ; it is a descriptive averment of the offence committed ; it is a part and parcel of the whole controversy. You cannot sever it from the remainder without doing violence. I therefore ask again, gentlemen, that you take no action upon the request made by the other side.

The PRESIDENT—Do the members of the Court desire the Court to be cleared, or shall we vote on this question by ballot?

Mr. MACKEY—The Court understands my motion, that the endorsement be stricken out as irrelevant to the specification, as not properly forming a part of that specification.

A member of the Court—The entire endorsement ?

Mr. MACKEY—The entire endorsement as a part of the specification, while it may be considered as evidence outside of the specification.

The JUDGE-ADVOCATE—Since the counsel has stated his purpose, which was not clearly stated before, I shall object to the motion as being illegal, improper, and not relevant at this stage of the proceedings.

The PRESIDENT—The question is, Shall the motion of the counsel for the defence to strike out, as stated, be entertained?

A vote was then taken by ballot.

The JUDGE-ADVOCATE—I am directed by the Court to announce that the motion of the accused is not sustained.

Mr. MACKEY (to the witness)—Well, General Hazen, you will, then, proceed to answer the argument of the Secretary of War in the specifications. The Secretary of War, the accuser in this case, argues upon this construction, after referring to your letter, that your letter was an "official expression of opinion to the effect that the failure of the Secretary of War to organize in two days and dispatch to the Arctic regions a new expedition at a season which made it certain that it must, under the best circumstances, encounter all the rigors of an Arctic winter, was a neglect of duty."

The JUDGE-ADVOCATE—What are you reading from, if you please?

Mr. MACKEY—I am reading from the argument of the accuser in the third specification.

The JUDGE-ADVOCATE—From the endorsement of the Secretary of War on the letter?

Mr. MACKEY—It is entitled the endorsement.

The JUDGE-ADVOCATE—Whereabouts, please?

Mr. MACKEY—It is at the bottom of the third page before the last. (To the witness:) Did you in this letter intend to express an opinion to the effect that it was the duty of the Secretary of War to organize a relief expedition in two days? A. No, I did not.

Q. Did you intend to charge the Secretary of War in that letter with a neglect of duty because he did not organize a relief expedition in two days? A. No.

Q. You did not? A. No.

Q. Is the construction of the accuser in this case, the Secretary of War, correct or incorrect upon that point, as you under-

stand your meaning and intent? A. It is not correct. I did not intend to charge neglect to any one. I did intend to say that it was a mistake not to have sent an expedition that autumn. There were a good many days—that is, there were more than two days—in which it could have been prepared and still have time to have gone. I did not intend to charge neglect upon any one.

Q. In the endorsement upon that letter referred to, the Secretary of War stated:

"The strictures made by the Secretary of War in his annual report, and now referred to by the Chief Signal Officer, were addressed to the extraordinary conduct of the Chief Signal Officer, as a military officer, in publicly controverting the propriety of previous official action of his official superior, the Secretary of War, and that, too, in a matter in which the Chief Signal Officer had no official responsibility."

Did you or did you not believe that you had an official responsibility as to that matter? A. I had no official responsibility for the decision of the Secretary of War. I did have the greatest responsibility which one man can bear to another to do everything in my power for the relief of that expedition. It was a responsibility far beyond official routine. It was a responsibility which one man bears to another when he goes into deep water where he cannot return without the assistance of that man, which had been promised in the strongest possible terms, both expressed and implied. There was nothing, no fortune which I possessed, no energy which I possessed, but was due to these men to assist and rescue them. They had gone there under an implied and absolute promise, and I did everything in my power to get them out of it, and I was ready to spend the last cent I possessed; and in 1882, when the *Neptune* was to be sent and Congress was very slow in making the appropriation, and it was doubtful if it would make it, I engaged that boat myself on my own responsibility. I would have done the same thing in the fall of 1883, if I had been permitted.

Q. To be sent for what purpose? A. The *Neptune* was sent for the relief expedition in 1882—that is, the ordinary annual relief expedition. I would have done the same thing in 1883, if I had been permitted to do it. Congress, however, did ap-

propriate the money in 1882, and I was relieved of that necessity.

Q. In this construction, made by the endorsement, of your annual report (for this is an argument on your annual report as well as an argument as to the alleged publication) the Secretary of War states that his strictures in his annual report were addressed to the extraordinary conduct of the Chief Signal Officer, as a military officer, in publicly controverting the propriety of previous official action. Did you publicly controvert the propriety of official action ?

The JUDGE-ADVOCATE (to the witness)—Wait a moment before you answer.

Mr. MACKEY—These interruptions are unwarranted. I ask a question in the language of the Secretary of War's own endorsement, and the witness is halted and asked not to answer. He is asked in that language, which is the only proper form in which to negative it by evidence.

The PRESIDENT (to the Judge-Advocate)—What is your objection ?

The JUDGE-ADVOCATE—I have not any. I simply desire to hear and understand the question, so as to be able to make an objection if necessary.

The PRESIDENT (to counsel for the accused)—You may proceed.

Mr. MACKEY (to the witness)—Did you intend to question the propriety of the Secretary of War's action or the authority upon which it was based ? A. I did not.

Q. Which did you intend to question, the authority upon which he based his action or the propriety of his action as related to his duty as Secretary of War ? A. The authority of the fact. I merely meant to say what I knew to be a fact in regard to my own conduct, which was necessary for my own defence.

Q. The Secretary of War states in the endorsement that the propriety of his action in not sending a ship in September, 1883, to the Arctic regions is not a proper subject of discussion between the Chief Signal Officer and the Secretary of War. State whether he did or did not discuss that publicly with you.

The JUDGE-ADVOCATE—Does not the paragraph commence with the words, "The correctness of the judgment of the Chief Signal Officer," etc.?

Mr. MACKEY—Yes; but I am reciting part of the sentence in the body of my question. You have dismembered the sentences of the annual report in the specification. We do not follow that. (To the witness:) The endorsement reads: "The correctness of the judgment of the Chief Signal Officer in the expression made by him, in his last annual report, of his views as to the propriety of the action of the Secretary of War in not sending a ship in September, 1883, to the Arctic regions, is not a proper subject of discussion between the Chief Signal Officer and the Secretary of War." Did or did not the Secretary of War publicly controvert the correctness of your judgment in his annual report? A. He did.

Q. He states here it is not the proper subject of discussion. State whether he did discuss it in his annual report. A. He did, at length.

Q. State whether he did pass harsh strictures upon you in his annual report. A. He did.

Q. Was that before or after the writing of your letter of the 17th of February, 1885? A. It was before.

Q. So much for the publication and the argument of the Secretary of War. To recur to another matter: You have stated that the purpose of your letter was to relieve you of the imputation of being responsible for the final disaster to the Greely party. How were you aware that the imputation was cast upon you, that you were in some degree responsible for that final disaster? A. By public expressions, and by the reading of the Secretary's report upon the subject, and by other means.

Q. Do you know whether that opinion that impugned you as responsible for the disaster existed in any other country than this? A. I do not. I never had any evidence that it did.

Q. Do you know Mr. John Syme—the Honorable John Syme, of St. John's, Newfoundland? A. I do.

Q. Do you recall his letter upon that subject as to the opinion existing in Newfoundland? A. The letter is in evidence.

Mr. MACKEY (to the Judge-Advocate)—Have you that letter?

The JUDGE-ADVOCATE—Yes; I have the letter from Mr. Syme.

The Judge-Advocate handed the letter in question to the counsel.

Mr. MACKEY—I will read a part of the letter of the Hon. John Syme, of Newfoundland—formerly governor, I believe—which forms one of the enclosures in that letter. I will read the part as to which I desire to question General Hazen. It was a letter addressed to General Hazen, and is dated St. John's, Newfoundland, 22d of December, 1883.

The counsel read from the letter as follows:

"It was only the other day I heard you recommended immediately on the arrival of the *Yantic* the fitting-out of a sealing-steamer to continue the search, and I am glad for your sake that you did so; for it proved you had not only a proper estimate of the probabilities of success, but that you had the heart to feel for those who were trusting that no effort to succor them on the part of yourself or your government would be considered too great."

(To the witness:) Did you receive that letter? A. I did.

Q. Were you present upon the arrival of the dead from the Arctic, and the living, the survivors, Lieutenant Greely and his companions? A. At what point?

Q. At Portsmouth, on their return to this country. A. I was.

Q. Was the Secretary of War present? did he go to receive them? A. He was not present.

Q. Was the Secretary of the Navy there?

The JUDGE-ADVOCATE—Mr. President, I would ask that all that part of the evidence submitted as to whether the accused, the Secretary of War, or any one else was present on the arrival of the Greely party at Portsmouth be stricken out. I object to that line of examination, because it has nothing to do with the merits of this case. It is extraneous; it is foreign to it; it is not relevant.

Mr. MACKEY—I submit, may it please the Court, that it is now relevant. The Secretary of War who formulated the charge and specifications, the accuser in the case, has virtually

testified in the case by incorporating his construction of the letter on which the charge is in part based. It is competent to show the animus of the accuser, who has placed his construction before the Court, in showing that his deductions do not properly spring from the language or the acts of the accused. We submit that it is competent to show that his deductions would naturally be colored by hostility to the accused, and by the temper of the accuser himself as to the matters out of which the controversy grows. We have convicted, we submit, or endeavored to do so, the Secretary of War of a spirit of violent hostility to the accused. We propose to show by circumstances, that so great was his hostility to Arctic work and those engaged in it under the direction of the Chief Signal Officer of the Army, that his malice did not halt at the grave itself. Two officers of the Army had died in the line of their duty in the Arctic, and their dead bodies were returned—Lieutenants Kislingbury and Lockwood. The Secretary of War, when eminent men of this nation assembled to do honor to the living and the dead, was absent, and purposely, as we propose to show. That is the object.

The PRESIDENT (to the counsel)—Will you halt a moment, or are you through?

Mr. MACKEY—Yes, I am entirely through.

The JUDGE-ADVOCATE—I still object. The other side has not advanced anything to change my views on the subject, and, without detaining the Court in the matter, I ask a decision.

The PRESIDENT—What is your motion?

The JUDGE-ADVOCATE—My motion is to strike out so much of the evidence as refers to the arrival of the Greely party at Portsmouth. I also object to permitting any further investigation in the same direction, because the matter is extraneous and has nothing to do with the case; is foreign to the issue. When I move to "strike out" that part of the evidence, I mean that it is not to be considered as proper evidence in this case.

Mr. MACKEY—I should like to know whether the objection is to the question I have just put or to the answer the witness made. The questions are recorded and the answer is recorded.

The PRESIDENT—I do not know that the answer is recorded with reference to the question concerning the Secretary of the Navy.

The JUDGE-ADVOCATE—No, it is not. I interposed.

A member of the Court—I would like to have that portion of the record read.

The reporter read as follows:

"Q. Were you present upon the arrival of the dead from the Arctic, and the living, the survivors, Lieutenant Greely and his companions? A. At what point?

"Q. At Portsmouth, on their return to this country. A. I was.

"Q. Was the Secretary of War present? did he go to receive them? A. He was not present.

"Q. Was the Secretary of the Navy there? (The Judge-Advocate objected.)

Mr. MACKEY—I have no further questions to ask on this point. I shall not touch it again.

The PRESIDENT—The Court will be cleared, but it will be in the form of a retirement of the members of the Court for deliberation.

The members of the Court and the Judge-Advocate then retired to an adjoining room for consultation with closed doors.

After some time spent in deliberation with closed doors the members of the Court and the Judge-Advocate returned to the court-room.

The PRESIDENT—The Court is called to order.

The JUDGE-ADVOCATE—I am directed by the Court to state that it decides to sustain the motion of the Judge-Advocate to strike out as stated in the record.

I am also directed by the Court to make known the following decision. In the opinion of the Court the strictures upon the late Secretary of War, the accuser, in which the accused, through his counsel, has indulged, are not warranted by any evidence yet before the Court, and the Court will not permit such strictures to be made not justified by the evidence.

Mr. MACKEY—May it please the Court, we respectfully submit to the Court that the counsel must, in the first instance, make his deduction from the evidence and present it. We

propose to question the animus of the accuser, and I trust that he does not mean to debar us from that right at the proper time, in argument, not at this stage, unless we can show the animus by the evidence. We will endeavor to show that animus, and we respect the decision of the Court.

The PRESIDENT—It being one o'clock, the Court will take a recess.

Mr. MACKEY—Will the Court allow me to state it is due to the counsel for the accused to state that, in making the imputation that the Secretary of War did not receive the dead at Portsmouth, counsel were not aware that he did visit Governor's Island afterwards. He has just been informed of that fact by General Hazen—

The PRESIDENT—Yes, he did.

Mr. MACKEY—Who desires me to explain that fact, that he visited Governor's Island upon the request of General Hazen.

The PRESIDENT—The Court will take a recess of thirty minutes.

A recess was then taken until 1.30 P.M.

The recess having expired, all being present as before, the Court resumed its session.

Mr. MACKEY—Mr. President and gentlemen of the Court, in order that the counsel for the accused may not violate the ruling of the Court, and may understand distinctly the limitation which, by the judgment of the Court, is imposed upon counsel as to strictures upon the accuser, I beg leave to ask whether the Court, by the decision announced, holds that the accuser in the case is not to be subject to any strictures—*any* strictures—or whether, in the judgment of the Court, the decision of the Court was intended to apply to the strictures in connection with the particular question that he was not present to welcome the Arctic survivors and to honor the dead.

I have explained that I learned, after making the reflection, that the Secretary of War had, upon the earnest request of the Chief Signal Officer, joined in receiving the dead at Governor's Island, though not receiving the survivors at Portsmouth.

I desire to know whether the view of the Court expressed is intended to apply to that question only, and if the strictures

were not warranted, as to that particular point, or as to whether the accuser is to be exempt from all strictures; for it would be necessary, may it please the Court, in the argument to draw deductions from the views of the accuser and his action in relation to the endorsement and other acts, and if the Court holds that the accuser cannot be properly subjected to strictures I would ask leave to submit to the Court a long line of authorities upon that point, that where a question of construction enters, where the accuser has presented it, or has presented his recollection of any fact, it is competent to show that his deduction has been colored by personal hostility, or that his recollection is not to be relied on, that it may have been swayed by hostility to the accused.

I would like to know whether the decision is general that the accuser in this case is not to have his construction impeached or his motives impeached in the matter of the charge and specifications preferred against the accused, and submit to the Court that if the accuser were present in court we could assail him through a cross-examination and evidence itself to discredit him; and as he has come to this Court with that endorsement, that it would be legitimate. I would like to know whether the decision is special or general?

The JUDGE-ADVOCATE—The decision speaks for itself, Mr. President. I might add that the latter part of the decision, as I understood it, was independent of any matter that the Judge-Advocate brought up, and it was separately announced.

Mr. MACKEY—Allow me to state that the accused has indulged in no strictures. His acts must speak for themselves. The counsel for the accused, in the discharge of his independent duty as counsel, has presented his deductions in support of positions that have been assailed, and only to that end, and the acts of the accused speak for themselves. It is submitted to the Court that the accused has indulged in no strictures through his counsel, and that it would be just to the accused not to charge him in the midst of a case, before it is completed—to render a decision upon the action of the accused in this case. And if it is possible to spread upon the record of the Court an objection, it is the duty of the counsel to ask

that it be there placed; that the accused speaks for himself, has indulged in no strictures, and that the counsel argues the special questions that arise. I simply desire to note that. The decision speaks for itself in its words, but how far it extends I cannot tell.

The PRESIDENT—The counsel must proceed according to the language of the decision, and if he should err in his construction of it his attention will be called to the fact.

Mr. MACKEY (to the reporter)—Will you read the last answer?

The JUDGE-ADVOCATE—There is nothing pending now. My motion has been sustained.

Mr. MACKEY—It will be necessary—

The PRESIDENT (interposing)—I will ask the counsel to suspend for a moment while I inquire of the Judge-Advocate in what form the first decision of the Court when it last retired is recorded—in what form was it entered upon the record? The decision of the Court was to strike out the portion objected to by the Judge-Advocate.

The reporter read the portion of the record which, upon the motion of the Judge-Advocate, was ordered to be stricken out.

The PRESIDENT—From that point down to the time of the clearing of the Court the questions and answers are directed to be stricken out from the record; that is the decision.

Mr. MACKEY—The second specification alleges, General Hazen, that you did address the letter which is cited, to the Secretary of War, without having been requested or authorized so to do; and you mentioned instances in which you had addressed the Secretary of War letters without his request or special authorization. Can you mention other instances besides those already given? A. I could mention several subjects. Soon after the Secretary of War became Secretary he began urging questions as to many subjects, which I will name, which required me to answer them, and some of the answers were replied to by himself, which made it necessary for me to reply again; and really the list of subjects I will mention extended nearly through the whole four years. They were of a kind which compelled me to answer them, because they were obstructive to my work.

Q. Did you answer without special leave first asked and granted ?

The JUDGE-ADVOCATE—I would like to know whether those answers were in writing or verbal. If they are written, under the former ruling of the Court they should be produced. In my opinion we cannot go into questions of the recollection of the accused. The best evidence must be produced in all such cases, as the Court heretofore has ruled.

Mr. MACKEY—May it please the Court, the Judge-Advocate appears to have mistaken the rule of evidence. The rule of evidence which requires the production of a written instrument instead of a recollection of a written instrument is one which relates to a case where the instrument itself is the basis of the action, not where it enters collaterally. If the accused was setting up some written instrument to establish some fact which had to be accurately established, then the production of the instrument could be demanded. But the accused is simply asked as to the practice of his office in addressing the Secretary of War. He may state in reply, if the fact was so, I have addressed him a hundred or more different communications without being first requested or specially authorized so to do.

It does not follow that the learned Judge-Advocate could demand the production of each. He is testifying as to his practice. If he were asked now to give the contents of an instrument, then the objection would lie, under the rules of evidence, and the Judge-Advocate could demand the instrument. But he is simply asked to what subject it related.

Now, if the written paper were shown, it would show the subject, it is true. But it is submitted to the Court that it is proper that the rules of evidence, which govern in courts-martial as they govern in the civil courts, should apply, and for the accused simply to state the subject to which it related ; and if it is insisted on, if the Court holds that that objection must be sustained, we will then put in each and every one of these instruments and ask the necessary time—and there will be a very long series of them—put them in and ask the necessary time to issue the subpœna *duces tecum* to bring them here. It is the

right of the accused to bring them, if the Court holds it is essential that they should be brought. But it is not proposed to enter into the contents, but to state the subject to which it relates, and nothing more.

The question was then read by the reporter as follows :

Q. Did you answer without special leave first asked and granted ?

The JUDGE-ADVOCATE—I withdraw the objection and will let that one be answered. I may enter another objection afterwards.

A. I did answer without leave.

Q. Please state another subject as to which you addressed the Secretary of War without leave first being asked and granted. A. A statute provides that in each and every year two sergeants of the Signal Corps may be promoted to second lieutenants upon the recommendation of the Chief Signal Officer. On the first occasion when it was necessary to hand in these names the Secretary of War declined to hand them to the President, upon the plea that he did not think the Signal Service was in the Army, and he did not think—

The JUDGE-ADVOCATE (interposing)—One moment. I object to the admission of that evidence, if it is in writing ; nor is it material to this issue.

Mr. MACKEY—If the Court sustains the objection we will produce it to-morrow.

The PRESIDENT—The Court seem to have ample evidence of the facts intended to be shown, as far as we understand the matter : that on several occasions the accused, after decisions of the Secretary of War, sent written communications to him on the subject of those decisions, appealing against them, and without especial permission of the Secretary of War being asked to that effect.

Mr. MACKEY—We have, then, no more questions, except to ask this. (To the witness :) Were you rebuked by the Secretary of War in either of the cases for addressing him without being specially requested or authorized to do so ? A. Not at all.

Q. Now we will pass to another matter. The Secretary

of War in his report for 1884, at page 24, uses this language :

"The Secretary of War knows of no one whose opinion would be considered, except the Chief Signal Officer, who would not have regarded such an expedition not only as substantially hopeless for any relief earlier than was actually given, but perilous in the extreme, if not foolhardy."

What did you understand by the use of the word "foolhardy" in that connection—did you understand it as impugning yourself or not ?

The JUDGE-ADVOCATE—One moment. Mr. President, the language speaks for itself. No one is responsible for the understanding the accused might have had, and that has nothing to do with this case. The language is plain and is susceptible of construction. The accused now comes before this Court and undertakes to go through the Secretary of War's report and give his opinion of what he thought the language implied. That is one question. The Secretary of War's report is in evidence and it speaks for itself as far as the purposes of this Court are concerned. It makes no difference what anybody else might have thought of that language and how he might have construed it. So that I consider the question as one entirely immaterial to the issue.

Mr. MACKEY—Mr. President, I submit to the Court that it is material what the understanding of the accused was of that language. He has testified that he had been made the subject of harsh strictures in this report. The letter which is in evidence opens with that statement—that the Chief Signal Officer of the Army had been made the subject of harsh strictures in the report of the Secretary of War. The Secretary of War, in his endorsement upon the letter which is in evidence, admits that he did make the Chief Signal Officer of the Army the subject of strictures. He certainly couples with him the term "foolhardy," and as to what the understanding of the accused was is material.

The Court may hold, when it comes to make up its final decision, that the understanding was not warranted. But his understanding was material. We are considering the question of motive. He has testified to his motive, and this is one of the

paragraphs that contain the stricture which the Secretary of War admits in his endorsement he made upon the Chief Signal Officer of the Army, and it is not a violent construction to give that it is intended to classify the Chief Signal Officer of the Army among the foolhardy. He certainly does state that the project recommended by the Chief Signal Officer was deemed, not by him, but by those whose opinion would be considered, as "perilous in the extreme, if not foolhardy." I ask the witness as to whether he understood that term "foolhardy" as applying to his action. And, whether he was mistaken or not, it governed his action. That is the question, as to his understanding of the stricture.

The JUDGE-ADVOCATE—As I have said, the language speaks for itself. I do not waive the objection.

The PRESIDENT—The question is, Shall the objection of the Judge-Advocate to the question be sustained?

A vote was then taken by ballot.

The JUDGE-ADVOCATE—I am directed by the Court to state that the objection of the Judge-Advocate is not sustained.

The question was then read by the reporter as follows:

Q. What did you understand by the use of the word "foolhardy" in that connection? Did you understand it as including yourself or not? A. I understood that to refer to all persons, not to any particular individual, who should approve or recommend a plan for the relief of Lieutenant Greely with an expedition leaving St. John's after September 15.

Q. Please answer the question. Did you understand it as including yourself? A. I did.

Q. The Secretary of War states among other things, in his annual report for 1884, the following:

"Waiving, however, that consideration, if there had at the time been given more weight to the views of that branch of the public service under whose management there had been one futile and one disastrous expedition in the northern seas in two successive years, than to the views of men having experience in such matters, it is now hardly to be doubted that we would have had last summer the news of two Arctic calamities instead of one."

What did you understand the term "that branch of the public service" to mean? A. That meant the Signal Service.

Q. Are those the strictures to which you refer in the opening of your letter of February 17, 1885? A. They are.

Q. The Secretary of War states in his annual report that he consulted certain persons of Arctic experience (I do not profess now to quote the exact words, but that is the tenor), who informed him, among them Lieutenant Garlington; and he cites from Lieutenant Garlington as follows: "The ultimate result of any undertaking to go north at this time extremely problematical"—that is, September 15—"chances against its success, owing to dark nights now begun in those regions, making ice-navigation extremely critical work." Will you state some of the grounds upon which you based your judgment in that letter, that the authorities from whom the Secretary of War derived his information were mistaken as to the navigation of those northern seas in September and in October? A. From the general knowledge and experience of Arctic navigators in that region, and frequent examples where ships had gone from St. John's to Littleton Island or to Cape York after September 15.

Q. How late? A. After the 15th of September, and even into October.

A member of the Court—It seems to me we are going a little further into that matter than is necessary.

The PRESIDENT (to the counsel for the accused)—Will you suspend a moment? There is an objection on the part of a member of the Court that we are going in that direction further than it is warranted.

Mr. MACKEY—I require no further answer on that point. I just wanted to meet the imputation of foolhardiness, that was all. (To the witness:) Please state whether you intended, in any part of your annual report for the year 1884, referred to in the second specification cited, to criticise or impugn the Secretary of War. A. I did not.

Q. Please state whether in your letter of February 17, 1885, you intended, in any part thereof, to criticise or impugn the Secretary of War, or attribute to him a neglect of duty as Secretary of War. A. I did not.

Q. Do you admit or deny that you used the language contained in the *Evening Star* of the 2d instant in a paragraph en-

titled "The Greeley Disaster—Throwing the Blame upon the Secretary of War"? A. I deny the portion which you have cited.

Q. Did you utter any language to that reporter with a view to publication? A. I did not.

Mr. MACKEY—That is all, unless General Hazen thinks of some other matter he wishes to state.

The WITNESS—I do not.

Cross-examination.

By the JUDGE-ADVOCATE:

Q. You have stated in your examination-in-chief that, during the interval between writing the letter and its being sent to the Secretary of War, it was in your possession or in the possession of your Adjutant for record. A. Yes.

Q. Can you explain or give the reasons why that letter was detained nine days before it was delivered to the Secretary of War—that is, from the 17th to the 26th? A. I have no special explanation, only that it came back to my office, to my especial desk, after the Adjutant had taken such record as was necessary; and it was not a matter of routine, but it was more of a matter in which I had a personal interest, and I detained it in my desk some days before it was sent, for no special reason except that I wanted to look it over and become thoroughly conversant with everything that was in it, and for several days it passed beyond my attention.

Q. You regarded the letter as a very important one, did you not? A. I did.

Q. Is it usual for you to keep such letters nine days after their composition? A. I always keep them as long as I feel any need to keep them, and thoroughly look them over and digest them in my mind. It may not be nine days, and may be more than nine days.

Q. Is it the practice in your office to retain letters of such an important character for nine days or so before they are submitted to the authority to whom they are addressed? Is that the general practice of the office? A. That is an unusual letter.

Q. Be kind enough to answer my question, and you can make an explanation afterwards. A. I can only reply as before : that I always keep them until I am thoroughly satisfied to send them.

Q. But my question is susceptible of a categorical answer. Is it the usual practice in your office to do so or not? Please answer the question as put, yes or no, and then afterwards you can make an explanation.

Mr. MACKEY—May it please the Court, the question is not entire. It must relate to letters of that class. The witness must be asked as to whether it was his practice to keep letters of that class.

The PRESIDENT—He may add that explanation when he answers the question.

The JUDGE-ADVOCATE—That is exactly what I desire.

The WITNESS—I would say that it was ; this being, perhaps, the only letter of that special kind that I ever did write.

Q. You do not understand the drift of my question. I mean whether it was the usual practice in your office to retain important letters, or letters on important subjects, for eight or nine days in your office before sending them to the Secretary of War? A. Oh! no, it is not.

Q. That is what I meant to say. A. No, sir, it is not.

Q. When did you make your application to go South, before you wrote that letter or afterwards? A. I do not recollect. It was some time after I wrote the letter. I think the two letters went over the same day.

Q. About the 26th of February, then? A. Probably. And I wish to explain at the proper time the reason they happened to go over the same day.

Mr. MACKEY—Please explain that in reply.

The JUDGE-ADVOCATE—When I come to it I will ask him, or you can, in the re-direct examination, bring that out if I should forget it. But I am examining him now. (To the witness :) Did you state, in your letter applying for leave to go South, when you desired to go? A. No, I did not.

Q. You stated you intended to go about March 14. You stated that in one of your answers to the counsel? A. Yes, sir.

Q. Will you be kind enough to state to the Court the necessity for making application so early for leave to go South? A. Because my family was going with me, and it required considerable preparation, and we wanted to know whether I was going or not.

Q. Had you been in the habit, in other cases, of making applications to go so many days ahead as you did in this case? A. Always, when there was as much preparation.

Q. Be kind enough to answer my question, and make your explanation afterwards. Had you been in the habit of making application so many days ahead in other cases as in this case? A. I think I had.

Q. It was usual with you, then? A. Yes, sir.

Q. To make application sixteen days ahead? A. No, I will change that. It is not usual. But I will state afterwards that in such cases it was usual.

Q. That is, when the family were going with you? A. Yes, sir.

Q. What action was taken on your application to go South? A. It was returned to me with the endorsement—

Mr. MACKEY (interposing)—If the endorsement is in writing, that would be the best evidence.

Q. What was the purport of the answer? A. It was, if I would hand it in again ten days later it would receive action.

Q. Do I understand you correctly to say that you did not state the date of your departure in your letter? A. No.

Q. You have had no personal experience as to Arctic explorations, have you? A. No.

Q. Then whatever experience you may have in matters of that character you gather from literature and the statements of others? A. I get it from a very great deal of study upon that subject and direct interviews with a great many Arctic explorers.

Q. When you saw Mr. Kauffmann at the Ebbitt House here about the 1st or 2d of March, had you not known him before to be a reporter of the *Star?* A. I had.

Q. You knew his character and his duties? A. I knew him to be a man of good character.

Q. I mean the character of his employment? A. Oh! yes.

Q. His meeting, you say, was casual and in a kind of a hurry? A. There was a great crowd there, and he accosted me before I had seen him. I do not know how much of a hurry he was in; I was in a hurry.

Q. You were in a hurry? A. Yes, sir.

Q. Did the interview, or rather the conversation, with Mr. Kauffmann become thoroughly impressed upon your mind? A. Pretty well.

Q. There was quite a large crowd of people there, you say? A. Yes.

Q. Do you mean to say that you remember the exact words that you used on that occasion? A. Very nearly the exact words.

Q. Very nearly, but not the exact words? A. Those that I have already given as exact in the testimony I remember.

Q. Only those, not the others? A. I cannot remember all the words I said. There are certain words which he says that I said that I did not say.

Q. Do you remember distinctly word for word or the exact words of what he said? A. No.

Q. You do not? A. Only so far as I have given them. The questions which were asked me I do recollect perfectly well, or so far as I have given them in my testimony.

Q. You say that, in some parts of Mr. Kauffmann's writing or article, he gave your language in substance, in some parts only. Now, as a matter of fact, does not the entire article state the substance and tenor of the whole interview? A. That depends entirely upon the construction of those words. There were certain expressions, very material, which I did not use. I did not use the name of the Secretary of War, nor of any other person. It all referred to the same subject as given.

Q. It all referred to the same subject. You mean, then, to disclaim the words "Secretary of War"—that you did not tell the reporter that you wrote to the Secretary of War? A. I disclaim that.

Q. Did not his question embrace an inquiry as to whether you had written to the Secretary of War or not? A. I do not recollect.

Q. Taking this question and your answer together, would not those two together make it appear as though you had replied that you had written a letter to the Secretary of War? A. The reference was in some way made to the Secretary of War.

Q. By him? A. Yes, sir. But my reply was, it referred to a letter I had written regarding the decision.

Q. Did you not say, "I did write such a letter"—did you not say that or words of similar import? A. No; I said I did write a letter.

Q. Did he not ask you whether you had not written a letter to the Secretary of War before you answered? A. I do not remember at this moment distinctly whether he named the Secretary of War or not. But it all referred to that one letter.

Q. That is what I am trying to get at. It all referred to that letter? A. Yes, it all referred to that letter. There was no other letter in controversy at all.

Q. It all related to that one letter you wrote to the Secretary of War of February 17? A. Yes, sir.

Q. Judging from your testimony in general, then, you frequently addressed the Secretary of War, not only in writing but also verbally, upon the matter of Arctic expeditions? A. Oh! yes, sir. I had a great many occasions to address him personally and by letter on that subject.

Q. From that it would seem that the Secretary of War had jurisdiction of that matter, would it not?

Mr. MACKEY—That is a question of law, may it please the Court, that he is not to express his opinion upon.

The JUDGE-ADVOCATE—We will leave it as it is.

Mr. MACKEY—His legal opinion cannot be asked.

The JUDGE-ADVOCATE—I am simply trying to find out from the accused, when he addressed the Secretary of War, whether he was the proper person. That is the import of my question.

Mr. MACKEY—As to the matter on which he addressed him, but not as to the whole matter. That is a question of law.

The JUDGE-ADVOCATE—I insist upon my question.

Mr. MACKEY—I ask that the question be made more specific.

The PRESIDENT—The question is, Shall the objection of the accused to the question be sustained ?

Mr. MACKEY—I beg leave to state to the Court that the Court ruled that the defence could not show by evidence that the Secretary of War had no jurisdiction. The defence have been denied the privilege of showing that he had no jurisdiction.

A member of the Court—Perhaps the question can be so modified as not to be objectionable.

The PRESIDENT—That is a question for the Judge-Advocate.

The JUDGE-ADVOCATE—I do not desire to amend it, may it please the Court.

A vote was then taken by ballot.

The JUDGE-ADVOCATE—I am directed by the Court to announce as its decision that the objection of the accused is not sustained.

The question was then read by the reporter as follows :

Q. From that it would seem that the Secretary of War had jurisdiction of that matter, would it not ?

The JUDGE-ADVOCATE—Please give a categorical answer, and you can make explanation afterwards.

Mr. MACKEY—Decline answering in that form, as your right to an improper question. In that particular form we submit to the Court that it is not an intelligible question. He is asked to concur with the Judge-Advocate in that particular form of question. I had not before observed the form of the question. He is asked, " From that it would seem that he had jurisdiction ?"

The JUDGE-ADVOCATE—" Would it not ? "

Mr. MACKEY—He is called upon to decide a question of jurisdiction instead of being asked whether he then regarded him as having a jurisdiction upon the matter upon which he concurred with the Secretary of War.

The JUDGE-ADVOCATE—Mr. President, it is hardly proper to discuss a decision of the Court after it has been rendered.

Mr. MACKEY—I do not mean that, but I just heard that question in that form, and I do not see how he can answer it in that form.

The JUDGE-ADVOCATE—But the intent of my question is, Would it not seem to him, from his own action, that the Secretary of War had jurisdiction? That is the import of the question, and I think it is hardly necessary to quarrel with the decision of the Court.

The question was again read to the witness by the reporter as follows:

Q. From that it would seem that the Secretary of War had jurisdiction of that matter, would it not? A. It would. I think that requires a little explanation.

Q. Now you can make the explanation. A. The question of his jurisdiction was spoken of on several occasions during the four years, but it never took any practical shape. I observed the Secretary's orders with all the loyalty possible, as if such questions had never been thought of, and it has never come up with me for any practical purpose. It was spoken of several times technically whether the Secretary of War had authority or not under the statute. But in a practical way the question was never entertained for a moment in my office.

Q. Then I understand you to say that the jurisdiction of the Secretary of War in these matters was never denied by you? A. No, never.

Q. That was what I was trying to get at originally. And because that jurisdiction was never denied by you, you addressed that letter of February 17, 1885; was it for those reasons also? A. That question was never thought of in connection with that letter.

Q. Was not your official report of 1883 and 1884 published throughout the country? A. I presume they were. Reports of that kind usually are so published.

Q. They are published generally? A. They are given out whenever the Secretary of Way gives his assent. They are never given out by the bureaus, at least by my bureau, until after the Secretary of War has received them, and, after a time, he has given them out himself and given me special authority to do it.

Q. And then they are disseminated throughout the country by your bureau? A. Oh! no. They are sent throughout the

country to our own stations. We have a large number of stations. They get a few copies, and any one applying for them gets them.

Q. Do they go to the public prints also? A. If they are called for. They are usually called for at the Secretary's office. He is given a large number of copies, and that is the usual course of getting them for the press. I ought to state, in continuation of the answer about giving out the reports, that the report which is animadverted upon by the Secretary of War was in fact given out by himself many days before I gave it out.

Q. How do you know that? A. Because there were none given from my office with the exception—

Q. Do you know from your own knowledge that it was so given out? A. I know it was given out of those that were sent him.

Q. How do you know it? A. Because they were published in the public prints.

Q. Is that the only reason why you know it? A. That is the only reason why I know it.

Q. You were not present when they were given out? A. No, sir.

Q. You only judge so from the fact that you saw some of them in the public prints? A. No; from the fact that all the reports that we gave out were given to him, and before any others were given out they were printed in the public press.

Q. Then it is not any direct knowledge you have of the matter; you only judge from circumstances? A. Only as I have told you.

Q. What was the date of Lieutenant Garlington's return? A. To St. John's—the 13th of September.

Q. Is it not a fact that you make complaint in your letter of February 17, 1885, and did you not say in that letter of February 17, 1885, that a "ship of rescue should have been dispatched from St. John's after the return of Lieutenant Garlington to that port, or as late as September 15, 1883, as urged by me, but not adopted by the Secretary of War"? Is not that your language? A. The letter speaks for itself.

Q. I ask, Is that your language? A. All that is in that letter is my language.

Q. That language, I ask you, is in that letter, is it not? A. I will read it:

"The Secretary of War, in his annual report for the year 1884, was pleased to make me the subject of severe strictures because, in my official report of the final disaster to the International Polar Expedition, I expressed the conviction that such disaster would have been averted had a ship of rescue been dispatched from St. John's, N. F., after the return of Lieutenant Garlington to that port, or as late as September 15, 1883, as urged by me, but not adopted by the Secretary of War."

That was my letter.

Q. Now, it appears from that letter you asked to have a ship sent up as late as September 15, 1883. You state that Lieutenant Garlington came back on the 13th. That makes a difference of two days, does it not? How do you reconcile that statement with your statement in your examination-in-chief that you had not asked the Secretary of War to send a relief expedition, and fit out a relief expedition within two days? How do you reconcile these facts with your testimony that you have given in your examination-in-chief? A. Where do you get the contradiction that you refer to?

Q. You state here in your letter: "I expressed the conviction that such disaster would have been averted had a ship of rescue been dispatched from St. John's, N. F., after the return of Lieutenant Garlington to that port, or as late as September 15, 1883, as urged by me, but not adopted by the Secretary of War." Now, you state that Lieutenant Garlington returned on the 13th? A. Yes.

Q. You also state in your examination-in-chief that you had not asked the Secretary of War to dispatch a relief ship for Lieutenant Greely within two days after the return of Lieutenant Garlington. Be kind enough to reconcile that contradiction.

Mr. MACKEY—He does not so state.

The JUDGE-ADVOCATE—The record will show.

Mr. MACKEY—He was asked whether he had made any requirement of the Secretary of War, or demand that he should

fit out a relief expedition in two days, not that he should *dispatch* one. Fitting out is one thing, and to give the order for it to sail is another. And if you will read there you will see what he was asked.

The PRESIDENT—Let the witness answer.

The WITNESS—I do not see any discrepancy. The general tenor of my wishes was that a ship should be sent at once, not requiring more than two days to take in the absolute necessaries for Mr. Greely; that is, that it should take on some food and clothing and such stores as could be picked up at once, the ship already being coaled there, and five of them in the harbor of St. John's, not spending more than two days for that purpose. I did not intend to state that I had made a special requirement that the ship should get off in two days, although I did think that two days was all that ought to be spent in taking on the supplies that she should take.

The JUDGE-ADVOCATE—Mr. President, it is now fifteen minutes of three o'clock, and I find I am considerably hampered and delayed in conducting the cross-examination of the accused to its conclusion without a ready reference to the record. It is only fifteen minutes of the time of our usual adjournment, and, if the Court will be kind enough to now adjourn and give me this opportunity, I shall to-morrow be able to proceed more rapidly than I could do now. To-day's record will then be transcribed, and I can refer to it easily. Therefore I ask the Court to be kind enough to adjourn until to-morrow.

The PRESIDENT—If there is no objection the request of the Judge-Advocate will be acceded to and the Court will adjourn until to-morrow morning at eleven o'clock.

Thereupon, at 2.47 P.M., the Court adjourned until to-morrow, Wednesday, March 18, 1885, at 11 o'clock A.M.

SEVENTH DAY.

ROOMS OF THE GENERAL COURT-MARTIAL,
EBBITT HOUSE, WASHINGTON, D. C.,
Wednesday, March 18, 1885, 11 A.M.

The Court met pursuant to adjournment.

Brigadier-General WILLIAM B. HAZEN then resumed the witness-stand, and his cross-examination was continued as follows:

By the JUDGE-ADVOCATE:

Q. Do you recollect the date of your application for leave to go South? A. No, I do not.

Q. Are you quite sure that you sent it to the Secretary of War on the same day that you sent your letter of February 17? A. No, sir; I am not sure at all. It was about that time. I think it was the same day.

Q. You are sure it was not after the day the letter of February 17 was sent, or before? A. No, I would not say positively as to that.

Q. Why did you wait so long in writing that letter of February 17—why did you keep it until near the close of the last administration, within a few days of its expiration? A. It had no reference to its being near the close of any administration. I kept it because I wanted to make some changes in it, and because I wanted to read it over; and then after it was finished it lay on my desk for several days without my thinking of it, without its coming to my notice at all. Then on the 25th I cleaned up my desk—that is to say, I went through all the papers that were on it. I will say that I have a very busy desk, and the matters that are not routine pass from day to day, and

then after a few days I always make it a custom to clean up my desk and get everything off. And then that happened on that day, and these papers that were not special, and were not routine, came before me. That was what caused it, nothing else.

Q. Was not that question of writing the letter on your trip South discussed by you with some of your officers? A. Not with any. I wrote it myself, and sent it out to the clerk to be copied.

Q. It was not discussed with any of them? A. Not to my recollection.

Q. Not with Lieutenant Pursell? A. Not to my recollection.

Q. Or with any one? A. Not to my recollection, and I am quite certain that it was not.

Q. Did you indicate to any of your officers that you intended to be absent when that letter was sent to the Secretary of War? A. No, I do not think I did, for I have no recollection of anything of that kind.

The JUDGE-ADVOCATE—I have no further questions to ask the accused.

Redirect Examination.

By Mr. MACKEY:

Q. You were asked whether you did not admit the jurisdiction of the Secretary of War as to the matters as to which you conferred with him. Did you ever confer with him as to his jurisdiction in the matter of sending out an expedition to the Arctic seas? A. That question was never raised at all at any time by anybody.

Q. You were asked about your retaining the letter in question for nine days. You have explained that in part. Please state whether you retained it in its type-written form, as it now is, or whether you retained it in manuscript. A. Most of the time in manuscript.

Q. For what purpose did you retain it? Was it a clear copy in manuscript when you retained it? A. No; I retained it, as I stated before, for the purpose of reading it, correcting it, and changing it—that is, a portion of the time, and a portion of the time it remained without my observation.

Q. Please state whether during that nine days you did make any changes in the manuscript. A. Oh! yes, I made very many.

Q. State, if you can, how long you retained it in your possession, how many days, after it had been copied by the typewriter in its present form. A. That I do not remember, but I think hardly any time; a very few days.

Q. Can you say that you retained it as many as three days? A. I think not, but I am not positive about it.

Q. It is dated February 17, and the accuser in this case states in his endorsement that he received it on the 26th. Please state how many holidays intervened, if you can, when no work was done at your office, between the 17th of February and the 26th of February. A. Counting Sundays, I think there were four.

Q. Do you recollect the day of the week that the 17th fell on? A. No, sir; I do not.

The JUDGE-ADVOCATE—The 22d was Sunday. That is admitted.

The WITNESS—And the 21st was given also for a holiday, and the 25th was three, and Sunday was four.

Q. Four holidays between the 17th and the 26th? A. Yes, sir.

Q. Were there an unusual number of holidays in that period? A. There were, to the great detriment of the office work.

Q. And four, you think, were embraced in the period between the 17th and the 26th? A. I think so.

Q. Do you admit that the statement of the Secretary of War is correct that he received that letter not until the 26th of February? A. No. The receipt-book found this morning shows that it was received on the 25th.

Mr. MACKEY—We have the receipt-book. If the Court will dispense with the necessity of calling an officer from his desk at the Signal Office, we will show that. The Adjutant may be called, unless the Judge-Advocate will admit it. I will submit it to him. It is the official receipt-book showing the date of transmission of letters from the Signal Bureau to the Secretary of War and to others. (The counsel handed the book in ques-

tion to the Judge-Advocate.) We submit the receipt-book as to the date at which this letter referred to in the third specification was transmitted from the Signal Bureau to the Secretary of War. Under date of February 25, 1885, it reads as follows :

"Submits for record the evidence to support the correctness of his judgment in recommending a ship to be sent in September, 1883, after return of Lieutenant Garlington."

That is the entry. It is important also for another purpose.

The JUDGE-ADVOCATE—Read the receipt. Who signed it ?

Mr. MACKEY—It is signed W. C. Costin, I think.

The WITNESS—It is the signature of the receiver.

Mr. MACKEY—Under the head of "Signature of the Receiver," the receiver of the two papers transmitted above is Fletcher, and then follows W. C. Costin.

The JUDGE-ADVOCATE—I have no doubt the record states what they have read. I do not deny that.

Mr. MACKEY—I ask the reporter to take this entry down. It is as follows :

"Submits for record the evidence to support the correctness of his judgment in recommending a ship to be sent in September, 1883, after return of Lieutenant Garlington."

Do you admit, Mr. Judge-Advocate, that that relates to that letter ? If not, we will summon the officer.

The JUDGE-ADVOCATE—I have made all the admissions I am going to make. I have stated that I have no doubt that that is the record, and that it reads as stated by the counsel.

Mr. MACKEY—We will connect that and show that it relates to this very question. We will do that at the proper time. (To the witness :) So there were not nine days intervening between the date of that letter and the date of its receipt at the War Department ? A. That makes it eight.

Q. And how many of those were office days, from the date of the letter to the date of its transmission ? A. Four or five.

Q. Four or five office or working days intervened ? According to the usual course of affairs as known to you, what time elapsed between the date of the transmission of that letter to

the Secretary of War and the date on which he would go out of office as Secretary of War? A. It would be nine days, supposing he went out of office the day after the 4th of March.

Q. He would have nine days to act upon that letter? Did you intend in any form to shun any responsibility attaching to the transmission of that letter? A. None whatever.

Q. Did you expect that letter to be followed by your arrest? A. I did not.

Q. State whether, after you had prepared that letter, you transmitted to the War Department any application for leave, official leave—not after you transmitted the letter, but after you had written it. A. After I had written it I did. It was not an application for a leave, but it was an application to do certain duty in the South.

Q. Inspection duty? A. Yes, sir.

Q. How long before the date of the transmission of the letter, if you can recollect? A. I cannot recollect that. I do not know whether it was before or after. It was about that time, and I think the letter was sent the same day, because, as I stated before, it was the day I cleaned up my desk. But it was not due to that fact; the letters have no relation to each other.

Q. You were asked by the Judge-Advocate as to your special knowledge in regard to the matter of Arctic expeditions. State whether you are a member of any scientific body concerned with Arctic discovery. A. I am a member of the International Polar Commission, composed of one person from each of the chief Northern nations of the world.

Q. Do you know how many nations are represented in that congress? A. I think there are ten.

Q. Is the membership a merely honorary one, or is it composed of men having knowledge of the requirements of Arctic work, and who have been engaged in the study of it? A. Purely of the latter class of men, its purpose being to work in harmony with regard to certain Polar problems.

Q. You were cross-examined as to the Secretary of War himself disseminating your report for 1884. Is that susceptible of proof? A. It is. The report reached me at the city of

Cheyenne, in Wyoming Territory. The telegraph operator came into the car and reported to me that my report referring to Arctic expeditions was then going over the wires. I then felt a great deal of apprehension, fearing that some one had gotten into my office and given it out without authority, inasmuch as I told the Secretary of War that it should be kept under lock and key until he saw fit to send it out. And when I got to Salt Lake City I made special inquiry as to how it happened. And then, after my return, I learned that it was first put out by the Secretary of War from his office.

The JUDGE-ADVOCATE—I object, Mr. President, to any hearsay testimony.

Mr. MACKEY—It is a circumstance which the Court may weigh as a basis for the conclusion which the witness has stated—the basis of his information. He has stated that he did not give it out from his bureau before it was issued from the War Department, and he states that circumstance.

The PRESIDENT—Let the question be read.

The reporter read the question as follows :

Q. You were cross-examined as to the Secretary of War himself disseminating your report for 1884. Is that susceptible of proof ?

The JUDGE-ADVOCATE—I wish to state simply this : It is a well-known fact that all public documents are sent around through the country and generally disseminated. But I object to the inference which comes from the testimony of the witness that the special report was published at an earlier date and on an extraordinary occasion—that is, that it was not published in the ordinary routine of the War Department, as other reports are published. As to that fact the accused cannot testify except as to matters that he knows of his own knowledge, not what other people told him. Hearsay is not admissible.

The PRESIDENT—Your objection, then, is to the answer ?

The JUDGE-ADVOCATE—Yes, sir; to the admission of hearsay testimony on the subject.

Mr. MACKEY—The witness had previously stated that the obnoxious report of the Chief Signal Officer assailed by the Secretary of War had been first issued immediately from the

War Department and not from the Signal Office, and that was stated without objection. He was cross-examined as to that statement, and he simply stated the ground of his statement. That is all; he states the grounds of it. It had already come out in the previous answer.

The PRESIDENT—The defence seems to think it important that the whole question should be answered.

Mr. MACKEY—I do not wish to be forced to place the late Secretary of War on the witness-stand, but I may be forced to do it.

The PRESIDENT—If there is no request on the part of any member of the Court to consider this matter in closed session, the witness may make his answer.

The JUDGE-ADVOCATE—I would like the decision of the Court on my objection.

The PRESIDENT—There is a decision of the Court on your objection. It is already decided.

The JUDGE-ADVOCATE—It is not sustained?

The PRESIDENT—It is decided that the witness may answer the question.

A member of the Court—The answer is already recorded.

The PRESIDENT—Yes, the answer is recorded as far as the witness has gone. He may make any explanation necessary.

Q. That is the ground of your belief? A. Yes, that is the ground of my belief. I only make the answer as the ground of my belief.

Q. You answered in cross-examination as to your sense of obligation to the men who were in the Arctic. From what did that sense of obligation spring in your mind which controlled your action? A. From my official duty; and, further than that, from my obligation to these officers and men who went out to the Arctic. They went out as men entering water beyond their depth, with the absolute promise, implied and expressed, that they were to be relieved, and I was ready and anxious to do all in my power to give them the most absolute relief in any and every possible way that I could.

Q. You have stated that previously. I thought it was some special matter you desired to speak of. You were questioned as

to your alleged requirement that the Secretary of War should organize and equip an expedition in two days. Did you expect or demand that he should organize and equip an expedition at all in the sense of those terms? A. Not in that sense at all. What I wished was implied in my telegram, one of the telegrams in evidence—that he, by telegram, should authorize at St. John's the employment of a ship to depart at once, to be dispatched without loss of time; and I laid a limit to the time at which, in my opinion, it would be necessary to delay the ship: it would be for two days; that the limit should not extend beyond two days.

Q. Please recall your demand. Did you state what preparation, or if any preparation, was required by your plan? A. The telegram would speak upon that.

The JUDGE-ADVOCATE—Mr. President, I am sorry that I am obliged to object, but there is no such telegram in evidence that I know of.

Mr. MACKEY—No; it was excluded, and we are not putting that in evidence.

The JUDGE-ADVOCATE—You are seeking to put it in evidence now where it has been excluded once before.

Mr. MACKEY—The witness is questioned as to the requirement which the witness said that he made of the Secretary of War. It is certainly competent, where that question arises, to show, either verbally or in writing, that the witness' requirement was that there should be no preparation at all made by the Secretary of War, in the sense in which the terms are used.

The WITNESS—I can answer that.

The PRESIDENT (to the Judge-Advocate)—Have you any further objection?

The JUDGE-ADVOCATE—Counsel has dropped the subject, as I understand it.

Q. I desire to call your attention to your last answer. In communicating on that subject did you say that the Secretary of War should authorize the expenditure, or who should authorize it?

The JUDGE-ADVOCATE—Wait one moment. That is only putting the thing in another form. The subject of his de-

mands, and his communications to the Secretary of War on that subject, have already been excluded by the Court, and I desire to invite attention to it.

Mr. MACKEY—Having been cross-examined as to the matter, I submit, may it please the Court, it is admissible for the witness to show what he said and meant. Is it to be decided, or has it been decided, Mr. President, that the Secretary of War, the accuser, makes his statement, attaches his statement to a specification; that it is admitted as proof or it is admitted as evidence to the point that the accused did make of the Secretary of War, in the letter referred to therein, the requirement that he should organize and equip an expedition in two days; and the accused is not permitted to show that this is a misinterpretation both of his letter itself and his view as previously presented to the Secretary of War? That his purpose was that no preparation should be made in the city of Washington; that his purpose was the sending of a single telegram to St. John's to start the ship that was ready at the wharf, only needing provisions—that is all that it is intended to show.

And the further question now objected to, may it please the Court, is, that I ask the witness to recur to the statement just made by him without objection. The witness states what his telegrams will contradict—that he desired the Secretary of War to authorize an expedition. The telegram, if admitted, will show that the memory of the witness is at fault on that point; that it was not the Secretary of War that he asked to authorize the expenditure, because the law regulates that, no appropriation existing for it.

The JUDGE-ADVOCATE—The language used by the Secretary of War in his endorsement is:

> "The present official expression of opinion to the effect that the failure of the Secretary of War to organize in two days and dispatch to the Arctic regions a new expedition," etc.

The PRESIDENT—Are those telegrams before the Court? If so, a member desires to see them.

The JUDGE-ADVOCATE—No, sir; they are not. They were excluded.

A member of the Court—Are those the telegrams of which the dates are before the Court?

The JUDGE-ADVOCATE—I think the dates were spoken of in the statement. They are the 21st and 22d of September.

The PRESIDENT—It has been suggested by a member of the Court that the inquiry be made of counsel how far it is intended to go in this matter.

Mr. MACKEY—It is simply in reply to the cross-examination, to so much of the cross-examination as was directed to the point whether the accused had required the Secretary of War or had not required the Secretary of War to organize and equip a relief expedition in two days; and he was examined at length on that point. This is simply the examination in reply, that is all, to show that what he asked was not the organizing and equipping of an expedition by the Secretary of War at all, but that what he asked required no preparation by the Secretary of War; and to have the witness' attention also called to his answer as to a request of the Secretary of War to authorize an expedition. There was no fund for that purpose, and the Secretary of War had no such power; and that would contradict the witness' own telegram, if it should come before the Court, which was that the appeal was to the President to authorize it, and not to the Secretary of War.

The JUDGE-ADVOCATE—The counsel had better go back a little further than that, in my opinion, and state the case as it really occurred. He raised the question in the examination-in-chief whether or not the accused had asked the Secretary of War to prepare and send out a relief expedition within two days. When it came to the cross-examination I simply called the witness' attention to the contradiction between his answer given on that occasion and his own written letter, and that is all that I asked about. It was an explanation that I wanted of his apparent contradiction, and no more. I did not bring the subject up. The other side brought it up in the direct examination of the accused, and started it, and it was my business in the cross-examination to reconcile or inquire into the apparent contradictions, so that the Court might be enlightened about the matter.

Mr. MACKEY—All I ask now is that the witness' attention should be called to the statement that the Secretary of War was appealed to for authority to send the expedition. I ask him whether he means that as correct—whether that is correct, that he applied to the Secretary of War for authority. He has a right to correct his testimony.

The PRESIDENT—If there is no objection the witness may answer the question.

Mr. MACKEY (to the witness)—What was your request in the premises? A. My request was that the President be applied to to authorize the expedition, there being no fund. He had to do it or some one had to do it.

Q. The President had to do it? A. Yes, sir.

Mr. MACKEY—That is all on that point. This is new matter that I propose, and it will be assumed that the witness is recalled, and he may be cross-examined. This is a statement of temperatures (exhibiting a paper).

The JUDGE-ADVOCATE—The recalling of the witness at this stage of the proceedings, before I have concluded or before the Court have concluded their examination, is rather an irregular procedure. Let the Judge-Advocate and the Court finish their examination, and then, if you desire to recall him, that will be another question. The present procedure as proposed by the counsel would be irregular.

Mr. MACKEY—By the rules governing the examination the Judge-Advocate can propound no more questions to this witness except by special leave of the Court.

The PRESIDENT—The witness cannot be recalled until he is dismissed, and the Court have a right to submit questions to him, as well as the Judge-Advocate.

Mr. MACKEY—Certainly.

The JUDGE-ADVOCATE (to the counsel for the accused)—Then is your redirect examination closed?

Mr. MACKEY—It is.

The JUDGE-ADVOCATE—Somewhat of contradiction having appeared as to the date of the receipt of the letter by the Secretary of War, I simply wish to propound one question to clear that up. (To the witness:) This is the letter you sent to

the Secretary of War, is it? (handing the original letter in evidence to the witness). A. It is.

The JUDGE-ADVOCATE—I call the attention of the Court to the fact that this letter is before it in evidence, and on the top of the document it is stated, "War Department, received February 26, 1885."

Mr. MACKEY—That is in the office of the Secretary of War, is it not, Mr. Judge-Advocate?

The JUDGE-ADVOCATE—I am reading exactly what the language is here. You must interpret it yourself.

Mr. MACKEY—Certainly. We are disproving that to show that an incorrect entry was made at the War Office, and, according to the receipt-book, we show it.

The JUDGE-ADVOCATE—I have no further questions to ask. Have the Court any questions to ask?

The PRESIDENT—Yes, I understand a member of the Court desires to ask a question.

By the COURT:

Q. I would like to ask the witness, for the purpose of removing an apparent ambiguity from the record, this: He testified yesterday that he procured at his own risk a ship to go to the Arctic regions. That referred to the expedition of what year? A. Of 1882.

Q. And that it was desired to procure another in the same way? A. That was the next year.

Q. The regular expedition? A. Not the regular one; after the regular one had failed.

Q. And you were relieved of the necessity of that by an appropriation by Congress for the preceding year? A. Yes, sir.

Q. I would like to ask about the original draft of the letter to the Secretary of War. What became of it after it was sent to the Adjutant for engrossment? A. I do not know. I think it went into the waste, like other scraps.

Q. Might that account for the otherwise unaccounted-for publication of the letter? A. It might do that.

Mr. MACKEY—I will recur to another matter.

The JUDGE-ADVOCATE—Has the Court concluded?

The PRESIDENT—We have no further questions, I believe, to ask the witness.

The accused, Brigadier-General WILLIAM B. HAZEN, at his own request, was then recalled.

Mr. MACKEY—We inquired of General Hazen as to the number of holidays that intervened between the date of the letter, the 17th of February, 1885, and the alleged date of its transmission to the War Department, February 26, and he answered that there were four. By reference to this almanac (handing an almanac to the witness) you may correct that statement, if you desire. A. There were but three. I make the correction; three was the number.

Q. It is claimed or intimated by the prosecution that you transmitted the letter in evidence, which led to your arrest, to the Secretary of War on the 26th of February, 1885, and at the same time, or about the same time, you transmitted an application for leave to go South, and that it was in order to escape the consequences of such letter or your being here. In other words, that it was a regular case of "fire and fall back." Can you state from that receipt-book (the receipt-book of the Signal Office) the date of the transmission of the letters to the War Department. Does that refer to your application for leave? A. I do not know whether it does or not.

Q. I will read the entry.

The JUDGE-ADVOCATE—There is no question about it. The prosecution admits that it was on the 19th that he sent his application for leave.

Q. It was on the 19th, and you think yourself that it might have been on the very same day that you sent the letter? A. Yes, probably.

Mr. MACKEY—I have just had my attention called to it, and I propose to present a statement furnished officially by Lieutenant Arthur W. Greely, United States Army, who commanded the Lady Franklin Bay Expedition from 1881 to 1884, showing the temperatures at Cape Sabine in the month of October, 1883. I submit to the Court that the annual report of the Secretary of War for 1884 is in evidence. That con-

tains a statement furnished by Captain Schley, United States Navy, in which he states that the temperature at Disco, at Upernavik, and at Tessuisak, on the west coast of Greenland, was at 60° below zero in the month of September and October. The purpose of this table is to show that even a thousand miles north of Disco, seven hundred and twenty-five miles north of Upernavik, instead of its being 60° below zero, it was plus 25—25 above zero—in the early part of October, and then down to the 27th of October it was only minus 16.

That is responsive to the statement of the Secretary of War's annual report, which report is in evidence, and the late Secretary of War is the accuser.

The JUDGE-ADVOCATE—I would like to see that document. I do not know who is testifying—the counsel, the document, or the witness.

Mr. MACKEY—No one is testifying now, but there is an offer of the paper in testimony.

The JUDGE-ADVOCATE—You offer this paper in testimony?

Mr. MACKEY—Yes, with that explanation.

The JUDGE-ADVOCATE—Mr. President, in the first place this report of the Secretary of War was introduced by the defence as evidence. There is a well-known rule of law, which I need scarcely mention here, that no one can contradict his own witness. Now the accused comes in here and submits another document. In other words, he has set up, so to speak, a wooden man, in order to knock him down. He first comes in here with the report of the Secretary of War, brings it in as evidence, and now he turns around and tries to contradict it. He is contradicting his own witness. I do not think it necessary to cite authorities on that subject.

Again, the document is not an original document, is not an office record. It is simply a document which shows for itself. At the bottom, over the signature, I presume, of Lieutenant Pursell, it says : "A true extract from records on file in the Signal Office." How can Lieutenant Pursell come in here and testify by his signature to the records of the Signal Office ? We cannot accept that. The document is objected to on that ground. And the third ground of objection I make is that the

whole subject is not relevant to the issue. I move, therefore, that it be not accepted.

Mr. MACKEY—May it please the Court, the official report of the Secretary of War is referred to in the specifications. It is treated in the endorsement of the letter; it is brought into the case. The official report of the Secretary of War for 1884 is brought into the case by the official endorsement of the Secretary of War on the letter. We propose to contradict it. In the nature of the case we had to present the official report. We presented it. It entered the cause through the prosecution, however, being recited in the endorsement, and the learned Judge-Advocate is mistaken in the proposition that a party cannot contradict his own witness. The authorities all concur in laying down a contrary doctrine, that you can contradict your own witness. Says Greenleaf in section 443 :

"For where the witness is not one of the party's own selection, but is one whom the law obliges him to call, such as the subscribing witness to a deed, or a will, or the like, here he can hardly be considered as a witness of the party calling him; and, therefore, as it seems, his character for truth may be generally impeached. But, however this may be, it is exceedingly clear that the party calling a witness is not precluded from proving the truth of any particular fact, by any other competent testimony, in direct contradiction to what such witness may have testified."

That is the law of evidence laid down by Greenleaf, and also by Starkie and Phillips, which we have on these points.

The PRESIDENT—It will not be necessary to argue the question any further. The Court will now retire for the determination of the question before it, and after that matter has been disposed of it will take a recess until fifteen minutes past one.

The members of the Court and the Judge-Advocate then retired to an adjoining room for deliberation with closed doors.

After some time spent in deliberation with closed doors, and the recess having been taken, the Court resumed its session, all being present as before.

The JUDGE-ADVOCATE—I am directed by the Court to announce that the objection of the Judge-Advocate to the reception of the paper is sustained.

I am further directed by the Court to state the following as

its opinion: There is no question before the Court respecting the endorsement of the Secretary of War, except the fact that the accused received that endorsement.

Mr. MACKEY—It will be unnecessary to pursue that line, then. (To the witness:) Did you prepare the letter of the 17th of February, 1885, unaided by counsel? A. I did not.

Q. Will you state whether parts of that letter in which you were aided by counsel were objectionable to you or not? A. They were.

Q. Did you express your objection to your counsel as to any paragraph prepared by him for that letter? A. I did.

Q. What did you say? A. I expressed the fear that there might be some paragraphs or some special direction in the letter which might be construed as disrespectful to the Secretary of War, and I therefore took the letter myself and corrected it with that view.

Q. You stated to the counsel that you thought the portion he prepared might have been regarded as disrespectful to the Secretary of War? A. Yes, sir.

Q. Did you reject that portion? A. I did.

Q. And in what direction did you change it? A. I changed it so as to make it, as I understood it, entirely free from any reflection or anything that might possibly be objectionable to the Secretary of War.

Q. You changed it so that in your judgment it could not possibly be objectionable? A. Yes, sir; objectionable to the Secretary of War.

Q. Do you recollect whether, on stating to counsel that certain paragraphs framed by him might be deemed disrespectful, you referred to your own duty as an officer of the Army in addressing the Secretary of War? A. Please repeat the question; I did not get it.

Q. Will you state whether, in rejecting the paragraphs of the letter framed by counsel, you stated as a reason for rejecting them your duty as an officer to treat the Secretary of War with respect? A. I did.

Q. Did your counsel concur in that idea? A. He did.

Q. I will ask you one more question. As to the whole mat-

ter of your official report for 1884, the matter of your letter and the matter of the interview, whether you will state upon your oath, and upon your honor as an officer of the Army, that you did not intend disrespect to the Secretary of War? A. I did not.

Mr. MACKEY—I have no further questions.

The JUDGE-ADVOCATE—I have no further questions to ask the witness. Has the Court any, Mr. President?

The PRESIDENT—None are indicated. The witness is discharged.

Mr. MACKEY—Call Lieutenant Pursell. (To the Court:) The purpose of calling Lieutenant Pursell is, that the entry in the receipt-book may be shown to relate to this letter.

The JUDGE-ADVOCATE—I have not summoned Lieutenant Pursell.

Mr. MACKEY—We have a right to a witness without summons, if he is present.

The JUDGE-ADVOCATE—There is no objection to calling him.

Mr. MACKEY—He was here a few minutes before the recess. We have a right to a witness without summons, unless it removes an officer from his duties.

The JUDGE-ADVOCATE—There is no question about it, and there is no use of discussing it that I can see.

Mr. MACKEY (to the Judge-Advocate)—As to this point, will you let me have the letter, if you please? We shall require a witness to be summoned, perhaps. The Judge-Advocate presents the stamp of the War Department in these words, "War Department, received February 26," to prove that that was the date at which the Secretary of War received the letter. We shall desire a witness to be summoned (I will be furnished with his name in a few minutes) to show that the stamp does not relate to the receipt of the communication by the Secretary of War. That is the date of its receipt for record in the Record-Room at the War Department, but not its receipt by the Secretary of War. He might hold it for weeks before it was delivered for record.

The JUDGE-ADVOCATE—The entry speaks for itself.

The PRESIDENT—It is not necessarily that date. The rule is that it should be of that date, but it might be of some other date.

Mr. MACKEY—Very well, we will produce evidence upon that point.

The PRESIDENT—I think the Judge-Advocate might admit that. It is not a matter of importance.

The JUDGE-ADVOCATE—Mr. President, I cannot admit anything beyond or contrary to what the document itself states. The document is in evidence and speaks for itself.

The PRESIDENT—Exercise your own judgment in the matter.

A member of the Court—There is only a difference of one day.

Mr. MACKEY—One day is very important sometimes.

The JUDGE-ADVOCATE—I should not at all object to admitting that the document was received perhaps on the evening of the 25th, was sent on the evening of the 25th to the War Department, and taken up next morning, and received by the Secretary of War and considered. I might admit that, but I cannot admit anything else.

Mr. MACKEY—We have sent for Lieutenant Pursell, in order not to delay the Court. (To the witness:) I have a further question to ask to show that it was not with reference to this Court-Martial that you consulted counsel. With reference to what matter did you have counsel, as stated in your examination a few moments ago? A. With reference to the entire Greely Arctic expedition, believing that my request, in my early report, for a Congressional investigation would be granted. It was upon that subject.

Q. It was in view of a probable investigation by Congress of the whole matter? A. Yes, sir.

Q. Who was the counsel to whom you refer? A. Mr. Mackey, the present counsel in this case.

Mr. MACKEY—That is all.

The JUDGE-ADVOCATE—To save further time, Mr. President, I will admit the correctness of the record introduced heretofore.

Mr. MACKEY—It was transmitted from the office on the 25th.

The JUDGE-ADVOCATE—I do not want to take up the time of the Court.

Mr. MACKEY—The time of the day we do not know. Mr. President and gentlemen of the Court, I announce that the defence closes at this point.

The JUDGE-ADVOCATE—You have no further witnesses to produce?

Mr. MACKEY—We have not.

The JUDGE-ADVOCATE—Has the Court any questions to ask the witness? I have none.

The PRESIDENT—We have none.

The JUDGE-ADVOCATE—I have no testimony to offer now in rebuttal.

The PRESIDENT—What is proposed in reference to the argument? Is any proposition made that will interfere with the argument proceeding immediately?

The JUDGE-ADVOCATE—I submit to the Court and to the counsel that I am perfectly willing to leave the case to the Court without argument, should the other side consent to do the same thing.

Mr. MACKEY—Mr. President and gentlemen of the Court, the Judge-Advocate has heretofore kindly made that suggestion and given me ample time to consider it. But I think it due to the accused that, where the testimony has necessarily taken a wide range and occupied many days in its delivery, a proper construction of its true bearing should be submitted to the Court, and that argument should be made. I shall endeavor to be as brief as practicable. It is usual, I believe, that upon the close of the testimony counsel shall have time to examine it before presenting his argument, and I ask until to-morrow morning at eleven o'clock, at which time I will be prepared to enter upon the argument.

Thereupon, at 1.38 P.M., the Court adjourned until to-morrow, Thursday, March 19, 1885, at 11 o'clock A.M.

EIGHTH DAY.

ROOMS OF THE GENERAL COURT-MARTIAL,
EBBITT HOUSE, WASHINGTON, D. C.,
Thursday, March 19, 1885, 11 A.M.

The Court met pursuant to adjournment.

ARGUMENT OF JUDGE T. J. MACKEY, COUNSEL FOR GENERAL HAZEN.

Mr. Mackey said: Mr. President and gentlemen of the Court, this cause has passed through the various stages of arraignment, of plea, and of testimony, and it is now to be submitted for judgment. It has often occurred in judicial tribunals that the principle involved in a cause is greater than the cause itself, the cause primarily affecting only the parties to the record. They are as fleeting as the leaf upon the current, but the principle is enduring. An error in its application may enter into the course of judicial administration in other like causes, and, being cited as a precedent, may inflict wrongs without remedy.

This is a court-martial met to consider and determine upon a charge defined and to be interpreted by a military code. Yet it does not administer martial law, for martial law is but the arbitrary will of the military commander in time of war; it is the unwritten code that dwells in the breast of the military chief. Although this court is composed of men of arms, men whose very presence and high rank recall the period, not far remote, when American soldiers awoke the world by the splendid tumult of their deeds, yet it must govern its proceedings by the rules of pleading and evidence laid down by jurists and enforced in the practice of civil courts.

The accused arraigned at this bar does not stand under the

shadow of the sword. All of his rights are held under the inviolable safeguard and the sacred majesty of the civic law, so far as rules of evidence and judicial tests applicable to pleadings are regarded.

Invoking those tests which the law applies to the pleadings and the evidence, I pass to their consideration, respectfully craving the patient indulgence of the Court while I endeavor to present them.

The charge is, "Conduct to the prejudice of good order and military discipline in violation of the sixty-second Article of War." The specifications recite "that the Secretary of War had, in the performance of his official duty, decided," etc.

We submit to the Court, as matter of law, that there is a fatal defect of proof upon so much of the specification. No evidence has been adduced, no law cited, to establish the first allegation, that the Secretary of War was in the performance of his official duty when he decided as alleged. That allegation passes through all of the specifications. Indeed, it is the very golden chain from which the charge and the specifications, if they are supported at all, must hang. If that is broken the case falls.

We judge a chain of iron, we test it, by the strength of its weakest link. We test a pleading by its strongest link. This is the strong link in the chain, that the Secretary of War was in the performance of his official duty.

Is there any proof offered upon that point? None. I need not cite authorities to satisfy the Court that where the allegation is that the officer to whom disrespect was shown was in the exercise of his office, they must establish it. That is a charge which specifically might be made in another class of cases, under the ninth Article of War, that he was in the execution of his office, the term "officer" meaning one entitled to military command, a commissioned officer. But the identical principle applies here, it being alleged that the Secretary of War in the performance of his official duty rendered the decision.

It is quite possible that the recital of the specification itself might exhibit the fact of which a court-martial would

take notice—that in the very nature of the case the Secretary of War was in the performance of his official duty. But neither the first specification, nor the second, nor the third relates to the exercise of functions touching the military establishment. That idea is negatived. The averment is in substance that the Secretary of War was in the performance of his official duty in deciding not to send a ship into the Arctic belt on the 15th of September, 1883; that he was in the performance of his duty in that.

Now, as that is a duty which does not inhere in the office of the Secretary of War, that does not spring from his legal functions as head of the War Department, as it is special if he had it, it must be proved. It becomes a material allegation. It has been dealt with as such, and it is the preamble to each and every specification. Yet the proof is silent. The Court upon that point, it is true, can take notice of a public statute imposing upon the Secretary of War the duty to decide whether a relief ship shall be sent into the Arctic, and when and how it shall be dispatched. But the Court will search in vain for any public statute imposing that duty. On the contrary, the statute, and the only statute, that defines the authority of any official of this government upon the question of originating Arctic expeditions, or acting in relation thereto, is the act of May 1, 1880, United States Statutes at Large, page 82, vol. xxi. There we read:

"Be it enacted, etc., That the President of the United States be, and he hereby is, authorized to establish a temporary station at some point north of the eighty-first degree north latitude, on or near the shore of Lady Franklin Bay, for purposes of scientific observation and exploration, and to develop or discover new whaling grounds; to detail such officers or other persons of the public service to take part in the same as may be necessary, and who are willing to enlist for such purpose, not exceeding fifty in number, and to use any public vessel or vessels that may be suitable for the purpose of transporting the members of said station and their necessary supplies, and for such other duty in connection with said station as may be required from time to time, etc."

One of the duties required "from time to time" was to send relief to the expedition, and certainly the duty to rescue it in a period of great peril. And the President of the United States, in

person, is charged with that duty. By his hand the order was signed which sent that expedition into unknown seas—by the order of one President who determined upon the expedition, His Excellency R. B. Hayes; and by the order of another, by his executive order, the commander of that expedition, the immortal Greely, was appointed by James A. Garfield, whose name seems destined for ever to be linked with tragedy, whose death united all Americans in the communion of a common sorrow. It was the act of the President.

But the learned Judge-Advocate may state that when the Secretary of War acts it is presumably by direction of the President. I admit that the presumption attaches that when in the course of *military administration* the Secretary of War acts he is held to be the organ of the President. But that presumption does not attach where, under a special act of Congress having regard to scientific and commercial purposes, explorations in Arctic seas for science, and the discovery of new whaling-grounds for commerce, the jurisdiction is vested specially in the President; and when the Secretary of War alleges that his, the Secretary of War's, decision is impugned, it must be shown affirmatively by the law that the jurisdiction vested in the Secretary of War to decide. If the President had any discretion under the law, and delegated to the Secretary of War the power to decide, the delegation of power, if it could be made under the statute, must be shown affirmatively.

Mr. President and gentlemen of the Court, on this point I am stating propositions that appear in the very horn-books of the law, in the very alphabet of juristic science, where the proposition is laid down that a material allegation for the support of a charge having been made, it must be proved. And we call for proof in vain.

But the specification proceeds (after reciting the decision of the Secretary of War that it was not practicable) that the Chief Signal Officer of the Army "did, in his official annual report as Chief Signal Officer, bearing date October 15, 1884, criticise and impugn the propriety thereof." What is "the said official action"? The decision of the Secretary of War that it was not practicable to send a relief ship in September, 1883, to the Arc-

tic—official action dealing with ships, with a nautical expedition.

Time was, may it please the Court, when this question presented by the counsel as to the naval functions of the Secretary of War would not have been contested. The Court may take notice of the historic fact that until the year 1794 the naval administration of the United States was conducted under the direction of the Secretary of War, that all naval administration was through and by him. But that was for a brief and exceptional period. That was the period marked by the extraordinary fact, on the other hand, that the commissary and quartermaster stores were always supplied the Army in that day through designated officers of the Treasury Department, and not by military agents.

But the period that blended the functions of the Treasury Department with the War Department, and those of the War Department with the Navy Department, has passed away, and a naval expedition, a nautical enterprise, does not suggest a function of the Secretary of War.

Well, he impugned, it is charged—he did "criticise the said official action of the Secretary of War, and impugn the propriety thereof." It is a question of proof as to whether the accused did, as alleged, criticise the *action* of the Secretary of War—not the Secretary of War; whether he did impugn the *propriety* of the action—not that he impugned the action; that is not alleged, but that he impugned the propriety. That is the curious language. That might be a question of proof. But the specification itself takes it out of the domain of testimony. For the accused admits that what is exhibited in the specification as the impugning and the criticising is a true extract from his official report, but denies that it contains the impugning and the criticising.

What is the language? This is what the accuser means by criticising and impugning. He defines the terms for himself. This is the language:

"On the return of the escort ship bringing the relief party to St. John's, September 13, there was still time, as known from previous experience and shown by subsequent facts, to send effective relief."

That is it, gentlemen of the Court. Now, what is the rule—the rule constantly enforced in courts-martial ?

I cite from the "Digest of Opinions" of the Judge-Advocate-General, page 46, at the foot of the page :

"It is immaterial in which form the charge is expressed, provided the specification sets forth facts constituting an act *prima facie* prejudicial to good order and military discipline."

That is, the specification in itself must show upon its face that if it be true that the accused did what is alleged in the specification, that then the charge of conduct to the prejudice of good order and military discipline is sustained. And this is all there is : "On the return of the escort ship," etc.

Is there any criticising of the action of the Secretary of War in that ? The true test is this, may it please the Court. We will suppose that that paragraph had been published weeks ago, before the American people had had their attention challenged to this trial through the press. Would it, upon its face, have suggested an impugning and a criticising of the action of the Secretary of War ? It says :

"On the return of the escort ship bringing the relief party to St. John's, September 13, there was still time, as known from previous experience and shown by subsequent facts, to send effective relief."

If he had added, "this should have been known to the Secretary of War," etc., there can be no doubt about it, it would have borne the construction of a criticising and impugning of his action. But it does not point in that direction. The specification recites that the Secretary of War decided that it was *not practicable*. The extract expressed the opinion that there was time, that there was still *time*.

Both averments may be true, the one made by the Secretary of War in the alleged decision that it was not *practicable*, and the averment of the Chief Signal Officer of the Army that there was *still time*. Those are the two. And it is respectfully submitted to the Court that there can be no judgment of guilt upon that specification, because to render such judgment the Court must hold that the extract from the annual report of the

Chief Signal Officer for 1884 standing alone sustains it (for each specification, the rule is, must be self-supporting), and, standing alone, it does not contain or suggest a criticising or impugning of the action of the Secretary of War.

But the specification alleges a decision—not that it had been decided, for that would have clearly been too indefinite; not simply that a decision was made that it was not practicable to send a ship of rescue in the fall of 1883. But the specification alleges that the Secretary of War "decided."

From the beginning we have demanded that decision. It has not yet come to the knowledge of the Court. I say it has not yet come, may it please the Court, because the Court shall know nothing unless the knowledge reaches it through the appointed judicial channels. It must reach it through the public statutes of which the Court takes judicial notice, or it must reach the Court through documentary or oral testimony given or presented in the presence of the Court or through the admissions of the accused. Those are the four channels. We ask for the decision of the Secretary of War, if in writing, as the word "decision" imports, or the word "decided." If in writing, produce the writing. If he did decide in fact, produce the evidence of the fact through the oral testimony, if written proof cannot be submitted.

And what is the answer to that? The Judge-Advocate puts in evidence an appendix to the report of the Secretary of War, to an alleged report of the Secretary of War for the year 1883, entitled "A memorandum."

May it please the Court, I understood then, and I understand now, that the object of introducing that memorandum was to set it up in argument as the decision of the Secretary of War referred to in each of the specifications. Who proves that that memorandum embodies the decision of the Secretary of War? Suppose, may it please the Court, it had appeared on the face of the memorandum, "This is a memorandum of the decision of the Secretary of War made on the 19th of September, 1883," etc. It could not prove itself. It might prove itself as a memorandum, but it could not prove that it embodied the decision of the Secretary of War. Is the Court to

adjudge, in the absence of proof, that the printed paper contains no error, that it is the same in substance and effect as the manuscript from which it was printed? The Court, it is respectfully submitted, cannot adjudge that. It professes to be a copy of a memorandum. The Honorable Secretary of War, on page 20 of his report, says:

"A copy of the memorandum of the views of the Secretary of the Navy and myself, made at the time, is appended."

He designates it, not as the decision of the Secretary of War, but as a copy of a memorandum containing the views of the Secretary of the Navy and himself. Does that, may it please the Court, answer the description of the decision that the accused is charged with impugning—the decision of the Secretary of War?

Does it not suggest that this is the memorandum of the decision of a board, not the decision of the head of the War Department, the officer charged immediately with the military administration? It is a copy, he says, of a memorandum. Where is the original?

May it please the Court, it is a rule of construction as applied to evidence, in practice in the courts, where a party introduces secondary evidence and withholds what is primary and original, that the presumption attaches that his position would not be supported by introducing the original document. Where is it? It has not been exhibited to the Court. Is it in the War Department? The Secretary's decisions must be filed there. We challenge the proof of any such record in the War Department. We would have had it here had it existed there. We are forced to the conclusion that no such record exists there.

This states the Secretaries of War and of the Navy have decided. It imports a decision preceding this. Where is it? This is alleged by the Secretary of War to be a copy in his annual report of what appears there, unsigned. If it is set up as the decision itself, it must be proved by the signature of the Secretary of War attached, or by oral testimony in Court, or the authentication of the proper officer.

Was it ever heard before that so grave a charge should be made as violating the decision of the Secretary of War, impugning it, and making that the basis of the charge, and the decision itself not be exhibited? Why is it that it is a requirement of law that the proof shall be responsive to the allegation? And what is the law upon that subject? I read from Starkie on Evidence, third volume, page 1529:

"It is a most general rule that no allegation which is descriptive of the identity of that which is legally essential to the claim or charge can ever be rejected."

You cannot reject the demand for the proof as to the decision. Again:

"Were it otherwise, if proof could be admitted which varied from the record, in consequence of the omission to prove any allegation descriptive of an essential particular, it is plain that the proof would no longer agree with the cause of action, or charge alleged, to any extent; they would differ throughout in respect of that descriptive allegation; and, as the proof would be more general than the allegations, it would no longer be partial proof of the same charge or claim, but of a different or more general one. As an absolute and natural identity of the claim of the charge alleged with that proved consists in the agreement between them in all particulars, so their legal identity consists in their agreement in all the particulars legally essential to support the charge or claim; and the identity of those particulars depends wholly on the proof of the allegations and circumstances by which they are ascertained, limited, and described. To reject any allegation descriptive of that which is essential to the charge or claim would obviously tend to mislead the adversary."

Now, the descriptive allegation applied to the decision is that it is the decision of the Secretary of War, and we are confronted with a memorandum, an alleged copy of an alleged memorandum, of an alleged decision of the Secretary of the Navy and the Secretary of War.

May it please the Court, this is much more than Darwin's solitary missing link. A whole chain is wanting here of legal proof and requirement.

I quote from Starkie on Evidence, volume third, star, page 1533:

"It seems to be a universal rule that a plaintiff or prosecutor shall in no case be allowed to transgress those limits which, independent of description, limitation, and extent, he has prescribed for himself. He selects his own terms in order to express the nature and extent of the charge or claim; he cannot, therefore, justly complain that he is limited by them. To allow him to exceed them would, for the reasons adverted to, be productive of the greatest inconvenience."

And the learned author, who is constantly cited in works upon the law of courts-martial, Mr. Starkie, applying the principles referred to, says on the same page :

"If a man were charged with stealing the horse of John Doe, and it turned out that the horse was the property of John Doe and James Doe, the variance would be fatal, for the interest of James Doe, thus proved and not alleged, would show that the ownership was misdescribed altogether."

We are charged with violating the decision of the Secretary of War, with impugning it; and to prove *that*, a joint decision of the Secretary of War and the Secretary of the Navy is exhibited. Could any method be adopted which would more naturally tend to effect a surprise upon the accused? He might be ambuscaded and surprised at every stage and throughout every specification, if this could be admitted. Is not the principle contended for here in reference to the specification exactly the same, though in its application relating to a different class of offences, as that illustrated by the learned author that I now cite? that proof of the decision of the Secretaries of War and of the Navy, if it were proved, is not proof of the decision made by the Secretary of War as alleged in the specification?

But it may be suggested that this is "technical." I submit that this is not what is termed a technical objection, if by the term "technical" it is meant to impress the Court with the idea that it does not belong to what is material.

Suppose a party were charged before this Court with having committed an act of violence upon the person or the property of another, the location of the property perfectly described, the scene known to the members of the Court, but the ownership not named, or misnamed. Objection is made upon that omission appearing. It might be termed a technical objection, but the

Court, guided by the long line of precedents in courts-martial, would instantly render a finding of not guilty as to that case. These requirements of the law, that descriptive words must be sustained in proof, belong not to the form, but they concern the substance of judicial administration.

A court-martial cannot disregard them, because the oath of the member binds him to apply the rules of the civil courts in the construction of pleadings and in the enforcement of the rules of evidence. It is vital. For what do the authorities say? Such a variance between the allegation and the proof, where words of description are used in the allegation, is a fatal defect.

With a view to dispose of questions of law at the opening, I pass to another question of law. We submit to the Court that the specification is not responsive to the charge in this, the first specification: That it does not appear that the alleged decision of the Secretary of War (and it is not set out in the specification) related to military administration. The charge is "conduct to the prejudice of good order and military discipline." "Good order" in what? Good order in the execution of the laws and authority relating to the Army of the United States—maintaining order there in the Army?

It is well settled that wherever this charge has been made under the sixty-second Article of War, the first requirement has been to show by the proof that the officer who is charged to have been the subject of the disrespect was acting in relation to a military duty, having authority to perform it.

Can the Court assume that because the Secretary of War is alleged to have made the decision in the performance of his official duty, that that is a sufficient allegation that it was a duty relating to the military establishment? We think we can satisfy the Court that that deduction would not be warranted.

Let us take the report of the Secretary of War for the year 1884. In that report the first page (as it appears in every report, in fact) gives a statement of expenditures and receipts, salaries, contingent, military establishment, Army, Military Academy, public works, including river and harbor improvements. The Court may take notice of the statutory powers of the Secretary of War in relation to the subjects stated, always,

in his official report, duties relating to the military establishment, consisting of the Army and the Military Academy of the United States; duties relating to public works, to the improvement of rivers and harbors—a class of duties having no relation to military administration. And the Court cannot hold that because of the mere allegation that he was in the performance of his official duty, that it related to military administration, especially when that very specification that recites the alleged class of duty takes it far beyond the orbit, the normal sphere, of the War Department—takes it into the northern seas in ships and into a nautical enterprise. And the proof is silent upon that point, that the Secretary of War was acting in the course of military administration when he decided, as alleged, not to send a ship of rescue to the Arctic. There is no proof upon that point.

Says a learned authority, Mr. Hilliard, in his work on the "Law of Torts," vol. i. p. 281:

> "Where words derive their actionable quality from extrinsic facts and circumstances connected with an office or employment of the plaintiff, these must be proved."

They must be proved. The decisions of the Judge-Advocate-General's office are burdened with determinations of that very point: that where the charge is an act to the prejudice of military discipline, it must be shown that the officer against whose authority the accused acted was engaged in the execution of military functions.

Why, may it please the Court, the Secretary of War is an officer of manifold functions. As an adviser of the President, a member of the Cabinet, his function is political. It may come to pass that the all-seeing eye of the public press, from which nothing seems to be hidden that transpires on the surface of the globe—this eye that never slumbers or sleeps may discover that the Secretary of War, as an adviser of the President, had counselled the execution of a treaty with a foreign power which, in the general judgment, would be detrimental to the interests of this nation. And an officer of the Army might, in sharp, incisive terms, through the public press, criticise the counsel given

by the Secretary of War, impugn its accuracy, deny the fact upon which he had advised the President of the United States to enter into this treaty. A court could not convict him upon the charge of conduct to the prejudice of good order and military discipline ; that would not be contended, because his criticising and impugning would relate to the political function of the Secretary of War, and not to military administration.

Why is it an offence at all to criticise and impugn in harsh and disrespectful terms and assail a superior officer by an officer of the Army ? It is this, we submit to the Court: That public attacks upon officers charged with the military administration tend to weaken the bands of authority, to promote disorder by inciting disrespect on the part of others, thus bringing the military establishment into contempt. That is the reason of that provision of the military code. The life of the offence consists in that consideration. And in order to establish it, in order that the proof of the charge shall follow the reason of the charge, or, as a great writer has well said, because "the reason of the law is the life of the law," it is for that reason that the proof must follow the reason of the law, to show that the officer was impugned or assailed in the course of military administration.

What was the question, may it please the Court ? What does the alleged decision relate to ? It related solely to a nautical question—namely, whether Melville Bay, in the Arctic belt, twenty-nine hundred and eighty miles, I am informed, from the War Department, was navigable in the month of September, the latter part of September, and in the month of October, 1883 ; whether the icebergs had barricaded Davis Straits ; whether the midnight sun of the Arctic had sunk behind its everlasting walls of ice ? That is it. We have heard, may it please the Court, of things that differ as widely as the poles. Surely this suggests the expression. The alleged decision related to the polar zone, to the regions of thick-ribbed ice, springing from no military function, suggesting no military authority.

And yet no proof is offered, no law is exhibited, to show that, as matter of law and matter of fact, this was made part of the military administration of the Secretary of War.

Did the War Department send a relief expedition finally to the Arctic ? The Secretary of War in his report says not. The Secretary of the Navy sent it. Charged by law with that duty, under the direction of the President he sends it. There never was a decision, we submit, made at any time pursuant to law by the Secretary of War, that a relief expedition should go to the Arctic seas. Not at all.

A member of the Court—Mr. President, I would like the Court at this time to take a short recess.

The PRESIDENT—Does the counsel object to a recess at this time ?

Mr. MACKEY—No, sir. I prefer a recess.

The PRESIDENT—Then, the usual time for a recess having arrived, the Court will take a recess until half-past one.

A recess was then taken.

The recess having expired, all being present as before, the Court resumed its session.

Mr. MACKEY—Mr. President and gentlemen of the Court, at the recess of the Court the counsel for the accused was addressing some considerations to the Court touching the functions of the Secretary of War as they related to the North Pole and explorations in northern seas by ship, with a view to maintaining the position that a charge of conduct to the prejudice of good order and military discipline can only be supported by proving that the conduct obnoxious to the Secretary of War related to the exercise of his military functions, to his functions as Secretary of War proper.

I beg leave to call the attention of the Court to Section 216 of the Revised Statutes of the United States, under the title "The Department of War," in which the powers and duties of the Secretary of War are defined :

"The Secretary of War shall perform such duties as shall from time to time be enjoined or entrusted to him by the President relative to military commissions, the military forces, the warlike stores of the United States, or to other matters respecting military affairs ; and he shall conduct the business of the Department in such manner as the President shall direct."

May it please the Court, the charge and the specifications

relate to the office of the Secretary of War as the immediate head of the War Department. That is emphasized by the fact that the accused is not even informed in the specifications as to what Secretary of War he impugned or is alleged to have criticised. The specification is the most novel ever submitted to a court-martial, in that the office is named, and the officer, *eo nomine*, is not ascertained in the specifications. It was intended to confine the specifications severely to the office of Secretary of War. That office, the statute recites, relates only to military administration. Congress, in the exercise of its jurisdiction, has supplemented the ordinary and normal functions of the Secretary of War by charging him with the duty of disbursing funds for the improvement of rivers and harbors. He is made a disbursing officer in regard to that class of internal improvements. But these do not relate to the function of the War Secretary, nor do nautical expeditions relate to that function.

We submit to the Court that the failure to exhibit proof connecting the language alleged to have been used by the Chief Signal Officer, with the military administrative functions of the Secretary of War, is fatal to the charge.

As to the second specification: We submit to the Court that now is the proper time, or rather the opening argument would have been the proper time, for the Judge-Advocate to have disclosed to the accused the law upon which the second specification rests. That is to be determined solely by matter of law. It is admitted that the citation from the letter of the Chief Signal Officer of February 17, 1885, to the Secretary of War, is correctly given. That specification alleges that the letter was addressed to the Secretary of War by the Chief Signal Officer without his being requested or authorized to address him such a letter. It is a matter of law. Where is the law which contains that requirement? We are entitled to know it, according to the rules that govern in the civil courts; and the authorities say that they must govern here. Where is the law? Is it to be kept undisclosed?

If there is a law, then its existence is fatal to this specification. If there is a law requiring that the Chief Signal Officer

should first obtain leave, then it was necessary to allege that, contrary to law, he addressed the Secretary of War a letter without obtaining leave. It is not done. We are unable to discover such a law.

Is it a custom? You cannot render judgment upon a custom, unless you prove the custom. We have disproved it as it relates to communications heretofore between the Chief Signal Officer of the Army and the Secretary of War. It was testified, and it is uncontradicted, that upon a vital question relating to Arctic expeditions and the disbursement of funds or some minor detail, not with reference to dispatching expeditions or fitting them out, the Secretary of War promulgated his decision as to the true construction of an Act of Congress, in which he thought (that is the testimony) that the law did not contemplate an annual relief expedition, and that the Chief Signal Officer protested against that decision by a communication addressed to the Secretary of War, the accuser in this case, and protesting against it, as the witness testifies, on the ground that the Secretary of War had erred in expressing his judgment to the President to the effect that such annual expeditions were not authorized by law.

The President, whose hand was to be potential upon the question of dispatching Arctic expeditions, enters the arena at that stage. The Chief Signal Officer protested that the Secretary of War had not correctly advised the President, and the decision of the Secretary of War was reversed by the President.

There was a communication touching a vital question, after a decision rendered, after advice given by the Secretary of War to the Commander-in-Chief of the Army and Navy, to the statutory head of Arctic explorations, the President, and sent without question by the Secretary of War, as to the right of the Chief Signal Officer, charged immediately with administrative and executive duties connected with those expeditions, without questioning the right of the Chief Signal Officer to give his view without being requested or authorized.

We instanced the further case of the Secretary of War having decided that the Signal Corps was not a part of the Army of

the United States, and the proof that the Chief Signal Officer protested against that view ; that it was reviewed by the head of the Department of Justice of the United States, and that the Secretary of War was reversed again on the issue made by the Chief Signal Officer with him, the communication being addressed to him without leave first obtained.

Men are not apt to invite communications to review their errors. We instanced the case, in proof, of Captain Olmsted, a cashiered officer of the Army of the United States—cashiered for embezzling public funds—restored by Act of Congress in some mysterious dispensation of Congressional providence, restored, assigned to the Signal Corps, smirched and stained, the Chief Signal Officer protesting against the assignment, and in that the Secretary of War was exercising a function of military administration. The Chief Signal Officer, the proof is, addressed the protest to the Secretary of War without leave, without rebuke. The officer was assigned, and, as the Chief Signal Officer predicted, he embezzled the moneys of the Signal Office. And we were proceeding to give other instances when the President of the Court, uttering its view, informed us that the instances were sufficiently multiplied.

So that the accused must hold that in the judgment of the Court as expressed at that stage, resting the proof upon that point, that our proof was already fatal to the second specification. We could draw no other inference, or we could have stretched out the line to the crack of doom on that point.

Mr. President and gentlemen of the Court, there is no such requirement of law or custom touching communications between the chief of a military bureau and the head of the War Department. It would be obstructive of public business, it would be a false method of administration, if upon every exigency the Chief Signal Officer of the Army were obliged first to require leave before addressing the Secretary of War. Our administrative systems, from the highest officer to the lowest, proceed, it is true, upon the basis of a graduated surbordination to authority ; that there shall be in the administration of the government respect without obsequiousness, that there shall be subordination without servility. And in the discharge of

what he deems his duty, of which the Chief Signal Officer himself must be the judge in the first instance, he may address a respectful communication to the Secretary of War touching his administrative duties, either before or after decision promulgated. That is a rational construction of the system; that is the established practice under the system.

If there were a law requiring leave, the Secretary of War, in the exercise of his administrative powers in reference to the Chief Signal Officer of the Army, has, in practice, dispensed with its requirements. He has dispensed with that, and he is estopped, to use a technical term; he cannot speak against it now. It is a settled principle of law that he who is silent when in conscience he ought to have spoken shall not be permitted to speak when in conscience he ought to be silent. It is against public policy. Courts have rebuked it, and so have courts-martial, for a superior officer to witness acts of a subordinate, time after time, and not rebuke them, not preferring charges upon them, and finally, for the same class of acts, moving upon him.

Says De Hart in his work on Military Law, page 99 :

"The general regulations for the Army [may it please the Court, he refers, I believe, to paragraph 214 of the regulations as they existed at the date of the publication of this work in 1846]—the general regulations for the Army stigmatize, as being highly improper, to hold charges against an officer or soldier, in order that they may accumulate, so as to form collectively a crime of sufficient magnitude to justify a prosecution : and declares the principle, that if the facts, as they arise, are not of a kind to be made matter of charge at the time, they should not at a future period be brought up or revived. . . . There have been cases of this description which have broken the harmony which ought to subsist between the members of the military community, and called forth the severest animadversions of the Court and the commanding general. It is, however, of rare occurrence, and in every instance, it is believed, where satisfactory evidence of its existence has been shown, the result has been painful and humiliating to the accuser."

He is estopped, it is said; his lips are sealed. We proved the custom of communicating with the Secretary of War without leave or special authority.

But what does the Chief Signal Office of the Army address

to the Secretary of War without leave? What does the Secretary of War, the accuser in the case, exhibit in the specification as a part of the letter addressed to him without leave—and it is that part which, he held, rendered the Chief Signal Officer obnoxious to the charge which has been preferred against him? This is the part:

"I respectfully submit that I am justified in the conclusion that the tragic termination of the International Polar Expedition was finally due to the decision not to dispatch a steam-sealer to effect its rescue on the 15th of September, 1883, which I did all in my power to have done; such sealer starting from St. John's, N. F., only thirteen days' steaming from Cape Sabine, in all human probability could have reached and rescued the party before there was any interruption to navigation by ice."

That ends the specification. Does that say, does that intimate, that the Secretary of War had rendered a decision? What decision has been traced, or attempted to be traced, to the Chief Signal Officer as affecting his knowledge of a decision by the Secretary of War? Why, the only one that the prosecution pretends that he had knowledge of was the decision of the Secretary of War and of the Navy—a board. He says, "Was finally due to the *decision.*" Does that impugn the Secretary of War? Does that criticise his decision? Does it intimate one word of disrespect to the author or authors of any decision? Is it not simply an affirmation in a hypothetical case, that if a steamer had left on September 15, 1883, in all human probability the Arctic tragedy would have been averted? Only this, and nothing more.

And we may search the obnoxious letter in vain for any impugning of the Secretary of War in terms or by reasonable implication. It does not appear, according to the recital of the letter in question, that the Secretary of War had ever rendered a decision, or that he was ever called upon to render a decision, in the sense in which the language of the specification imports a decision. He may have been a member of a board composed of the Secretary of the Navy and the Secretary of War, or any number of officers. But that does not fulfil the specification.

I therefore submit to the Court that the proof does not support the second specification, and the second specification itself

does not move in support of the charge to recite acts that *prima facie* constitute an offence. And the limitation as decided, the test, is, as decided by the Judge-Advocate-General of the Army and supported by authorities cited, that the specification must on its face support the charge.

The third specification is as follows :

"In that Brigadier-General William B. Hazen, Chief Signal Officer United States Army, knowing that the Secretary of War had, in the performance of his official duty, decided, in the month of September, A.D. 1883, that it was not practicable to send in the year 1883 an expedition to the Arctic region, etc., . . . and having written and sent to the Secretary of War an official communication, bearing date the 17th day of February, A.D. 1885, containing, among other things, the following language :

"'The Secretary of War, in his annual report for the year 1884, was pleased to make me the subject of severe strictures because, in my official report of the final disaster to the International Polar Expedition, I expressed the conviction that such disaster would have been averted had a ship of rescue been dispatched from St. John's, N. F., after the return of Lieutenant Garlington to that port, or as late as September 15, 1883, as urged by me, but not adopted by the Secretary of War.

"'As my silence, in view of those strictures, might be construed as implying my assent to their justice, I beg leave to place on record the evidence that supports the correctness of my judgment in the premises. . . .'"

So far I have read. I will continue hereafter.

Now, is it not clear, may it please the Court, from that citation, that the purpose of the letter was not to impugn a recognized decision of the Secretary of War, but to question the justice of his strictures ? Not to question the justice of any admitted decision on his part, but to question the justice of his strictures as they applied to the Chief Signal Officer of the Army. That purpose appears on the face of the citation, which is as follows :

"I respectfully submit that I am justified in the conclusion that the tragic termination of the International Polar Expedition was finally due to the decision not to dispatch a steam-sealer to effect its rescue on the 15th of September, 1883, which I did all in my power to have done ; such sealer starting from St. John's, N. F., only thirteen days' steaming from Cape Sabine, in all human probability could have reached and rescued the party before there was any interruption to navigation by ice."

He imputes it to the decision not to dispatch a steam-sealer. What decision? The prosecution exhibits it. The decision of the Secretary of the Navy and the Secretary of War. Does he impugn? The term "impugn," I submit to the Court, used in the connection in which it is used in the first specifications, means a disrespectful arraigning or assailing. Does he impugn the Secretary of War? Does the conclusion follow by irresistible deduction from that citation that the Secretary of War was responsible? No. We have to import into it facts that lie beyond the circle of the evidence to give it that construction. The Court will have to adopt the construction placed upon the letter by the Secretary of War himself, which the Court has, I understand, decided is not evidence in the cause—the endorsement of the Secretary of War—except to establish the fact that the endorsement was upon the letter of the Chief Signal Officer when returned to him by the Secretary of War.

The Court could not receive that endorsement as proof. It could not receive any matter of specification as proof. That is an argument. That is construction by the accuser. If the letter did not render the Chief Signal Officer obnoxious to the charge of conduct to the prejudice of good order and military discipline, if the letter itself was not obnoxious, the endorsement could not make it so. It is upon the letter, upon its face, upon a reasonable construction of its language according to the meaning of the terms in common acceptation, that the Court is to decide whether it is a criticising of the action of the Secretary of War and an impugning of its propriety.

But the specification proceeds:

"And said communication having been returned by the Secretary of War to said Chief Signal Officer with an endorsement thereon, in words and figures as follows: War Department, etc."

Under the decision of the Court, as I understand it, Mr. President, we are not called upon to disprove the allegations of that endorsement. They are not evidence, but the endorsement is only considered as evidence of the admitted fact that it was on the letter when it was returned.

If the endorsement containing the construction of the Secre-

tary of War is to fall into the scales in which we lay the evidence for the defence, or into the scales, rather, in which the evidence for the prosecution is laid, we must then discuss it. But it will be the first time in the history of judicial tribunals where the argument of the accuser is permitted to enter into the orbit of the case as evidence to be met.

I should like to be informed on that point—whether we have to discuss that. We have been at a disadvantage, if we have, for the Court arrested us by its decision when we were moving on the endorsement. I submit to the Court that it is a mere argument; that the accuser in this case cannot testify by proxy—he must be here. He could say all of these things in Court. We are entitled to know that, and we ask the Court whether that is the meaning of its decision, that that is evidence? whether it is to be considered as evidence in the case or merely proof of the fact that the letter bore that endorsement?

The JUDGE-ADVOCATE—Mr. President, before the Court takes any action I desire to call attention to the fact that the record shows that this endorsement which the other side calls in argument persistently was introduced by the prosecution and admitted by the defence. The record so shows.

Mr. MACKEY—We admitted that it was on the paper.

The JUDGE-ADVOCATE—That afterwards the Court made a decision in reference to it. That then the accused's counsel questioned the decision and desired an opinion of the Court as to its import, and that the President of the Court gave him an answer, to the effect, I think, that he must judge of the language himself; that he must proceed in order, and whenever he transgressed that decision the Court would tell him.

Mr. MACKEY—That related, may it please the Court, to the accusatory remarks against the Secretary of War, and the defence admitted the endorsement, as an endorsement, which appeared on the letter of the accused. But we are dealing with it now as an argument put in the specifications—whether we are to answer the accuser, who appears by proxy, in that argument; if that is evidence or argument.

The PRESIDENT—A member of the Court desires to have that portion of the record containing the decision read.

The JUDGE-ADVOCATE—The first question arose on March 17 in reference to this endorsement, when the defence made a motion to strike out. That motion was not sustained by the Court. Then the accused's counsel asked as to the purport of the decision, and no answer was given him. Then he again raised the question yesterday, when the Judge-Advocate said (page 222):

"The JUDGE-ADVOCATE—I am directed by the Court to announce that the objection of the Judge-Advocate to the reception of the paper is sustained. I am further directed by the Court to state the following as its opinion: 'There is no question before the Court respecting the endorsement of the Secretary of War, except the fact that the accused received that endorsement.'"

Mr. MACKEY—That is as I understand it. I understand that to mean that the endorsement on the paper is material to that extent only; that the accused received the letter with that endorsement upon it. That is the way I understand it.

After consultation among the members of the Court the Judge-Advocate said:

The JUDGE-ADVOCATE—I am directed to announce as the decision of the Court the following: "The correctness of the statement of facts and of the opinions expressed in the endorsement of the Secretary of War is not a question before this Court."

Mr. MACKEY—Mr. President and gentlemen of the Court, it appears that the obnoxious letter was returned by the Secretary of War with this endorsement, which I read in part:

"The within paper, bearing date of February 17th inst., was received at the War Department February 26, and is respectfully returned to the Chief Signal Officer."

We shall beg leave to consider this endorsement, may it please the Court, in its bearing upon the temper of the accused as affecting his construction of the letter, which construction may, by some possibility, influence the judgment of the Court insensibly. It will appear from that endorsement, as we have endeavored to show, that such was the heat of the Secretary of War and temper upon matters relating to the Chief

Signal Officer of the Army and his administration of Arctic expeditions that even upon an Arctic question, upon a question of ice-navigation, the Honorable Secretary could not keep cool. In stating that the correctness of the judgment of the Chief Signal Officer in the expression made by him, in his last annual report, of his view as to the propriety of the action of the Secretary of War in not sending a ship in September, 1883, to the Arctic regions, is not a proper subject of discussion between the Chief Signal Officer and the Secretary of War—that is the first misinterpretation. The Secretary of War interprets in that paragraph the letter of the Chief Signal Officer of the Army as one inviting discussion with him.

The PRESIDENT (to counsel for defence)—At the appropriate time will the counsel suspend his remarks for a few moments? The Court will be closed and we will retire on an application of a member of the Court.

The members of the Court and the Judge-Advocate then retired to an adjoining room for consultation with closed doors.

After some time spent in deliberation the members of the Court and the Judge-Advocate returned to the court-room, and the session of the Court was resumed, all being present as before.

The JUDGE-ADVOCATE—I am directed by the Court to state that it declines to hear any further argument upon the subject of the endorsement of the Secretary of War, for any purpose whatever.

Mr. MACKEY—May it please the Court, we respectfully ask that, in all respectful forms in which a solemn protest can be entered against the decision of the Court, that it may be entered upon the record in behalf of the accused.

The PRESIDENT—Let it be entered.

NINTH DAY.

ROOMS OF THE GENERAL COURT-MARTIAL,
EBBITT HOUSE, WASHINGTON, D. C.,
Friday, March 20, 1885, 11 A.M.

The Court met pursuant to adjournment.

Mr. Mackey resumed his argument as follows :

Mr. President and gentlemen of the Court, before proceeding further in treating of matters of law that arise from the third specification, I shall read the law, in part, in support of the argument and the construction that I shall submit to the Court.

I cite first from Macomb's "Martial Law," page 137, a part of the paragraph found on that page :

"It may sometimes happen that the party accused may find it absolutely necessary, in defence of himself, to throw blame and even criminality on others who are no parties to the trial ; nor can the prisoner be refused that liberty which is essential to his own justification."

I cite also as to the law governing courts-martial in construction, third Greenleaf, Section 469 :

"It is apparent that while martial law may or does in fact assume cognizance of matters belonging to civil as well as to criminal jurisdiction, military law has respect only to the latter. The tribunals of both are alike bound by the common law of the land in regard to the rules of evidence as well as to other rules of law."

It is alleged in the third specification as follows :

"He, the said Brigadier-General William B. Hazen, Chief Signal Officer United States Army, did, in response to an inquiry made by a newspaper reporter as to whether he, the said Hazen, had written a letter to the Secretary of War throwing the blame of the loss of the Greely party upon his shoulders, intentionally make a statement in answer to said newspaper reporter, with a view to its publication, and did cause the same to be pub-

lished on the second day of March, 1885, in a newspaper printed and published in the city of Washington, D. C., called the *Evening Star*."

The allegation here is, may it please the Court, that a statement was made, that it was made intentionally, that it was made with a view to its publication, and that the Chief Signal Officer of the Army, having made the statement intentionally and with a view to its publication, did cause the same to be published.

This is matter of evidence. Two witnesses may testify to a state of facts directly opposite. The Court may believe the one and reject the other. The impeaching witness presented by the prosecution in this case is the reporter to whom the alleged statement was made; the witness for the defence, who by his own election appears, is the accused himself. These are all the witnesses; and they are the best witnesses, in the nature of the case.

The gravamen of the offence is not in making the statement; that will not be contended. It is not in making a statement intentionally—and it would be difficult to conceive of an unintentional statement in any case. But the gravamen of the offence, if there be an offence, which draws it within the jurisdiction of military law, is the making it with a view to its publication.

What swears the reporter upon that point? He swears that there was no intimation given by him to the Chief Signal Officer of the Army at that chance meeting that his statement was to be published; that there was no suggestion that it was an interview for publication.

But it may be suggested, in behalf of the prosecution, that General Hazen, knowing that his interrogator was a reporter for the press, could and should have presumed that in eliciting a statement from him, the Chief Signal Officer of the Army, upon a matter of general public interest, he, the Chief Signal Officer of the Army, should have known, must be reasonably presumed to have known, that the statement responsive to the interrogation would be published; that this is the common-sense view.

But it appears upon the oath of the Chief Signal Officer of the Army, uncontradicted and unimpeached, no witness being

offered in rebuttal against him, that this reporter had had ten conversations with him, in relation to matters of public interest, which were never published, to one that was published. So the presumption that would ordinarily attach is rebutted, and especially when no suggestion as to publication, as the reporter states, was made; especially when the accused, who is an unimpeached witness, swears before the Court that it did not occur to him at the time that he was conversing with a newspaper reporter, although he had long known Mr. Kauffmann as a newspaper reporter, but had had friendly social relations with him beyond his reportorial sphere.

That allegation, it is submitted to the Court, is not sustained; and the evidence that negatives the allegation is greatly reinforced when we examine the testimony which discloses the cause that operated upon the mind of the reporter and upon the mind of the Chief Signal Officer of the Army, leading to the interrogation of the reporter and leading to the statement of the Chief Signal Officer of the Army.

A newspaper paragraph had appeared in a journal of wide circulation, with great head-lines, declaring that the Chief Signal Officer of the Army had thrown the blame of the Greely disaster on the Secretary of War in a letter addressed by him to the Secretary of War. That led to the alleged interview. The reporter states in his testimony that he called the attention of the Chief Signal Officer of the Army to the paragraph in the Chicago *Tribune*, and asked him if he had written such a letter, the paragraph containing the further statement that the Chief Signal Officer, after writing the offensive letter, had sought a leave, either before or after, that he might evade the consequences of his act.

To these linked questions, these blended interrogations, the reporter swears here that the Chief Signal Officer of the Army responded to him, "It is not true." What did that answer mean, may it please the Court—"It is not true"? Can it be held to have meant only, "It is not true that I have intended to flee from the face of authority after offending it"? Why should it not be applied to all the interrogatories? Why should it not be applied as meaning, "It is not true that I have written

a letter throwing the blame upon the Secretary of War, and I have not endeavored to evade any responsibility in the matter by flight" ?

It must have struck the mind of the Chief Signal Officer of the Army, with his long military experience and his knowledge of military law, that the question itself was, in part, supremely absurd, as the allegation in the paragraph cited from the Chicago *Tribune* was also. He knew well that if he had rendered himself amenable by any act of his to trial by court-martial, his obtaining a special authority or order to permit him to proceed South on a tour of inspection for ten days would not have enabled him to evade the responsibility that attached to his act. And he responds to these questions, swears the reporter, "It is not true," and follows that, according to the same witness, by a statement that "I have written a letter; I have stated that if my recommendation had been adopted the disaster would have been averted."

The paragraph, as it appears in the *Evening Star*, reports the Chief Signal Officer as responding: "Had my recommendation not been entirely ignored the disaster would have been averted." If that was so, the Chief Signal Officer would have been treading very near the margin of hostile criticism. But when the reporter is questioned as to what the Chief Signal Officer of the Army did say, when the reporter is asked, "Will you swear upon your oath that General Hazen used those words, 'entirely ignored'?" he answers, "I will not swear it." When he is questioned in chief by the learned Judge-Advocate as to whether he gave the tenor of General Hazen's reply, he answers, "Yes, I gave the tenor." But, may it please the Court, as the term "tenor" has in law a definite and fixed meaning, and means that a conversation or paper set out according to its tenor is set out word for word—for that is the legal meaning, that it is word for word—the reporter was therefore asked by the counsel for the Chief Signal Officer of the Army, "What do you mean by your statement that you gave the reply of General Hazen according to its tenor?" And he answered, "I mean that I abbreviated it." He first declares that he cannot swear that he gave it in the words of the Chief Signal Officer of the

Army; that he intended to give its substance; and then he swears that he abbreviated it.

Is the Chief Signal Officer of the Army to be held guilty of making statements for publication subjecting him rightfully to trial by court-martial—to be held guilty upon the inferences of a newspaper reporter who aims to give substance and not form; to give an impression of the meaning created in his mind, but not the words of the Chief Signal Officer of the Army? Supposing that there were not any testimony upon this point, may it please the Court, except the testimony of the reporter? It must fall short of establishing the allegation that the language published was the language of the Chief Signal Officer of the Army.

One novelty that marks this portion of the specification is this: It is the settled practice, when a party is to be held criminally liable for the words contained in a printed paper, to set out the printed paper in the indictment or in the specification. Here was a printed paper accessible, produced in court. It is not set out. It is not claimed that it was to be set out. It is simply alleged that in substance it was as recited in the specification. Why allege substance when the literal words were in print and at the hand of the accuser? Because the accuser well knew, must have known, that he could not support the specification if it alleged the precise words; and hence the object was to get in the substance and effect, ignoring the written paper to that extent upon which the specification is based.

The authorities hold that in a specification under a charge before a military court (which answers to a count in an indictment), if the government professes to set out the paper according to its tenor, and there is the slightest variation, it will be fatal.

May it please the Court, has it been proved in substance? Has it been proved that the Chief Signal Officer of the Army stated: "I have written a letter to the Secretary of War throwing the blame of the Greely disaster upon his shoulders"? Is it reasonable to assume, in the very nature of things, that an officer of General Hazen's rank and intelligence would, to use a current vulgarism, "give himself away" to a newspaper re-

porter? Is there any evidence that when the newspaper reporter said to him, "There is a paragraph in the Chicago *Tribune* stating that you have written a letter throwing the blame of the Greely disaster on the shoulders of the Secretary of War"—is there any evidence to show that General Hazen adopted the head-lines of a hostile paragraph when that was, on its face, a publication hostile to the Chief Signal Officer of the Army? Is it probable that he would have adopted it? Is it not reasonable to assume that when General Hazen answered back, "It is not true," that he meant his answer to cover and deny the statement that he had written a letter throwing the blame upon the Secretary of War, as also the statement in the paragraph that he intended to make his flight from the seat of government?

The rule in criminal trials is that, where language will bear a construction favorable to the accused, it is not only the prerogative of the court, but its duty, to attach to the language the construction that does not involve criminality. And why? It springs from the cardinal principle of the law that one accused of crime is deemed to be innocent until he is proved guilty. That presumption walks with him into the chamber of the court, it stands by his side, its shield is over his head, and it does not fall until the judgment of guilty is announced. To make all presumptions against the accused is to violate a cardinal principle of law.

I have considered the proof upon the question of an interview—of statements made with a view to publication—and it rests upon the testimony of the reporter. But it does not rest there alone, may it please the Court. The Chief Signal Officer of the Army, testifying before the Court, solemnly swears that it is not true that with a view to publication he made the statement alleged, or any statement, to a reporter on the night of the 1st of March—that it is not true; that while the reporter does not recollect, and will not swear, that General Hazen used the word "ignored," General Hazen does recollect, and will swear upon the point, and swears solemnly that he did not use it. While the reporter will not swear that General Hazen adopted the language used by the reporter, throwing the blame upon the Secre-

tary of War—to that point he will not swear—yet on that point General Hazen swears, and swears solemnly, that he did not intend to adopt such language.

So that, upon the question as to the language used and the intent in using it, upon the question of language used with a view to publication, not only is the allegation not supported by the solitary witness adduced to establish it, but it is contradicted by the two witnesses combined, the witness for the prosecution and the accused himself, and it is contradicted by all the surrounding circumstances.

May it please the Court, this is a tribunal sworn to render impartial justice according to the law and the evidence. The evidence is more than the testimony. The testimony is what falls from the lips of the sworn witness. The evidence includes within its orbit all of the circumstances surrounding the case as they appear in proof.

What was the length of this alleged interview so fruitful of painful consequences? What was the length of this interview that attracts from distant stations high officers of the United States Army, imposing upon them the double burdens of duty in court and departmental administration? What was its length? Less than a minute—an interview on the wing in the crowded lobby of the hotel. Was it written down at the time? No. The accuracy of the report depended upon the frail memory reproducing it fifteen hours later. The very incidents of this trial admonish us how uncertain it is, how uncertain is our memory, when we are called upon to give the exact words of another. Language has been uttered here by a witness and by the learned Judge-Advocate and by counsel—language heard by the Court with an attentive ear—and yet the members of the Court, the counsel for the prisoner, and the learned Judge-Advocate have differed as to the language used; and it requires that exact system which mirrors the words, as it were, upon the page by the hand of a stenographer to correct mistakes as to what language was used. And shall an officer of the Army be convicted upon the contradicted recollection, as to material words, of a newspaper reporter?

It is true, Mr. President, that in this case the reporter is not

only a worthy gentleman, as attested by the Chief Signal Officer of the Army, but a miraculous reporter who never magnifies items of news; who with mathematical precision gauges every word that he pens for the public; who subjects what he is penning or has penned to tests as severe as could be applied through integral and differential calculus itself to secure the utmost exactness; but he claims that he never magnifies. But he does swear that he abridges; that he did abridge; that he abbreviated. If that be so, then he has not given the language of General Hazen at that interview—if he has abbreviated it. A word may bear one meaning, a sentence may be held to be of one import, when cut from its context, when if the entire statement were given a contrary meaning and intent would appear.

How do we know but what in the matter cut off by the reporter, as he declares, in the process of abridgment, General Hazen should have said: "I have written a letter to show that I am not responsible for the disaster to Lieutenant Greely and his party; to show that, had my recommendation last fall been adopted, the disaster would have been averted; but I intend no disrespect to the Secretary of War, and do not intend to charge him as responsible for the disaster"?

Can the Court hold, when the proof is of an abbreviated paper, that the utterances as made did not contain these qualifying statements? It is respectfully submitted to the Court that that would be to take a leap in the dark; that that would be to cross a chasm that the evidence has not bridged. It must be bridged with proof only, and there is the fatal chasm and hiatus between the specification and the proof.

Now, if a letter had been addressed to the Chief Signal Officer of the Army after the paragraph appeared, calling his attention to that paragraph, with the inquiry whether he was there correctly reported, and he had answered in the affirmative, we could not defend on that point. It would then be simply a question of construction for the Court, in the light of the law, as to whether that language constituted such a publication as to render the Chief Signal Officer of the Army amenable to the charge of conduct to the prejudice of good order and military discipline.

But there is no proof that he saw that paragraph before the charges were preferred. The paragraph in the *Star* was published on the evening of March 2. The charge and specifications were formulated and signed on the following day. There is no proof that the Chief Signal Officer of the Army had time to contradict it—and it would keep a man exceedingly busy to contradict all the false paragraphs relating to him in the newspapers of the day. There was no opportunity for denial until he denied it here on oath.

Will the Court believe him? Will the Court hold that an American may be a Brigadier-General in the Army of the United States, clothed with its honorable uniform, decorated for services to his country in war, and yet that such an officer, standing before it unimpeached by legal methods, would solemnly and deliberately perjure himself upon a charge like this? That is the issue presented squarely to the Court. Upon that point General Hazen's testimony closed with the question, "Can you say upon your oath as a witness, upon your honor as a soldier and a gentleman, that you have not intended an act of disrespect to the Secretary of War?" And he answered, "I do say so."

May it please the Court, there are acts that speak for themselves, about which there is no question of construction. For instance, if one should strike another to the earth with a lawless hand for some supposed reflection upon him, he certainly could not set up as a defence that he did not intend an act of violence or disrespect by striking the party to the earth. The act needs no explanation; it speaks for itself. The logic of the fact is embodied in the very act.

But we deal here with publication, with written sentences, with constructions. We deal with language that does not inevitably force us to the deduction that if uttered it was uttered with disrespectful intent to criticise and impugn the action of a superior officer. We are dealing with that, and on that line the testimony falls to the earth.

It appears at the alleged interview that the Chief Signal Officer did state that had his recommendation been adopted the disaster would have been averted, stating it, as he says, without

naming the Secretary of War, without using the term "Secretary of War"; and the reporter swears that he will not say that the Chief Signal Officer of the Army used the term "Secretary of War." But the Chief Signal Officer of the Army does admit that he stated in response to the reporter who sought him (not the Chief Signal Officer of the Army seeking the reporter—that is the testimony of both): "I have written a letter stating that if my recommendation had been adopted the disaster would have been averted."

It has been testified that the Chief Signal Officer of the Army was greatly concerned upon the question whether in the public judgment he should be held responsible for that disaster. He was deeply concerned in that question. It was natural that he should be. His hand penned the instructions by which the International Polar Expedition was to be governed. Ruled by those instructions, it had been posted on duty at a point nearly eighty-two degrees north latitude, and three hundred miles beyond the furthest northern limit of human habitations. He knew that. He knew the extent of the disaster that had reached it. He knew that on the rocks of Cape Sabine there lay nineteen dead of the Army of the United States, among them two officers. He knew that the hand of one of those officers—Lieutenant Lockwood, of the Twenty-third Infantry—had unfurled the standard of this nation at a point further north than any ensign had ever waved. He felt the magnitude of that calamity. He knew and felt how many virtuous hearth-stones it had draped with the symbols of mourning. It was a matter of very deep concern to him. He has stated his deep sensibility upon that question. It walked with him in the bright light of noonday, and the awful spectacle came to him in the deep shadows of the night. It concerned him to show that he had done his utmost to avert that disaster. It was a disaster that challenged the attention of the nations. Ten great governments of the Northern Hemisphere were concerned with that expedition in interest. A disaster on such a scale that the Empress of the Indies, the Queen of England, with the majesty of a woman's character that dimmed the very lustre of her imperial crown, gave her choicest Arctic ship for the rescue. For once in English his-

tory England's ship was not moving in England's battle-line, not sailing in the track of England's wars or commerce, but in the battle-line of humanity, to attest the kindred thoughts that bound together the two great branches of the Anglo-Saxon race.

It concerned the Chief Signal Officer, a member of the International Polar Congress, as he was, whose name was known to the great nations in connection with this question, who had taken part in it—it concerned him to vindicate himself. He has declared here upon his oath that his purpose in writing the letter to the Secretary of War was not to inculpate, but to exculpate; not to arraign the Secretary of War, but to vindicate himself.

Do the words of the letter contradict that declared intent? On the contrary, may it please the Court, they support it. The Chief Signal Officer testifies that his purpose was to establish that the so-called Arctic authorities upon whose statements it was decided not to dispatch a ship of rescue in the fall of 1883 to the Arctic, were in error. Hence he enclosed the statements of known Arctic navigators, men who had achieved renown in the ice-fields of the north, and men who, though not renowned in history, are renowned in their tasks; men the business of whose lives it is to know when the waters north of St. John's, Newfoundland, begin to be navigable and when they cease to be navigable. It is their trade, their profession, to know. He encloses those also. He encloses them certainly not to impeach the Secretary of War, nor to question his motive, nor to impute to him a neglect of duty, because he avowedly only concurred with the Secretary of the Navy in the views, presented in the memorandum, not to send a ship of rescue upon the statements made to him.

The Secretary of War was not an authority upon the question. He did not pretend to be an authority. To arraign him for an error in decision, if he made due effort to inform himself, would, outside of the requirements of military law, have been an act of the grossest injustice. He who does the best under the circumstances as he sees them, intending to do his duty, stands absolved whatever may be the consequences. There was no such intent. But he does name some of the authorities, and he impeaches them—impeaches them by the proof.

Let me see what authorities he names. Here is his letter. Not the Secretary of War! The Secretary had alleged that the decision not to send a ship of rescue was based in part upon the statements of Commander Wildes and Lieutenant Garlington. To that the Chief Signal Officer of the Army addresses himself. He says :

"In view of the conduct of Commander Wildes and Lieutenant Garlington, I would not consider their opinions upon the subject of service in the Arctic of any possible value, but, on the contrary, to be misleading; while Captain Tyson's long experience on an ice-floe in winter in the Arctic regions, under the most distressing circumstances, invalidated his opinion upon the subject also."

Meaning, as to Captain Tyson, that he had been demoralized by his experience ; that he had become, like Commander Wildes, afflicted with glaciphobia, or ice-horror, and could not look calmly upon ice. Another authority that he arraigns—but not the Secretary of War—is :

"The Secretary of War, it appears, reached his conclusion after having personally consulted Captain Greer, U. S. N., who went to Littleton Island in the summer of 1873 in command of the *Tigress*, in search of the wrecked *Polaris* party, and Dr. Emil Bessels, the scientist of the *Polaris* expedition, and some others."

These are some of the authorities. He names some and he leaves others unnamed. Little could he have thought that this letter should have borne the construction that it was intended to impute to the Secretary of War a neglect of duty. It was intended to impute to the authorities upon which the Honorable Secretary of War acted a want of knowledge, not to impute, to them even, a neglect of duty. It was intended, above all things, to place on the files of the War Department a solemn statement of the Chief Signal Officer of the Army to show that he had made the utmost effort to effect that rescue, and that it was not effected was due to the misleading counsel given to the Secretary of War by pretended Arctic authorities.

And it is respectfully submitted to the Court that in no sense, by no intendment, can the question enter into the decision of this honorable Court as to whether the Secretary of War was

right in that matter or the Chief Signal Officer of the Army was right. No such issue is challenged here by the Chief Signal Officer of the Army in this case.

I submit to the Court that the fact that the letter was returned to the Chief Signal Officer of the Army (I only refer to that fact alone—the mere fact that it was returned) appears in the testimony of the Chief Signal Officer of the Army in reply to a question by the Judge-Advocate.

The Judge-Advocate has argued before the Court, in discussing an interlocutory motion, that the fact of the return of the letter by the Secretary of War aggravated the act of publication, aggravated the fact that the Chief Signal Officer of the Army made a statement at all impugning the Secretary of War.

We concede the correctness of that deduction if the premises upon which it rests are true. To be sure, the return by the Secretary of War of a letter addressed to him by an officer of the Army, which, in the judgment of the Secretary of War, rendered the officer obnoxious to trial by court-martial, and the returning of it with the statement that the Secretary commits the letter to your own hands (for if it were filed in the War Department I should be obliged to take official action upon it), was, gentlemen of the Court, a most gracious act—an act that should have awakened only a sense of gratitude in the breast of the Chief Signal Officer of the Army. It was a benign exercise of power, and it was so felt.

But the sense of gratitude which it awakened was marred by the fact that a copy of the letter appears to have been retained for the purpose of a prosecution. It "kept the word of promise to the ear and broke it to the hope." It was seemingly an act of oblivion, committing to the supposed offender the proof of his guilt, and yet preserving the proof. Either the copy that appears in the specifications was a copy retained when the letter was returned or a copy obtained surreptitiously before the letter was sent. The deduction is irresistible. This is not the open blow of the Saxon, but the stiletto-stroke of the Italian.

But I pass from that subject, may it please the Court, and I beg your attention to this point in the few brief remarks that I shall make.

The matter of the charge of the first specification consists entirely in extracts from the report of the Chief Signal Officer of the Army for the year 1884, which report was published on the 15th of October, 1884. The charge to which the specification relates is preferred on the 3d of March, 1885, five months later. The authorities upon military law already cited hold that where an accuser reserves his knowledge of an act violative of military law, and, when some other like act is in his judgment committed, recurs to the former act and presents an ancient and stale matter to a court, that courts-martial view the practice with disfavor, with condemnation. Says De Hart on Military Law, as stated on yesterday at page 244, such practice has always resulted in consequences most painful and humiliating to the accuser. And in the opinions of the Judge-Advocate General of the Army, in the Digest of Opinions here, numerous cases are cited where courts-martial have held that under those circumstances they would not sanction that cumulative system of hoarding up in memory all that has passed and renewing it after a long interval.

The matter of the first specification was in the report of the 15th of October, 1884, the report published by order of the Secretary of War and disseminated from the War Department. That is the proof. What would be thought, may it please the Court, of one who, in an action against another for publishing matter defamatory in its nature, should have it proved that he himself had by his order knowingly disseminated the publication, the paper; that he had performed the act of publication? It is not the act of writing charged; it is the publishing in the annual report, and it is published by the War Department, and it is answered by the War Department. According to the construction put upon it by the Honorable Secretary of War, so far as he is regarded, the report required no answer; but, so far as his official action is regarded, he answers it. He discusses it at length in his own report weeks later. He enters the field of controversy, he presents the array of his authorities, he selects a public forum for a discussion. The letter comes. It is the reply to strictures uttered as admitted by the Secretary of War, penned by him, admitted to have been penned by him in the re-

cital of the first specification. And the Chief Signal Officer of the Army, in response to the authorities cited by the Secretary of War, presents a long array of Arctic authorities, overwhelming with this proof the authorities referred to by the Secretary of War, bringing confusion to them; and then the case is transferred by that specification, so far as the controversy is concerned relating to the annual report of the Chief Signal Officer for 1884. It is exhausted by the joint discussions through annual reports in the public forum, and it is then referred, by the specification, to a judicial tribunal.

May it please the Court, it suggests to the mind of the historic student the case of the philosopher who, standing in the presence of the great King Pyrrhus, allowed certain propositions of the king relating to matters of philosophy to go uncontradicted. Said one of the disciples of this philosopher: "Why, you could have proved the king in error; why did you not do it?" "Ah!" said the philosopher, wiser in his day and generation than the most of us, "I never argue a question with a man who commands forty legions."

It only remains for me to glance, in a few words, at what I will assume will be the line of attack on these positions made by the learned Judge-Advocate. I must assume that; and as we have not the reply, it is the duty of counsel to meet the possible deductions from what may be deemed weak points in the position taken by the defence.

I assume, first, that the learned Judge-Advocate will insist that here is a subordinate officer, subordinate to the Secretary of War, and the chief of a military bureau in the War Department. The Secretary of War decided as to a matter which, in his judgment, it was his duty to decide—that it was not practicable for an expedition to sail into the Arctic seas in the month of September, 1883; that the Chief Signal Officer of the Army had no responsibility for that decision, and yet he makes an excursion into a field beyond the sphere of his duties, and publishes in his annual report strictures upon the decision of the Secretary of War. That, I assume, will be his first position.

May it please the Court, much of what would be stated on that point, if I am correct, would be such a case as the great

O'Connell declared it was when, in answer to Sir Robert Peel, he said: "The honorable gentleman is indebted to his fancy for his facts, and to his memory for his jests."

That position on the part of the prosecution assumes the very question at issue: that the purpose of the paragraph cited from the annual report of the Chief Signal Officer of the Army was to impugn the Secretary of War. That is a question of proof, and it does not spring as a natural deduction from the paragraph itself.

As to the second paragraph it may be argued that the Chief Signal Officer of the Army knew that the Secretary of War, if he had not decided himself that it was not practicable to send an expedition into the Arctic in the fall of 1883, was a party to the decision jointly with the Secretary of the Navy. The Chief Signal Officer of the Army acknowledged receiving a dispatch from Captain Mills sent on the 15th of September, 1883, informing him of the decision of the Secretary of War and of the Navy. Assume that that is the position taken.

I have endeavored to satisfy the Court, if that is the position, it is a surrender of the case on each specification, for the specification alleges a decision of the Secretary of War, and not the decision of a board composed of the Secretaries of War and of the Navy. How did they get together? How were they conjoined? Whom the law has put asunder, let no man join together, may be stated as true here. How did they combine, and when did they separate? By what official or legal conjunction did they unite, and where comes in the disjunctive? We cannot tell. That is one of the mysteries of the case.

But the learned Judge-Advocate may insist that as the greater embraces the lesser (a proposition in mathematical science that we are not now prepared with evidence to dispute), it follows that if the Secretary of War and the Secretary of the Navy rendered a joint decision, that the decision is the decision of the Secretary of War. You can impute the whole decision to the Secretary of War, although he only formed a part of the board or commission or tribunal, or the individuals in conjunction, who made it. Well, that would make a part equal to the whole, may it please the Court. That is not true in mathema-

tics, and it is not true in law. That would not be the decision we are called upon to meet. We are dealing with strict law.

But the specification states that this letter was sent without the Chief Signal Officer first asking leave. We have appealed in vain for that law. May it please the Court, it is the legal right of the accused to have the law disclosed before his counsel proceeds to argument. The authorities are abundant upon that point. It is his right, say the authorities, to go further. De Hart on Military Law, at page 194, says :

> "The parties before the court may claim the benefit of its opinion upon any question of law or custom arising and disputed in the course of the proceedings, and in the decision of which either may be interested."

We have not received it. If we had, if there be such a law, if it has been disentombed, if search has been made among the mouldy statutes of the past for it, we will show that it has become obsolete by time, by custom, by practice ; that it is without vital force in guiding communications between the chief of a bureau in the War Department and the Secretary of War. We must assume that there is no such law.

But the learned Judge-Advocate may say the very courtesy that exists and should be maintained between the Chief of the Signal Bureau of the Army and the Secretary of War should have led him to ask leave. But the proof is that these communications, that communications requesting the Secretary of War to review his decisions as to matters of administration in the Signal Bureau, had been passing for four years.

As to the third specification I cannot imagine what the learned Judge-Advocate may say.

In conclusion, may it please the Court, it is proper to state that there are many novelties that attend the case—novelties in the mode in which it was initiated. We recognize with confidence the fact that the Chief Signal Officer of the Army, the prisoner at the bar, is on trial before a Court with an unchallenged membership. No member of this honorable Court sits here by virtue of an overruled challenge. And when I state that in behalf of the accused, I state in effect that he has paid the highest tribute that he could pay to the character of this

Court. He has thereby declared, in stating his confidence in the justice of this Court, that he in this case thinks the stream will rise above the fountain from which it springs. The accused is aware that although the Court is directed to be appointed by the President of the United States, the order detailing it is from the Secretary of War. The accuser selected its members. Yet the accused stands here and states with the utmost sincerity and confidence that he stands, in his judgment, before an impartial tribunal.

May it please the Court, this is not the altar of sacrifice. It is the altar of justice. It is a judicial tribunal, where the spirit of the partisan should be subdued in the breast of the judge. If the Court by its judgment pronounces the accused guilty, it will be a judgment carrying with it the weight that should be attached to the high character of the tribunal that pronounces it. But it is respectfully submitted to the Court that, under the law, no judgment can be rendered against the prisoner unless his guilt is proved beyond a reasonable doubt. This is the proposition laid down by all the law-writers. And what, may it please the Court, is "proof beyond a reasonable doubt"? What does it mean? I submit to the Court that it means that when the trembling balance of the judgment comes to rest, when the mind is seeking to make no further inquiry for proof of guilt, when it is recumbent in the belief that the prisoner is guilty as charged, then, and not until then, has the charge been established by proof beyond a reasonable doubt.

But, Mr. President and gentlemen of the Court, we await your judgment with confidence. Upon this evidence, with his consciousness of his own acts and his own motives, the accused in this case feels that he is locked up in an armor of triple steel against this assault. He feels that this Parthian shaft will be shattered on the bright shield of his soldierly record. But if your judgment be against him you may inflict a scar broader and deeper than those scars he now wears upon his body to attest his honorable service in his country's wars.

ARGUMENT OF THE JUDGE-ADVOCATE FOR THE GOVERNMENT.

The JUDGE-ADVOCATE—Mr. President and gentlemen of the Court, at this stage of the proceedings it becomes my duty to submit for your consideration my reply to the defence in the case which has occupied your attention for the past week.

On account of the simplicity of the real issues presented in this case, I deem it unnecessary and improper to waste your time by asking for a delay for the purpose of replying in detail to the lengthy argument of the defence. But I beg leave to submit verbally a few remarks upon the evidence introduced and the general features of the case.

In doing so I shall not attempt to combat the many peculiar theories advanced by counsel for the defence, because many of them have no foundation in fact, and I must exclaim with Mr. Swift:

> "From premises erroneously brought
> Deduction's naught."

Being imbued with the principle that the government has no interest in the conviction of an innocent man, and being conscious that the law makes certain requirements of me not only as prosecutor, but also with reference to the interests of the accused, I have endeavored in the preparation and conduct of this case, as far as consistent with my duty, to give all the assistance possible to the accused, to the end that the Court might have before it all the facts pertinent to the issue and all the truth attainable. Whether or not I have succeeded in this honest endeavor it is not for me to say.

In considering the first specification it seems to me that three propositions arise: First, did the accused know of the Secretary of War's official decision as recited in the first part of the specification? Second, did the accused use the language in his annual report as alleged and quoted in the closing paragraph of the specification? The third proposition is, if he did know the decision referred to in the first proposition, and if he did utter or write the language spoken of in the second proposition, then the question arises whether or not the language sustains the allegation that he did therein criticise the official

action of the Secretary of War and impugn the propriety thereof.

As to the first proposition, that the accused did know of the official action of the Secretary of War in the matter—know not only from his own admission of the fact that he received the telegram of Captain Mills of September 19, 1883, in which the decision in question was recited, but we know that also from the testimony of McLoughlin, in which he stated that the annual report of the Secretary of War for 1883, in which the decision in question is set out in full, was received at the office of the Chief Signal Officer on December 11, 1883, or nearly ten months before the date of the alleged criticism.

But the point is raised by the counsel for the other side that the prosecution has failed to establish the averment that the decision was made by the Secretary of War in the performance of his official duty.

In order to prove the knowledge of the accused of the decision in question, the prosecution was obliged to show the exact means, source, and channels through which the accused obtained that knowledge.

This proof carried with it the character of the decision, the language of which speaks for itself, and shows upon its face that it was a decision made by the Secretary of War in his official capacity and in the performance of his official duty. At the time of its production the defence objected to its reception as evidence, but the Court did not sustain the objection, thus disposing of the subject, so that it cannot now be a matter of controversy.

At a subsequent stage of the proceedings the accused himself admitted under oath that he never questioned, but always acknowledged, the jurisdiction of the Secretary of War in such matters.

It must be borne in mind that the International Polar Expedition being almost entirely composed of men belonging to the Army and on detail in the Signal Service or in the Signal Bureau, the matter of the relief of that expedition became of necessity a question for the official action and consideration of the Secretary of War. Under the well-known rule that every

public officer is presumed to act in obedience to his duty until the contrary is shown, it would have been proper for the defence to negative by proper evidence this presumption ; but it not only failed to do so, but confirmed it by the best of evidence—the admission of the accused under oath.

As to the second proposition under this specification, that the accused uttered the language set out in the first specification, it is admitted by the accused, so that there cannot be any controversy in reference to it. Therefore no further comments are needed. His report for 1884 is in evidence and was admitted by him.

In thus disposing of the first and second propositions under the first specification I beg leave to remark that I consider it beyond my province, for reasons which I will hereafter state, to enter fully on the third proposition made by me in reference to the first specification—that is to say, the question of criticism. I wish, however, in connection with the matter, to invite the attention of the Court to the time and circumstances when and under which the alleged objectionable language was written ; for these are natural concomitants and important factors in determining whether or not the language in question sustains the allegation that the accused did criticise and impugn the propriety of the official action of the Secretary of War.

The decision of the latter was made on the 19th of September, 1883, and was not called into question by the accused, as far as the record shows, until the rendition of his annual report to the Secretary of War for the year 1884, dated October 15, 1884. History, as well as the report just cited, tell you, gentlemen, of the disaster that befell the Greely party, and of its rescue and return to this country in the spring of 1884. It was evident that the responsibility for that disaster belonged somewhere, and the accused tells you public opinion, the press, put it upon his shoulders. It is from this motive, and for the purpose of attributing the responsibility of the disaster to the decision of the Secretary of War, that the alleged objectionable language was inserted in the annual report of the Chief Signal Officer. It was purely an after-thought as a measure of escape from whatever blame might have attached to the accused, if any.

In view of section 1195 of the Revised Statutes, there can be no doubt that the Secretary of War was the superior of the accused. That law places the latter under the direction of the former. Nor does the accused deny that in matters concerning Arctic explorations he always approached the Secretary of War, and that there was never any question as to the jurisdiction of the latter in such matters.

Hence it follows that there is no issue as to the right of the Secretary of War to decide questions arising in connection with that subject, in regard to Arctic expeditions.

Mr. MACKEY—I would like to ask the Judge-Advocate—

The JUDGE-ADVOCATE—I object to any interruptions by the counsel.

Mr. MACKEY—The rule is, may it please the Court, that a misstatement of fact can be corrected in the argument. The Judge-Advocate states that the accused did not deny the jurisdiction of the Secretary of War as to all questions connected with Arctic expeditions. He stated that the question never arose as to that matter practically.

The JUDGE-ADVOCATE—The record speaks for itself, and I do not care to argue the matter now.

Having the right to decide, the rule announced by the United States Supreme Court in the case of Mott *vs.* Martin, in 12th Wheaton, 38, that

> "Every public officer is presumed to act in obedience to his duty until the contrary is shown,"

attached to the act of the Secretary of War. Furthermore, it has been held by the courts (see 1st Brightley's "Federal Decisions," page 598) that "when a particular authority is confided in a public officer, to be exercised in his discretion, upon an examination of facts of which he is the appropriate judge, his decision thereon, in the absence of any controlling provision, is absolutely final."

This decision and the rule above quoted are respectfully submitted to the Court for its consideration when determining the subject of the alleged criticism.

We will now approach the second specification. This also

involves, in my opinion, three separate propositions, namely: First, Did the accused know of the decision of the Secretary of War? Second, Did he, without authority or without having been requested so to do, address a certain letter to the Secretary of War concerning the latter's action? Third, If he did have the knowledge averred, and if he did write the letter in question under the circumstances cited, was such addressing and writing an impropriety inconsistent with good order and military discipline? The first proposition has already been disposed of under the remarks upon the first specification.

The second proposition is established by the accused's admissions and by the production of the letter of February 17, 1885.

The third proposition, however, is of similar character as the one of the same number under the first specification, and, as in the case of the former, I consider it beyond my province to discuss it, except in so far as to invite the attention of the Court to my remarks made in reference to this subject under the first specification.

I must, however, beg leave to add that the usages and practice of the Chief Signal Officer in reference to addressing the Secretary of War upon other subjects after they had been acted upon by the latter, furnish no safe rule to guide the Court in deciding upon the merits of the issue under the second specification. Every act must be judged by itself and its surrounding circumstances. The paragraph quoted in the second specification from the accused's letter of February 17, 1885, does not contain any appeal for redress from an action had of the Secretary of War. Its language treats of the decision made nearly eighteen months previously—a decision which, from its very nature and the surrounding circumstances, was final beyond recall and irrevocable. It implied no censure of the accused. It did not invade any of his rights. It did him no injustice, and therefore gave him no cause for complaint, and afforded no justification for his peculiar action some eighteen months later.

And if there had been occasion for complaint, why was such a long period permitted to pass by before he sought redress? The knowledge of the accused of this character of the decision

supplies the key to his intent and subsequent purpose in addressing the language in question to the Secretary of War.

The accused was permitted to testify as to his intent in writing the various instruments before the Court and recited in the first, second, and third specifications. He was allowed to give his own interpretation of the language used, and to disclaim any disrespect to the Secretary of War. His testimony, however, in that particular, is of no value in the face of the written evidence of his action. The rules of law tell us that it is not competent to vary that record by parol evidence. The declarations of a party are evidence against him. Documentary evidence is construed by the court, not for the court by the witness. The court interprets for itself as best it may. A latent ambiguity which testimony out of the papers expresses it may explain. But in other respects the documents speak for themselves, and no witness can testify to the contents of the writing when the writing is before the Court. The intention is derived from the act.

It must not be overlooked that while the accused disclaims disrespect to the Secretary of War in his testimony, the vials of vituperation were emptied upon the Secretary of War by the accused through his counsel. If the latter represented his client, then there is a most remarkable contradiction between the testimony of the accused and his declarations through his counsel, during the trial, in reference to the Secretary of War and his acts at the time of the commission of the offences alleged.

In analyzing the third specification I find the following propositions: First, Did the accused know of the decision of the Secretary of War? Second, Did he address the Secretary of War in the language quoted in third specification, and did he receive the endorsement recited? Third, If he did so address the Secretary of War, and if he did receive the endorsement of the Secretary of War, the question arises, Did he, in response to an inquiry of a newspaper reporter, intentionally make the statements the substance of which is recited in the specification? Fourth, If he did make the statements alleged, did he make them with a view to their publication, and did he cause them to be published?

The first proposition needs no further remark—that is, the proposition as to the knowledge of the decision of the Secretary of War. The proof bearing upon that has been treated in a discussion of the first and second specifications.

The second proposition is established by the introduction in evidence of the letter of February 17, 1885.

The third proposition depends for proof upon the testimony of Mr. Kauffmann, from which it appears that the accused did state that he had written and sent to the Secretary of War such a letter as was described in the interrogation of the reporter, throwing the blame of the loss of the Greely party upon the Secretary of War, and that the accused's recommendations for a relief party had been utterly ignored.

In my opinion, from a careful perusal of the testimony, there seems to be no issue as to the correctness and truth of the substance and effect of the article published in the *Evening Star*. But as to the point whether or not the accused caused this publication, or whether or not he made the statement with a view to its publication, we must look for proof to the circumstances and surroundings connected with the interview between the accused and the reporter.

We know from the testimony of the accused, as well as from that of Mr. Kauffmann, that the latter was well known to the former as a gatherer of news for the *Evening Star;* that the accused had frequently and during a long period furnished Mr. Kauffmann with items of news which were published from time to time in the newspaper just spoken of, and this at no time with any positive instructions by General Hazen to Mr. Kauffmann either to cause or not to cause such publications.

Is it not, therefore, reasonable to presume that any man with a full knowledge of these circumstances ought to have realized the fact that information was sought of him for publication, and that if he did give information it would be published? The very reference by the reporter to a newspaper article as a motive for his inquiry would have suggested to a mind exercising ordinary prudence that the information sought to be obtained was for dissemination among the public.

This reference to a newspaper report served in a measure as

a notice to the accused that his utterances upon the subject were of interest to the news-gatherer and would be made public.

In the light of these circumstances, and with the injunction of the Secretary of War still fresh in his mind to keep the contents of the letter of February 17, 1885, to himself, I ask whether or not the accused was justified in making any statement at all, in reference to the letter in question, to a newspaper reporter ?

And I submit, further, did not the accused, by making the statements in question under the circumstances stated, virtually and intentionally cause the publication of the article in question ? And in his chapter on libel Mr. Greenleaf says :

"A publication consists in communicating matter to the mind of another."

And it is believed that the word was used in this sense in the specification in question.

Mr. MACKEY—What volume do you quote from ?

The JUDGE-ADVOCATE—From third Greenleaf, in the chapter on libel.

We cannot look into the breast of the accused for his motives or for proof of his intent. The books say that absolute, metaphysical, and mathematical demonstration certainly is not essential to proof by circumstances. It is sufficient if they produce moral certainty to the exclusion of every reasonable doubt.

The Court can only come to a conclusion upon the facts here in issue by an act of reasoning from other proved facts, which I have endeavored in a general way to bring to its attention.

And I may, in concluding this matter, state that there may be applied with propriety in this instance the rule of general presumption that a person intends whatever is the natural and probable consequence of his own actions. If, however, the Court, in its wisdom, should decide that the entire specification has not been substantiated in any particular, I respectfully submit that such exceptions or substitutions may be made as the Court may deem proper and warranted by the evidence.

I have heretofore stated that I considered it beyond my province to discuss the proposition whether or not the language used by the Chief Signal Officer, as quoted from his annual report of 1884 and his letter of February 17, 1885, sustained the allegation that that language contained improper criticisms of the official action of the Secretary of War and impugned the propriety thereof.

I refrain from entering upon such a discussion because of the profound respect I entertain for the mature and diversified experience of the distinguished officers who compose this Court. I feel that it would be improper for one of my rank and experience to attempt to enlighten upon matters of discipline and official propriety officers who have grown gray in the service of their country, and who have been honored with high commands and great official trusts, in war as well as in peace.

With my thanks for your kind attention, and with an earnest request for your indulgence for my shortcomings, I respectfully submit the case for your consideration.

Mr. MACKEY—I call the attention of the Court to an incorrect statement of the evidence of Mr. Kauffmann by the Judge-Advocate.

The PRESIDENT—State what it is.

Mr. MACKEY—The Judge-Advocate states that Mr. Kauffmann asked the question, "Did you write such a letter" after the receipt of the Chicago *Tribune*, and that the accused replied that he did. I call attention to the fact that that is not supported by the evidence. I simply want to direct the attention of the Court to that point.

I also desire to state that the case of Mott *vs.* Martin, referred to by the Judge-Advocate, is also respectfully referred to by the defence as an authority.

The PRESIDENT—Has the Judge-Advocate anything to say in reply to the statement of counsel?

The JUDGE-ADVOCATE—I have nothing to say. I deny it. The Court has the evidence before it and can judge for itself.

The PRESIDENT—The Court will now close for the purpose of deliberating upon the case as presented, and there will be no further public sessions. The Court is closed.

Thereupon, at 1.08 P.M., the Court went into closed session, no one being present but the members of the Court and the Judge-Advocate, for the purpose of considering the case as presented. After some time passed in deliberation the Court at 3 P.M. adjourned to meet again at 11 A.M. to-morrow, the 21st instant.

J. W. CLOUS,
Capt. Twenty-fourth Infantry, Judge-Advocate.

TENTH DAY.

ROOMS OF THE GENERAL COURT-MARTIAL,
EBBITT HOUSE, WASHINGTON, D. C.,
Saturday, March 21, 1885, 11 A.M.

The Court met pursuant to adjournment, with closed doors.

Present:

1. Major-General WINFIELD S. HANCOCK, U. S. A.
2. Major-General JOHN M. SCHOFIELD, U. S. A.
3. Brigadier-General OLIVER O. HOWARD, U. S. A.
4. Brigadier-General ALFRED H. TERRY, U. S. A.
5. Brigadier-General CHRISTOPHER C. AUGUR, U. S. A.
6. Brigadier-General WILLIAM B. ROCHESTER, Paymaster-General.
7. Brigadier-General SAMUEL B. HOLABIRD, Quartermaster-General.
8. Brigadier-General ROBERT MURRAY, Surgeon-General.
9. Brigadier-General JOHN NEWTON, Chief of Engineers.
10. Colonel GEORGE L. ANDREWS, Twenty-fifth Infantry.
11. Colonel WESLEY MERRITT, Fifth Cavalry.
12. Colonel HENRY M. BLACK, Twenty-third Infantry.

Captain J. W. CLOUS, Twenty-fourth Infantry, Judge-Advocate.

The proceedings of yesterday, having been read, were then approved.

The Court being cleared and closed for deliberation, and having maturely considered the evidence adduced, finds the accused, Brigadier-General William B. Hazen, Chief Signal Officer of the Army—

Of the first specification: "Guilty."

Of the second specification: "The Court finds the facts as alleged, but attaches no criminality thereto."

Of the third specification: "Guilty," except the word "intentionally," and except the words "with a view to its publication, and did cause the same to be published on the 2d day of March, 1885, in a newspaper printed and published in the city of Washington, D. C., called the *Evening Star*," and except the word "such," and except the words "as was described in the interrogation of the said reporter," and except the words "entirely ignored," and of the words thus excepted "Not guilty"; substituting, however, for the words "entirely ignored" the word "negatived," and of the substituted word "Guilty."

And the Court finds the accused—

Of the charge: "Guilty."

And the Court does therefore sentence him, Brigadier-General William B. Hazen, Chief Signal Officer, United States Army, "to be censured in orders by the reviewing authority."

WINFIELD S. HANCOCK,
Major-General U. S. A., President.

J. W. CLOUS,
Capt. Twenty-fourth Infantry, Judge-Advocate.

The proceedings of the tenth day, having been read to the Court, with closed doors, were approved.

There being no further business before it, the Court at 2.30 P.M. adjourned *sine die.*

WINFIELD S. HANCOCK,
Major General U. S. A., President.

J. W. CLOUS,
Capt. Twenty-fourth Infantry, Judge-Advocate.

WASHINGTON, D. C., March 28, 1885.

Respectfully submitted to the Secretary of War.

P. H. SHERIDAN,
Lieutenant-General.

EXECUTIVE MANSION,
WASHINGTON, April 17, 1885.

The proceedings, findings, and sentence in the foregoing case of Brigadier-General William B. Hazen, Chief Signal Officer, United States Army, are hereby approved.

In giving effect to the sentence of the Court-Martial it is to be observed that the more exalted the rank held by an officer of the Army, the greater is the responsibility resting upon him to afford, through his own subordination to his superior officers, an example for all others who may be of inferior rank in the service. To an officer of fine sensibilities the mere fact of being brought to trial before a court-martial must be, in itself, a mortification and punishment.

In the foregoing case the accused, whose high rank and long experience in the service should have inspired him with a full realization of that respect for constituted authority which is essential to military discipline, has been adjudged guilty of indulging in unwarranted and captious criticism of his superior officer, the Secretary of War, thereby setting a pernicious example subversive of discipline and the interests of the service. Subordination is necessarily the primal duty of a soldier, whatever his grade may be. In losing sight of this principle the accused has brought upon himself the condemnation of his brother officers who examined the charges against him, and seriously impaired his own honorable record of previous conduct. It is to be hoped that the lesson will not be forgotten.

General Hazen will be released from arrest and assume the duties of his office.

GROVER CLEVELAND.

APPENDIX.

APPENDIX.

LETTER OF CHIEF-ENGINEER GEORGE W. MELVILLE, U. S. N.

IRVING HOUSE, PHILADELPHIA,
December 5, 1884.

GENERAL WM. B. HAZEN, U. S. A., Washington, D. C.:

DEAR SIR: Your letter of the 30th ultimo to hand this A.M., and I hasten to reply.

Your letter comprises three questions: First—My opinion, with my present knowledge of affairs, of the chances of being able to reach Cape Sabine last autumn, had I been ordered to do so. Second—The chances of a good sealer reaching that point, if leaving St. John's, N. F., by September 15. Third—What would have been the chances of wintering safely at some high point, in the event of not reaching Cape Sabine, and of receiving relief early this spring.

Now as to the first query. From facts gathered during the summer cruise of the relief fleet of 1884 I am confirmed in the opinion which I formed in the autumn of 1883—viz., that had I been landed at any point north of Cape York or Cape Athol in Davis Strait, according to the plan that I then proposed, I could successfully have communicated with Cape Sabine with entire safety to myself and party. Notwithstanding that my proposal to the Navy Department was that I should go as far as Littleton Island, where I had every reason to believe I would find the Greely party—if, indeed, they had been able to reach that point—still, if my instructions should have directed or permitted me to proceed as far as Cape Sabine, I am confident now that the voyage could have been accomplished at that time.

And, secondly, I am of opinion that a good sealer or steam-

vessel, not too large, of average strength and a speed of seven or eight knots an hour, leaving St. John's September 15, could have gone, and *can* go every year, as far north as Cape Sabine or Littleton Island, near the mouth of Smith Sound.

And, thirdly, concerning the chances of wintering with safety at some high point and being relieved in early spring, there is no reason whatever why any vessel could not winter without danger in any of the well-known harbors between Cape York and Littleton Island. The only question in this matter would arise if the effort to reach Cape Sabine should be continued too late in the season, when it would become necessary to winter on the southward side of one of the large islands or projecting points of land, instead of in an inner harbor. If a good harbor were secured anywhere north of Cape York, early spring succor could reach Cape Sabine without a doubt, and at least thirty days sooner than did the relief fleet of 1884. It is only proper that I give you some of the reasons which lead me to entertain the opinions which I have so confidently expressed.

The facts established during the cruise of Greely Relief Fleet were these: That we found natives at Cape York; a large settlement of natives at Saunders Island, who winter in North Star Bay; we saw sled-tracks of the Eskimos at Cape Parry, and still further to the northward, where the natives winter on the islands in Whale Sound. And before leaving Littleton Island natives had visited the United States steamer *Bear* who had wintered at Life-Boat Cove, to the northward, but in sight of Littleton Island.

To insure the safety of my party it was a part of my plan to affiliate with these natives and make use of them as guides, and their dogs to assist in transportation; although I did not then, and neither do I now, regard it as essential for the safety of a travelling party to depend upon natives, so long as there is an abundant supply of provisions, with alcohol for fuel and tents for shelter. I can winter anywhere in the Arctic regions with safety.

The months of September and October are those when Baffin's Bay, Melville Bay, and Davis Strait are freest from ice. The drift-current at all times in these waters is to the south-

ward, retarded occasionally by wind and tide, but the current is southerly. The ice-gorge which jams the mouth of Smith Sound keeps the ice broken and scattered in the large bay-like waters of Davis Strait, and all, or nearly all, of the loose ice of spring and summer is driven out of Davis Strait before the fall ice begins to form. In fact, this strait or sound is comparatively free of ice from July to October. Young ice starts to make in August, but the wind breaks it up and it is driven south until October, when the ice makes across the mouths of the bays and the sound gradually closes up. For these reasons I am convinced that a point to the northward of Cape Parry can be reached as late as October 15, with the possibility of reaching Cape Sabine, or Littleton Island, or Port Foulke (Foulke Fiörd) as late as October 30.

It is true that northerly gales set in about this season of the year, but so much the better for clearing the strait of ice, as the gorge jams to the north of Cape Sabine and Littleton Island, and that which streams through this narrow strait has the broad bay to the southward in which to scatter.

A ship might steam against these northerly gales, but the wind does not blow constantly, and inside of Davis Strait to the north of Cape Athol there are plenty of harbors and islands affording shelter until the gale abates.

Again, a ship never lies so well as she does in the midst of a loose pack where there is absolutely no sea; this affords an excellent harbor until the gale has subsided. Any vessel that enters a winter harbor is perfectly safe until the breaking-up of the ice in the spring; and, indeed, if she be laid up in a close harbor, she will not only be safe until spring, but may have to be sawed out of her bed. Witness the schooner *United States*, of the Hayes expedition, the *Advance*, of Kane's expedition, and the little schooners of one hundred tons that I saw whaling in Cumberland Sound at Niautilick Harbor, where many other vessels of all classes, large and small, have been wont to winter for years.

If a close harbor cannot be made, a shelter is found under the lee of one of the islands—*i.e.*, to the southward of one of the islands in Davis Strait—where boats, and sleds, and provisions

should be landed for the safety of the party should the vessel be carried off to sea; and if this occurred there is no great danger to be feared, as she would drift with the floe southward to a warmer climate and to freedom and safety, and if crushed in spring-time the surplus boats and provisions kept on board the vessel will suffice for all.

Escape from Smith Sound with boats and sleds is a matter of no great labor in spring or summer, if supplied with provisions—*vide* Kane, Buddington, Garlington, Colwell, and Captain Pike, of the *Proteus;* and had Captain George Tyson had a sufficient number of boats to carry his party of nineteen people when in sight of the coast of Labrador, before the *Tigress* (Captain Bartlett) picked him up from the ice-floe, he, too, could have completed his journey in the boats.

If a harbor had been made for a ship, or had supplies been placed anywhere north of Cape Athol, succor could have reached Cape Sabine thirty days earlier than did the *Thetis* and *Bear*. Whale-ships have fished in Jones Sound, across the North Water, as early as June 3, often as early as June 9. When the *Thetis* and *Bear* and three of the whalers were off Cape York on June 19 the ice had every appearance of having been loose and broken and pushed up for more than thirty days, and there was an abundance of open water. The *Thetis* pushed her way from Cape York to Littleton Island in less than seventy-two hours, including a stay of twelve hours at Conical Rock and the visits made to Saunders Island and Cape Parry, and in the whole of this distance we had no great amount of ice-work to do, and we met with no ice that we did not bore or ram our way through; and from the appearance of the ice in this part of Davis Strait I am sure that there had been open water for more than thirty days. Floes and rafts of ice may have driven hither and thither at times, but from the condition of the ice at that time—broken, scattered, rotten, and full of holes—I am sure these waters were navigable thirty days before our arrival. And had a ship wintered north of Cape Athol, the time occupied in crossing Melville Bay could have been devoted to making headway towards Cape Sabine by ship, to support sledge parties that could have started in March or April at the latest.

No good could accrue from wintering at Upernavik or Tessuisak, as the relief fleet and ten whalers were north of Upernavik when the ice still lay solid across Melville Bay; but there is no current pushing the ice out of the comparatively dead bight of Melville Bay, such as there is in Davis Strait, which pushes out, winter and summer, though of course faster in spring and summer than at any other season of the year. Melville Bay is choked with ice thirty days after Davis Strait is open. The bugbear of spring ice navigation is Melville Bay, for once the North Water is reached navigation becomes comparatively easy.

In regard to my ability to have made the transit of the strait between Littleton Island and Cape Sabine, not having been there at the critical time, I, to be sure, cannot tell what the result would have been; but let it suffice for me to say that I did conduct the party from the *Jeannette* and make the landing on Henrietta Island, a distance estimated at from twenty to thirty miles, and return to the ship, when the ice was running like a mill-sluice, and no single piece of ice was at any moment at rest. Again, I was detailed by Captain De Long on the retreat to conduct the entire transportation of boats, sleds, and provisions (he laying out the road) a distance of nearly three hundred miles, before reaching Bennett Island over ice and through water much more chaotic than any I saw on either of my two voyages through Baffin's Bay and Davis Strait to Littleton Island or Cape Sabine.

I am, sir, very respectfully,

GEORGE W. MELVILLE,

Chief Engineer U. S. N.

LETTER OF LIEUTENANT A. W. GREELY, U. S. A.

SIGNAL OFFICE, WAR DEPARTMENT,
WASHINGTON CITY, December 10, 1884.

GENERAL W. B. HAZEN, *Chief Signal Officer:*

SIR: Referring to the letter to you from Chief-Engineer George W. Melville, U. S. N., under date of December 5, I have to say that I have carefully read and considered it.

I concur fully and entirely in the views and opinions of Engineer Melville, save on certain immaterial points.

Concerning the crossing from Littleton Island to Cape Sabine, on which he says he cannot speak authoritatively, I have to say that, while young and constantly-forming ice precluded crossing during October, 1883, I am confident that any party in good physical condition, under proper and efficient leadership, could have crossed at any time subsequent to the 10th of May, 1884.

Very respectfully yours,

A. W. GREELY,

First Lieut. Fifth Cav., A. S. O. and Asst.

LETTER OF SERGEANT D. L. BRAINARD.

WASHINGTON, D. C., December 9, 1884.

GENERAL W. B. HAZEN, U. S. A.:

SIR: Referring to letter written by Chief-Engineer Melville, U. S. N., in reply to your inquiries, and of which you request my views, I have the honor to reply as follows:

In my opinion a vessel would have encountered almost insuperable obstacles in endeavoring to attain our isolated position at Cape Sabine during the autumn of 1883. The feasibility of such an enterprise would have been extremely problematical, owing to the prevalent gales, the rapid and eddying currents at that point, and the chaotic masses of ice which are drifted with great velocity under influence in this the narrowest portion of Smith Sound.

The never-ending stream of ice drifting down Kennedy Channel often "gorged" between Cape Sabine and Cairn Point, and was held in this position on the south by southerly winds, and on the north by the great pressure of the ice-fields from the Polar Ocean.

The practicability of a well-equipped steam-sealer reaching Cape Isabella, and thus rendering efficient aid to our forlorn party, was never for a moment doubted by those most capable of judging the dangers and difficulties which attend ice-navigation at that season of the year.

Our opinion in this matter was confirmed by the observations of Sergeants Rice and Frederick during the early days of November. Standing near the summit of Cape Isabella, they had an uninterrupted view for many miles to the southward, and within the range of their vision not a piece of ice capable of offering the slightest obstruction to a vessel appeared. The waves rolling in from Melville Bay and dashing against the cliffs at their feet gave ample evidence of the scarcity of ice in the North Water, and the feasibility of its successful navigation.

The plan proposed—to land a relief party on the Greenland coast, at or near Cape York, with the intention of affording succor to our expedition in the early spring of 1884—would without doubt have been successful under the energetic and experienced officer, Chief-Engineer Melville, who suggested it. There were many days during the month of May when the channel between Cape Sabine and the Greenland coast was so nearly cleared of ice that small boats from the opposite coast could have reached us in safety. It was a matter that was under almost daily discussion in our miserable hut at Camp Clay, even when death's shadows were hovering darkly above us; and I now reiterate what I had said then, "The plan of relief from that source is practicable, and if undertaken it will be the means of averting a disaster which now appears imminent."

In the views of Chief-Engineer Melville, relative to this plan, I heartily concur in every particular.

Very respectfully, your obedient servant,

D. L. Brainard,

Sergeant S. C., U. S. A.

LETTER OF CONSUL MOLLOY.

UNITED STATES CONSULATE,
ST. JOHN'S, N. F., December 22, 1884.

GEN. W. B. HAZEN, *Chief Signal Office, Washington, D. C.:*

DEAR SIR: Yours of 11—30—84 received, and I herewith beg to enclose Captain Pike and Captain Walshe's report, also three others, which hope will be found satisfactory. Later on I could obtain some further information from the Dundee whaling-masters, who will not arrive here before March.

I have to thank Mr. Syme for considerable assistance in this matter. Anything I can do will be most happily done. Shall leave here for Washington about 10th January.

Yours most respectfully,

THOS. N. MOLLOY,

U. S. Consul.

LETTER OF HON. J. SYME.

St. John's, N. F., 22d December, 1884.

My dear Hazen: I have your two notes. Anxious to assist you in fixing the blame on the parties responsible for the loss of life amongst the Greely party, I forward you statements from several parties who know whereof they speak, and who, I think, are known to Lieutenant Greely.

I trust these statements will serve the purpose for which you require them; but if not, and I can be of further use to you, command my services.

If I may be allowed to give my own opinion, as I took a deep interest in the success of the expedition all through, it occurred to me that, on the return of the steamship *Yantic*, Captain Wylde and Lieutenant Garlington's one and only thought should have been to devise means to fit out one of the five steamers that lay in the harbor unemployed, for the purpose of at least trying to reach their perishing countrymen in the frozen north, instead of wasting precious time in reporting and circulating statements which could have been inquired into at a future time.

It was only the other day I heard that you recommended immediately on arrival of *Yantic* the fitting out of a sealing steamer to continue the search; and I am glad for your sake that you did so, for it proved that you had not only a proper estimate of the probabilities of success, but that you had the heart to feel for those who were trusting that no effort to succor them on the part of yourself or your government would be considered too great.

Mrs. Syme unites with me in wishing your lady, family, and self all the kind greetings of the season.

Yours sincerely,

J. Syme.

General W. B. Hazen.

CERTIFICATE OF HON. J. SYME AS TO THE CHARACTERS OF THE ICE-NAVIGATORS WHOSE STATEMENTS ARE APPENDED.

I, the Honorable John Syme, of St. John's, Newfoundland, merchant, beg to state that my connection with the seal-fishery amongst the northern ice-fields, as well as the general business of Newfoundland, has extended over twenty-two years, and I have come in contact with the most successful and most intelligent of our ice-captains and others engaged in ice-navigation, but there are none better able to give an opinion on the subject of following up the Greely Relief Expedition last fall than the parties whose statements go herewith.

J. SYME.

ST. JOHN'S, N. F., 20th Dec., 1884.

STATEMENT OF CAPTAIN PIKE.

Captain Richard Pike, of St. John's, Newfoundland, states: I have been engaged seal-hunting in the northern ice-fields for the past thirty-five years. I commanded the steamship *Proteus*, and landed Lieutenant Greely and his party at Lady Franklin Bay in the fall of 1881, and in the summer of 1883 I again commanded the steamship *Proteus* when she was lost near Cape Sabine. From my knowledge of the Arctic regions and navigation amongst heavy northern ice-fields, I did expect a vessel would have been dispatched from St. John's immediately on arrival of *Yantic* steamship there, for the purpose of continuing the effort to succor Lieutenant Greely and his companions, and I volunteered to Lieutenant Garlington to take charge. I most unhesitatingly affirm if a steamer such as the steamship *Bear* or *Neptune* had been fitted out and dispatched up to even 20th September, Cape Sabine would have been reached without any trouble, and this I expressed to Consul Molloy.

A steamer could winter in many fine harbors on the west coast of Greenland, and would in all probability get free from her winter quarters during May month.

After my return to St. John's I was very anxious that a steamer should have been fitted out with provisions to winter, if necessary; and plenty of first-rate men acquainted with ice-navigation offered to go, and, if necessary, remain over winter to search for Greely and his party. And this not being done, as well as the steamship *Yantic* not going back to land provisions and any lumber that could be spared for the purpose of providing for the wants of the explorers, led to the death of so many brave men.

Had a steamer got to Littleton Island even, of which, humanly speaking, there would have been a certainty, such men as our seal-hunters would in any season, either with drift or frozen ice to overcome, have been able to cross over to Cape Sabine; besides, a fire from either place would have been seen by those living at Cape Sabine or Littleton Island.

RICHARD PIKE.

ST. JOHN'S, N. F., 18th Dec., 1884.

STATEMENT OF ICE-PILOT WHITE.

Thomas White, of St. John's, Newfoundland, at present in a position of trust in connection with the new graving-dock, aged thirty-eight, states:

I have been engaged from boyhood in the general seafaring business of the colony—viz., seal-hunting, fishing, and foreign-going—and have occupied positions of responsibility in the seal-hunting line. I have been a master of watch with Captain Pike, of Newfoundland, and Captain Fairweather, of Dundee, both of whom are famous for their knowledge of navigation amongst the northern ice-fields, as well as for the work done by them in the Arctic seas.

In the year 1881 I was selected by Captain Richard Pike to fill the position of second officer in the steamship *Proteus*, and the success of that expedition in landing Lieutenant Greely at Lady Franklin Bay, and the speedy return of the ship to St. John's, has become a matter of history. During the voyage I noted everything relating to the drift-ice and the navigation in these northern waters, as I hoped I would be one of those who would be selected to bring back Lieutenant Greely and his companions. Unfortunately the wish was ungratified, by my being on fishing service when the *Proteus* was fitted out in 1883 as a relief ship.

When the steamship *Yantic* arrived back with the *Proteus'* shipwrecked crew I was so fully impressed with the belief that a steamer fitted out immediately and dispatched to Cape Sabine would have reached that point before the northern water got frozen up, that I expressed the opinion the authorities had missed the chance of rescuing the explorers.

At that time there were four suitable sealing steamers available for the work, and which could have been dispatched within forty-eight hours after the *Yantic's* arrival. A splendid crew of men and officers could have been obtained at an hour's notice, and these men would have had no objection to winter in

many of the good and safe harbors on the west coast of Greenland, had there been a necessity to do so; but I was convinced there would be no such contingency.

I conceived a great liking for Lieutenant Greely on the voyage north, and would have gladly risked venturing in the Arctic regions to succor him. Even to reach Pandora Harbor, which was certain of being accomplished, a party of our sealers, used to boating amongst drift-ice or to walking over ice, would have communicated with Cape Sabine during the fall or winter. It is no unusual thing for our seal-hunters to walk fifteen or twenty miles at a stretch over drift-ice in the open sea.

It was a fatal mistake not to dispatch a steamer on arrival of *Yantic*, as all who have a knowledge here of Arctic navigation expressed the same opinion. Those who gave contrary advice must have both felt and known that they would be accessory to the death of the explorers.

THOMAS WHITE.

ST. JOHN'S, N. F., 20th Dec., 1884.

STATEMENT OF ICE-PILOT WALSH.

Captain Samuel Walsh, of St. John's, Newfoundland, states: I have been engaged in the seal and whale fishery, the former for many years, and have commanded some of the best steamers engaged in these perilous ventures amongst the heavy northern ice-fields. In the summer of 1883 I occupied the position of pilot to steamship *Yantic*, which accompanied the steamship *Proteus* as relief ship to the Greely expedition.

On my return to St. John's, I am positively certain had a suitable vessel, such as the steamship *Bear*, been fitted out—without loss of time—she would have reached Cape Sabine, or in that neighborhood, before navigation had closed up to that point, and I should have unhesitatingly and gladly volunteered my services as pilot.

A steamer could winter at many points on the west coast of Greenland, and from such winter quarters she would get free some time in May month.

There were three or four suitable vessels available for the work, which could have been dispatched within forty-eight hours after arrival of steamship *Yantic;* and the idea being abroad amongst seamen acquainted with ice-navigation, several men applied to be engaged. Had those in command of steamship *Yantic* or the expedition gone back and landed some rations or spare board, which I wondered much at not being done, the lives of Greely and his party would assuredly have been saved. Had the vessel so dispatched reached Pandora Harbor before close of navigation, she could have wintered there—and I know assuredly she would have reached that point. Our hardy seal-hunters would have crossed to Cape Sabine, either in boats amongst drift-ice or on the ice, and thus brought succor to Greely and his party.

SAMUEL WALSH.

ST. JOHN'S, N. F., 18th Dec., 1884.

STATEMENT OF WILLIAM CARLSON.

William Carlson, of St. John's, Newfoundland, a native of Sweden, states: I was steadily employed trading between Greenland and Iceland for two years, and had considerable experience in navigating amongst ice during that time.

I have been engaged at the Newfoundland seal-fishery for thirteen years, and have seen all the roughs and smooths in the navigation of heavy northern ice during that time. I was on board of the steamship *Proteus* when she took Lieutenant Greely and his party to Lady Franklin Bay, and also on the second occasion when she was lost near Cape Sabine.

After our being picked up by the steamship *Yantic* on the Greenland coast, it was a matter of surprise to me (and this I did not hesitate to express to Captain Pike and others) why Captain Wilde or Lieutenant Garlington did not return to Cape Sabine and land a portion of stores that they had, knowing that Lieutenant Greely and his party were expected at that point, if a vessel failed to reach them at Lady Franklin Bay; and had this been done the lives of the brave men that perished would have been saved. Even after the *Yantic's* return to St. John's, had a vessel such as *Bear* or *Neptune* been fitted out, there is not the shadow of a doubt in my mind but the vessel would have succeeded in reaching Cape Sabine, or the neighborhood.

A crew could have been got in St. John's, of first-class men, to have manned the ship, either to return or stay over the winter; and there are many good harbors on the west coast of Greenland where a vessel could have entered, and in May month no doubt vessel would have been released.

There is no doubt it was a fatal mistake not to send a vessel down after arrival of *Yantic*.

WILLIAM CARLSON.

ST. JOHN'S, N. F., 18th Dec., 1884.

STATEMENT OF ENGINEER McPHERSON.

Peter McPherson, of St. John's, Newfoundland, engineer, holding a first-class English certificate, states he has been ten years acting in the capacity of engineer in sealing steamers, and has had large experience in the management of steamers amongst the ice-fields of the frozen north.

He had charge of the engine department of steamship *Proteus* when that vessel landed the Greely party at Discovery Harbor in 1881, and took a deep interest in everything pertaining to the success of the expedition ; he also took careful note of the land, harbors, working of the ice and currents, thinking the observations so noted might be of advantage to him or others if engaged in the relief mission.

From the knowledge so acquired, I feel confident there would have been no difficulty in such vessels as steamships *Bear*, *Eagle*, *Falcon*, or *Ranger* reaching Cape Sabine or neighborhood last fall, had any one of them been dispatched within two or three days after arrival of steamship *Yantic* in St. John's ; and the vessels just named were coaled and ready for immediate employment. I consider those charged with the relief of the noble band of explorers acted with culpable apathy in not making what at the time, there was no reason to doubt, would be a successful effort. Even supposing the relief ship only reached Pandora Harbor, which to my mind was a certainty, a crew of Newfoundland sealers would, during the fall or winter, have communicated with Cape Sabine ; for these men are in their element either in boats amongst drift-ice or on frozen ice and snow.

On my voyage north in steamship *Proteus* I noticed many fine harbors south of Cape Sabine where a steamer could safely winter, and the probabilities are she would be released before the end of May in any year.

PETER MCPHERSON.

ST. JOHN'S, N. F., 20th Dec., 1884.

TEMPERATURE (FAHRENHEIT) AT UPERNAVIK, LATITUDE N. 72° 47′, LONGITUDE W. 56°, WINTER 1883–4. FURNISHED BY THE METEOROLOGICAL BUREAU OF DENMARK.

	October, 1883.	Novemb'r, 1883.	December, 1883.	January, 1884.	February, 1884.	March, 1884.	April, 1884.
	°	°	°	°	°	°	°
1	+33.6	+20.3	6.3	−14.1	− 3.3	−22.2	+10.2
2	31.8	22.1	5.2	−16.1	−15.0	−25.8	9.1
3	25.7	13.8	3.9	−20.4	−15.0	−11.4	− 0.6
4	36.1	19.2	28.2	−21.3	−19.5	−22.2	− 4.2
5	30.9	18.9	14.7	−16.8	−23.6	−20.4	−10.7
6	32.2	16.5	32.7	− 3.1	−29.4	+28.9	−17.1
7	31.1	19.9	16.0	+14.2	−33.0	− 3.5	−14.4
8	21.0	14.9	− 0.2	− 5.1	−26.7	−16.4	− 7.4
9	21.0	10.9	− 2.4	− 8.7	−23.1	−16.1	− 3.1
10	21.9	16.5	− 8.9	−15.0	−23.6	−17.9	− 0.9
11	21.9	25.5	−11.4	−13.9	−33.9	−11.7	− 1.5
12	21.9	20.1	− 9.6	− 2.4	−34.8	+ 4.8	− 3.3
13	22.1	17.8	−10.5	+ 5.7	−30.3	+ 4.8	+ 0.5
14	21.9	17.8	− 7.1	− 2.7	−30.3	+ 0.1	−33.9
15	23.7	21.7	− 6.7	− 4.2	−19.5	−14.6	+22.8
16	22.1	21.0	+ 3.9	−12.8	+ 0.3	−18.2	+33.6
17	19.6	19.4	+10.2	−16.4	15.8	−25.1	16.7
18	16.7	17.4	+ 1.9	−20.4	3.9	−19.7	15.6
19	22.8	17.4	− 9.2	−21.3	− 2.4	−14.3	11.7
20	29.1	13.5	− 8.5	−18.2	+ 1.2	− 8.1	8.6
21	25.3	10.6	− 9.2	−26.3	4.8	−10.8	16.3
22	24.3	10.2	− 9.6	−25.4	12.0	−11.4	31.1
23	20.3	9.1	−17.1	−28.5	− 3.3	−15.7	21.9
24	27.9	5.9	−19.5	−33.0	− 6.7	− 9.2	8.4
25	22.8	1.2	−17.5	−29.4	+ 8.4	+ 0.1	8.1
26	22.1	4.1	−16.1	−30.1	− 6.0	− 9.6	18.1
27	19.6	3.9	−22.2	−28.5	−17.9	− 7.1	14.2
28	20.7	26.1	−25.8	−22.2	−19.5	+ 3.4	7.7
29	15.6	24.6	−25.8	−22.5	−15.0	− 4.9	6.6
30	20.3	15.6	−26.5	− 4.5		+ 0.1	− 0.2
31	23.9		−23.6	+ 6.6		− 6.3	
Means	+24.3	+15.8	−5.3	−14.8	−13.4	−9.8	+5.5

Originals in Centigrade ; observations taken at 8 A.M. London time.

☞ *True copy.*

B. M. PURSELL,
2d Lieutenant, Signal Corps, U. S. Army.

SIGNAL OFFICE, WASHINGTON CITY,
May 6, 1885.

TEMPERATURE OF THE AIR, AS RECORDED ON BOARD THE STEAM LAUNCH CARRYING LIEUT. GREELY'S PARTY FROM CAMP CONGER TO NEAR CAPE SABINE, SEPTEMBER 10, AND ON THE ICE FLOE UNTIL AFTER LANDING AT ESKIMO POINT.

Date Sept'r, 1883.	1 A.M.	2 A.M.	3 A.M.	4 A.M.	5 A.M.	6 A.M.	7 A.M.	8 A.M.	9 A.M.	10 A.M.	11 A.M.	12 M.	1 P.M.	2 P.M.	3 P.M.	4 P.M.	5 P.M.	6 P.M.	7 P.M.	8 P.M.	9 P.M.	10 P.M.	11 P.M.	12 P.M.	
1....	26.8	26.4	27.	27.	27.	28.8	29.	29.5	30.	32.6	....	34.	32.9	30.5	30.2	28.6	27.8	26.2	25.1	23.	21.3	19.	18.5	18.5	
2....	17.	16.	17.5	21.	24.4	26.	27.	27.1	28.4	29.7	28.8	32.2	31.7	31.3	28.	29.	29.2	27.8	27.5	26.5	25.4	25.	....	23.5	
3....	25.	25.8	26.2	26.2	26.	26.3	27.8	27.8	27.9	29.5	29.	29.5	29.5	30.6	29.3	30.	26.3	26.4	26.2	24 8	24.2	23.	23.2	22.8	
4....	22.8	22.5	22.2	23.	24.	24.2	26.	26.1	26.3	27.7	27.3	27.5	28.	28.5	29.	28.	28.2	....	26.5	26.	....	....	....	24.1	
5....	22.8	23.7	23.	23.	23.	24.5	27.7	29.	27.5	27.	27.	26.	25.4	25.4	27.5	19.2	19.	16.2	14.	13.9	14.	14.1	15.	16.	
6...	21.	22.4	23.	23.1	24.	23.1	24.8	24.7	26.5	30.1	32.8	29.6	28.9	....	27.5	26.	24.5	22.7	21.6	21.	21.	19.5	21.	20.2	
7....	22.	25.3	25.	24.5	24.	23.	22.5	21.6	22.8	23.	23.	22.5	23.5	22.	21.6	22.	21.2	20.5	19.5	9.2	5.	4.9	4.	4.	
8....	1.	1.	6.2	4.	10.	11.	12.	11.	12.5	11.	9.8	9.3	14.1	15.3	19.1	17.2	17.3	17.	13.	12.5	9.	8.5	11.6	13.	
9....	13.2	13.2	13.6	14.6	15.1	16.3	17.5	15.5	15.	15.2	16.	17.8	17.5	17.8	18.	16.1	16.3	16.	15.3	14.9	14.5	14.	14.	13.7	
10....	13.5	13.5	13.5	13.5	13.	13.7	13.9	13.	13.2	14.8	13.8	14.	14.												
11....	....	....	....	....	....	....	....	13.5	....	....	....	....	17.	15.											
12....	....	....	....	....	....	....	....	17.	21.	23.	17.	17.	21.		....	....	....	....	19.						
13....	....	....	....	....	....	....	9.	....	....	....	....	....	....	16.8	16.8										
14....	....	....	....	....	....	....	18.5	....	....	....	....	....	....	....	....	....	....	26.	26.	....	....	26.			
15																									
16....	....	....	....	....	....	....	....	....	....	17.	....	19.5	20.	19.8	....	18.	....	....	....	10.					
17....	....	....	....	....	....	....	....	....	....	....	14.8	15.	....	....	....	....	....	....	....	....	....	....	...	....	About 78° 52′ N.
18....	....	....	....	....	....	11.	....	....	....	....	....														
19....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	23.					
20...	....	....	....	....	....	....	....	....	....	21.5	....	21.5	21.	22.	....	22.5									
21....	....	....	....	....	....	....	....	....	24.	26.	26.5	26.5	...	....	25.										
22....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	....	10.8									
23....	....	....	....	....	....	....	....	....	....	....	....	16.													
24....	....	....	....	....	....	....	....	....	16.5	....	16.5	....	....	16.8											
25....	....	....	....	....	....	....	....	....	....	12.5	...	12.5	....	....	....	....	....	....	....	11.2					
26																									
27																									
28																									
29....	....	....	....	....	....	....	....	....	16.8																
30....	....	....	....	....	....	....	....	....	....	....	23.	....	....	23.5											

True extract from records on file in Signal Office.

B. M. PURSELL, *2d Lieut., Signal Corps, U. S. A.*

TEMPERATURES OBSERVED NEAR CAPE SABINE, OCTOBER, 1883.

	7 A.M.	9 A.M.	11 A.M.	1 P.M.	2 P.M.	4 P.M.	6 P.M.	7 P.M.	5 P.M.	Minimum.
	°	°	°	°	°	°	°	°	°	°
1	.....	25.	.....	.....	.....	.....	26.5			
2	.....	.....	24.							
3										
4	.....	17.	.....	.....	.....	8.	.....	.....	9.7	− 6.
5	.....	17.	.....	16.						
6	.....		7.	.....	16.					
7	.....	15.	12.5							
8	.....	.....	12.							
9	.....	.....	12.							
10										
11	−4	.....	.....	.....	.....	.....	.....	.....	.....	− 7.
12	−8.5	.....	.....	.....	.....	.....	.....	.....	.....	−12.5
13	.....	.....	.....	.....	.....	.....	3.			
14										
15	.....	.....	−1.							
16										
17										
18	1.	.....	.....	.....	.....	.....	.....	.....	.....	− 6.5
19	.....	.....	.....	.....	.....	.....	.....	.....	.....	− 9.
20	.....	.....	.....	.....	.....	.....	.....	.....	.....	−13.
21	.....	.....	.....	.....	.....	.....	.....	.....	.....	− 3.5
22										
23	.....	.....	.....	.....	.....	.....	.....	.....	.....	−16.
24	.....	.....	− 1.5	.....	.....	.....	.....	.....	.....	− 5.5
25	.....	.....	− 1.5	.....	.....	.....	.....	.....	.....	− 4.
26	.....	.....	4.							
27	.....	.....	−16.	.....	.....	.....	.....	.....	.....	−20.5
28	12 M. −2°.....									−17.5
29										+ 5.
30										− 8.
31	11 A.M. 2°.....									+ 2.

True extract from records on file in Signal Office.

B. M. PURSELL,

2d Lieut., Signal Corps, U. S. A.

TEMPERATURE OF THE AIR AT ST. JOHN'S, N. F., DURING THE MONTHS OF SEPTEMBER AND OCTOBER, 1883.

September, 1883.				October, 1883.			
Date.	Temp. Fah.	Date.	Temp. Fah.	Date.	Temp. Fah.	Date.	Temp. Fah,
	°		°		°		°
1	52	16	57	1	47	16	36
2	62	17	55	2	46	17	34
3	68	18	59	3	47	18	38
4	54	19	52	4	48	19	36
5	49	20	50	5	41	20	47
6	58	21	49	6	37	21	52
7	57	22	50	7	38	22	41
8	49	23	52	8	47	23	38
9	55	24	49	9	50	24	33.5
10	56	25	51	10	44	25	37
11	54	26	48	11	58	26	38
12	53	27	47	12	44	27	39
13	53	28	45	13	45	28	34
14	56	29	54	14	52	29	33
15	48	30	48	15	48	30	28
						31	47
	Mean....	.....	53°.		Mean....	.....	42°.1

True extract from the records on file in the Signal Office.

B. M PURSELL,

2d Lieut., Signal Corps, U. S. A.

FROM GENERAL HAZEN, PROTESTING AGAINST SECRETARY LINCOLN'S REFUSAL TO FORWARD HIS LETTERS TO CONGRESS.

War Department,
Office Chief Signal Officer,
Washington City, June 7, 1882.

To the Honorable the Secretary of War:

Sir: I have the honor to acknowledge the receipt of the action of the Secretary of War on my letters of May 25 and 26, declining to forward the same for the information of Congress. This leads me to believe that the purpose of those letters was not understood.

The lives of the party at Lady Franklin Bay depend solely upon timely action here and in the matter in question, and the purpose of those letters was to lay before Congress what appears to me a very important fact. The ship must sail from St. John's, Newfoundland, by July 1 in order to insure the fullest chances of reaching the party, and my letter of May 12, 1882, was written to impress this fact strongly upon Congress. But the statement of the Secretary of War, through the President, to Congress, in his letter of May 18, 1882, that he did not know that there was an understanding to keep up these Arctic stations, leaves the inference that there was no such understanding, which cannot fail to weaken the object of my letter, since it takes away a part of the moral obligation to give the party timely support.

It was to lay the fact before Congress, in its own published reports [which it may have forgotten], that the expedition was one for continuous work, requiring continuous support, in place of one such as it was fair to infer it was from the letter of the Secretary of War—that the expedition had been authorized for a season, but that the Chief Signal Officer, at his own instance, had seen fit to perpetuate it, and had reserved no part of the original fund intended to bring the party back.

It was to correct this wrong impression with the President, and with such members of Congress as should be impressed with the Secretary's letter, that these letters were sent.

It was to lay before Congress the obligation to send this aid speedily, as shown in the enclosures, which are the original reports of Congress on the subject.

As the head of the Bureau immediately responsible for the fitting out of this expedition, and who will now be held to a strict account for the timely succor of the party, I forwarded these facts, which it was imperative for Congress to know for its intelligent action.

In forwarding these papers (in view of the fact that his former letter for Congress was sent back to him) it would seem to the Chief Signal Officer, whose duties constitute him the custodian of the detailed information now required in this case, that he is forbidden to give to Congress all the information needed for its full understanding of the case, or to show to them the absolute obligation and necessity of speedy action; for every day the relief vessel is delayed in sailing after July 1 lessens the chances of reaching these men at all.

I am, very respectfully, your obedient servant,

W. B. HAZEN,

Brig. and Bvt. Maj.-Gen., Chief Sig. Officer, U. S. A.

LIEUTENANT GREELY ON GARLINGTON'S DISOBEDIENCE OF ORDERS.

CAMP CLAY, NEAR CAPE SABINE,
April 30, 1884.

GENERAL: The unfortunate death by drowning of our remaining Eskimo hunter renders it very possible that the remainder of us perish by starvation, although we hope for ultimate safety. Jens' Kayak was probably cut through by ice and was lost with him. We lost, January 18, Sergeant Cross by scurvy, and, during April, Esk. Frederick, Lieutenant Lockwood, Sergeants Jewell and Lynn by starvation. Sergeant Rice perished by exhaustion in Baird Inlet in a noble attempt to prolong our existence by recovering the English meat abandoned in November last, when Sergeant Elison lost his hands and feet by freezing. The rest of us are living on twelve ounces meat and a few shrimps daily, having enough to last until May 12. Several—Lieutenant K., Sergeants Israel, Gardiner, and Steward Bierderbeck—are in low condition, and I presumably am next in dangerous condition. Sergeant Long killed a seal, and he and Jens killed a small bear, which has so far saved our lives, coming too late to save those named as dead. *I cannot refrain from saying that had Lieutenant Garlington carried out your orders and replaced the two hundred and forty rations rum and one hundred and twenty alcohol in English cache here, and the two hundred and ten pounds mouldy English bread, spoiled English chocolate and potatoes, melted sugar, and the two hundred ten pounds rotten dog-biscuit, we would without doubt be saved.* We lived all winter on an incredibly small ration, and it seems doubly hard to perish in summer within a month or six weeks of final relief. The following orders have been verbally issued by me, and will, I trust, be confirmed by you and the War Department: Private H. Bierderbeck to be a hospital steward, first class,

July 19, 1883. Sergeant Connell reduced September —, 1883, and Private Linn promoted to sergeant same date. Private J. R. Fredericks to be sergeant *vice* Cross, January 18, 1884. Private F. Long to be sergeant April 11, 1884, *vice* Linn, dead. Corporal J. Elison, Company E, Tenth Infantry, transferred to Signal Corps and promoted to be observer-sergeant April —, 1884, *vice* Rice, dead. Sergeant D. L. Brainard, G. S., assigned to Signal Service as an observer-sergeant April —, 1884, *vice* Jewell, dead. These promotions, etc., have been made for extraordinary services and in the best interests of the service. I cannot too strongly urge that Sergeant Brainard be commissioned in the line if he returns. His services have been simply extraordinary and invaluable. Lieutenant Kislingbury was formally reassigned to duty April —, 1884, the date of Lieutenant Lockwood's death. He has broken down physically and mentally, and Sergeant Brainard is ordered to assume charge in case of my death. The men, with one or two exceptions, have met the privations and sufferings in a noble, manly, patient way. Dr. Pavy has been systematically plundering his crippled patient from November till April. Besides Sergeant Elison and myself, who have detected him, four others have sworn to having seen him. I state this that public opinion may curse the man if he, as seems possible, lives to return. I write as from my grave, and with no personal or bitter feeling. As regards the discoveries made, it has been my intention and wishes that the most northerly land should be called Hazen Land or coast; the west coast of Grinnell Land and Greely Fiord, Garfield Land or coast; the land on which Cape Lockwood is situated, which is thought to be distinct and separate, Arthur Land. The land west of Hayes Sound, and which Sergeant Long thinks closes it, I have not named, leaving it to you. For the first time in two hundred and seventy-five years England yields the honors of the farthest north, and I trust that the nation will not be too neglectful of those dependent on the men who have done this work. The Eskimo families I hope will be pensioned, and, if possible, that my wife and children have a proper pension.— May 5, 1884.

I have been ill, and fear the worst in my own case. Lieu-

tenant K. being unfit in health for command, I have directed Sergeant Brainard to assume command.

A. W. GREELY,

1st Lt. 5th Cav., A. S. O. and Ass't Com'd'g Exp'd't'n.

Sergeant Brainard's name *as of the Signal Service* should be associated *on the map* with Lieutenant Lockwood's as making the highest north.

A. W. G.

A true copy of original, which is in pencil on one sheet.

B. W. PURSELL,

Sec. Lieut. Signal Corps, U. S. A.

SEPTEMBER 16, 1884.

LETTER OF GENERAL HAZEN URGING THAT LIEUTENANT GARLINGTON BE BROUGHT TO TRIAL.

WASHINGTON, D. C., January 30, 1885.

HON. ROBERT T. LINCOLN, *Secretary of War:*

SIR: On the 21st instant I had the honor to address a letter to the Secretary of War, in which I urged that, as an act of justice to me, a court-martial should be ordered for the trial of Lieutenant Garlington on the charges that I had preferred against him.

The terms in which the Secretary of War declined to grant my application satisfy me that the bearing of those charges on the question of my own imputed responsibility, for the disaster to the Lady Franklin Bay Expedition, has not been rightly apprehended.

I refer especially to the following extract from the endorsement on my letter:

> "The Secretary does not think that the result of a trial of Lieutenant Garlington would properly affect the record of another officer, or that his trial could be ordered upon such a consideration."

I respectfully submit that the view thus presented has never been sanctioned in practice, nor by any authority upon military law. Where two officers are charged with correlative duties in the execution of a common plan, and one is unjustly stigmatized as in some degree responsible for a disastrous result, it may happen that the only available defence will be for such accused officer to show by legal proof that not he, but his subordinate, had produced such result by disobedience of orders. This very principle was involved in the memorable trial of Major-General Fitz-John Porter.

Through that trial Major-General Pope was relieved of the damaging imputation of having incurred defeat at the second

Manassas by a defective plan of battle or a faulty disposition of his forces.

He proved to the satisfaction of the court that such defeat was due to General Porter's disobedience of orders in failing to attack at a critical stage of the battle.

Whatever may have been the real facts or merits of that case, the principle on which it was decided has never been questioned.

The same principle may be exemplified by supposing the case of a commander in the field whose forces are surprised at night in their encampment.

A court of inquiry convened soon after finds that the surprise was due, primarily, to a lamentable defect of judgment in such commander in failing to properly picket the roads, etc.

The commander thus censured subsequently discovers evidence by which he can conclusively prove that the officer who commanded the pickets stationed on the very road by which the enemy advanced had, in violation of orders, fallen back without firing a shot, and hence the surprise and defeat.

The court, however, that had directed its attention and criticism chiefly to the commander's plan of campaign, having found that such subordinate officer had only erred in judgment, it would follow, according to the principle announced, that, despite any amount of newly-discovered evidence, no court-martial should be ordered for the trial of the guilty subordinate, and his commander must continue to rest under imputations that are provably false.

The case supposed does not materially differ in principle from that under consideration.

A court of inquiry found that my subordinate officer was urged to undue haste by my orders, which had the alleged effect of clouding his mental vision ; that the plan formulated by me for his guidance was fatally defective, and directly conduced to the failure of the expedition commanded by such officer.

Many months after the court of inquiry was dissolved the disaster occurred which is now known to have been the result

of that failure, and which involved the sacrifice of a number of lives by starvation. I now offer to prove beyond a reasonable doubt, both by newly-discovered evidence and by material facts formerly in proof, but which were either ignored or misconstrued by the court, that the officer who commanded the relief expedition actually deserted his post and deliberately violated his instructions in their most vital point, and thus the disaster followed almost inevitably, although such officer possessed adequate means to prevent it.

Sincerely believing that the Secretary of War has not considered the case in this, its true aspect, I respectfully invite his attention to this presentation of it, with the view to a reconsideration of the position taken in the endorsement from which I have quoted.

I am, sir, your obedient servant,

W. B. HAZEN,

Brig. and Bvt. Maj.-Gen., Chief Sig. Officer, U. S. A.

STATEMENT OF W. H. LAMAR, JR., SERGEANT SIGNAL CORPS.

WASHINGTON, D. C., December 3, 1884.

GENERAL W. B. HAZEN, *Chief Signal Officer, U. S. A.:*

SIR: In compliance with your request I have the honor to submit the following report and accompanying chart:

The Greely relief party left this city at 9.50 P.M., June 11, 1883, and on the following morning went aboard the United States steamship *Yantic* in the Brooklyn Navy-Yard. The day passed and Lieutenant Garlington said nothing to the Signal Service observers about comparison of instruments in New York. On the morning of the 13th we learned that the vessel would sail at 4 P.M. Knowing that we had instructions to compare some instruments in New York, we went to Lieutenant Garlington. I asked him what we were to do about the matter. "Don't you do anything until you are ordered," was his quick and irritated reply. I said: "Well, lieutenant, we have received very explicit instructions in regard to making these comparisons, and, as the Signal Office is looking to us to do our work well, I thought it but proper to call your attention to this subject before leaving this place"; to which he replied in the same irritated manner: "Yes, old Abbe, and, among them, have got up a *lot* of d—d instructions about your work. It is too late now to do anything about it; the vessel sails at 2 o'clock." I then told him I would like to have a copy of the instructions. He said that he only had one copy of them; that he would let me have those, but that we must be very careful with them, as this was the only copy he had, and that *he had not read them.* He got the instructions *at once* and gave them to me, and I kept them until we reached St. John's. At that place the instructions contemplated scientific work for us, but

in disregard of them Lieutenant Garlington ordered us to other work not in the line of our duty, and said *nothing* about the work we were instructed to do at that place. We knew that he had not read these instructions, and therefore if we said nothing we should fail entirely to accomplish our mission; so, after consultation, we decided that if we could only get him to read the instructions he could not fail to see the importance of our work, and would give us an opportunity to comply with our instructions. So we carried them to him and told him that our duties with the expedition were other than those he had assigned us; that our reputation at the Signal Office depended upon the manner in which we performed the important work entrusted to us; that he was not giving us a fair opportunity to perform our duties, and insisted upon his reading the instructions. He seemed enraged that we should presume to approach him on the subject, and told us that our duties would be the same as the regular Army party. We protested that we were detailed for special duty, and that from his instructions he would find that this special work was calculated to occupy every moment of our time; that this was the service we had volunteered for, and that it was entirely different from that of the regular Army party. He was very angry, and ordered us back to work shifting the cargo of the *Proteus*. He took the instructions, but in a few minutes handed them to Ellis without reading them, saying that he did not have time to read them then, but that he would call for them some time when he was at leisure. We kept them until the *Proteus* sank. *He never* called for them, and could never have read them. Whenever approached in regard to our work in any way he always became irritated, and answered pettishly, so we avoided contact with him as much as possible, never speaking to him except when it was *absolutely* necessary in order to carry on our work.

The instructions required him to issue to each man a blank-book for a diary. These books were with observers' stationery supplies, and were unpacked at St. John's, and kept ready to be issued when called for by Lieutenant Garlington. This he never did.

The *Proteus* was the same vessel that took Lieutenant Gree-

ly's party to the Arctic in 1881. The cabin was very large, having ten berths besides those in the captain's state-room. In this cabin Lieutenant Greely took two lieutenants, the surgeon, and all of his observers; but Lieutenant Garlington packed these berths full of bedding, and could not find room for his two observers, who were always on duty in that portion of the ship, and in all kinds of weather had to go the entire length of the ship, over a deck stacked with lumber, to take observations. His attention was called by Captain Pike to the disposition Lieutenant Greely had made of his men, and the captain offered to accommodate Ellis and myself in the cabin; but Lieutenant Garlington would not agree to such an arrangement, but forced us to go into the dirty forecastle of the ship and eat and sleep with the sailors, his own description of whom is to be found in his report. It is a noteworthy fact, which I respectfully submit, that, whilst Lieutenant Garlington refused his observers permission to accept the accommodations offered by the captain and provided by the government, these observers were paying out of their own private means as much for ship's fare as himself.

The *Proteus* entered Smith Sound on the morning of July 22. No ice was to be seen with the large glass from the crow's nest. Pandora Harbor was reached about 6 A.M. Lieutenant Garlington went ashore to examine the cairn, and at 7 A.M. we started for Littleton Island, which was passed between 8 and 9 o'clock, but no one landed to examine the cache. Passing Littleton Island, the ship was headed northward. At 11.36 A.M. we met the solid ice-pack, which extended from Cape Inglefield to Cape Sabine. The *Proteus* steamed along the edge of the pack to Payer Harbor, but not the slightest opening could be discovered by the watch in the crow's nest, so the captain decided to go into Payer Harbor and wait for a change in the ice. He told me that he was not discouraged by meeting this barrier; that in a few days great changes would take place in the ice; that we were at least ten days earlier than any one else had ever passed Cape Sabine; that he would go into Payer Harbor and spend several days filling his bunkers with coal, and would then go out and see about the ice. After this conversation with

Captain Pike I went to Lieutenant Garlington and told him that, as the vessel was going to stop several days, Ellis and myself would like to make some magnetic observations on the shore. He then spoke to Captain Pike about the time we should remain at Payer Harbor, and Captain Pike repeated about what he had just told me. Lieutenant Garlington made no objection to the delay, and when the vessel anchored at 2 P.M. he put us ashore with our instruments, and went on round the cape to examine the Beebe cache. He returned between 5 and 6 o'clock and reported open water towards Cape Albert, and Ellis and myself were called to hurry on board with our instruments. At 7 P.M. the vessel was again under way. I soon met Captain Pike on deck, and asked him why his plans had been changed so suddenly. He said Lieutenant Garlington thought he had discovered open water to the northward, but that he had told him his men in the crow's nest with the large glass had not seen it, and he did not think there was any safe water there, and that, besides that, he wished to fill his bunkers; but that Lieutenant Garlington insisted upon his going at once, saying that he (Pike) would not be doing his duty to the United States government or Lieutenant Greely's party if he did not go at once. That he then started under protest. He told me that in his opinion it was very dangerous, and entirely unnecessary, to attempt to force a passage through the ice.

Passing round Cape Sabine, the vessel was put into a narrow lead extending in almost a straight line from Cape Sabine to Cape Albert. This lead was followed till we were nearing Cape Albert, when it closed, and all the heavy ramming that followed failed to break a passage through to the open pool of water round Cape Albert. At 11.30 P.M. the vessel was turned about, and after retreating several miles back towards Cape Sabine she was put in another lead, which extended several miles in a northeasterly direction, and then turned almost at right angles in a northwesterly direction, entering the pool of open water around Cape Albert a little northeast of the Cape. At 2 A.M. of the 23d the *Proteus* was nipped and held for two hours near the close of this lead. At this point the ice was

light and no damage was done to the ship by the nip. At 4 A.M. the lead reopened and we steamed forward only to find that the open pool of water had vanished and heavy ice-pack was in its place. Lieutenant Garlington was now satisfied to return to Cape Sabine. We entered the lead which we had abandoned on the night before, but which was now our only chance of escape, and hurried back to Cape Sabine, passing without difficulty through the heavy floes that stopped the vessel on the previous evening. Our hasty retreat was almost concluded, only a few hundred yards more would bring us to the open water, when the treacherous lead closed, and at 2.45 P.M. the vessel was nipped between the heavy floes, she was crushed, and at 6.05 P.M., when the lead again opened, she sank, leaving us upon the ice.

As soon as the nip occurred Lieutenant Garlington set all the men to work getting provisions on deck, and when it became evident that the vessel could not withstand the enormous pressure the stores were thrown upon the ice on both sides of the vessel by those on board and carried back to a safe place by those on the ice. The ship's party worked in the stern of the vessel, most of their provisions being in the cabin store-room. The expedition party worked in the forward hatch and forward peak, where our supplies were kept; hence there was very little chance for collisions between the two parties—in fact, it was only those members of both parties on the ice that could see each other, those on board being the length of the ship apart, and with engine-works between them.

Our party worked effectively and as hard as they were able to work, many of us to perfect exhaustion. Before we left the ship, and while we were working at the forward hatch, it struck me that in case of a wreck the charts, boat compasses, and chronometers which we had in the cabin would be almost indispensable, so I ventured to suggest to Lieutenant Garlington that it would be well for me to go and get them out on the ice. He replied with great excitement: "Damn the instruments; save provisions." After the vessel was crushed in, and most of us were on the ice, I was getting articles away from near the vessel, and if I did not happen to get the very articles he had in

his own mind he would rail in a most disagreeable manner to me. Convinced that I could do more effectual service away from Lieutenant Garlington, I took the first opportunity to get on the port floe under the command of Lieutenant Colwell, who was always cool and calculating, never becoming fretted, inspiring respect and confidence in every one. Had it not been for his presence of mind at the wreck our largest and best whale-boat, which was indispensable to a successful retreat, and much, if not all, of the provisions on the port floe would have been lost. I remained with his party till this floe was abandoned. When the vessel sank the lead opened rapidly, and both floes drifted southeastward, the port floe travelling much faster than the other. Some of the provisions were transferred to the other floe in boats; but it soon became impossible to get the boats across, and the port floe, with all the provisions on it, was then abandoned, and the entire party united on the starboard floe. It was early morning of the 24th before it was safe for the boats to attempt to reach the shore. At that time Lieutenant Colwell launched a loaded whale-boat, and with a crew of six men, four of whom belonged to the ship's crew, started for the shore. Captain Pike some time later got off one of his boats, and Lieutenant Garlington soon followed with our other whale-boat, the ship's crew following soon after with another boat; Lieutenant Colwell's boat was the only one of these four that returned to the floe before it was abandoned. When he reached the floe there were on it Dr. Harrison and myself, of the expedition party, with our dingey loaded, and Captain Pike and ten or twelve of his men, with one boat. The captain and several of his men soon started for the shore in their only boat, and Lieutenant Colwell took off all the men that were left, leaving our dingey loaded on the ice. This boat we were to take in tow, but the ice looked dangerous, so it was left. When we left the floe it was off Cape Sabine, and drifting southeasterly, and bearing away on it the greater part of the provisions saved from the wreck. We reached Cape Sabine, and found Lieutenant Garlington, Captain Pike, and all the others had landed at the same point except the first boat-load, by Lieutenant Colwell, which was landed about half-way between Cocked-Hat Island

and Cape Sabine, and was never seen by our party again. After we had unloaded the boat in which I came ashore I observed that no further effort was being made by Lieutenant Garlington to save anything more from the floe. I spoke to Moritz about going back to the floe again, and he expressed a willingness to make another trial. We asked Lieutenant Garlington if we could go back, telling him we could get up a party; but he refused, saying we must not risk it. About this time several of the ship's crew decided to go back to the floe to get provisions and clothing, and as they stepped into their boats Moritz and myself got in with them. We soon reached the floe, which, with a change of tide, was drifting back to the northeastward. Moritz and myself got out our dingey, which was already well loaded, and made the shore safely. The boat we went over in was loaded and reached the shore soon after we did. Another boat with a volunteer crew of expedition men and ship's crew succeeded without difficulty in reaching the floe soon after we left it, and it also brought a heavy load of provisions ashore. Ellis, perhaps, knows better than any one else available what remained on the floe after this boat left, as he was in it, and was about the last man to leave the floe. Thus by the *voluntary action* of the men three heavy boat-loads were saved, Lieutenant Garlington not approving of the risk and positively refusing to let our whale-boats go back to the floe. If he had made another trip to the floe with our party, in our own boats, then the three boats of the ship's party would have been available for another trip with their own crews, and two or three more boat-loads would have been saved. But as it was most of the regular members of our party made the last trip in the ship's boats, and when they returned were too tired to go again, even if Lieutenant Garlington had asked them to do so; but he did not make such a request, nor did he endeavor to get a boat party from those men of the ship's crew who had not made an extra trip to the ice. They could easily have gone, and in my opinion could have been hired to do anything. When the last boat left the floe, about 2.30 P.M., it was drifting back northwestward, and must have continued in that course till high tide, about 6 P.M., and hence it must have remained in reach of the shore for several hours later.

I find the following in my journal of July 24:

"Since landing we have been engaged in assorting articles to be used by our boats. . . . A supply of clothing was issued to each man. Only such articles were issued as were absolutely necessary. All the space possible in the boats was to be preserved for taking provisions. All extra clothing was deposited in a cache in the cliff just above where we landed."

Again on the 25th:

"Morning spent by Lieutenant Colwell and several men in fitting sails for boats and making preparations for crossing Smith Sound with all the provisions possible."

And later on same day:

"Captain Pike's crew and our own stored away as much as possible in boats, and started across the sound."

After loading the boats in the manner described in these extracts, there was some salt meat left on the shore; this was put in the dingey and taken in tow by one of the boats. All the provisions landed by Lieutenant Garlington's party at the camp were carried away, nothing being left except a few cans of sour berries.

It was estimated by Lieutenant Garlington that we took forty days' rations. I do not know how rations are estimated, but it seems to me we had much more than enough to last our men forty days; especially of meat, of which we had fifteen pieces of bacon, two large cans of pemmican, about twenty pounds each, and a large quantity of canned mutton, turkey, chipped beef, and condensed milk, and the greater part of a barrel of salt meat, which was taken in the dingey. The bacon was fried in profusion, the gravy *poured on the fire for fuel, and the meat wasted.* One can of the pemmican was opened at Cape York and tested, but the men liked the other canned stuff better, and no more of it was used. I learned that it was given to the Esquimaux at Upernavik. The canned meats, vegetables, etc., were eaten in profusion—in fact, the men gorged themselves all the time they were in the camp. The salt meat taken in the dingey was never eaten, but *used for fuel*, as will be

seen from accompanying extracts. Lieutenant Garlington carried his large dog in his boat, much to the annoyance of his crew. This dog was also fed on the supplies. After such use of the supplies, when we reached Cape York, and it was decided for Lieutenant Colwell to take a boat with a light load and cross Melville Bay, a quantity of canned meat, several pieces of bacon, and several other things were transferred from the large whale-boat to Lieutenant Garlington's boat. The supplies remaining in this large whale-boat were amply sufficient (except bread which got wet) to last our party to Godhaven, a period of thirty-nine days. This shows that there must have been much more than forty days' rations in each boat when we left Cape Sabine, as each boat started with an equal amount of provisions. We also carried away a barrel of alcohol, which contained about twenty gallons; this was sometimes used for cooking, and was frequently tapped by the men. This fact, it seems, was not discovered by Lieutenant Garlington until he got to Upernavik, and I was told, to prevent his men from getting drunk on it there, he took an axe and knocked the head of the barrel out, and poured the alcohol on the rocks. There was also a three-gallon demijohn of whiskey saved from the wreck.

The only time I heard one word about preparing for Lieutenant Greely was just before we left Cape Sabine, when Lieutenant Garlington made the *Proteus' crew* turn in all the buffalo overcoats then in their possession, saying they must be left for Lieutenant Greely's party. They were put in a cache, but not one mouthful of food was put in with them, and whatever provisions Lieutenant Greely's party got there were found lying out on the rocks as left after our boats were loaded to the danger-line.

I find the following in my notes on the 26th:

". . . Dr. Harrison, steering the dingey, which we still have in tow, loaded with such articles as there is least use for, so that in case we should have to abandon it no change of cargo would be necessary.

"Our two boats made the land just above Life-Boat Cove about midnight of the 25th, where we remained until 3.35 P.M. of the 26th, when boats started for Pandora Harbor. Passed an immense herd of walrus on

the north side of Littleton Island, and saw many lying up on ice-floes, but no attempt was made to shoot them. Lieutenant Garlington left a record at the coal-cache on south side of Littleton Island. We arrived at Pandora Harbor at 7.50 P.M., and found Captain Pike's party encamped. While at this place Captain Pike said we ought to wait for the *Yantic* for a week or ten days. He thought she would surely come by that time, and Lieutenant Colwell proposed to take one boat and go south for the *Yantic*, and let the others wait at this point, where game was plentiful. But both of these propositions were rejected, and on the morning of the 28th all the boats started south. Had either proposition been adopted our winter station could have been established at Littleton Island when the *Yantic* came a week later. We had saved the whale-boats provided for crossing Smith Sound, and which proved to be good ones, and could have crossed over to Cape Sabine any day with greater safety and less labor than was required to cross Melville Bay in a gale such as we experienced."

I know of no better way to give an account of how this retreat was conducted than to quote from my notes made at the time at places along the route.

At one of our encampments I find that I wrote the following:

"August 1.—*Tin-Can Cove* is the name by which our present encampment is known by the men. Until nearly noon the weather was so bad that few left their sheltering places except to open a can of whatever canned goods they chose to indulge in and then throw the can into the water. I do not like to be critical, but cannot refrain from making a few remarks upon our present situation. Our supplies should be so preserved as to prepare us for the worst; but how do we find it at the present moment? The officers are in their tent, about one hundred yards from the boats and supplies, and know nothing of what is going on outside. The men are *gorging* themselves; whatever they see that they *fancy they want*. Now while I am writing several fellows are going through the pile of supplies; a box of raisins is found, and the remark is: 'Off with the bloody lid.' In this manner things are going. Cans of condensed milk that might be a comfort to the entire party, if used in a pot of tea, are opened and devoured by a single individual and the can thrown into the sound. There is no wood here with which to make a fire to cook, so the cook is burning pork for fuel; even that would not be so bad were not the fire kept burning for hours longer than there is any necessity. A barrel of alcohol is here, and cooking could be done with that, and this meat saved. I am sure all this waste would not be allowed were it known by Lieutenant Garlington; but he does not come to see it for himself. . . . The camp is full of complaints, and it seems there is nothing to make the present situation pleasant. . . .

"A stew of birds or rabbits would be an appreciated change just now, and so long as game is *so plentiful* our supply of provisions would last much longer; but at present the party is devouring everything that it is possible to cram into their stomachs or waste upon the rocks. . . ."

Ten days later we have reached Cape York, and I find the following remarks in my notes:

"At 2.30 P.M. boats were hauled upon the shore. . . . Seeing that no move was being made to put up a tent, I asked Sergeant Kenny about it. He said that there was no place for a tent; that the stones were all wet, and the men were wet; a tent would be of little use; that for himself and one or two others they had spread a sail over one of the boats and would stay there. There was the fly-sheet lying upon the ground and not in use, so I asked some one if he would help me to build a tent to protect us from the storm. 'No, I am soaking wet, and a tent will do me no good,' was the reply. I asked another, and still another, and so on round the party, and received similar replies until I came to McDonald. He was the *only man in the party* who was willing to build a tent; so he and myself took the tent-fly and soon had a comfortable shelter from the snow-storm. The men are shivering around as wet as they can be, cursing their situation and the expedition, when all of this discomfort *might have been* easily avoided. There is plenty of canvas to make a comfortable shelter for our entire party, but no two men will work together. At meal-times it is a grab, hoggish game; just so a man fills his own stomach he cares very little whether any one else gets anything or not. There are several in the party who between meals, or whenever they can, *take from the pile of supplies* whatever suits their fancy. In this manner our limited supply of food is going. I never thought that men with souls and reason could act thus. It is all *because the proper discipline is not exercised* and the *proper attention* not given by the *commanding officer*. . . . There are some men in the party who would do better were others acting differently; but while things are going they think each should have a share, and so the matter is made worse by him whose duty it is to stop this practice."

"August 11.—McDonald and I kept warm, and were sheltered from the cold rain, . . . but these men who refused to build a tent were in a lamentable condition, wet and chilled to the bone. Still no effort was made to fix a shelter. A cold rain fell during the entire day, and most of the men were hovering around a small fire of seal-blubber in a miserable state. At 7 P.M. it was still raining, and there was every prospect of as bad a night as the last. The men were all shivering around a small fire of whale-blubber, still as wet as they were twenty-six hours before, and with no prospect of a better state of things. I went and talked to them, and tried to show the folly of staying out in the weather, and again proposed to

help to build a tent for all. After a 'growl,' in which nearly all participated, a move was at last made. A place was selected, . . . and in a short time we had a tent large enough for all, and a good protection from the weather. *This could have been done just as well over twenty-four hours before, and all been comfortable;* but as it is they are so wet and chilled that it will take hours before they can be comfortable. If there is the least obstacle in the way of making the party comfortable at the next camp, I should not be surprised at a repetition of this experience."

There are other incidents that might be related, but as this report is sufficiently full to convey a general idea of the conduct of the expedition, it is respectfully submitted without further recital.

Very respectfully, your obedient servant,

W. H. LAMAR, JR.,

Sgt. Sig. Corps, U. S. A.

STATEMENT OF FRANK W. ELLIS, SERGEANT SIGNAL CORPS.

WASHINGTON, D. C., January 27, 1885.

GENERAL W. B. HAZEN,

Chief Signal Officer, U. S. A.:

SIR: In accordance with your request I have the honor to submit the following report upon the Lady Franklin Bay Relief Expedition of 1883, of which I was a member:

In New York, on board the *Yantic*, on June 13, learning that the vessel was to sail that day, Sergeant Lamar and myself went to Lieutenant Garlington and asked him what should be done in regard to the comparison of barometers we were instructed to make while in New York. In an angry manner he told us to do nothing until we were ordered. Sergeant Lamar told him that we had received very explicit instructions in regard to the barometer comparisons.

Lieutenant Garlington replied: "That reminds me old Abbe and among them went and got up a lot of d—d instructions, and I have not read them." He then went into the cabin and immediately brought out a copy of the instructions given him in regard to the work of the Signal Corps men on the expedition, and gave it to Lamar, telling him to be careful with it, as it was the only copy he had. After reaching St. John's, N. F., he said nothing to us in regard to the work we were instructed to perform, but set us to work with the other men shifting the cargo of the vessel.

Lamar and myself agreed to lay the matter before him again. We told him that we had been given no opportunity to carry out the instructions given us; that we wanted a room in the cabin, where we could mount the barometer and keep the instruments, and that we wanted a place to do the work expected

of us. He became very angry, and told us that our duty would be the same as that of the regular Army party; that no distinction would be made between us. I gave him the copy of instructions. He ordered us back to work shifting the cargo. He was busy, and gave the instructions back to me, telling me to hand them to him some other time, as he could not read them then. He never called for that copy again, and it sank with the vessel.

In Godhaven there was a difference of opinion between Lieutenant Garlington and Captain Pike about starting northward.

Lieutenant Garlington wanted to start, and Captain Pike held that the weather was not favorable; that there was no hurry, as we were at least *two weeks too early*. The *Proteus* was run aground about forty miles from Godhaven. There was a light fog at the time. In answer to inquiries made by the mate the Esquimau Nicholas replied, "Plenty water." One day the vessel stopped near the land in Melville Bay, and it was found that she was out of her course. Lieutenant Garlington expressed the opinion that Captain Pike was no navigator, and did not know what he was about.

The *Proteus* arrived at Pandora Harbor early on the morning of July 22. A party went ashore to look for the record left there by Beebe the year before. It was not found. The vessel steamed to Littleton Island and slowly passed it. No one landed. At Littleton Island no ice could be seen by the mate from the crow's nest. Within three hours the vessel encountered an almost solid ice-floe, from six to eight feet thick, and of hard ice. It was impassable. The mate reported that no water could be seen to the northward. The vessel then steamed to the westward, keeping very near the ice; but no lead through the floe was found, and anchor was dropped in Payer Harbor. Before the ship was brought to anchor Lieutenant Garlington and party started out to find the cache on Cape Sabine. Lamar and myself, with instruments, were landed on an island to commence magnetic observations. The instruments were carried to the top of the island, and observations fairly commenced, when Lieutenant Garlington was seen coming back in the

boat. He signalled to us to return to the ship at once. It was late in the afternoon of July 22 when the vessel was put into the ice. Captain Pike said that he did not believe that there was any open water ahead; that it was not water that Lieutenant Garlington had seen. Lieutenant Colwell was with the mate in the crow's nest directing the movements of the vessel in the ice.

There was no open lane of water, and the *Proteus* had to ram her way. When it was impossible to break through one route another was tried, until at last she was caught and unable to move.

While in the pinch, about 2 A.M., July 23, on deck, Captain Pike, during a conversation with me, said that when he went into Payer Harbor he fully intended to stay there three or four days, or until the ice had passed out of the sound; that it was against his wishes the vessel was put into the ice; that Garlington ordered him on to the ice, telling him that he (Garlington) would not consider him (Pike) as performing his duty to the United States Government or to the people at Lady Franklin Bay; that if it was to do over again he would give Garlington to understand who was in command of the ship; that he wished he was back in Payer Harbor again.

At 7 A.M. I went to sleep, and about 3 P.M. was awakened by Lamar, who told me the vessel was in a nip, and they were preparing to throw things overboard. Having put my gun and ammunition on to the ice, I was ordered into the hold, where men were at work throwing boxes on deck. When they began to throw things overboard there was a good deal of excitement. Our party in the fore part of the vessel worked very hard. When the sides of the ship began to mash Lieutenant Garlington got off on the ice and did not come aboard again. A great many provisions went down between the ice and the ship's side. Some men were on the ice carrying things to safer places. Lieutenant Garlington was giving orders to these men in a very wild manner. He ordered me on the ice. While I was on one side of the ship he ordered me on to the other. He then ordered me to roll a barrel away, but before this could be done he ordered me to take a box. He was very

much excited. All the boats had been gotten off but one when the cry came, "She is sinking," and every one left the ship. But she did not sink, and Lieutenant Colwell and a few more returned to save the boat. He ordered Lieutenant Colwell three times, in a very peremptory manner, "To hell with the boats; save the provisions." The boat was saved, and more boxes were thrown overboard. When Lamar asked him to be allowed to save some of the instruments in the cabin he replied: "To hell with the instruments." On the vessel the expedition party worked in the fore part of the vessel, while the *Proteus men* worked in the cabin store-room. Every one seemed to be at work, though the men of our party may have worked harder than the others. When the vessel had sunk, and the ice had begun to separate, there were two pans of ice holding provisions which had been thrown from both sides of the ship. Those pans began to move away from each other, and the work of moving the provisions all to one pan was commenced. This was done by drawing the boats loaded through the slush-ice between the two pans. Several loads were made when the rope would no longer reach from one pan to the other. Then every one deserted the pan which was on the port side of the vessel. When the water had cleared sufficiently to admit of rowing private Murphy and myself crossed in a small boat to save some more of the provisions. We had reached the provisions, and had just begun to load, when Lieutenant Garlington ordered me several times to return, and we came back bringing nothing, when it would have been just as easy for us to have brought the boat loaded. There was no reason for having us return, as no one was doing any work at that time. All the provisions on the port floe could have been easily transferred to the other, and would have been done had he allowed it. On that deserted pan were about six boxes of bacon, perhaps three hundred pounds of bread, and some canned goods. Every one rested for three or four hours. Early on the morning of July 24 the boats were loaded with provisions and clothing to be taken to Cape Sabine. Lieutenant Colwell, with the large whale-boat and a crew partly of our own men and partly of men from the *Proteus'* crew, made the first trip to land. This load was placed on the coast

more to the northward than any boat, afterwards landed, and was not seen again. [These were the stores left for Lieutenant Greely.] A short time afterwards Captain Pike ventured out, soon followed by Lieutenant Garlington in the other whale-boat. I was in this boat. On the way across it was found that the plug was out of the bottom of the boat, and that it was a third full of water. Lieutenant Garlington was greatly excited, and asked three times in about a minute if the water was gaining, receiving an answer each time. The plug being put in and the water bailed out, the boat reached the land near where Pike's men had landed. I was left on the rock with the load, and the boat started to return to the ice. I was ordered to shoot any of Pike's men if they should come and try to take anything. I was asked if my gun was loaded, and replied that it was. In a short time Lieutenant Garlington returned, having given up the return trip. Although I was not in the boat, I believe the boat could have returned to the ice with little trouble, for we met no ice coming to the land that would hinder rowing a loaded boat, and, moreover, other boats, only a short time afterwards, did return to the ice. The men in the boat were rather disgusted at having to return without anything, and so expressed themselves to one another. Presently more of Pike's boats, and finally Lieutenant Colwell's boat, which had returned to the ice and brought off the men from it, returned to Cape Sabine. At this time Lieutenant Garlington seemed to have given up all thought of trying to save any more of the provisions on the ice. He refused to let a party of his own men who volunteered go back to the ice, telling them they must not risk it. But Taylor, second mate of the *Proteus*, with a crew of his own men, started back to the ice, and Lamar and Moritz got in the boat with them. Murphy, Kenney, White, and myself took the punt (Pike's smallest boat) and started out. Lieutenant Garlington did not approve of this. His instructions to the men in the punt were for them to turn back if they should meet with danger, and to run no risks whatever. He cooled the enthusiasm of the men. The punt was the last boat to leave the rocks of Cape Sabine. When we encountered ice Kenney repeated Lieutenant Garlington's orders about turning back; but Mur-

phy replied, "We have gone too far now to turn back," and the ice-pan was reached by dragging the boat over the intervening ice. It could not have been more than five miles from the ice-pan to Cape Sabine, for the punt, heavily loaded, was less than an hour in traversing the distance. Other points of land were nearer the ice-pan at that time than Cape Sabine. Clear weather continued for eight or ten hours after the provisions were abandoned, and I believe that *everything* could have been landed at different points along the coast as the ice drifted. As it was, two heavy boat-loads of provisions were saved without Lieutenant Garlington's concurrence—one of them in disregard of his instructions, while Lamar and Moritz brought back the dingey. Those men who did not work voluntarily would have worked willingly under orders. The men were not perfectly exhausted, as stated. There was left on the ice as much provisions as had been taken to land. There was a quantity of bacon and canned stuff. Had it not been for this voluntary action of the men in saving provisions, when the party came to leave Cape Sabine the first whale-boat landed by Lieutenant Colwell would certainly have been visited, and nothing eatable would have been left for Lieutenant Greely. Lieutenant Garlington did not seem to have a thought of leaving provisions for Lieutenant Greely. He did make some of the *Proteus*' men give up the buffalo overcoats which were left. The party remained on Cape Sabine the 24th and 25th. Every one was allowed to eat as much as he wished. When preparing to leave Cape Sabine the boats were loaded as heavily as they dared to load them. All the provisions landed at that place were crowded in. The supply of clothing allowed the men was limited so as to give more room for provisions. All that I remember to have been left was less than half a barrel of salt beef which had been broken open and part of the contents thrown into the bottom of the dingey.

Our party had three repeating-rifles and a shot-gun, in addition to a rifle or shot-gun to nearly every man of the *Proteus*' crew. One repeating-rifle belonged to Moritz, one to Lieutenant Colwell, and one belonging to myself. The shot-gun belonged to Lieutenant Colwell. For Moritz' and Colwell's guns

there was one box containing two thousand rounds and one box containing fifteen hundred rounds of ammunition. For my gun there were two hundred and fifty cartridges, two hundred bullets, three pints of powder, and fifteen hundred primers, with a set of reloading tolos complete. There was a large Colt's revolver, with one hundred rounds of ammunition, and a box containing two thousand cartridges for a forty-four calibre Winchester, intended for some one in the Greely party.

The party left Cape Sabine about 4 P.M. July 25 with a stiff breeze. There was very little ice to be seen in Smith's Sound. On the way across Murphy, who was steering and sailing the boat, said that she was loaded too heavily, and Lieutenant Garlington suggested that some things be thrown overboard, to which there was no reply, and nothing was thrown overboard. The east side of the sound was reached about midnight, and Garlington's boat was unloaded.

In loading it again there was trouble in getting everything in, and Lieutenant Garlington made the remark, "Oh! my, I'm afraid we will have to leave some of the canned stuff." Here Murphy suggested that the wafers were the best thing to leave, as the five or six boxes containing them took up a great deal of room, and remarked that there was more nourishment in one can of condensed milk than there was in all the wafers. Lieutenant Garlington replied that he did not want to leave the wafers. "It is the only kind of bread I eat." Nothing was left excepting the box of forty-four calibre cartridges. On the afternoon of the 26th the boats were rowed to Littleton Island. We passed between the main-land and the island. The sun was shining brightly after the snow of the night before. Great numbers of walrus were seen on the rocks near the water and swimming in the water of Life-Boat Cove.

It was said at the time that there must have been five hundred of them on the island. We saw numbers of walrus on small pieces of ice south of Littleton Island. They were very tame. We passed in the boats within twenty yards of a small ice-pan with eight large walrus on it.

No one from our boat landed on Littleton Island but Lieu-

tenant Garlington and Kenney. They left a record in a bottle in the coal-heap, returning immediately to the boat. The cache supposed to be there was not seen by any one, and no attempt was made to find it.

We reached Pandora Harbor, where we found Pike's men, who had landed there the night before. The boats were unloaded and moored out. Lieutenant Garlington's tent was pitched. The men ate three meals a day, and had plenty to eat each time. It was the opinion among the men that the party would remain here and await the arrival of the *Yantic*. This was the intention of Captain Pike and his men. There was a little surprise when it was ordered that the boats be in readiness for starting. The first landing was made a little to the south of Cape Chalon, the next at Northumberland Island, and then near Cape Parry. Each time the tent was unpacked and pitched for Lieutenant Garlington. At Cape Parry we stayed two days on account of bad weather. Here provisions were wasted. The grease from the frying bacon was poured on the fire to make it burn, and now and then a slice of the bacon itself was burned. Some of the salt beef was used for fuel. Cans of condensed milk, cans of turkey (two-pound cans), and cans of dried beef were opened and contents eaten. Two or three of the men made gluttons of themselves. One man more conspicuous than the rest would eat till he could eat no more, and as soon as he was able to eat again he would do so. I saw him open a can of turkey, eat as much as he could, and throw the rest away. Lieutenant Garlington stayed in his tent nearly all the time we were at Cape Parry, or Tin-Can Cove, as the men called the camp. Kenney and Murphy drew some alcohol from the barrel.

The next landing-place was Saunders Island, where we stopped two days. A great many birds were killed. Some of these birds were carried away with us; some of them spoiled, and were thrown away. On the afternoon of August 7 we came to Conical Rock. Here the tide was causing the ice-pans to whirl round, and they would come together and separate, making it very dangerous for the boats. Garlington called to Colwell: "I say, Colwell, what do you think of this?" Colwell: "I

think it is a pretty bad place." Garlington : "Let's get out of it?" Colwell : "I don't see how you are going to get out. I guess we will have to haul up on the ice." Here Garlington complained of being suddenly very sick, and asked to be put out on the ice. The boats were pulled up on the ice. The tent was taken out for him to lie upon. When the ice opened up again the boats were put into the water, and we reached Conical Rock. Garlington climbed on top with a telescope to look ahead. Then going ahead, the ice soon became as bad as before. Again he complained of being sick. Landed eight or nine miles to the northward of Cape York at 9 P.M., August 7. Next morning Lieutenant Colwell, with some of his men and some of Pike's men, in Pike's boat, the "punt," pushed ahead to Cape York to find the Esquimaux there, and make inquiries about the *Sophia*, which it was supposed would be there. Lieutenant Garlington had placed great hopes on finding the *Sophia* here. He remarked on the way in the boat that he expected to find this vessel before he did the *Yantic*. The Esquimaux knew nothing about the vessel, but said there was another lot of Esquimaux around the cape. The boats rounded the cape and found only one family of these people. They knew nothing. We landed there and stayed for two or three days. *Kenney got so drunk on the alcohol that he was very sick.* Here it was decided that Colwell should push ahead for Upernavik. On August 12 we returned to where we saw the first Esquimaux, and remained there till the 16th. During that time there was no watch kept over the provisions, and more cans were opened. Bacon and salt beef were burned on the fire.

On August 19 we landed on an unknown island. Some one got out a quantity of alcohol. On the 20th we landed again for rest and for something to eat.

Murphy, who was steering the boat, got so drunk that when we started again he fell overboard. We got into very heavy, angular ice among large icebergs, and Lieutenant Garlington kept wanting to turn back and get out from among them; but Captain Pike kept on. Then he said we would turn back any way. We were then about ten miles from land; but he kept trying to get Captain Pike to turn back, all the time following

in the track of his boats. When the icebergs began to grow fewer, and it was easier to row, he quit saying anything about turning back.

When we reached Upernavik there was left of provisions about one-fourth of what we had on leaving Cape Sabine. There were about one hundred pounds of bacon, a number of cans of mutton and turkey, and some alcohol.

Very respectfully, your obedient servant,

FRANK W. ELLIS,

Serg. Sig. Corps, U. S. A.

LIEUTENANT GREELY'S INSTRUCTIONS.

WAR DEPARTMENT,
OFFICE OF THE CHIEF SIGNAL OFFICER,
WASHINGTON, D. C., June 17, 1881.

The following general instructions will govern in the establishment and management of the expedition organized under Special Orders No. 97, War Department, office of the Chief Signal Officer, Washington, D. C., dated June 17, 1881.

The *permanent* station will be established at the most suitable point north of the eighty-first parallel and contiguous to the coal-seam discovered near Lady Franklin Bay by the English expedition of 1875.

After leaving St. John's, Newfoundland, except to obtain Esquimaux, hunters, dogs, clothing, etc., at Disco or Upernavik, only such stops will be made as the condition of the ice necessitates, or as are essential in order to determine the exact location and condition of the stores cached on the east coast of Grinnell Land by the English expedition of 1875. During any enforced delays along that coast it would be well to supplement the English depots by such small caches from the steamer's stores of provisions as would be valuable to a party retreating southward by boats from Robeson's Channel. At each point where an old depot is examined or a new one established three brief notices will be left of the visit—one to be established in the cairn built or found standing, one to be placed on the north side of it, and one to be buried twenty feet north (magnetic) of the cairn. Notices discovered in cairns will be brought away, replacing them, however, by copies.

The steamer should, on arrival at *permanent* station, discharge her cargo with the utmost dispatch, and be ordered to return to St. John's, N. F., after a careful examination of the seam of coal at that point has been made by the party to deter-

mine whether an ample supply is easily procurable. A report in writing on this subject will be sent by the returning vessel. In case of doubt an ample supply must be retained from the steamer's stores.

By the returning steamer will be sent a brief report of proceedings and as full a transcript as possible of all meteorological and other observations made during the voyage.

After the departure of the vessel the energies of the party should first be devoted to the erection of the dwelling-house and observatories, after which a sledge-party will be sent, according to the proposal made to the Navy Department, to the high land near Cape Joseph Henry.

The sledge-parties will generally work in the interests of exploration and discovery. The work to be done by them should be marked by all possible care and fidelity. The outlines of coasts entered on charts will be such only as have actually been seen by the party. Every favorable opportunity will be improved by the sledging-parties to determine accurately the geographical positions of all their camps, and to obtain the bearing therefrom of all distant cliffs, mountains, islands, etc.

Careful attention will be given to the collection of specimens of animal, mineral, and vegetable kingdoms. Such collections will be made as complete as possible; will be considered the property of the Government of the United States, and are to be at its disposal.

Special instructions regarding the meteorological, magnetic, tidal, pendulum, and other observations, as recommended by the Hamburg International Polar Conference, are transmitted herewith.

It is contemplated that the permanent station shall be visited in 1882 and 1883 by a steam-sealer or other vessel, by which supplies for and such additions to the present party as are deemed needful will be sent.

In case such vessel is unable to reach Lady Franklin Bay in 1882 she will cache a portion of her supplies and all of her letters and dispatches at the most northerly point she attains on the *east coast of Grinnell Land*, and establish a small depot of supplies at Littleton Island. Notices of the locality of such de-

pots will be left at one or all of the following places—viz., Cape Hawks, Cape Sabine, and Cape Isabella.

In case no vessel reaches the *permanent* station in 1882 the vessel sent in 1883 will remain in Smith's Sound till there is danger of its closing by ice, and, on leaving, will land all her supplies and party at Littleton Island, which party will be prepared for a winter's stay, and will be instructed to send sledge-parties up the *east side of Grinnell Land* to meet this party. If not visited in 1882, Lieutenant Greely will abandon his station not later than September 1, 1883, and will retreat southward by boat, following closely the *east coast of Grinnell Land,* until the relieving vessel is met or Littleton Island is reached.

A special copy of all reports will be made each day, which will be sent home each year by the returning vessel.

The full narrative of the several branches will be prepared with accuracy, leaving the least possible amount of work afterwards to prepare them for publication.

The greatest caution will be taken at the station against fire, and daily inspections made of every spot where fire can communicate.

In case of any fatal accident or permanent disability happening to Lieutenant Greely the command will devolve on the officer next in seniority, who will be governed by these instructions.

W. B. HAZEN,

Brigadier and Brevet Major-General,

Chief Signal Officer, U. S. A.

LIEUTENANT GREELY'S PLAN OF RELIEF EXPEDITION ADOPTED BY GENERAL HAZEN, AND FURNISHED LIEUTENANT GARLINGTON FOR HIS GUIDANCE.

FORT CONGER, GRINNELL LAND,
August 17, 1881.

Chief Signal Officer of the Army:

SIR: I have the honor to recommend that, in connection with the vessel to visit the station in 1882, there be sent some captain of the merchant service, who has had experience as a whaler and ice-master. Five enlisted men of the Army are requested to replace men invalided, or who are found to be unfit otherwise for the work. One of the number should be Signal Service Sergeant. Sergeant Emory Braine, Second Cavalry, and Sergeant Martin Hamburg, Company E, Tenth Infantry, are recommended most highly, and without they are physically or morally unfitted within the year their detail is requested. The two remaining men should be such as have had some sea experience. All the men should be rigidly examined as to their physical condition. The ice-master should be expected to see that every effort is made to reach this point by the vessel sent. In case the vessel cannot reach this point—a very possible contingency—a depot (No. A) should be made at a permanent point on the east coast of Grinnell Land (west side of Smith Sound or Kennedy Channel), consisting of ninety-six cans chocolate and milk, ninety-six cans coffee and milk, one-half barrel of alcohol, forty-eight mutton, forty-eight beef, one keg rum, forty-eight cans sausage, forty-eight cans mulberry preserves, two barrels bread, one box butter, forty-eight cans condensed milk, one-half barrel onion-pickles, forty-eight cans cranberry-sauce, forty-eight cans soup, twenty-four cans tomatoes, one gross wax matches (to be in water-tight case), one-eighth cord of wood, one wall tent (complete), one axe and helve, one whale-boat. At

Littleton Island, carefully cached on the western point, out of ordinary sight, with no cairn, should be placed an equal amount (Depot B), but no boat. A notice as to the exact locality should be left in the top of the coal (preferably in a corked and sealed bottle), buried a foot deep, which was left on that island. A second notice should be in the edge of the coal furthest inland, and a third in the Nares cairn, now open, which is on summit southwest part of island.

The second boat should be left at Cape Prescott, or very near, in order that, if boats are necessarily abandoned above that point, one will be available to cross to Bache Island and go to the southward. These boats should be not exceeding forty feet, and not less than twenty above high-water mark, and their positions should be marked by substantial scantling, well secured and braced, to the top of which a number of pieces of canvas should be well nailed, so that it may be plainly and easily seen. A second staff, with pieces of canvas, should be raised on a point which shows prominently to the northward, so a party can see it a long distance. Depots A and B should be made ready in St. John's, and be plainly marked and carefully secured.

The packages during the voyage should be easily accessible. Depot A should be landed at the farthest possible northern point. A few miles is important, and no southing should be permitted to obtain a prominent location. The letters and dispatches should all be carefully soldered up in a tin case, and then boxed (at St. John's) and marked, or put in a well-strapped, water-tight keg, and should be left with Depot A, if such depot shall be at, or north, or in plain sight of Cape Hawks, and the newspapers and periodicals left at Littleton Island. If Depot A is not so far north the letters and all mail should be returned to the United States. After making Depot B at Littleton Island, the vessel should, if possible, leave a record of its proceedings at Cape Sabine. If the party does not reach here in 1882, there should be sent in 1883 a capable, energetic officer, with ten (10) men, eight of whom should have had practical sea experience, provided with three whale-boats and ample provisions for forty (40) persons for fifteen months. The list of all provisions taken by me this year would answer exceedingly well. In case the

vessel was obliged to turn southward (she should not leave Smith Sound, near Cape Sabine, before September 15) it should leave duplicates of depots A and B of 1882 at two different points, one of which should be between Cape Sabine and Bache Island, the other to be an intermediate depot between two depots already established. Similar rules as to indicating localities should be insisted on. Thus the Grinnell Land coast would be covered with seven depots of ten days' provisions in less than three hundred miles, not including the two months' supplies at Cape Hawks.

The party should then proceed to establish a winter station at *Polaris'* winter quarters, Life-Boat Cove, where their main duty would be to keep their telescopes on Cape Sabine and the land to the northward. They should have lumber enough for house and observatory, fifty tons of coal, and complete meteorological magnetic outfit. Being furnished with dogs, sledges, and a native driver, a party of at least six (6) men should proceed, when practicable, to Cape Sabine, whence a sledge-party northward of two best-fitted men should reach Cape Hawks, if not Cape Collinson. Such action, from advice, experience, and observation, seems to me all that can be done to insure our safety. No deviation from these instructions should be permitted. Latitude of action should not be given to a relief party who on a known coast are searching for men who know their plans and orders.

I am, very respectfully, yours,

A. W. GREELY,

First Lieut. Fifth Cavalry, A. S. O., and Ass't, Commanding Expedition.

FROM GENERAL HAZEN IN ANSWER TO COMMANDER WILDES.

WASHINGTON, D. C., Dec. 19, 1884.

The Honorable the Secretary of War:

SIR: I beg to briefly review several misstatements of facts and errors of deduction which appear in the recent letter of Commander Wildes to the Secretary of the Navy, which has had a wide publication, and unless noticed may mislead. That letter had the double purpose of exculpation of himself and detraction of me, and I shall notice his several statements in their order:

First—I cannot at present speak of the Court of Inquiry.

Second—Commander Wildes denies that his ship was properly equipped for the service to which he was assigned, and states that she was not a "complete Arctic ship." It was ordered by the Navy Department to be properly equipped for Arctic service. Her "battery was taken off, all her ordnance stores were landed, and she was sheathed from her bow to a little abaft of foremast with oak planking spiked on the outside of her copper." Her sheathing was from "three to six inches in thickness." The special service to which she was assigned was to accompany the steam-sealer *Proteus* through Davis Straits and Melville Bay to Littleton Island as the reserve ship. By test she perfectly met every requirement of that service, the failure being only in her commander. She made the passage from Upernavik, through the ice of Melville Bay, to Littleton Island, a distance of about six hundred miles, in less than three days, making between those points the quickest time on record. He was ordered by his own immediate commander, Rear-Admiral Cooper, "to prepare the *Yantic* for the above-mentioned service," the order containing this admonition: "In making your preparations you will bear in mind that your

vessel may be absent a long time from port and depots of supplies, and may encounter severe and stormy weather and ice."

Third—Commander Wildes admits that when the *Proteus* was wrecked her designated reserve ship, the *Yantic*, which was ordered "to accompany" her, was distant more than one thousand miles, and attempts to excuse it. But he fails to state that he voluntarily separated from the *Proteus* by agreement with Lieutenant Garlington, in violation of both the letter and spirit of their orders, before the necessity for separation arose. It is a sound maxim that "no man shall stand excused by his own wrong." If Commander Wildes sailed from the Navy Yard at New York before the repairs on his ship's boilers were completed, he violated the orders of the Navy Department, which required that he should sail only "when in all respects in readiness for sea." He cannot excuse his neglect to land any of his stores at Littleton Island by the statement that "the limited quantity of provisions on board," and the expectancy of adding thirty-seven more men to his crew of one hundred and forty-six, and "the difficulties and disasters that thoroughly-equipped Arctic ships had experienced in these same waters"; for he did, in fact, add that number to his crew a few days later, transport them to St. John's, and yet had sufficient provisions on hand when he returned to New York to have supplied the combined parties of Greely and Garlington with full rations for ten months.

Fourth—His failure to return from Upernavik to Life-Boat Cove with Garlington, and there establish the winter quarters for the succor of Greely and his men, Commander Wildes attempts to explain by an equally "lame and impotent conclusion." The navigable season in Melville Bay was not about closing, as he states, on the "2d of September." It is a well-known fact, and there is no authority to the contrary, that Melville Bay is always navigable throughout the entire month of September, which he knew and reported. The United States steamship *Juniata*, a third-rate like the *Yantic*, and with similar sheathing, sailed in 1873 from St. John's as late as September 18, under the orders of the Secretary of the Navy, to renew her search for the *Polaris* and her crew by cruising to the

northward through Melville Bay, and her enterprising captain would have certainly attempted this passage had he not learned of the rescue of the *Polaris* party.

Commander Wildes was bound by his sacred duty to attempt the passage, or at least to ascertain by actual trial whether it was impracticable or not, and the trial would have been a success. He held in his hands the balances of life and death for Greely and his men, and solved it against them, his only purpose there being their rescue. Sir Allen Young, whom he cites to show that an attempt to cross Melville Bay in September would have been extremely hazardous, does not support his view. That navigator passed through the main pack, or middle passage, in the *Pandora* in 1875 as late as September 23. He was beset in the main pack for five days in July, the wind blowing southeast true, as he did not in his strong ship deem it necessary to diverge from the direct course and seek a safer route. If northerly winds had set in on September 2, as Commander Wildes stated, then, as experience has shown, the route by the westerly Cary Islands was open and practicable, if indeed it has ever closed. The sealers and whalers pass Upernavik, going northward by that route, as early as the 1st of May. Careful investigation has led me to believe it very probable that Melville Bay was navigable during the entire winter of 1883, as was the lower portion of Smith Sound.

Fifth—The plan of relief had been agreed upon by myself and Greely, the latter having formulated it in all its details, after his arrival at Lady Franklin Bay, and he earnestly besought that no deviation be permitted. He was familiar with the whole problem, and was more vitally interested in the success of the rescue than any other man possibly could have been, and the plan failed only because those sent to execute it violated their orders for its enforcement. Such a prearranged plan for the rescue by a co-operating party is the most sacred compact that man can make, and only its literal observance can be justified. Such is the testimony of the heroic commander of that Arctic expedition which bore the flag of our country farther to the north than the ensign of any other nation has ever waved.

His words on this point, written at Cape Sabine, have all the authoritative sanction that attaches to the declarations of the dying, and he is the best possible witness, because he was in a situation that best qualified him to judge. I was without authority to change the plan after it became impossible to so inform the officer with whom it had been concerted. I did supplement it in the direction of greater safety by securing a reserve ship, but the action of her commander rendered that provident measure of no avail.

Sixth—It is true, as stated by Commander Wildes, that no amount of provisions left on Littleton Island could have been of any service to Greely. But had the winter station been established there, as required by the plan of relief, the party there stationed could have crossed over to Cape Sabine and rescued Greely and his men.

There will probably never be seen such a spectacle again, of men sent by a generous government to rescue brave Arctic explorers, who, when on the spot and in midsummer, possess every facility for its accomplishment, bear away, without any attempt at rescue, into regions of sunshine and plenty the very succor which they were sent to extend, regardless of the fact that human lives were trembling in the balance, and leaving the very men whom they were sent to save without food and shelter to meet and endure the cold, darkness, and starvation of an Arctic winter. Commander Wildes states, as a reason for his hasty return without establishing a winter station at Littleton Island, that his men had no clothing adapted to an Arctic climate, and not even "matches enough to start a fire with." No comment is necessary here. He had been ordered to make "preparations" for a cruise to the west coast of Greenland into Arctic seas, and he had full power to make requisition for, and secure, all supplies needed for that special service; and yet he started on this voyage with a "tropical" outfit. He did not even provide boats enough to save his crew in case of a wreck, and carried a crew of one hundred and forty-six, taking on board a fresh draft of additional men on the very day he sailed, when fifty would have been sufficient, as he testified, if he had provided his ship with patent blocks and some additions to her apparatus.

Seventh—Commander Wildes seeks to impeach my administrative capacity as Chief Signal Officer of the Army by imputing a want of nautical knowledge, and cites my question to a witness as to the supposed custom of the sealers "to feel their way along with the bottom of the boat, rather than to sound, as is usual in our marine service." The rocks along the coast of Labrador and beyond are worn smooth by the constant attrition of the ice, and as sealing vessels touch their smooth surfaces they glide away unharmed, literally "feeling their way." Such is the report of Arctic sailors.

When Commander Wildes appeared before the Court of Inquiry, a tribunal that he knew was convened by order of the President of the United States, he protested in advance against having his "acts as commander of the naval expedition inquired into by the Court." He only consented to be sworn after the Recorder had replied to him as follows: "Commander Wildes, you are summoned as a witness, and appear as a witness, before the Court to answer any questions that may be put to you, and you have the same privilege that any other witness has of declining to answer any question that may tend to criminate you." He then consented to testify, but positively objected to being asked any questions by myself, although he readily answered all questions propounded to him by Lieutenant Garlington.

Upon his conduct the Secretary of the Navy says: "It does not, in the present aspect of the facts, seem to the Department that the *Yantic* properly fulfilled her duty as a tender to the *Proteus*—with which she had been ordered to proceed in company—while keeping twelve days behind her, and thereby defeating the objects of the expedition." This, and further communications of the Secretary of the Navy, virtually impute to Commander Wildes a gross violation of paragraph nine, Article eight, of the articles for the government of the Navy, which makes liable to such punishment as a court-martial may adjudge any person in the Navy who "is negligent or careless in obeying orders, or culpably inefficient in the performance of duty." It is no defence of Commander Wildes that his orders did not specifically define how he was to render such aid as, when on the spot, any emergency might make necessary. A supposed

loyal and watchful regard for duty, and the functions his commission clothed him with, was sufficient authority to enable him to deal with conditions that change every moment, and which no commander can foresee. Commander Wildes knew that the only purpose of the expedition was the relief of the Greely party, and that with himself rested the sole power to render that relief, Mr. Garlington having gone south to seek it, and being able to obtain it. When, as Commander Wildes says, there were two courses before him, either to aid Greely or Garlington, and he quickly decided upon the latter, he fails to say that it was easy to have rendered all the necessary aid for Greely with but two days' delay, and then given to Lieutenant Garlington all the aid he could have done at first. The power to rescue Greely and his party was in the hands of Commander Wildes, and it only required his willingness to do it, and he refused it, and sailed to the south thirty days before it was necessary.

I am, very respectfully, your obedient servant,

W. B. Hazen,

Brig. and Bvt. Maj. Gen., Chief Sig. Officer U. S. A.

FROM GENERAL HAZEN, AGAIN URGING THE TRIAL OF GARLINGTON.

SIGNAL OFFICE, WAR DEPARTMENT,
WASHINGTON CITY, December 20, 1884.

The Honorable the Secretary of War:

SIR: On the 6th instant I forwarded charges and specifications against First Lieutenant Ernest A. Garlington, Seventh Cavalry, late in command of the Greely Relief Expedition, for disobedience of orders and neglect of duty, requesting that he be brought to trial.

I have to again request this action, and that it may be done as speedily as circumstances will permit.

I am not debarred from saying to you that, in my opinion, and in that of the eminent legal adviser whose opinion I have sought, that neither the evidence nor facts warranted the very damaging opinions of the Proteus Court of Inquiry referring to me, as formulated in their proceedings.

My consciousness fails to discover any grounds for such action, and it is opposed by a record of thirty years of efficient public service. I made no special defence before the Court, excepting to show the falsity of the evidence that the relief outfit was faulty and insufficient, not supposing that any was necessary, and the findings of that Court reflecting so severely upon me are seriously harmful and unjust, and are not supported by facts or evidence.

Mr. Garlington defeated the purpose of that expedition by his wilful acts, which I am ready to prove, and I again ask, as a matter of simple justice to myself, to the truth of history, and in the interests of discipline and a high sense of duty, that he be brought to trial.

He was disobedient and neglectful of his duties from the be-

ginning, and ended with such utter neglect, inefficiency, and disregard of the highest and plainest duties that could rest upon any man, and even the common dictates of humanity under circumstances affecting life and death, and for which others were made responsible, that again, in the interests of simple justice, I ask for his speedy trial.

I enclose the opinion of my attorney, Judge T. J. Mackey, upon the subject, as referring to any effect the Proteus Court of Inquiry might be thought to have upon the question of his trial.

I am, sir, very respectfully, your obedient servant,

W. B. HAZEN,

Brig. and Bvt. Maj.-Gen., Chief Sig. Officer U. S. A.

LETTER OF THE HON. ROBERT T. LINCOLN, SECRETARY OF WAR, PRESENTING HIS VIEWS OF THE ACTION OF GENERAL HAZEN IN RELATION TO THE GARLINGTON RELIEF EXPEDITION, TO WHICH VIEWS THE PROTEUS COURT OF INQUIRY CONFORMED ITS CONCLUSIONS.

WAR DEPARTMENT, October 31, 1883.

To the Chief Signal Officer United States Army:

SIR: I have the honor to acknowledge the receipt of your letter of the 16th inst., enclosing the report of First Lieutenant E. A. Garlington, Seventh Cavalry, upon the expedition sent to the Arctic seas this summer for the relief of the International Meteorological Expedition, under the command of Lieutenant A. W. Greely, Fifth Cavalry, and also the letter of the Acting Chief Signal Officer of the 23d inst., enclosing Lieutenant Garlington's responses to your special interrogations.

It is needless to say to you that the disastrous failure of this relief expedition, upon the success of which depended, as it may perhaps hereafter be learned, the lives of a number of men, has widely excited public attention, and that there is a general desire to understand clearly the causes of this failure, and that it may be known where the responsibility therefor rests. It is apparent that two things at least were omitted, either one of which being done the general object of the expedition would have been accomplished up to a certain point, and the party, not seriously crippled, would have been left at a place from which it could have proceeded to execute its further plans for the relief of Lieutenant Greely and his party. The loss of the *Proteus* alone, happening where it did, might have been a matter of no im-

portance in this connection. It was fully contemplated that if it failed to reach Lady Franklin Bay it was to return to St. John's, leaving the relief party in winter quarters at or near Littleton Island. If Lieutenant Garlington had prudently made a base of supplies at or near Littleton Island it would have been a matter of little consequence to him or his party whether the *Proteus* went to St. John's, or, without loss of life, to the bottom of the ocean. On the other hand, if the *Proteus* had succeeded in reaching Lady Franklin Bay its extra stores would not, as I understand, have been needed by Lieutenant Greely, who was there abundantly provided for, and the taking of these extra stores past Littleton Island was not only useless for any purpose, as I conceive, but was a fatal risk. It would therefore seem that the directions contained in the memorandum mentioned in your letter, that Lieutenant Garlington should in going up establish a base of supplies, was a most prudent measure, the omission of which, after it had been once thought of, is as difficult to understand as it is to be deeply regretted. It is now clear that it was never an order to Lieutenant Garlington, but it is equally clear that, having seen it and having under your orders a discretion, he could not have done more wisely than to follow the particular suggestion contained in it above mentioned. I consider it necessary to inquire further into the history of this memorandum. It appeared as a loose paper enclosed with your letter of instructions to Lieutenant Garlington dated June 4, 1883, but it is not mentioned in that letter. I am advised by the Secretary of the Navy that, while he was preparing his orders for the *Yantic*, you furnished his department with a supposed copy of that letter, which, in like manner, did not mention the memorandum and did not enclose it. This copy, as did the original, covered four mentioned enclosures, but only one of them seems to have been like its original. The three other enclosures, as now seen, differ entirely from those with the original letter, and do not, of course, meet their own description as found in the body of the supposed copy of the original letter. After the telegraphic reports of the disaster were received I, upon the request of the Secretary of the Navy, directed the Acting Chief Signal Officer, in your absence, to prepare for, and

furnish to, the Secretary of the Navy a copy of your instructions to Lieutenant Garlington. This last, as furnished, contains only three enclosures, four being mentioned in the body of the letter. One of them was substantially like one of the enclosures with the original letter; another was substantially like one of those with the first copy above mentioned; and the third was marked "Enclosure 4" (an enclosure 4 being noted in the letter), and is a copy of the "memorandum" in question. These latter papers were, of course, supposed by the Secretary of the Navy and myself, in our conference, to be as stated, an authentic copy of your instructions to Lieutenant Garlington, and we, in our conferences, formed an opinion as to his having disobeyed an order, which it now appears he did not in fact receive as an order. I have had prepared, and herewith enclose, a tabulated statement and memorandum of the above-mentioned discrepancies, and some others of less importance existing in the above-mentioned papers, which it is thought ought to be alike, and I request to be advised what explanation there is, if any, for these discrepancies; and further, what the records of your office show to have been done with the above "memorandum" after its original preparation; and what, in case Lieutenant Garlington had himself been lost upon this expedition, would have prevented the resting upon his record of the imputation of having disobeyed a positive instruction as to landing his extra stores at or near Littleton Island on his way north. I may also add that I observe in the agreement between yourself and the owners of the *Proteus*, under which it started upon this expedition, a clause providing for the sale by the *Proteus* to Lieutenant Greely's party at Lady Franklin Bay of coal, if needed, to the amount of seventy tons. I beg that you will advise me why it was supposed that that party might need to have the benefit of a contract for fuel to that amount in case the *Proteus* had succeeded in reaching Lady Franklin Bay. The other important omission to which I have referred is the failure of Lieutenant Garlington to keep his ship in company with the *Yantic*. I have not observed in any of his papers a satisfactory explanation as to his reasons for permitting the *Proteus* to be separated from the *Yan-*

tic before their arriving at Littleton Island or its neighborhood. He was informed by his letters of instructions that the *Yantic* would accompany him as far as Littleton Island.

The assistance of the Navy in this way was regarded by us as adding greatly to the probable success of the expedition and as an almost perfect protection against great disaster. But, instead of sailing together, the movements of the vessels were so conducted that for all the good the *Yantic* was to Lieutenant Greely's party in any way, or to Lieutenant Garlington's relief party in saving their lives or their supplies, the *Yantic* might as well have left St. John's in 1884 as when it did. At the very outset at St. John's it appears from these papers that Lieutenant Garlington and the commander of the *Yantic* made an agreement embodied in an unsigned written memorandum that, upon leaving St. John's, the *Proteus* was to steam, and the *Yantic* was to go under sail; and the agreement does not seem to contemplate the probability of their being again in company until about August 25, at Pandora Harbor, not far from Littleton Island. As it happened, Lieutenant Garlington was still at Godhaven when on July 12 the *Yantic* arrived there, the commander of the *Yantic* saying that he would have to remain about a week to make some repairs and to coal. The *Proteus* remained four days of this week, and, without waiting the other three days, steamed away to become a wreck. Instead of using the *Yantic* as a convoy and companion, the *Proteus* was moved by written agreement, and by design, as though escaping from the *Yantic*.

I am not satisfied with Lieutenant Garlington's explanation of the causes which led him into the very grave, and perhaps fatal, error of going south from Littleton Island after the loss of the *Proteus*. If he had remained there he would have been succored by the *Yantic* in eight days, and a relief station for Lieutenant Greely's party would have been established. The loss of the *Proteus* would then have been little more than an inconvenience. I cannot understand how it was that while on July 22, on his way north, when, in his own words, "the weather was perfect, warm, calm, delightful, . . . there was

no ice as far as could be seen from the crow's nest with the aid of a very powerful telescope," he felt so safe, even away from all communication with the *Yantic*, that he saw no necessity for making a base of supplies at Littleton Island; yet four days later, at the same place, he did not suppose the *Yantic* could get up to where he was, and so put to sea with all his party in small boats in an Arctic ocean. The *Yantic* was bound to go there. Imagine, if possible, the reception which the commander of the *Yantic* would have had if he had returned home in September with no news of the *Proteus*, and without having been to Littleton Island. It is not forgotten that Lieutenant Garlington was not in a pleasant place, nor that he endured very great hardships; but he had volunteered for the performance of an important duty, with a full knowledge of the certain difficulties and of the desolation which would surround him, and the demand upon him was correspondingly great.

In his supplemental report Lieutenant Garlington says that "when the *Proteus* encountered the pack in Melville Bay no one on board that vessel thought the *Yantic* would cross the bay. This opinion was formed from the known intention of the commander of the *Yantic* not to put his vessel into the ice." This opinion was formed on the way north, and therefore prevailed when Lieutenant Garlington passed Littleton Island. It was in effect that no assistance could come from the *Yantic*, and that those on the *Proteus* must depend only upon themselves for the attainment of the two alternative objects of their voyage—first, to reach Lieutenant Greely with their ship, and, failing that, the establishment of a well-provided relief station at or near Littleton Island. The last object could have been assured by merely delaying for a few days their dangerous northward voyage; and it now appears that a delay of but a little more than a week would have permitted not only the establishment of the station, but would have put them again in close communication with the *Yantic*. For, as Lieutenant Garlington says, "As it turned out, to every one's surprise, the *Yantic* saw no ice in Melville Bay, and had an uninterrupted passage to

Littleton Island." Lieutenant Garlington's singularly unfortunate errors of judgment as to his own safety in going in one direction, and as to the *Yantic's* danger in coming from the opposite direction, were each productive of disaster. It appears to me that Lieutenant Garlington's supplemental report only tends to make an understanding of his failure to remain at or near Littleton Island after the loss of the *Proteus* more difficult than before. If he had no hope of the *Yantic* coming north, not from lack of enterprise in its commander, but on account of the assumed unfitness of the ship for such a voyage and the orders by which it was controlled, how is it that he expected to carry out the plan outlined in his supplemental report, where he says that he "determined to communicate with the *Yantic* as soon as possible to do so, to get from her all the supplies that could be spared, and establish a depot at Life-Boat Cove"? Life-Boat Cove is near Littleton Island. It is not to be supposed that he thought that the *Yantic* would accomplish more under his guidance than before, and would come north to Littleton Island or Life-Boat Cove to land supplies if its orders or its condition were such as to prevent its coming. It is even more improbable that Lieutenant Garlington could reasonably expect to cross a large expanse of Arctic sea in small boats and return in them, necessarily in a late season, with supplies and shelter for a winter station at Life-Boat Cove. Upon due consideration I have thought it proper to submit the case to the President, with my recommendation that he direct the appointment of a Court of Inquiry to investigate the fitting out of the Greely relief expedition transported by the steamer *Proteus*, having particular reference to the orders and instructions therefor, and for the conduct of the expedition and the arrangements made for assistance from the United States steamship *Yantic;* and also the general conduct of the expedition, including particularly the failure of the *Proteus* to keep in company with the *Yantic* up to Littleton Island or its neighborhood, and the failure to establish a well-provided relief station at or near Littleton Island; and with directions to report their findings and their opinions as to whether the conduct of any officer of the

Army in the premises calls for further proceedings before a court-martial, and the reasons for the conclusions which they may reach.

The President has thereupon directed that a Court of Inquiry be appointed, as recommended, and the necessary orders will be at once issued.

I am, very respectfully, your obedient servant,

ROBERT T. LINCOLN,

Secretary of War.

GENERAL HAZEN'S MILITARY RECORD.

(*Letter from T. J. Mackey in Washington Post.*)

WEBSTER LAW BUILDING,
WASHINGTON, March 16, 1885.

To the Editor of the Post:

There appeared in the *National Republican* of the 14th inst. the following: "The other" (meaning General Hazen), "in public estimate, is regarded a very incompetent and unruly officer. The sensational has played a very important part in the career of General Hazen."

This being in a newspaper owned by one of the late secretaries who made the decision not to send relief to Greely after the return of the *Yantic* in 1883, and at a time when he personally controlled the paper, and being printed in the editorial column, it is fair to suppose that it was penned by him, and with the purpose to affect the judgment of the court-martial having the subject under consideration.

He meant to say that General Hazen is a very incompetent officer, and his career is mainly sensational, and he is insubordinate.

Unfortunately for the truth of these statements, the writer is not sustained by the record.

General Hazen has never engaged in contests except in self-defence when wantonly assailed. There is not a fact anywhere in his record to support the charge of incompetency. The record does show that in 1858 his department commander, General Wool, publicly commended him in the highest manner for zeal and efficiency. It shows that in 1859 the inspector of his department, Lieutenant-Colonel (now General) Joseph E. Johnston, officially reported: "The second lieutenant, Hazen, was severely wounded a week ago in the third successful pursuit

of Indians, in which he has exhibited activity, perseverance, and courage." It also shows that he was breveted by the government for this service for "gallantry in two general engagements with the Indians." It shows that this same officer (General Johnston), as a general in the Confederate service, reports substantially that, but for the service of General Hazen with his command at Stone River, the Confederates would have gained that battle. He (General Johnston), now being in this city, still maintains it. It shows that his command held the only position of the original Union line of the morning at that battle. It shows that his command flanked the besieging army at Chattanooga, gaining Brown's Ferry and Lookout Valley by passing the enemy's flank in fifty-two boats at night when the siege of our Army was raised. It shows that he with his command first gained the crest and carried Mission Ridge at the assault in that battle. It shows that he was most efficiently engaged in the principal actions, including Resaca, Pickets Mill, and Jonesboro, in the Atlanta campaign.

Secretary Stanton appointed General Hazen a major-general December 13, 1864, and wrote in his commission as his reasons: "For long and faithful service of the highest character, and for gallant service in the capture of Fort McAllister." General O. O. Howard, in whose army General Hazen served the last year of the war, has said: "I say, and always have said, that General Hazen is one of the best and most efficient officers I have ever known." General Sherman, with whom General Hazen served during a great portion of the war, says, in a communication dated June 10, 1883: "I was not in the Army during his (General Hazen's) earlier years of service, and can only recall him to memory from and since the battle of Shiloh; but his military record from the day of his first commission is perfect, and is such as any man may be proud of. He is an officer of the highest professional attainments, of the best possible habits, and is very particular in the choice of his associates." The record shows that at the beginning of the war he was a second lieutenant of infantry, and at its close the commander of an army corps, having gained his successive steps by gallant conduct in battle. General Gibbon, the Inspector General of the

Department of Dakota, October 3, 1879, names Fort Buford, General Hazen's post, as in the best police of any in the department.

Professor Cleveland Abbe, of the Signal Service, says, in his testimony before the recent joint commission of Congress to investigate the Signal Service and other scientific bureaus, "The Signal Service is now in the highest state of efficiency," and then explains in detail how it has become so, "due to its admirable and complete organization and administration in every detail, brought about by General Hazen."

These stories of incompetence are puerile falsehoods of a syndicate of defamation, made up of General Hazen's bitter enemies, who have tried unavailingly every other charge against him and have now come to this one, but his most ample record of thirty-four years' public service does not show one word to justify this charge, and the record is unassailable. Besides, it is an unmanly act for a man to attack another when at the bar of justice.

T. J. MACKEY,

Counsel for General Hazen.

LETTER FROM J. W. RANDOLPH IN ANSWER TO THE ASPERSIONS CAST UPON SERGEANT BRAINARD BY COLONEL CHAUNCEY McKEEVER.

CLEVELAND, O., Sept. 6, 1884.

GEN. W. B. HAZEN,

Chief Signal Officer U. S. A., Washington, D.C.:

DEAR SIR: The Washington specials to the Cleveland papers do Sergeant Brainard and comrades great injustice. The specials referred to are alleged interviews with a prominent Army official "high in authority." That the said prominent official "high in authority" is some one who is desirous of injuring Sergeant Brainard is very evident, as the specials show on their face genuine malice.

There is not to-day in the whole world a man with a higher regard for honor, decency, and the good of the United States Army than Sergeant Brainard. The assertions made by his unknown traducer that he is degrading the service by making a disgraceful exhibition of himself in dime museums is false. Neither he nor his comrades are on exhibition as "freaks of nature" or "monstrosities," but simply appearing on the stage, when, with the assistance of Polar maps, they deliver very interesting lectures.

As to the respectability of the place where they are now under engagement I would refer you to *any* citizens of Cleveland. The museums where they are to appear for the next ten weeks are the most respectable places of amusement in the cities where they are located, and attended by the very best people. The "survivors" are very popular with the people. As an evidence of their popularity, the dignitaries of the Cincinnati Exposition, the mayor and city officials, have tendered them a reception, and from present indications it will be a

most enthusiastic reception. I am paying them one thousand dollars per week, which I am sure you will agree is a very handsome remuneration, and the travel is certainly beneficial to their health. I sincerely trust that nothing may occur to jeopardize Sergeant Brainard's prospects for promotion. If ever any one deserves it I am sure it is he. I crave your indulgence for this intrusion upon your valuable time.

I am, sir, yours very truly,

J. W. RANDOLPH.

THE DELINQUENCY OF COMMANDER FRANK WILDES PROVED BY THE LOG-BOOK OF THE "YANTIC."

It has come to my knowledge, since the Introduction to this work was stereotyped, that certain entries in the log-book of the *Yantic* directly contradict the official report of Commander Wildes in several vital particulars affecting the question of that officer's responsibility for the Arctic tragedy.

I deem it due to historic truth that the facts thus derived from an indisputable record should be given to the public.

I cite from Commander Wildes' report of the cruise of the *Yantic* as follows:

"Near Cape Dudley Digges I ran close in, but could see no opening; the ice was packed close, and reached to the land twenty miles distant. . . .

"At noon of this day (August 10), having ice in all directions, except S. E., and unable to see but a short distance in that direction, the land being unapproachable, our supply of coal greatly diminished, the imprudence of remaining in this vicinity became sufficiently obvious, and I bore up for Upernavik, which was reached August 12, having thick, rough weather during the passage."

The entry in the log-book of the *Yantic* shows that at the very hour that ship headed southward for Upernavik, on August 10, Cape York was in sight, distant about twenty-five miles to the southeast, and *was* approachable, there being no ice within view sufficient to obstruct her passage to that point.

The report of Lieutenant Garlington shows that on that very day the advance of his party, under Lieutenant Colwell, was encamped at Cape York, and the entire party remained there until August 16.

Had Wildes landed at Cape York before bearing up for Upernavik, as stated, Garlington would have there been intercepted and would have been obliged to return on the *Yantic* and establish the winter station at Life-Boat Cove, as ordered by General Hazen, in pursuance of the plan of Lieutenant Greely.

That having been done, the most appalling disaster in the history of American Arctic exploration would never have transpired.

That disaster was too dire and revolting in its incidents to be compensated for, even by the tall, heroic manhood of the redoubtable Schley, whose dauntless spirit, exhibited in the rescue of its survivors, has added another unfading laurel to the already full wreath of the United States Navy.

The same accusatory log-book shows that so far from being impelled to hurry away from the vicinity of Cape York by his "greatly diminished supply of coal," Commander Wildes had then on board the *Yantic* one hundred and thirty (130) tons of coal, or within forty tons of her full coal capacity, an amount that could have been made to last fifteen days, and he was only two days' steaming from coal supplies at Upernavik.

The full significance of Wildes' failure to make a persistent effort to effect a landing at Cape York will be best appreciated by the fact that he had explicit notice that the wrecked Garlington party, including an officer of Wildes' own ship, were retreating on that point.

That notice was given in the record which Garlington deposited at Pandora Harbor on July 27, and which Wildes found and read on August 3, as stated in his official report.

I make the following extract from that record :

"I have forty days' full rations for my party. Will go south, keeping close into shore as possible, and calling at Carey Islands, to Cape York, or until I meet some vessel. Hope to meet United States steamship *Yantic*, or the Swedish steamer *Sophia*, which should be about Cape York."

Had Commander Wildes been without any special mission in those waters, and had learned casually of the wreck even of a party of foreign explorers who were retreating southward to Cape York in open boats, the dictates of common humanity would have required that he should exhaust every effort to effect their rescue.

But sixteen of those thirty-seven shipwrecked men were his own countrymen, who had been charged with the duty of rescuing twenty-five other American citizens who were then greatly

imperilled in the polar zone, and the orders received by Commander Wildes from his government contained the following clause:

"In view of the possibility of the destruction of the *Proteus*, it is desirable that you should proceed as far north as practicable in order to afford succor to her officers and men in the event of such an accident."

With these orders before him he committed those men in their frail yawl-boats to the hazard of threading the ice of Melville Bay for nearly two hundred miles, and that too when he had at least fifty days of the navigable season yet left in which to continue the search for them, and they were then within easy reach of his ship, at the very spot at which he had been notified to seek them, and where they had gone to seek him.

If on these facts appearing Commander Wildes is not brought to the bar of a court-martial, then Article 9 should be stricken from the Articles for the government of the Navy.

I quote from that article as follows:

"Such punishment as a court-martial may adjudge may be inflicted on any person in the Navy who is negligent or careless in obeying orders or culpably inefficient in the performance of duty."

T. J. MACKEY.