

guilty of the first charge—guilty of the second specification of the second charge, and guilty of the second charge, leaving out the words "acting as a spy." They, therefore, do, on the most mature reflection, sentence the prisoner, Alexander Arbuthnot, to be suspended by the neck until he is dead—two-thirds of the Court concurring.

EDMUND GAINES,  
Maj.-Gen. by Brevet,  
President of the Court.  
J. M. GLASSELL,  
Recorder.

#### DEFENCE K.

May it please this Honorable Court,

The prisoner arraigned before you is sensible of the indulgence granted by this honorable Court, in the examination of the case now before them. It is not the wish of the prisoner, in making his defence, to try the patience of the Court, by making a reference to the voluminous documents and papers, or to recapitulate the whole of the testimony which has come before the honorable court, in the course of this investigation. Nor is it the intention of the prisoner to waste the invaluable time of this Court, by appeals to their feelings or sympathy, though I am persuaded that sympathy no where more abounds than in a generous American breast. My only appeal is to the sound and impartial judgment of this honorable Court, the purity and uprightness of their hearts, that they will, dispassionately and patiently weigh the evidence they have before them, apply the law, and on these, and these alone, pronounce their judgment.

If this honorable Court please, I shall now proceed to examine the law and evidence that is relied on, by this honorable Court, in support of the first charge and specification.

Winsett, a witness on the part of the prosecution, says the Little Prince shewed him a letter written in June last, signed A. Arbuthnot, requesting his friendship with the lower nation of Indians. The same witness stated that he believed the letter to be now in the possession of the little Prince. Here, may it please this honorable court, I would call their attention to the law, relating to evidence. First, presuming that the rules of evidence are the same, whether in civil or military tribunals, M'Comb 96—this point being conceded, the next enquiry is, what are the rules of evidence with respect to the admission of letters or papers, of private correspondence, in a Court of criminal jurisdiction? May it please this honorable Court, must you not produce the original letters and papers if they are not lost or mislaid so that they cannot be obtained, and in case they are lost, proof must be made of the handwriting being the same of that of the original, before they can be received as evidence; [M'Comb on courts martial; Peake's evidence; Gilbert's law of evidence.] No instance can be cited where the copy of a letter was read as evidence, when the original could be obtained, much less the giving in evidence the contents of such letter from bare recollection. The only proof that this honorable Court has of the existence of such letter being in the hands of any person, or its contents being known, is the vague memory of a vagrant individual. Make this rule of evidence; and, I ask you when would implication, construction and invention stop? Whose property, whose reputation, and whose life would be safe? Here I would beg leave to mention a remark made by the President of this Court, in the course of this investigation, which was, that, notwithstanding the letter was proved by the witness to be in the possession of the Little Prince, that, this court could not notice that circumstance, because there was no means by which it could be obtained. I would ask the honorable court, what means they have adopted, or what exertions have they made to procure this letter? If the honorable Court please, I shall here close the defence of the first charge and specification, believing that they are neither supported by law or evidence.

May it please the honorable court, I will now come to the second charge and first specification of that charge. In support of this charge and specification, the evidence is a letter, written to my son. If the court please, this letter was written in consequence of my property at Sawhnee, and the large debts that were due me from Bowlegs and his people. Nothing I believe of an in-

flammatory nature can be found on reading the document marked A. authorizing the opinion that I was prompting the Indians to war. On the contrary, if the honorable Court will examine the document marked A, they will see that I wished to lull their fears, by informing them that it was the Negroes, and not the Indians, the Americans were principally moving against. If the honorable Court please, I will make a few remarks upon the second specification, and here close my defence. In proof of this charge, the Court have before them the evidence of Hambly, Cook, and sundry letters, purporting to be written by myself, to different individuals. May it please the Court, what does Cook prove? Why, that I had ten kegs of powder at Sawhnee; let me appeal to the experience of this Court, if they think that this quantity of powder would supply one thousand Indians and an equal number of blacks, more than two months for hunting? As to the letters named in this specification, may it please the Court, the rules of evidence laid down in the first part of this defence will apply with equal force in the present case.

It remains now, may it please the Court, to say nothing as to Hambly's testimony—and, may it please this honorable Court, the rule laid down in this case, as to hearsay evidence, will be found without a precedent. A strong case was stated by an intelligent member of this Court, on the examination of this part of the evidence. That is, would you receive as testimony what a third person said, who, if present, you would reject as incompetent? Apply this principle to the present case. Could an Indian be examined, on oath, in our court of judicature? If then the testimony of savages is inadmissible, Hambly proves nothing.

Here, may it please this honorable Court, I close my reply to the charges and specifications preferred against me, being fully persuaded that, should there be cause of censure, my judges will, in the language of the law, lean to the side of mercy.

Fort St. Marks, 27th April, 1818.

The Court proceeded to the trial of Robert C. Ambrister, a British subject, who, being asked if he had any objections to any one of the members of the Court, and replying in the negative, was arraigned on the following charges and specifications, viz.

Charges against Robert C. Ambrister, now in custody, who says he is a British subject:

Charge 1st.—Aiding, abetting, and comforting the enemy, supplying them with the means of war, he being a subject of Great Britain, at peace with the United States, and lately an officer in the British Colonial Marines.

Specification 1st.—That the said Robert C. Ambrister did give intelligence of the movements and operations of the American Army between the 1st and 20th of March, 1818, and did excite them (the negroes and Indians) to war against the army of the United States, by sending their warriors to meet and fight the American army—whose government was at peace and friendship with the United States and all her citizens.

Charge 2d.—Leading and commanding the Lower Creeks in carrying on a war against the United States.

Specification 1st.—That the said Robert C. Ambrister, a subject of Great Britain, which government was in peace and amity with the United States and all her citizens, did, between the 1st of February, and 20th of March, 1818, levy war against the United States, by assuming command of the Indians in hostility and open war with the United States, and ordering a party of them to meet the army of the United States, and give them battle, as will appear by his letters to Governor Cameron of New-Province, dated 20th March, 1818.

By order of the Court,  
J. M. GLASSELL, Rec.

To which charges and specifications pleaded as follows, viz:

To the first charge and specification—*Not Guilty.*

To the second charge and specification—*Guilty and Justification.*

The Court adjourned until to-morrow.

Tuesday, 3 o'clock.

The evidence on both sides being closed, the prisoner was allowed until 5 o'clock this evening to make his defence.

The time allowed the prisoner for the preparation of his defence having expired,

he was brought before the Court, and made the defence attached to these proceedings.

The court was then cleared, and proceedings read over by the Recorder; when, after due deliberation on the testimony brought forward, the court find the prisoner Robert C. Ambrister, guilty of so much of the specification to the first charge as follows, viz. "and did excite them to war with the U. States, by sending their warriors to meet and fight the American army, he being a subject of Great Britain, which government was at peace with the United States, and all her citizens;" but not guilty of the other part of the specification;—guilty of the first charge; guilty of the other specification of the second charge, and guilty of the second charge; and do, therefore, sentence the prisoner, Robert C. Ambrister, to suffer death by being shot—two-thirds of the court concurring.

One of the members of the court requesting a re-consideration of his vote on the sentence, the sense of the court was taken thereon, and decided in the affirmative—when the vote was again taken, and the court sentence the prisoner to receive fifty stripes on his bare back, and to be confined with a ball and chain to hard labour for twelve calendar months.

The court adjourned, sine die.

#### DEFENCE.

The United States of America }  
versus }  
Robert Christy Ambrister. }

Who, being arraigned before a special Court-Martial, upon the following charges, to wit:

1st. Aiding, and abetting, and comforting the Indians, supplying them with the means of war, he being a subject of Great Britain, at peace with the United States, and lately an officer in the British colonial marines.

2d. Leading and commanding the lower Creek Indians, in carrying on war against the United States.

To the first charge the prisoner at the bar pleads *not guilty*, and as to the second charge he pleads *guilty, and justification*. The prisoner at the bar feels grateful to this honorable court for their goodness in giving him a sufficient time to deliberate, and arrange his defence on the above charges.

The prisoner at the bar here avails himself of the opportunity of stating to this court, that, inasmuch as the testimony which was introduced in this case, was very explicit, and went to every point the prisoner could wish, he has nothing further to offer in his defence, but puts himself upon the mercy of the honorable court.

ROBERT C. AMBRISTER.

Head-Quarters, Division of the South.  
Adjutant-General's Office,  
Camp 4 miles North of St. Marks, }  
April 28th, 1818. }  
GENERAL ORDER.

At a Special Court-Martial, commenced on the 26th instant, at St. Marks, and continued until the night of the 28th, of which Major-General E. P. Gaines, is President, was tried A. Arbuthnot, on the following charges and specifications, viz.

Charge 1st.—Exciting and stirring up the Creek Indians to war against the United States and her citizens, he (A. Arbuthnot) being a subject of Great Britain, with whom the United States are at peace.

Charge 2d.—Acting as a spy, and aiding, abetting, and comforting the enemy, supplying them with the means of war.

Charge 3d.—Exciting the Indians to murder and destroy William Hambly and Edmund Doyle, confiscate their property, and causing their arrest, with a view to their condemnation to death, and the seizure of their property, they being citizens of Spain, on account of their active and zealous exertions to maintain peace between Spain, the United States, and the Indians.

To which charges and specifications the prisoner pleaded *not guilty*.

The court, after mature deliberation on the evidence adduced, find the prisoner, A. Arbuthnot, guilty of the first charge, and guilty of the second charge, leaving out the words, "acting as a spy," and, after mature reflection sentence him, A. Arbuthnot, to be suspended by the neck until he is dead.

Was also tried, Robert C. Ambrister, on the following charges, viz.

Charge 1st.—Aiding, abetting, and comforting the enemy, and supplying them with the means of war, he being a subject of Great Britain, who are at peace with the United States, and late an officer in the British colonial marines.

Charge 2d.—Leading and commanding the lower Creek Indians in carrying on a war against the United States.

To which charges the prisoner pleaded as follows: to the first charge *not guilty*, to the second charge *guilty, and justification*.

The court on examination of evidence and mature deliberation, find the prisoner, Robert C. Ambrister, guilty of the first and second charges; and do, therefore, sentence him to suffer death, by being shot. The members requesting a re-consideration of the vote on this sentence, and it being had, they sentence the prisoner to receive fifty stripes on his bare back, and be confined with a ball and chain to hard labor, for 12 calendar months.

The Commanding General approves the finding and sentence of the court in the case of A. Arbuthnot, and approves the finding and first sentence of the court in the case of Robert C. Ambrister; and disapproves the re-consideration of the sentence of the honorable court.

It appears, from the evidence and pleading of the prisoner, that he did lead and command within the territory of Spain, (being a subject of Great Britain,) the Indians in war against the United States, those nations being at peace. It is an established principle of the laws of nations, that any individual of a nation making war against the citizens of any other nation, they being at peace, forfeits his allegiance, and becomes an outlaw and pirate. This is the case of Robert C. Ambrister, clearly shown by the evidence adduced.

The Commanding General orders that Brevet Major A. C. W. Fanning, of the corps of artillery, will have, between the hours of 8 and 9 o'clock, a. m. A. Arbuthnot suspended by the neck with a rope, until he is dead, and Robert C. Ambrister to be shot to death, agreeably to the sentence of the Court.

By order of Major General Jackson,  
ROBERT BUTLER, Adj.-Gen.

Baltimore, December 11.

We have read the report of the trials of Arbuthnot and Ambrister with mingled emotions of astonishment and horror. We have always thought from the vague reports which have heretofore reached us respecting these cases, that General Jackson and the court martial proceeded against these men in a most arbitrary and high-handed manner; but we were in hopes when the proceedings of the court came to be laid before the public, a sufficient justification of their conduct would appear, instead of which, the detail of the cases makes them ten fold blacker than they were before. There were but two charges against Arbuthnot, which, if proved, rendered him worthy of death, either by the laws of nations or by the municipal laws of our own country—These were his acting as a spy, and his exciting the Indians to murder Hambly and Doyle—one only of these, that of his being a spy, was cognizable by a court martial. On both of these charges, however, the accused was acquitted. The other charges, whether true or false, were neither cognizable by a court-martial, nor punishable by any court or any law. We do not say that the offences were venial or justifiable; but we say they were not punishable by any law, national or international.

The charges against Ambrister were altogether unfounded in law, admitting them to have been true. Are we to be told at this time of day, that a foreigner is to be punished with death for joining our enemies in war, because the nation to whom he owes allegiance is at peace with us? And are we to be told also, that he is to be tried by a court martial? We have always supposed that the citizens of any neutral nation had a right, so far as the belligerent was concerned, to join the armies, and fight the battles of either party at his pleasure. The captives have a right to enquire if the prisoner of war be a citizen, and owe allegiance to the government of the captors, and here their enquiries must stop; they have no right to enquire to what other government he may owe allegiance. This question has, however, been so well settled for two centuries past, that it is almost disrespectful to an enlightened public, to offer any argument to prove it; and yet General Jackson says in his order, that "it is an established principle of the laws of nations, that any individual of a nation making war against the citizens of any other nation, they being at peace, forfeits his allegiance, and becomes an outlaw and pirate."

A principle more absurd and monstrous, we have no recollection of having ever heard uttered. We should like to know where the General finds such a law or such a principle. We suppose, however, he is the maker of his own laws. A man found in this predicament, is, according to General Jackson's code, an outlaw and a pirate.

The term outlaw, when applied to American jurisprudence, is a word wholly without meaning. In the English law it has a meaning, and some of the old English legal writers say, that an outlaw has *caput lupinum*, and may be knocked on the head like a wolf by any one that should meet him, but this doctrine has been abrogated in England (if it was ever in reality the law) for centuries. It seems, however, that General Jackson has revived it in America. According to no code of laws that we are acquainted with, is there any such thing as piracy on land; but General Jackson, it seems, has adopted this principle also into his code.

Finally, take these trials all in all, they are the most extraordinary we have ever seen, both as respects the charges alleged against the accused—the proof by which they were convicted (the hearsay testimony of the Indians, who could not have been admitted as witnesses in person) and the arbitrary, unfeeling and inhuman manner, in which the sentence of the court was carried into execution.

A writer at Nashville, in attempting to justify General Jackson in executing the men, asserts, that "that the General so far from regretting the course he had adopted, had publicly declared, that he was only sorry that he had not hung up the governor of Pennsylvania, and the commander of St. Marks!"