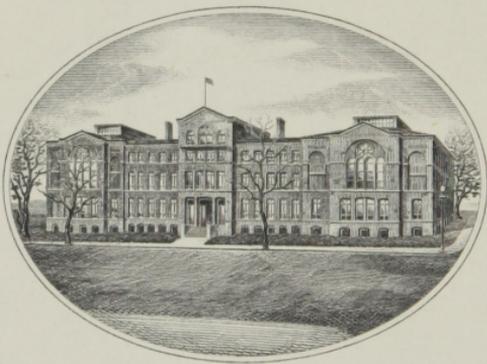


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PROCEEDINGS

OF A

COURT MARTIAL

FOR THE TRIAL OF

Edward ✓
SURGEON B. M. BYRNE,

HELD AT

FORT MOULTRIE, S. C.

ON

MARCH 24th, 1859.

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P R E F A C E .

My object in publishing the proceedings of this Court Martial in full is, that all the facts relating to the unfounded slander on which this trial was based, may be spread before the public, to enable it to make its *own* deductions, and to form its *own* judgment on the subject. These proceedings were taken down by a competent phonographic reporter, Mr. J. S. Woodruff, and their accuracy was tested by comparison with the daily record of the Judge Advocate.

As this record speaks too clearly for itself to be misunderstood, and as I trust that the public, as well as the Army, will give it a careful perusal, I deem it quite unnecessary, after having been fully acquitted by the highly honorable Court that tried me, to make any comments on the testimony.

In my letter to Col. Gardner, dated October 12th, 1858, I asserted that the accusation which was made against me was "a base slander without the *shadow* of foundation;" and whoever carefully reads this trial will, I doubt not, arrive at the conclusion that that assertion is fully sustained by the evidence, and that it is literally true. I entertain no apprehension whatever, that ~~every~~ *any* man who reads this record will ever infer that my acquittal was in any degree aided by the benefit of a *doubt*; or that one tittle of evidence has been adduced against me which has not been fully met, and conclusively refuted. It will be perceived that although the first charge was a defective and illegal one, not having specified *any circumstances*, I waived all objection to it, in order that there might be a full development of the facts, and that those facts are so overwhelmingly in my favor as to paralyze even the slanderer's tongue.

I invite special attention to the testimony of that witness whose *opinion* formed the *only* evidence (at all worthy of notice) that was produced against me.

Without further remark, I confidently submit this record to public scrutiny, entertaining no doubt that the verdict of the public, and that of the whole Army, will be the same as that of the eight just, enlightened, and honorable judges who have decided the case.

B. M. BYRNE,

Surgeon United States Army, Fort Moultrie, Charleston Harbor.

FIRST DAY.

Proceedings of a General Court Martial, which convened at Fort Moultrie, South Carolina, by virtue of the following special orders, viz :

“WAR DEPARTMENT, ADJUTANT GENERAL’S OFFICE, }
Washington, March 12th, 1859. } ”

[*Special Orders, No. 41.*]

By direction of the President of the United States, a General Court Martial is hereby appointed to meet at Fort Moultrie, South Carolina, at eleven o’clock, A. M., on Thursday, the twenty-fourth day of March, 1859, or as soon thereafter as practicable, for the trial of Surgeon Bernard M. Byrne, Medical Department U. S. Army, and such other prisoners as may be brought before it.

DETAIL FOR THE COURT.

Brevet Brigadier General Sylvester Churchill, Colonel Inspector General’s Department.

Brevet Colonel Charles A. May, Major 2nd Dragoons.

Brevet Col. Carlos A. Waite, Lieutenant Colonel 5th Infantry.

Brevet Colonel Justin Dimick, Lieutenant Colonel 2nd Artillery.

Brevet Lieut. Colonel Daniel T. Chandler, Captain 3rd Infantry.

Brevet Lieutenant Colonel William H. T. Walker, Major 10th Infantry.

Brevet Lieutenant Col. Edward J. Steptoe, Major 9th Infantry.

Lieutenant Colonel George B. Crittenden, Regiment Mounted Riflemen.

Brevet Major William A. Nichols, Captain Adjutant General’s Department.

Captain *Samuel Jones*, 1st Artillery, Judge Advocate.

No other officers than those named, can be assembled without manifest injury to the service.

By order of the Secretary of War.

S. COOPER.

Adjutant General.”

FORT MOULTRIE, South Carolina, }
11 A. M., March 26th, 1859. }

The Court met pursuant to the foregoing order, and adjournment from the 24th instant.

PRESENT :

Brevet Brigadier General Sylvester Churchill, Colonel Inspector General’s Department.

Brevet Colonel Charles A. May, Major 2nd Dragoons.

Brevet Col. Carlos A. Waite, Lieutenant Colonel 5th Infantry.
 Brevet Colonel Justin Dimick, Lieutenant Colonel 2nd Artillery.
 Brevet Lieutenant Colonel Daniel T. Chandler, Captain 3rd
 Infantry.

Brevet Lieutenant Col. Edward J. Steptoe, Major 9th Infantry.
 Lieutenant Colonel George B. Crittenden, Regiment Mounted
 Riflemen.

Brevet Major William A. Nichols, Captain Adjutant General's
 Department.

Captain *Samuel Jones*, 1st Artillery, Judge Advocate.

ABSENT :

Brevet Lieutenant Colonel William H. T. Walker, Major 10th
 Infantry. Cause of absence not known.

The Court then proceeded to the trial of Surgeon Bernard M. Byrne, Medical Department U. S. Army, who was called before the Court, and having heard the order appointing the Court read, was asked if he had any objection to any member named in the order, to which he replied in the negative.

The Court was then, in the presence of the accused, duly sworn, by the Judge Advocate, and the Judge Advocate was duly sworn by the presiding officer of the Court.

Surgeon Bernard M. Byrne applied to the Court to be permitted to introduce William E. Martin, Esq., of the Charleston bar, as his counsel. The Court granted the application, and William E. Martin, Esq., appeared as counsel for the accused.

The accused, Surgeon Bernard M. Byrne, Medical Department, U. S. Army, was then arraigned on the following charges and specifications, preferred by order of the Secretary of War.

Charge 1st.—Neglect of duty, to the prejudice of good order and military discipline.

Specification.—In this, that Surgeon Bernard M. Byrne, Medical Department U. S. Army, was stationed at Fort Moultrie, S. C., on or about the 9th day of September, 1858, and was then and there the only medical officer of the Army, when a fatal and epidemic disease, known as yellow fever, prevailed among the troops at said post, whereof many died; nevertheless he, the said Byrne, did then and there neglect and abandon his duty, to attend the the sick of said post, and did neglect his said duty from on or about the 9th day of September, 1858, until on or about the 11th day of October, 1858.

Charge 2d.—Conduct unbecoming a gentleman. *Specification.* In this, that Surgeon Bernard M. Byrne, Medical Department, U. S. Army, did, at Fort Moultrie, South Carolina, on the 12th day of October, 1858, in an official letter of that date to his commanding officer, Brevet Colonel J. L. Gardner, U. S. Army, falsely state as follows: "At the time I was taken ill, the health of the command (meaning at Fort Moultrie, South Carolina,) was better than it had been at any time for several months previously;" and as follows: "there being no other sick man" (meaning other than one Bright) "in hospital at the time;" whereas, in truth and in fact, at

the time when the said Byrne alleges that he was taken ill, viz: on the 8th of September, 1858, the health of the command at Fort Moultrie, South Carolina, was worse than it had been for several months previously. Epidemic yellow fever was on the increase, and there were eight sick men in hospital at said post.

To which charges and specifications, the accused pleaded as follows:

To the specification to first charge. Not guilty.

To the first charge. Not guilty.

To the specification to second charge. Not guilty.

To the second charge. Not guilty.

Brevet Colonel J. L. Gardner, Lieutenant Colonel 1st Artillery, a witness for the prosecution, was duly sworn.

Question by Judge Advocate.—Who was in command of this post, Fort Moultrie, on the 9th day of September last?

Answer.—I was.

Question by Judge Advocate.—How long previously had you been in command?

Answer.—From the 16th of June last.

Question by Judge Advocate.—Did you remain in command of this post continuously from the 1st of September until about the middle of October last?

Answer.—Yes; from the 16th of June last continuously down to this date.

Question by Judge Advocate.—What medical officer of the army was stationed here on or about the 9th of September last?

Answer.—The accused, Surgeon Bernard M. Byrne, Medical Department, U. S. Army.

Question by Judge Advocate.—Was any other medical officer of the army stationed here at that time?

Answer.—No.

Question by Judge Advocate.—Did any epidemic disease prevail among the troops at this post, on or about the 9th of September last?

Answer.—Yes, sir; the disease usually called yellow fever.

Question by Judge Advocate.—Did it prevail to any great extent?

Answer.—There had been four cases before the 9th of September, and they succeeded each other in rapid succession from that date, judging by the number of deaths which occurred on the 10th, 11th, 12th, 13th, and so on, of September.

Question by Judge Advocate.—About how long did the yellow fever prevail among the troops at this post; between what dates?

Answer.—From the 12th of August until the 30th October.

Question by Judge Advocate.—Were there many deaths among the troops here from yellow fever?

Answer.—Just twenty-nine in that period.

Question by Judge Advocate.—Did Surgeon Byrne, as the medical officer at the post, attend the sick of the command during the prevalence of the yellow fever?

Answer.—At two different times of that period.

Question by Judge Advocate.—Specify the times.

Answer.—From the 12th of August until he went on the sick report, including the 8th of September. He was reported as sick on the morning report of the 9th September. And again he attended the sick from and including the 11th to the 30th of October. That is, he attended twenty-eight days before he went on the sick report, and twenty days after he came off, making forty-eight days. He was on the sick report thirty-two days continuously; making eighty days, the period during which the yellow fever prevailed at this post.

Question by Judge Advocate.—Do you know if Surgeon Byrne attended the hospital, and the sick among the troops, at any time while he was on the sick report?

Answer.—None, to my knowledge.

Question by Judge Advocate.—Did you see Surgeon Byrne at any time while he was on the sick report?

Answer.—Yes; frequently.

Question by Judge Advocate.—Had you any conversation with Surgeon Byrne, after he ceased to attend to the sick, on the subject of his return to duty; if so, how often, and what was the substance of the conversation?

Answer.—Yes, as nearly as I recollect, it was ten or twelve days after the doctor went on the sick report, that finding rumors and insinuations afloat, to the effect that he, Surgeon Byrne, was shamming sickness to avoid exposing himself to the epidemic, I felt it my duty, to the service and himself, to go to him, and suggest, as delicately as I could, that it would be well for him to make an effort, though a painful one, to visit his hospital, saying he might be carried if unable to walk. In doing so, I simulated as a reason for the suggestion, that Dr. L'Engle, who was then in charge of the hospital, was new to the post, had not regularly relieved him, and that it might facilitate his labors. The friendly motive of this suggestion was evidently misunderstood by the doctor, who received it with evident ill-temper, replying with asperity that when he was ready for duty, he should so report. Some few days after, from three to five, when these insinuations had assumed the form of open impeachments of his character, I went again to the doctor, and informed him explicitly of this state of things; that I thought he owed it to himself and the service to meet such impeachments openly, by demanding a court of inquiry; telling him that as the necessary ground for such a proceeding, he might name me as responsible for the assertion that such things were being said. This communication was received as the former in ill-temper, and he demanded of me the names of the utterers of such false and base insinuations as he called them, applying to them very opprobrious epithets. He said he would hold them to personal responsibility before a Court Martial for their slanders. He positively refused my advice, and said he would trust to his well-known character, and not gratify their malice by such a resort. I

complied with his demand, by naming the officers of the garrison, and a citizen physician, who was named to me as one who had said something of that sort; and that I had been informed that the whole community, civil and military, had lost confidence in him.

Question by Judge Advocate.—During this last conversation with Surgeon Byrne, did he say anything as to when it was probable he would resume his duty?

Answer.—No, sir; not to my recollection.

Question by Judge Advocate.—Did he at any time whilst he was on the sick report, give you any information as to when he would probably resume his duty?

Answer.—I think he mentioned during the early part of his sickness that he hoped to get out in a few days.

Question by Judge Advocate.—You speak of his sickness. Do you mean to say Surgeon Byrne was sick during the time his name was on the sick report?

Answer.—Yes. I considered him sick. He was on the sick report, and I considered him sick of course.

Question by Judge Advocate.—Was he reported to you as sick, every day during the time he was not attending the sick?

Answer.—Yes, sir.

Question by Judge Advocate.—During the first eight or nine days after he ceased to attend the sick, who reported him to you as sick?

Answer.—During that time no one made any formal report of his sickness. A citizen physician, Dr. Ravenel, attended to the sick, but made no report. I think his name never appeared on the sick report.

Question by Judge Advocate.—Who first reported to you that Surgeon Byrne was sick?

Answer.—I really do not know; but that same day I went to see him. I heard that he was sick, but do not remember looking at the sick report.

Question by Judge Advocate.—About what was the strength of the command, when the yellow fever broke out?

Answer.—Total, one hundred and forty-seven (147).

Question by Judge Advocate.—During the prevalence of the yellow fever, were any troops detached from this post; if so, about how many, and at what time?

Answer.—Yes. On the 29th of August, a detachment of twenty-two, total, to Castle Pinckney, in charge of the Africans. On the 31st, two days after, an addition of ten. In the meantime, the first detachment had been moved to Fort Sumter. On the 11th of September, another addition of twenty-one. During the sickness, this number was reduced by the sick who were sent here, so that finally only thirty-two joined in a body. Lieut. Davis was in command of the detachment.

Question by Judge Advocate.—What was the general health of the command at this post, for three or four months previous to the 9th of September last?

Answer.—I have no recollection. I was only in command from the 16th of June.

Question by Judge Advocate.—Was there any epidemic disease at this post before the yellow fever broke out?

Answer.—I am not aware of any.

Question by Judge Advocate.—On or about the 9th of September last, what was the health of the command as compared with what it had been for several months previously?

Answer.—I cannot answer the question explicitly from my recollection.

Question by Judge Advocate.—Can you say whether, on or about the 9th of September, the health of the command was better or worse than it had been for some time previously?

Answer.—The sick list rapidly increased after the 9th. I cannot say what it was before.

Question.—Had there been any deaths from yellow fever before about the middle of August?

Answer.—The first case that occurred and was spoken of as the yellow fever, was on the 12th of August; that man died on the 16th of same month.

Question by Judge Advocate.—Were there any cases and deaths in the garrison from yellow fever, between the 1st and 9th of September?

Answer.—Yes, there were two on the 4th of September, Privates Holden and Zimmerman.

Question by Judge Advocate.—You say the yellow fever broke out in the garrison about the middle of August. On or about the 9th of September did you regard the epidemic as on the increase or decrease?

Answer.—It was my impression that it was on the increase at that time. Not being a medical man, however, I could not judge of it; the grounds of that impression were that we lost one on the 16th and one on the 30th of August, and two on the 4th of September. It did not turn out so, however, as we had no other death until the 11th.

Question by Judge Advocate.—Previous to about the 9th of September, was there much alarm or apprehension on this island, in regard to the fever.

Answer.—There was no alarm, whatever, in regard to it, before the 12th of August, when the first case occurred. There was much alarm after that.

Question by Judge Advocate.—Between the 12th and 30th August, was there much alarm and apprehension in regard to yellow fever.

Answer.—Yes, there was alarm. I cannot say how much; there had been but one death up to the 30th of August.

Question by Judge Advocate.—Was there any thing of a panic on the Island in regard to the fever, previous to the 30th of August?

Answer.—No, sir; not to my knowledge.

Question by Judge Advocate.—Was there any thing like a panic on the subject between the 1st of September and middle of October?

Answer.—Yes; there was a very great panic. The alarm increased very much; so much that persons would not pass near the fort—would avoid it. We had about thirty deaths in connection with the garrison within that time, besides those which had occurred previous to that date.

Question by Judge Advocate.—Was there any thing in the health of the command in the first week of September to increase the alarm?

Answer.—In the first week of September there were two deaths from yellow fever, and that increased the alarm.

Question by Judge Advocate.—Who attended and treated the two cases that occurred in August?

Answer.—Surgeon Byrne.

Question by Judge Advocate.—Did Dr. Byrne at the time report those as yellow fever cases?

Answer.—I think the first case that occurred, he named as gastritis; but after the man died it was generally considered as yellow fever, and a very clear case of it. He did not report officially of what disease the man died. The second case that occurred was my servant woman. In conversation with him on that case, probably the first day of its occurrence, he thought with me that it was a case of yellow fever. At the instance of my family I asked him again, after he had called in Dr. Ravenel in consultation. He then said that Dr. Ravenel did not so consider it, but a case of high bilious fever, complicated with a peculiarity which obtains only in females, and that this had given it the appearance which alarmed my family, and this opinion he concurred in. I thought at the time that the doctor's remark was a sort of a white lie, justified by medical ethics, to avoid creating alarm in my family. After her death he plainly admitted that it was a case of yellow fever; but I ought to add that I cannot tell how long after her death he admitted this, but I suppose in a few days.

Question by Judge Advocate.—Did you ever hear Doctor Byrne admit that the first case you have spoken of was yellow fever?

Answer.—I do not remember his speaking of it in that point of view.

Question by Judge Advocate.—Look at the book now handed to you, and say if you recognize it as the official report of the sick at Fort Moultrie, at any time you have been in command?

[The Judge Advocate handed to the witness a book in manuscript.]

Answer.—Yes. I have no doubt that it is.

Question by Judge Advocate.—Is there any report of the 8th of September last? If so, by whom is it signed?

Answer.—There is, and it is signed by Doctor Byrne.

Question by Judge Advocate.—Is there any report of the 9th of September? If so, by whom is it signed?

Answer.—There is no report signed after the 8th until the 16th, inclusive, and the report of the 17th is signed by Dr. L'Engle. In that interval Dr. Ravenel was in charge of the Hospital, and did not sign the report. I suppose it was made out and sent in by the Hospital Steward without signature.

The Judge Advocate laid the book before the Court in evidence.

And at five minutes before three o'clock, P. M., the Court adjourned, to meet again at eleven o'clock, A. M., on Monday, the twenty-eighth.

SECOND DAY.

MONDAY, March 28th.

The Court met pursuant to adjournment. Present the same members as yesterday and the accused and his counsel. The journal of Saturday was read, and the examination of Colonel J. L. Gardner was resumed by the Judge Advocate.

Question.—Colonel, was it not at any time between the 8th and 17th of September, officially reported to you that Dr. Byrne was sick?

Answer.—I think it was, verbally. I then visited him and found that he was on his sick bed.

Question.—Did you consider Surgeon Byrne's health such as to make it necessary that you, as commanding officer of the post, should procure medical attendance for the troops?

Answer.—I considered it necessary to have medical attendance and spoke to Dr. Byrne on the subject.

Question.—Between the 8th of September and 11th of October last, was it ever officially reported to you that Surgeon Byrne was not disqualified by sickness from attending to his post?

Answer.—(Witness produced a letter.) It might have been two or three days after the date of this letter. Cannot say how many. Or it might have been a few days before the date of the letter, which is dated the 10th. Say it might have been the 7th or perhaps earlier. Cannot be particular myself as regards the time, but I rather think it was some days before that; say then about the 4th, not meaning to be particular but as near as any. Dr. L'Engle stated to me, (he was the acting assistant Surgeon of the post,) that in his opinion (here witness read from the letter) Dr. Byrne was not disqualified by his rheumatic affection from prescribing for the sick in the hospital. An objection was here made by the counsel for the defence, who said if the letter was not to be offered in evidence it should not be read. If it was to be offered there would be no objection.

The Judge Advocate stated that it was to be so offered and the objection was withdrawn.

Question.—Was it on or after the 26th September last the communication was received by you?

Answer.—I suppose it was about the 4th or 5th of October that I was sent a letter which repeats this very language.

Question.—Was this report made in writing?

Answer.—No. It was first verbally. Afterwards I received this letter dated the 10th of October. It is the written report and which I submit. (Letter handed to the Judge Advocate who proposed to read it.) Defendant's counsel requested to see the letter. There being no objection the Judge Advocate read as follows:

FORT MOULTRIE, Oct. 10, 1858.

Colonel: I have the honor to acknowledge the receipt of your note of this morning asking me to repeat Dr. Byrne's message to you, and to repeat what I had said to you relative to the allegations communicated to him by you. The doctor asked me to say that he would like very much to see you again and have another talk on the subject, regretting that he had taken your communication with so much christian forbearance. My own remark to you was, that Dr. Byrne was not in my opinion disqualified by his rheumatic affection from prescribing for the sick in hospital on and after the 26th of September last.

Very respectfully your ob't serv't,

Signed:

WM. J. L'ENGLE,

Assistant Surgeon, U. S. A.

To Brev't Col. Gardner, 1st Regiment Artillery Commanding.

Question.—Did you on or about the fifth of September last, announce to the troops of this post the prevalence of yellow fever here, and warn them against unnecessary exposure?

Answer.—I did warn them, but do not remember the dates. I warned them especially against drunkenness.

Judge Advocate.—Did you warn them that yellow fever was here?

Answer.—Yes I did. I must have alluded to that fact.

Question.—Did you make them an address on the subject?

Answer.—I did, sir. I had the guard house cleaned at the time as a precautionary measure.

Question.—Was this before or after the death of Holden and Zimmerman?

Answer.—It was, I think, immediately subsequent to the death of one of them, I do not remember which; but it was after the death of one or the other of them. It might have been after the death of Jones. I know I made them an address and told them if they did not leave off drinking, we should have half of them in the myrtle grove.

Judge Advocate.—I have not got your answer exactly, as to the time of the address.

Answer.—It was immediately subsequent to the death of one who died of that disease, or as I considered it, yellow fever. The myrtle grove is the place of burial.

Judge Advocate.—You told them before you got through the

disease, or before the disease should terminate. What disease did you allude to?

Answer.—The disease then prevailing, and which I considered as yellow fever.

Question.—Did Surgeon Byrne agree with you at the time that the disease was yellow fever?

Answer.—I do not remember having a conversation with him at the time upon the subject. It was my own impression and a most painful one it was.

Question.—Had Surgeon Byrne suggested to you the propriety or importance of making this announcement, that yellow fever was prevalent, to the troops?

Answer.—No, sir. He had not consulted with me in the least. It was my own movement altogether.

Question.—Was Surgeon Byrne present when you made this address?

Answer.—No, sir. I think not. I do not remember his being there. I certainly have not thought of the incident since. My recollection of it is quite imperfect, except as to the essence.

Question.—During the time Surgeon Byrne was reported sick, was he confined to the bed or house?

Answer.—He was confined to his house, sir. Perhaps the last third of the period he was occasionally about. I saw him hobbling on his crutches, and he was so at the time he made me the first communication. When I made my first suggestion to him he was confined to the house.

Question.—Do you know whether Surgeon Byrne was attended and treated by any physician for the time he was sick?

Answer.—It was only by report that I heard he received the attendance of a physician. But the answer to the question will be emphatically, no. I did not see him with any physician.

Question.—Did any physician report his, Byrne's, state of health to you during the time?

Answer.—Yes.

Counsel for defence here objected and reduced the objection to writing, which was read. "The report of a third party is not the best evidence the nature of the case admits of. It is secondary. The physician should be produced and examined."

President.—Are you, as Judge Advocate, disposed to waive the question?

Judge Advocate.—No, sir.

President.—The court will be cleared.

The Court was accordingly cleared of all except the members composing the court.

On being called into court counsel was informed that the court had decided that the objection should not be sustained.

Judge Advocate.—Colonel you are now to answer the question. Did any physician report the state of health of Dr. Byrne during that time?

Answer.—None, but Dr. L'Engle, as I have stated.

Question.—Was there any physician employed to attend the sick at this post between the time that you first heard that Dr. or Surgeon Byrne was sick and the arrival of Dr. L'Engle?

Answer.—Yes, sir. Dr. Ravenel, a citizen of Charleston, and a physician of high reputation.

Question.—What was the state of the epidemic when Surgeon Byrne resumed his duties?

Answer.—I will refer to my memorandum. I should consider it about as bad as it had been from any period during the eight or ten days. For I think that the deaths were as numerous afterwards.

Judge Advocate.—Name all the officers that were on duty here during the prevalence of yellow fever.

Answer.—Capt. Doubleday, Lieut. Tillinghast, Lieut. Shoup, and all the officers belonging to the garrison before and after that time. Dr. Byrne and Dr. L'Engle were here, the latter however, only part of it. Lieut. Silvy was absent, I think, through the whole of it.

Question.—Do you know the hand-writing of Surgeon Byrne? Have you ever seen him write?

Answer.—Yes, sir.

Judge Advocate.—Look at the paper now handed to you and say if you recognize it as a letter addressed to you by Surgeon Byrne.

Answer.—Yes, sir.

Judge Advocate.—I propose to read a part of that letter to the court. I will read it all if the accused desires it.

Counsel for defence.—All if you please.

Colonel May to Judge Advocate.—It is to be received as evidence is it?

Judge Advocate.—Yes, sir.

The letter dated Fort Moultrie, Oct. 12th, was then read to the court.

FORT MOULTRIE, S. C., October 12th, 1858.

Colonel: I have the honor to acknowledge the receipt of your communication of this date, enclosing copies of letters relating to me from Capt. Doubleday, Lieut. Tillinghast and Lieut. Shoup. In reply to all these letters I shall make to you a brief statement of the facts in the case.

I was seized about 10 o'clock, on the night of the 8th of September, with a violent pain across the sacrum and hips, and was for many hours so ill that I could not turn in bed without suffering great agony. At the time I was taken ill the health of the command was better than it had been at any time for several months previously. There had been some five cases and three deaths from yellow fever previous to my illness, but for five or six days before I was taken ill there had not been a new case, so that I flattered myself that the disease had disappeared entirely. Two days before I was taken ill a man named Bright was attacked with what appeared to be cholick, attended with some fever, but his

symptoms were so alleviated by treatment that his case was not regarded as serious; and, indeed, so little importance was attached to it that on the second day of his illness I gave permission to the steward to absent himself, nearly the whole day from the hospital, *there being no other sick man in the hospital at the time.*

During my illness, Bright's disease put on the form of yellow fever, and of which disease he died after an illness of about 12 days.

I resorted to all the remedies without delay that are usually recommended for rheumatism, of which disease I had two slight attacks while in California. I took Colchicum, guaiacum and iodide of potash. Of these remedies guaiacum seemed to benefit me the most, and I felt much relief by keeping in a constant state of perspiration, which I did day and night for several days. Still the pain continued though to a great extent alleviated; and after consulting with Dr. Ravenel, who recommended blistering, I put a blister over the sacrum. This relieved the pain in the sacrum very much, but diffused and transferred it to the left hip joint. I applied (by advice of Dr. Ravenel) a blister on this joint also, and was much relieved by it, but before the blister healed no fewer than six boils broke out in the vicinity of both blisters. When but partially relieved from the annoyance of these boils, and still suffering from pain in the left hip joint, Mrs. Byrne was taken dangerously ill with fever (about the 24th of September) and although still suffering from boils and rheumatism, I was obliged to keep constantly on my feet performing the duties of both physician and nurse to my wife. Mrs. Byrne continued dangerously ill for 12 days, and there were several nights during that period that I did not sleep one hour, so much did I suffer from pain and anxiety. In a few days after being thus exposed, a pain seized me in the left knee joint, and was at times so severe as to cause sickness at the stomach, while the pain in the hip joint became greatly alleviated. I applied a blister (about the 5th of October,) to the inside of my left knee joint, and as soon as the blister drew, I felt almost entirely relieved of the pain. On the 8th of October, I made to you the report, of which I here enclose a copy. In compliance with this report, I visited, in consultation with Dr. L'Engle, the only two cases of serious diseases then in hospital (Rippett and Driscoll,) both of whom were laboring under yellow fever. On the 10th inst., feeling my health much improved, *though weighing 19 pounds less than when I was taken sick,* I relieved Dr. L'Engle and reported for duty.

Now as respects the base and unfounded insinuations contained in the letters of Capt. Doubleday, Lieut. Tillinghast, and Lieut. Shoup, viz: that I deserted my post in the hour of danger, I repel them with the scorn and contempt, which such mean, unworthy, and un-officer like suspicions merit. It may not be out of place to mention here, that during a service of over 22 years, I have not been altogether as much as *three weeks* on the sick report till this occasion; that for more than 19 years, I have not been

one day on the sick report; and that during those 19 years, I have faithfully and successfully attended troops in three visitations of cholera, and in two of yellow fever, besides having been present in several battles.

My reason for declining to call for a Court of Inquiry, when you first informed me of this unfounded assault on my reputation, was, that I considered I would be bestowing importance on a base slander, for which there was not the shadow of foundation, while I conceived that the proper honorable and officer like course was, for any officer who had justifiable grounds for so base an accusation, to prefer charges against me, and if he could not do this which it was his *duty* to do, it was due to common morality that he should abstain from making mean, cowardly, slanderous insinuations against the character of a brother officer, because he had the misfortune to be a few weeks sick in a period of 22 years.

It was because I was governed by this view of the case, that I urged upon you, to inform me who had, or if anybody had *said*, that I *feigned* sickness, as it was my intention, and is still my intention to prefer charges for slanderous lying against any officer who will boldly and openly make such assertions. You did not inform me that any officer had made this assertion, and I therefore scorned and despised, and still scorn and despise the base insinuations against my character, made by those who will not dare to make such assertion.

Respecting my professional qualifications, I have nothing to say; but as regards my devotion to the sick, before I was taken ill myself, I ask no stronger evidence than that which you yourself can give.

I have the honor to be, very respectfully, your ob't serv't,

B. M. BYRNE, Surgeon, U. S. A.

Col. J. L. Gardner, 1st Artillery, Commanding Fort Moultrie, S. C.

At the conclusion of the letter, the Judge Advocate stated that he had concluded the examination of this witness in chief, and inquired of defence if they wished to commence the cross-examination, to which an affirmative reply was given.

Cross-Examination.—Question.—Did you or not call several times at the hospital to see private Jones, when taken ill? When was the man taken ill?

Answer.—I called, may be, twice at the hospital. I did two or three times while he was sick. The last time at the moment of his death, when I closed his eyes. He was taken sick on the 12th of August, and died on the 16th. When he was taken sick was the first notice I had of it. The man seemed unwell before that. But I did not think it of any consequence.

Question.—What was your impression of Dr Byrne's attention to this man during his illness?

Answer.—That he was attending to him faithfully. I have seen him constantly over his bunk.

President.—That is hardly a sufficient answer, from the first at least.

Question.—Did you or not visit the hospital during the illness by yellow fever of privates Holden and Zimmerman while Dr. Byrne was in attendance? When were these men taken ill, and at what time did you visit them?

Answer.—I attended it certainly during Zimmerman's time. I do not recollect about the other. It was at the same time, I believe. My attention was directed particularly to Zimmerman, as he was my orderly. But let me answer as briefly as I can. I did, sir.

The question was repeated when the witness responded. I did, sir.

Question.—When were these men taken ill, and at what time did you visit them?

Answer.—I do not remember the date on which Holden was taken ill. Zimmerman was taken ill on the second of September. Both died on the fourth.

Question.—What was your impression of Dr. Byrne's attention to these men?

Answer.—I thought it good attention, sir. As good as could be given. Never had a doubt of it. Never had the question raised in my mind.

Question.—Did or did not Dr. Byrne say to you several days before the death of this girl in your employ, that he regarded her disease to be yellow fever?

Answer.—(Several days before death.) I do not know whether I stated it before, sir; but he concurred with me in the opinion that it was yellow fever. I was under a strong conviction that it was, and I asked him the question, and he concurred with me.

Question.—What was the character of Dr. Byrne's attention to this girl's disease. How long did it last?

Answer.—She was taken sick, sir, on the 25th August, and died on the 30th. I believe he had attended her every day with the exception of one day or part of the day.

There is something more in the question I believe. He was as attentive as he could possibly be, attending her on the last day, or the last but one, I am not certain which, eight times in the day. I think that to be near the number of times on the other days, or at any rate frequently in the course of the day. His attention was such as to procure for him an expression of thanks from every member of my family.

Question.—Did you ever see any physician, in public or private practice, more devoted to the sick than Dr. Byrne.

Answer.—I never did, sir. The time before his illness I never saw a more attentive physician. That was before his illness. After his recovery I did not give special attention to it, but observed that he was always attentive to his hospital, and was always there. Scarce a morning, I suppose, that I did not see him going to the hospital. I do not want the whole of that down.

Question.—How long have you known Dr. Byrne?

Answer.—By reputation and by personal knowledge, I think I have known him nearly ever since he has been in the service. Nearly 20 odd years.

The Court took a recess of 10 minutes.

AFTER RECESS.

Question.—Did or did not the girl that died in your employment, have black vomit? Did Surgeon Byrne attend her before and after this, and how often?

Answer.—She had black vomit, and he attended her throughout her sickness.

The Judge Advocate was asked to read the last part of the question again, which was complied with. Witness.—I consider my former answer to include what is asked there.

Counsel for defence.—We want to know how many visits were paid?

Witness.—Can't say; sir. He visited her when she had the black vomit. I cannot say how many visits he made after she had the black vomit.

Question.—What hours in the day did Dr. Byrne attend?

Judge Advocate.—It is not necessary. He says he attended her eight or nine times a day.

Question.—Did you visit Dr. Byrne during his illness?

Answer.—I have answered that satisfactorily before.

Defence.—You have omitted one question.

Question.—What opinion do you entertain of Dr. Byrne as a medical officer?

Answer.—A high opinion, sir; deriving my impression through those I know and esteem as medical men. These are the grounds of my opinion. I have no judgment as a physician. I derive his reputation from others.

Question.—Did you visit Dr. Byrne during his illness?

Answer.—I have answered that question. I did several times. That was the answer to the former question.

Question.—Was Dr. Byrne in bed when you visited him?

Answer.—I suppose two thirds of his time he was confined to his bed. That is during his sickness, and whenever I visited him.

Question.—How did he describe his symptoms and treatment?

Answer.—He described his disease as being rheumatism in the hips, usually called lumbago or what is called sciatica, of which I had myself personal and painful experience. I do not remember what his own prescription was or the treatment he was undergoing. He told me his treatment, but what it was I do not remember. I told him, I thought I had great relief in the treatment of Dr. South, by using colchicum and hot baths.

Judge Advocate.—I do not think that pertinent to the question.

Question.—Did Dr. Byrne present the appearance of a man who was suffering or had suffered from disease?

Answer.—Yes, sir. The Doctor has usually a very florid complexion, and I did not observe a very great change in him, but at

the end of the time he had the evident appearance of having suffered.

Question.—How did Dr. Byrne appear after he had reported for duty compared with the time he was sick?

Answer.—I have no very distinct recollection of his appearance, but he looked like a man who had suffered, and he had other indications besides his appearances. He walked slow. I do not carry in my mind the appearance before and after, I only know that he looked like a man who had been suffering.

Judge Advocate to defence.—Have you any more questions?

Counsel.—Yes, sir.

Question.—You saw Dr. Byrne very frequently during his confinement in the bed and in the house. From all you saw and from all the circumstances of the case, do you entertain a doubt that he had been sick?

Answer.—No, sir. I never entertained a doubt of it.

Question.—In your examination in chief you said you did not know of Surgeon Byrne attending the hospital while on the sick list. Do you not know that before he reported for duty, he visited the hospital in consultation with Dr. L'Engle?

Answer.—I do not.

Counsel for defence here announced that they had no further questions to ask.

The Judge Advocate here instructed the Orderly to call Dr. L'Engle into Court. In the meantime he had one or two questions to put to the witness himself.

Question.—You have said on the cross-examination, that you never entertained a doubt that Dr. Byrne had been sick. Do you mean to say that you never entertained a doubt as to Dr. Byrne's being so sick as to be unable to perform his duty?

Answer.—I never entertained a doubt as to the degree of his sickness and his inability to perform his duty.

The President.—I suppose you limit that time to the time he was confined to his quarters?

Judge Advocate.—Yes, sir.

Answer of witness repeated.—I am no judge of the degree of his sickness, but I did not entertain a doubt that he was unfit for duty.

Question.—Why then did you advise Dr. Byrne to return to duty on your visit to him, some eight or ten days after?

Answer.—Not because I thought he was fit for duty, or that he could visit his hospital without great pain, but I wished that he should make even a painful, although a very painful effort in behalf of his own reputation, assailed by rumors without.

Judge Advocate.—State as near as you can the date of your last visit to him, when you informed him of the insinuations and advised him to ask for a Court of Inquiry.

Answer.—Towards the conclusion of his sickness and after the first communication. Nearer than that I cannot say or give.

Question.—Was it before or after Surgeon Byrne addressed an

official note, saying he could attend the sick in consultation with Dr. L'Engle?

Answer.—I think it must have been before that. Cannot say how long, or any nearer than that.

Question.—During your conversation on that occasion, did Dr. Byrne intimate when he could return to duty and visit the sick in consultation with Dr. L'Engle?

Answer.—Not as I remember, sir. I have a very vague impression that he intimated something of being shortly on duty, but it is so indistinct that I cannot recollect it.

Question.—Did you, after this visit, and in conversation on the same day, converse with any of the officers of the post as to what had passed between Dr. L'Engle and yourself?

This was objected to by defence, and the objection being reduced to writing, was read by the Judge Advocate.

“The examination in reply is confined to such subjects as are brought out by the cross-examination. The question would seem to be opening new matter to which the accused has no means of replying.”

The Judge Advocate stated that his object was to fix by this and other questions, if possible, the date of this conversation.

The President ordered the Court to be cleared.

On assembling, the Judge Advocate announced that the Court had decided that the objection be not sustained.

Question repeated.—Did you, after this last visit, in conversation on the same day, converse with any of the officers of the post as to what had passed between yourself and Dr. L'Engle?

Answer.—I had such conversation, and I think it very probable that it was the same day. I had such conversation with the officers and afterwards in conversation with Dr. Byrne. I think it very probable on the same day that it occurred.

The following letters were then read by the Judge Advocate :

FORT MOULTRIE, S. C., Oct. 8, 1858.

Sir:—I have the honor to report that my health is now so far restored that I shall be able to visit, in consultation with Dr. L'Engle, any serious case of disease which may occur among the troops at this post, but not sufficiently so to enable me to undergo much fatigue. I have, therefore, respectfully to request that Dr. L'Engle be retained as my assistant, till such time as I shall be able fully to discharge my duties, which I trust will be in the course of a few days.

B. M. BYRNE.

Lt. O. H. TILLINGHAST.

The following was the reply :

HEAD QUARTERS, FORT MOULTRIE, S. C., }
October 8th, 1858. }

Sir:—In reply to your communication of this date, I am directed by the Col. commanding to say, that Dr. L'Engle is on duty as

your substitute, by authority from the War Department, during the prevalence of the present infectious disease, or until he shall be regularly relieved. As to consultations between you and Dr. L'Engle, he considers that a professional matter, with which he has nothing to do.

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

O. H. TILLINGHAST,
Acting Adjutant first Artillery.

To Surgeon B. M. BYRNE, Medical Staff. Present.

Judge Advocate.—The defence admits these letters to be what they purport to be. I propose to add them on the record.

Question by defence.—Did you ever hear any rumor prejudicial to Surgeon Byrne before assistant L'Engle's arrival at this port.

Col. May.—The Court can adopt such a question, but I do not think the accused can ask it. It seems to me that it should be put as a question by the Court, at the request of the accused, in order to keep the examination all straight.

(No further action was taken on this question to-day. Reporter.)

President.—I shall submit a few questions to the Judge Advocate, from the Court, and let him say whether he thinks they have been answered fully or not. You are perfectly willing to do that, Judge Advocate.

The Judge Advocate said there could be no objection.

Question by the Court.—You say Dr. Ravel was employed to attend the sick before Dr. L'Engle arrived. Was that done by Surgeon Byrne, and was that employment from his being unable to attend to his own duties in consequence of his own sickness? Was he employed because of Surgeon Byrne's sickness? What caused it, and by whom was he employed?

Answer.—He was employed, I supposed, by Dr. Byrne. His duties continued to be performed from the moment of Dr. Byrne's sickness. No formal contract was made with him such as is prescribed by the regulations—a written contract. I can give the conversation, if needed.

The answer to the question is briefly: He was employed by Dr. Byrne himself. His sickness was the cause of it, no doubt. I think it is probably an answer to state the manner in which it was done. He had been associated with Dr. Ravel in some practice about here, and attended others besides the troops. Now, sir, if you will add to my answer, that in my first conversation with Dr. Byrne after he was reported sick, he informed me, in reply to some question as to who was to be his successor, that Dr. Ravel had offered, from professional courtesy, to attend his sick. That he had thought proper to object to such an arrangement, as the Doctor would have a legal claim on the government for his compensation. He had, therefore, told the Doctor that he would

receive, doubtless, the compensation of an Assistant Surgeon, equal to six or seven dollars a day, but that the Dr. had scoffed at such a compensation, as entirely inadequate for his time and services. And the Doctor accordingly attended at the hospital, I believe eight days from the first, but I gave no further consideration to the matter.

Here the defence asked to present a letter, to be permitted to examine two witnesses for the defence, before the prosecution was closed, and giving their reasons therefor.

The Judge Advocate said he had no objection, and the Court having none, the request was granted.

The President then announced the Court adjourned, to meet to-morrow, at 11 o'clock.

THIRD DAY.

TUESDAY, March 29th.

The Court met at 11 o'clock A. M. Present—the same members as yesterday. The accused and his counsel also present. The Judge Advocate informed the Court that he had received a letter from Col. Walker and asked if it was the pleasure of the Court to have it read.

President.—The proceedings of yesterday must first be read. If the letter is noticed at all it must appear in the proceedings of to-day.

The journal of yesterday was then read; at the conclusion of which the Judge Advocate read the letter of Col. Wm. H. T. Walker, assigning his reasons for not attending the Court.

The President ordered that the letter be put upon the record, and go to the proper authorities by whom he could be excused. Also that it would be well to write to Col. Walker, informing him that the Court had commenced and it would not be necessary for him to attend.

Col. J. L. Gardner, the witness examined yesterday, asked permission of the Court, to amend his testimony in one particular. He found that it was understood by outsiders too strongly.

Judge Advocate.—Will I take this explanation of the witness now, sir.

President.—You can read it for information.

Col. May said the witness wished to give his reasons for his desire to correct his testimony of yesterday. The question is, shall these reasons go on the record?

President.—The corrections should go on the record.

Col. May objected to the witness correcting his evidence, for the reasons assigned which was in consequence of the remarks of outsiders.

The Court here closed for deliberation. On re-opening, the Court decided that the objections of the member be sustained.

Col. Gardner.—I want, however, to add an explanation and to enter my evidence more fully. If the Court would permit me to read the explanation they would better understand my meaning.

Some objection was again made, and on request of a member, the Court closed a second time for deliberation.

On the re-opening of the Court, the Judge Advocate announced that the Court had decided that the witness' reasons be entered on the record, and that he be permitted to explain his testimony notwithstanding the improper reason he had offered. "Col. Gardner stated that in consequence of remarks made by outsiders who deemed his evidence too strong, he thought his language may have been misunderstood by the Court, and he therefore desired to correct it in order to remove any such impressions from their minds. He wished to state that in his answer to the first question put by the Judge Advocate on the re-examination, he used the word 'entertained' in its strict sense. But he did not mean that doubts did not sometimes enter into his mind from the tales and rumors that reached his ear, but they were never retained. A little reflection always sufficed to dispel them."

Judge Advocate.—The accused now desires to be permitted to examine Dr. Eli Geddings.

Dr. Eli Geddings, Professor of the practice of medicine in the Medical College of the State of South Carolina, at Charleston, was then duly sworn.

Question.—How long have you practised medicine?

Answer.—Thirty odd years.

Question.—Give a description of the disease called lumbago as connected with sciatica.

Answer.—Lumbago is a very painful disease, generally attacks the loins, sometimes the nerves and muscles, sometimes the ligaments are affected. When it affects the nerves, it affects chiefly what is called the lumbar nerves, and when it attacks the latter especially it is called sciatica. In some cases it has a severe form of neuralgia, in some cases rheumatism, in some gout, in some cases it is doubtful, and it may depend upon a variety of conditions. That is all.

Question.—Is lumbago sometimes a disease of long duration?

Answer.—It is very variable as to time of duration. It may continue for a few days, other cases for months, and it may continue even for years.

Question.—Is it possible to know positively by simply looking at a patient affected with lumbago, whether or not, he is suffering pain.

Answer.—No.

Question.—Is it possible by simply looking at a patient affected with lumbago, to know, whether he is able to perform his ordinary duties.

Answer.—No.

Question.—Is or is not lumbago a disease in which relapses frequently occur.

Answer.—Relapses are very common.

Question.—Is or is not exposure to wet and fatigue very likely to cause a relapse in patients convalescing from lumbago.

Answer.—Very apt.

Question.—Has medical science reached such perfection, that without ever having felt a patient's pulse, or ever having spoken a word to him in relation to his disease, a physician can positively know that a patient who walks very lame after a rheumatic attack, is able to attend to his ordinary avocations?

Answer.—I think not. If it is I am not posted up.

Question.—How long have you known Dr. Byrne? When and where?

Answer.—I have known Dr. Byrne for upwards of 25 years. Knew him first in Baltimore. I lived very near him there and knew him very well then. Afterwards met with him on this Island.

Question.—What is Dr. Byrne's standing in your estimation, and among the medical profession.

Answer.—Very respectable. I believe at the time of his examination and admission into the army, he passed number one, and he stands as well now, as far as I know. So far as I know him, he has sustained a good reputation.

Question.—Would or would you not warn a patient of yours just recovering from lumbago, against exposing himself to damp and fatigue before he had been fully restored to health?

Answer.—I would.

Cross examined by Judge Advocate.—Question.—Would a person suffering from lumbago to so high a degree as to prevent him from attending to his ordinary avocations, be able to walk about his house and up and down stairs without manifesting much pain?

Answer.—I should think not. He might be deterred from going out for fear of a relapse. That is a circumstance mentioned in my last answer.

Question.—Would a person suffering from lumbago to the degree mentioned in the last question, be able to write long and important documents, and transact and attend to legal business, without manifesting that he was sick?

Answer.—Yes.

Question.—Is it or not regarded by the medical profession as a point of honor for a physician to make extraordinary efforts, even to exposing himself, to attend to his patients, when a fatal and epidemic disease is amongst them?

Answer.—Yes, undoubtedly.

Question.—If the extent of his practice was very limited, and all within a few hundred yards of his residence, would this point of honor be regarded as more particularly binding.

Answer.—I think it would.

Question.—What are some of the diseases which may be feigned with the least chance of detection?

Answer.—It is difficult to define, or to answer that question. Feigned diseases are all difficult to detect.

Question.—Are or are not rheumatism, lumbago, sciatica, pains in the knee, and hip joints, regarded as particularly difficult of detection?

Answer.—They are.

Question.—Are or are not the diseases, as stated in last question, and particularly described, selected by persons who feign sickness and who wish to avoid duty?

Answer.—Well, they are selected generally, but you have to rely chiefly or very much, upon the report of the individual.

Question.—Would a physician, who was suffering so severely with rheumatism, lumbago, sciatica, or pains in the knees and hip joints, as to be unable to attend patients, within a few hundred yards of his residence, be able to move freely about his house—up and down stairs, performing the duties of physician and nurse, to members of his family; keep constantly on his feet, and continue for 12 days without one hours sleep?

Answer.—I must answer in this way. In the first place there is a question of power to attend. The power to attend might exist, and he might be deterred, however, from considerations of personal safety, and from fear of exposing himself from going out.

Question.—How would a physician who so acted during the prevalence of yellow fever be regarded by the medical profession generally?

Answer.—I cannot understand the question. I think my last answer embraced that.

Judge Advocate.—I will change my question. I was merely supposing a case. Supposing a person moved about for 12 days, without rest.

Dr. Geddings.—My answer would be embraced in the previous one. The power might exist; but if he thought his life was in danger, he would not be called to go out by any law. If he was in fear of losing his life by exposure, he would certainly have the right to refuse to go out.

Question.—Do you or not consider that gentlemen of the medical profession generally would take that view of their duty? “I have supposed the case of a person, suffering from rheumatism, lumbago, pain in the knee and hip joints, who, nevertheless, walks about his house freely; goes up and down stairs, keeps on his feet constantly for twelve days, performs the duty of physician and nurse, and continues for that length of time without sleep one hour, day or night.

Answer.—My answer is embraced in a previous one. If he was in fear of his life he would have the right to decline, and particularly when his place might be supplied. I know I should take that course in my own case. I might be disposed to jeopard my life under certain circumstances, but not under circumstances where my place might be supplied by another who would not jeopard his life; that is when I was in ill-health myself.

Question.—Did you see Surgeon Byrne at any time between the 8th of September and 11th of October?

Answer.—I think not, sir. I have no recollection of it. At that time I was very much confined to the city.

Question.—About what time did yellow fever appear as an epidemic in Charleston last year?

Answer.—It appeared early in August.

Question.—How late in the season does it continue generally?

Answer.—Until November, when it usually terminates; though I have known a case as late as Christmas.

Question.—Were you on Sullivan's Island any time when yellow fever prevailed last summer?

Answer.—I was, about the conclusion of the epidemic. About perhaps the last part of October or first of November. I came down then to see one or two cases.

By accused in reply.—Question.—What danger to the medical man have you been speaking of. Is it contagion from epidemic disease, or the risk of exposure from the disease under which he is laboring?

Answer.—From the risk of exposure, for I don't happen to believe in contagion. A medical man would never be justified in avoiding an important case or to attend a patient, from any fear of contagion.

Question.—What is the treatment for lumbago?

Answer.—It is various. Blistering is proper, cupping, leeching, moxa collicum, opium, actual cautery, iodide of potash, turpentine. There is a variety of remedies. It is exceedingly variable.

Question.—Is danger from exposure to the air increased by the treatment? Explain.

Answer.—Sometimes it is. The remedies are sometimes given to affect the skin and induce perspiration. If that perspiration is suddenly checked by the aid of exposure it is injurious.

Question.—How do you explain what you said of the ability of a patient suffering from lumbago to write letters and attend to legal business?

Answer.—Because lumbago has nothing to do with his hand or his head.

Question.—Would a physician, suffering from lumbago, violate medical ethics by giving up his patients to the charge of other medical practitioners, even though his practice lay within a few hundred yards of him?

Answer.—If he was unable to attend himself it would not. That has to be done daily.

Question.—How many times in your experience has the yellow fever prevailed on the island as an epidemic?

Answer.—Only twice as far as I can recollect; in 1824 and 1858; there have been occasional cases but no epidemic.

Question.—How long after it becomes epidemic in Charleston does it become so on the island, where this garrison is situated?

Answer.—There is no fixed period. The lapse of time last summer I do not know.

Question.—Have the sporadic cases which have occurred for thirty years produced alarm on the island?

Answer.—I think not.

There being no other question the evidence was read to the witness and he was dismissed.

Col. J. L. Gardner recalled.

The Judge Advocate stated that Col. Gardner was being examined by the court when his examination was suspended, and asked the court if they had any further questions to ask him.

The question from yesterday was put.

Question.—Was Dr. Ravenel employed with or without your consent, or were you officially informed of his appointment?

Answer.—I considered him to have been employed with my knowledge and consent, though without any formal contract.

Question adopted by the court at the request of the accused:

Question.—Fix the date if you can, when you first heard rumors prejudicial to Surgeon Byrne in regard to his neglect of duty?

Answer.—I cannot do it, except very vaguely, and that was before I went to see him the first time.

The Judge Advocate requested the court to adopt a question which he would submit.

Question.—Did these reports and rumors originate among the officers and men of the garrison, or were they freely spoken of first by visitors to or residents on the island?

Answer.—I cannot say by whom they originated, but I do not think they originated in the garrison. Many were of such a character as must have originated outside.

There being no further questions for witness and the hour of three having arrived, the President announced the court adjourned till 11 o'clock to-morrow.

FOURTH DAY.

WEDNESDAY, March 30.

The Court assembled at 11 A. M., and the journal of yesterday was read. A discussion ensued as to the custom of entering each consecutive day on the record, the names of the members of the Court. It was decided to be a mere matter of form, after the first day, and the journal as read, "members present as yesterday," permitted to stand. Dr. Edmund Ravenel was called and duly sworn for the accused.

Question.—Did you attend troops at Fort Moultrie last summer? During what period?

Answer.—Yes, sir. I attended from the 9th of September to the 16th, I think, inclusive.

Question.—On what day did the first case of yellow fever occur, which came under your notice?

Answer.—Where; did you mean among the troops? Bright was the first man I saw with Dr. Byrne. Dr. Byrne invited me to see a case with him. That man I believe was Holden. Question answered briefly. While I was in attendance. It was on the 9th.

Question.—Did you or not visit Dr. Byrne for several days after the commencement of his illness?

Answer.—Yes, sir.

Question.—Did or did not Dr. Byrne appear to suffer much pain and consult with you as to what he had better do to obtain relief?

Answer.—Yes, sir.

Question.—What did you recommend?

Answer.—Blisters.

Question.—Did or did not Dr. Byrne subsequently inform you that he had, in compliance with your advice, applied a blister, and obtained much relief from it?

Answer.—Yes, sir.

Question.—What was Dr. Byrne's account of his disease to you? What was your remark, if any, about chasing the pain, and your remedy therefor?

Answer.—He told me he had rheumatism in his back and detailed his treatment. I told him to apply blisters in preference to what he was doing, and to chase the pain by applying blisters in succession.

Question.—Did or did not Dr. Byrne inform you that he had followed your advice, had applied the blister over the hip joint, and was much benefited by it?

Answer.—Yes, sir.

Question.—Was or was not Dr. Byrne confined to his bed during the whole time that you attended the troops at Fort Moultrie?

Answer.—Yes, sir.

Question.—Would you or not prohibit any private patient of yours who was as ill as Dr. Byrne appeared to be, and who was just recovering from a severe attack of rheumatism, from subjecting himself to fatigue and exposure?

Answer.—I think so, sir.

Question.—Do you consider that fourteen cases of yellow fever, spread over a period of twenty-four days, and all confined within the same building, imposed a heavy duty on one medical officer?

Answer.—I think one officer could attend to it very easily.

Question.—Could not one physician give ample attention to at least thirty patients a day, when sick of yellow fever, provided those thirty patients were all located within the same building.

Answer.—Yes, sir; provided he had the proper assistance. By assistance I mean nurses, &c., in attendance.

Question.—How long have you had experience in the epidemics of yellow fever, which have occurred on Sullivan's Island?

Answer.—I saw yellow fever here first in 1819, and have seen cases of it here whenever it has prevailed in Charleston.

Question.—How often, if at all, has yellow fever spread as an epidemic on Sullivan's Island since the year 1824?

Answer.—I cannot say it has ever spread as an epidemic. That question is since 1824? Yellow fever prevailed here in 1824, not since.

Question.—Did those sporadic cases which occurred so very frequently, cause much apprehension and alarm in any of those years, that yellow fever would spread on Sullivan's Island as an epidemic?

Answer.—No, sir. Not until 1858.

Question.—Have or have not sporadic cases of yellow fever occurred very frequently? and how often between the years 1824 and 1858?

Answer.—If you mean by sporadic cases, cases originating here, I never saw one. But if you mean sporadic cases originating in the city and coming down here, I have seen it ever since the yellow fever has been or broken out in Charleston, except in 1858. I say it originated here in 1858, because it occurred here.

Question.—Do you mean when you say it was never epidemic on Sullivan's Island after 1824, to say you did or did not consider it so in 1858?

Answer.—Well, it would be considered to be an epidemic in 1858, although the cases were not very numerous. I mean to say the cases were not very numerous outside of the garrison.

Question.—At what time in the fall of 1858, did you begin to suspect that yellow fever would spread on Sullivan's Island as an epidemic?

Answer.—Not until Bright was taken ill, which was on the 9th of September.

Question.—When you took charge of the hospital at Fort Moultrie on the morning of the 9th, did you find any other patients besides Bright and Ray?

Answer.—Ray was not in on that day ill. I think Ray had been ordered to duty before that in the morning, but I did not prescribe for Ray. Bright was the only man sick in the hospital I considered sick on that day.

Question.—Bright was sick, you say, on the 9th, but when was he taken with symptoms which indicated yellow fever?

Answer.—I do not recollect. I considered him a very ill man when I first saw him.

Question.—Did or did you not frequently express the opinion to Dr. Byrne, and others, as late as the 8th of September, that there would be no epidemic on Sullivan's Island that fall?

Answer.—Yes, sir. I did until Bright's case.

Question.—Is there or is there not a wide and essential difference between the terms sick men, and men on the sick report?

Answer.—I think so. Sometimes men on the sick report require very little to be done for them, and are still unfit for duty.

Question.—Would you, in making a correct estimate of the general health of a garrison, take into account men who were on the sick report with nothing more than a cut finger, or some other slight ailment, a bruised toe, or a sprained wrist?

Answer.—I should not have taken such cases into consideration.

Question.—Were or were not privates Holden and Zimmerman the only soldiers, you visited in consultation with Dr. Byrne?

Answer.—I think so. I know Zimmerman was one of them.

Question.—Are you or not the owner of slaves?

Answer.—Yes, sir.

Question.—How do you act towards a slave of yours, who, when convalescing from rheumatism, or any other disease, informs you, that he does not yet feel able to go to his work, and especially if that slave be one that has never before been sick?

Answer.—I believe him, and treat him as kindly as I can.

Question.—Would you or not consider that you had outraged humanity if you had ordered any slave of yours to return to his work, when he told you that he was not able to go, unless that slave was a well known malingering?

Answer.—Certainly, sir, if I had ordered a slave out to work, when he was sick. If I suspected him, I would cross-question him until I ascertained what was the matter with him.

Question.—Give a description of the disease called lumbago, as connected with sciatica.

Answer.—Lumbago and sciatica are two forms of rheumatism. They are both rheumatism. The only difference is in the locality. When in the back, it is called lumbago, when in the hip, sciatica.

Question.—Is not lumbago sometimes a disease of long duration, and how long?

Answer.—Sometimes of long duration. It varies very much with the violence or severity of the attack upon the subject. It sometimes depends upon the exposure of the subject, and sometimes depends upon the constitutional condition of the subject.

Question.—Is it possible to know positively by simply looking at a patient affected with lumbago, whether or not he is suffering pain?

Answer.—No, sir.

Question.—Explain more particularly what you mean by condition of the subject.

Answer.—I mean his constitutional condition. If a man be in good, strong health, he can undergo a good deal of exposure without having rheumatism produced. If he be of strong and robust constitution, he could endure exposure without producing rheumatism. If of delicate constitution, he could not stand so much. Weakly men are more liable to attacks of rheumatism than strong ones.

Question.—Is there not a great deal in the predisposition, which may favor an attack?

Answer.—Yes, sir.

Question.—Is or is not exposure to damp and fatigue very likely to cause a relapse in patients convalescing from lumbago?

Answer.—Yes, sir.

Question.—Is it possible to know positively by simply looking at a patient affected with lumbago, whether he is able to perform his ordinary duties?

Answer.—That would depend very much upon the opportunity you had of seeing the individual. If he was simply sitting in a chair you could not tell, or form any opinion in the matter.

Question.—Is or is not lumbago a disease in which relapses frequently occur?

Answer.—Yes, sir.

Question.—Has medical science reached such perfection, that without ever having felt a patient's pulse, or having spoken a word to him in relation to his disease, a physician can positively know that the patient who walks very lame after a rheumatic attack is able to attend to his ordinary avocations?

Answer.—I should think not, sir.

Examination in chief here closed.

Questioned by Judge Advocate.—Who employed you to attend the sick at this port last fall?

Answer.—Dr. Byrne.

Question.—On what day did he employ you, Doctor? Do you remember?

Answer.—I believe on the 9th of September. It was either the 8th or 9th. I may say I know it was on the 9th.

Question.—State the circumstances under which he employed you, and the compensation it was agreed between you that you should receive.

Answer.—Dr. Byrne sent for me in the morning; I went, and found him in bed, complaining very much, and he requested me to visit his patients at the hospital. I offered to do so as a friend, not wishing to have the charge of the hospital. The Doctor said it would be necessary to take charge of the hospital; he said it would be necessary, because he did not expect to be out immediately, giving as a reason, that he had had a similar attack before, which had lasted a considerable time, and he feared that this was of the same character. I then said, if it was to be a matter of business, that I would not attend for the compensation allowed by the regulations. The Doctor then said it would be necessary to have some one in the hospital, and I must charge as I would for private patients. That is all, sir. A good deal of conversation occurred upon the subject, which, I suppose, is unimportant matter.

Question.—Was this a private matter between Dr. Byrne and yourself, for which the Doctor was to pay?

Answer.—No, sir. I considered that the government would pay me.

Question.—Did Dr. Byrne attend the sick at all whilst you had charge of the hospital?

Answer.—No, sir.

Question.—Did you visit with Dr. Byrne the men, Holden and Zimmerman, whilst in the hospital?

Answer.—I made one or two visits with him to each of them; I did not attend regularly.

Question.—How many days was this before he employed you?

Answer.—I do not recollect; it was four or five.

Question.—Did you not understand Dr. Byrne to say he believed those two men had yellow fever?

Answer.—I believe Dr. Byrne considered them both as yellow fever. We differed as to one; I considered Holden's case as yellow fever, the other not.

Question.—Do you know, Doctor, if there had been any case of yellow fever in the garrison prior to Holden's?

Answer.—I know of none.

Question.—Did you have any conversation professionally with Dr. Byrne, in regard to the case of a servant woman in Col. Gardner's employ, about the end of August?

Answer.—I saw that girl with Dr. Byrne.

Question.—Did or did not Dr. Byrne consider it a case of yellow fever?

Answer.—I believe he did consider it a case of yellow fever.

Question.—Was or was not that the first case in the garrison, so far as you know, that Dr. Byrne considered yellow fever?

Answer.—I do not know how many cases occurred, but I think so. The Doctor was in great doubt in regard to the man Jones, who died just before; I did not see Jones.

Question.—When you visited Holden and Zimmerman with Dr. Byrne, did Dr. Byrne manifest any fear or apprehension as to yellow fever?

Answer.—No, sir.

Question.—Was there or not much alarm, or any thing like panic on this island, on account of the prevalence of yellow fever?

Answer.—There was a great deal of disease here, and every body was more or less uneasy on the subject. I think it was about that time; but the uneasiness was not from yellow fever.

Question.—How early in the season did this disease appear?

Answer.—Not until the last or middle of September; it was after I took charge of the hospital; before that I do not think any originated here. I had seen but two cases of yellow fever before that. There was a great deal of bilious remittent fever here, and our children began to be sick; that created a great deal of uneasiness, the cases were so severe.

Question.—About how many persons died of yellow fever during the prevalence of the epidemic? I mean both in the garrison and outside.

Answer.—Including all, I think the deaths from yellow fever were sixty-five; but it must not be understood that all these cases originated on Sullivan's Island. A large proportion of these cases

were from the disease contracted in the city, and broke out on the island, and thus fell into my hands.

Question.—What was about the population of the residents on the Island at the time?

Answer.—It was supposed to be about two thousand.

Question.—Were there many cases in which the disease did not prove fatal?

Answer.—Yes, sir. It depended very much upon the nation to which the subjects belonged. Of the American, but very few died; of the Irish, two-thirds died; of the Scotch, English and German, one-half died. There were sixty-five deaths. I cannot tell the proportion I had; I do not recollect the whole number of cases I had; but less than half died. Perhaps it is fair I should say, there were many cases considered as yellow fever I did not attend; they were put into the hands of other physicians.

Question.—Have you not generally observed, Doctor, that when yellow fever prevailed, that other physicians regarded many cases as yellow fever which you did not so consider?

Answer.—Yes, sir.

Question.—Did you consider Dr. Byrne as your patient whilst you had charge of the hospital, or at any time whilst it is alleged he was sick?

Answer.—No, sir, I did not. I considered him as prescribing for himself; he asked my advice occasionally.

Question.—Did you at any time, by examination, or by question, satisfy yourself as to whether Dr. Byrne was so sick as to be unable to attend to his duties?

Answer.—I never made any examination; I never raised a question upon the subject.

Question.—Would you have retained in the hospital, or excused from duty for so long a time, any soldier who did not exhibit symptoms of rheumatism more than Dr. Byrne?

Answer.—I should question a soldier very closely; I did not question Dr. Byrne at all.

Question.—Did you report to the commanding officer that Dr. Byrne was so sick as to be unable to attend to his duty?

Answer.—I conversed with the commanding officer the very day I took charge of the fort; I did not consider it my duty to make a report.

Judge Advocate.—I do not mean for a moment to say, Doctor, that you were at all delinquent in duty.

Question.—Would a person suffering so severely from rheumatism, as to be unable to attend to his ordinary business, that business not being manual labor, be able to walk about the house freely, walk up and down stairs, without manifesting much pain?

Answer.—I should think he would manifest pain; if he was in much pain, he would.

Question.—Would a physician, who was suffering so severely from rheumatism as to be unable to attend his patients, (few in

number,) and who were all in one house, only a few hundred yards from his residence, be able to keep constantly on his feet for twelve days, walk about his house, up and down stairs, nurse and attend a patient in his house for twelve days, so assiduously as not to sleep one hour a night for many nights?

Answer.—I should think not; I should think, under those circumstances, he could have visited his patients.

Question.—If you had been attending professionally any physician for rheumatism, lumbago, or sciatica, who should manifest a desire to resume his duties, and visit a few patients who were within a few hundred yards of his residence, and he should represent to you that he could do all that is supposed in the last part of the preceding question, and ask your advice in the case, what would you advise him to do?

Answer.—Tell him to go and attend to his duty.

Question.—You say you are the owner of slaves. If you had a physician specially employed and paid by you to attend the sick, and a fatal epidemic disease should break out among them, causing many deaths, would you consider it incumbent on him to make great exertions to attend the sick?

Answer.—Certainly.

Question.—Having reference to the preceding question, and with the same supposition: If a physician should abandon and neglect his duty under such circumstances, without giving you any better evidence of illness than did Dr. Byrne, how long would you keep him in your employ?

Question objected to by accused. Objection: "The question leads the witness. It is further objectionable in its present form, because if witness answers it categorically, he must adopt the opinion of the Judge Advocate, that Dr. Byrne did not exhibit evidence of illness to witness. Not only has no such proof been offered, but this witness has proved the contrary. The question is further objectionable, because it is assuming the very thing the Court has to investigate, viz: whether the accused did or did not neglect his duty."

The Court here took a recess.

On re-assembling, the Judge Advocate stated to the Court, that on consultation with the accused, through his counsel, he would withdraw the former question, and substitute another one, to which there would be no objection.

The question was then put as follows:

Question.—If a physician, employed by you to attend your negroes, should abandon them, suffering as much or no more than you supposed Dr. Byrne, how long would you keep him in your employ?

Answer.—I cannot tell. I would have to refer to Dr. Byrne's case. I cannot say how much Dr. Byrne was suffering. I saw him for the first eight days, perhaps every day, and then I did not see him again for a considerable time.

Judge Advocate.—Doctor, the question is not exactly answered yet, sir.

Dr. Ravenel.—My answer is, I do not know how much Dr. Byrne was suffering. I saw him in bed, and he appeared incapable for duty. It was only occasionally that I went to see him. When I went to inquire about Mrs. Byrne's health, then I saw him limping about the house.

Judge Advocate.—The question is, if a physician, employed by you to attend your negroes, should abandon them, suffering as much or no more than you believed Dr. Byrne was, how long would you keep him in your employ?

Answer.—The question would be then how much Dr. Byrne was suffering. For eight days he was in his bed. After that he was hobbling about on his stick. I cannot say to what extent Dr. Byrne was suffering. I saw him day after day for the first eight days, and then I did not see him for a considerable time. I saw him at first lying in bed, and as a matter of course supposed him ill. I had no doubt about the matter. I had no right to question him, and I did not. He generally stated how he was. When a physician comes into a room, he generally tells the patient his condition. When I entered Dr. Byrne's room, I had no suspicion of any thing wrong, and, therefore, made no examination. I took it for granted that what he said was right. If I was attending him regularly I should have questioned him very closely. But I was not attending him regularly. The Doctor was attending his own case. If I had considered myself his physician I should have questioned him.

Question.—Did you have any conversation with Dr. L'Engle in regard to the health of this command, during the prevalence last fall of yellow fever?

Question objected to by counsel for accused.

Judge Advocate.—I do not propose to get the conversation.

Objection withdrawn.

Answer.—I do not recollect any. I conversed with Dr. L'Engle very frequently, but not particularly, as I recollect, in regard to the health of this command. I had charge of the garrison, and never thought of the command at all. In fact, I did not know what was going on here.

Question.—In any of those conversations, was the subject of Dr. Byrne's sickness spoken of?

Answer.—Yes, sir.

Question.—Did you or not, at any time in conversation, tell Dr. L'Engle that you thought Dr. Byrne was as able to attend the sick in the hospital, as you were to attend your patients?

Answer.—I do not think I used words of that strength at all, sir. I can tell what I did say, as near as I can recollect. When the question was asked of me, of course I did not know Dr. Byrne's condition. I saw him about his house with a stick, and it appeared to me then it was I told Dr. L'Engle that when I myself had suffered severely from rheumatism, I had visited

patients upon crutches. I suppose that is the conversation that Dr. L'Engle alludes to.

Judge Advocate.—Dr. L'Engle did not allude to any conversation. Allow me to inform you Doctor that Dr. L'Engle did not do it. I ascertained it in another way, sir.

Question.—Doctor, did you or not, while Dr. Byrne was reported sick, tell Lieut. Shoup that you were more really unwell than Dr. Byrne appeared to be?

Answer.—I do not recollect having made any such profession, sir. I think it fair to say, that in all such conversations as those in which I spoke of my inability to attend, I had no body to attend for me, and was obliged to make great exertions, very frequently to attend my patients. Never recollect of having made use of any such expression; but it is proper to say that when I speak of my ability, I speak as a private physician, having no one to attend for me, and it often required great exertions.

Question.—Doctor, to whom did you first present your bill against the government for your services?

Answer.—To Lieut. Tillinghast.

Question.—Did he pay it?

Answer.—No, sir; it was sent to Washington and returned.

Question.—When you presented your bill to Lieut. Tillinghast did he say he had any authority to pay it?

Answer.—No; he sent it to Washington. It was first sent without Col. Gardner's certificate. I took it then to Dr. Byrne, and asked him to give me a certificate upon it. I took it to Col. Gardner, and Lieut. Tillinghast took the pen and wrote the certificate himself. It was then sent again and returned back; and finally it was sent on to Mr. Miles.

Question.—Do you know what endorsement the commanding officer, Col. Gardner, made on the bill before forwarding it to Washington? If so, state in substance what it was?

Objected to by accused, and withdrawn.

Answer.—I have no recollection. I have not the certificate; but it was a certificate of my attendance.

Question.—Did you ever, in conversation with Lieut. Tillinghast in regard to the payment of your bill, say that you had made extraordinary efforts to attend your patients, when you were really more unwell than Dr. Byrne appeared to be? Or did you use words of that import?

Answer.—I do not recollect that I said so. I conversed with the gentleman very freely, but do not recollect what passed. I was very unwell myself, and was making great exertions.

Question.—Doctor, you were a practising physician on this island last fall during the prevalence of yellow fever, did you not meet with and converse with many persons, and was it not commonly reported that Dr. Byrne was malingering or feigning sickness?

Objected to by counsel for accused, and objection read.

“It is impossible for the accused to meet rumors. If any state-

ment is made by any one prejudicial to the reputation of Surgeon Byrne, the accused has a right to be confronted with the persons making the statement. It has not been shown that the persons stating facts prejudicial to Surgeon Byrne's reputation are out of the jurisdiction. If they are accessible, they should be produced. If the statement cannot be traced to any particular person, then the question is still more objectionable, as no man can defend himself against rumor."

Court closed for deliberation. On re-opening, the Judge Advocate announced that the Court had decided that the objection of accused be sustained. Court then adjourned.

FIFTH DAY.

THURSDAY, March 31st.

Present the same members as yesterday, and the accused and his counsel.

The journal of yesterday was read, and the examination of Dr. Edmund Ravenel resumed by the Judge Advocate.

Question.—Doctor, state if you can the number of men who were sick in the hospital on the 9th of September?

The question was objected to by the counsel for accused, and grounds of objection reduced to writing and read as follows:

"The hospital records are the best evidence. Dr. Ravenel will speak by memory; and thus his testimony would, therefore, be secondary. Proof of the contents of books, papers, &c., is never allowed unless the loss or destruction of such papers is first established."

Judge Advocate.—I can only say, that the question is asked because the morning report of the 9th September is not authenticated by the attending physician, or by any signature.

The Court was closed for deliberation. On re-opening, the Judge Advocate announced that the Court had decided that the objection be not sustained.

Question repeated.—Doctor, state if you can the number of men who were sick in the hospital on the 9th of September?

Answer.—As far as I can recollect, eight were presented to me. Several of these were ordered for duty, but do not recollect how many.

Question.—Did Surgeon Byrne appear at any time when you visited him as if suffering from the effects of blistering?

Answer.—I could not tell anything about it. My business with Surgeon Byrne was very short. He was not my patient, and therefore I did not examine him.

Question.—At any of those visits, did Surgeon Byrne appear to suffer so acutely from pain as to produce sickness at the stomach?

Answer.—Not that I saw.

Question.—Do men generally endure such acute pain as that, without manifesting it in their countenances?

Answer.—Some men bear pain better than others. I frequently find patients suffering very much, without manifesting it in their countenances, or without showing it. In all my visits to Dr. Byrne there were none professionally, and therefore I was there but a very short time. I was very much engaged at the time, and could not remain long with anybody.

The Judge Advocate announced here that he had closed on his part.

QUESTIONS IN REPLY BY ACCUSED.

Question.—Can you remember the diseases from which patients were suffering on the morning of the 9th of September, and your prescription?

Answer.—No, sir; I cannot. I thought Bright was the only one who was seriously ill. In the course of the day, several patients were brought into the hospital. I was sent for four or five times.

Question.—Were there any serious cases among them, especially were there any cases of yellow fever, except such as came in on that day?

Answer.—The answer to that would require me to correct my testimony in one of my answers of yesterday, and which correction I desire to make. Bright was very sick when I first visited the hospital, but I did not then consider it yellow fever. I was not satisfied that he had yellow fever, until four days before his death, when I was convinced that that was his disease. Bright, I think, died on the 17th. There were no other cases of yellow fever at that time. Other cases of yellow fever came in during the 9th. There were two certainly, whose names I remember—Heiss and Ray.

Question.—Was it or was it not after the occurrence of Bright's case that the alarm first manifested itself?

Answer.—I think it was after Bright's case. The first case which gave me any anxiety on the subject was that of Ray. He was brought sick of yellow fever into the hospital, on that very day, the 9th of September. He had been in attendance and nursed the man Holden, who had a few days before arrived from Key West, and on the 4th of September died of black vomit. The three men, Bright, Wolf and Ray, who were in the same room with Holden, took yellow fever, and all three died. They had not been in the city; and their cases, therefore, were the first to cause me any anxiety or serious apprehension that the fever would spread through the hospital.

Question.—If but eight cases of yellow fever had occurred among the troops during the whole fifteen days which intervened between the 26th of September and 11th of October, and there was a medical officer in attendance on them, would you consider it at all incumbent on Dr. Byrne, while yet lame and suffering, to leave the bed-side of a member of his family who was dangerously ill with yellow fever, to assist that medical officer in attending an average of one patient in two days?

Answer.—I should think it certainly not necessary, unless his services were called for by the physician in a case of difficulty or doubt, where a consultation was required.

Question.—Might or might not a person, who was suffering much from lumbago and from boils, be able to nurse a sick member of his family by keeping on and off his feet for twelve days in a chamber, and yet be unable, without increased suffering and imminent danger of relapse, to go out of doors frequently during the day and also at night to visit patients that were not more than four hundred yards distant from his dwelling?

Answer.—Certainly.

Question.—When a physician is himself affected with lumbago, is or is he not as capable of prescribing for himself, as he would for any other patient, were he in perfect health; and do you, under such circumstances, think he requires the regular attendance of a physician?

Answer.—I think he could prescribe for himself, sir. It was unnecessary to have another physician.

Question.—Would you, if attacked with lumbago, be likely to send for a physician, requesting his regular attendance?

Answer.—No, sir; I should not. I have suffered myself in the same way, and have prescribed for myself before?

Question.—Were you or were you not very much occupied shortly after Dr. Byrne was taken sick? Describe your situation and health particularly.

Answer.—I was very much occupied, and had not a moment to spare. I was very much debilitated by disease, but still able to perform all my duties.

Question.—Could or could not a patient suffering much from lumbago write letters, especially short business letters?

Answer.—Yes, sir.

Question.—Why is it that lumbago would not prevent a patient from writing?

Answer.—Because it does not affect his head. He has the command of his mind and his hand.

Question.—If but five or six sporadic cases of yellow fever had occurred on Sullivan's Island (and one of them an imported one from Key West) between the 12th of August and the 8th of September, a period of twenty-seven days, and if no new cases had occurred for five or six days previous to the 8th of September, had or had not Dr. Byrne, under these circumstances, and when guided by the history of this island for the last thirty-five years, a very strong reason to infer, as late as the 8th of September, that there would be no epidemic on Sullivan's Island that year?

Answer.—Certainly. That was my own feeling and opinion up to that day and later.

Question.—Did or did not Dr. Byrne when he discussed with you the compensation that would be allowed for your attendance on the troops, tell you that the commanding officer would make the arrangement with you as to that compensation?

Answer.—I do not recollect that, sir.

Question.—In the second hypothetical case put by the Judge Advocate, you replied: “You should think a medical man could have visited his patients.” Suppose one with the Judge Advocate’s description applies to Surgeon Byrne’s during the time Assistant Surgeon L’Engle was in charge of the hospital, would medical ethics then have required him to attend?

(The question of the Judge Advocate of the preceding day relative thereto read, which was as to whether a man able to go about the house, nurse, &c., was not able to visit his patients, &c.)

Answer.—I should say not. If there was a physician in attendance, I should think it was unnecessary.

Question.—In the second hypothetical case to which you answered: “Tell him to go and attend to his duty;” did you contemplate patients being under the charge of another physician or no?

(The question relating to the above was read to witness from the journal of yesterday.)

Answer.—Certainly not. That was not stated in the supposition.

Question.—Referring to your conversation with Dr. L’Engle about Dr. Byrne, when you spoke of visiting your patients upon crutches, had you any one to supply your place? If nay, does this constitute it a different case from Dr. Byrne’s. *Explain* how it differs?

Answer.—I was attending to my private business. In my case I had no one to attend or supply my place. Persons were calling upon me and requesting me most urgently to go and see their families, and, under the circumstances, I made extraordinary exertions. It differs from Dr. Byrne’s case in this. He was not subject to anything like the number of calls that a physician is in private practice. I have had parents who would visit me in my chamber with their children, asking me to prescribe for them. I had to prescribe for many without even seeing them, and as soon as I possibly could I went out on crutches; besides Dr. Byrne had one to attend to his business.

No other question being before the Court for witness to answer, he asked permission to explain to the Court why the reports were not signed when he had charge of the hospital. “Dr. Byrne told me that the hospital steward would make out the morning reports and present them to him for signature. These reports were not presented to him and he did not think of asking for them. The hospital steward himself became ill very soon after, and no reports were made by his substitute or his assistant. Then that assistant himself became ill whilst I was in attendance, and I did not ask for any report then. The witness was then dismissed and the Court took a recess.

On re-assembling, the next witness called was Assistant Surgeon Wm. J. L’Engle, who was duly sworn.

Questions by Judge Advocate :

Question.—Your name is Wm. J. L'Engle, is it not ?

Answer.—Yes, sir.

Question.—Doctor, were you on duty at Fort Moultrie last fall, if so, how long and how did it happen ?

Answer.—I was on duty here from the 17th of September until the morning of the 15th of October. I came down to Fort Moultrie on a visit on the 16th of September, and was placed on duty by the commanding officer of the post next day. I was ordered to return to the post the next day and report for duty. I did not visit the hospital between the 9th and 15th of October officially; I think it was on the 9th, or about the 9th of October, and although I did not visit the hospital, I was here at post for duty.

Question.—You came down on a visit you say. Were you on leave of absence? State fully.

Answer.—I considered myself on leave of absence by virtue of the yellow fever order. I was under orders for Texas. Before I started for Texas, the order from the Head Quarters of the Army, excusing officers under orders for Texas, from reporting until the first of November, was brought to my notice. I considered myself, in common with all other officers, excused from reporting until the first of November. I availed myself of the interim to go to Florida to transact some private business. Upon my arrival in Charleston, I found the Florida steamers withdrawn, which compelled me to lay over and take the Augusta train, so as to reach Florida via Savannah. During that day or on that day, I came down to Fort Moultrie on a visit. Those are the circumstances and details which brought me here.

Question.—What reasons, under the circumstances, did the commanding officer assign for ordering you to report to him for duty?

Answer.—He said our Surgeon is sick and Dr. Ravenel, who is now attending to the hospital, is unwilling to continue. Those are the reasons. Dr. Ravenel said he had as much as he could do outside in his private practice.

Question.—Did yellow fever prevail among the troops at that time to any great extent?

Answer.—It did, sir.

Question.—Did many die of it? If so, how many while you were on duty?

Answer.—About ten I think, sir; at least ten whose names I can now call to mind. There might have been one or two more. I have not referred to reports or dates of those who died during that time.

Question.—What medical officer of the army was established here on your arrival?

Answer.—Dr. Byrne, the accused, now before the Court.

Question.—Did Dr. Byrne turn over his duties to you, as usual, or as one Surgeon of the army would turn over to another?

Answer.—He did not, sir.

Question.—From the day that you reported for duty until the 9th of October, did Dr. Byrne visit or attend the sick of the command?

Answer.—He did not. He might have visited the hospital on the 9th of October. I am not positive as to dates. He went once with me before I was relieved. I could tell by reference to the books. (Book shown.) It was on the 9th. I think he did visit the hospital with me.

Judge Advocate.—The question is from the day that you reported until the 9th.

Answer.—That excludes the 9th; I therefore answer negatively. He did not.

Question.—Did you visit Dr. Byrne on the day you arrived or when you reported for duty?

Answer.—I visited him as a friend on the 16th, the first day I arrived. I visited him in his bed room; he was in bed.

Question.—Did he say anything of being sick, or consult with you?

Answer.—He told me he was suffering with rheumatism; he did not consult with me.

Question.—Did he ask you to visit him professionally?

Answer.—He did not, sir.

Question.—Did you, at any time whilst on duty, consider him as your patient?

Answer.—No, sir.

Question.—After your first visit to Dr. Byrne, did you see him frequently? If so, between or about what dates?

Answer.—I only saw him once from the first visit. I think it was but once from the first visit until the 23d or 24th of September. Cannot be positive which; but it was between those dates. On my first visit I called of an evening and did not see him; I only saw him once after the first visit until the 23d or 24th of September; after the 24th of September I saw him every day, frequently three or four times a day, until the 8th of October?

Question.—Did Dr. Byrne exhibit the appearance of a man who was seriously sick at any time that you saw him?

Answer.—I made no examination. I only judged from his own description of symptoms. Certainly sometimes he did not appear to be very seriously sick. The question covers so much time, I cannot answer accurately. During some of the time he was in bed; and at other times he was not, when I saw him.

Question.—From the 24th of September to the 8th of October, when you saw him three or four times every day, did he or not at any time exhibit the appearance of one seriously sick?

Answer.—I did not consider him seriously sick at any time between those dates. That embraces all the dates.

Question.—Describe his occupation and movements, Doctor, during that time.

Answer.—His principal occupation was that of attending upon his wife, who was ill at the time. I was prescribing for his wife during that interval, between the 24th of September and the 8th of October, and on occasion of my visits, I always found him either sitting down or walking about the house.

Question.—Did you discover in him any indication that he was suffering bodily pain during that time?

Answer.—I had no possible means to discover that he was suffering bodily pain, further than his own statements.

Question.—Did he generally complain or say that he was suffering bodily pain?

Answer.—He complained, sir. Yes he did.

Question.—Did he look and walk like a man who was suffering bodily pain from rheumatism, in the form of lumbago, sciatica, pains in the hip and knee joints, from blisters or boils?

Answer.—I could discover no evidence of disease excepting his gait, his manner of walking, which was constantly with the stick, with a limp, as a man would walk who had one stiff knee.

Question.—Did you at any of these visits walk up and down stairs together, or to the porch?

Answer.—He walked out to the porch with me on several occasions. On another occasion he visited a sick servant with me in a room on the next floor.

Question.—Was the servant confined to her bed?

Answer.—She was confined to her bed for several days; I think two days she laid in bed.

Question.—Did he not tell you at that time he had been treating professionally that girl?

Answer.—I visited her the first day of her illness, and he told me he had already prescribed for her. She had fever at the time, but I did not then consider it a case of yellow fever.

Question.—Walking up and down the steps, from one floor to the other, did Dr. Byrne exhibit the appearance of a man physically unable to attend to the duties which you were then attending in his stead?

Answer.—I did not consider him so.

Question.—Doctor, was it or not your opinion, as an army surgeon, that Surgeon Byrne was physically able to attend and perform all the duties of Surgeon at this post from the 26th of September to the 8th of October last?

Answer.—It is my opinion, sir, that he was able to attend to it.

Question.—Was it or not your opinion that he could have attended to those duties without other danger to himself than the danger of contracting the then prevailing epidemic, yellow fever?

Answer.—I certainly thought so, sir.

Question.—Is that your opinion now?

Answer.—Yes, sir.

Question.—Have you any recollection of having with Dr. Byrne any conversation on the subject of his return to duty? If so, state the date and substance of conversation.

Answer.—On the 7th of October I asked him if he thought he would be well enough to go to duty the first of next week, (the conversation was on Thursday,) as I wished to have an opportunity of going to Florida, and transacting my business before the first of November, when my leave would expire. (Here witness requested to correct and erase the last of the sentence.) Dr. Byrne replied that he did not think that he would, and suggested to me that I might accomplish my object by getting a seven day's leave from the Colonel or commanding officer, to employ Dr. Ravenel to do duty until I should return. That is the purport of the conversation, sir.

Question.—Did Dr. Byrne at that time intimate any probability when he could resume his duty, or did he leave you in entire doubt on the subject?

Answer.—He did, sir. He did not intimate any particular time, but left me in doubt.

Question.—Did he or not say anything to induce you to believe that he had an intention of resuming his duty in less than two or three weeks?

Answer.—As near as I can recollect, he used these words: "No, it will not be the first of next week, and, if I am not better, it will not be the first of next month."

Question.—Is it or not well understood by all army Surgeons, that if you had followed Dr. Byrne's advice, and employed Dr. Ravenel, or any other private physician, to attend to the duties, it would have been at your own expense?

Answer.—It would have been at my own expense, if the substitute required remuneration at all.

Question.—How long after this conversation was it that Dr. Byrne visited the hospital, in consultation with you?

Answer.—I really can't say, sir, whether it was on the morning of the eighth or ninth. I think the ninth.

Question.—How long after this conversation was it before Surgeon Byrne resumed his duties entirely?

Answer.—I think that he resumed the whole duty on the morning of the eleventh, as shown on the register book.

Question.—Did Dr. Byrne tell you, between the 7th and 11th of October, that there had been material change for the better in his health?

Answer.—I do not recollect his saying so.

Court then adjourned.

SIXTH DAY.

FRIDAY, April 1.

The Court met at 11 A. M. Present—the same members as yesterday, and the accused and his counsel. The Journal of yesterday was read, and the examination of Surgeon Wm. J. L'Engle resumed by the Judge Advocate.

Question.—You say you were on duty until the 15th of October. Were you not relieved from duty by order of the commanding officer before the 15th?

Answer.—I was, sir.

Question.—How then did you happen to be on duty to the 15th, the week before?

Answer.—The previous order to relieve me was countermanded by the commanding officer of the post.

Question.—Did he assign a reason for so doing? If so, state what it was.

Answer.—I cannot call to mind any assigned by him at the time, except in general terms, that it was at the instance of the officers of the post.

Question.—Doctor, had you any authority from the commanding officer to visit the hospital, or control it in any way, between the 10th and 15th of October? If so, state it.

Answer.—I had authority to visit the hospital from the commanding officer; but he did not prescribe any special duty for me to perform, and I declined visiting in consultation with Dr. Byrne, unless specially ordered to do so by the commanding officer. Receiving no such order, I performed no duty after the 10th of October; I did not consider it to be my duty.

Question.—Had you or not authority from the commanding officer to take the entire control of the hospital, even to the extent of excluding Dr. Byrne, if necessary?

Question objected to by Counsel for accused. Objection: "Col. Gardner has testified that he did not doubt, unless momentarily, of Surgeon Byrne's inability to perform duty. The Colonel's testimony is therefore favorable to the accused. The question is evidently intended and calculated to impeach it. Could he give orders to exclude Dr. Byrne if he had confidence in him? If he gave such an order it is inconsistent with his testimony, and the prosecution has therefore impeached its own witness; and none of the laws of evidence are plainer than that this cannot be done." (See Greenleaf's Law of Evidence, vol. i, sec. 442.)

The Court was closed for deliberation, and on re-opening, the Judge Advocate announced the decision of the Court to be: "that the objection be not sustained."

Question repeated.—Had you or not authority from the commanding officer to take the entire control of the hospital, even to the extent of excluding Dr. Byrne, if necessary?

Answer.—He intimated to me that I had that authority from him.

Question.—How did he intimate it? Give us his words as near as you can.

Answer.—It was brought out by conversation between one of the company commanders and myself, in regard to the probable election of patients in the hospital, to be treated by myself rather than by Dr. Byrne. In case of such choice, the question was raised, what was to be done? The Colonel said, in the usual

jocular manner in which the question of Dr. Byrne's sickness was always debated or referred to by the officers of the post,—

[Judge Advocate.—Do you mean by question, the question of Dr. Byrne's sickness?

Answer.—Yes, sir.]

“Why, L'Engle could keep him out.” That was the answer or remark of the Colonel. That is the solution of the difficulty.

Question.—Doctor, had you any conversation with Dr. Edmund Ravenel, while you were on duty here, in regard to Dr. Byrne's sickness?

Answer.—I had, sir.

Question.—Did or did not Dr. Ravenel tell you in one or more of these conversations, that, in his opinion, Dr. Byrne was able to attend to his duty?

Answer.—He did, sir, saying that he had visited patients when he was a sicker man than Dr. Byrne was.

Question.—When Dr. Byrne went with you to see his servant, did he go out of doors?

Answer.—No, sir, he did not; he went down through an open stairway, leading from the piazza to the basement.

Question.—Did you mention to Col. Gardner the conversation you had with Dr. Byrne, on the subject of his return to duty? If so, did you mention it on the day of its occurrence?

Answer.—I did, sir.

Question.—When Dr. Byrne visited the hospital in consultation with you, did he manifest fear or apprehension in approaching yellow fever patients?

Answer.—He evidently discovered a certain amount of anxiety.

Question.—Did it seem to be anxiety on the patients, or on his own account?

Answer.—His manner was excited; I cannot say from what cause.

Question.—Explain as nearly as you can his manner of approaching patients, feeling their pulse, and questioning them.

Answer.—I do not know how to answer that question. He made no particular examination of the patients. I was prescribing for the patients under my care, and his examination was very slight.

Question.—Did Dr. Byrne, or did he not, feel the pulse at arms-length, and keep himself as far as possible from the patient?

Answer.—Yes, sir. That was his manner.

Question.—Was his manner and bearing such as to allay or excite alarm among the patients?

Answer.—The latter; it was calculated to excite alarm. He discovered it himself, and the inference would be that it would excite it in others. I do not say that it did, but such was the inference.

Question.—Have you any reason to believe that his manner was observed and commented upon by any other person or persons than yourself? If so, state it.

Answer.—My reasons for believing that it was observed are, that it was quite evident. I had no reason to believe that it was commented on, because nothing occurred which led me to believe so. It must have been observed, as attention was called to it by his remark on entering the room.

Question.—State the remark, will you?

Answer.—On entering, there were two basins of black vomit in the room, and he exclaimed, "Good God!" That is all, sir.

The examination in chief here closed.

Questioned by accused.—Please state your age to the Court.

Answer.—I am twenty-seven years old.

Question.—Refer to the Army Register, and state when Surgeon Byrne was appointed Assistant Surgeon, and when you received the appointment of Assistant Surgeon in the army.

Answer.—The date of Dr. Byrne's entry is 20th May, 1836. My entry is on the 28th of August, 1856.

Question.—State to the Court upon what evidence you expressed an opinion to the Court in your examination in chief, that between the 26th of September and the 11th of October, Surgeon Byrne was capable of performing duty.

Answer.—Upon the evidence of my own senses.

Question.—Explain in what way your own senses enabled you to come to the conclusion just announced.

Answer.—I testified that he was physically qualified to prescribe for the sick in the hospital, as he possessed and exercised a sufficient degree of physical ability to walk about his house almost continually during the day, and descend and ascend the stairway, which was quite sufficient to convince me that he was able to go and attend to the hospital, if he desired to do so.

Question.—To what period of time does your last answer refer?

Answer.—It refers to the period embraced in my testimony, from the 26th of September to the 8th or 9th of October.

Question.—You said just now, that he walked about his house continually. Were you with him, so as to enable you to form this judgment?

Answer.—I was at his house repeatedly during that time; was at his house every day during that time, and sometimes as often as five times a day. He usually met me at the door, and almost always walked out to the front porch with me on my leaving the house.

Question.—State exactly how often you saw Surgeon Byrne ascend and descend the stairway.

Answer.—Once. He made but one visit with me down stairs; but I infer from his own remarks. [Stopped by counsel for the accused, who said he only asked how often he, the witness, had seen him.]

Question.—Did you intend the Court to understand it as your opinion that Surgeon Byrne could have attended to his duties alone, that is, without the aid of another Surgeon?

Answer.—I did, sir.

Question.—If he had so assumed these duties, would he or not have been obliged to attend in all weather, and at all hours of the day and night?

Answer.—He would.

Question.—You were understood to have said in your examination in chief, that you did not examine Dr. Byrne, nor to have asked any questions relative to his disease and symptoms. Did you mean to be so understood? If so, to what period of time is the remark applicable?

Answer.—I did not examine him to ascertain; neither did I question him, further than “how he was to-day?” or some such remark as that. I did not question him as to his illness at any time, further than to ask him how was he, on several different occasions.

Question.—Does the witness mean the ordinary salutation, which pass between persons on meeting?

Answer.—Not at all. I did not refer to that. That is not my meaning. The words are precisely what I wish to stick to. It was an inquiry as to the state of his health. I meant to institute a particular inquiry as to his illness, rheumatism for instance. It was more than an ordinary inquiry. It was an inquiry as regarded his health.

Question.—Is it the custom of medical men to form opinions of the existence or absence of disease without examination?

Answer.—It is not the custom.

Question.—Could you, or any medical gentleman, pronounce upon the soundness of any organ, locomotive or vital, without an examination.

Answer.—No, sir.

Question.—What is the mode of examination by which medical men arrive at their conclusions with regard to the condition of their patients? State them all carefully and minutely.

Answer.—It would take a volume to answer that question. The diagnosis is the most difficult part of the profession to acquire. It is the most difficult branch of the profession to acquire that we can speak or write of.

Question.—Is the statement of a patient of his symptoms, of suffering one of the most important of these means of arriving at a conclusion?

Answer.—It is one of the most important means.

Question.—Will you describe some of the other most prominent means of arriving at a conclusion?

Answer.—I hold it as equally impossible to answer that question as the other.

The accused respectfully solicits that the witness be required to answer in part at least.

Judge Advocate.—It seems to me that the question is not as difficult as the other. Can you not describe some?

Answer.—If the accused wishes me to give the Court a lecture on diagnosis, I can do so. The question embraces so wide a field, and so many resources, that it would be impossible for me to con-

fine myself to any particular thing. The question opens such a wide field that it is impossible for me to answer without giving the court a lecture on the rules and principles of diagnosis.

(The accused said he would drop it.)

Question.—Are there, at least, no prominent rules for forming opinions in the examination of cases, which you could give, without occupying much time? If so, mention them?

Answer.—The question calls upon me to define the rules of a case. I say it might be a case of diabetes, or it might be a case of intermittent fever. The rules for the examination of these would be very different.

Question.—What rules then would you resort to, in ordinary cases, to form a judgment of the disease called lumbago?

Answer.—The statements of the patient principally.

Question.—Describe the disease known as lumbago.

Answer.—The most prominent symptoms are, a severe pain in the small of the back. In other words it is rheumatism affecting the lumbar muscles.

Question.—Describe your treatment of the disease.

Answer.—I do not think I ever treated two cases alike in my life.

Question.—Is the treatment calculated to increase the risk and danger of exposure to damp and wet, and to the variations of temperature in day and night?

Answer.—It depends altogether upon the course pursued.

Question.—If the diaphoretic system is pursued, would the risk from exposure be increased by such treatment?

Answer.—Yes, sir. I am testifying though against the evidence of my own senses. As to the diaphoretic system of treatment, you are supposing a case which I believe different from the present one. It is an hypothesis.

Question.—Would you give an opinion affecting property, when the inquiry was as to the health of a man, without an examination as to his health?

Answer.—If the question turned upon whether that man was sufficiently well to perform a certain service, and if that man had come under my immediate observation, I would. Referring to health and property together, the inference is plain, I would.

Question.—If one of your friends should call on you for a professional opinion in regard to the health of a negro he intended to buy, would you express an opinion of his soundness, which would induce him to make the purchase, without an examination?

Answer.—If he should place that negro under my observation for a fortnight, without examining him, I could tell him whether or not that negro was able to perform certain duties.

Question.—Is this a variable temperature or not? Is or is there not much dampness, and do or not high winds prevail on this island, and at what times do they most prevail?

Answer.—I have not examined the meteorology of the island, and have not been here long enough to form an opinion.

Question.—Be pleased to state whether easterly and northeasterly winds prevail on this island, and speak particularly of the period of the autumnal equinox.

Answer.—I do not know anything about it, sir.

Question.—In what does the danger of exposure to damp, and changes of climate in the diseases of lumbago consist? i. e. what is the consequence of such exposure?

Answer.—It is usually an aggravation of the symptoms. That is what you might expect.

Question.—Is or is it not within your knowledge, that in such exposure, there is danger of affection of non vital organs, as affected in lumbago, being transferred to the vital organs?

Answer.—Where it is in an acute form, attended with fever, there is such danger.

Question.—State the vital organs in danger of being so affected. Would such transfer endanger life?

Answer.—The heart is put down as one of the vital organs, and in danger; perhaps that more frequently affected than any other organ. Such transfer, in that case, would endanger life.

Question.—Is or is not chronic rheumatism sometimes followed by transfer to the heart?

Answer.—Cases may have occurred, but they are extremely rare. I have never seen one myself. This translation of rheumatic irritation from muscle to the heart is peculiar to acute rheumatism. If you will allow me, I will answer, it is my opinion that chronic rheumatism is never followed by translation to the heart. That is my opinion. Others may differ. I say, this translation of rheumatic irritation from the muscle to the heart is peculiar to acute rheumatism.

Question.—Are or are not the pains in lumbago intermittent?

Answer.—No, sir. I would not consider them so.

Question.—Would you say, as a medical man, that a person suffering from lumbago, who is free from pain at one hour, may not have suffered greatly a short time before, or is not liable to such suffering a short time after, from the same disease?

Answer.—No, sir. I think not. I do not understand lumbago to be an intermittent disease. The question implies the intermittent character of the disease.

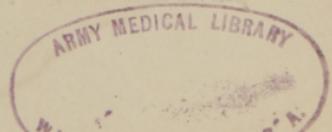
Question.—Are rheumatic affections confined to the muscles of the body? Are not the nerves and other tissues frequently involved?

Judge Advocate.—It involves two questions, and I will put the first.

Question.—Are rheumatic affections confined to the muscles of the body?

Answer.—They are not.

Question.—Are not the nerves and other tissues frequently involved?



Answer.—The question would be in the affirmative in some answers, and negative in others. Rheumatism sometimes attacks the joints and muscles; where the pain or disease is confined to the lining membrane of the joint, it becomes synibitis; where the nerves, neuralgia; and where the muscles, rheumatism. When the nerves are attacked, it becomes neuralgia, when the lining membrane joint is attacked, synibitis, and when the muscles are attacked, it is rheumatism.

Question.—What kind of a season prevailed here last autumn, during your residence on this island, in regard to wetness or dryness?

Answer.—That question can be determined by the hospital register. I was so much engaged, I do not know anything about it.

Question.—Do or do not moral causes (for example deep emotional anxiety) produce decided effect in subduing physical pain?

Answer.—I think I would be safe in answering that in the affirmative. It is generally admitted to be so.

Question.—What then would be your opinion of the possibility of the critical illness of a member of one's family, his wife or child, for example, subduing the exhibition of great pain, and of pain itself?

Answer.—It would depend altogether upon the source and cause of that pain. For instance affliction might set aside the pain of a toothache, but not in any pain produced by organic lesions.

Question.—Have you not known instances of men under the influence of drunkenness, sobered in a few moments by some great calamity, murder for example?

Answer.—No instances ever came under my observation. I have heard of it.

Question.—Is there organic lesion in lumbago?

Answer.—There is more or less inflammation of the muscular tissues in lumbago and that is what we understand by lesion.

Question.—Would you conclude that because a man attending upon his wife, ill of so fatal a disease as yellow fever, herself a stranger to the climate, exhibited no complaint, he was necessarily not suffering any physical pain?

Answer.—That is a very hard question. It supposes a case so entirely different from the one under consideration that I would rather decline answering. This case will be taken as a precedent, and this supposes a case so entirely different from the actual state of affairs that I would prefer not to answer it.

Counsel for the accused.—The accused wishes an answer, because the witness is on the stand as an expert. Such witnesses have always, and (on this trial too) been examined on hypothetical case or cases stated.

Judge Advocate.—I have no question of it. I asked him in a particular case, if you refer, &c.

Counsel for accused.—All the medical witnesses have been examined as experts, and Dr. L'Engle is not an exception. I call upon him to express an opinion. If I don't prove the case, then it goes merely as matter of opinion.

Col. May.—I understand the witness to object to answer the question, unless he enters an explanation. If allowed to do so, he is prepared to answer the question.

Witness.—I do not consider the question, there applies to the case under consideration. (Counsel for accused.) To which the accused would reply, the witness has nothing, whatever, to do with that.

The question was again read.

Answer.—I admit that an individual so situated might be suffering bodily pain. I also state that a medical man from having an opportunity of observing him closely at the time, and constant association with such an individual, could form a very correct estimate as to the amount and intensity of the pain.

Question.—Without an examination of the person what opportunity would a medical man have for observing and forming an opinion that would not be enjoyed by any other person?

Answer.—He is presumed to know how persons usually conduct themselves under the influences of association.

Question.—The Judge Advocate, yesterday, put this question to you: "Did he look and walk like a man suffering bodily pains, &c." (read as yesterday) and you answered to it: "I discovered no evidence, &c., except walking like a man who had one stiff knee." Be pleased to state what other indications could be afforded than were afforded?

Answer.—None were afforded other than could be readily assumed.

Counsel for accused.—I submit that is not an answer to the question.

Witness.—It will force me to details, sir, that I would not like.

Counsel.—The accused submits that the question is not answered. The accused insists upon a strict, legal answer, and throws himself upon the protection of the Court for an answer.

Col. May.—I think the witness should answer the question.

Witness.—Perhaps I can answer the question without saying what I thought would be necessary to answer the accused satisfactorily.

Answer.—I did not consider that the evidences sufficiently accounted for the amount of disease claimed. But a person suffering intensely, could not perform the amount of physical labor, that was performed by the accused under my own eye. It would have been impossible for the patient, to move who claimed to be so ill and suffering so intensely.

Question.—Would a man, who feels the pulse of a patient at arms length be in any less danger from contagion, then if he felt it in the ordinary way?

Answer.—No, sir.

At 3 o'clock the Court was adjourned.

SEVENTH DAY.

SATURDAY, April 2d.

The Court met at 11 o'clock, and the Journal of yesterday was read. Present—the same members as yesterday, and the accused and his counsel. The cross-examination of Ass't Surgeon Wm. J. L'Engle was resumed by the counsel for accused.

Question.—Did you or not visit Dr. Byrne several times before you were called to attend Mrs. Byrne with him?

Answer.—I did, sir.

Question.—Did you or not always find Dr. Byrne in bed when you visited him previously to Mrs. Byrne's illness?

Answer.—I do not recollect seeing him, except on my first visit. I may have seen him oftener, but do not recollect it.

Question.—When did Mrs. Byrne's illness begin?

Answer.—It was on the 24th or 26th of September. It was about that time.

Question.—How long did you attend Mrs. Byrne in consultation with Dr. Horlbeck and Dr. Byrne.

Answer.—It was twelve or fourteen days.

Question.—Was not Mrs. Byrne dangerously and critically ill with yellow fever? How long?

Answer.—She was, and during the period already mentioned.

Question.—Can you assert that Dr. Byrne was not suffering much during the whole period of Mrs. Byrne's illness, both from rheumatism and boils?

Answer.—Of course, I cannot.

Question.—Are not relapses caused by fatigue and exposure very frequently in rheumatism and rheumatic affections?

Answer.—Yes, sir.

Question.—How many cases of yellow fever occurred among the troops during the whole period of your attendance, and how many deaths? How long did you attend them?

Answer.—I cannot answer that question without reference to the register. It is impossible.

Counsel.—We wish you to examine the register. The register was sent for.

Witness.—I think you will find some trouble about it, for I hardly think the accused will agree with me as to my statements. There are patients that died a day after and the day before, that I do not acknowledge as my patients at all. I found them in *articulo mortis* when I came on duty.

Question.—Did you ever express to Dr. Byrne a doubt as to Mrs. Byrne's recovery?

Answer.—I did, sir.

Question.—Was it not very important to the safety of Mrs. Byrne's life that a physician should constantly watch over her during the twelve days she was seriously ill?

Answer.—Yes, sir. It was important that she should have the care of a physician constantly.

Question.—You visited Mrs. Byrne's very frequently night and day. Did you ever see any nurse in the room with Mrs. Byrne except Dr. Byrne, and do you not believe that Dr. Byrne was her only attendant during her illness?

Answer.—I do. I saw no one else attending her except Dr. Byrne, and he was almost constantly at her bedside.

Question.—Supposing yellow fever to be a contagious disease, was or was not Dr. Byrne more exposed and much more likely to contract it by nursing his wife, night and day, who was ill with it, than he would have been by making transient visits to the hospital?

Answer.—That is not my theory. I cannot argue the case as I do not believe it to be contagious. I am not prepared to take that side of the question.

Question.—Referring to your conversations with Dr. Ravenel about Dr. Byrne's ability to perform duty, are you positive he said he was able, or did he say Dr. Byrne was as able as he, Dr. Ravenel, was at the period of time to which he referred?

Answer.—In my conversation with Dr. Ravenel he frequently alluded to the probability of his being called up as a witness in this case, and was rather careful in the selection of his words, but from the manner of conversation about the case, constantly throwing ridicule upon the idea or proposition that Dr. Byrne was unable to go to the hospital I once put the question to him, "If he did not think that Dr. Byrne was able to go to the hospital," and he replied, "I think so," saying at the same time that he had prescribed for his patients when he was a much sicker man than Dr. Byrne was at that time.

Question.—Would you feel certain that your memory was correct if Dr. Ravenel in testimony should state positively that his remark was qualified as put by the last interrogatory?

Answer.—I am sure that Dr. Ravenel expressed himself to me in the way I have just stated.

Question.—When were the conversations with Dr. Ravenel to which you have just referred?

Answer.—At various times during Dr. Byrne's illness.

Question.—How then could they be about his being a witness in this case?

Answer.—Because the probability of his being tried was the current talk on my arrival at this island.

Question.—Was or was not your detention at this post last fall a matter of inconvenience to you, and to your personal arrangements—a serious annoyance and vexation to you?

Answer.—Yes, sir.

Question.—Were or were you not engaged in visiting any further cases of yellow fever with Dr. Byrne, in any other time, except Rippet and Driscoll?

Answer.—I cannot be positive, but I think Rippet and Driscoll were the only two patients with yellow fever in the hospital on the morning Dr. Byrne visited with me. I might have attended his own wife but no body else that I recollect of. I do not recollect of

any other patients. The servant girl referred to was not at the time considered a case of yellow fever.

Question.—Were or were not those visits after Dr. Byrne's return to duty?

Answer.—Yes, sir, they were.

Question.—Did you or did you not visit these cases, Rippett and Driscoll, with your mind made up beforehand that Dr. Byrne was alarmed by the fear of contagion from yellow fever?

Answer.—Yes, sir. I say yes, sir, because he discovered a certain degree of apprehension of danger from contagion whenever the subject was mentioned for several days previous to his visit to the hospital.

Witness.—If you will allow me I will change that expression and say a certain amount of anxiety upon the subject of contagion whenever the prevailing epidemic was discussed for several days previous to his visit to the hospital.

Question.—Can you undertake to say, that this foregone conclusion did not add material weight to the impression produced in your mind, by Dr. Byrne's manner in the hospital, detailed in your examination in chief?

Answer.—I did not think it did.

Question.—Without other proof or in the case of another physician of whom you had no preconceived opinion, would that manner alluded to, have convinced you as positively or entirely as you have expressed yourself?

Answer.—Yes, sir.

Question.—Is or is not Dr. Byrne often excitable in manner? Do you know of what country and blood he is?

Answer.—He was born in Ireland, sir. As to his temperament, I can say but little, as I have only seen him for three times for an hour or two, previous to meeting him here last summer. I think I saw him three or four times.

Question.—The question refers to Dr. Byrne's *manner*. Be pleased to answer plainly, whether it is or it is not often an excitable one?

Answer.—I should incline to think it was rather an excitable one.

Question.—How many cases of yellow fever occurred among the troops at Fort Moultrie from the 17th of September to the 11th of October?

The counsel for accused here submitted a certified copy of an official report of the sanitary condition of Fort Moultrie, for last fall, during the prevalence of the epidemic. The original was made by Surgeon B. M. Byrne, the accused, and deposited in the Surgeon General's office, at Washington.

Col. May.—The proper record in the original entry is the best and most proper evidence, and not a copy made out from those entries.

Judge Advocate.—If the accused introduces a document of that sort, and it is in conflict with the record, I shall find it out and

expose it; but I believe it is perfectly legitimate to prepare an exact copy from the record. If it is not an exact copy it is worthless. It is presented with a view of saving the time of the Court, by presenting in a bulk what would have to be brought out by questions.

Counsel for accused suggested that the document be compared with the registry book, in the evening, and then go on record the next day as evidence.

The Judge Advocate said he would admit it to be, what it purports to be.

Question.—When you stated in your evidence as your opinion, that Dr. Byrne might have gone to duty at any time between the 26th of September and the 9th of October, did you mean to say that it was right and proper that he should have gone to duty, or simply within the bounds of possibility that he could have done so?

Answer.—I did. I considered it right and proper that he should have done so.

Question.—Would you without a medical examination, send a soldier to duty, and on just such evidence as Surgeon Byrne's case presented to you?

Answer.—If I had the same reason for believing that he was as capable of performing the duty that was required of him, as Dr. Byrne was of performing his proper duties, I would.

Question.—Would you send any soldier to duty who insisted that he was sick, without examining him?

Answer.—I have often done so.

Question.—Was it in cases of soldiers of good character?

Answer.—I have done so with men who were considered good soldiers, without any previous knowledge of their character.

Question.—You have said that Dr. Byrne walked about his house. Did you ever in any of your numerous visits to Dr. Byrne's house, see him walking either for exercise or for amusement, or was it simply from one room to another that he walked?

Answer.—I cannot say that I ever saw him walking for amusement or exercise; but he walked from one room to the other upon my visits, and very frequently accompanied me to the front porch.

Question.—Did you think that the number of yellow fever patients in the hospital was so great at any time during the fifteen days which intervened between the 26th of September and the 11th of October, as to render it urgent for Dr. Byrne to report for duty.

Answer.—I did.

Question.—When you speak of the front porch, is not the porch, or piazza, and the body of the house all under the same roof?

Answer.—I think they are.

Question.—What was, in your opinion, the emergency, if any, that should have caused Dr. Byrne to expose himself to the weather and to fatigue while suffering, as he alleges, from rheumatic pains, boils and blisters?

Answer.—The existence of yellow fever as an epidemic at the post of which he was the physician and proper medical officer.

Question.—Is or is there not at this time a patient in the hospital under your charge, named Hewitt? If so, what is his disease?

Answer.—There is one, and his disease is rheumatism.

Question.—How long has he been on the sick report?

Answer.—I do not know. He was in the hospital when I took charge on the 27th of March. I am not presumed to know any thing about him previous to my taking charge. He was entered March 7th, 1859. This is from the hospital register.

Question.—During the time he has been under your charge, has he or has he not been walking about through the wards of the hospital, going up and down stairs, to and from the surgery, without any manifestations of pain?

Answer.—I shall have to go a little into detail. When I went on duty, I found him in bed. I continued to prescribe for him in bed for two or three days. He then declared himself much better. I directed him to take a little moderate exercise each day; walking about the wards the first day after getting out of bed. The next day I allowed him to go down stairs. He does not complain of pain, and I observe no symptoms of it. He only complains of a little soreness about the joints, but says he has no positive pain. I have said I observed no manifestation of pain. I discovered none.

Question.—Would we or not have a right to conclude then that it is your opinion that moderate exercise is not only incompatible with the existence of pain in rheumatism, but beneficial?

Answer.—No, sir. The time that I directed the patient to get out of bed and walk about the house, he did not complain of pain at all. He simply said, I have no pain, I have only a long soreness about the joints.

Question.—Did you or not learn at the hospital that Hewitt had been nearly all the time, since he entered the hospital on the 7th ult., walking about without giving any manifestations of pain?

Answer.—I heard no such report.

Question.—Can you undertake to say when this man will be discharged from the hospital?

Answer.—No, sir.

Question.—When did you receive orders for Texas?

Answer.—I cannot tell without referring to army orders. As near as I can recollect it was about the last of July. I do not know what day of the month.

Question.—Were you not much dissatisfied with this order, and did you or did you not contemplate resigning your commission rather than obey?

Answer.—I did.

Col. May.—I object to such a question. I do not see what bearing it has upon the case. I think the accused has already been allowed great latitude.

The counsel for accused submitted the following:

The purpose of this question, and others which will follow, is to show that Assistant Surgeon L'Engle was disappointed seriously in his private arrangements by being detained on duty here, and that every day's detention was an annoyance and vexation. The accused will endeavor to show that this irritation and annoyance at his detention here gave coloring in his mind to the whole conduct of the accused, whose place he was supplying.

The Court was closed for deliberation; and on re-opening the Judge Advocate stated that the Court had decided that the objection made by the member be not sustained.

Question repeated.—Were you not much dissatisfied with this order?

Answer.—I expressed at the time a disinclination to go to Texas, because I had at that time an opportunity of leaving the military service, and accepting a position in a civil hospital, far more remunerative than the one which I now hold, and I had at the time some idea of resigning to accept it; but upon subsequent consideration I declined to accept, and obeyed my order to go to Texas. The acceptance of a position in a civil hospital would necessarily require me to resign my position as surgeon in the army. I had an idea of resigning in order to accept this position.

Question.—Are the reasons referred to in your last answer those which caused your stay on the island to be a serious annoyance, as you have already stated?

Answer.—They had nothing whatever to do with it. I will state why it was an annoyance. I was not annoyed, but disappointed, in a visit to Jacksonville, Fla., where I wished to go, in order to transact some business with my brother who resides there, but which business had no connection whatever with my professional relations; being simply to discuss with him the advisability of the sale of a certain piece of property which I then owned in Jacksonville. But a few days after being here, I received a letter from my brother, saying that he had closed the business, he having the power of attorney from me to do so. There was still remaining some unsettled business which I wished to have an opportunity of investigating myself; but that involved so small an amount I could hardly consider it a source of vexation by not being able to do it personally. That is all.

Question.—Was or was there not another cause of vexation in your detention, namely, that you might be prevented from visiting your family in Florida?

Answer.—I do not acknowledge that as a source of annoyance or vexation, because I intended to go through Jacksonville on my way to Texas, go when I would.

Question.—Did you or not ever ask Dr. Byrne whether he thought he would be able to report for duty in a few days, assigning as a reason for making the enquiry, that you wished to give the surgeon general the dodge by making a visit to Florida

before he could have time to repeat the order sending you to Texas?

Answer.—I did, sir.

Question.—When you say you judge from the evidence of your senses, that Dr. Byrne was able to do duty from the 26th of September to the 11th of October, what opportunities had you for judging before the 26th of September, and fix the dates?

Answer.—Before the 26th of September I do not claim to have formed any opinion.

Question.—In summing up your testimony, be pleased to state whether, when you say that Dr. Byrne was able to go to duty from the 26th of September to the 10th or 11th of October, you mean, as your opinion, that he, Surgeon Byrne, was not at all sick—that is *shamming*—or being sick, that he was not too sick for duty?

Answer.—As I have before stated, I had no opportunities of ascertaining whether he was or was not at all sick; but it was my opinion that he was competent to perform his duty on each and every day of the time specified.

Witness.—If you will allow me, I will change that from competent to perform, to say that he had physical ability to perform his duty.

Counsel for accused submitted the following:

The accused now states that he has no further questions for Dr. L'Engle, except those upon the records of the hospital, and on some other points on which he has not had the opportunity to confer with his counsel. These he will present when he is again called up, if the Court will be pleased to so order.

The Judge Advocate then stated that he would admit and put on the record a certified copy of the report of cases in the hospital at Fort Moultrie last fall, and say: The accused submitted to the Court a paper appended to this record and marked S S. I will admit that paper to be what it purports to be, an official copy of an official report made by Surgeon Byrne, and now on file in the Surgeon General's office at Washington. The paper was then read and appended to the record.

The Court then adjourned.

EIGHTH DAY.

MONDAY, April 4th, 1859.

The Court met this day, at 9 o'clock. Present—the same members as yesterday, and the accused and his counsel. The examination of Assistant Surgeon Wm. J. L'Engle was resumed.

Question by accused.—Examine the record, and say how many new cases of yellow fever occurred during the time you had charge of the hospital; how many between the 26th of September and the 11th of October?

Answer.—There were thirteen cases of yellow fever among the enlisted men, whilst I was on duty, and eight of these occurred between the 26th of September and the 11th of October; there were other cases connected with the garrison entitled to medical attendance.

Question.—Did these cases furnish more than occupation enough for more than one medical practitioner?

Answer.—No, sir.

Question.—How many cases in a medical hospital could one medical practitioner conveniently attend?

Answer.—I should say the number would depend upon the arrangement of the patients in the hospital; but, under any circumstances, certainly not less than twenty to thirty a day. I have myself attended over twenty yellow fever patients in a civil hospital, being myself the only medical officer.

Question.—Were or were you not extensively engaged in private practice whilst attending on the hospital?

Answer.—I was, sir.

Question.—What proportion of time do you think the hospital, and what proportion of time do you think your private practice occupied you?

Answer.—They were about equally divided.

Question.—Have you had extensive experience in the disease called lumbago?

Answer.—No, sir.

Question.—How many cases of lumbago do you suppose you have attended in the whole course of your practice, both private and public?

Answer.—I cannot recollect. Somewhere between five and ten.

Question.—Have you ever practiced medicine before you entered the army? If so, how long?

Answer.—I practiced medicine from the spring of 1853 until the fall of 1856, before I entered the army.

Question.—At how many posts have you been stationed since you entered the army, and about what was the average strength of the command at each post?

Answer.—My first service in the army was at Fort Monroe. Before I entered the army I was acting as Assistant Surgeon in the employ of the government, at that post, but not as a commissioned officer.

Judge Advocate.—State the number of posts you have been at since you entered the army.

Answer.—At five posts, sir. The first was a one company post, the second a one company post and regimental headquarters, the third a two company post, the fourth a two company post, and the fifth a one company post and regimental headquarters. This excludes my present service, and my service at Fort Monroe, in which I was employed by the government before I was commissioned for two months, at one of the posts there were thirteen companies.

Question.—You stated in your cross-examination, that lumbago is not an intermittent disease. Did you mean by that to say that a patient affected with lumbago experiences from the commencement of an attack to its termination no intervals in which there is an entire cessation of pain?

Answer.—The question I answered on that subject was worded entirely different from that, and the same answer would not apply to both. Answer, in brief, is: He may do so, sir. That is not my idea of the disease, that it is intermittent.

Question.—Have you or not ever kept on the sick report for an indefinite period, a private soldier, who complained of chronic rheumatism in different parts of the body, but who could walk about without ever limping, and whose own assertion that he suffered was the only evidence you could have of his disease?

Answer.—I have, sir.

Question.—When a patient is dangerously ill with yellow fever, is it or not of primary and vital importance that that patient should have at least one watchful and reliable nurse at or near his bedside in constant attendance?

Answer.—Yes, sir; it is of importance that he should.

Question.—Considering Mrs. Byrne's illness, which you say was critical, and the number of cases in the hospital, which you say occupied just one-half of your time, was the emergency which you say existed for Dr. Byrne to take charge of the hospital one that would exist while you were in charge; or was it your meaning that it was his duty to relieve you, which constituted the emergency?

Answer.—I thought it was his duty to relieve me, and that, in my mind, constituted the emergency. I consider the first condition named as having nothing at all to do with it.

Question.—Suppose Dr. Byrne had been in perfect health from the 24th of September to the 8th of October, when he reported for partial duty, would you, as a brother officer, and especially as an officer of his own corps, have permitted him, if you could have prevented it, to leave the bedside of his wife, who, you admit, required constant watching to save her life, in order that he might relieve you from a very temporary and a very light duty?

Answer.—Under those circumstances, I would have done all in my power to have assisted him in the discharge of his duty, but would have thought very strange of him, at least, if he had not offered at any time to go and see his own patients.

Questions in reply by Judge Advocate:

Question.—After receiving, in a day or so after you entered on duty here last fall, a letter from your brother, informing you of the settlement of your business at Jacksonville, was your detention here a source of vexation and irritation? State fully.

Answer.—I do not consider it a source of vexation and irritation; on the contrary, I look back to it as my pleasantest army experience, being in the midst of my friends and relatives.

Question.—You say, that Dr. Ravenel, in conversation with

you, referred to the probability of his being called as a witness on the trial of Dr. Byrne; state, if you know, what reason he had for thinking he would be tried?

The accused objected to the question. The accused must object to this witness undertaking to give Dr. Ravenel's reasons, as no one but the Doctor can be supposed to know them. The accused also objects from the candid declaration of the Judge Advocate, that he intends to prove the rumors existing on the Island. The accused has heretofore made a similar objection, and it has been sustained by the Court. For the reasons more in *extenso* he refers to his former objections.

The Judge Advocate said he desired to lay before the Court a review of all the facts connected with the circumstances of the case. The accused has himself first inquired as to the existence of these rumors on the Island, by a question put to Col. Gardner. It was a question on a matter introduced by defence.

The former decision of the Court was then sent for.

The Court was closed for deliberation. On re-opening, the Judge Advocate stated that the Court had decided that the objection be not sustained.

Question.—You say Dr. Ravenel, in conversation with you, referred to the probability of his being called as a witness on the trial of Dr. Byrne. State, if you know, what reasons he had for thinking he would be tried.

Answer.—I think he formed an opinion from the current rumor, and from the fact that I had received a certain communication from the Surgeon-General, ordering me to take charge.

The accused must again object to this witness undertaking to give Dr. Ravenel's reasons, because no one but the Doctor could be supposed to know them.

The Court was again closed, and on re-opening, it was announced that the Court had decided that the objection be sustained.

Question.—You said that Dr. Horlbeck attended Dr. Byrne's wife with you. Did he not have the same opportunity of observing Dr. Byrne's health that you had?

Answer.—Yes, sir.

Question.—Did you have any conversation or conversations with him on the subject of Dr. Byrne's state of health?

Answer.—I did, sir. I had conversations with him on that subject.

Question.—When you took charge of the hospital at this post last fall, was private Jones, who died on the 16th of August, recorded on the official register as having died of yellow fever? If not, of what disease?

Answer.—My impression is that he was not recorded as a case of yellow fever at that time. I think it was recorded as a case of gastritis.

Question.—Examine the hospital register now handed to you, and say how his disease stands recorded.

Answer.—Opposite his name, and under the head "complaint,"

is recorded gastritis, which word is marked over with a pencil; just above it is written "feb. typh. ictod," which is the technical expression abbreviated for yellow fever.

Question.—Look at the names of Sergeant McMahon and Renehan on the register, who came into the hospital on the 26th of August, and say how their diseases are recorded.

Answer.—Opposite Sergeant McMahon's name, in the column of complaint, stands the same technical abbreviated expression for yellow fever; opposite Sergeant Renehan's name are dittos, referring to or meaning the same disease. Sergeant McMahon is reported as returned to duty on the 31st of August, and Serjeant Renehan on the 4th of September.

Question.—Were the diseases so recorded when you took charge of the hospital?

Answer.—I cannot say as to those two cases.

Question.—Opposite the name of Sergeant McMahon is there any indication of erasure or obliteration?

Answer.—Yes, sir.

Judge Advocate stated that he would record here that the register was exhibited in Court.

Question.—State, if you know, when and by whom these changes were made.

Answer.—I think they were made by the hospital steward, and about the time for making out the quarterly report of sick at the end of September. At that time the steward asked me how he should enter some cases, referring to a number of cases, which he mentioned. I told him the cases had occurred before I came on duty, and he must go and see Dr. Byrne on the subject. From him, I think, he received orders as to how he should enter them. He said he did not know what the technical expression for yellow fever was, and in making out the report, he asked how to enter the yellow fever cases.

The Judge Advocate here stated that he had no further question to ask witness.

Question by the Court.—Did you report to, or in any manner inform the commanding officer, or Dr. Byrne, that there were more sick persons belonging to the garrison than you could attend from the time you took charge of the hospital, and Surgeon Byrne's return to duty?

Answer.—I did not.

The witness was then discharged.

Lieut. F. A. Shoup, 1st Artillery, a witness for the prosecution, was then duly sworn.

Question.—Were you on duty at this port on or about the 8th of September last, and for some months previously? If so, in what capacity?

Answer.—I was in the command of Company H, 1st Artillery.

Question.—How many men in that company were reported sick in hospital, and how many sick in quarters on 6th, 7th, 8th and 9th of September?

Answer.—(Referred to record.) On the 6th there were five, on the 7th there were six, on the 8th there were seven, on the 9th there were four. They were simply reported sick, without stating in the morning company report whether they were in the hospital or at quarters.

Question.—What was the state of the health of the troops at this post, on or about the 8th of September last, as compared with the state of the health of the troops for several months previously?

Answer.—It was worse.

Question.—Was there any fatal and epidemic disease in the garrison previous to about the first week of September?

Answer.—There were deaths. There had been but one very sudden death in the garrison previous to the first week of September. I cannot say whether the disease was epidemic or not.

Question.—Was there any fatal and epidemic disease in this garrison from and after that time. If so, what was it?

Answer.—There was. Yellow fever.

Question.—Were you present on the 5th of September last when the commanding officer of this post addressed the troops on the importance of avoiding exposure to yellow fever?

Answer.—I was.

Question.—Was Surgeon Byrne, the then Surgeon of the post, present at the same time?

Answer.—He was.

Question.—Did the commanding officer say or intimate that he made that address at the suggestion of Surgeon Byrne?

Answer.—He did.

Question.—Did Surgeon Byrne speak up and say, whilst the commanding officer was addressing them, anything so as the men could hear him. If so what did he say?

Answer.—He did. He confirmed the assertions made by the commanding officer, that there was yellow fever in all the grogeries about the island. The commanding officer stated in the first place that it was made by the authority of Surgeon Byrne. This was on the 5th September.

Question.—It is in evidence that a soldier named Holden died of yellow fever in hospital here on the day before the 4th of September. State, if you remember, about what time on the 4th he was buried.

Answer.—I do not exactly remember, but think it was on the morning of the 4th, between 9 and 10 o'clock.

Question.—Was there at the time of this address a soldier lying dead in the hospital of yellow fever, and was his funeral escort then in ranks?

Answer.—There was a soldier lying dead in hospital, but his death was not reported as one of yellow fever, and his funeral escort was not then in ranks. This man's name was Zimmerman.

Question.—Soon after this address, in a few minutes after, did Surgeon Byrne say anything to you about the impropriety of

releasing the prisoners. If so, state as nearly as you can his words?

Answer.—He did. There had been several prisoners released who were in the guard house for drunkenness. The commanding officer had ordered the commanders of companies to release all those they thought proper, and who were not undergoing sentences or awaiting sentence. Dr. Byrne said to me that was the worst thing that could have been done, that these men would go off into these grog-shops where the yellow fever was and a few days would be in the hospital. He did not say of what disease.

Question.—Previous to this address was there any serious apprehension in the garrison, as far as you know, that yellow fever was impending?

Answer.—No, sir.

Question.—Was there or was there not such an apprehension from and after about the 8th of September?

Answer.—There was.

Question.—During Dr. Byrne's reported sickness, that is, between the 8th of September and 8th of October last, had you any conversation with Dr. Ravenel in regard to Dr. Byrne's ability to attend to the duties of Surgeon at this post?

Answer.—I had on several occasions.

Question.—What opinion did Dr. Ravenel express on the subject. State his words as nearly as you can?

Answer.—On one occasion he said, it was impossible for him to say whether Dr. Byrne was sick or not, but that he, Dr. Ravenel, had been going about the island attending to his patients day and night when he had more rheumatism than Dr. Byrne had. On other occasions he expressed himself in a similar manner.

Question.—Were the grog-shops on this island, which Dr. Byrne said, during Col. Gardner's address to the troops, were full of yellow fever, in the immediate vicinity of the garrison or a few hundred yards?

Answer.—There is one within a few hundred yards of the garrison. They are all within convenient walking distance and from a quarter to three quarters of a mile of the garrison.

The examination in chief of this witness was here closed.

Question by the accused.

Question.—When you speak of the health of the garrison, on or about the 9th of September, being worse than previously, state whether you have founded this opinion on an examination of the health statistics of the post?

Answer.—I have not.

Question.—Referring to Surgeon Byrne's allusion to yellow fever being in the grog shops did he speak of its being there or as liable to be brought down from the city?

Answer.—He spoke of its being there.

Question.—To what period of Surgeon Byrne's sickness did Dr. Ravenel's conversation with you about Surgeon Byrne's ability to attend the sick refer?

Answer.—It referred to the entire period from the time he first took sick and up to the time he reported for duty; that is for the entire period. I think the particular conversation alluded to occurred after or subsequent to Dr. Byrne's return to duty?

The accused said he had no further questions.

Question by the Court.

Question.—Had all the men whom you mention as being reported sick on the 6th, 7th, 8th and 9th of September been reported to the Surgeon and by him ordered to the hospital?

Answer.—The morning company report was made out from the hospital morning report. I cannot say whether all who were reported sick were in the hospital.

There being no further questions the witness was discharged.

Lieut. O. H. Tillinghast, 1st Artillery, was duly sworn.

Questions by Judge Advocate.

Question.—Were you on duty at this post on or about the 8th of September last and for some months previously. If so, in what capacity?

Answer.—I was on duty here at that time, acting as regimental adjutant, and was also regimental quartermaster.

Question.—What was the state of health of the garrison on or about the 8th of September last, compared with what it had been for months previously?

Answer.—I should think it was worse, and had been growing worse for two or three weeks previously, not as bad as it was subsequently but worse than formerly.

Question.—Was there any fatal epidemic disease in the garrison previous to about the 8th of September?

Answer.—I did not hear of any.

Question.—Was your official position such that if there had been any you would in all human probability have heard of it?

Answer.—I think I should, sir.

Question.—How many men of the command died at this post during the three or four months preceding the month of September last. State as nearly as you can?

Answer.—I do not remember but one. There may have been others.

Question.—If there were more would not the official post records show it?

Answer.—They would report the men of the command. I have not examined the record with that view and cannot say whether it is so or not.

Question.—Did any fatal epidemic disease prevail in the garrison from and after the first week of September. If so, what was it?

Answer.—During the first week of September a man died who came from Key West, and it was said by the Doctor that the man died of yellow fever. He did not belong to the command. He was a discharged soldier, or within two months of it. Another man died the next day in the hospital and it was generally supposed that he had died of yellow fever. I did understand at the

time that the Doctor said it was not yellow fever. I cannot add more, but that there was no doubt about their having yellow fever in the form of an epidemic about a week later. I believe it was less than a week that Dr. Ravenel informed the commanding officer, in my presence, that they had yellow fever in the hospital. That I think was about the 11th of September.

Question.—Were you present on the 5th of September last, when the commanding officer addressed the troops on the importance of avoiding exposure to yellow fever?

Answer.—I was present.

Question.—Did he say or intimate that he made the address at the suggestion of Dr. Byrne, and was Dr. Byrne present with him at the time. If so, did he say anything, and what was it?

Answer.—Dr. Byrne was present with him at the time. The commanding officer said the address was made at the suggestion of Dr. Byrne. Dr. Byrne was appealed to once or twice by the commanding officer to know if these things were not so. Dr. Byrne said they were and assented to the propositions. He afterwards appealed to him to know if there was not yellow fever in the grog shops about the island, assuring the men if they went there they would catch it. Dr. Byrne assented to it and said it was so.

Question.—Previous to this address was there any serious apprehension in the garrison that yellow fever was here?

Answer. I do not think there was. The subject was discussed. A man died about the middle of August, but I think the Doctors said it was not yellow fever. A servant girl of Col. Gardner's had also died, whose death created a great deal of discussion. This was a little subsequent to the time that the man Holden died. The girl died later in the month, about the 25th August. The conclusion arrived at was that she died of yellow fever. I heard the opinion of the Doctor the morning after she died.

Here the Judge Advocate said he wished to make an explanation to the Court as a matter of justice to Dr. Byrne. "In my questions in regard to the erasures in the record book I did not mean to be understood as impeaching Dr. Byrne at all, or to insinuate or prove that Dr. Byrne had mutilated the book. I had no such intention whatever. I simply wanted to prove another point in the prosecution without throwing impeachment upon Dr. Byrne."

Court then adjourned.

NINTH DAY.

TUESDAY, April 5th.

The Court met pursuant to adjournment at half past 9 o'clock. Present—the same members as yesterday, and the accused and his counsel. The examination of Lieut. O. H. Tillinghast was resumed by the Judge Advocate.

Question.—Did Dr. L'Engle communicate in conversation with you and other officers of the post on the 7th of October last the result of a conversation he just had with Dr. Byrne on the subject of his (Dr. Byrne's) resuming his duty?

Answer.—I had a conversation with Dr. L'Engle on the morning of the 7th of October on that subject. There were one or two officers present. I can say positively, there were two present.

Question.—State the substance of what Dr. L'Engle said? (Question objected to by the accused.)

Objection.—The accused objects to the proof of what Dr. L'Engle said in conversation with witness. Dr. L'Engle was here to prove whatever he said. The accused cannot conceive under such circumstances why secondary evidence is offered. And it is not allowable. Dr. L'Engle is a witness for the prosecution. It cannot be their intention to impeach him, and the only other assignable reason would be to sustain him, and this is premature as he has not been attacked.

Judge Advocate.—Dr. L'Engle has already given in testimony the substance of this conversation with Dr. Byrne on the 7th of October last, and also after that he spoke of it immediately to other officers of the post, Col. Gardner among the rest. Col. Gardner has given in testimony the substance of a conversation with Dr. Byrne on the same subject, but could not give the date. The object of this question is not to impeach or support Dr. L'Engle's testimony, but with other questions to identify the conversation, and show if such be the fact, that they were both on the same day, and Col. Gardner immediately after in consequence of Dr. L'Engle's conversation, visited Dr. Byrne.

The Court was closed for deliberation. On re-opening, the Judge Advocate announced the decision of the Court that the objection be sustained.

Question.—Was the substance of what Dr. L'Engle said in that conversation reported very soon after by an officer on the same day to Col. Gardner?

Answer.—I do not know that the substance of Dr. L'Engle's remarks was repeated to Col. Gardner, but a representation was made by an officer to Col. Gardner in consequence of this conversation of what Dr. L'Engle had said. This representation was made by Capt. Doubleday, he being the senior officer, immediately, or within an half hour after the conversation with Dr. L'Engle.

Question.—Do you know that Col. Gardner had on this same day a conversation with Surgeon Byrne on the subject of his (Byrne's) return to duty?

Answer.—I know it by his (Col. Gardner's) informing me that he had such a conversation.

Question.—Did Col. Gardner give you this information on the day just referred to, that is on the 7th of October last?

Answer.—He did, and immediately after returning from Dr. Byrne's house.

Question.—State the substance of what Col. Gardner said in giving you that information? (Objected by accused.)

Objection.—The accused objects to this witness, detailing conversations with Col. Gardner, and statements made by the Colonel on the ground that it is secondary evidence. Col. Gardner is within the jurisdiction of the Court, and should be produced. It seems to the accused to be the same point, just decided in relation to Dr. L'Engle.

Judge Advocate.—The object of the question is to fix the date of the last conversation, which Col. Gardner testified to having with Dr. Byrne. Col. Gardner was questioned as to the date, and could not give it. I only desire to obtain enough of what Col. Gardner said to the witness, to enable the Court to judge, if Col. Gardner was then speaking to the witness of the same conversation with Dr. Byrne, which he has detailed in testimony to the Court.

The Court was then cleared for deliberation, and on re-opening the Judge Advocate announced the decision of the Court that the objection be sustained. The question was withdrawn.

Question.—Did or did not Col. Gardner tell you in that conversation, that in the conversation he had with Dr. Byrne, that he, Gardner, had concealed from Dr. Byrne the existence of current reports and rumors that he, Dr. Byrne, was feigning sickness, and that he, Gardner, had simulated as a reason for speaking to him, that Dr. L'Engle was new at the post, and had not regularly relieved him (Byrne's)? Objected to by the accused.

Objection.—The accused objects for the same reason last urged; the evidence is secondary. It seems a mere repetition of the same points twice ruled out by the Court.

Judge Advocate.—Col. Gardner has testified that he had two conversations with Dr. Byrne on the subject of his (Byrne's) return to duty. In the first he concealed from Byrne the existence of current reports prejudicial to him, and simulated a reason. In the second he informed him that such reports were current and gave himself as authority that they were, and advised Byrne to ask for a Court of Inquiry. I think it a matter of some importance to the prosecution to show, if such is the fact that this second conversation was held on the 7th of October last, the day before Dr. Byrne addressed an official note to the Adjutant of the post on the subject of his (Byrne's) return to duty, which note is in evidence before the Court. I have endeavored to identify the conversation by showing what was its substance, but the question was thrown out by the Court. I now propose to show that the conversation of which Col. Gardner spoke to the witness on the 7th of October, was not the first of Col. Gardner's conversations.

The Court was cleared, and on re-opening its decision announced that the objection be not sustained.

The question was repeated.

Question.—Did or did not Col. Gardner tell you in that conversation, that in the conversation he had with Dr. Byrne, that he,

Gardner, had concealed from Byrne the existence of current reports and rumors that he, Dr. Byrne, was feigning sickness, and that he, Gardner, had simulated as a reason for speaking to him, that Dr. L'Engle was new at the post, and had not regularly relieved him (Byrne's)?

Answer.—He did not so state, but on the contrary he stated to me that he did tell him these rumors were current, and assigned himself as authority for that fact.

Question.—Did he not say that in that conversation he had advised Dr. Byrne to ask for a Court of Inquiry?

Answer.—He did say so.

Protest by accused.—The accused begs leave to submit that the objections to the continuation of the examination into conversations with Col. Gardner are not again repeated, because he submits with deference to the ruling of the Court for their admission. But he wishes to be understood still as not consenting to the evidence. I ask to put that on the record.

Counsel for accused.—If the Court will allow me, I will explain. It might have been supposed from a remark that this paper ought not to have gone on the record, but it is really the highest evidence of the deference which the accused pays to the opinion of the Court, the very highest which he can pay in that way.

Judge Advocate.—I will add in connection with that I do not propose to pursue the matter any further.

Counsel.—I would state in justice to the accused that he would have objected, if he had understood the last as a new question.

The accused was allowed to enter his objections and the protest was withdrawn.

Objection.—The accused objects to this question on the same ground, upon which the Court has twice ruled out inquiries into the conversations with Col. Gardner; namely, that it is secondary, and Col. Gardner should be produced. This objection the accused deems quite consistent with the ruling of the Court, in admitting the last question as explained by the Judge Advocate.

The Judge Advocate stated that he had no reply to make, whereupon the Court was closed for deliberation.

On re-opening the decision was announced that the objection be sustained, and the question not put.

Question.—Did or not Dr. Ravenel in a conversation with you, last fall, express any opinion as to Dr. Byrne's ability to attend to the duties of Surgeon at this post, during the time he (Byrne) was reported sick? If so, what opinion did he express? Give his words as nearly as you can.

Answer.—Dr. Ravenel came to me with an account against the United States for services rendered the sick in the hospital and wanted me to pay it, I being Quartermaster. I declined paying it, and gave my reasons for doing so. He urged many arguments why it should be paid, and among them he stated that he was a much sicker man whilst doing that duty in the hospital of attending the sick than Dr. Byrne was.

Question.—Were you intimated and constantly associated with Dr. L'Engle while he was on temporary duty here last autumn?

Answer.—I was.

Question.—Did Dr. L'Engle manifest at any time any vexation or irritation at being detained here to perform the duties of Surgeon of the post? State fully.

Answer.—He did not. On the contrary, it was a matter of remark that he did the duty very cheerfully. I will add that he remained, in a great measure, voluntarily, for after Col. Gardner had expressed his intention of detaining Dr. L'Engle, he ascertained that he, L'Engle, had a female relative traveling with him, and told Dr. L'Engle that under those circumstances, he would not detain him, that he might go on. Dr. L'Engle remarked that that was no matter, and he did not regard it himself, and he would not allow such a reason to influence him in the discharge of his professional duty.

Question.—Was he or not complimented in orders by the commanding officer for his services here?

Answer.—He was.

Judge Advocate.—I am sorry to detain the Court, but I would say that on the cross-examination there was an effort made to show that Dr. L'Engle was irritated at his being detained here. As a matter of justice to Dr. L'Engle, I propose to put on record the following letter;

HEAD QUARTERS, FORT MOULTRIE, S. C., }
October 11th, 1858. }

[Orders, No. 33.]

Surgeon B. M. Byrne having reported for duty, Assistant Surgeon Wm. J. L'Engle is relieved from duty at this post. In relieving Dr. L'Engle from duty, the Colonel commanding takes occasion to express his high appreciation of his services, in so cheerfully leaving his own pursuits and coming to duty at this post during the prevalence of an epidemic unparalleled in its virulence, as well as by his unremitting attention to and skillful treatment of both soldiers and citizens, Dr. L'Engle has discovered qualities which could not fail to command the admiration and win the esteem of every officer and soldier of the command.

By order of Col. GARDNER.
O. H. TILLINGHAST, Ac't. Adj., First Artillery.

Question.—Look at the paper now handed to you, and say if the signature is yours, and if it is a true copy of that order?

Judge Advocate.—I think it but just to Dr. L'Engle, in view of the cross-examination, to read this order to the Court. The above order was then read.

The examination in chief was here closed.

Question by accused:

Question.—Did any of the officers of the post, except Col.

Gardner and Dr. L'Engle, to your knowledge, visit Surgeon Byrne while he was on the sick report.

Answer.—I have understood from Capt. Doubleday that he went to see him. I have no reason to suppose that any other officer went. (The witness was here discharged.)

Capt. Abner Doubleday sworn.

Question.—Were you on duty at this post on the 7th of October last?

Answer.—I was.

Question.—Were you present with Lieut. Tillinghast and Lieut. Shoup on the morning of that day, when Dr. L'Engle related the result of a conversation he had that morning with Dr. Byrne on the subject of his (Byrne's) return to duty?

Answer.—I was present when there was a conversation on that subject, but do not recollect all the conversation or that Dr. L'Engle said he had been conversing with Dr. Byrne. Dr. Byrne was the subject. Lieut. Tillinghast and Lieut. Shoup were present, as also Dr. L'Engle.

Question.—Did you, in consequence of the statements made in that conversation by Dr. L'Engle, consider it your duty to make any representation to the commanding officer, Col. Gardner, and did you make any representation to him?

Answer.—I did; and within a few moments after the conversation occurred.

Question.—What was the substance of that representation? State fully.

Question objected to by the accused.

The accused objects, because while the Court has refused to allow evidence of Dr. L'Engle's statements in conversation, the Judge Advocate now proposes to elicit the very statements in another form, for example: "What was the substance of the representation you made to the commanding officer? which representations the witness has just said were in consequence of communications by Dr. L'Engle. This the accused considers an effort to bring out indirectly, what the Court has several times refused to allow to be brought out directly.

Judge Advocate.—The object of calling this witness and of certain questions put to the last witness on the stand, is to prove if such is the fact, that on the 7th of October last, it was officially represented to the commanding officer of this post that it was due to the reputation of the service, notice should be taken officially of Dr. Byrne's conduct at the time referred to; that in consequence of that representation, Col. Gardner spoke with Dr. Byrne on the subject, and had with him, Byrne, the conversation referred to by Col. Gardner in his testimony, as the second conversation, and that all of this occurred the day before Dr. Byrne, in an official note, reported himself as ready to attend partially to his duty.

The Court was cleared for deliberation, and it was decided that

the objection be not sustained. The last question was again repeated.

Answer to the Question.—I stated to Col. Gardner that the Assistant Surgeon of the post, Dr. L'Engle, had said in the presence of the officers of the post, that Dr. Byrne, in his opinion, had been fully able to attend to his duties at the hospital, for, I think he said, a period of time from the 26th September to some day in October, or for about twelve days that he had been under his observation. And that two citizen physicians who had seen Dr. Byrne, had stated a similar opinion. The accused objected.

Objection.—The accused objects to any testimony, in any form or shape, which will have the effect of eliciting opinions of persons, unless such persons are brought forward before the Court, and the accused is permitted to cross-examine him. The accused does not mean by this objection to cover one just made and decided by the Court against him.

Counsel.—I should state, in explanation, that the witness was giving the opinions of citizen physicians, and this has been over-ruled by the Court.

The Court was cleared for deliberation. On re-opening, it was announced that the answer stand as recorded, and that the witness should go on and state the substance of the official report, which was made to Col. Gardner.

Witness.—Under these circumstances, I told Col. Gardner that it was due to Dr. Byrne, and the service, that the matter should be investigated. That is the substance of the report I made to him.

Question.—Did or did not Col. Gardner in the afternoon of the same day, the 7th of October, tell you that he had conversed with Dr. Byrne on the subject of your report?

Answer.—He did.

Court then adjourned at 3 o'clock.

TENTH DAY.

WEDNESDAY, April 6th.

The Court met at half past 9 o'clock. Present—the same members as yesterday and the accused and his counsel. The examination of Capt. Abner Doubleday was resumed by the Judge Advocate.

Question.—State, if you can remember, who was with you when Col. Gardner spoke to you on the subject of his conversation with Dr. Byrne on the 7th of October last.

Answer.—I think it was Lieut. Tillinghast.

Question.—State, if you remember, where this conversation occurred, and how were you and Lieut. Tillinghast occupied.

Answer.—It occurred on the porch in front of my door, and we were engaged in playing chess.

Question.—Name the two citizen physicians, referred to in your testimony of yesterday.

Answer.—Dr. Ravenel and Dr. Horlbeck.

The examination in chief here closed.

The accused stated he had no question for the witness, and he was then discharged.

Dr. L'Engle recalled.

Question by Judge Advocate —The morning reports of the sick at this post, from the 17th of September to the 10th of October last, inclusive, are signed by you, and on all of them Surgeon Byrne is reported sick. Is it or not customary in the army to report persons sick, who are perfectly able to perform certain specific duties.

Answer.—It is, sir.

Question.—Did you or not, by placing Surgeon Byrne's name on the sick report, as stated in the preceding question, mean to report officially, or in any way, that Surgeon Byrne was so sick as to be unable to attend to the duties of Surgeon at this post?

Answer.—I did not think that he was so sick as to be unable to attend to the duties of the post. It is the custom of the service to place officers upon the sick report, at their request, with the rest in the morning reports.

Question.—Did you or not think it proper, and in accordance with the custom of the service, situated as you were, to insist on examining into the extent and degree of Surgeon Byrne's sickness, before placing him on the sick report?

Answer.—I did not consider it either necessary or proper, or in accordance with the custom of the service to do so.

Question.—You testified to having a conversation on the 7th of October last with Surgeon Byrne on the subject of his (Byrne's) return to duty. Explain how it is that you can fix the date of that conversation?

Answer.—I recollect it in connection with an entry in the morning report book, on the morning after the conversation referred to. I entered Dr. Byrne's name on the sick report myself, on the morning of the 8th of October, and that entry is now there. Previous to that time the steward had entered his name on the sick reports. It is in my hand writing, on the morning report of the 8th.

The examination on the part of the Judge Advocate here closed. Questions by accused.

Question.—Explain your last answer. Why the change of the hospital steward entering Dr. Byrne on the sick report before this conversation, and of your entering it afterwards?

Answer.—It was made by my order. I think it occurred in consequence of a supposition, on the part of the steward, that Dr. Byrne was coming to duty, and he omitted the Doctor's name.

My attention was called to it by a note from the commanding officer, and I then entered it.

Question.—Did or did not Dr. Byrne, in one of his conversations with you, in relation to reporting for duty, request you to inform the commanding officer that he would, from that day, be able to visit in consultation with you, any serious case of disease?

Answer.—I have some recollection of such conversation.

Question.—Fix the date, if you can.

Answer.—I cannot fix the date of it.

Question.—Can you not approximate to it.

Answer.—I have a very indistinct recollection of the conversation, but think it was sometime after the 7th of October.

Question.—You are aware Dr. Byrne reported for partial duty on the 8th of October. In view of this, do you or do you not think that the conversation may have been previous to the 7th of October?

Answer.—No, sir.

Question.—Explain the specific duties which you say may be performed by a person although on the sick report.

Answer.—A man may be on the sick report with the toothache, and yet be able to do guard duty. That is one, and I might go on and make instances for a week or a month and state others.

Question.—Then if on the 8th of September or any other day, there should be eight, or any other number of men, on the sick report, is there anything to forbid the conclusion, that any or all of them were capable of performing specific duties?

Answer.—Nothing on the face of the report. It could be determined on examination, if they were capable.

Judge Advocate.—I think the question is not answered. The inference is there might be something else.

Answer.—Nothing else short of an examination. It could be determined by an examination whether they were capable or not of performing certain specific duties.

Question.—How far then is the mere fact *per se* of a certain number of men being on the sick report, evidence of the state of the health of a command?

Answer.—It goes for very little.

Examination by accused here closed.

Question by the Court.—Was or was not Surgeon Byrne reported on the sick report as sick, when you took charge of the hospital? and did you or did you not continue so to report him, for this reason, as well as the others you have stated?

Answer.—He was so reported when I took charge of the hospital, and I continued to report him for that and other reasons.

Question by the Court.—Is it or is it not frequently the case, that officers and soldiers are both on the sick report, and are under medical treatment, and yet reported for light duty, and do such duty.

Answer.—Yes, sir, it is.

The witness was then allowed to retire.

The Judge Advocate said he desired, before he closed the prosecution, to lay before the Court, in evidence, a certified extract from the sick report book. The book had been identified by Col. Gardner, as the morning sick report book. He proposed to make an extract from it, embracing the reports of the 6th, 7th, 8th and 9th of September, 1858, which the Court might compare. That the Court might understand all the circumstances, he proposed to read it, and to lay before them the correspondence which led to the investigation.

The reading was objected to by the accused, and the prosecution here closed.

DEFENCE.

Vincent Williams, hospital steward, a witness for defence, was then duly sworn.

Question.—How long have you filled the position of hospital steward, and under what medical officers, and where?

Answer.—I have filled the position of hospital steward here, since the 20th of August last, a year. I was hospital steward in Texas, at Fort Inge, a short time. I also acted as hospital steward on the Sioux expedition a short time. I acted as such also to a detachment of troops from New York to Fort Ewell, in Texas. I have acted under Dr. Norris; Dr. Getty twice, at Fort Inge, and on the Sioux expedition; also under Dr. Fayssoux, a citizen physician here, Dr. Sutherland, Dr. Holden, Dr. Simpson, Dr. Lining, at that time a citizen physician, Dr. Byrne, Dr. L'Engle and Dr. Ravenel.

Question.—Did you visit Dr. Byrne at any time during his illness, last summer? How often, and at what intervals?

Answer.—Three times. The first visit was shortly after he was taken sick, within a few days; the second about the 20th of September, the last a few days before the Doctor came to duty.

Question.—Was Dr. Byrne in bed when you visited him?

Answer.—He was twice; the first two visits.

Question.—Did Dr. Byrne present the appearance of a man suffering or in health? Explain.

Answer.—He presented the appearance of a man that was sick. My first visit to the Doctor I was not in his room, but I spoke to him through the window. He was in bed. My second visit was in the afternoon. I was in his room and conversed with him for twenty or thirty minutes. He was in bed with his night clothes on. I asked him how he was, and his reply was, he hoped his disease had left him, but that he was very much troubled with boils. He looked so unwell to me that I remember remarking to my wife when I came home, that there were reports that Dr. Byrne was not sick, but that to me he looked as bad as any man we had in the hospital. On my third visit the Doctor was up, and walking around his room. He appeared to me to walk with great difficulty, and still looked sickly; looked bad.

Question.—Was the second visit in the day or night time?

Answer.—It was between the hours of three and five in the afternoon.

Question.—Do you or do you not know whether blisters were applied to Surgeon Byrne? If so, tell all you know.

Answer.—I do not know, sir, only from what the Doctor told me.

Question.—What was Dr. Byrne's appearance? and, if you know it, what his weight when he returned to duty, compared with what they were in health?

Answer.—When Dr. Byrne's came to duty, he looked very much like a man that had been severely sick. About his weight I know nothing at all.

Question.—How did Dr. Byrne go to the hospital when he returned to duty?

Answer.—In his buggy.

Question.—Was he not assisted in and out of it? and if so, by whom?

Answer.—For some days he was, sir; sometimes by myself, and, I think, by the driver.

Question.—Did you or not ever see any medical officer send a man to duty looking as badly as Surgeon Byrne, when he returned to duty?

Answer.—I do not remember of ever seeing a man look worse.

Question.—How did Dr. Byrne's attention to yellow fever patients compare with those of Dr. L'Engle and Dr. Ravenel?

The Judge Advocate objected to the question, and it was withdrawn.

Question.—Was or was not Surgeon Byrne attentive to yellow fever patients? Did you ever know any one more so? If so, whom?

Answer.—He was attentive; and I never knew of any one more so.

Question.—How often in twenty-four hours did Dr. Byrne generally visit patients sick of yellow fever?

Answer.—His visits would have averaged during the time he attended the hospital, and during the prevalence of the epidemic, as much as three visits a day. Some days he visited the hospital five or six times a day. By a day I mean twenty-four hours.

Question.—When Dr. Byrne visited yellow fever patients in the hospital before and after his illness, did he or not show any shrinking from contact with them? Describe his manner and deportment on these occasions?

Answer.—None that I could perceive, sir. He would come into the hospital, and would ask the patient how he was, or something to that effect, feel of his pulse, look at his tongue, ask him all the necessary questions, and if the patient was dangerous and very sick, he would sometimes take out his watch and time the man's pulse. He would give the necessary directions and then the necessary orders. I believe that covers the question. I would

like to add that on one occasion, the first visit of the Doctor to the hospital after he was sick, which, if my memory serves me correctly, was on the 9th of October, he came into the ward of the hospital and found our mail and market man, as you might say, beyond hope. (Rippett was the man's name.) He did show some feeling, but I would not call it fear, when he examined him.

Question.—Was Dr. Byrne alone on that occasion, or was any one with him, and who?

Answer.—He was not alone; Dr. L'Engle was with him, and I think the hospital attendant, but I am not certain, and myself.

Question.—Do you or not know whether Rippett was particularly useful to the garrison? If you do, explain how?

Answer.—He was a very useful man, from the fact that he carried the mail from Charleston here, and done all the marketing and errands generally for the garrison.

Question.—Did you or not know whether he had likewise been distinguished in Mexico?

Answer.—Only by hear say, from himself and others.

Question.—Was any one, beside Rippett, ill in the hospital at the time of the visits of Dr. Byrne and Dr. L'Engle, and who?

Answer.—I can only answer for one man besides Rippett. I am satisfied there were more, but who they were I cannot tell. The other man was Driscoll.

Question.—Did you notice anything peculiar about Dr. Byrne's mode of feeling the patients pulse on that occasion?

Answer.—I did not perceive anything different from his usual manner.

Question.—Did you or not hear any exclamation from Surgeon Byrne in the room? If so, what was it and at what period of the visit?

Answer.—Nothing more than feeling at seeing Rippett dying as he was. There was no exclamation that I remember.

Question.—How many yellow fever cases do you suppose you have seen Surgeon Byrne attend?

Answer.—Some twenty, I should think. I would like to make an explanation on the question, not as an answer at all, but that the Court may understand. In regard to statistics, I gave in my evidence from the books entirely. As I am not a physician, I cannot tell who did or did not have the yellow fever.

Question.—In all these, did you ever see anything peculiar about Dr. Byrne's mode of feeling the patient's pulse, or approaching the patient?

Answer.—I never did, sir.

Question.—How many men were confined to the bed in that hospital on the 8th of September, the day Surgeon Byrne was taken sick?

Answer.—To the best of my memory there was only one man

necessarily confined to his bed, and that man was private Bright, of E Company, 1st Artillery.

Question.—What seemed the matter with him, that is Bright, at that time?

Answer.—On that day he complained specially of cramps and choleric's in his stomach.

Question.—Do you recollect on what day it was that Dr. Byrne gave you permission to absent yourself from the hospital, with the view of visiting Fort Sumter?

Answer.—I think it was on the morning of the day of the 8th of September.

Question.—Did or did not privates Jones and Holden, both throw up black vomit before they died?

Answer.—They did, sir

Question.—Did you ever know Dr. Byrne on any occasion since his first arrival at Fort Moultrie, to neglect visiting promptly any person who was reported to him as sick?

Answer.—I never did, with one exception. The night of the 8th of September, I called on him, or rather the morning of the 9th you might call it, it was after 12 o'clock at night, I called on him and reported that a man had come in the hospital sick, "Galway was the man;" he prescribed for him and did not visit him.

The examination in chief was here closed.

Questions by Judge Advocate.

Question.—Were any men dangerously ill in the hospital of yellow fever, about the time you made your first visit to Surgeon Byrne?

Answer.—I think there were, sir.

Question.—Were there any dangerously ill about the time you made your second and third visits to Surgeon Byrne?

Answer.—Yes sir, I think there were.

Question.—Did Surgeon Byrne procure medicine for his own use, from the hospital, during the time he was reported sick? If so, what medicine?

Answer.—Yes sir, he did. Tincture of Guaiacum, and I think I spread some blisters for him. I do not even know that they were for Dr. Byrne's own use. I only remember they were sent to Dr. Byrne's. I remember now I prepared some liniment for him afterwards.

Question.—Is there not a register of prescriptions and an account of medicines issued on them, kept in the hospital?

Answer.—There is a register of prescriptions, but no account of medicines on them, any more than the prescriptions show themselves?

Question.—Was medicine sent to Dr. Byrne's by you on his own prescription? If not, by whom?

Answer.—I think sometimes on his own written prescriptions, and sometimes verbally by a messenger from the Doctor's house. My memory is very indistinct on this point.

Question.—Were his written prescriptions filed and recorded as others are ?

Answer.—Yes, sir.

Question.—You say when Surgeon Byrne first visited the hospital, after return from duty, he was assisted from his buggy. Did he appear to be suffering from pain, more or less than when you saw him walking about his room on your third visit to him ?

Answer.—Much the same, I should think, sir.

Question.—Did you or not make any report to Dr. Byrne of the state of health of one Holden, who died on the 4th of September of yellow fever? If so, what was the substance of the report, and where was Dr. Byrne ?

Answer.—I do not know, sir, of making any report to Dr. Byrne in regard to Holden. I went to Dr. Byrne when Holden was brought into the hospital, and I reported to him that there was a man brought into the hospital sick, who had come from Key West. That was all the report I made to the Doctor. The Doctor went to see him immediately.

Question.—Did you, or any attendant or employee about the hospital, report to Dr. Byrne anything in regard to Holden's symptoms any time within twenty-four hours before his (Holden's) death ?

Answer.—I do not know, sir, that there was any report made to the Doctor. There may have been.

Question.—Did you or not on or about the day or the night of the 8th of September last, make any report to Dr. Byrne of the symptoms of private Bright, then sick in the hospital ?

Answer.—I think when I applied to the Doctor for permission to go to Fort Sumter, it was about 11 o'clock in the day. The Doctor asked me how Bright was, and I told him he appeared easier, and that I thought his prescription, meaning an injection, had relieved him. I do not know of any other reports being made with regard to Bright at that time. I reported to the Doctor when I came back from Fort Sumter; and if anything transpired in regard to Bright, I have forgotten it now.

Question.—Had you any suspicion on the day or night of the 8th of September that Bright had yellow fever ?

Answer.—None in the world.

Question.—You say you reported to Dr. Byrne after 12 o'clock of the night of the 8th of September, that Galway had come to the hospital. Is it usual to report at that hour of the night when a man comes into the hospital, to report the fact to the Doctor ?

Answer.—I always have, if I thought a man was seriously sick.

Question.—When you made that report to the Doctor, did you say or intimate that Galway had symptoms of yellow fever, or did you say anything about his symptoms ?

Answer.—I described the man's feelings and symptoms to the Doctor as near as I could. I do not think I said anything about yellow fever; although my impression was that he had symptoms of yellow fever, as far as my judgment went.

Question.—In your report to the Doctor, did you convey to him your impression of the disease indicated by the symptoms?

Answer.—I think not. I know I did not. I left that to the Doctor to determine for himself.

Question.—What did the Doctor do, or what directions did he give, when you made that report?

Answer.—The Doctor prescribed calomel and quinine, and a blister to his stomach.

Question.—Did you ever know Dr. Byrne, or any other, to prescribe that or anything like that for a patient in the first stage of yellow fever?

Answer.—I think that Dr. Byrne has prescribed it sometimes. It is a general prescription with the Doctor to give calomel and super-tartrate of potash, and leave off the blister. That is his prescription in nearly all cases of a bilious character, and in nearly all cases indicating fever.

Question.—Did Galway's case prove to be yellow fever?

Answer.—It was so reported on the books. It is in Dr. L'Engle's handwriting, and on my description of his case. Dr. Ravenel, who treated him, did not think that he had yellow fever. Dr. L'Engle never attended him at all, nor saw him while he was sick. Dr. L'Engle was not here then. He commenced his duty on the 12th September.

Question.—When the quarterly report of sick was about to be made out at the end of September last, how did Dr. L'Engle ascertain the diseases which had been treated before his arrival, and what direction did he give you in regard to them? Explain.

Answer.—He ascertained the disease by the prescription book, and by description as near as I could tell him.

Question.—Did he or not tell you to consult Dr. Byrne as to any of those diseases?

Answer.—He may have done so, sir; but I do not remember it now.

Question.—Was there any excitement or uneasiness in the garrison, on or about the 8th September last, about yellow fever?

Answer.—Not about the 8th of September; there was about the 1st of September, but it had not died away at that time, the 8th.

Question.—Was that uneasiness or excitement allayed by the deaths of Holden and Zimmerman, or was it increased; and when did they die?

Answer.—I should think it was rather increased. Holden died at 11 o'clock, or thereabouts, on the morning of the 4th of September. Zimmerman died at 12 o'clock of the night of the 4th of September.

The Court then adjourned at 3 o'clock.

ELEVENTH DAY.

THURSDAY, April 7th, 1859.

The Court opened at 9½ o'clock, A.M. Present the same members as yesterday, and the accused and his counsel.

The cross-examination of Vincent Williams, Hospital Steward, was resumed by Judge Advocate.

Question.—At the time you made your second visit to Surgeon Byrne, you say that there were men in the hospital dangerously ill with yellow fever. Did Surgeon Byrne look as sick as these men?

Answer.—I think that he did.

The cross-examination here closed.

QUESTIONS IN REPLY BY ACCUSED.

Question.—How did the diseases of Sergeant McMahon and Sergeant Renehan come to be altered on the register?

Answer.—Sergeant McMahon and Sergeant Renehan were both sick about the last of August. There was no alarm at that time about yellow fever in the garrison, and when I filled up the register and came to their names, which I think was after the Doctor was taken sick, I supposed from the treatment that they were cases of intermittent or remittent fever, and entered them so on the register, without directions from the Doctor. But when I visited the Doctor on or about the 20th of September, after the yellow fever had become an established fact here, the Doctor stated to me or directed me that these two men, with private Jones, who had also been entered under another disease, that they had yellow fever; consequently I altered the register myself, and changed the cases to yellow fever. The register will show that the diseases are entered in my own handwriting. In these two cases, there is no erasure, but an alteration with a scratch of the pen.

Question.—Can you fix the time when you sent the blisters and guaiacum to Dr. Byrne?

Answer.—I cannot, sir; but it was during his illness.

Question.—Was or was it not between the 26th of September and the 8th of October?

Answer.—I think not. I think it was before the 26th of September that the Doctor got the blister and the guaiacum.

Question.—Did you or not ever visit Surgeon Byrne's quarters, after he had reported for duty? If so, state if you know it, at what hour he was in the habit of retiring to bed at that time?

Answer.—I went to the Doctor's house frequently after he came to duty, and when he ordered me to report to him in the evening; for sometime after he came to duty, he said, "come before eight o'clock, for I go to bed very early these evenings;" or words to that effect. I went several times about or before that hour, and found the Doctor in bed.

Question.—While Dr. Byrne was sick, and for a short before and after, was the weather very dry or very wet?

Answer.—From my own memory I do not know, but the meteorological observations that I keep at the hospital will show that it was cloudy and damp about the time the Doctor was taken sick. I do not remember how it was after he returned from duty, but I think it was fair, good weather.

Question.—Is or is it not Dr. Byrne's practice to prescribe calomel and quinine for intermittent fever, and were or were not such cases numerous in the garrison?

Answer.—It is his practice, and such cases were numerous previous to the epidemic.

Question.—What was Dr. Byrne's practice in regard to keeping or not keeping in the hospital all on the sick report? If there was any rule observed state the reason for it.

Answer.—It was Dr. Byrne's practice to keep nearly all the men in the hospital, without they were married, because they could receive better attention, and could not visit these whisky shops; and on the whole the Doctor always thought it best, as the hospital was never crowded, to keep the men in the hospital, and as a general thing making no difference, however slight their disease or complaint.

Question.—If Dr. Byrne then were to speak of sick men, with your knowledge of his custom and practice, whom would you understand him as referring to?

Answer.—A patient that would be severely or dangerously ill. Closed on the part of defence.

Question by the Court.—You have stated at the time Dr. Byrne was taken ill, there was but one man in the hospital necessarily confined to his bed. Were there any other men sick in the hospital at the time? If so, how many?

Answer.—There were seven besides the man in bed, making eight in all, on the evening of the 8th of September.

Question.—If Dr. Byrne had ordered you to report to him on the evening of the 8th of September last the number of sick men in the hospital, would you have simply reported to him that there was but one?

Answer.—I would have reported that there were eight in hospital, because in the general acceptation of the term every man on the sick report is sick, or hurt, or wounded.

Question by the Court.—You have stated that there were eight men sick in the hospital on the evening of the 8th of September. How many were there sick in the hospital on the morning of the 8th of September?

Answer.—Eight.

Question by the Court.—You have said there was only one man necessarily confined to bed on the 8th of September. Were there any in bed unnecessarily?

Answer.—Sometimes some of the patients would lay on their beds during that day at intervals, but none confined to their bed by order, except Bright. There were not any confined to their bed unnecessarily on the 8th of September.

There being no further questions the witness was discharged.

The accused asked to state to the Court that in order to save the time of Court, that a copy of the statistics of the hospital records made under the eye of the Judge Advocate, and admitted by him to be correct, would be offered in evidence.

The Judge Advocate stated that Col. Gardner and Dr. L'Engle had expressed a desire to make corrections in their testimony. This was proposed to be accomplished by calling them again to testify before the close.

The President said that all corrections should be made as soon as possible for the benefit of the parties themselves.

Corporal Michael Fitz Gerald, of E Company, a witness for defence, was duly sworn.

Question.—Did you visit Surgeon Byrne last fall whilst he was on the sick report. If so, how often and how far apart were your visits?

Answer.—I visited him about four times a day. About 7 and 11 o'clock in the morning, and 4 and 8 in the afternoon and evening.

Question.—How many days did you so visit him?

Answer.—All the time I was in the hospital, (I was the hospital attendant) until such time as I got sick. I cannot state the number of days, but I was only sick three days whilst Dr. Byrne was sick. I was over two months hospital attendant. I think it was on the 11th I was taken sick.

Question.—Did you or not see any change in Surgeon Byrne's appearance. If so, describe the change?

Answer.—I saw a change in him after he was taken ill. He seemed to be very pale and emaciated.

Question.—Was or was not Surgeon Byrne in bed when you saw him?

Answer.—When the Doctor first reported sick, he was in bed when I first saw him.

Question.—If you saw him after he was out of bed what was he doing?

Answer.—He was walking with a cane and limped about his house.

Question.—Do you or not know anything about blisters having been sent to Dr. Byrne? If you do, tell anything you know.

Answer.—Yes, sir. I know of the steward making a blister which I carried myself, and I made one myself and carried it. I have known of two.

Question.—Were you or were you not nurse in the hospital on the 8th of September, the day on which Dr. Byrne was taken sick?

Answer.—Yes, sir, I was nurse on that day. I do not know if that was the day on which Dr. Byrne was taken sick.

Question.—Was any patient in bed on that day except Bright?

Answer.—There was none, except Sergeant Finn in bed on

that day, who was not confined to his bed, he could get out and walk about. There was no one that was confined to bed except Bright. He wanted to get up and said he was able, but the Doctor would not let him. He said he thought he was able enough to walk round.

Question.—Did you visit Dr. Byrne after he reported for duty? If so, how long afterwards.

Answer.—I visited him sometime before the 21st of October. It was after I got well the second time. The Doctor was not well at the time.

Question.—How do you fix the 21st of October as the date?

Answer.—It was the day I was reported for duty on the hospital books to the best of my belief.

Question.—How were you employed before you reported for duty, and while getting well?

Answer.—I was employed about the hospital and driving the Doctor to and from the hospital.

Question.—Were or were you not at the Doctor's quarters about night fall. Tell the Court if you know what time the Doctor was in the habit of going to bed at this time?

Answer.—I visited the Doctor's house about 8 o'clock generally every evening. At that time the Doctor was in bed. He laid on a bed which was rather loose, and at the least move you could hear it.

Question.—Do you mean that this was after the Doctor reported for duty and was attending to the hospital, or before?

Answer.—It was after the Doctor reported for duty. I used to go to the Doctor's to tell him how his patients were at night.

Question.—When were you taken sick? Give the date of both attacks.

Answer.—On referring to the hospital books I find that I was taken sick on the 15th of September, and reported for duty on the 17th September. The second time was on or about the 11th October, and I was reported for duty on or about the 21st October.

Question.—Have you or have you not any recollection of being in the hospital on the 9th October, when Surgeon Byrne and Assistant Surgeon L'Engle visited the hospital?

Answer.—I have no recollection of both being there on that day, or of visiting there.

Question.—Do you remember Dr. Byrne and Dr. L'Engle visiting the hospital at any time together? If so, where were you then?

Answer.—I recollect of Dr. Byrne and Dr. L'Engle visiting the hospital in the morning of the day that I got sick. Both came in the room together in the morning. It was the second time I got sick.

Question.—Did you see anything unusual in Surgeon Byrne's manner? Did he speak to you, or what did he do?

Answer.—I did not see anything unusual in his manner. He came and spoke to me and asked me how I felt. He told me not

to be alarmed, that it was nothing and I ought not to be afraid; that I did not have the yellow fever, or words to that effect.

Question.—Did you hear no exclamation from him?

Answer.—None that I am aware of.

Question.—You say you drove Dr. Byrne's carriage to and from the hospital. Did he get in and out by himself, or with assistance? Explain.

Answer.—He got in and out by my assistance.

Question.—How many cases of yellow fever have you seen Surgeon Byrne attend?

Answer.—I do not know. I have never kept an account of them. I think between 15 and 16 cases. There may have been more or less, I am not positive.

Question.—Did you in any instance observe any reluctance or shrinking from contact with the patients by Dr. Byrne?

Answer.—No, sir.

Question.—You say you have been hospital attendant. Did you ever observe anything singular in his mode of feeling the pulse?

Answer.—No, sir. I have never observed anything singular. I have seen him take hold of the patients by the wrist and feel the pulse, and sometimes in dangerous cases look at his watch at the same time.

Question.—Did you drive anybody else beside Dr. Byrne? State how long.

Answer.—I drove for Dr. L'Engle, but do not know how long. I think about a week or two.

Question.—Fix the latest time that you drove Dr. L'Engle as near as you can.

Answer.—About the 5th or 6th of October.

Question.—Whose horse and buggy was it? How was Dr. L'Engle employed?

Answer.—It was Dr. Byrne's horse and buggy? He was attending to his patients on the Island.

Question.—Do you mean in private practice?

Answer.—Yes, sir.

Examination in chief closed.

Cross-examined by Judge Advocate.

Question.—Were you in the habit of visiting Dr. Byrne's house and seeing him daily, or almost daily, before he was reported sick?

Answer.—Yes, sir.

Question.—After he was reported sick, did you discover any change in his manner of seeing and receiving you, from what it had been before?

Answer.—The change that I have discovered was that I have always, after he was sick, went to his window to speak to him, on account of the window being near his bed. Before he was sick I always spoke to him outside of his office or parlor door.

Question.—Did you or not feel mortified at your reception and treatment by Dr. Byrne, whilst he was reported sick?

The accused objected to the question. The accused now objects because the question seems to open inquiries which he does not think are connected with the charges and specifications, and he would not know what issue he is to make. His objection is, therefore, that the question is irrelevant.

After discussion the objection was withdrawn.

The question was again put.

Answer.—I did at one time, sir.

Question.—Did you or not complain, and say to any one, that Dr. Byrne seemed to look upon you as a walking pestilence? or words to that effect?

Answer.—Not that I am aware of, or that I can remember.

Question.—Did you or not report to Dr. Byrne, on or about the night of the 8th September, anything in regard to the symptoms of one Bright, then sick in the hospital?

Answer.—I don't recollect that I did.

Question.—Were you attendant in the hospital at that time? Do you not remember when it began to be suspected that Bright had yellow fever; was it before or after Dr. Byrne was reported sick?

Answer.—It was after Dr. Byrne was reported sick.

Cross-examination closed.

Re-examined by accused.

Question.—When Mrs. Byrne was taken sick, who put up the bedstead on which Dr. Byrne lay?

Answer.—I helped to do it.

Question.—What family has Dr. Byrne?

Answer.—A wife and three children.

Question.—Did you ever serve as hospital attendant before last fall? If so, how long?

Answer.—Yes. I have served six or seven months in Old Point; two months at Fort Capron.

Question.—Have you ever served as hospital steward? If so, how long?

Answer.—I have served as hospital steward at intervals, in Florida, during Col. Dimick's command.

Question.—State what was Surgeon Byrne's attention to yellow fever patients, before and after he was taken sick.

Answer.—I have seen him attending to them at one time as well as the other. He was kind and attentive, and never neglected them.

There being no further questions for this witness, he was discharged.

Private John Cleary, Company E, was called by the defence, and duly sworn.

Question.—Did or did not Dr. Byrne attend you and your wife, early in October last, while you were both ill of yellow fever?

Answer.—Yes, sir.

Question.—How many times a day do you think he visited both of you?

Answer.—About four or five times a day.

Question.—Do you remember anything about his feeling your's or your wife's pulse? If so, state it.

Answer.—Yes, sir. He felt our pulse and looked at his watch at the same time.

Question.—Did you see Surgeon Byrne about the time he reported for duty? If so, describe his appearance and condition.

Answer.—Yes. He seemed to me to be a very delicate man, and very much reduced.

Question.—While he attended you and your wife for yellow fever, did he ever seem to shrink from coming close to you? Was there any alarm or shrinking shown?

Answer.—Not that I could discover.

The witness was here discharged.

Private John Davis, Company E, 1st Artillery, a witness for the defence, was duly sworn.

Question.—Were you or not a patient in the hospital, about the middle of last of October?

Answer.—I was.

Question.—Were there or not several yellow fever patients under Dr. Byrne's treatment, while you remained in the hospital?

Answer.—There was.

Question.—Was or was not Dr. Byrne attentive to those patients? Explain fully.

Answer.—He was. He visited the hospital three or four times a day, to my own knowledge.

Question.—Did you ever see any shrinking from contact with the patients, by Dr. Byrne?

Answer.—I did not.

Question.—Did you ever see anything at all out of the usual way, in his mode of feeling the pulse? Explain how he was in the habit of doing it.

Answer.—I have seen the Doctor, at different times, use his watch whilst feeling the men's pulse, in the hospital.

Question.—What was Dr. Byrne's appearance at that time? Robust or delicate? State fully.

Answer.—He appeared to be in delicate health, and looked very pale.

Question by the Court.—Was there any part of the time to which you have testified, before the 12th of October, last?

Answer.—No, sir.

Witness was then discharged.

Serg't Finn, H Company, 1st Artillery.

Question.—Were you or not a patient in the hospital on the 8th of last September?

Answer.—Yes, sir.

Question.—Was there or not any other besides private Bright, confined to his bed on that day?

Answer.—I do not remember any other.

Question.—Did you feel any necessity for keeping in your bed

on the 8th of September, the day on which Dr. Byrne was taken sick?

Answer.—No, sir.

Question.—Do you remember whether there were any others in the hospital on that day no more sick than you? If so, how many?

Answer.—I remember there were several others, but I do not remember how many.

Question.—Was any one more sick than you besides Bright, in the hospital on that day?

Answer.—I do not know whether there was any sicker than I was, but know there was none sick enough to be confined to bed.

Closed on part of defence.

TWELFTH DAY.

FRIDAY, April 8.

The Court met at half-past nine o'clock. Present—same members as yesterday, and the accused and his counsel. The journal of yesterday was read.

Ann McMorro, a witness for defence, was duly sworn.

Questions by accused.

Question.—Where do you live?

Answer.—With Dr. Byrne.

Question.—How long have you lived with Dr. Byrne?

Answer.—Eleven months.

Question.—What are your duties in the Doctor's family?

Answer.—House work.

Question.—Did you wait on the chamber of Dr. Byrne during his illness in September last?

Answer.—Yes, sir.

Question.—How long do you suppose Dr. Byrne was confined to his bed?

Answer.—I think between two and three weeks.

Question.—Did or did not Dr. Byrne seem to suffer much during that time?

Answer.—Yes, sir. He seemed to suffer a great deal, indeed.

Question.—Did you or not know whether Dr. Byrne had blisters applied to him during his illness?

Answer.—Yes, sir; he had.

Question.—Did you ever see them? Who brought them? Have you or not any reason to think they were used, and why?

Answer.—Yes. The man who attended to the hospital brought them. I have a reason to think they were used, because when I got them and carried them into the room I gave them to Mrs. Byrne and they were all nice and smooth, but when I got them again, a few hours afterwards, they were on the table all mussed up and ruffled.

Question.—What is the name of the hospital man referred to in your last answer?

Answer.—Fitz Gerald.

Question.—Do you know anything of the dressing of the blisters? If so, say who attended to it? Tell all you know fully.

Answer.—Yes, sir. I have seen Mrs. Byrne spreading salve to put on them. Mrs. Byrne attended to them. I saw the rags with salve on them after they came off, lying in the room. Mrs. Byrne put them on, I suppose.

Question.—Do you or not know whether Dr. Byrne suffered from boils while sick? State why you think so, fully?

Answer.—I have heard Mrs. Byrne asking him how they were, several times, and he said very sore. I have heard him ask Mrs. Byrne to have poultices and plasters made to put on them.

Question.—Who generally carried food to Dr. Byrne during his illness?

Answer.—I did.

Question.—What was the state of Dr. Byrne's appetite during his illness, as compared with what it was before and is now?

Answer.—When the Doctor was sick he had no appetite at all, but now that he is in good health he has a very good appetite.

Question.—Did Dr. Byrne ever call on you to hand him medicines during his illness?

Answer.—Yes, sir.

Question.—Has or has not Dr. Byrne a supply of medicines always in his house?

Answer.—Not always. Sometimes.

Question.—Did or did not Dr. Byrne look like a person that had been sick. If so, how long did he look so?

Answer.—Yes. Several weeks after he went to duty he looked sick.

Question.—What reasons have you, besides those mentioned, for thinking that the Doctor was suffering while confined to his bed and house?

Answer.—From seeing him have so much difficulty in moving in bed, and in crawling and going about the house. He could not walk.

Question.—Had he any aid in walking? What was it?

Answer.—Yes. His stick.

Question.—For how long a time do you suppose Dr. Byrne walked lame after he went to duty?

Answer.—He walked lame for several weeks after he went to duty.

Question.—How did his appearance, when he went to duty, compare with what it is now?

Answer.—He don't look the same man now that he did then; then he looked miserable, now he looks well and rosy, then he looked pale.

Question.—Did you ever see him during the whole period that he was confined to the house, walk without the aid of a stick?

Answer.—No, sir.

Question.—You say Mrs. Byrne attended to the blisters. Has

Dr. Byrne any male person or male servant about his house, or had he any while sick?

Answer.—No, sir. Unless the man who attended the hospital.

Question.—Did that man attend in the house or out of doors, and to what?

Answer.—He did not attend in the house. He attended out of doors to the horse.

Question.—Was any one sick in Dr. Byrne's house, while he was sick, besides Mrs. Byrne?

Answer.—I was taken sick the same day Mrs. Byrne was taken sick. I was taken sick in the morning and Mrs. Byrne that night.

Question.—Where was Dr. Byrne when he first prescribed for you?

Answer.—In bed.

Question.—Explain what you mean by the last answer more fully.

Answer.—He was lying in bed sick. I told him I had a bad headache, and he told me to go down and go to bed.

Question.—Describe how your room is situated, and say whether one would have to go outside of the house to visit it from the Doctor's room?

Answer.—No, sir; he would not have to go out of the house. My room is under the Doctor's chamber, and there is a short flight of steps going down.

Question.—How often did he visit your room? Did he seem sick then? Why do you think so?

Answer.—Twice, and he seemed sick then. He had a stick in his hand, and could scarcely get down stairs, and looked so pale and so bad that I told the Doctor not to come down stairs any more.

Question.—Do you recollect how many days passed after Mrs. Byrne was taken sick before you left your own sick bed?

Answer.—Four days.

Question.—Did you or not see Dr. Byrne on the same day you left your bed? and if so, describe his appearance, and relate the conversation, if any, that passed between you and him.

Answer.—I saw the Doctor when I came out of my room, and he looked so bad, and could scarcely walk, that I told the Doctor to go to bed, and that I would do all I could; but he told me that he would attend to Mrs. Byrne the best he could, and that I must see to the children.

Question.—Did you or not see Dr. Byrne on the first day that he went to the hospital after his sickness, and if so, how did he look? Do you remember anything that occurred then?

Answer.—Yes, sir; he looked very bad, and I told him not to go to the hospital; he could hardly get down stairs, and had to hold on to the banisters; and I told him not to go, because he looked so bad. I thought he would not be able to get back, and because he seemed to have so much trouble in going.

Question.—At what hour did Dr. Byrne generally go to bed for some weeks after he reported for duty?

Answer.—Between seven and eight; eight o'clock was the latest I have seen him up.

Question.—Do you remember whether or not Dr. Byrne ever left his bed and dressed himself, from the day he was first taken ill, until Mrs. Byrne took sick?

Answer.—No, sir. It was as much as he could do to sit in the chair. Mrs. Byrne had to help him to the chair, whilst I would make the bed.

Question.—Whose business was it to make the Doctor's bed? How often was it made during his illness? Tell how the Doctor was situated while you were making it.

Answer.—It was my business, and his bed was made twice during his illness. He seemed so bad he could not get out of his bed, and when he had his bed made up, Mrs. Byrne was obliged to assist him out of bed to his chair, with a blanket wrapped round him.

Question.—You said Dr. Byrne sometimes, but not always, keeps a supply of medicine at home; do explain more fully, and say whether or not it is his practice usually to keep them.

Answer.—Generally there is always a great deal of medicine down there, but once or twice I had to get the boy to get some from the hospital, and while the Doctor was sick.

Examination in chief closed.

Cross-examined by Judge Advocate :

Question.—How long, for about how many days, did you observe about Dr. Byrne's room indications, such as plasters, salve and dressing cloths, &c., indicating that he was suffering from the effects of a blister?

Answer.—For several days; for about ten days, and even when the Doctor was attending to his duty. I used to find some in the room after he returned to duty.

Question.—During these ten days, whenever you saw him in bed, did he appear to be suffering severely? Did he turn and move about the bed with much apparent difficulty and suffering?

Answer.—Yes, sir, he did; he used to have a great deal of difficulty in moving in bed, and seemed to suffer very much pain. I used to hear him in the next room moaning.

Question.—Did you, during that time, find about the Doctor's bed or room, marks or spots to indicate that he was suffering from boils? Did you see any rags or pieces of linen that looked as if they had been used for dressing boils?

Answer.—Yes, sir; I saw pieces of rag.

Question.—Did Dr. Byrne appear to be suffering so severely as you have described, up to the very day you was taken sick?

Answer.—Yes, sir.

Question.—You have said the Doctor visited you twice during your illness. Did Dr. L'Engle come with him down stairs to your room on either one of those visits?

Answer.—I do not remember, sir.

Question.—Did Dr. L'Engle visit you with Dr. Byrne at any time during your illness?

Answer.—Dr. L'Engle visited me, I know; but I do not remember whether Dr. Byrne was along with him either time. Dr. L'Engle visited me two days; it was the second and third days of my illness; he visited twice one day, and once on another day. That is as well as I can recollect.

Question.—Were you lying in bed when Dr. Byrne visited you? If so, how was the head of the bed situated relatively to the stair-way?

Answer.—Yes, sir. The stairs came right down from the Doctor's room; the head of my bed was just to the right of the door, and close by it.

Question.—Whilst lying in bed could you see persons coming down stairs?

Answer.—No, sir.

There being no further questions, the witness was discharged.

Dr. John Bellinger, a citizen physician, and witness for defence, was duly sworn.

Questions by accused.—How long have you practiced medicine?

Answer.—I graduated in 1826, and have been in practice ever since; about thirty-three years.

Question.—If a patient is suffering from lumbago, does he incur risk by exposure to wet and damp weather, and in what does the danger consist?

Answer.—He does incur some risk, and always risk of aggravation of the disease. The severity of the risk would depend upon whether he was suffering from an acute or chronic form of the disease; if he were laboring under an acute lumbago the risk would be greater.

Question.—Can medical practitioners determine, by seeing a man moving about a house, without questioning or examining him, whether or not he is suffering, whether or not he is capable of attending to his ordinary duties?

Answer.—That is a very general question, and I can only give a very general answer, and say, he could not.

Question.—A man complaining of lumbago, nevertheless attends at the bed side of his wife for ten or twelve days, who is critically and dangerously ill of yellow fever. A medical practitioner sees him an indefinite number of times during the wife's illness, and pronouncing judgment on the evidence of his senses, as he states it, without examining or questioning him about his disease, that the man is physically capable of a hospital in an epidemic. How much value do you think is to be attached to such an opinion?

Answer.—I should say such a man would be capable of attending to some of his duties at the hospital, but whether he would be fully capable or not I could not say, without seeing the individual, meaning thereby in a qualified manner to concur in the opinion implied in the question. I mean that a physician of experience

might form an approximative judgment by meeting him in that way.

Question.—Against the patient's declaration that he was sick, and his evidencing it by his gait and actions, would it be safe for a medical practitioner still to conclude that he was able to perform his duties?

Answer.—The ability would depend upon the nature of his duties. I still believe that, under the circumstances, I could form a tolerably correct opinion of his condition. I think I could make myself better understood by making a little explanation: Physicians judge diseases by two classes of symptoms, the objective and subjective. The objective is what is known to our understanding, the subjective is what the patient tells himself. We sometimes correct an opinion in one class by the other.

Question.—Suppose a Surgeon in the army is sick, and an assistant is detailed to supply his place. When the Surgeon is convalescing, still suffering, his wife is attacked with yellow fever, and is critically ill for twelve days, and he is her only nurse—the assistant has occupation in hospital for one half his time, thirteen cases for twenty-four days. Be pleased to state the rules and laws which should govern the Surgeon's conduct in such a case by the strictest standard of moral and professional obligation known to the medical world.

Answer.—I am not aware of any code of regulations by which such a case could be judged of; that is to say, I mean no written or published code. Each man must determine such a case for himself, in accordance with the laws of conscience. It was a case of conflicting obligations to some extent. I would say in private practice a physician so circumstanced, feels himself, and is admitted to be, released from all professional obligation. I would suppose, in military practice, his feeling of being released from all official obligation would depend upon the confidence he had in his assistant Surgeon.

Question.—In the case stated by the last question, would you, if called upon to decide, undertake to pronounce judgment, that the Surgeon had neglected his duty?

Answer.—If I were to make an opinion upon the case as stated, I should consider such an accusation unjust and unwarranted.

Question.—Are or are not pains in rheumatism intermittent? Please describe this feature of the disease.

Answer.—Rheumatic pains are always remittent and frequently intermittent, in other words, subject to periods of abatement and of aggravation.

Closed on the part of defence.

Cross-examined by Judge Advocate:

Question.—Would a physician who was suffering one day, and had had been so suffering for ten or twelve days so severely from the combined effects of lumbago, sciatica, blisters and boils, as to be unable to move in his bed without great difficulty and suffering, unable to leave his bed without assistance, and then only to

be seated in a chair, wrapped with a blanket, be able to get up next day, move about his house, attend as physician and nurse a member of his family, and continue so to do for ten or twelve days, keeping almost constantly on his feet, and during that time frequently not sleep one hour during the night?

Answer.—I can conceive of the possibility of such a thing under a strong necessity.

Question.—(Under the same supposition as before.)—If you were at the same time attending with the physician above supposed, the patient seeing the physician from three to five times for twelve days, could you form a tolerably accurate opinion of his ability to attend a few patients in a hospital, within a few hundred yards of his residence?

Answer.—Yes, I could.

Question.—What would be the probable effect on the physician of the extraordinary exertions supposed in my first question? Would he at the end of the time be better able to resume his duties than at the beginning?

Answer.—Not necessarily. I would also add, as explanatory, although anxiety over fatigue would bring great exhaustion, mental and physical; on the other hand, if his periods of watching and nursing terminated gradually, there would be some opportunity of recuperation, and he might return to duty. Although it would depend entirely upon how he ceased his periods of nursing; he might be very much exhausted, or he might be left comparatively restored to strength.

Question.—There is a hospital at this post. If you were specially employed by the United States to attend the sick, and furnished with a house within a few hundred yards of the hospital, and yellow fever should prevail to a great and fatal extent, would you, supposing you able to do all that is supposed in my first question, consider yourself unable to attend the sick in hospital?

Answer.—Supposing also, what I cannot omit to suppose, that there was no one else to attend, I would certainly make an effort to do it.

Closed by Judge Advocate.

Re-examined by accused:

Question.—When you spoke of the ability of a physician to judge, without examination, of the capacity of a person to perform duties, please explain if you meant to say, that in such a case a practitioner could decide whether the person was or was not in pain. Was that your meaning? or did you mean that certain duties might be performed, whether the person was in pain or not?

Answer.—I could not undertake to judge whether he suffered any pain at all, or how much; but I could form some estimate of his ability to perform certain duties.

Question.—What length of experience would, in your opinion, be necessary to enable a medical practitioner to decide, without examination, and in the way you have spoken of (viz: by the ob-

jective mode,) of the ability of a person to perform his ordinary avocations?

Answer.—I think it impossible to give a precise answer to that question. Tact is so different in different individuals.

Question.—In reply to the Judge Advocate's question just now, about the hospital, you assumed that there was no one to attend to the hospital. Suppose, however, that the hospital was in charge of an assistant Surgeon of the United States army. What then would be your opinion of the obligation resting on the Surgeon to go and take charge of it under the case supposed by the questions?

Answer.—I think that question already answered. That is, if there was a competent assistant, he would be under no official obligation.

Closed on the part of accused.

Question by the Court.—You have stated that the rheumatic pains are always remittent, and frequently intermittent, in other words, subject to periods of abatement and of aggravation. Does this apply to the form of disease known as lumbago, both chronic and acute?

Answer.—Yes, generally to all forms of rheumatism.

Question by Court.—In giving your opinion in relation to a Surgeon not being called on by any moral or official obligation to attend his hospital, under the circumstances which were stated to you, were you or not aware of the extent of the military obligation which devolves on an army Surgeon in case of yellow fever, or other fatal epidemic existing in his hospital.

Answer.—I am not at all familiar with any of the army regulations governing army Surgeons. I answer only on general principles, and on my experience in civil practice.

The witness was here discharged, and the Court took a recess.

After recess, Col. J. L. Gardner was recalled by defence.

Questions by accused :

Question.—Can you fix the date of your last interview with Dr. Byrne while he was on the sick report, certainly and definitely? If so, please do it.

Answer.—In answer to that question I want to correct my testimony given before, and that correction will include an answer to this question. I have made a memorandum to make myself secure about it. I stated that about ten or twelve days after Dr. Byrne went on the sick report, I had a conversation with him, and suggested that he should visit his hospital, however painful the effort. On further reflection, I now say that that interview must have been of a later date, say a full fortnight after he was reported sick on the sick report; in relation to the date of the second conversation now inquired about, my recollection does not allow me to be more particular than to say, that it occurred before the Doctor returned to duty, and while yet confined to his house. I wish to add, that in neither of these conversations, nor at any other time,

did I threaten him with an investigation of his conduct, nor intimate the existence of such a purpose on the part of any one.

Question.—You cannot then say on what day the last conversation took place. Do you not think it was as late as the very day before he reported for duty?

Answer.—The answer to that question is involved in the former. I cannot be more particular; I have answered to the very best of my recollection; I have tried my very best, and cannot succeed, and say anything later, to satisfy my own conscience.

Question.—If Dr. Byrne had reported to you for partial duty, the day after you had suggested the Court of Inquiry, do you or do you not think that such an extraordinary circumstance would have made a clear and lasting impression on your mind?

Answer.—Yes, sir; I think it would while the matter of the interview was fresh in my mind.

Question.—Then if you have no such impression, and have had none, are or are you not satisfied it could not have been so?

Answer.—I am perfectly satisfied that all such questions can produce no nearer answer than that I have given.

Cross-examined by Judge Advocate :

Question.—Was the conversation of which you have been testifying on the same day that Capt. Doubleday made to you a representation, as to the necessity in view of the then existing rumors of taking some action in regard to Surgeon Byrne's conduct?

Answer.—It was on that same day, I remember it now. It was that which made me more fully aware of the distinct form in which the rumors had then come, and which I had previously regarded as idle rumors.

Question.—Had or had not Dr. L'Engle spoken to you on that same day of the substance of a conversation he had with Dr. Byrne in regard to his (Byrne's) return to duty?

Answer.—About that time and after my conversation occurred with him. It might have been on the same day, for what I know.

Question.—On that same day, the day of the conversation with Dr. Byrne, have you any recollection of having met and conversed with Captain Doubleday and Lieut. Tillinghast on the porch in front of their quarters?

Answer.—No, sir. I have no recollection of such a conversation, although it might have occurred. I was in the habit of going in the fort every day.

Question.—Have you any recollection of having spoken with those officers in regard to that particular conversation with Dr. Byrne?

Answer.—No, sir. I do not remember of having spoken to them of it. I was in the habit of conversing with them upon the subject.

Question.—Have you any recollection of having said to them in one of these conversations, "I or we have him (referring to Dr. Byrne) fixed dead now," or used words to that effect?

Answer.—I not only do not recollect it, sir, but don't believe it, that I ever said such a thing. It will be seen by a closing remark in my letter to the Adjutant General, transmitting the three letters of Capt. Doubleday, Lieut. Tillinghast and Lieut. Shoup, that I differ with those officers in some respects.

Question.—Look at the four papers now handed to you, and say if they are your letter and the three other letters just referred to by you?

Answer.—They are the letters referred to by me.

The Judge Advocate proposed to read the letters in evidence, and asked permission of the Court to read them, and append them to the record.

Objected to by accused.

Objection.—The accused objects to the introduction, because the letters constitute secondary testimony. And if it should be said they are admissible as an official communication to head quarters, the answer is, they do not constitute a part of the official communication. The principal objection is that the prosecution has no right to arraign the accused on statements made by officers, all of whom are under the jurisdiction of this Court, and have been examined already in this trial.

The Judge Advocate.—The existence of these letters has been brought to the notice of the Court by this witness on the part of the defence, and the witness has referred to them, or one of them, as conveying his views and as sustaining his answer. Under the circumstances, I think it proper to lay them before the Court, as they will throw some light on this matter. These letters were given to me by the Adjutant General of the Army, to be used on this trial. The three letters from Capt. Doubleday, Lieut. Tillinghast and Lieut. Shoup, are official, and dated at this post on the 11th October last, and addressed to Col. Gardner. The fourth letter is official, and addressed by Col. Gardner to the Adjutant General of the Army, forwarding the other three letters, and dated on the 12th October last.

In reply to the Judge Advocate the accused respectfully submits that although Col. Gardner is his witness, he asked him no questions about these letters. The reference to them by the witness was upon a cross-examination by the Judge Advocate. Under the examination, the accused respectfully submits that it is not competent for the prosecution to elicit answers, which answers shall be made the predicate of testimony otherwise objectionable.

The Court was closed for deliberation, and decided that the objection be sustained, and the three letters not received as evidence.

Court then adjourned.

THIRTEENTH DAY.

SATURDAY, April 9th, 1859.

The Court met at half past 9 o'clock. Present—The same members as yesterday, and the accused and his counsel. The journal of yesterday was read.

The Judge Advocate stated to the Court that he had examined official books of the post with the accused counsel, and they had agreed to enter on the record certain statements and facts collected from those books.

The statement would be this :

The Judge Advocate and accused, under the advice and assistance of his counsel, have examined the official register and reports of the hospital and post, and, in consequence, have agreed to the following statement of facts, and that they be laid before the Court in evidence :

The average strength of the command present at Fort Moultrie from the 7th of June to 7th July, 1858, was $173\frac{2}{3}$.

Average from the 7th July to 7th of August, 1858, $158\frac{2}{3}$.

Average from the 8th August to the 8th of Sept. 1858, $135\frac{1}{3}$.

Average for the first eight days in September, 1858, $109\frac{1}{2}$.

On the 7th June, 1858, Company H, 1st Artillery, arrived from Florida at Fort Moultrie, bringing its sick members, eleven in number, the diseases generally being intermittent fever.

On the 10th of June, the number of sick of that company had increased to twenty, and by the 25th of the same month the number of sick of that company was reduced to four.

On the 8th September, 1858, the number of men on the sick report at Fort Moultrie was eleven, that is eight in hospital, and three in quarters ; on the 9th of the same month there were eleven on the sick report, that is nine in hospital, and two in quarters. Of the eleven men on the sick report on the 8th of September last, Bright appears to have been treated for rheumatism from the 4th of July to the 7th of September. On the 7th, Surgeon Byrne prescribed for him calomel, and on the 8th an injection. One was treated for syphilis prior to the 9th of September. One went to duty September 11, and treated for debility prior to the 9th September. One went into the hospital on the 6th, treated for drunkenness and returned to duty on the 9th. One Cholera Morbus in Hospital, September 6th, for duty September 9th ; one *Morbii Varii* in hospital, Sept. 7th, for duty Sept. 9th ; one Dysentery, in hospital Sept. 8th, to duty Sept. 10th ; one Intermittent Fever in hospital Sept. 8th, to duty Sept. 12th ; one in quarters, *Stricture* for months, to duty, Sept. 17th ; one in quarters, wounded, off sick report, Sept. 17th ; one in quarters, dysentery, Sept. 8th, for duty Sept. 10th. Private Chester was reported sick of yellow fever on the morning of the 4th Sept., (believed to have gone into hospital the evening before,) and excluding Bright, this is the last case of yellow fever reported before Galway's, who is reported on the morning of the 9th.

From the 5th to the 9th September, 11 men deserted from this post, viz : one on the 5th, three on the 6th, three on the 7th, two on the 8th, and two on the 9th September. And that for one month immediately preceding the 5th of September there had been no desertion from this post.

The troops were paid on the 3d September, after the troops had

been paid in July last; and between the 16th of July and 2d of August there were *thirty-two* desertions from the post.

“During the months of June, July, and August 1858, there was but one death in this command.”

SAML. JONES, Capt. 1st Artillery,
Fort Moultrie, April 10th, 1859. Judge Advocate.

South Carolina, Charleston District:

Personally appeared, B. M. Byrne, who being sworn, deposeseth and saith that he expected, if the witnesses had been present to prove the facts set forth in relation to each, in a letter written by him to the Judge Advocate of this Court, bearing date 31st January, 1859. Sworn to before me this 9th day of April.

W. E. MARTIN, Notary Public.

B. M. BYRNE.

By Surgeon Finlay.—I expect to prove that while serving as his assistant at Jefferson Barracks, in the cholera epidemic of July, 1850, I faithfully performed my duty without manifesting any personal apprehension of the disease, though a firm believer in its contagiousness.

By General Wool, whom I have also requested you to summons, I expect to prove that I have served as medical director in Mexico and California for a period, altogether of nearly three years; that during that whole period I discharged all the duties which devolved upon me with such fidelity and efficiency as never to have incurred in a single instance the slightest rebuke from him, while on the other hand he officially complimented me when I applied to be relieved from duty in the department of the Pacific. And, although my character as a medical officer may need no endorsement in the army among those who know me well, I nevertheless, consider it very important, that on this occasion I should have the testimony of an officer, who for more than twenty years has known me well, both as an officer and a man, and who has had me for nearly three years under his immediate command.

The Judge Advocate on the part of the United States admitted that if the two officers named were present as witnesses before the Court, they would testify as above stated.

The accused exhibited to the Court an essay advocating the contagious character of Asiatic and malignant cholera, 2d edition, Childs & Peterson, Philadelphia, showing that he held the views of the contagious character of cholera since the fall of 1833. He exhibited it because he desired to refer to it and use it in his written defence. He also exhibited to the Court a statistical report of the sickness and mortality of the Army, prepared under the direction of the Surgeon General, by Richard H. Coolidge, M. D., Assistant Surgeon U. S. Army. He will comment upon it in argument upon pages 153 and 154.

The counsel for accused here announced that they had closed on the part of defence and had no further testimony to offer.

Captain Abner Doubleday recalled by Judge Advocate.

Question.—Did you visit Surgeon Byrne at any time during

last September whilst he was reported sick, if so, how often and about how long after he was so reported.

Answer.—I visited him twice; the first time on the 16th of September, the day Dr. L'Engle arrived, and the second time within a week afterwards.

Question.—Was Surgeon Byrne in bed when you saw him on both occasions?

Answer.—On my first visit he was in bed; on the second, I do not remember whether he was lying or sitting in bed. I think he was lying on his bed covered with a sheet.

Question.—On the first visit did Surgeon Byrne look, move or act like a sick man? Explain.

Answer.—I should never imagined that he was sick, if I had not been told that such was the case. I was with him about half an hour. During that time he showed no signs of suffering; he moved about in his bed, got a letter off the table near the bed or outside. He had to reach out some distance to get the letter. As I was about leaving he raised himself in his bed and made a slight contortion as if it hurt him. It was the only indication that he was suffering. He talked like a man that was perfectly well. He conversed on the subject of his Florida land and Dr. L'Engle's arrival.

Question.—On your second visit did Surgeon Byrne act, speak, move or converse as a sick man suffering much pain.

Answer.—I saw no signs of sickness or pain about him.

Question.—Did he look pale and emaciated, or the reverse?

Answer.—He looked rather florid than pale in appearance. He did not look emaciated.

Question.—You have testified to having made an official representation or report to Col. Gardner in October last, in regard to the necessity of taking some action in regard to Surgeon Byrne's conduct? State the date of the occurrence.

Answer.—I have already stated in my previous testimony. It was on the 7th of October.

The Judge Advocate here closed.

Questions by accused.

Question.—In what capacity did you visit Surgeon Byrne?

Answer.—I paid him a friendly visit when I heard he was sick.

Question.—Was it your practice, and that of the other commissioned officers to visit yellow fever patients, during the prevalence of yellow fever?

The Judge Advocate objected to the question as irrelevant. The Court was cleared for deliberation.

On opening, the Court decided that the objection of the Judge Advocate be sustained.

Question.—Fix the date of your last visit to Surgeon Byrne.

Answer.—I cannot do it more nearly than I have already done. About a week after the 16th of September last. Within a week.

Question.—At what time of the year do desertions most commonly occur?

Answer.—I do not know that they occur oftener at one time than another. They generally occur after pay day.

Question.—When are the troops at this post paid off? How often, and about what time in the month?

Answer.—They are paid every two months as a general thing. Generally between the first and fourth of the month at this post.

Question.—State whether September is or is not one of those months.

Answer.—September is one of those months. Yes.

Question.—Do you or do you not remember whether there were desertions on or about the 8th of September?

Answer.—I was absent from the post and do not know.

Witness was then discharged.

The Judge Advocate stated that he would admit that the troops were paid on the 3rd of September.

Private James Smith, Company H, was called by the Judge Advocate, and duly sworn.

Question.—Were you employed at the hospital at this post, on or about the 4th of September last, when Private Holden died.

Answer.—Yes, sir.

Question.—Did you or not see Surgeon Byrne visit the hospital shortly before Holden died of black vomit?

Answer.—Yes, sir.

Question.—Did Surgeon Byrne go into the room where Holden was lying? If not where did he go, and what directions did he give?

Answer.—He came to the top of the stairs.

The accused objected.

The accused objects to any testimony offered in reply, in relation to Dr. Byrne's alleged timorousness, in visiting cases of yellow fever. The accused is not arraigned under either of the charges for cowardice. He, therefore, does not come prepared to meet any such issue. In the examination in chief of Dr. L'Engle, for the first time in the case, this topic was touched upon, by answers elicited by the questions of the Judge Advocate. The accused then thought the question inadmissible, as the record stood; but he preferred not to raise an objection. He, therefore, did not object. The accused, however, submits that an examination in reply, is confined to topics elicited by the defence, on cross-examination, which is unrestricted. The accused, having developed no such new ground of defence, these questions referring to the question of Surgeon Byrne's timorousness, in meeting yellow fever cases, being in no way embraced by the charges or specifications, he submits that the question is incompetent.

Judge Advocate.—I think the question admissible and proper, on two grounds. Assistant Surgeon L'Engle, has testified that Surgeon Byrne's manner of approaching and examining yellow fever patients, manifested fear. The accused has introduced witnesses apparently to impeach that testimony. One object of calling this witness is to sustain Dr. L'Engle's testimony. Again, I believe it is a well established principle, that on a criminal trial, say for murder, if the act is proved, and the accused pleads any

specific justification or excuse, insanity for instance, it devolves upon him to prove the insanity; and his testimony on that point may be met and rebutted by other testimony. So in this case, the accused is charged with abandoning and neglecting his duty, during the prevalence of yellow fever, and has attempted to prove in justification, that he was sick—so sick as to be unable to attend to his duty. That testimony may be met and rebutted by other testimony, to show that he was not so sick, as to incapacitate him for the performance of his duty; and that he was prompted by fear, one of the most common causes offered to feign sickness, to avoid duty. It is true, that in this case the accused, by the indulgence of the Court, called two witnesses for the defence, out of time, before the prosecution was closed; and this disclosed his line of defence. But he could not avail himself of that indulgence to shift the burden of proof from the defence to the prosecution; but I propose by this and other witnesses to rebut the testimony on the report of defence.

By accused.—If the first view of the Judge Advocate be correct, he should have developed his grounds while the testimony for the prosecution was before the Court.

De Hart on Court Martials, page 160, at top, has this language: "It must be distinctly understood, and observed in the conduct of all military trials, that the prosecutor must, during the prosecution, and before the prisoner comes on his defence, produce all the evidence he has, to support the charge. After the prosecution has been closed, it must be announced and entered upon the record, and no further proof in support of any alleged specific fact in the charge, can be received." See, likewise, page 161. The accused would submit that the case is still stronger, where such fact is not in the charges and specifications. The accused submits to the Court, the fact that he is not at liberty to call any more witnesses, as the best explanation of the reason for the rule.

The view presented by the Judge Advocate, in his last ground, is as the accused submits with deference, wholly untenable. By his own showing the justification, referred to is the sickness. This being matter of extenuation, the Judge Advocate would be at liberty to controvert the testimony of the accused, on that point, and he has done so without exception. But when the Judge Advocate goes on to allege another motive, it is evident that he raises a new issue—what the lawyers call a new assignment.

He therefore submits that the testimony is inadmissible, and there is no telling how far the case may be extended if this mode is pursued.

Judge Advocate.—I certainly have no intention of introducing at this stage of the trial testimony to the support of any alleged specific fact in the charge, but only to meet the plea of sickness.

Court was cleared and decided that the objection of accused be sustained.

Judge Advocate.—After the decision just made by the Court, I have no other question for this witness. (The witness was dis-

charged.) The Judge Advocate stated to the Court that he had no other witness in attendance. He had summoned three other witnesses, citizens of Charleston, but they had not obeyed the summons. By one of these (Dr. Horlbeck) he expected to prove that he (Horlbeck) attended Surgeon Byrne's wife professionally with Dr. L'Engle for ten or twelve days last fall, during the time it is alleged that Surgeon Byrne was sick. That he (Horlbeck) had, during that time, constant opportunity of seeing and observing Surgeon Byrne, seeing him several times of the day and that he (Horlbeck) entertained and expressed to Dr. L'Engle and others the opinion that Dr. Byrne was fully able to attend to his duty, and further, that Surgeon Byrne exhibited great timidity and fear in regard to yellow fever.

By another, whom he had summoned, he expected to prove that he, the gentleman summoned, visited Surgeon Byrne once during the time it is alleged he was sick. He visited him officially at Surgeon Byrne's request to transact some important legal business, and that Surgeon Byrne exhibited no appearance of sickness.

By the third he expected to prove that Surgeon Byrne, on or about the 8th of September last, manifested great fear of yellow fever, and asked, of a gentleman who has been long a resident at this post, "if he thought the yellow fever would spread as far as his (Surgeon Byrne's) house." He therefore asked the Court to give him till Monday to produce the witnesses.

Objected to by accused.

1st. The accused objects to postponement. The 868 paragraph army regulations under which the Judge Advocate is proceeding, has no reference to the Judge Advocate, but is applicable to prisoners only.

2d. If it is applicable the Judge Advocate has not complied with the second and third regulations of the paragraph.

3d. The testimony or a great part of it is such as the Court has just ruled to be inadmissible.

Court was cleared for deliberation and decided that the objection be sustained.

The Judge Advocate added that he had this instant been informed that Dr. Horlbeck was on the point of sailing for Europe, and would probably sail before Monday, and then it was extremely doubtful if he could procure the attendance of either of the three.

Decision by the Court.—As the Judge Advocate has used due diligence in summoning these witnesses it is no fault of his that they are not in attendance, and as there is no compulsory power vested in Court's Martial to compel the presence of citizen witnesses, the Court deems it unnecessary to delay any further.

The Judge Advocate then announced that he had no further testimony to offer.

The accused also stated he had no further testimony to offer, and asked the Court to grant him until Wednesday next to prepare a written defence.

The request was granted and the Court adjourned until Wednesday, the 13th inst.

SURGEON B. M. BYRNE'S DEFENCE,

READ TO THE COURT, APRIL 13, 1859, BY HIS COUNSEL,

WM. E. MARTIN, Esq.

Mr. President and Gentlemen of the Court :

For more than twenty-two years I have had the honor of holding a commission in the army of the United States. During that period I have experienced my full share of the vicissitudes of professional life. Devoting myself and all my energies to the service of my early choice, I have cheerfully encountered every hardship and met every responsibility to which it has called me. In common with you, gentlemen, and the other officers of our army, I have shared its fortunes in peace and in war, and in every section of our wide spread territory. Dedicating myself in youth to my country's service, I have passed the spring and summer of my life without, as far as I know, a breath of suspicion upon my name and character; and now, when its autumn is advancing upon me, I have the heavy misfortune to stand before my country and my comrades, with my character assailed and my conduct and standing as an officer and a gentleman, the subject of judicial investigation and scrutiny. You, gentlemen, whose lives have been one unbroken career of honor and usefulness to yourselves and to your country; you who in war have borne that country's flag to glory and to victory, and, in the not less trying times of peace, have maintained its honor and its integrity; you, my judges, on this eventful occasion, may imagine, but can scarcely realize the painfulness of my position. May Providence avert from each of you the calamity—for such it is, whatever may be your decision, which has overtaken a brother officer. May you never know in your own experience, how far a stranger, without friend or acquaintance, may be the victim of popular rumor and exaggeration, and even perfect innocence, may fall short of that protection to which every man is entitled against judgment without proof, and condemnation without hearing.

But while I may be excused for the exhibition of the emotion which these charges have produced, it is far from my wish or design to enlist your sympathies as the ground of acquittal at your hands. To your honest, impartial, and unswerving sense of duty and of justice, I alone appeal. To that firm and unflinching integrity which has always characterized the Court Martial of the United States, which knows not men, but recognizes only truth, under the sanction of an enlightened conscience—to the law and to the testimony, I look as the bulwark of my defence and vindic-

cation. To these, and only to these, I now proceed to solicit your consideration.

The specification to the first charge is that, being stationed at Fort Moultrie, on or about the 9th day of September, 1858, and being then and there the only medical officer of the army, when a fatal disease, known as yellow fever, prevailed among the troops at that post, I then and there neglected and abandoned my duty to attend the sick, and did so neglect it from on or about the 9th day of September, 1858, to on or about the 11th day of October, 1858.

The aggravation alleged in this specification is that "I was then and there the only medical officer of the army." The neglect and abandonment are alleged to have existed from the 9th day of September, 1858, to 11th October, 1858. The proof is beyond controversy that Assistant Surgeon L'Engle was placed on duty at this post, as a medical officer of the army, on the 17th day of September, and so continued until the 11th day of October. It is evident, therefore, that it was only from the time of my having been taken sick to the time of Dr. L'Engle entering upon his duties, from the 8th to 17th of September, that the fact stated in aggravation, has been sustained by the proof. So that the two periods of time—the first before and the second after Dr. L'Engle's arrival—are distinct, and as far as the aggravation charged, different in the character which may be fixed upon them by that portion of the specification now under consideration. If, then, it is an aggravation that, being then and there the only medical officer of the army, as alleged, that I left my post of duty, it is applicable to the first part only. The conclusion derivable from this analysis is this: that circumstances of less pressing emergency, would justify a medical officer in yielding his field of duty when his place was known to be supplied by another in the same service, and under the same obligations with himself, than if his place was not so supplied. And it follows also, that a greater exigency must be shown to have existed before such supply had been furnished, as an excuse for relinquishing his post.

I now beg leave respectfully to invite the attention of the Court to my condition before Dr. L'Engle's arrival, and first to my own statements. I would ask the Court to consider, that although as a general rule, the statements of a party interested are not admissible in his own behalf, yet there are reasons why my account of my own symptoms and sufferings are so in this case. The first is, that in medical practice, all treatment, even in cases of life and death, is based on the patient's account of his own symptoms—and these, until disproved, must, from the necessity of the case, be taken to be true. This is true of every patient; and, if the report of the medical officer of the condition of those in his charge is relied on as competent evidence, is there any reason why the same rule is not applicable to his own condition, of which he must necessarily know more than of the condition of others? There certainly can be no such reason, unless his statement is

disproved by other facts and circumstances, a subject to be discussed hereafter. The rule, however, in every judicial investigation, is that the best evidence must be adduced which the nature of the case admits of. The best evidence of the sickness or health of troops in the army, is the report of those to whose care the law has confided them. And if this were an inquiry into the condition of the health of the garrison, as in another branch of the investigation, the statements of the health officer of the post would be the best evidence, until it was falsified or disproved. For these reasons, my own statements are evidence, and primary evidence until disproved. It is evident, therefore, that these declarations cannot be overruled unless the prosecution establishes the contrary—that is, unless they prove that what is alleged as a fact is not a fact, they must establish a negative.

The other reason is, that all the facts and circumstances, extending even to the statements and declarations of a party implicated, which occurred at the time of the occurrences which are the subject of judicial investigation, are admissible in evidence in every tribunal under the name of *res gestæ*. The rule is not extended, nor is it asked to be extended, to anything done or said *ex post facto*. But all that I did as evidencing my condition, and all that I said as explaining it, at the time of the alleged delinquency and before, any one supposed these circumstances would ever be the subject of judicial investigation, are as competent testimony as any that can be offered. Like all testimony, it may be impeached, but until it is done, it stands as proof.

A third reason is equally forcible, but has more limited application. I mean the declarations of my condition and my inability to perform service contained in my letter to Col. Gardner, of 12th October, 1858, acknowledging the receipt of letters enclosed, from Captain Doubleday and Lieutenants Tillinghast and Shoup. This letter is offered in evidence by the prosecution, and is the basis of one of the charges. Besides, the fact that the charging of one portion of it to contain a false statement, without a denial of the correctness of the remainder, is an admission of the truth of such remaining parts as far as they state facts in my history; there is another unquestioned and unquestionable rule which prevails in all judicial tribunals, viz: that when a paper is produced and a part of it relied on against the writer, he is entitled to have the paper read entire, and to rely upon the whole for what it purports to be.

On this principle then, the statements of the condition of my health and of my sufferings, as well of the other causes which incapacitated me from attention to duty, as fully detailed and set forth in that letter, are evidence in my behalf. If I have elaborated these grounds, at apparently great length, it is to prepare the minds of the Court for the reception which I desire to bespeak for my statements, namely, not as evidence, merely tolerated under peculiar circumstances, but as testimony fully and amply entitled to all the consideration to which the highest evidence is entitled.

And with these preliminary remarks, I now respectfully solicit consideration of this part of the testimony.

Referring the Court to my letter to Col. Gardner, of 12th October, for a full statement of my disease and sufferings, I beg leave hastily to recapitulate a portion of it. It appears that I had on former occasions in California, two attacks of lumbago; that, on the night of the 8th of September, at or about 10 o'clock, I was seized with violent pains across the sacrum and hips, and was for many hours so ill that I could not turn in bed without suffering great agony. That I resorted to the usual remedies for rheumatism, detailed and set forth in the letter above referred to. That among other remedies, I kept myself in a state of constant perspiration for several days, experiencing some relief from it, although the pain continued. That I consulted with Dr. Ravenel, and by his advice, (which fact is corroborated by his testimony,) I put on blisters, which transferred the pain to the left hip joint. That by the same advice, I applied blisters there also, but before they healed no fewer than six boils broke out in the region of the blisters. That while suffering from these causes, Mrs. Byrne, my wife, was taken dangerously ill with yellow fever, and so continued for about twelve days. That during several nights of this period such were my bodily suffering and my anxiety on her account, that I did not sleep one hour, and that in consequence of these causes, I was seized a few days afterwards with a pain in the left knee joint, which was at times so severe as to produce sickness at the stomach. That about the 5th of October I applied a blister to this also, and on the 8th of October, when my health was comparatively restored, and Mrs. Byrne had passed the crisis of her attack, though I was still suffering, and weighing nineteen pounds less than when taken sick, I reported for duty and visited in consultation with Dr. L'Engle, the only two serious cases in the Hospital, Rip-pitt and Driscoll; of my condition at the time I resumed my duties, the pain and debility under which I labored, I will not speak at present, as this belongs to another branch of this discussion, namely, the corroborative proof of these statements by myself of my own condition. To that branch of this defence I shall postpone it.

I have said that my own statements, until the Court is induced to question their truth and accuracy, are primary evidence. I may add still more strongly, that when made by an officer holding a commission in the U. S. Army, and a gentleman whose veracity has never been questioned, they *prima facie* establish the point in question.

I have next to ask this Court to consider whether these statements have been disproved. What evidence would this Court consider sufficient to brand with falsehood and deceit an officer and a gentleman of unimpeached standing and character? Would it do so, on testimony as light, as it would require for a matter of trifling moment? Would it place a speculative opinion in the scale and permit it to counterbalance the strongest asseverations

otherwise entitled to faith and credence? Most certainly not. To rebut such a statement, the Court must first conclude that it is false—for it cannot be denied that he who speaks of his own state and suffering is a better judge than any one else can be, and possessing the highest evidence and best means of knowledge, you cannot arrive at the conclusion that the statement is simply erroneous, inaccurate. It cannot be so unless it is corrupt; he cannot be mistaken. There is no room for charity in attributing it to error. It must be true for what it purports to be, or it must be wilful deception; there is no middle ground.

With this serious view of the necessity for weighty testimony, I ask the Court to follow me with that patient courtesy which has marked the whole progress of this trial, to a consideration of the testimony which has been adduced to brand my statements as untrue, to stigmatise me as one unworthy of the commission and service I love and cherish, and then to decide whether the proof is of that character sufficient to outweigh in the scale the asseverations of one hitherto wholly unimpeached, and under circumstances in which all the means of knowledge are on the one side, and speculation supplies its place on the other.

It may be said, without controversy, that the chief, and indeed almost the only rebutting testimony, is that of Assistant Surgeon L'Engle. The Court will observe that this applies only to the period between the 26th of September, and 8th of October, when I reported for duty. By examination, it will be seen that he expresses no opinion in regard to any other period. It may be asserted, therefore, with confidence, that the issue is narrowed from the whole period of my sickness, down to the last named dates, a period of twelve days. What is his statement? The Court will observe that he has nowhere said I was not sick; *that* he always declined to say, but his remark several times repeated, is that I was "physically able to attend the sick." See Journal of the 6th day, page 46. When examined, and cross examined, this was the extent of his opinion, and he as often repeated that his evidence referred to the period of time beginning on the 26th of September. It was at this time that he commenced visiting Mrs. Byrne in her illness, and it was then, and only then, that he professes having opportunities for observation.

I beg the Court carefully to reflect upon the ground of this opinion. It rests upon what he calls the "evidence of his senses." He never examined me. He never asked any questions. Dr. L'Engle is a young man of 27 years of age. He was commissioned in the army in August, 1856, and practiced medicine three years before. He has been in his profession in all, five years. And yet, under the disadvantage of acting without enquiry, and without examination, he undertakes to say I was able to do duty alone—to assume the entire charge of the hospital during the night and the day—subject to be called out in all weather, (which was proved by the meteorological tables to be wet and damp at the time,) and subject to every vicissitude entailed by such duties. Dr. Geddings and

Dr. Ravenel expressed unqualifiedly their opinion that medical science had not attained sufficient perfection to enable a physician to form a reliable opinion under such circumstances—the former, himself eminent in his profession, adding these emphatic words : “if it has, I am not posted up.” See the testimony of Dr. Geddings, third day, page 23, and Dr. Ravenel, fourth day, page 30.

Another physician, one of great eminence in his profession, Dr. John Bellinger, was examined as to the ability of a physician under like circumstances to form an opinion of a person being able to attend to his ordinary avocations, and his answer was that “a man of experience might form an approximative opinion!” Thus we see, that of the three medical men examined as experts, two have rejected a judgment so formed—and the qualified indorsement of the third is inapplicable, unless Dr. L’Engle be first established as “a physician of experience.” Whether he is so or not, I leave the Court to determine upon the testimony. It will be borne in mind how young he is as a man, and in his profession, and that by his own account, the number of cases of lumbago, which have come under his observation is very small, and then it will not be difficult to decide, whether his judgment is to be the standard, not only against my own declaration, but against the judgment of those so much his seniors.

But what is this “evidence of his senses,” upon which Dr. L’Engle relies with so much confidence. It is, in brief, that during the time of Mrs. Byrne’s illness, he saw me moving about her bedside ; that I frequently accompanied him to what he called the porch, but which, from his own explanation, is but a piazza, the whole small building under one roof ; and that once, in a case of emergency, to visit a sick servant, under the same roof also, I descended a short flight of stairs. He admits that I moved with difficulty and apparently in pain. His statement further presents, in its strongest aspect, a case of a man impelled by the strongest demands to which the human heart is susceptible. Mrs. Byrne, by his account, was dangerously ill of a deadly disease. He admits that he expressed to me doubts of her recovery. I was her only nurse, in a disease which perhaps more than all others, requires constant watching. The presence of a physician, by Dr. L’Engle’s testimony, was necessary by day and by night at her bedside. This presence, and this attention, in an emergency, to call out the strongest instincts of the human heart ; and in their development to subdue not only the exhibition, but the sense of pain and suffering ; these, and only these, are relied upon by Dr. L’Engle on “the evidence of his senses” to prove that I was capable of discharging the duties of the hospital—duties which would have entailed upon me the obligation to go out in all weather, and at every hour of the day and night. These are the only “evidences of his senses” on which he has relied so confidently as to lead him to a conclusion which implies deceit and falsehood, in a brother officer of his own corps. It is true, that

under the cross examination he did not deny that during this period I manifested pain and suffering. Even in reply to a question from the prosecution—journal of 5th day, page 42, he admits that during this time, I complained of suffering. On the same page, in reply to a question from the Judge Advocate, he replies, “I could discover no evidence of disease, except his gait, his manner of walking, which was constantly with a stick, with a limp, as a man would walk who had a stiff knee.”

Having just said I complained, we are certainly at liberty to add the two manifestations together. If these do not constitute all the evidence of pain which could be offered, but one more can be imagined, and that is the condition the patient’s person would exhibit. That opportunity was in his reach. His often repeated visits to Mrs. Byrne afforded them. He formed his opinion that I was able to do duty about the 26th of September. He continued his visits—meanwhile enjoying my confidence as proved by his attendance upon Mrs. Byrne for twelve days in her dangerous malady—and certainly willing to accept courtesies meanwhile, as shewn by the use of my horse and carriage in his private practice. During all this time, he must have believed I was practising a deception; and yet he was willing to form such a judgment of one whom he visited as a friend as he states; and to predicate upon that opinion a letter to the commanding officer of the post.

And in the whole period he never conceived it his duty to establish his convictions or to remove his impressions by inquiries and examination, when he could have verified my assertions by the marks of the blisters and boils yet visible upon my person. He did not, however, think this necessary. He was already satisfied of my practising deception; and, notwithstanding the previous friendly relations and continuance of kind offices between us, he was willing to jump to his conclusions in a way which may be quoted as an example of adventurous professional enterprise, but which will scarcely ever furnish a precedent in the line of its safe practice.

But as it is necessary to pass on, I must dismiss further commentary upon Dr. L’Engle’s testimony, as furnishing rebutting evidence of my own declarations. What claim, I beg leave to inquire, has Dr. L’Engle to the credence of this Court that I do not possess?

Is he an assistant Surgeon of the army? I held that position when, by his testimony, he was seven years of age, and have held it ever since. My commission is more than twenty years older than his. I point to a record without stain or spot. Can he do more? He judges on the “evidence of his senses”—I judge by my *senses* and *my sensations*. Mine was experience—his speculation. Mine a declaration which must be believed, or the narrator was false—his a haphazard venture where nothing was involved but error of judgment, at least before this Court, for the responsibility to conscience and his profession, who can measure? It seems to me, therefore, in dismissing Dr. L’Engle’s testimony, that before the

Court can be influenced by it in a way to disbelieve my statements, it must be first satisfied that such imperfect means of judging as he possessed were exercised in all fairness and impartiality, and that when exercised they afforded greater light and more information than the highest means of obtaining such knowledge were entitled to and calculated to shed and did shed upon my condition.

Was the witness in a condition thus to observe calmly and judge dispassionately? I shall not go beyond the record of his testimony for my proofs. On 16th of September he visited Fort Moultrie, while *en route* for Florida, to which place he was going to visit his family and attend to his business. He was detailed and entered on his duties on the 17th. He admits that this detention was a "serious annoyance and vexation to him."—Journal of seventh day, page 53. He was under orders for Texas. He contemplated resigning rather than obey them. It is true, he says that within a few days after his arrival the cause of his vexation was removed. But it is evident that his anxiety to be relieved was not, for we find him, (journal of seventh day, page 57, 58,) admitting, in reply to a question from the accused, "that he asked Surgeon Byrne whether he thought he would be able to report for duty in a few days, assigning as a reason for making the inquiry that he wished to give the Surgeon General the dodge, by making a visit to Florida before he could have time to repeat the order sending him to Texas." The date of this conversation does not appear; but most certainly it was after the time (two days after reaching this post) when, by the reception of letters, his vexation and annoyance were removed. Besides, there existed another cause of impatience, easily appreciated by every army officer, in the curtailment of his visit to his family and relatives in Florida. Every days detention here shortened it, and it is but natural that he should have felt impatience at his delay; and it is equally evident that it has given a coloring to all the views he has taken of this case. But suppose he was entirely removed from all bias in this matter. I ask, is his single opinion to influence the Court to the conclusion that I have practised falsehood and deception? It is, after all, the opinion of one man and one officer against another. Thus weighed in the scale, I have not only an equal right to be believed with Dr. L'Engle, but being in a condition to be a better judge, I am more entitled to such credence. During the whole period of time I have been in the army, I have not been three weeks on the sick report before last fall, and for twenty years I have not been one day on it. I submit to the Court, therefore, that in all points of view, my statements stand unimpeached by this witness.

I would now inquire if they have been rebutted by any other testimony. Do my declarations, contained in the letter of 12th October, to Col. Gardner, of the quantity of fatigue and exposure I underwent, seem inconsistent with such suffering as incapacitated me from hospital duties? I have only to ask the

Court if it takes any, to take all of its statements, and I shall be satisfied.

Is Captain Doubleday's testimony a refutation? He saw me but twice; once in bed, and once on the bed, as he supposes, lying with a sheet or covering over me. He saw, he says, no evidence of sickness, but he follows this by the remark that in turning over in bed, I exhibited contortion as if in pain. But Captain Doubleday is not an expert in medical matters, and his opinion, whatever it may be, is not entitled to weight against the irrefragable testimony offered on the other side. Then is it impugned by the opinion of the commanding officer of the post. The prosecution must have anticipated such evidence; but his testimony (second day, page 18) was that he never entertained a doubt that I had been sick; and as modified by his explanations on the third day journal, page 22, that if doubts entered his mind they were never retained, a little reflection always sufficed to dispel them.

What other rebutting testimony has been offered? The Court, against my objections, allowed the opinions of Drs. Ravenel and Horlbeck to be quoted as against me. But the latter has not been called by the prosecution into Court. Nor has any attempt been made to coerce his attendance, although he was in Charleston during the whole progress of this trial to the closing of the testimony. I have a right to argue, and I do contend, that the prosecution would have failed as signally in eliciting any such opinion from him as from Dr. Ravenel, whom I examined in my own behalf. No such opinion has been expressed by him. The prosecution, it is true, have attempted to prove that, on other occasions, he did express the opinion that I was capable of doing duty. But without detaining the Court on this point, it may be enough to say, that Dr. Ravenel, it is to be presumed, is the best judge of the opinion he held and expressed. As explained by him, it was not a positive affirmation of my being able, but a qualified one, comparing my ability with his own on a certain occasion. And when this is explained, he states that on the occasion referred to, he "had no one to supply his place; persons were calling upon him, and requesting him most urgently to go and see their families, &c." "He had parents who would visit him, in his chamber, with their children, asking him to prescribe for them, &c.; had to prescribe for many without seeing them, and as soon as he was able, he went out on his crutches." So that the opinion is altogether modified. But, even in this case, he adds, that he does not consider it a parallel case with Dr. Byrne's, as there was some one in charge of his business. All the physicians, including Dr. L'Engle, have placed the statements of the party affected with disease, or alleging himself to be so, as the highest in order of evidence of his condition. I have shown my condition by this evidence, and I have reviewed all the testimony which has been offered to rebut it. If it should be argued, that I have no medical testimony, except Dr. Ravenel, who testified to a portion of the time, I answer, that it is not customary (and it has been so proved

in this trial) for medical men to call in other physicians to attend them in lumbago and rheumatism.

Having now reviewed all the testimony offered to rebut my statements, I shall next ask the Court to consider the corroborative testimony. Laying aside everything I said and did as explanatory of my condition, inasmuch as the prosecution alleges, by its mode of conducting the case, that these are simulated, I shall point to what cannot be feigned. By Vincent Williams, hospital steward, I have proved (journal of tenth day, page 75,) that I looked like a sick man, and was in bed with night clothes on; (same day, next page,) that when I returned to duty, I looked like a man that had been severely sick. That I was assisted in and out of the carriage in which it was my practice to ride to the hospital, though so near; "he does not remember ever to have seen a man look worse." And in reply to a question from the Judge Advocate, (journal eleventh day, page 1,) he said, that Dr. Byrne looked as badly as men in the hospital dangerously ill with yellow fever. Corporal Fitz Gerald (journal of eleventh day, page 83,) describes me as pale and emaciated; he knew of blisters being made, and he carried them himself. By private John Cleary, (journal of the eleventh day, page 87,) it has been proved that I was very "delicate, and very much reduced." And as late as 15th October, private Davis describes me as appearing to be in delicate health, &c., very pale (journal of eleventh day, page 87.) The testimony of Ann McMorrough is more full, and necessarily so, than the others. The reason is obvious. She is the servant in the family; and all the circumstances of my sickness came immediately under her observation. It would be difficult to quote from her testimony, as all parts of it are applicable and important. She states that blisters were brought from the hospital by Fitz Gerald; (confirming his testimony;) that she brought them in smooth, and saw them afterwards in the room, "mussed up and ruffled." She saw Mrs. Byrne spreading salve to dress these blisters. She also mentioned facts going to show, independently of my statements, that I suffered from boils; she shows that I had no appetite; that she handed me medicines; that I looked sick, and showed many evidences of suffering, and that I looked sick for some time after I went to duty. That she saw the cloths with which the boils were dressed, and Mrs. Byrne preparing them; that it was her business to make up the beds of the house, and mine was not made up but twice during my sickness, and then I got up with difficulty, and sat in a chair, supported by Mrs. Byrne with a blanket round me. Lastly, there is the corroborative proof of the commanding officer, Col. Gardner. He says, in his testimony, second day, page 18, that I had the appearance of having suffered; and this he repeats at several stages of his examination.

After this view of the corroborative testimony, I would beg leave to inquire what proof of that nature could be adduced that I have not adduced. I cannot imagine that any man called upon to

establish the fact of his having been sick, could produce any other testimony stronger than I have done; or that any witness could be supplied, in ordinary cases, unless it should be an attending physician. I have adduced Dr. Ravenel for a portion of the time; although he has testified that it would not be expected of a medical man to call in a physician when he was suffering from rheumatism, and that he had forborne to do so under similar circumstances. I respectfully submit, therefore, in leaving this branch of the case, that if the Court believes the witnesses, I have fully sustained and confirmed the statements made by myself of the nature and of the degree of my sufferings.

I submit further, on the ground explained in the first part of these remarks, that such statements have been made evidence by the mode and manner in which they have been introduced by the prosecution. And further, that such statements, admitting that like other testimony they may be disproved, have not been so in this case; and having not been so, but, on the contrary, having been amply sustained by proof, I have a right to fall back upon them as primary evidence, containing a full and uncontradicted history of my condition, and the disability which prevented the performance of my duties.

I shall now proceed to consider another, the last, ground upon which I rely as exculpating me from all blame in not attending the hospital during the period of time between the 26th of September and 8th of October, when I reported for duty, the period covered by Dr. L'Engle's testimony.

If the proof has established it to your satisfaction, I shall claim, on that ground an acquittal at your hands. This ground of defence is the extreme and critical illness of Mrs. Byrne, my wife, during the whole of this period.

I shall not detain the Court by dwelling on a fact so amply proved, and which has not been questioned, as Mrs. Byrne's extreme danger. Dr. L'Engle admits it throughout his testimony. He states that he mentioned to me his doubts of her recovery. He adds that the presence of a physician by her bedside throughout her illness was necessary. He mentioned, too, that I was her only nurse, and he saw no other.

It is at this time that a conflict of duty begins. All duties are relative. There can scarcely be imagined a case where a man is so isolated that they can be otherwise. And it seems to me there cannot be one where the call is louder, and the path plainer, than those which led me to the performance of the one class which I selected and discharged. If I had been able to go out to the hospital, and its inmates were unsupplied with medical attention on the one hand, while the extreme illness of Mrs. Byrne demanded my presence at home on the other, the conflict would have been greater, and the path of duty less distinctly marked. But such was not the aspect of affairs. It was not a question of dereliction to one or the other of a class demanding my professional care. The patients in the hospital were committed to the care of

an assistant surgeon in the army; supposed, from the confidence placed in him by the government, to be competent to the performance of his duty. On the other hand, there was no one to whom I could delegate the duty and the responsibility of that cleaving to her, which I had engaged under solemn vows to exhibit in sickness as well as in health. Assuming that I was able to go out, which the proof shows I was not, what comparison was there in the calls upon me. Dr. L'Engle, by his own testimony, had not occupation for half his time; an average of one patient for two days, and the other half of his time was taken up in a profitable private practice.

The Court propounded to him the question :

“Did you report to, or in any manner inform, the commanding officer, or Dr. Byrne, that there were more sick persons belonging to the garrison than you could attend from the time you took charge of the hospital until surgeon Byrne's return to duty?”

Answer—I did not, sir. See journal of eighth day, at the end of his testimony, page 62. The foregoing statement shows that the answer could not have been otherwise.

Then, was the issue between leaving the soldiers unattended, on the one hand, and Mrs. Byrne, on the other? Not at all; even Dr. L'Engle's views of the case present no such question. Were the interests of the army and of the country suffering by my absence from, and Dr. L'Engle's presence at, the hospital? Not at all; Dr. L'Engle was not neglecting other duties elsewhere; no other branch of the service was suffering by his attendance at this post. He states that being under orders for Texas when detailed for duty here, and having had his attention called to orders extending to the first of November, the time when officers so ordered were to report for duty, he was occupied in filling up the interval with engagements of a private nature. It is manifest, therefore, that it was not the public interest which, in his view, or in any view, could have demanded the sacrifice of me—a sacrifice involving, it may be, the loss of life, too, of Mrs. Byrne—but the private interest of one individual. It was not a question between duty to one's family and to the service; but it was a question between surgeon Byrne and assistant surgeon L'Engle.

The solution of this problem of duty and of ethics, has been submitted to others, who, by their eminence in their profession and in private life, are well qualified to be competent judges. All the physicians have concurred in the opinion that even on the ground of danger to myself, arising from exposure, I would be released from obligation to go out. That danger has been shown to consist not alone in the aggravation of the existing symptoms of the disease from which I suffered, but from the danger to life itself, by transferring the lesion from the non-vital organs, to the vital organs, of which the heart was mentioned as one most liable to be affected.

Professor Robert J. Graves, in his *Clinical Lectures*, vol. 1, page 496, second edition, states his experience as follows :

“In the memorable wet month of July, 1839, I was called out of bed at midnight to visit a lady in the country, and the vehicle sent to convey me was a hack covered car. The cushions were very damp, and I had not proceeded half a mile before I was attacked with lumbago so severe that I could scarcely walk when I arrived at my patient’s residence. Next morning I was better, having perspired freely during the night, but still the pain was troublesome, and as the season continued unusually cold, and as my duties exposed me to the weather, and prevented me from giving myself the necessary rest, my lumbago continued to increase, and in about a month the glutinal and sciatic nerves of the left side became engaged. I noted particularly, that the pain spread very gradually downwards from the lumbar region, so that it took a week or ten days to arrive at the ham, and still longer to arrive at the ankle. I was then quite lame of the left leg, suffered much in bed, and had become so helpless that I had to get my servants to draw on my stockings, &c.” The Professor goes on to state, that he feared at one time that he would become hopelessly unfit for duty during the remainder of his life.

I have introduced this extract to show how well grounded is the opinion of the medical gentlemen in this case. To these and greater dangers would I have been exposed if I had attempted to resume the entire charge of the Hospital at the period of Mrs. Byrne’s illness, when I had just risen from my bed, after sixteen days confinement, and was still suffering severely in a manner very similar to that described by Professor Graves.

But it is not alone on the ground of danger to my life from exposure to the wet and the damp during the day and night, that I rest my claim to exemption from duty at this period. This danger existed, but it was combined with another cause equally or more potential, to which I have alluded, the necessity for constant attention to Mrs. Byrne in her critical illness. The former of these causes was held by Dr. Geddings and Dr. Ravenel as quite sufficient to release me from all obligation, as my place was then supplied by a competent substitute. To Dr. Bellinger a case was stated, (see journal 12th day, page 93,) and his opinion asked. It is presumed correctly to embrace the facts of this case and is not repeated, to avoid prolixity. I beg leave to refer to the record. His answer was in brief that it was a case of conscience to some extent, and each physician should judge of the case for himself. In private practice a physician so situated would be released from all obligation—and in the military practice the feeling of being released would depend altogether on the confidence he had in his Assistant Surgeon. The following question was then put to him, and the following was his reply: *Question*—“In the case stated by the last question, would you, if called upon to decide, undertake to pronounce judgment that the Surgeon had neglected his duty?” *Answer*. “If I were to make an opinion upon the case as stated, I should consider such an accusation unjust and unwarranted.”

The answer to the last question, if the case stated is sustained by the proof, and I respectfully submit that it is amply proved, establishes my right to exemption from all blame as far as the highest requirements of private practice can be the law of this case. Is there any rule in the army, written or unwritten, moral or military, which can impose upon a Medical man a higher measure of obligation than that of private practice? Can there be any which would require a Surgeon in the army to do duty before he has fully recovered from a severe attack of disease, while his duties are fully performed by another competent Medical Officer, of whose time one-half only is occupied with his official duties, and the other with a lucrative private practice? Is there any to require a sick man to endanger his own and his wife's life, merely to afford to the other the opportunity for recreation or attention to private business? There certainly can be no such rule, no such obligation. If there were, no Medical man who valued his reputation and his life, and his dearest affections, would hold a commission.

Are medical officers the only class of men in the army, who, when sick, are to be debarred the common indulgence extended even to private soldiers. Are they the only class who are forbidden the indulgence of those duties, and privileges imposed upon them by the nearest, the strongest, the most sacred of the obligations of social and domestic life. What would an officer of the line feel, and how would he act, if after sixteen days confinement to bed from rheumatism, he should be told that, on the second day after his leaving it, and still lame and suffering, with his wife, it might be, on her death-bed, he should be required to go out and serve as officer of the day upon the opinion of one who had never felt his pulse, nor made a single inquiry upon which to predicate his opinion. Would he not consider the rights of the service violated in his person. Would he not feel that just indignation which every man experiences upon the denial of his veracity and an assault upon his honor. And yet the duties of an officer of the line in garrison are not more arduous than those of the Surgeon. It will not be denied that emergencies may arise, when the medical officer would feel it his duty, as the officer of the line would to give the command, to be carried upon a litter to his duties. But such an emergency could only exist when the sick were suffering from want of medical attendance.

In concluding this branch of the discussion, and in leaving the first charge and specification, let me solicit the attention of the Court to a general view of my position. I was convalescent, though a sufferer, as I think I have fully proved. I had, in the person of my own wife, one patient from 24th September to 7th of October, dangerously ill of a disease, in which the average mortality in general practice is said to be about one in three cases, the extreme danger of whose position, it appears in his own testimony, was made known to me by a medical gentleman, whose opinion and whose conduct I regard as the groundwork of all the trouble, which have come upon me. For this patient, I was sole

nurse in the midst of strangers, and without a relative, upon whose sympathy she had a right to call. Barely able to keep my feet, I was sustained amidst bodily pain and mental anguish, in the discharge of those duties, I could not delegate to another if I would, and would not if I could; by the influence of those strong emotions which banish self in the absorbed and absorbing anxieties for a near and dear object of tender affection. In this emergency—one which as much as battle tries men's souls, my place was supplied by another, whose average of patients was just half of mine—one in two days. If my wife was entitled to my medical services, which will scarcely be gainsaid, I, in sickness and suffering, had twice the average of duty that my substitute had in perfect health.

Could it be expected—could it be required by any standard of professional or moral obligation—that under such circumstances I should forsake this post of duty, leaving my place unsupplied for that already supplied. If there is I know it not; and resting on the conviction, that every man in this Court will take the same view of relative obligation with myself, I shall rely confidently on your fully exonerating me from the first specification and charge.

The second charge is conduct unbecoming an officer and a gentleman.

The specification is that in a letter to my commanding officer, bearing date 12th October, 1858, I falsely stated, that at the time I was taken sick, the health of the command was better than it had been at any time for several months previously," and as follows, "there being no other sick man, meaning other than one Bright, in hospital at the time, whereas, in truth and in fact, on the 8th, the health of the command was worse than it had been for several months previously; epidemic yellow fever was on the increase, and there were eight men sick in hospital."

Every allegation made by a party against another must be proved by him who makes the allegation. Until he has made out his case, or a *prima facie* case, the defendant is not called upon to offer any proof. When a fact is proved by the prosecution, even though it may be the principal, and indeed the only fact to be proved, the charge may still not be sustained. Take the case of larceny for example. The principal fact is the taking and carrying away the personal goods of another. You prove the taking and carrying away. But you have not made out the crime; there is an ingredient necessary. You must show that it is done with a felonious intent; with it, it is larceny; without it, it is trespass. Hence the motive gives color to the act. Apply it here. If the prosecution had proved my statements incorrect, and gone no farther, falsehood would not have been established. Inaccuracy is not falsehood. To make out a statement false, the intention must be shown to deceive. The *crimen falsi* must appear. The fact that a statement is inaccurate would not support the specification because it alleges falsehood. If no falsehood appears, the

inaccuracy does not constitute conduct unbecoming an officer and a gentleman. Denying altogether that the prosecution has even shown the statements to be inaccurate, it follows that if I can maintain this proposition, there can be no falsehood; for while I admit that even a truth may be so stated as to show an intention to deceive, and be criminal, the simplicity of the charge and specification, renders any such subtle reasoning, as that proposition would involve, unnecessary, and inapplicable here. With these preliminary remarks, which I consider necessary to a correct understanding of the subject, I shall proceed to show not only that the prosecution has not established the proposition incumbent upon it, but I shall advance a step further, and endeavor to show:

1st. That the statements of the letter are correct.

2d. That there was no intention to create a false impression.

The rule to which I adverted in the outset of this discussion, that every paper or statement is to be taken as a whole is applicable, there would be no fairness in the selection of an isolated passage, and in drawing a conclusion from it, inconsistent with the intent of an entire document. This is so apparent that illustration is unnecessary. To arrive at a correct understanding, therefore, of what is meant by the extracts from the letter which are made the foundation of the charge and specification, it is important to take a general view of the whole letter. I beg the Court to observe that the facts on which the opinion of the health of the command is based, are fully declared.

This is of itself a distinguishing feature of truth. If one in a position to be informed and speaking by authority, suppresses material facts, and predicates an opinion on such a statement, he is guilty of deception. If he lays before you all the facts, his conclusions are matters about which you are in a situation to judge for yourself as well as he. It becomes then a matter of opinion, deducible from the case as made by the facts. Such a deduction, with the materials for it, presented to the mind of the reader or hearer, can never be stamped as deception. At the most it is only error of judgment. Does not my letter fully sustain this character? Is there any mis-statement, or the omission or suppression of any fact necessary for a judgment upon the matter in question. Certainly not. On the contrary every thing bearing on the case is fully set forth. The first view of the letter I desire to present is that it is evident from the context that I refer, in speaking of the health of the command, to the *general health*. This is evident from reading the very next sentence which follows, that upon which the charge is founded, in connection with the first. The passage reads: "At the time I was taken sick, the health of the command was better than it had been at any time for several months previously." Here the specification stops and goes on to state the health of the command was worse, and for a reason adds "epidemic yellow fever was on the increase." This mode of selecting one passage and omitting that which follows and qualifies it, is not consistent with any law of fair construction

whatsoever. The specification would create the impression that I ignored the existence of yellow fever altogether. Read the two sentences as they actually occur in the letter, and see how different is the impression: "At the time I was taken sick the health of the command was better than it had been at any time for several months previously. There had been some five cases and three deaths from yellow fever previous to my illness, but for five or six days before I was taken ill, there had not been a new case, so that I flattered myself the disease had disappeared entirely." This shows very plainly that I concealed nothing of the occurrence of some yellow fever cases, and it shows as plainly that my views were of the general health. Is the statement of the general health being better at the time I was taken sick than for "several months" previously, sustained. I do not ask if the prosecution has disproved it, which it was bound to do, but whether I have not confirmed it. By what method shall the average health of a post or any people for a given period be estimated. I presume the only correct way is to add up the number of cases from day to day, for a specified time, and divide it by the number of days. The quotient will give the average, comparing one period with another, the result will show the comparative health. Pursuing this plan we find the aggregate and ratio as follows:

Aggregate sick from 8th Aug. to 8th Sept. 341, average per day 11.

" " " 8th July to 8th Aug. 410, " " $13\frac{7}{31}$

" " " 8th June to 8th July, 601, " " $19\frac{12}{31}$

Thus the aggregate and average increased as you go back. The expression "several months" in the letter, is somewhat vague, but it is presumed that three months would properly be understood as its equivalent, and this is as far as the comparison has been carried back. It has been attempted to be shown that the average strength of the troops had diminished, and that for the first eight days in September it had reached 109½. But there must be some error in the attempted application of figures to facts, as Col. Gardner says, (journal, first day, page 7,) that when the fever broke out there were one hundred and forty-seven men in garrison. The statements are reconcilable, and therefore nothing can be made by the prosecution out of this reduction. Am I not then fully authorized by statistics, in stating that the general health was better. But the charge in the specification is that epidemic yellow fever was then on the increase. I maintain most confidently that at that time (8th September) *there was no epidemic yellow fever on the Island*. For full proof I refer to Dr. Ravenel's testimony. In reply to a question when he began to suspect that yellow fever would become epidemic, he answered not until Bright's case, 9th September. This was the first time he ever suspected. Of course it was not so then. See journal, fourth day, page 28; and the Doctor adds, he frequently told Dr. Byrne and others, as late as 8th September, that he did not expect it would become epidemic. And further on at page 31, of same day, in reply to a question from the Judge Advocate, he says, alluding to

the time of the appearance of yellow fever, that it did not occur "until the last or middle of September; it was after I took charge of the hospital." He took charge on the 9th. I was taken sick on the 8th. This proof shows beyond controversy that the language of the specification is not sustained by the proof, as there really was at the time no epidemic yellow fever either in garrison or on the island. The statement from the hospital records, prepared by Judge Advocate and myself, shows that private Chester was reported 4th September, supposed to have come into hospital the evening before, and this sustains my statement that no new case (this being the last) originated for five or six days before I was taken sick. Was I not authorized in the belief that this disease had disappeared entirely?

Refer to the testimony of the medical witnesses. Dr. Gedding's journal of 3d day, page 25, says that the yellow fever had never, to his knowledge, prevailed as an epidemic on Sullivan's Island, except in 1824 and 1828. Dr. Ravenel's experience of the Island goes back to 1819, (forty years.) He says, in his testimony, (4th day, page 28,) that sporadic cases occur, or are brought down, whenever the disease prevails in the city, but he has never known it epidemic since '24, until '58; and, as quoted above, he expressed these views to me before I was taken sick. The foregoing statement and authorities show my meaning, and the reasons for my opinions. Before passing to the last allegation in the specification, I desire to call attention to the special notice I have taken of Bright's case, by showing that after I was taken, his disease assumed the form of yellow fever.

This is sustained by Dr. Ravenel, who says it put on that form on the 14th, and he died on the 17th. This notice shows I made no concealment.

The last allegation of the specification, is that I said there was no other sick man in the hospital than Bright, whereas there were eight.

There are various ways of testing truth or falsehood, into which, as we have shown, intention enters as the element.

One of these, and perhaps that not the least recommended to every man's common sense, is, that if a man should make a statement, which if construed in a certain way would inevitably subject him to refutation by the easiest and simplest means, obvious and accessible to all, it would be presumed his meaning was misunderstood, and he meant something else. The literal interpretation to my words, given in the specification, would imply that I was so grossly stupid and ignorant, as not to know that the hospital records, accessible to all, would furnish a refutation.

It must be obvious, therefore, if I had offered no proof, that I could not have used language in the sense attributed. But I have offered proof, and convincing proof, of the correctness of the terms employed by me. I first refer to Dr. L'Engle, when recalled by the prosecution, page 74, tenth day. He says a man may have tooth-ache, and yet, being on the sick report, might be

able to do guard duty; and that he could go on for a month to state other instances. In reply to the next question, he also admitted, in substance, that the fact of being on the sick report, would not imply unfitness for duty, or being sick strictly. When asked by the next question, how far being on the sick report is evidence of the health or sickness of a garrison, his reply was, "it goes for very little." Again refer to Dr. Ravenel's testimony, 4th day, pp. 28, 29: *Question*—"Is or is there not a wide and essential difference between the term 'sick men' and being on the sick report?" *Answer*—"I think so. Sometimes men on the sick report require very little to be done for them, and are still unfit for duty."

And his answer to the next question shows that, in making an estimate of the health of a garrison, such cases would not be taken into the calculation. These general statements and opinions of medical men, are verified by proof of my practice, and, therefore, of the sense in which I employed the language. Vincent Williams, hospital steward, a man of considerable intelligence and experience, and who certainly gave his testimony in a way to convince the Court that he was studiously anxious to be accurate, says that it was my practice to keep all who were not married in the hospital, while on sick report, on account of the whisky shops; and then he was asked "if Dr. Byrne then was to speak of 'sick men' with your knowledge of his custom and practice, whom would you understand him as referring to?" *Answer*—"A patient that would be severely or dangerously ill." I think I have thus shown clearly, that in using the term sick man in hospital, I did not mean no other in hospital on sick report; such a statement would have been folly, as I have shown above; but that I meant it in the sense so fully explained above, namely: men dangerously or seriously sick. Assuming this to have been proved, the last proposition I shall advance is, that in the sense I used it, it was perfectly correct. The following is the official extract, presented by the Judge Advocate and myself to the Court, from hospital books:

On 8th Sept. there were 11 men on sick report—8 in hospital, 3 in quarters.

1. Of them, Bright, had been treated from 4th July to 7th of September, for rheumatism, when Surgeon Byrne prescribed calomel, and on 8th injection.

2. One treated for syphilis, previous to September 9th.

3. One for debility previous to September 9th. Returned to duty September 11th.

4. One treated for drunkenness, in hospital, September 6th. Returned to duty September 9th.

5. One cholera morbus, in hospital, September 6th. Returned to duty September 9th.

6. One morbi varrii, in hospital, September 6th. Returned to duty September 9th.

7. One dysentery in hospital. Returned to duty September 10.

8. One intermittent fever, in hospital, September 8th. Returned to duty September 12th.

9. One, in quarters, stricture for months. To duty September 19th.

10. One wounded—off sick report, September 17th.

11. One Dysentery, September 8th. For duty September 10th.

The three last were in quarters. They are, therefore, not covered by the changes and specifications. Thus, except Bright, specially mentioned by me, there was not a serious nor more fatal case.

Hospital Steward Williams, (tenth day, pp. 77, 78,) says that to the best of his memory Bright was the only man confined to his bed necessarily; others may have been lying on their beds. But even Bright was not regarded very ill, as on that day he, the witness, had leave of absence for nearly the entire day.

Several other witnesses, Corporal Fitz Gerald, Sergeant Finn, and I think others, testified to the same effect.

I submit, therefore, that my report *was true*.

The few cases of yellow fever which had occurred previously to the 8th of September, I regarded as extraneous. One was imported from Key West and the others were sporadic. But such as they were I mentioned them, making no concealment, but on the contrary stating with precision when each terminated and what was the whole number of cases. By no ingenuity nor distortion can my meaning be made to be different from what I have shown it to be. And on any principle of fair construction I defy any other interpretation than that my letter contained the truth—the whole truth—and nothing but the truth. If I had stated it otherwise it would not have been so.

If I had stated that Finn, who had a venereal sore, or Wolf, who, though delicate, was then acting as nurse, Halbert, who was drunk, or Row, convalescent from cholera morbus, and who went to duty next day, or Shaller, slightly indisposed, who also went to duty next day, or Murphy, who had taken but one dose of medicine and was walking about in hospital, or Wedenback, who was also walking about, were sick men, I would have stated what was not true, and would have given the commanding officer a false impression of the health of the post on that day. But it seems to me the particularity I employed, specifying minutely Bright's condition and his symptoms even after my sickness, and the utter folly of making a report which construed as it has been would be liable to be corrected at any moment by the morning report—all go to exhibit internal evidence of the letter being accurate and true.

I doubt not if it has not been the experience of every man who hears me, it certainly has been mine to have had one, some or more of his actions misunderstood and misconstrued—about the purity of which, perhaps of all others in his life, he entertained the least possible doubt. Such is my experience in regard to this letter. Written hastily it certainly was, but it has really been a matter of

surprise to me, since that, under the circumstances, it bears the strictest scrutiny, as I have shown that it does.

With these remarks, I shall conclude my commentary on the second charge and the specification, feeling confident that in the opinion you will form and the judgment you will pronounce, the dictates of honor and integrity will lead you to a predisposition in favor of one heretofore unsuspected; and that you will not arrive at any conclusion unfavorable to me, because no proof has been offered to justify any such inference.

I have now finished the discussion of the charges and specifications, and the proof offered to sustain them. It may be that in my anxiety to meet the case upon its merits I have not been as technical as I might have been in my defence.

I might have objected that I am called upon without that definiteness which should belong to every trial, to answer to charges which do not sufficiently inform me of the offence alleged, and the time—place and mode of its commission. But these I have not objected to, as it was my desire that this trial should be the means of vindicating my reputation.

And now, having closed the discussion, I have only to refer to some subjects not embraced either in charges or specifications. I mean the attempt made by the prosecution to stigmatize me with timorousness in approaching cases of yellow fever. The prosecution was indeed adventurous in advancing upon such an attack upon such very slender resources. Every syllable of testimony offered in this subject is that of Dr. L'Engle, who testifies to my exhibiting excitement, as he calls it, of manner amounting to anxiety. (See testimony of 6th day, near the end of examination on page 45.) This is the only visit (to Rippett and Driscoll) that Dr. L'Engle ever paid with me to yellow fever patients. He was prescribing for the patients. I was under no obligation therefore to feel their pulse. Yet he says I did, and in a manner to exhibit fear. He adds that my manner was calculated to excite rather than to allay the anxiety of the patients, and that seeing two basins of black vomit as I entered the room, I used the exclamation good God! The witness denies that previous impressions—prejudice I might call it with propriety—had anything to do with the opinion he formed on that occasion. He, on a *single* visit, was able to discover evidences of fear; while all the other witnesses—during all the period of time before and after I was sick—Col. Gardner, Dr. Ravenel, Vincent Williams, Corporal Fitz Gerald, Sergeant Finn, Private Cleary, Private Davis—seven to one—could discover nothing of the kind. Have I not proved by each of them that I was assiduous and devoted? Has not each one successively been asked if I exhibited any shrinking or hesitation in approaching the yellow fever patients—their testimony including all the cases from the very beginning to the very end of the epidemic—and has not the answer uniformly been in the negative? I forbear a reference, as heretofore, to each day and page. The statements run throughout the whole of the testimony I have

quoted. Dr. L'Engle is a professional man. He is presumed to understand his duties. He is supposed to value the honor of his profession in himself and in others. But it will not be venturing too far to hazard the opinion that the discernment he has shown in forming from a single interview a judgment so unfavorable to a brother officer, and the sense of justice which has led him so freely to promulgate it, would not be, by any means, the more lightly esteemed if he had fortified his opinion by that of the physician and laymen examined in this case, whose opportunities for a judgment were not less than one hundred fold in comparison with his. Such he has not done. He stands solitary and alone. Unaided, unsustained, he attempts to affix a stigma not only on a professional brother, but his senior, by twenty years, in his own corps. It was reserved for another to see the very evident cause of an emotion, which I do not deny, and which I have no wish to conceal. Dr. L'Engle has thought proper to attribute my exclamation (remembered only by himself) to seeing the two basins of black vomit. Thus, not satisfied with the discovery of imagined weakness, he is at no loss for the cause of its exhibition. Happily he was not the only spectator. Another, less gifted by fortune and education with opportunity for cultivating generous sentiments, yet possesses more of that "charity which thinketh no evil." Hospital Steward, Williams, could see in poor Reppett's hapless state a sufficient cause for the emotion, which it is no discredit to have felt and no unmanliness to avow. Between these judgments I leave the Court to decide, and doubt not that in this, as in so many other cases, the judgment of charity will be the judgment of truth. And I have no fear that it can lead to a conclusion which must rest in the belief that to Dr. L'Engle has been committed an acuteness of vision and perception which, in comparison with others, is as seven to one.

Before taking leave of this subject, I beg leave to invite the attention of the Court to an argument drawn from the rule of analogies. I have shown by my treatise on malignant cholera, that for twenty-six years I have been a firm believer in its contagious character. The work exhibited to the Court entitled Medical Statistics of the Army, published under the supervision of the Surgeon General, by Assistant Surgeon Corbidge, shows that I have attended this disease with remarkable success in two of its visitations at New Port Barracks, Ky. The extract is as follows: "Cholera again made its appearance at New Port Barracks in September, 1851. In the reports of that and the following quarter, eighty-five cases are reported, nine proving fatal. These cases were treated by Assistant Surgeon Byrne, who makes the following remarks respecting them, in his report dated September, 1851," then follows an account, which I forbear quoting, only to avoid fatiguing the attention of the Court. The same authority again proceeds to say: "In May, 1852, cholera again appeared in New Port Barracks. The first case, says Dr. Byrne, occurred in a recruit who had recently come up the Ohio river in a boat on which the cholera had prevailed. In May and June nineteen cases

were successfully treated by Dr. Byrne, which, with eighty-five cases the previous year, makes one hundred and four, of which nine died, being about one death in twelve cases."

I have proved by Dr. Geddings and Col. Gardner that my standing as a medical officer has always been good. By Surgeon Finley and General Wool, (by the admissions of the Judge Advocate,) the following testimonials:

By the former, that while serving as his Assistant at Jefferson Barracks, in the cholera epidemic of July, 1850, I faithfully performed my duty without manifesting any personal apprehension of the disease, although a firm believer in its contagious character.

By General Wool, that I have served as Medical Director in Mexico and California, for a period altogether of nearly three years; that during that time I discharged all the duties that devolved upon me with such fidelity and efficiency as never to have incurred, in a single instance, the slightest rebuke from him; while, on the other hand, he officially complimented me, when I applied to be relieved from duty in the department of the Pacific.

With these endorsements, and with a record of twenty-two years service without censure or reproach, this Court, I feel assured, will not be ready to lend a listening ear to the charges discreditable to me as an officer and as a man.

My defence is now concluded.

I thank the Court for the patient courtesy with which it has listened to this protracted trial; and now to you, who are the best judges of a soldier's honor, I commit mine, in the firm conviction that it could not be confided to more safe and worthy hands.

Fort Moultrie, April 13, 1859.

(Signed)

B. M. BYRNE.

Surgeon Byrne

Died Sept. 6, 1860

at Fort Moultrie S.C.

APPENDIX.

EXTRACT.

*Morning Report of Sick and Wounded, at Fort Moultrie, So. Ca.,
September, 1858.*

September	Company	Regiment.	Remaining		Taken Sick	Total		Sent to Duty	Transferred	Discharged Service	Deserted	Died	Remaining.		Total	Remarks and Surgeon's Signature.
			Hospital. Quarters.	Hospital. Quarters.		Hospital. Quarters.	Hospital. Quarters.									
6th.	H E	Staff and Band.	..	1	..	..	1	1	..	..	..	..	..	..	..	Therm., 7 A.M., 79°
		1st Artillery.	2	3	2	4	3	2	1	..	..	..	5	..	5	1 pris., Co. E, in hos- pital.
		Do. Do.	2	..	..	2	..	..	..	..	..	..	2	..	2	
		Prisoners.	1	1	1	1	2	1	..	..	..	..	1	1	2	B. M. Byrne, Surgeon.
		Total	5	5	3	7	6	4	1	..	..	..	8	1	9	
7th.	H E	Staff and Band.	..	..	..	..	..	..	..	..	..	..	..	..	..	Therm., 7 A.M., 77°
		1st Artillery.	5	..	1	6	..	..	..	..	..	..	6	..	6	1 pris., Co. E in hos- pital.
		Do. Do.	2	..	..	2	..	..	..	..	..	..	2	..	2	
		Prisoners.	1	1	..	1	1	1	..	..	..	..	1	..	1	B. M. Byrne, Surgeon.
		Total	8	1	1	9	1	1	..	..	..	..	9	..	9	
8th.	H E	Staff and Band.	..	..	..	..	..	..	..	..	..	..	..	..	..	Therm., 7 A.M., 75°
		1st Artillery.	6	..	2	7	1	1	1	..	..	..	5	2	7	1 pris., Co. H in hos- pital.
		Do. Do.	2	..	..	2	..	..	..	..	..	..	2	..	2	
		Prisoners.	1	..	2	2	1	1	..	..	..	..	1	1	2	B. M. Byrne, Surgeon.
		Total	9	..	4	11	2	2	1	..	..	..	8	3	11	
9th.	H E	Staff and Band.	..	..	1	1	..	..	..	..	..	..	1	..	1	Therm., 7 A.M., 79°
		1st Artillery.	5	2	..	5	2	3	..	..	..	..	3	1	4	2 pris., Co. H in hos- pital.
		Do. Do.	2	..	..	2	..	..	..	..	..	..	2	..	2	
		Prisoners.	1	1	2	3	1	..	..	..	..	..	3	1	4	1 pris., Co. E., ditto Surgeon Byrne, sick.
		Total	8	3	3	9	5	3	..	..	..	..	9	2	11	

I certify that the above is a true extract.

SAML. JONES, Captain 1st Artillery,
Judge Advocate.

[*General Orders, No. 9.*]

WAR DEPARTMENT, ADJUTANT GENERAL'S OFFICE, }
Washington, April 22, 1859. }

I.—At the General Court Martial which convened at Fort Moultrie, South Carolina, pursuant to "*Special Orders,*" No. 41, of March 12, 1859, from the War Department, and of which Brevet Brigadier General Sylvester Churchill, Colonel Inspector General's Department, is President, was arraigned and tried Surgeon *Bernard M. Byrne*, Medical Department, U. S. Army, on the following charges and specifications, viz :

CHARGE I.

"*Neglect of duty to the prejudice of good order and military discipline.*"

Specification.—"In this: That Surgeon *Bernard M. Byrne*, Medical Department, U. S. Army, was stationed at Fort Moultrie, S. C., on or about the 9th day of September, 1858, and was then and there the only medical officer of the Army, when a fatal and epidemic disease, known as the yellow fever, prevailed among the troops at said post, whereof many died, nevertheless he, the said *Byrne*, did then and there neglect and abandon his duty to attend the sick of said post, and did neglect his said duty from on or about the 9th day of September, 1858, until on or about the 11th day of October 1858."

CHARGE II.

"*Conduct unbecoming an officer and a gentleman.*"

Specification.—"In this: That Surgeon *Bernard M. Byrne*, Medical Department, U. S. Army, did, at Fort Moultrie, South Carolina, on the 12th day of October, 1858, in an official letter of that date to his commanding officer, Brevet Colonel J. L. Gardner, U. S. Army, falsely state as follows: 'At the time I was taken ill the health of the command, (meaning at Fort Moultrie, South Carolina,) was better than it had been at any time for several months previously,' and as follows: 'there being no other sick man' (meaning other than one Bright,) 'in hospital at the time,' whereas in truth and in fact, at the time when the said *Byrne* alleges that he was taken ill, viz: on the 8th of September, 1858, the health of the command at Fort Moultrie, South Carolina, was worse than it had been for several months previously; epidemic yellow fever was on the increase and there were eight sick men in hospital at said post."

To which charges and specifications the accused pleaded "Not Guilty."

FINDINGS OF THE COURT.

The Court, having weighed and considered the evidence adduced, finds the accused, Surgeon *Bernard M. Byrne*, Medical Department, U. S. Army, "Not Guilty" of the charges and specifications exhibited against him, and "*does therefore acquit him.*"

II.—The proceedings of the General Court Martial in the foregoing case have been duly submitted to the Secretary of War, and the following are the orders thereon :

WAR DEPARTMENT, April 22, 1859.

The department accepts the judgment of the Court ; but cannot let pass without comment, a case involving principles of such consequence. Doctor Byrne withdrew from duty, for a month, during a fatal epidemic among the troops under his medical care. He defends it on the ground that he was himself sick, (of lumbago and sciatica,) and that his wife, during part of the time, was dangerously ill. Her illness could not absolve him from his public duties in such an emergency. His own state during the whole time is not satisfactorily shown—as he treated his own case. But the Assistant Surgeon testifies, confidently, that for the last thirteen days of the time, (the period of Mrs. Byrne's illness,) he was quite able to attend his hospital. This testimony is not sufficiently met by the defence. In the verdict of the Court, the accused was entitled to the benefit of any reasonable doubt. But the Department, when neglect of the sick is imputed to the officer who has care of them, cannot be satisfied without clear proof to the contrary.

The Assistant Surgeon erred in reporting Surgeon Byrne sick, through courtesy, when he was satisfied he was not sick.

It was error in the ruling of the Court on the law of evidence, to reject testimony offered by the prosecution, in rebutting the defence of sickness, to show fear of contagion. As this is not matter of substantive charge, but is, in medical jurisprudence, a chief motive of feigned sickness, it was certainly admissible to disprove sickness. The Department does not mean to imply that the testimony, if admitted, would have varied the judgment of the Court.

JOHN B. FLOYD,
Secretary of War.

III.—The General Court Martial, of which Brevet Brigadier General Sylvester Churchill is President, is dissolved.

CHARLESTON, May 4th, 1859.

Capt. Fenn Peck, steamer Cecile.

DEAR SIR: Surgeon Byrne, in a communication to the Surgeon General last fall, a copy of which is before me, alludes to his having attended troops in two yellow fever epidemics—one of which was in Florida. In preparing for his trial there was no one accessible by whom he could prove his conduct on either of those occasions. After the trial, I think on the very day of its termination, I learned from a friend of yours that you had been connected with the Doctor on the occasions referred to. He stated facts which you had mentioned—which, although too late for the trial, I would be glad to lay before the Doctor for his forthcoming publication of the trial. Will you favor me with a reply, stating all you saw of Surgeon Byrne on those occasions and oblige,

Yours, very truly,

WM. E. MARTIN.

CHARLESTON, May 4th, 1859.

Gen. W. E. Martin, Charleston, S. C.:

MY DEAR SIR: Your note of this date has been received and the contents noted. In reply, I have made some statements relative to Dr. Byrne, which was about this, as near as I recollect, "That if he (Dr. Byrne) was now afraid of yellow fever that I had known him when he was not."

In the summer of 1843, the yellow fever made its appearance in Key West in a most malignant form. I then commanded the United States steamer General Taylor. Dr. B. was then at St. Augustine. I was ordered with all possible dispatch, with Dr. B., to Key West. On our arrival there we found the fever very bad, both among citizens and troops. Dr. B. immediately went and reported for duty, and was among the officers and men, not only doing his duty as a Doctor but as a nurse. I saw him dressing blisters, cupping, and mixing medicine, and giving it to the patients himself.

Some few days after our arrival, the fever spreading rapidly, Dr. B. made a proposition to the officer in command that he thought if the officers and troops were taken to Indian Key that the disease would subside. At this suggestion all the well and sick were embarked on board the Gen. Taylor and were taken to Indian Key. Several of the soldiers were taken sick on board, Dr. B. paying all attention to them, watching them night and day. Very few cases occurred after landing at Indian Key. Some two weeks after, health being restored, their being no further use for Dr. B.'s services, he returned with me to St. Augustine.

I remain, very respectfully, your obedient servant,

FENN PECK.

JAN 23 1947

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