

MESSAGE  
OF THE  
PRESIDENT OF THE UNITED STATES,  
COMMUNICATING.

*In compliance with a resolution of the Senate of the 8th of January last, calling for information in relation to violations of the act entitled "An act to protect all persons in the United States in their civil rights and furnish the means of their vindication," such information as is in the possession of the departments on the subject, and the steps taken to enforce the law.*

FEBRUARY 19, 1867.—Read, ordered to lie on the table and be printed.

*To the Senate of the United States:*

I have received a resolution of the Senate, dated the 8th day of January last, requesting the President "to inform the Senate if any violations of the act entitled 'An act to protect all persons in the United States in their civil rights, and furnish the means of their vindication,' have come to his knowledge; and if so, what steps, if any, have been taken by him to enforce the law and punish the offenders."

Not being cognizant of any cases which came within the purview of the resolution, in order that the inquiry might have the fullest range I referred it to the heads of the several executive departments, whose reports are herewith communicated for the information of the Senate.

With the exception of the cases mentioned in the reports of the Secretary of War and the Attorney General, no violations, real or supposed, of the act to which the resolution refers have at any time come to the knowledge of the Executive. The steps taken in those cases to enforce the law appear in those reports.

The Secretary of War, under date of the 15th instant, submitted a series of reports from the General commanding the armies of the United States, and other military officers, as to supposed violations of the act alluded to in the resolution, with the request that they should be referred to the Attorney General "for his investigation and report, to the end that the cases may be designated which are cognizant by the civil authorities, and such as are cognizant by military tribunals." I have directed the reference so to be made.

ANDREW JOHNSON.

WASHINGTON, February 18, 1867.

*List of papers.*

Report of the Attorney General.  
Report of the Secretary of State.  
Report of the Secretary of the Treasury.  
Report of the Secretary of War.  
Report of the Secretary of the Navy.  
Report of the Secretary of the Interior.  
Report of the Postmaster General.

ATTORNEY GENERAL'S OFFICE,

January 21, 1867.

SIR: I have the honor to acknowledge the receipt of a copy of a resolution of the Senate of the United States of January 8, referred by you to this office for report. The resolution is in these words:

*Resolved*, That the President be requested to inform the Senate if any violations of the act entitled 'An act to protect all persons in the United States in their civil rights, and furnish the means of their vindication,' have come to his knowledge; and if so, what steps, if any, have been taken by him to enforce the law and punish the offenders."

The provisions of the act which specially refer to the President for executive action are contained in the 4th, 8th, and 9th sections.

By the first clause of the 4th section it is provided, "That the district attorneys, marshals and deputy marshals of the United States, the commissioners appointed by the circuit and territorial courts of the United States, with powers of arresting, imprisoning, or bailing offenders against the laws of the United States, the officers and agents of the Freedmen's Bureau, and every other officer who may be specially empowered by the President of the United States, shall be, and they are hereby, specially authorized and required, at the expense of the United States, to institute proceedings against all and every person who shall violate the provisions of this act."

The 8th section provides, "That whenever the President of the United States shall have reason to believe that offences have been, or are likely to be, committed against the provisions of this act within any judicial district, it shall be lawful for him, in his discretion, to direct the judge, marshal, and district attorney of such district to attend at such place within the district, and for such time as he may designate, for the purpose of the more speedy arrest and trial of persons charged with a violation of this act; and it shall be the duty of every judge or other officer, when any such requisition shall be received by him, to attend at the place and for the time therein designated."

Section 9 provides, "That it shall be lawful for the President of the United States, or such person as he may empower for that purpose, to employ such part of the land or naval forces of the United States, or of the militia, as shall be necessary to prevent the violation and enforce the due execution of this act."

No report has, within my knowledge, been made to you from this office in relation to any violations of the above-mentioned act, nor am I advised that any report has been made to this office of any such violations. A case has been referred to this office by the Secretary of War, which may involve a violation of the provisions of the act which forbid a discrimination against people of color under the penal laws of the States. It is the case of one William Fincher, a person of color in the State of Georgia. The action taken by this office upon this reference appears in the following letter:

ATTORNEY GENERAL'S OFFICE,

December 11, 1866.

SIR: It has been represented to the President that a person has been subjected to, and is now suffering, (not as a punishment of crime whereof he has been duly convicted,) a condition of involuntary servitude within the United States, in contravention of Article XIII, section 1, of the Constitution of the United States.

"If a question so grave, and of such high and prevalent interest, has legitimately arisen, it becomes the duty of the government, independently of the presumptive indigence of the party in a case involving vagrancy, to direct the zealous co-operation of the counsel of the United States with that of the petitioner in the courts of law.

"It is alleged that one William Fincher is now performing compulsory labor or service in the chain gang in Pike county, Georgia, a condition of constraint to which he was forcibly subjected without having been convicted of, or charged with, any crime, defined as such in the laws of Georgia; that he was indicted as a vagrant, and convicted of vagrancy in the county court; that upon a hearing before an appellate court, on *certiorari*, the prosecution below was sustained, and that the whole proceedings were had upon insufficient evidence of the charge; that the sentence was given with circumstances of severity, and that the object of the prosecution was to destroy the party's influence and action in the community as a colored preacher, zealously attached to some society or association which is offensive to public sentiment. Such is the information which has been communicated; but your action in the premises will be grounded exclusively upon the facts as you may discover them upon investigation.

"I have to instruct you to inquire into and immediately report the substantial circumstances of this case; the law and practice of Georgia in full touching the matter, and a full abstract of the record of the prosecution throughout; stating particularly whether, and if so when and how, the case has been adjudicated by the highest appellate court of the State having jurisdiction of the matter.

"You will understand that, unless your report shall show that it is entirely impracticable, the object of the President is to have the matter brought forward for adjudication by the Supreme Court of the United States.

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

"HENRY STANBERY,

*Attorney General.*

"HENRY S. FITCH, Esq.,

*United States Attorney, Savannah, Georgia.*"

It will be observed that this letter purports that the facts of Fincher's case were represented to the President. This expression was according to the usual formula in such cases; but, in point of fact, the representations came through the War Department to this office.

From the facts stated, it was supposed, as will be seen by the letter, that they involved a question of the infraction of the late constitutional amendment. It may appear, when the report of the district attorney is received, that they involve an infraction of the civil rights bill.

The district attorney replied to this letter under date of December 15, 1866, acknowledging its receipt, and stating that he would proceed at once to Pike county and make a rigid investigation of the facts, and report as soon as possible. No report having been received, his attention was again called to the subject; and, by a despatch received from him on the 19th instant, he states that the absence of material witnesses and the pressure of public business had delayed his report, but says that it will be mailed from Savannah this day.

I am not advised of any other case which requires executive action under those sections which have been enumerated, or under any other section of the civil rights bill.

I have the honor to be, very respectfully, &c.,

HENRY STANBERY,

*Attorney General.*

The PRESIDENT.

ATTORNEY GENERAL'S OFFICE,

*Washington, January 28, 1867.*

SIR: I had the honor on the 21st instant to make a report to you upon the resolution of the Senate of the 5th, for information of any violations of the

civil rights act. The case of William Fincher, a person of color, in the State of Georgia, was referred to in my report; as to which I was unable to say, with the information then before me, whether it came within the purview of the resolution. I stated that I had directed the district attorney at Savannah to investigate and report fully upon the case, but that I had not, up to that date, received his report. It has now come forward, and is herewith communicated.

I have the honor to be, sir, very respectfully,

HENRY STANBERY.

The PRESIDENT.

OFFICE UNITED STATES ATTORNEY FOR GEORGIA,

Savannah, January 21, 1867.

SIR: Upon receipt of your communication of December 11, 1866, relative to the case of William Fincher, "reported as suffering (not as a punishment for crime whereof he had been duly convicted) a condition of involuntary servitude within the United States in contravention of Article XIII, sec. 1, of the Constitution of the United States," I proceeded at once to the district in which Fincher was confined, (distant from Savannah some two hundred miles,) in order thoroughly to investigate, according to your instructions, the substantial circumstances connected therewith.

My apparent neglect to report was necessitated by unexpected delays in securing a correct transcript of the record, and in ascertaining such collateral facts as would enable me to form an intelligent opinion as to the actual merits.

Enclosed you will find a certified copy of the proceedings had in the county and superior courts, together with an explanatory letter from Fincher's counsel. It seems that Fincher was presented by a grand jury as a vagrant, tried by a petit jury, and convicted. On *certiorari* the cause was carried to the superior court, and, after argument, the *certiorari* was dismissed and the verdict below affirmed.

Here the record ends. By the code of Georgia, (now embodied and made a part of the constitution of the State by the convention of 1865,) the common and statute laws of England, enforced in Georgia prior to the 14th of May, 1776, are continued in force so far as the same have not been modified or superseded by the code itself. It follows, therefore, that vagrancy in Georgia is a crime.

This the code places beyond dispute by the penal sanction it prescribes for the offence. (Sec. 4435, page 563, vide Exhibit 1.) This section was amended by an act of the general assembly approved 12th March, 1866. (Georgia Laws, page 234, vide Exhibit 2.) In connection with the same grade of offences the legislature, on the 20th March, 1866, passed an act entitled "An act to alter and amend the penal code of Georgia," to which I here make reference as explaining the peculiarity of the punishment inflicted upon Fincher. (Georgia Laws, page 233, vide Exhibit 3.) It was under this act that Fincher was sentenced to the chain-gang. Section 4532 of the code (vide Exhibit 4) provides that in all criminal cases the jury shall be judges of the law and fact, and this doctrine, under the decisions of the supreme court of the State, is carried to an extraordinary length; in fact, so far as to render a new trial, simply because the verdict is contrary to law and evidence, almost impossible. The favorite proposition, repeatedly reiterated by the appellate court, is that the verdict must be "so grossly" in contravention of the law and evidence as to "shock the understanding and moral sense." *Shepherd's, Adm. vs. Burkhalter, 13 Ga.*; *Powell's Adm. vs. Bigby, 14 Ga.*; *Williamson vs. Nabers, 14 Ga.*; &c.

It will be perceived from these citations that there is nothing in Fincher's case, according to the present laws of Georgia, rendering it an exception either in the mode of procedure or the punishment inflicted. He was indicted for a

crime under the State laws, was tried by a jury, had the benefit of counsel, was convicted, and sentenced in conformity with the statutes of the State. In reality he is suffering "involuntary servitude as a punishment for crime whereof he had been duly convicted" according to the laws of Georgia. How far these laws conflict with Article XIII of the Constitution I do not understand you as requiring any expression of opinion. It is now, and was at the date of your letter, too late to carry this case to the supreme court of Georgia, and thence to the United States Supreme Court for final adjudication.

By the rules of practice as well as by positive enactment all bills of exceptions must be tendered the judge within thirty days of adjournment. (Sees. 4161 and 4171, code.)

The superior court for Pike county adjourned on or before the 1st of November, 1866. Why a writ of error, which would have operated as a superse-deas, was not applied for is explained by letter of counsel herewith enclosed. While I cannot resist the conclusion, as the result of my inquiries, that defendant was unjustly convicted, owing to the bias of the jury, and sentenced, from a similar cause, with unusual severity, I am at a loss to discover any legal remedy.

The history of jury trials is too prolific of equally disreputable findings to render Fincher's case an anomaly.

It would appear from the letter of his own attorney, W. C. Branman, (himself an agent of the Freedmen's Bureau,) that Fincher's antecedents were not of so exemplary a character as to entitle him to any peculiar sympathy. My own inquiries have confirmed this opinion. I deem it proper to state, in conclusion, that the general assembly, on the 17th of March, 1866, enacted almost verbatim the first section of the civil rights bill. (See Exhibit —.) Theoretically, therefore, no distinction is made under the laws of Georgia between whites and blacks; practically, I am sorry to say, the distinction is very broad, principally owing to the prejudices of jurors.

Trusting that my report may prove satisfactory, I have the honor to remain, very respectfully, your obedient servant,

HENRY S. FITCH,  
*U. S. Attorney.*

HON. HENRY STANBERRY,  
*Attorney General.*

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No. 1.

SECTION 4435. Any person wandering or strolling about, or leading an idle, immoral, profligate course of life, who has no property to support him, and who is able to work, or otherwise to support himself in a respectable way, or who is a professional gambler, shall be deemed and considered a vagrant, and shall be indicted as such as in other cases, and, on conviction, shall be punished by confinement and hard labor in the penitentiary for any time not less than two nor longer than four years: *Provided, nevertheless,* That at any time before conviction said indictment shall be quashed upon the defendant's paying costs and giving bond and good security, in open court, for his good behavior and future industry for one year. The amount of such bond shall not exceed four hundred dollars.

No. 2.

" All persons wandering or strolling about in idleness, who are able to work, and who have no property to support them; all persons leading an idle, immoral, or profligate life, who have no property to support them, and are able to work, and do not work; all persons able to work, having no property to support them,

and who have not some visible and known means of a fair, honest, and reputable livelihood; all persons having a fixed abode who have no visible property to support them, and who live by stealing or by trading in, bartering for, buying stolen property; and all professional gamblers, living in idleness, shall be deemed and considered vagrants, and shall be indicted as such; and it shall be lawful for any person to arrest said vagrants, and have them bound over for trial to the next term of the county court, and upon conviction they shall be fined or imprisoned, or sentenced to work on the public works or roads, for not longer than a year, or shall, in the discretion of the court, be bound out to some person for a time not longer than one year, upon such valuable consideration as the court may prescribe, the person giving bond, in a sum not to exceed three hundred dollars, payable to said court, and conditioned to clothe, and feed, and provide said convict with medical attendance for and during said time: *Provided*, That the defendant may, at any time before conviction, be discharged upon paying costs and giving bond and security in a sum not exceeding two hundred dollars, payable to said court, and conditioned for the good behavior and industry of defendant for one year."

## No. 3.

SECTION 1. That from and after the passage of this act the crimes defined in the following sections of the penal code as felonies and punishable by imprisonment in the penitentiary, shall henceforth be reduced below felonies, and punished in the manner hereinafter set forth. (Section 4435 not included in this modification.)

SECTION 2. That all other crimes designated in the penal code punishable by fine and imprisonment, or either, shall be likewise punishable in the manner hereinafter set forth; that is to say, the punishment for any of the aforesaid crimes, hereafter committed, shall be a fine not to exceed one thousand dollars, whipping not to exceed thirty-nine lashes, to work in chain-gang on the public works not to exceed twelve months, and any one or more of these punishments may be ordered in the discretion of the judge.

## No. 4.

AN ACT to define the term "person of color," and to declare the rights of such persons. Approved March 17, 1866.

SECTION 2. That persons of color shall have the right to make and enforce contracts, to sue, be sued; to be parties, and give evidence; to inherit, to purchase, lease, sell, hold, and convey real and personal property, and to have full and equal benefit of all laws and proceedings for the security of person and estate, and shall not be subjected to any other or different punishment, pain or penalty for the commission of any act or offence than such as are prescribed for white persons committing like acts or offences.

SECTION 3. That all laws and parts of laws in relation to slaves, and free persons of color, militating against this act, be, and the same are hereby, repealed.

August Term, 1866.—Special presentment.—John H. Baker, foreman; F. W. A. Doyle, County solicitor.

THE STATE }  
*vs.* }  
 WILLIAM FINCHER. }  
 GEORGIA, *Pike county*:

The grand jurors chosen, sworn, and selected for the county of Pike, to wit, the undersigned, by special presentment, in the name and behalf of the citizens

of Georgia, charge and accuse William Fincher, a freedman of the county and State aforesaid, of vagrancy, for that the said William Fincher in the county aforesaid on the eighth day of July, in the year of our Lord eighteen hundred and sixty-six, and on divers days and times before and after that day and previous to the finding of this presentment, did wander and stroll about then and there, leading an immoral and profligate course of life—said William Fincher then and there having no property to support himself, and who is able to work or otherwise support himself in a respectable way—contrary to the laws of said State, the good order, peace, and dignity thereof.

August term, 1866; John H. Baker, foreman; Pleasant Davis, Stephen D. Williamson, James P. Blossengane, Martin C. Cochran, Peter E. Fossett, Isaac McLeroy, Green W. Jackson, David A. Gasque, Absalom P. Montgomery, Henry J. Furguson, Isaac Strickland, William H. Willis, William Barrett, Christopher Parker, William J. Barnes, Andrew J. Blalock.

Bill of indictment waived and consent that the special presentment instead thereof.

W. T. C. BRANNAN,

T. M. CARTER,

*Defendant's Attorneys.*

The defendant, William Fincher, formally arraigned and pleads not guilty. August term, 1866.

F. W. A. DOYLE, *Co. Sol.*

*Evidence.*

A. B. Vaughn sworn: Does not know how defendant makes his living; has not seen him engaged at work since Christmas; has frequently seen him along the road and at home not engaged; heard him say in February last he had no money; knows of no visible means he has of a support; has seen a cow at his house; he has a little patch planted but has not cultivated it; never saw him at work in it; no prospect of making a crop on it; does not know of his having any trade or calling; he has two women and several children in family; has not seen him at work since last of February or 1st of March; has not seen the least sign or inclination in him to work since; has not met him of nights, for witness has not been out himself; there were some 1,500 or 2,000 rails split on the place last winter; has not seen him or known of his being in the employ of any person since last winter; knows of no income he has; passed a meeting of freedmen last Saturday evening, near the old steam saw-mill; the defendant was speaking to them; there were some fifty present; lives two miles from defendant, who lives on a very public settlement road; has passed his house often this year and has seen him at home a dozen times; does not know who cleared the patch; defendant came to witness last spring to buy an ox, he said to plough, and said he had no money; I did not sell to him; does not know that he makes his living by pilfering.

Thomas J. Barrett sworn: States he has not seen defendant employed the present year; defendant lives in Pike county, Georgia, five and a half miles south of Zebulon; has a small patch planted, not sufficient to support his family if it had been cultivated; defendant follows no trade that witness knows of, and has no property or means within witness's knowledge; has not seen him often; defendant wished to buy a beef from witness in June; did not let him have it; has seen him passing the road several times; does not know how he supports himself; knows of no illegal means by which he procures a support.

William J. Fincher sworn: Says he has known defendant all his (witness's) life. Defendant has a wife and four children; and another woman and child

live with him ; he had some corn last winter or spring ; he is a mechanic ; does not know of his working at his trade this year ; saw defendant pass witness's house ; worked for witness two or three days last spring ; have seen him pass with tools ; saw him at work, where he lives, splitting rails last winter ; defendant is not a stout man ; not able to do heavy work ; don't know that he has been able to do heavy work. During the time witness owned him, he looked on him as being perfectly honest, and he was intrusted with the business of the place, and acted honestly. Witness does not know of his having been sick.

Milas Hagins sworn : Says he is acquainted with defendant ; knows of no livelihood followed by him for a support ; knows of no property belonging to defendant ; has seen a cow and calf in his pen ; knows of his following no trade or calling ; witness was near by at three meetings of freedmen last week, Tuesday and Thursday nights, and Saturday evening ; defendant spoke at all of them ; witness was concealed ; defendant said he had so much power given him, he could hardly speak ; he had just learned how much power he had ; that if they did not stand up for the schools against the white folks, he had power to hang them up by the neck ; he had hung two by the thumbs ; two of the meetings were at Lije Taylor's, (freedman,) in the mountains ; the other at Bill Barrett's, (freedman ; ) no other white person present ; they did not see witness ; he said he wanted money to start schools and put up a store ; there was none paid in ; he was to receive it ; he intended to have schools if the white people objected. Witness lives in the neighborhood of defendant ; does not suppose he has done a week's work this year ; the work that has been done there was by frolics, asking others to help. Defendant said he could send to Augusta and get authority to do what he wanted to ; he said if they did not give him liberty to have a school at Fincher's church, he would send to Augusta and get authority, and have it in spite of them ; I never saw defendant engaged in illegal business, nor heard him make any statement in defiance of the law.

Joseph Youngblood sworn : Says he has known defendant ten years ; does not know that he has any means of support ; defendant lives within one hundred or one hundred and fifty yards of witness, in Pike county, Georgia ; knows of no business that he follows ; he is a farmer and mechanic ; he has a cow and calf, and a one-horse wagon that he claims ; witness does not know of his having been sick this year ; he has two women and five children living there with him ; never has seen either of the women at work ; heard the wheel there last winter ; has not heard it this summer ; has seen the defendant passing the road frequently of evenings and mornings ; witness sold defendant two bushels of corn last winter, and has not got his pay.

Emily McDaniel (freed girl) sworn : Says she is acquainted with defendant, and staid at his house a day and night last week ; they had soup and bread for breakfast ; the soup looked like starch, and they had bread and greens for dinner ; the defendant lay on the bed and slept the first evening, and went off next morning ; witness did not see him do anything ; his wife carded and spun ; did not see anything to live upon ; saw some milk, not much.

The testimony for the State closed.

The defendant introduced William Guilford (freedmen) sworn : States he is acquainted with defendant ; witness has a shop in Barnesville ; never has been at defendant's ; witness is president of the Equal Rights Association of Upson county, and agent of this county ; the defendant is vice-president of the society of this county, and the office is pretty good profit ; defendant was appointed by witness ; his pay is \$30 or \$40 per month ; if the friends here do not pay, the benevolent friends north are to pay ; does not know that he has been paid any-

thing yet ; the business of the association is to establish schools, bury the dead, and employ lawyers ; witness is to get \$60 per month ; he is agent for Loyal Georgian ; he has not received any pay yet ; he let the defendant have two bushels of corn last June, out of some supplies that had been sent to him as agent ; has received no report yet ; has to report to Captain Bryant and General Tilson ; knows of no visible means of support that defendant has.

Charles Fambrough (freedman) sworn : Says he is president of the Equal Rights Association for this county ; the objects of the association are to get up schools, attend to the poor and sick, bury the dead, and cultivate good feelings between the freedmen and their former masters. It is the duty of the vice-president to do all he can for the society ; defendant is vice-president for this county ; witness appointed him just before the fourth of July ; witness was elected by a committee at Barnesville ; his pay is not to exceed \$40 per month ; there is nothing contrary to law or illegal in the society ; we are to report to Captain Bryant ; we are to draw from benevolent societies north when we fail to make up ; knows nothing of the pecuniary condition of defendant ; was never at his house ; has heard him preach ; the association promised to pay my salary, but have received nothing yet ; witness works in a shoe shop for Mr. Bloodworth.

Dr. E. W. Wilson sworn : Says he is a physician, and is acquainted with defendant ; treated him in sickness several years since, and has let him have some pills this year ; defendant is not as stout as witness, but is able to do good work ; he is not as stout as some men ; his liver has been diseased.

Josh Mangham (freedman) sworn : Says defendant is vice-president of the association ; never heard until to-day what he was to get ; witness promised when he gathered his crop to give him something, so did the most of them ; witness is treasurer of the association, and there is one dollar and forty cents in the treasury ; defendant is a minister, and before he was freed was very industrious ; does not know whether he has anything to support on or no.

Rich. Mangham (freedman) sworn : Says he is chaplain of the association, but that he is no preacher ; he paid one dollar when he joined ; there is nothing unlawful in it ; he has attended all the meetings ; there were only two last week ; heard nothing said wrong at either meeting ; the members agree to pay something this fall to the vice-president.

The evidence closed, and, after argument to the jury by counsel for the defendant and State, the judge charged the jury :

That if they believed from the evidence that the defendant was wandering and strolling about in idleness, and that he was able to work and had no property to support him, and no visible and known means of a fair, honest, and reputable livelihood whereby to make a support, that constituted vagrancy, and it was their duty so to find. That if defendant was the vice-president of an association, and that was not proven to be disreputable, and the emoluments of the office were sufficient to support him, he was not required to work, notwithstanding he might have no property ; for if the emoluments of an office are sufficient to support the incumbent, and the filling of that office is an honest and reputable livelihood, he is not guilty of vagrancy though he may be destitute of property and live in idleness. That if they entertained a reasonable doubt of the guilt of the defendant, it was their duty to give him the benefit of the doubt and find him not guilty. That they were the judges of the law and the facts in the case, and, as they believed, so find.

The jury retired to their room and returned into court and delivered a verdict of: "We, the jury, find the defendant guilty."

JOHN B. SLATON, *Foreman.*

Whereupon the defendant's counsel moved for a *certiorari* to the superior court upon the following grounds:

1. That the finding of the jury was contrary and against the evidence in the case.
2. That the verdict and finding was wholly and totally contrary and against the weight of evidence in the case.
3. That said verdict and finding was against the charge of the court.

Upon the petition of defendant's counsel a *certiorari* was granted, and the proceedings in the case certified to the superior court.

At the October term, 1866, of Pike superior court, the *certiorari* was heard and returned with the following order entered thereon:

It is ordered by the court, upon hearing the foregoing *certiorari*, that it be dismissed, and that the defendant be remanded into the custody of the sheriff of this county and carried before the judge of the county court, to be sentenced according to law.

A. D. HAMMOND, *Sol. Gen'l.*

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*County court of Pike county, October term, 1866.*

THE STATE  
*vs.*  
 WILLIAM FINCHER, (freedman.) }

Indictment for vagrancy and verdict of guilty at August term, 1866. *Certiorari* to superior court, and judgment of that court dismissing the *certiorari* and ordering the defendant to be brought before this court to be sentenced according to law.

Whereupon it is considered, ordered, and adjudged by the court that the sheriff of this county take the defendant, William Fincher, (freedman,) from the bar of this court to the county jail, there to be safely kept until demanded by the inferior court of the county, to be by them placed at hard labor on the public works or roads for and during the full term and time of twelve months, to be computed from the present term, and then be discharged; and that defendant pay the cost of this prosecution.

STATE OF GEORGIA, *Pike county*:

I, Hartford Green, judge of the county court in and for said county, hereby certify that the above and foregoing eight pages is a true extract of the minutes and papers of file in my office, had in the case of the State *vs.* William Fincher (freedman) for vagrancy.

(Given under my hand and official signature at office in Zebulon, in said county, with the seal of the court attached, this the 24th day of [SEAL.] October, 1866.

H. GREEN, *Judge County Court.*

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OFFICE AG'T BUREAU REFUGEES, FREEDMEN AND ABANDONED LANDS,  
*Pike County, Ga., Zebulon, January 4, 1867.*

SIR: Yours of a recent date has just been received. I would say in regard to Fincher's case, that everything was done for him that could have been done for any man, but it was not sufficient to release him. I, together with T. M. Carter, esq., were his counsel, and after the conviction in the county court, we saw proper to carry his case to the superior court by *certiorari*, and after argument the judge decided that there was no error in the verdict of the jury in

the court below. He predicated his decision upon the ground that there was no certainty as to Fincher's receiving any emoluments whatever from the society of which he was vice-president; and that if it was a fact that the society had promised him thirty-five or forty dollars per month as a salary, it was not a corporation, could not be sued, and, of course, could not be relied on. He considered that there was no other evidence to support the defence of the defendant Fincher. I desired and would have carried his case to the supreme court, but could not do so unless my fees were advanced, and it was impossible for Fincher to raise the money. From facts that have come to my knowledge since the trial, I feel satisfied that his character for virtue and morality is not better than it should be. He had a wife, and another woman living with him, and his wife says that he was intimate with this woman that was living at his house. In the bill of indictment he was not charged with the crime of adultery.

Enclosed you will find the certificate of the county judge in regard to the manner in which Fincher's case was conducted.

Trusting that this report may meet your approval, I remain, respectfully, your obedient servant,

W. T. C. BRANNON,  
*Agent, &c., Pike County, Georgia.*

HENRY S. FITCH, Esq.,  
*United States Attorney for Georgia.*

STATE OF GEORGIA, *Pike county:*

I, Hartford Green, judge of the county court in and for said county, hereby certify that upon the trial in said court in the case of the State *vs.* William Fincher, on indictment for vagrancy, Walter T. C. Brannon and Thomas M. Carter, attorneys for defendant, managed the defence in a skilful and able manner, devoting some two days of the court exclusively to obtaining witnesses, examining them, and arguing points of law to the court, and addressing the jury. After the finding of the jury they sued out a *certiorari* to the superior court, and I was present upon the hearing of the *certiorari*, and take pleasure in stating that both defendant's attorneys made able and lengthy arguments in favor of the *certiorari* and received the commendation of the court and several members of the bar for the able and skilful manner in which they conducted the case.

Given under my hand and seal of office this the 4th day of January, 1867.

H. GREEN,  
*Judge County Court.*

DEPARTMENT OF STATE,

*Washington, January 23, 1867.*

The Secretary of State has received a copy of a resolution of the Senate inquiring if any violation of the act entitled "An act to protect all persons in the United States in their civil rights, and furnish the means of their vindication," has come to the knowledge of the President; and if so, what steps, if any, have been taken by him to enforce the law and punish the offenders.

The Secretary of State has the honor to report that the Department of State has no knowledge or information on the subject of the resolution.

WILLIAM H. SEWARD.

The PRESIDENT.

TREASURY DEPARTMENT,

*January 22, 1867.*

DEAR SIR: I have received from the Attorney General a copy of a resolution adopted by the Senate of the United States on the 8th instant, which is as follows:

*Resolved*, That the President be requested to inform the Senate if any violations of the act entitled 'An act to protect all persons in the United States in their civil rights, and furnish the means of their vindication,' have come to his knowledge; and if so, what steps, if any, have been taken by him to enforce the law and punish the offenders."

No information has been received by this department of any violations of the act referred to, nor have I been made cognizant of any violations of it by information received from any quarter.

I have the honor to be, very truly, your obedient servant,

H. McCULLOCH.

The PRESIDENT.

WAR DEPARTMENT,

*Washington City, February 15, 1867.*

SIR: I have the honor to acknowledge the receipt of Senate resolution of January 8, 1867, requesting the President to inform the Senate "if any violations of the act of Congress entitled 'An act to protect all persons in the United States in their civil rights, and furnish the means of their vindication,' have come to his knowledge; and if so, what steps, if any, have been taken by him to enforce the law and punish the offenders," together with a report of the Attorney General on the construction of the act referred to, which papers were referred to me by you for report on the 23d of January. In answer to said reference I have the honor to report: First, that in relation to the steps taken by this department to enforce the act of Congress referred to in the said resolution, so far as its execution devolved upon military authorities, it was promulgated in General Orders No. 50, July 21, 1866, to all commanders of military departments, districts, and posts, a copy of which order is hereto attached. The enforcement of said act of Congress is also one of the general regulations of the Bureau of Refugees, Freedmen and Abandoned Lands. And a General Order, hereto attached, was also issued from the army headquarters.

No instance has been reported to this department of any neglect or refusal by military officers or employes of this department to enforce, to the extent of their legal authority, the provisions of the aforesaid act of Congress within their respective commands and stations, and I have no knowledge of any such neglect or refusal having been reported to the President.

Second. The following cases of alleged violation of the said act of Congress were officially reported to the President, to wit:

1. The case of Dr. Watson, for the murder of a negro in the department of Virginia, who, after his discharge by civil tribunal, was put on trial before a military commission, which was dissolved on the ground of want of jurisdiction, under the decision of the Supreme Court.

2. The case of William Fincher, a person of color, sentenced to the chain-gang in Georgia as a vagrant, which was referred to the Attorney General, and is under his direction and charge.

3. The case of — Perkins, in the State of Texas, where protection to a colored man from alleged illegal acts under color of civil authority was afforded by the assistant commissioner of the Freedmen's Bureau, and his action approved by this department. Full reports of these cases are hereto annexed.

No other reports of the violation of the act aforesaid have been made to you by me. Reports by military commanders of crimes and offences committed against freedmen and others in their respective commands have been made to this department and referred to the Attorney General for his opinion on the appropriate remedy. Whether they or any of them constitute violations of the civil rights law, I am unable to state.

Your obedient servant,

EDWIN M. STANTON,  
*Secretary of War.*

The PRESIDENT.

[General Orders No. 50.]

WAR DEPARTMENT, ADJUTANT GENERAL'S OFFICE,  
*Washington, July 21, 1866.*

The following act of Congress is published for the information and government of all concerned :

[PUBLIC—No. 26.]

AN ACT to protect all persons in the United States in their civil rights, and furnish the means of their vindication.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That all persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens of the United States; and such citizens, of every race and color, without regard to any previous condition of slavery or involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall have the same right, in every State and Territory in the United States, to make and enforce contracts, to sue, be parties, and give evidence, to inherit, purchase, lease, sell, hold, and convey real and personal property, and to full and equal benefit of all laws and proceedings for the security of person and property, as is enjoyed by white citizens, and shall be subject to like punishment, pains, and penalties, and to none other, any law, statute, ordinance, regulation, or custom, to the contrary notwithstanding.

SEC. 2. *And be it further enacted,* That any person who, under color of any law, statute, ordinance, regulation, or custom, shall subject, or cause to be subjected, any inhabitant of any State or Territory to the deprivation of any right secured or protected by this act, or to different punishment, pains, or penalties on account of such person having at any time been held in a condition of slavery or involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, or by reason of his color or race, than is prescribed for the punishment of white persons, shall be deemed guilty of a misdemeanor, and, on conviction, shall be punished by fine not exceeding one thousand dollars, or imprisonment not exceeding one year, or both, in the discretion of the court.

SEC. 3. *And be it further enacted,* That the district courts of the United States, within their respective districts, shall have, exclusively of the courts of the several States, cognizance of all crimes and offences committed against the provisions of this act, and also, concurrently with the circuit courts of the United States, of all causes, civil and criminal, affecting persons who are denied or cannot enforce in the courts or judicial tribunals of the State or locality where they may be any of the rights secured to them by the first section of this act; and if any suit or prosecution, civil or criminal, has been or shall be commenced in any State court against any such person, for any cause whatsoever, or against any officer, civil or military, or other person, for any arrest or imprisonment, trespasses,

or wrongs done or committed by virtue or under color of authority derived from this act or the act establishing a bureau for the relief of freedmen and refugees, and all acts amendatory thereof, or for refusing to do any act upon the ground that it would be inconsistent with this act, such defendant shall have the right to remove such cause for trial to the proper district or circuit court in the manner prescribed by the "act relating to habeas corpus and regulating judicial proceedings in certain cases," approved March three, eighteen hundred and sixty-three, and all acts amendatory thereof. The jurisdiction in civil and criminal matters hereby conferred on the district and circuit courts of the United States shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where such laws are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offences against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of the cause, civil or criminal, is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern said courts in the trial and disposition of such cause, and, if of a criminal nature, in the infliction of punishment on the party found guilty.

SEC. 4. *And be it further enacted,* That the district attorneys, marshals, and deputy marshals of the United States, the commissioners appointed by the circuit and territorial courts of the United States, with powers of arresting, imprisoning, or bailing offenders against the laws of the United States, the officers and agents of the Freedmen's Bureau, and every other officer who may be specially empowered by the President of the United States, shall be, and they are hereby, specially authorized and required, at the expense of the United States, to institute proceedings against all and every person who shall violate the provisions of this act, and cause him or them to be arrested and imprisoned, or bailed, as the case may be, for trial before such court of the United States or territorial court as by this act has cognizance of the offence. And with a view to affording reasonable protection to all persons in their constitutional rights of equality before the law, without distinction of race or color, or previous condition of slavery or involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, and to the prompt discharge of the duties of this act, it shall be the duty of the circuit courts of the United States and the superior courts of the Territories of the United States, from time to time, to increase the number of commissioners, so as to afford a speedy and convenient means for the arrest and examination of persons charged with a violation of this act; and such commissioners are hereby authorized and required to exercise and discharge all the powers and duties conferred on them by this act, and the same duties with regard to offences created by this act, as they are authorized by law to exercise with regard to other offences against the laws of the United States.

SEC. 5. *And be it further enacted,* That it shall be the duty of all marshals and deputy marshals to obey and execute all warrants and precepts issued under the provisions of this act, when to them directed; and should any marshal or deputy marshal refuse to receive such warrant or other process when tendered, or to use all proper means diligently to execute the same, he shall, on conviction thereof, be fined in the sum of one thousand dollars, to the use of the person upon whom the accused is alleged to have committed the offence. And the better to enable the said commissioners to execute their duties faithfully and efficiently, in conformity with the Constitution of the United States and the requirements of this act, they are hereby authorized and empowered, within their counties respectively, to appoint, in writing, under their hands, any one or more suitable persons, from time to time, to execute all such warrants and other process as may be issued by them in the lawful performance of their respective

duties; and the persons so appointed to execute any warrant or process as aforesaid shall have authority to summon and call to their aid the bystanders or posse comitatus of the proper county, or such portion of the land or naval forces of the United States, or of the militia, as may be necessary to the performance of the duty with which they are charged, and to insure a faithful observance of the clause of the Constitution which prohibits slavery, in conformity with the provisions of this act; and said warrants shall run and be executed by said officers anywhere in the State or Territory within which they are issued.

SEC. 6. *And be it further enacted,* That any person who shall knowingly and wilfully obstruct, hinder, or prevent any officer, or other person charged with the execution of any warrant or process issued under the provisions of this act, or any person or persons lawfully assisting him or them, from arresting any person for whose apprehension such warrant or process may have been issued, or shall rescue or attempt to rescue such person from the custody of the officer, other person or persons, or those lawfully assisting as aforesaid, when so arrested pursuant to the authority herein given and declared, or shall aid, abet, or assist any person so arrested as aforesaid, directly or indirectly, to escape from the custody of the officer or other person legally authorized as aforesaid, or shall harbor or conceal any person for whose arrest a warrant or process shall have been issued as aforesaid, so as to prevent his discovery and arrest after notice or knowledge of the fact that a warrant has been issued for the apprehension of such person, shall, for either of said offences, be subject to a fine not exceeding one thousand dollars, and imprisonment not exceeding six months, by indictment and conviction before the district court of the United States for the district in which said offence may have been committed, or before the proper court of criminal jurisdiction, if committed within any one of the organized Territories of the United States.

SEC. 7. *And be it further enacted,* That the district attorneys, the marshals, their deputies, and the clerks of the said district and territorial courts shall be paid for their services the like fees as may be allowed to them for similar services in other cases; and in all cases where the proceedings are before a commissioner, he shall be entitled to a fee of ten dollars in full for his services in each case, inclusive of all services incident to such arrest and examination. The person or persons authorized to execute the process to be issued by such commissioners for the arrest of offenders against the provisions of this act shall be entitled to a fee of five dollars for each person he or they may arrest and take before any such commissioner as aforesaid, with such other fees as may be deemed reasonable by such commissioner for such other additional services as may be necessarily performed by him or them, such as attending at the examination, keeping the prisoner in custody, and providing him with food and lodging during his detention, and until the final determination of such commissioner, and in general for performing such other duties as may be required in the premises; such fees to be made up in conformity with the fees usually charged by the officers of the courts of justice within the proper district or county, as near as may be practicable, and paid out of the treasury of the United States on the certificate of the judge of the district within which the arrest is made, and to be recoverable from the defendant as part of the judgment in case of conviction.

SEC. 8. *And be it further enacted,* That whenever the President of the United States shall have reason to believe that offences have been or are likely to be committed against the provisions of this act within any judicial district, it shall be lawful for him, in his discretion, to direct the judge, marshal, and district attorney of such district to attend at such place within the district, and for such time as he may designate, for the purpose of the more speedy arrest and trial of persons charged with a violation of this act; and it shall be the duty of

every judge or other officer, when any such requisition shall be received by him, to attend at the place and for the time therein designated.

SEC. 9. *And be it further enacted*, That it shall be lawful for the President of the United States, or such person as he may empower for that purpose, to employ such part of the land or naval forces of the United States, or of the militia, as shall be necessary to prevent the violation and enforce the due execution of this act.

SEC. 10. *And be it further enacted*, That upon all questions of law arising in any cause under the provisions of this act a final appeal may be taken to the Supreme Court of the United States.

SCHUYLER COLFAX,

*Speaker of the House of Representatives.*

LA FAYETTE S. FOSTER,

*President of the Senate pro tempore.*

IN THE SENATE OF THE UNITED STATES, *April 6, 1866.*

The President of the United States having returned to the Senate, in which it originated, the bill entitled "An act to protect all persons in the United States in their civil rights, and furnish the means of their vindication," with his objections thereto, the Senate proceeded, in pursuance of the Constitution, to reconsider the same; and

*Resolved*, That the said bill do pass, two-thirds of the Senate agreeing to pass the same.

Attest:

J. W. FORNEY,

*Secretary of the Senate.*

IN THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES,

*April 9, 1866.*

The House of Representatives having proceeded, in pursuance of the Constitution, to reconsider the bill entitled "An act to protect all persons in the United States in their civil rights, and furnish the means of their vindication," returned to the Senate by the President of the United States, with his objections, and sent by the Senate to the House of Representatives, with the message of the President returning the bill:

*Resolved*, That the bill do pass, two-thirds of the House of Representatives agreeing to pass the same.

Attest:

EDWARD McPHERSON, *Clerk*,  
By CLINTON LLOYD, *Chief Clerk*.

By order of the Secretary of War:

E. D. TOWNSEND,

*Assistant Adjutant General.*

Official:

\_\_\_\_\_  
*Assistant Adjutant General.*

[General Orders No. 44.]

HEADQUARTERS OF THE ARMY, ADJ'T GENERAL'S OFFICE,

*Washington, July 6, 1866.*

Department, district, and post commanders in the States lately in rebellion are hereby directed to arrest all persons who have been or may hereafter be charged with the commission of crimes and offences against officers, agents,

citizens, and inhabitants of the United States, irrespective of color, in cases where the civil authorities have failed, neglected, or are unable to arrest and bring such parties to trial, and to detain them in military confinement until such time as a proper judicial tribunal may be ready and willing to try them.

A strict and prompt enforcement of this order is required.

By command of Lieutenant General Grant :

E. D. TOWNSEND,

*Assistant Adjutant General.*

Official :

\_\_\_\_\_  
*Assistant Adjutant General.*

UNITED STATES vs. DR. JAMES L. WATSON.

Brevet Colonel G. B. Carse, captain Veteran Reserve Corps and assistant superintendent of the bureau in the seventh district of the department of the Potomac, under date of November 24, 1866, at Lexington, Virginia, made a report of which the following is an extract :

“BUREAU REFUGEES, FREEDMEN AND ABANDONED LANDS,  
“SUB-DISTRICT NO. 8, SEVENTH DISTRICT VIRGINIA,  
“ROCKBRIDGE, BATH, AND ALLEGHANY COUNTIES,  
“*Headquarters, Lexington, Va., November 24, 1866.*

“CAPTAIN: I have the honor to report that Dr. James L. Watson, the man who shot William Medley, (freedman,) in the county of Rockbridge, on the evening of Wednesday, the 13th instant, causing the death of Medley on the day following, was tried before an ‘examining court’ convened at Lexington on the 22d instant.

“Dr. Watson was this day honorably acquitted by the ‘examining court’ of the charge pending against him, *i. e.*, of feloniously shooting one William Medley, a freedman, thereby causing his death. \* \* \* \* \*

“The first witness sworn in the case for the prosecution was a young man named Louis Loudon, who is a step-son of Mr. Echols, at whose house the shooting occurred. Mr. Loudon stated to the court that on Wednesday p. m. of last week Dr. Watson rode into the field where Medley and some two or three other freedmen were engaged in sowing wheat. Dr. Watson spoke to Mr. Loudon in his usual manner, and immediately dismounted from his horse and proceeded to where Medley was engaged in hitching a horse to a barrow, some fifteen steps from where Mr. Loudon was standing. Dr. Watson, immediately upon reaching Medley, began striking him with a stick, and at the same time asked Medley why he broke his carriage. Medley said he had not done so, and ran away from Watson, who called Medley to stop, which Medley did; but seeing the Doctor approaching him, evidently intent upon assaulting him, Medley ran, when the Doctor drew a pistol and called upon Medley to stop, at the same time pulling the trigger of the pistol, causing the cap to explode, but not the pistol to discharge. Medley still continued to run, and had succeeded in getting some fifty yards from the Doctor when he fired the pistol, the ball from which entered the back of Medley. The colored men who were in the field at the time fully corroborated the testimony of Mr. Loudon.

“Mr. Echols was next sworn, who stated that Dr. Watson had called at his house and informed him that he (Watson) had an account to settle with a freedman named Medley. Mr. Echols, thinking it was a bill for professional services, remarked that he had money enough in his hands of Medley’s to satisfy any claim the doctor might have against him. The doctor then replied that it was not a pecuniary account, but stated that Medley had offered an insult to his family by attempting to pass them on their way to church the Sunday previous, while

driving Mr. Echols's carriage, containing a portion of Mr. Echols's family, to church, and that he (Medley) had endangered the life of Mrs. Watson and daughter, who were at the time in the Doctor's carriage, and that Medley's conduct was such that he would not submit to from any man, white or black. He (Dr. Watson) then asked Mr. Echols where Medley was, and upon being informed that he was in the field, Dr. Watson immediately started in the direction indicated as the whereabouts of Medley.

"Dr. Chandler, who attended Medley and examined the wound, was next called to the stand. He stated that the ball entered the body of Medley near the termination of the spine and two inches to the right thereof, passing through the abdomen, severing several coils of the intestines, thereby causing the death of Medley.

"Several witnesses were called for the defence, who swore to the fact of Dr. Watson being near-sighted, several of whom stated that they did not believe Dr. Watson capable of aiming a pistol with any degree of accuracy at any object a distance of twenty or thirty yards from him. Witnesses were also called to prove the condition of the road at the point where Medley attempted to pass the carriage of Dr. Watson. These witnesses stated that it was impracticable for two carriages in motion to pass at any point on the road near where the carriages collided.

"Several men of good standing in the county were also called to prove the good character of Dr. Watson, among whom were several colored men. All of these witnesses spoke of Dr. Watson in the highest terms, and as a man whose generosity and kindness towards white and black were excelled by no man in the county.

"After the argument on the part of the Commonwealth and on the part of the counsel for the defendant, the court, composed of five magistrates of the county, ordered the discharge of the prisoner.

\* \* \* \* \*

"I am, captain, very respectfully, your obedient servant,

G. B. CARSE,

*Brevet Colonel and Assistant Superintendent,  
Sub-district No. 8, Seventh District Virginia.*

"Captain R. S. LACEY,

*"Superintendent Seventh District, Virginia."*

On December 1 the following order was issued :

HEADQUARTERS DEPARTMENT OF THE POTOMAC,  
BUREAU REFUGEES, FREEDMEN AND ABANDONED LANDS,  
*Richmond, Virginia, December 1, 1866.*

SIR: You will repair, without delay, to Lexington, Rockbridge country, Virginia, or to any other place within this department which may be necessary, arrest Dr. James L. Watson, of Rockbridge county, (charged with murder,) and bring him to these headquarters. You will take with you three or four enlisted men, properly armed, to aid you in making the arrest and in guarding the prisoner.

Very respectfully,

J. M. SCHOFIELD,

*Major General Commanding, Assistant Commissioner.*

Lieutenant WILLIAM A. CAMERON,

*Fifth United States Artillery, Richmond, Virginia.*

Under the above order, Dr. James L. Watson was arrested on the 4th December at his home in Rockbridge county, and was brought to Richmond on the 7th, and on the succeeding day gave the following bond and parole :

Know all men by these presents that we, B. Deshall Hamau, Robert W.

Snead, Robert G. Scott, are held and firmly bound to the United States of America in the sum of twenty thousand dollars, lawful money of the United States, for which payment well and truly to be made we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, for and in, the whole jointly and severally, firmly by these presents. Whereas Dr. James L. Watson, of Rockbridge county, State of Virginia, has been arrested, and is now in the custody of the military authorities, by order of the major general commanding the department of the Potomac, and assistant commissioner of the Bureau of Refugees, Freedmen and Abandoned Lands, charged with shooting and killing, with malice aforethought, one William Medley, (colored,) of the county and State aforesaid :

Now the condition of this obligation is such, that if the said Dr. James L. Watson shall not go beyond the limits of the city of Richmond, State of Virginia, without the consent of the aforesaid commanding general and assistant commissioner, or some other superior military authority, except for such length of time and to such places as the aforesaid commanding general and assistant commissioner shall permit, and shall appear before such court or military commission, at such time and place as the beforementioned commanding general and assistant commissioner shall designate and appoint, then this obligation shall be null and void, otherwise to remain in full force and virtue.

JAMES L. WATSON. [SEAL.]

Witnesses :

J. L. RATHBONE, *First Lieutenant and A. D. C.*  
 WILLIAM A. CAMERON, *Lieutenant Fifth U. S. Artillery.*  
 B. DESHALL HARMAN.

Witnesses :

J. L. RATHBONE, *First Lieutenant and A. D. C.*  
 WILLIAM A. CAMERON, *Lieutenant Fifth U. S. Artillery.*  
 ROBERT W. SNEAD.

Witnesses :

J. L. RATHBONE, *First Lieutenant and A. D. C.*  
 WILLIAM A. CAMERON, *Lieutenant Fifth U. S. Artillery.*  
 ROBERT G. SCOTT.

Witnesses :

J. L. RATHBONE, *First Lieutenant and A. D. C.*  
 WILLIAM A. CAMERON, *Lieutenant Fifth U. S. Artillery.*

Whereas I, Dr. James L. Watson, of Rockbridge county, State of Virginia, have been arrested by the orders of the commanding general of the department of the Potomac, and assistant commissioner of the Bureau of Refugees, Freedmen and Abandoned Lands, on the charge of maliciously shooting and killing one William Medley, (colored,) of Rockbridge county, Virginia, upon being released from close custody, I do hereby give my solemn parole of honor that I will not go beyond the limits of the city of Richmond, Virginia, except by permission of the department commander; that I will report in person daily to said department commander, and that I will deliver myself up for trial on the beforementioned charge at such time and place as the commanding general of the department may direct.

JAMES L. WATSON.

Witness :

J. L. RATHBONE, *First Lieutenant and A. D. C.*

On the same day the following order was issued :

[Special Orders, No. 182.]

BUREAU REFUGEES, FREEDMEN AND ABANDONED LANDS,  
HEADQUARTERS ASS'T COM'R, DEP'T OF THE POTOMAC,  
*Richmond, Virginia, December 8, 1866.*

III. Dr. James L. Watson, of Rockbridge county, State of Virginia, is granted permission under his parole, given this day, to visit his home in the said county and State, on condition that he shall report in person to the major general commanding department and assistant commissioner of the Bureau of Refugees, Freedmen and Abandoned Lands, at his headquarters at Richmond, Virginia, at 10 o'clock a. m. on the 19th instant.

By command of Brevet Major General J. M. Schofield, assistant commissioner.  
O. BROWN,  
*Acting Assistant Adjutant General.*

On the same day the following communication was addressed to the major general Commissioner :

BUREAU OF REFUGEES, FREEDMEN AND ABANDONED LANDS,  
HEADQUARTERS ASS'T COM., DEP'T OF THE POTOMAC,  
*Richmond, Virginia, December 8, 1866.*

GENERAL: I desire to give you the facts, so far as they are now known, of an important case now before me, and which may very likely be brought before the President. A freedman, named William Medley, was shot and killed by Dr. James L. Watson, a prominent citizen of Rockbridge county, Virginia, under circumstances detailed in the accompanying extract from the report of Brevet Colonel Carse, and which does not differ materially from the statement voluntarily made to me by Dr. Watson himself after his arrest. Upon finding that the wound he had inflicted upon the colored man was mortal, Dr. Watson surrendered himself to a magistrate, and was recognized in a nominal sum to appear before an examining court, which court, after hearing the case, discharged the prisoner. Two of the magistrates, as I was informed, were in favor of bringing the case before a jury, while three voted for the discharge. This seemed a fair type of the numerous cases reported by officers of the bureau in which the civil courts fail, in the opinion of those officers, to give substantial justice and protection to the freedmen. I therefore determined to bring the case before a military court, not so much on account of its individual merits, as for the purpose of testing in the best practical way the important general questions involved.

I have caused Dr. Watson to be arrested and brought to Richmond, and have taken his parole and bond, with ample security, to appear for trial on the 19th of this month. My purpose is to bring the case for trial before a military commission to be appointed under the act of Congress of July 16, 1866, and to consist of a full number of officers of rank.

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

J. M. SCHOFIELD,

*Brevet Major General U. S. A., Ass't Commissioner.*

Major General O. O. HOWARD,

*Commissioner Bureau Refugees, &c., Washington, D. C.*

On the 12th of December the following order was issued :

[Special Orders No. 184.]

BUREAU OF REFUGEES, FREEDMEN AND ABANDONED LANDS,  
HEADQUARTERS ASS'T COM., DEP'T POTOMAC,  
*Richmond, Virginia, December 12, 1866.*

I. Captain Garrick Mallery, 43d United States infantry, inspector of the Bureau of Refugees, Freedmen and Abandoned Lands, department of the Potomac, will proceed without delay to the Natural Bridge, Rockbridge county, Virginia, for the purpose of summoning such witnesses as he may deem necessary in the case of the United States *vs.* Dr. James L. Watson.

This duty being completed, he will return to these headquarters.

By command of Brevet Major General J. M. Schofield, assistant commissioner.

O. BROWN,  
*Acting Assistant Adjutant General.*

The papers in the case were at the same time referred to Captain Mallery, whose report is as follows :

DEPARTMENT OF THE POTOMAC, HEADQUARTERS  
BUREAU OF REFUGEES, FREEDMEN AND ABANDONED LANDS,  
*Richmond, Virginia, December 26, 1866.*

In obedience to your instructions I have the honor to make the following report upon the testimony of the witnesses examined by me in the case of Dr. J. L. Watson, of Rockbridge county, and the merits of the whole case as it appeared to me after investigation at the scene and in the neighborhood of the homicide.

Mr. Robert J. Echols stated as follows : I am near neighbor of Dr. Watson, residing about a mile from him. On Wednesday, November 14, about 3 p. m., Dr. Watson called on me at my house, and said that he had an account to settle with William Medley, a freedman in my employ. I, thinking that it was a bill for professional services, stated that I had money enough in my hands due to Medley to satisfy any claim the doctor might have against him. The latter replied that it was not a pecuniary matter, but that Medley had offered an insult to his family by attempting to pass them on their way to church, the Sunday previous, while driving my carriage containing a portion of my family, and had endangered the lives of Mrs. Watson and daughter, who were in the doctor's carriage, and also the lives of that portion of my family, consisting of my young daughter and step-daughter, in the charge of my seamstress, which was in my carriage, and that Medley's conduct was such that he would not submit to it from any man, white or black. He said, "I have come to give William a caning," having a stick a little thicker than my thumb. I replied, "William is the best boy I ever knew." The doctor concurred, saying, "Yes; he is one of the best boys I ever knew," but repeated his intention to cane him. I suggested that, as no harm had actually happened to the two families, and but a small damage to the doctor's carriage, it would be better to have the latter repaired at William's expense. But the doctor repeated much as before, and inquired the whereabouts of William. I told him he was in the field at work. He started in that direction. A short time after I heard the firing of a pistol, and in a few moments William came and fell down near my house. I went to him, and found him wounded. I ordered my horse saddled, to go for Dr. Chandler. I had the boy carried in a blanket to his quarters. Dr. Watson came and examined him, and gave him some stimulus, at first saying that it was only a flesh wound, but afterwards agreed with me that Dr. Chandler should be sent for, which was done. William lived about thirty hours after the shooting. I

was with him all the time until he died. He had been in my employ seventeen months. He was recommended to me by Dr. Watson when I came on the farm. He had been raised about there, and Dr. Watson knew him well, and told me by all means to get him, as he was the best boy he knew. Some time after that, Dr. Watson made it a personal favor for me to let William go to him, under some trouble for help in his family, but I declined, because I myself could not spare him. I considered him the best boy I ever knew in my life. He was married. His wife was in the field when he was shot, but not in a position to see the shooting. She came with him to my house after the shooting. He evidently came to me for protection.

Mr. Lewis P. Loudon, a step-son of Mr. Echols, states as follows: About 3½ p. m., on Wednesday, the 14th November, I was in the field adjoining Mr. Echols's house, when Dr. Watson rode by me, giving some indistinct salutation, without stopping, and went on directly to where William Medley was engaged in preparing to harrow. He was at the moment hitching his horse to the harrow, and was about fifteen or twenty paces distant from me. Dr. Watson immediately dismounted, and began to strike William on the head with his stick, at the same time asking him "why he broke his carriage." He struck William both before and after thus speaking. William said he had not done so, and jumped behind his horse to avoid the doctor, who followed him. William then began to run towards the centre of the field. The doctor called on him to stop. He seemed to halt for a moment; but on the doctor approaching him, evidently with the intention of again assaulting him, with the stick still in his hand, he ran again. The doctor then drew a pistol and called on William to stop, at the same time pulling the trigger. The cap snapped, but the pistol was not discharged. Medley was still running, and had got between fifty and sixty feet off, when the doctor fired the pistol, the ball from which entered Medley's back.

Philip Carter, a young colored man, stated: I was in the field on the afternoon in question; I was going along the path near the fence when the doctor rode by, and went past Mr. Loudon, and then crossed over to where William was, with the harrow. I was not near enough at first to hear if there was any talk, but I could see plainly; I was going in the same direction with the doctor, but slower than he went. He got off his horse beside William and began striking him on the head. I did then hear him ask William why he had broken his carriage, and William answered that he had not. The doctor had struck him before I heard this. William ran behind the horse with which he was going to harrow, and the doctor followed. William then ran off into the field, and I heard the doctor shout to him to stop. He snapped a pistol, and William seemed to slacken up a minute, and then ran on. The doctor fired the pistol then. William ran toward the farm buildings near where his wife was, and then went toward Mr. Echols's house.

David Carter, colored, was not in a position, from a rise in the ground where he was at work, to see Dr. Watson approach, or to observe the first part of the assault, but saw the last part, the firing of the pistol, and that William, at the shot, clapped his hand on the part wounded. He corroborated the two last-named witnesses.

Dr. Samuel T. Chandler testified to being called to attend to the deceased, described his wound, and that he died in about thirty hours from the effects of it.

These are the witnesses in chief for the prosecution whom I summoned. They all say that they gave the same evidence before the examining court, and it is to be remarked that Dr. Watson, who has, though under caution from myself, as well as others also, on the subject of the whole affair, and stated that

he took pride in being perfectly candid regarding it, gives the above as his own version, with the single and unimportant exception that he asked the question, "Why did you break my carriage," before he struck any blow, and did not commence by a blow, then asking the question. He clearly stated that the above evidence, all of which he had heard at the examining court, was correct, with that trivial exception.

Immediately after the shooting Dr. Watson went to a neighboring justice of Rockbridge county, and surrendered himself. The coroner's inquest found that *William Medley came to his death by a pistol-shot fired by J. L. Watson*; whereupon the magistrate who acted as coroner required Dr. Watson to enter into a recognizance in the sum of \$1,000, to appear at a "called court," or examining court, to be convened at Lexington, on Thursday the 22d November. This court was composed of William White, Henry M. Hatcher, James G. Updike, Samuel Cowan, and John W. Mackey, "gentlemen justices," Henry M. Hatcher being chosen to preside. The court was occupied in the case until the 24th of the same month, Dr. Watson being charged before it with "*feloniously and unlawfully killing William Medley*," and on the last named day the following order was made: "On consideration, the court is of the opinion that the said James L. Watson be not further tried for the said offence, and he is ordered to be discharged from custody."

The evidence for the defence before the examining court, and also that proposed to be offered by Dr. Watson before the military commission, to sustain which I summoned the witnesses designated by him, was confined to the following points:

First. General good character.

Second. Provocation, by the statement of particulars of the carriage collision; and,

Third. His nearness of vision, which was said to prevent his taking accurate aim at the distance at which the shot was fired.

First. The good moral character of Dr. Watson in the community seems to have been well established. There was the evidence of colored as well as white witnesses to that point.

Second. I went with Dr. Watson, at his request, over the ground at which the collision occurred, and heard his full explanation of it; also examined witnesses on the subject. While in some doubt how far evidence on that point would be admitted by any intelligent court as defence on a charge of murder, yet it might be considered with reference to motive, and under my instructions to be liberal in allowing the accused the benefit of all testimony which could possibly affect his case favorably, I summoned all the witnesses he desired. I give the substance of this matter of defence as it was presented to the examining court, and as was developed by my investigation.

On Sunday, the 11th November, the wife and daughter of Dr. Watson proceeded to church, driven by a colored boy named Oler Cole, the carriage being drawn by mules. They were followed by the carriage of Mr. Echols, driven for the same destination by the deceased, William Medley, and containing the young daughter and step-daughter of Mr. Echols, under the charge of his seamstress, Miss Nancy Jane Childres. This carriage was drawn by horses, being a faster team than that of Dr. Watson's ahead of it. For a considerable distance the road is such that no vehicle can pass another travelling in the same direction. At a point in the road near the house of Mr. Adam Hickman Miss Childres suggested to the driver of Mr. Echols's carriage, the deceased William Medley, that he could probably pass the slower team there, and he turned to the left to do so. At that precise point where the turn was made, it seems that, with the co-operation of the slower team in front, Mr. Echols's carriage could have passed in safety. Miss Childres states that the ladies in Dr. Watson's carriage called to their driver not to let the other carriage pass, and that

thereupon the driver of the front carriage also turned slightly to the left. This is denied by Mrs. and Miss Watson. The result, however, was, that in a bad and narrow part of the road, somewhat beyond where the first attempt to turn out was made, the carriages came into collision, and the wheels were for a short time locked. The hub of Mr. Echols's carriage broke one of the spokes of Dr. Watson's. This was not with great violence, for the spoke was only pushed out of place and snapped, the two pieces still remaining attached to the hub and felloe when I saw the carriage a month afterward, and the adjacent spokes being apparently not touched. The carriages were soon separated, and that of Mr. Echols resumed its place in the rear until a more favorable place in the road allowed it to pass. Dr. Watson was absent from home at the time this occurred, and did not know of it until the succeeding night. He heard that Mr. Echols was absent on Wednesday morning, and not wishing to chastise one of his men in his absence, waited until the afternoon. He asserts that it was not only his right to beat the freedman Medley for what he considered a wanton and malicious insult and injury, but that he was bound in honor to do so. This is his defence, or rather exculpation. The cost of repairing his broken spoke would be about fifty cents.

Third. I must explain that I summoned the witnesses called for by Dr. Watson to prove his nearness of vision only in deference to your orders to be exceptionally liberal in giving him full benefit in that respect. I remonstrated with him against involving the government in that expense, because it would be obvious that myopia would be no defence before an intelligent court, however it might avail with ignorant justices or juries, explaining that he himself, or any one acquainted with optics, could well understand that a myope, though defective in distinguishing the features of a man at the distance at which the shot was fired, or in aiming at any particular button of his clothes, could perfectly well see and aim at the object. I was aware that persons fully as near-sighted as himself were good line shots without the aid of glasses, but, though unable to controvert me, he insisted upon the witnesses being summoned, which I finally concluded to do, for the reason above given, and also because the same evidence having been given at the examining court, it might be well to have it within the reach of the commission.

This explanation is made in justice to myself, as it seems futile to introduce evidence of defence on such a ground, especially when the object actually was hit with fatal accuracy.

I summoned twelve witnesses on these points, namely: character; the collision, including the condition of the road; and nearness of vision. While I distinctly stated to Dr. Watson that I did not desire him to enter into his line of defence to me, it was my duty not to put the government to expense in summoning wholly immaterial witnesses, or too many on the same point, for which reasons alone I inquired the general point proposed to be proven by each; neither did I converse with the witnesses for the defence, except in Dr. Watson's presence. My knowledge of their proposed testimony is derived from that given on the defence in the trial before the examining court, and from my general investigation of the subject. But I am confident that if all the evidence offered by the accused had been admitted by the commission, and all proved that he expected, the defence would have amounted to no more than I have stated.

Respectfully,

GARRICK MALLERY,

*Captain 43d United States Infantry, Inspector.*

Brevet Brigadier General O. BROWN,

*Acting Assistant Adjutant General.*

*List of witnesses summoned.*

*For the United States.*—Lewis P. Loudon, Philip Carter, (colored,) Samuel T. Chandler, Robert J. Echols, and David Carter, (colored.)

*For the defence.*—Adam Hickman, Oler Cole, (colored,) Edward Peck, John F. Greenlee, Sarah A. E. Watson, Fanny R. Watson, William S. Moffett, Lucian P. Grigsby, David E. Moore, Samuel Williams, James Carter, (colored,) and William Jordan.

Samuel T. Chandler and Robert J. Echols were also summoned on the part of the defence, as well as for the United States.

GARRICK MALLERY,  
*Captain United States Infantry, Inspector.*

On the 14th December the following petition was presented to Major General Schofield :

*To Major General Schofield, commanding district of Richmond, and assistant commissioner of the Freedmen's Bureau.*

The petition of ——— Watson, doctor of medicine, of the county of Rock-bridge, in the State of Virginia, respectfully sheweth that, on the — day of ——— in this year, he was arrested (upon his voluntary surrender) upon the charge of feloniously killing one ——— ———, a freedman, and committed for examination before an examining court in his county ; that on the — day of ——— he was regularly examined by the said court and acquitted, and discharged from further prosecution, as will appear by the record of the said court, a copy of which is herewith exhibited.

That the said court was a regularly constituted court, having jurisdiction, by the laws of Virginia, to hear and examine such cases, and to acquit and discharge the prisoner, or to send him on for further trial ; and its judgment of acquittal is final, so that the accused cannot "thereafter be questioned or tried for the same offence."—(See the Code of Virginia, chap. 205, p. 765, sec. 2.)

That on the — day of this month he was arrested for the same offence by an officer and detachment of men of the army of the United States, said to be acting under orders from you, and brought a prisoner to Richmond, for the purpose of being again tried for the same offence by a court-martial or military commission, as he has been informed.

Upon these facts your petitioner asks that you will order his immediate discharge from custody, for the following reasons, to wit :

First. By the termination of the war, and the proclamation of the President of the United States, peace prevails in Virginia, and martial law has ceased to exist, (2 Blackstone's Comm., 413, 414 ; 2 H. R. Repts., 98 ; 17 Repts., 493 ; Hallam's Const. History, 323, 330, 331,) and the execution of any man, under such circumstances, by a military tribunal is, by the authorities aforesaid, murder.

Second. By the Constitution of the United States, art. 3, sec. 2, par. 3, it is declared that "the trial of all crimes, except in the cases of impeachment, shall be by jury."

Third. By the Constitution, art. 1, sec. 8, par. 10, the power of Congress over crimes, except treason, is to "define and punish piracies and felonies committed on the high seas, and offences against the law of nations," and therefore it and its courts have no jurisdiction to try felonies committed on the land.

Fourth. By the fifth article of the amendments to the Constitution, it is declared that "no person shall be held to answer for a capital or otherwise infamous offence, unless on presentment or indictment of a grand jury, except in cases arising in the land and naval forces, or in the militia when in actual service in time of war or public danger, nor shall any person be subject, for the same offence, to be twice put in jeopardy of life or limb."

Fifth. By the sixth article of the amendments to the Constitution it is declared that "in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed."

Sixth. That the consequence of these principles and constitutional provisions is, that the courts of the United States cannot try a felony committed on the land in time of peace, and therefore no military court can, unless the offender be in the land or naval forces, or in the militia in actual service; and such trials can take place only in State courts, and by a jury.—(See Milligan's case in the Supreme Court of the United States.)

Seventh. That the Freedmen's Bureau bill and the civil rights bill do not, nor does either of them, change the rights of the accused or the power of the government in criminal cases: first, because Congress had no power to change them, having no right to alter or violate the Constitution; secondly, because they do not profess to effect such change, but relate entirely to civil proceedings and rights of living freedmen, or criminal cases in which live freedmen have been denied justice and a fair trial, and do not profess to govern the trial of white men for the benefit of dead freedmen; thirdly, because, at the most, the jurisdiction conferred by one or both of them is concurrent, and not exclusive, and the settled rule in such cases in the courts of the United States is, that the court first taking jurisdiction shall hold it to the conclusion of the case.

Eighth. Because the authority of the State court which acquitted your petitioner was as complete as that of any court can be, and if it may be reviewed by a military commission, so may the decision of any other court, in this State or any other State, and "chaos has come again," and the State governments are overthrown, for there can be no civil government without a judiciary.

Your petitioner therefore asks that he may be forthwith discharged.

———— WATSON,  
By his counsel, JAMES LYONS,  
OULD & CARRINGTON.

This was responded to as follows:

HEADQUARTERS DEPARTMENT OF THE POTOMAC,  
BUREAU OF REFUGEES, FREEDMEN AND ABANDONED LANDS,  
*Richmond, Virginia, December 14, 1866.*

GENTLEMEN: After fully considering your petition for the discharge of Dr. Watson, and maturely weighing the able arguments presented in support of that petition, I feel compelled to decline granting your request.

A military commission will be appointed to meet in the city of Richmond, at 10 o'clock a. m. on Wednesday, the 19th instant, for the trial of Dr. Watson.

All questions of law, as well as of facts, involved in the case may be presented for the consideration of that commission.

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

J. M. SCHOFIELD,

*Brevet Major General U. S. A., Assistant Commissioner.*

Messrs. LYON, AUGUST, and others,

*Counsel for Dr. James L. Watson, Richmond, Virginia.*

On the same day the following order was issued:

[Special Orders No. 186.—Extract.]

HEADQUARTERS DEPARTMENT OF THE POTOMAC,  
BUREAU OF REFUGEES, FREEDMEN AND ABANDONED LANDS,  
*Richmond, Virginia, December 14, 1866.*

II. Under authority of the act of Congress of July 16, 1866, a military commission is hereby appointed, to meet in the city of Richmond, Virginia, at

10 o'clock a. m. on the 19th of December instant, or as soon thereafter as practicable, for the trial of Dr. James L. Watson, and such other prisoners as may be properly brought before it.

*Detail of the commission.*

Brevet Brigadier General R. S. Granger, lieutenant colonel eleventh United States infantry.

Brevet Brigadier General Thomas H. Neill, major twentieth United States infantry.

Colonel O. B. Wilcox, twenty-ninth United States infantry.

Brevet Lieutenant Colonel F. M. Cooley, captain eleventh United States infantry.

Brevet Lieutenant Colonel George H. Higbee, captain eleventh United States infantry.

Brevet Major Thomas S. Dunn, captain twenty-first United States infantry.

Brevet Major W. G. Edgerton, captain twenty-ninth United States infantry.

Brevet Major H. R. Putnam, captain twenty-first United States infantry.

Brevet Major J. M. Goodhue, captain eleventh United States infantry.

Brevet Captain Richard Robins, first lieutenant eleventh United States infantry.

Brevet Captain E. S. Huntington, first lieutenant twenty-ninth United States infantry.

First Lieutenant E. B. Knox, twenty-first United States infantry.

First Lieutenant W. N. Sage, twenty-ninth United States infantry.

Brevet Major C. R. Layton, captain eleventh United States infantry, acting judge advocate department of the Potomac, judge advocate.

By command of Brigadier and Brevet Major General J. M. Schofield, United States army, assistant commissioner :

O. BROWN,

*Acting Assistant Adjutant General.*

On the 19th of December the commission appointed by the above order met and adjourned to await the attendance of witnesses. Immediately after the adjournment the following writ of *habeas corpus* was served upon Major General Schofield :

THE COMMONWEALTH OF VIRGINIA :

*To Major General J. M. Schofield, of the United States army, commanding at Richmond, and assistant commissioner of the Freedmen's Bureau, greeting :*

We command you that the body of James L. Watson, detained by you, and under your custody, as it is said, together with the day and cause of his being taken and detained, by whatsoever name he may be called, you have before the judge of our circuit court of the city of Richmond, at the State capitol in the said city, on to-day, at 2 o'clock p. m., to do, to submit to, and receive all and singular those things which shall then and there be considered of him in this behalf, and have then there this writ. Witness Benjamin Pollard, clerk of our said court at Richmond, the 19th day of December, 1866, and in the 91st year of the Commonwealth.

BENJ. POLLARD.

A copy teste :

GEO. L. CHRISTIAN,  
*Deputy Clerk.*

To this General Schofield on the same day made the following reply :

HEADQUARTERS DEPARTMENT OF THE POTOMAC,  
BUREAU OF REFUGEES, FREEDMEN AND ABANDONED LANDS,  
*Richmond, Va., December 19, 1866.*

*To the honorable Circuit Court of the city of Richmond, in session, Va. :*

I have the honor to acknowledge the receipt, through the hands of James Lyon, esq., of the writ of your honorable court, dated at the city of Richmond this 19th of December, 1866, commanding me to have the body of James L. Watson, now under my custody, before the judge of your honorable court to-day at 2 o'clock p. m., together with the cause of his being taken and detained. To which I have the honor to respectfully answer as follows, to wit :

James L. Watson was arrested by my order on the 4th day of December instant, and is now held for trial by military commission, under authority of the act of Congress of July 16, 1866, which act directs and requires the President, through the Commissioner and officers of the Freedmen's Bureau, to exercise military jurisdiction over all cases and questions concerning the free enjoyment of the right to have full and equal benefit of all laws and proceedings concerning personal liberty, personal security, &c., by all citizens, without respect to race or color, or previous condition of slavery of the States whose constitutional relations to the government of the United States have been discontinued by the rebellion, and have not been restored.

The above-named act of Congress has been officially published to the army by the President through the War Department, for the information and government of all concerned.

As an officer of the United States army, commanding the military department which includes the State of Virginia, and assistant commissioner of the Freedmen's Bureau for the same department, my duty requires me to decline compliance with the writ of your honorable court, and I do therefore respectfully decline to produce the body of the said James L. Watson.

I have the honor to be, very respectfully, your obedient servant, \*

J. M. SCHOFIELD,  
*Assistant Commissioner.*

On the same day also the following communication was sent to the major general Commissioner :

HEADQUARTERS DEPARTMENT OF THE POTOMAC,  
BUREAU OF REFUGEES, FREEDMEN AND ABANDONED LANDS,  
*Richmond, Va., December 19, 1866.*

GENERAL : I have further to report in regard to the Watson case. On the 14th instant a petition for his discharge from military custody was presented by his counsel and ably argued during the morning hours of two consecutive days. I declined to grant the petition, and ordered a military commission to try the case.

Wishing to leave the commission free to judge the questions of law as well as of fact involved in the case, I did not publish my reasons for refusing the petition of Dr. Watson's counsel, but simply made a memorandum of those reasons for the information and instruction of the judge advocate of the commission. I send you a copy of that memorandum, together with the petition and my answer.

The commission met this morning, but adjourned until to-morrow to admit the arrival of witnesses.

Immediately after the adjournment Dr. Watson's counsel presented to me a writ of *habeas corpus* from the circuit court of Richmond, which I have an-

swered, declining to comply. I send you a copy of the writ, together with my answer.

What further steps will be taken by Dr. Watson's counsel I am not advised, but will inform you of important facts as they transpire.

Very respectfully, your obedient servant,

J. M. SCHOFIELD,

*Brevet Major General U. S. A., Assistant Commissioner.*

Major General O. O. HOWARD,

*Commissioner, &c., Washington, D. C.*

MEMORANDA.

Dr. Watson was arrested and is held for trial under section 14 of the act of Congress of July 16, 1866, which gives to the President, through the commissioner and officers of the bureau, "military jurisdiction over all cases and questions concerning the free enjoyment" of the rights to have "full and equal benefit of all laws and proceedings concerning personal liberty, personal security," &c., by all citizens, without respect to race or color, or previous condition of slavery, of the States whose constitutional relations to the government have been suspended.

The allegation against Dr. Watson is that of felonious homicide, committed upon one \_\_\_\_\_, a freedman of Rockbridge county. It is further alleged that the examining court of that county, in spite of sufficient evidence to require the case to be brought before a jury according to law, refused to remand the prisoner for trial, and discharged him from custody, thus justifying the killing of a negro by a white man for reasons which would not be held to justify the killing of a white man by a negro, or one white man by another. If this allegation is well founded the action of the examining court, if final and without remedy, endangers the personal security of all people of color living within the jurisdiction of that court. Therefore the case of Dr. Watson belongs to one of the classes of cases over which the act of July 16 gives military jurisdiction.

It may be further said that the case in question belongs to the most important of those classes; for if the freedmen of Virginia are in danger of injustice, it is not so much on account of any inequality in the laws, nor yet from undue severity of the courts, but from individual violence and wrong. And it is not the end of criminal trial and punishment to do justice to the victim who has been slain, as the counsel would seem to insist, but to protect society. It is all the freedmen of Rockbridge county, if not all of the State of Virginia, whose rights are alleged to have been denied by the examining court in the case of Dr. Watson.

It is urged by the counsel that the discharge of Dr. Watson by the examining court is final, and a bar to further trial. This is true, so far as the courts of Virginia are concerned; but the law which makes such discharge final is a special and exceptional statute of Virginia, which is not binding upon a military court of the United States.

The prisoner was not tried and acquitted by a jury, but simply examined and discharged by a court having no authority to try and convict, and hence none to acquit, within the meaning of the Constitution of the United States or of the general law.

The argument of counsel against the constitutionality of the act of July 16, 1866, is based upon the simple denial of the ground assumed by Congress in passing the act.

By the rebellion and attempted secession of certain States, their constitutional relations to the government of the United States were destroyed, or suspended, and a state of war followed. This state of war was recognized and declared by Congress in accordance with the provision of the Constitution. The mili-

tary power of the rebellious States having been destroyed, the President proceeded to organize new State governments, which, having been accomplished, he declared the war at an end, and the civil law fully restored. Congress (on the other hand, assuming that peace could not be made without the consent of the Senate, at least, and that it devolved upon Congress instead of the President to fix the time when and conditions upon which the rebellious States should be restored to the exercise of the rights and privileges under the Constitution which they had discarded and forfeited) has declared that martial law still exists in those States, and has given military jurisdiction therein to certain military officers over a large class of cases.

The law giving this jurisdiction—that of July 16, 1866—has been officially published to the army by the President, through the War Department, “for the information and government of all concerned.” This official publication of the law “for the government of all concerned,” must be construed as waiving, by the Executive, any objections he may have had to the passage of the law on the ground of unconstitutionality, and makes it binding upon his military subordinates.

Nor does the fact that the special regulations (which seem to have been contemplated by Congress for the exercise of the military jurisdiction conferred by the law) have not been published make the law itself any less operative or binding upon the army. Martial law has been continuously in force over a large portion of the country during the past five years. The rules governing military courts have been long established and are well known; hence it was only necessary to publish the law, leaving it to be carried out under the rules already long established.

On the 22d December the following order was received from the Adjutant General’s office, War Department :

WAR DEPARTMENT, ADJUTANT GENERAL’S OFFICE,  
*Washington, December 21, 1866.*

GENERAL: The case of James L. Watson, on trial by a military commission, under your orders, and in respect to whom a writ of *habeas corpus* was applied for, has been submitted to the Attorney General, who reports to the President his opinion that the military commission ordered by you has not competent jurisdiction for the trial of Mr. Watson.

The President, therefore, directs that the commission be dissolved, and James L. Watson discharged from military custody without delay, and that you report your action to this department.

By order of the Secretary of War :

E. D. TOWNSEND,  
*Acting Assistant Adjutant General.*

Brevet Major General J. M. SCHOFIELD,  
*Commanding Department of the Potomac, Richmond, Va.*

The commission had adjourned to the 22d without proceeding to the arraignment of the accused, at the request of the latter and his counsel. The commission was dissolved and the prisoner discharged by the following order :

[Special Orders No. 190.]

BUREAU OF REFUGEES, FREEDMEN AND ABANDONED LANDS,  
HEADQUARTERS ASS’T COM’R, DEP’T OF THE POTOMAC,  
*Richmond, Virginia, December 22, 1866.*

I. By direction of the President of the United States the military commission appointed by Special Order No. 186, paragraph 2, from these headquarters, is hereby dissolved.

II. Dr. James L. Watson, citizen of Rockbridge county, Virginia, is, by direction of the President of the United States, discharged from the obligations of his parole and bond, given on the 8th day of December instant, and is released from further custody.

By command of Brevet Major General J. M. Schofield, assistant commissioner :

O. BROWN,  
*Acting Assistant Adjutant General.*

On the same day the following communication was sent to General E. D. Townsend, assistant adjutant general :

HEADQUARTERS DEPARTMENT OF THE POTOMAC,  
BUREAU REFUGEES, FREEDMEN AND ABANDONED LANDS,  
*Richmond, Virginia, December 22, 1866.*

GENERAL: I have the honor to acknowledge the receipt of your communication of the 21st instant, conveying the order of the Secretary of War, by direction of the President, that the military commission appointed by me for the trial of James L. Watson be dissolved, and that James L. Watson be discharged from military custody.

I have accordingly dissolved the commission and discharged Mr. Watson.

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

J. M. SCHOFIELD,  
*Brevet Major General U. S. A., Assistant Commissioner.*

Gen. E. D. TOWNSEND,  
*War Department, Washington, D. C.*

The record of the military commission, appointed and dissolved as above stated, is hereto appended; also a copy of charge and specifications which had been served upon the accused, and of the pleas which his counsel had sent to the judge advocate.

*Proceedings of a military commission which convened at Richmond, Virginia, by virtue of the following special order.*

[Special Order No. 186.—Extract.]

HEADQUARTERS DEPARTMENT OF THE POTOMAC,  
BUREAU OF REFUGEES, FREEDMEN AND ABANDONED LANDS,  
*Richmond, Virginia, December 14, 1866.*

II. Under authority of the act of Congress of July 16, 1866, a military commission is hereby appointed to meet in the city of Richmond, Virginia, at 10 o'clock a. m. on the 19th of December, instant, or as soon thereafter as practicable, for the trial of Dr. James L. Watson, and such other prisoners as may be properly brought before it.

*Detail for the commission.*

Brevet Brigadier General R. S. Granger, lieutenant colonel eleventh United States infantry.

Brevet Brigadier General Thomas H. Neill, major twentieth United States infantry.

Colonel O. B. Wilcox, twenty-ninth United States infantry.

Brevet Lieutenant Colonel F. M. Cooley, captain eleventh United States infantry.

Brevet Lieutenant Colonel George H. Higbee, captain eleventh United States infantry.

Brevet Major Thomas S. Dunn, captain twenty-first United States infantry.

Brevet Major W. G. Edgerton, captain twenty-ninth United States infantry.

Brevet Major H. R. Putnam, captain twenty-first United States infantry.

Brevet Major J. M. Goodhue, captain eleventh United States infantry.

Brevet Captain Richard Robins, first lieutenant eleventh United States infantry.

Brevet Captain E. S. Huntington, first lieutenant twenty-ninth United States infantry.

First Lieutenant E. B. Knox, twenty-first United States infantry.

First Lieutenant W. N. Sage, twenty-ninth United States infantry.

Brevet Major C. R. Layton, captain eleventh United States infantry, acting judge advocate department of the Potomac, judge advocate.

By command of Brevet Major General J. M. Schofield, assistant commissioner :

O. BROWN,

*Acting Assistant Adjutant General.*

FIRST DAY.

COURT-ROOM OF UNITED STATES COURT,  
*Richmond, Virginia, December 19, 1866—10 a. m.*

The commission met pursuant to the foregoing special order.

Present: Brevet Brigadier General R. S. Granger, lieutenant colonel eleventh United States infantry; Brevet Brigadier General Thomas H. Neill, major twentieth United States infantry; Colonel O. B. Wilcox, twenty-ninth United States infantry; Brevet Lieutenant Colonel F. M. Cooley, captain eleventh United States infantry; Brevet Lieutenant Colonel George H. Higbee, captain eleventh United States infantry; Brevet Lieutenant Colonel Thomas S. Dunn, captain twenty-first United States infantry—styled in the order convening the commission brevet major; Brevet Major J. M. Goodhue, captain eleventh United States infantry; Brevet Major W. G. Edgerton, captain twenty-ninth United States infantry; Brevet Captain E. S. Huntington, first lieutenant twenty-ninth United States infantry; Brevet Captain Richard Robins, first lieutenant eleventh United States infantry; First Lieutenant E. B. Knox, twenty-first United States infantry; First Lieutenant W. N. Sage, twenty-ninth United States infantry; Brevet Major C. R. Layton, captain eleventh United States infantry, acting judge advocate department of the Potomac, judge advocate.

Absent, Brevet Major H. R. Putnam, captain twenty-first United States infantry. Cause of absence not known.

The members present took their seats according to brevet rank and in the order above named.

The judge advocate stated that he was not prepared to present to-day any business for the consideration of the commission. Whereupon the commission adjourned until to-morrow morning, the 20th instant, at half past ten o'clock.

C. RODNEY LAYTON,

*Captain 11th U. S. Inf., Brevet Major U. S. A., Acting Judge Advocate  
Department of the Potomac, Judge Advocate.*

SECOND DAY.

COURT-ROOM OF UNITED STATES COURT,  
*Richmond, Va. December 20, 1866—10.30 a. m.*

The commission met pursuant to adjournment.

Present: Brevet Brigadier General R. S. Granger, lieutenant colonel eleventh United States infantry; Brevet Brigadier General Thomas H. Neill, major twentieth United States infantry; Colonel O. B. Wilcox, twenty-ninth United States

infantry; Brevet Lieutenant Colonel F. M. Cooley, captain eleventh United States infantry; Brevet Lieutenant Colonel George H. Higbee, captain eleventh United States infantry; Brevet Lieutenant Colonel Thomas S. Dunn, captain twenty-first United States infantry—styled in the order convening the commission brevet major; Brevet Major J. M. Goodhue, captain eleventh United States infantry; Brevet Major W. G. Edgerton, captain twenty-ninth United States infantry; Brevet Captain E. S. Huntington, first lieutenant twenty-ninth United States infantry; Brevet Captain Richard Robins, first lieutenant eleventh United States infantry; First Lieutenant E. B. Knox, twenty-first United States infantry; First Lieutenant W. N. Sage, twenty-ninth United States infantry; Brevet Major C. R. Layton, captain eleventh United States infantry, acting judge advocate department of the Potomac, judge advocate.

Absent, Brevet Major H. R. Putnam, captain twenty-first United States infantry. Cause of absence not known.

Mr. T. F. Williams, a reporter appointed by the judge advocate to record the proceedings of and testimony to be taken before the commission, appeared in court and was duly sworn to the faithful performance of his duty.

The prosecution being ready to proceed with the case against Dr. James L. Watson, then in court, for whose trial the commission had been convened, the prisoner presented a written application to the commission, of which the following is a copy, the original paper, marked A, being appended to these proceedings:

UNITED STATES }  
*vs.* }  
 JAMES L. WATSON. }

The prisoner asks a continuance of this case until Saturday next, to enable him to prepare for his defence, which he has not had time to do since the copy of the charges was served upon him last night. This application is made without waiver of objection hereafter to the jurisdiction of this court.

JAS. L. WATSON.

The commission was cleared for deliberation upon the application of the accused. The commission being again opened, it was announced by the judge advocate that the application of the prisoner had been granted. There being then no further business for the consideration of the commission, the commission adjourned (11.30 a. m.) until Saturday morning, the 22d instant, at half past ten o'clock.

C. RODNEY LAYTON,  
*Captain 11th U. S. Inf., Brevet Major U. S. A.,  
 Acting Judge Advocate Department of the Potomac, Judge Advocate.*

THIRD DAY.

COURT-ROOM OF THE UNITED STATES COURT,  
*Richmond, Virginia, December 22, 1866—10.30 a. m.*

The commission met pursuant to adjournment.

Present: Brevet Brigadier General R. S. Granger, lieutenant colonel eleventh United States infantry; Brevet Brigadier General Thos. H. Neill, major twentieth United States infantry; Colonel O. B. Wilcox, twenty ninth United States infantry; Brevet Lieutenant Colonel F. M. Cooley, captain eleventh United States infantry; Brevet Lieutenant Colonel Geo. H. Higbee, captain eleventh United States infantry; Brevet Lieutenant Colonel Thomas S. Dunn, captain twenty-first United States infantry; Brevet Major J. M. Goodhue, captain eleventh United States infantry; Brevet Major H. R. Putnam, captain

twenty-first United States infantry; Brevet Major W. G. Edgerton, captain twenty-ninth United States infantry; Brevet Captain E. S. Huntington, first lieutenant twenty-ninth United States infantry; Brevet Captain Richard Robins, first lieutenant eleventh United States infantry; First Lieutenant E. B. Knox, twenty-first United States infantry; First Lieutenant W. N. Sage, twenty-ninth United States infantry; Brevet Major C. R. Layton, captain eleventh United States infantry, acting judge advocate department of the Potomac, judge advocate.

After the roll had been called the commission was closed for deliberation.

When it had been again opened, the proceedings of the last meeting were read and approved.

The judge advocate then presented and read the special order, of which the following is a copy, the original order, marked B, being appended to these proceedings:

[Special Orders No. 190.—Extract.]

BUREAU OF REFUGEES, FREEDMEN AND ABANDONED LANDS,  
HEADQUARTERS ASSISTANT COMMISSIONER, DEPARTMENT POTOMAC,  
*Richmond, Virginia, December 22, 1866.*

I. By direction of the President of the United States the military commission appointed by Special Order No. 186, Par. 1, U. S., from these headquarters, is hereby dissolved.

By command of Brevet Major General J. M. Schofield, assistant commissioner.

O. BROWN,

*Acting Assistant Adjutant General.*

The commission then, on motion, took a recess for half an hour, to enable the judge advocate to record the proceedings of to-day's session.

At the expiration of the recess the commission reassembled, when the proceedings were read and approved.

The commission then, on motion, and in accordance with the above order, adjourned *sine die*.

C. RODNEY LAYTON,  
*Captain 11th U. S. Inf., Brevet Major U. S. A.,*  
*Acting Judge Advocate Department of the Potomac, Judge Advocate.*

R. S. GRANGER,  
*Brevet Brig. Gen. and Lieut. Col. United States Infantry.*

*Charge and specifications preferred against Dr. James L. Watson, citizen.*

CHARGE—murder.

*Specification 1.* In this: that he, Dr. James L. Watson, heretofore, to wit, on the fourteenth day of November, in the year of our Lord one thousand eight hundred and sixty-six, at Rockbridge county, in the State of Virginia, in which said State the ordinary course of judicial proceedings had been interrupted by the rebellion, and before the same has been fully restored, and whose constitutional relations to the government had been practically discontinued by the rebellion, and before said State has been restored in such relations, and has been duly represented in the Congress of the United States, did, then and there, feloniously, wilfully, and of his malice aforethought, discharge a loaded pistol, then held in the right hand of him, the said Dr. James L. Watson, the same being loaded with gunpowder and a leaden ball, against and upon the person of William Medley, a freedman, then residing in said Rockbridge county, and State of Virginia, and did then and there inflict upon him, the said William Medley, a mortal wound, whereof afterwards, to wit, on the fifteenth day of November, in the year aforesaid, at the county and in the State afore-

said, the said William Medley died, and thereby and there the said Dr. James L. Watson did, unlawfully and of malice aforethought, him, the said William Medley, kill and murder.

*Specification 2.* In this: that heretofore, to wit, on the fourteenth day of November, in the year of our Lord one thousand eight hundred and sixty-six, at Rockbridge county, in the State of Virginia, a State where the ordinary course of judicial proceedings had been interrupted by the rebellion, and before the same has been fully restored, and whose constitutional relations to the government had been practically discontinued by the rebellion, and before the said State has been restored in such relations, and duly represented in the Congress of the United States, and where military protection and military jurisdiction was and is extended, and was and is still in force in said State, over all cases and questions concerning the free enjoyment of the immunities and rights secured to all the citizens of said State, so then in rebellion, by an act of Congress in such case made and provided, dated July 16, 1866, Dr. James L. Watson, citizen, on the said fourteenth day of November, eighteen hundred and sixty-six, in the county aforesaid, in and upon the body of one William Medley, a man of color, in the peace of the State of Virginia, a State so then in rebellion as aforesaid, and not yet restored in its constitutional relations to the government, then and there being, feloniously, wilfully, and of his malice aforethought, did make an assault, and the said Dr. James L. Watson, with a certain pistol then and there charged with gunpowder and a leaden bullet, which said pistol he, the said Dr. James L. Watson, in his right hand, then and there had and held, then and there feloniously, wilfully, and of his malice aforethought, did discharge and shoot off, to, against, and upon the said William Medley, and the said Dr. James L. Watson, with the leaden bullet aforesaid, out of the pistol aforesaid, then and there, by force of the gunpowder aforesaid, by the said Dr. James L. Watson discharged and shot off, as aforesaid, then and there feloniously, wilfully, and of his malice aforethought, did strike, penetrate, and wound him, the said William Medley, in and upon the back of him, the said William Medley, giving to him, the said William Medley, then and there, with the leaden bullet aforesaid, so as aforesaid discharged and shot out of the pistol aforesaid, by the said Dr. James L. Watson, in and upon the back of him, the said William Medley, one mortal wound, of which said mortal wound he, the said William Medley, soon thereafter, to wit, on the fifteenth day of November, eighteen hundred and sixty-six, died; and the said Dr. James L. Watson, him, the said William Medley, in the manner and by the means aforesaid, feloniously, wilfully, and by the malice aforethought, did kill and murder, against the peace and dignity of the said State of Virginia, not yet restored to its constitutional relations to the government, and by virtue of the said act of Congress, dated July 16, 1866, being subject to and under military jurisdiction. And although after the said murder, so as aforesaid committed by the said Dr. James L. Watson, and before the arrest of the said Dr. James L. Watson by the military authorities of the United States, an examination of said case was held and had by an examining court of Rockbridge county, in the State of Virginia, to wit, on the twenty-second, twenty-third, and twenty-fourth days of November, in the year of our Lord one thousand eight hundred and sixty-six, under and according to the laws of said State in such case made and provided, and although by a provision of the law of the State of Virginia, requiring that when, on such examination before said court, it appeared that a felony had been committed, and that there was probable cause to charge the accused therewith, the court should remand him for trial before the circuit court having cognizance of the case; and although proof of the felony aforesaid was made before said court, and probable cause shown to charge the said Dr. James L. Watson therewith, and cause him, the said Dr. James L. Watson, *therewith, and cause him, the said Dr. James L. Watson,* to be remanded to the circuit court of the county of

Rockbridge, therein to be indicted and tried for the aforesaid offence; yet the said court, in disregard of the proof on said examination, did fail to enforce the law of said State, but did discharge him, the said Dr. James L. Watson, in violation of the same, there being, then and there, plenary proof of the offence whereof the said Dr. James L. Watson was examined by the said court. Whereby the said court did fail to secure the equal benefit of all laws concerning personal liberty and personal security to the citizens at large of said State, and of the county of Rockbridge in particular, and in violation of the said act of Congress.

*Specification 3.* In this: that he, Dr. James L. Watson, citizen, did, on the fourteenth day of November, in the year of our Lord one thousand eight hundred and sixty-six, in the county of Rockbridge and State of Virginia, in and upon the body of William Medley, a man of color, commit an assault and battery, and did beat, shoot, and wound him, the said William Medley, of which said beating, shooting, and wounding, he, the said William Medley, presently died, and the said Dr. James L. Watson, then and there, in the county and State aforesaid, him, the said William Medley, did kill and murder in his malice aforethought.

C. RODNEY LAYTON,

*Captain 11th U. S. Inf., Brevet Major U. S. A.,  
Acting Judge Advocate Dep't of the Potomac, Judge Advocate.*

Witnesses: Louis P. Loudon, Philip Carter, (colored,) David Carter, (colored,) Robert J. Echols, Dr. Samuel J. Chandler.

*Plea.*

United States *vs.* James L. Watson.

The said James L. Watson, protesting that he is not guilty of the murder and felony in the said charges and specifications alleged against him, for plea in this behalf says: That he ought not to be tried now here by this military commission and court, because, as he here avers, being a citizen of Virginia not in the army or navy of the United States, or in the militia in active service, he was, on the fourteenth day of November, in this year one thousand eight hundred and sixty-six, arrested and committed for examination, and tried before a duly constituted court of the county of Rockbridge in the State of Virginia, according to the laws of Virginia for the trial of murder, in feloniously and maliciously killing one William Medley, a freedman, by shooting him with a pistol, loaded with gunpowder and a leaden ball, on the fourteenth of the said month; and afterwards, on the twenty-fourth day of the said month of November, by the said court duly examined and finally acquitted of the said murder and felony, as appears by the record of the said court now remaining in the said court, and which is in the words and figures following, to wit, (here insert the record;) and the said James L. Watson says that he, the said William Medley, mentioned in the specifications aforesaid, is the same William Medley mentioned in the record of the said court, and the felony and murder charged in the said charge and specification is the same identical felony and murder mentioned and charged in the said record of the said court of Rockbridge county, of which felony and murder he, the said Watson, was finally acquitted as aforesaid, by the said court in the manner aforesaid, according to the laws of Virginia, which in such cases were and are the supreme law; and the said Watson says that upon the said judgment, acquittal was so rendered as aforesaid by the said court in the said county of Rockbridge. Martial law did not prevail in the said county of Rockbridge, and the action and authority of the civil and municipal courts of the said county were not then suspended by the late rebellion, or any other cause, and the influence, authority, and protection of the laws of

Virginia and the Constitution of the United States had not been withdrawn from the citizens and court of the county of Rockbridge, and were not at that time, to wit, on the said twenty-fourth day of November, in the year one thousand eight hundred and sixty-six, repealed, abrogated, or suspended.

Wherefore, he prays judgment of this military commission and court whether the United State shall be allowed to prosecute, impeach, or charge him, on account of the said supposed murder and felony in the said charge and specifications contained, alleged, and specified, and whether he ought further to answer the same, and that he may be dismissed by this military commission and court without further delay.

*Plea 2.*

United States *vs.* James L. Watson.

The said James L. Watson, by protestation, denying that he is guilty of the murder and felony in the said charge and specification alleged against him, for plea in his behalf says, that he ought not to be tried now here by this military commission and court, because, he says, he is a citizen of Virginia, in no way, now or at any time heretofore, connected with the army or the navy of the United States, or the militia in active service, and by the Constitution of the United States, article third, section two, paragraph third, he is entitled to be tried by a jury, and by the sixth amendment to it, to a public trial by an impartial jury, and therefore he prays judgment of this military commission and court, without a jury, and that he may be immediately dismissed from the same.

HEADQUARTERS DEPARTMENT OF THE POTOMAC,  
BUREAU OF REFUGEES, FREEDMEN AND ABANDONED LANDS,  
*Richmond, Virginia, January 5, 1867.*

I certify that the foregoing is a correct transcript from the record of this office.

O. BROWN,  
*Brevet Brigadier General Volunteers,  
Acting Assistant Adjutant General.*

HEADQUARTERS BUREAU OF REFUGEES, FREEDMEN  
AND ABANDONED LANDS, STATE OF TEXAS,  
*Galveston, December 18, 1867.*

GENERAL: I have the honor to inclose copies of papers and my letter to the military commander of the district. I think they will fully give you an understanding of the case. You will observe that the military commander sustains my course.

As soon as I obtain Judge Baldwin's (United States district attorney) written opinion, (I know what it is, and that he will say that the civil courts are obstructed,) I will forward it.

I have respectfully to add that I am of the opinion that this is but one of many cases of a like character that must arise in Texas. Nothing but the strong military arm of the government will keep the people of many sections of this State from committing aggravated violence on the freedmen or Union citizens.

I have the honor to be, general, very respectfully, your obedient servant,

S. H. LATHROP,  
*Captain 35th infantry, Brevet Major United States Army,  
Acting Assistant Commissioner.*

Major General O. O. HOWARD,  
*Commissioner, Washington, D. C.*

HEADQUARTERS BUREAU OF REFUGEES, FREEDMEN  
AND ABANDONED LANDS, STATE OF TEXAS,  
*Galveston, December 17, 1867.*

SIR: I have the honor to enclose papers relating to the retention, by the military authorities, of a colored man, (Dick Perkins.) Copies of my letter and telegrams to Colonel De Gress, at Houston, give the result of my action in the matter. The course of the civil authorities in contemplating turning Perkins over to the man with whom the difficulty occurred is so extraordinary, and the cruel treatment which he received, as is fully set forth in the affidavits of Surgeons Coffman and Baird, United States surgeons at Houston, appears to me to be ample reasons for the course of Colonel De Gress.

There is no doubt in my mind, or in that of any United States officers who are cognizant of the facts and know the course of civil justice in Texas, but that the freedman Perkins would have been made away with somewhere on the road; at any rate he would never have reached the jail in Grimes county alive.

I know no reason why the man who had the difficulty with Perkins could not have been arrested and held on the affidavit of Perkins as well as Perkins on his. I deem it would require sound judgment and the presence of both parties to decide on the truth of testimony so much at variance as these two affidavits are. Certainly in the eyes of the law one is as good as the other.

I would respectfully recommend that Perkins be turned over to the United States court for trial or keeping, or that he be held by the United States military authorities until they are satisfied that the criminal courts of the country are uninterrupted. At the present time I am confident that his trial by the county courts would be a farcical proceeding, and that justice would not be done to either of the parties.

I would respectfully state that I have submitted the facts to Judge Baldwin, the United States district attorney, and will forward his decision when received. Perkins is now in hospital at Houston under guard. I respectfully ask further instructions in this case.

S. H. LATHROP,  
*Capt. 35th Inf., Bvt. Maj. U. S. A., Act. Ass't Com'r.*  
ACTING ASSISTANT ADJUTANT GENERAL,  
*District of Texas, Galveston, Texas.*

Official: S. H. LATHROP,  
*Capt. 35th Inf., Bvt. Maj. U. S. A., Act. Ass't Com'r.*

OFFICE SUB-ASSISTANT COMMISSIONER BUREAU OF  
REFUGEES, FREEDMEN AND ABANDONED LANDS, STATE OF TEXAS,  
*Houston, Texas, December 14, 1866.*

COLONEL: I reported to you verbally last Monday that a freedman who had been wounded by his former master some six weeks since, and who was confined in jail three or four days after the shooting, until he made his escape five weeks after with a United States soldier who was confined in the same jail, and that he was hunted with blood-hounds after escaping, had been sent to me by Captain Archer, sub-assistant commissioner of Hempstead. I sent this man to the freedmen's hospital at this place, but yesterday his former master tracked him here and had him arrested. Please find enclosed an official copy of an affidavit made by him before the city recorder, by which you will see that this freedman was turned over to the tender mercies of his deadly enemy, who had at one time attempted to kill him. Here are the acts of the civil authorities laid bare. First, arrest a man without a warrant, confine him in the calaboose with irons around his legs, and handcuffed, and then turn him over to a citizen,

and that citizen his worst enemy. After the facts in this case as to the arrest were reported to me, I sent Dr. Baird, acting assistant surgeon, in charge of freedmen's hospital, to the city marshal to see on what charges this man was arrested and taken from under my protection. Mr. Darwin, the former master of the freedman, answered my demand personally by showing the affidavit he had made, but at the same time claiming that he had not yet taken charge of this freedman. If he had not at that time, he is certainly guilty of perjury. I took a copy of this affidavit and sent a written communication to the city marshal, of which the enclosed is a copy, and at the same time sent a request to the post commander, asking that one non-commissioned officer and ten men be ordered to report to me, so that in the event the marshal refused to deliver this freedman to me I could enforce my demand. The city marshal called at my office and wished to know how far I intended to interfere in this matter. I explained to him that this freedman was sent to my office by Captain Archer, and that he was, when arrested, under my protection. The marshal replied that he had concluded not to deliver this freedman up to Mr. Darwin, but to hold him until the sheriff of the county in which the shooting took place, and from where he escaped, should call for him; that it must be immaterial to me who held him until that time. I told him it was of great consequence to me who held him, and I would adhere to my first demand. At this time the sergeant came in and said he was ordered to report to me with ten men. The city marshal at once agreed to let me have the freedman, but I would not for one moment attribute the release of the freedman by the city marshal to the appearance of the squad, *as civil authority is supreme in this State*. I then ordered the sergeant to take his guard and go with the marshal and receive from him a freedman named Dick Perkins, and bring him to my office, and not allow any posse to take him away either by a pretended authority or force. The sergeant complied with this order. Captain Pease, commanding this post, then gave me a guard to place my hospital to protect this man. I am convinced that had it not been for the prompt manner in which Captain Pease furnished me the one sergeant and ten men, Mr. Darwin and his prisoner would have gone on the train, *and I of course would not for a moment suppose* but what Mr. Darwin would have taken the *best* of care of him and delivered him *safely* at the county jail either *dead* or *alive*.

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

J. C. DE GRESS,

*Sub-Assistant Commissioner.*

Colonel H. A. ELLIS,

*Acting Assistant Adjutant General.*

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OFFICE SUB-ASSISTANT COMMISSIONER BUREAU OF REFUGEES,  
FREEDMEN AND ABANDONED LANDS, STATE OF TEXAS,  
*Houston, Texas, December 15, 1866.*

MAJOR: I have the honor to respectfully state that the sheriff of Harris county served on me a warrant and demanded, in the name of the State of Texas, that Dick Perkins be turned over to him. I refused to deliver him, in the name of the United States, on the ground that the surgeon of this post had made an examination of the boy and reported that he was not in a condition to be removed, and also that I could not deliver him without instructions from your headquarters. Please find enclosed copy of report of the surgeon. It is my opinion that this boy should be held, and can be under the provisions of the civil rights bill, as he was thrown into jail and his life endangered by not receiving proper medical attention. Further, that he was put in irons and handcuffed on an illegal affidavit and delivered into the hands of a citizen, and that

citizen his worst enemy. I think this man should now be brought before the United States district court and tried there on whatever charge they wish to prefer.

I have the honor to be, very respectfully, your obedient servant,

J. C. DE GRESS,

*Sub-Assistant Commissioner.*

Major S. H. LATHROP,

*Acting Ass't Commissioner Bureau of Refugees,*

*Freedmen and Abandoned Lands.*

HOUSTON, TEXAS, *December 15, 1866.*

COLONEL: In compliance with an order from post headquarters, I have the honor to report having made an examination of said negro. I found a suppurating wound and a pistol ball lodged in the immediate region of the hip joint, which I removed by making an incision one inch and a half in length. The ball had entered immediately above pouparts ligaments, passing over crest of ilium. The delay in performing this operation has endangered the hip joint, and at this time will not admit of his being removed from hospital, and in my opinion rendered so by not receiving the proper surgical attention immediately after being wounded.

VICTOR H. COFFMAN,

*Acting Assistant Surgeon.*

Colonel J. C. DE GRESS,

*Sub-Ass't Commissioner Bureau of Refugees,*

*Freedmen and Abandoned Lands.*

Official copy :

J. C. DE GRESS,

*Sub-Assistant Commissioner.*

STATE OF TEXAS, *Harris County :*

Personally appeared before me, O. Darwin, and made oath that the negro man named Dick is the same that did about six weeks ago enter Mr. Stracor's store, at the Retreat, in Grimes county, in said State, and shot me with a pistol, with the intent to murder me. The said negro man was arrested in the city of Houston, and placed in my possession by the civil authorities.

O. DARWIN.

Sworn and subscribed before me this 13th day of December, 1866.

Q. B. J. HADLEY,

*C. R. and ex-officio J. P.*

Official copy :

J. C. DE GRESS,

*Sub-Assistant Commissioner.*

HEADQUARTERS BUREAU OF REFUGEES,  
FREEDMEN AND ABANDONED LANDS, STATE OF TEXAS,

*Galveston, December 15, 1866.*

I do hereby certify that Dick Perkins (colored) at the time he was arrested was under my charge at freedmen's hospital and suffering severely from effects of wound received, and was not in a condition to be removed.

THOMAS C. BAIRD,

*Acting Assistant Surgeon United States Army.*

Personally appeared before me at my office, at Houston, Texas, Dick Perkins, (colored,) who, after having been duly sworn, deposes and says that he notified Captain Byron Porter, then agent of the Freedmen's Bureau at this point, that Mr. Darwin had threatened his life, and that he was afraid to go to his late home near Courtney, Grimes county, Texas; to which Captain Porter replied that he did not have any fears, that the said Darwin certainly would not shoot him, and that I could go home whenever I wanted; upon which I started to Courtney, and from there to my home. Three days after which, at a place called Retreat, in Grimes county, and while in Mr. Stracor's store for the purpose of buying shot, I saw my former master, who was in said store, and who said to me, "How do you do, in this lower part of the country?" to which I replied, "Tolerable, I thank you." In the mean time Mr. Stracor had closed and bolted the door behind me. After saying this I turned to Mr. Stracor, who had turned around for the shot, and not paying any attention to Mr. Darwin, the first thing I knew of Mr. Darwin's intention to shoot me was by hearing the report and feeling a pain where the ball entered my body. After he shot me I turned towards him and commenced shooting at him, and fired (4) four shots. He, however, was coming towards me, and when close to me, and had taken hold of me, also the merchant, Mr. Stracor, but I succeeded in getting my arms around both of them and their backs towards me, holding with my hands the pistol in the hands of Mr. Darwin. Mrs. Stracor had by this time come into the store and asked that the door be opened, to which they replied, "do not open the door," but she opened the door and I walked towards said door, and when near enough I pushed the said Darwin and Stracor from me, and started backwards out of the door, but not before Mr. Darwin had struck me with his pistol over my head, and I kept from falling by holding to the door-facing. I then ran for my horse, and picked up my shot-gun, which was lying near my horse, and also turned to look for my hat. Mr. Stracor had got to me by this time and taken hold of me and my gun, and I only succeeded in getting on my horse and away from him by his wife's pulling him from me. I ran at once to Mr. Whiteside's, who used to be an agent of the Freedmen's Bureau, for the purpose of getting protection. Mr. Whiteside was not at home, but some men there carried me to an out-house, where I remained two days. After that some strange men took me to Mr. Grissoms, where I remained one night. The next morning I was taken by other strange men to the jail at Anderson, Grimes county, where I was kept six weeks. While in there two United States soldiers were confined in the same jail, and I succeeded in making my escape with one of these soldiers. I reported to Captain Archer, at Hempstead, who sent me to Houston, and I was there placed in the hospital. This morning I was arrested by policeman Fitzgerald, and placed in confinement in the calaboose, with irons on my legs and hands handcuffed. While in jail at Anderson my wound was not dressed, nor was I ever brought before any tribunal.

his  
DICK + PERKINS.  
mark.

Witness: J. A. WARREN.

Sworn and subscribed to this 13th day of December, 1866.

J. C. DE GRESS,  
*Sub-Assistant Commissioner.*

Official:

J. C. DE GRESS,  
*Sub-Assistant Commissioner.*

OFFICE SUB-ASSISTANT COMMISSIONER BUREAU OF  
REFUGEES, FREEDMEN AND ABANDONED LANDS, STATE OF TEXAS,  
*Houston, December 14, 1866.*

COLONEL: The sheriff of Grimes county called at my office at one o'clock this p. m., and demanded, in the name of the State of Texas, of me Dick Perkins, referred to in my communication of to-day. I refused to deliver the man, on the ground that while in prison last no medical attention was given him, and that I proposed to keep him until he was well, and that I had referred the matter to your headquarters. I do not think that it would be advisable to give up this man at this moment, if at all.

I am, colonel, very respectfully your obedient servant,  
J. C. DE GRESS,  
*Sub-Assistant Commissioner.*

Colonel H. A. ELLIS,  
*A. A. A. G., Galveston.*

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OFFICE SUB-ASSISTANT COMMISSIONER BUREAU OF  
REFUGEES, FREEDMEN AND ABANDONED LANDS, STATE OF TEXAS,  
*Houston, December 13, 1866.*

SIR: You have in your custody Dick Perkins (colored) arrested by you this day. I have the honor to request that the said Dick Perkins be turned over to me at once, when he will be held subject to orders of the proper authorities.

I am, sir, very respectfully,

J. C. DE GRESS,  
*Sub-Assistant Commissioner.*

Mr. LORD, *Marshal City of Houston.*

Official copy :

J. C. DE GRESS,  
*Sub-Assistant Commissioner.*

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HEADQUARTERS BUREAU OF REFUGEES, FREEDMEN  
AND ABANDONED LANDS, STATE OF TEXAS,  
*Galveston, December 15, 1866.*

Colonel J. C. DE GRESS, *Houston, Texas:*

I have to acknowledge the receipt of papers in relation to the colored man Dick Perkins, and to inform you that they have been submitted to the military commandant, and your action approved.

Under instructions from the War Department, September 19, 1866, such cases are subject to the cognizance of the bureau or military authorities.

It would perhaps be advisable to furnish the civil authorities with act of Congress of July 16, 1866, and invite their attention to paragraph 14.

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

S. H. LATHROP,  
*Captain 35th Infantry, Bvt. Maj. U. S. A., Acting Ass't Com.*

Official copy :

S. H. LATHROP,  
*Captain 35th Infantry, Bvt. Maj. U. S. A., Acting Ass't Com.*

[Telegram.]

HEADQUARTERS BUREAU OF REFUGEES,  
FREEDMEN AND ABANDONED LANDS,  
*Galveston, Texas, December 15, 1866.*

Colonel J. C. DE GRESS, *Houston, Texas :*

You will hold the boy Perkins until further orders.

S. H. LATHROP,  
*Acting Assistant Commissioner.*

Official :

S. H. LATHROP,  
*Captain 35th Infantry, Bvt. Maj. U. S. A., Acting Ass't Com.*

NAVY DEPARTMENT,  
*Washington, January 24, 1867.*

SIR : I have the honor to acknowledge the receipt from you of a copy of the resolution of the Senate of the 8th instant, requesting the President "to inform the Senate if any violations of the act entitled 'An act to protect all persons in the United States in their civil rights and furnish the means of their vindication,' have come to his knowledge; and if so, what steps, if any, have been taken by him to enforce the law and punish the offenders," and to reply thereto that this department is not aware of any violations of the act referred to.

Very respectfully,

GIDEON WELLES,  
*Secretary of the Navy.*

The PRESIDENT.

DEPARTMENT OF THE INTERIOR,  
*Washington, D. C., January 24, 1867.*

SIR : I have received, by reference, a copy of Senate resolution requesting the President "to inform the Senate if any violations of the act entitled 'An act to protect all persons in the United States in their civil rights and furnish the means of their vindication,' have come to his knowledge; and if so, what steps, if any, have been taken by him to enforce the law and punish the offenders."

In reply I have to state that no information whatever of violations of the act referred to in the resolution has been received at this department, and that the records of this department furnish no means of obtaining information upon the subject embraced in the resolution.

I am, sir, with great respect, your obedient servant,

O. H. BROWNING, *Secretary.*

The PRESIDENT.

POST OFFICE DEPARTMENT,  
*Washington, January 23, 1867.*

SIR : I am in receipt of a copy of the resolution adopted by the Senate of the United States on the 8th instant, requesting information "if any violations of the act entitled 'An act to protect all persons in the United States in their civil rights and furnish the means of their vindication,' have come to the knowledge of the President," &c., and have the honor to inform you, in reply thereto, that no cases have come to the knowledge of this department of any violation of the provisions of that act.

I am, very respectfully, your obedient servant,

ALEX. W. RANDALL,  
*Postmaster General.*

The PRESIDENT.