TRIAL OF HENRY WIRZ.

CONCLUSION OF THE ARGUMENT.

PHYSICAL CONDITION OF THE ACCUSED.

Col. Chipman concluded his argument for the prosecution in the case of Wirz on Saturday, and said in part:

I come now to notice Counsel's argument, alleging murder in violation of the laws of war, under which there are laid numerous specifications, alleging with all the positivity that was possible the murder of various such cases. "Let it shall—says the counsel—when have been particularly referred to by the defence—to little more than simply recite the evidence of the witnesses.

The various cases of death which are justly to be laid to the charge of the prisoner as murders may be considered under four heads:

1st. The cases of death resulting from mutilation by the hounds.

2d. The cases of death resulting from confinement in the stocks and the chain-gang.

3d. The cases of killing of prisoners by the guards, pursuant to the direct order of the accused given at the time.

4th. The cases of killing by the prisoner's own hands.

Without repeating previous arguments, I will say in addition that the main truth in the statement of facts set out in the written statement of the accusation that the prisoners within the stockade had ample notice of the dead line regulation, and that if any were shot in crossing that line he was responsible. The evidence proves that force existed to enforce that the dead-line regulation was pasted up within the stockade. Besides, many of the witnesses on the stand testified that so far as to understand the new prisoners they received no information of the dead-line rule, but certainly acquired that knowledge from their comrades, their experience of that regulation of escaped given to him by their comrades.

Before proceeding further, it may be proper to say a few words as to the criminal responsibility of the prisoner. In the first place I need hardly remind the Court of that fundamental principle of law that "a man must be conclusively presumed to contemplate the natural and probable consequences of his own act." (1st Greenleaf's Evidence, section 18.)

I am claim that the death resulting from the use of the stocks and the chain gang was an unfortunate punishment for the hardship and the sick, the strong and the feeble, and the death was equal upon the pursuit of escaping prisoners with ferocious hounds, are not the natural and probable consequences of the act of the prisoner in question? Why, what more natural and probable than that a ferocious dog, when pursuing an escaping man, should mortally lacerate him, just as, if he was a mad dog, he would do to a man? And what results from the application of such methods of treatment as intended to kill on the part of him who adopts them is a necessary presumption of law, just as "an assault is considered as equally intended to kill with blows made with a deadly weapon" (1st Greenleaf's Evidence, sec. 18.) Again, it has been laid down that the crime of murder is committed "whenever any man willfully endangers the life of another by any act or omission likely to kill and which does kill." (2d. Bishop. Wharton's Criminal Law, page 435.) Colonel Chipman argued that when he showed the prisoner's respects likely for the use of the chain gang, &c., that every death resulting from these causes was murder for which the prisoner should be responsible.

The testimony of Robert Tait, George W. Gray, Col. Gibbs, Chas. T. Stickney, J. H. Goldsmith, J. H. Goldsmith, and others, was referred to as showing that the accused ordered prisoners to be confined in the stocks and in the chain gang, and that in some cases the men subjected to this treatment were very sickly debilitated, and in other cases they had just been through back wounded by the hounds.

The testimony of other witnesses was quoted to show that the accused would go around the stockade in the morning with the hounds to get the track of prisoners who had escaped; that he would give orders to start the dogs after prisoners; that he had told Turner to get the hounds; that the accused himself went with the dogs when Frotscky was captured; that in the case of Hudson Corbett the accused asked to explore why the dogs were not allowed to tear him. (Corbett:) that prisoners were torn by the dogs, the accused being present; that the dogs were fed with raisins taken from the bakery; that the accused had expressed his approbation of the fact that dogs were allowed to tear prisoners; and that the prisoner's own confidential returns for August, 1864, acknowledged that prisoners had been escaped had been recaptured by the dogs and brought back.

Col. Chipman argued that these extracts were sufficient to show the respectability of the accused for the punishment of prisoners by the stocks, chain gang, &c., and for the pursuit by hounds, and that, according to the principles already referred to, every death resulting from such punishment such pursuit must be considered as having been caused by the accused.

The testimony of numerous other witnesses was cited to show that death had resulted from the bites of the dogs.

Colonel Chipman, conceding the principle of a presumption of prisoner's sound position of guilt, and of presumption, contended, however, for a relaxation of strictness in this case, in view of the unprecedented circumstances. Among these, he referred to the fact that ordinary facilities for communication with the outside world were wanting to the prisoners. They were cut off from the council and material assistance and discipline. Most of them were consequently marked with the pangs of hunger and disease, or exposed to the hardships of a struggle with death, in which the odds were fearfully against them. Their companions were constantly dying around them, either from same disease, or cause, or accident, or death, while the survivors were deadened in their sensibilities to all. They became habituated to the terrible surroundings, till the death of a comrade under which would formerly seem the most fearful or cumulative misery, would not even cause a momentary pause upon their minds, and certainly they would not change their manners with different circumstances, even should they be able to do the time; and all will be remembered that many of them which had not had full knowledge of the dangers the week and the month. He did, they never expected to emerge from that scene alive, and never hoped that a day would come when their perpetrator should be seen good before a tribunal of justice. Many they were too numerous to be witnesses to his malicious acts. Ordinary precautions to dates and particulars are, therefore, not to be expected. " " " But I have no apology to offer for this testimony. In reference to it, you are asked to find the prisoner responsible for the death of any of those in his custody, you will find the evidence direct, plain, and clear, and not vague, uncertain, or equivocal. You are asked to apply the rules of evidence, only the peculiar circumstances to which we have alluded, always remembering that your duty is to have at the truth in the most proper manner possible.

Colonel Chipman then argued the question under the branch of Charge second (that of death from bite of dogs) to charge, viz: "With regard to the testimony of Dr. Bierman to the fact of the death of a man from gangrene, the evidence of Dr. Bierman, and of the man quoted from 21 Statutes, page 711, to show that it was sufficient to constitute murder; that the party died of the wound given by the prisoner, although he would not have originally so died, but by reason of the intervening negligence or unskilful treatment." Colonel Chipman argued that the facts made out the same case as if the dog had killed the escaped prisoner on the spot, and discriminated between the cases of Jackson and the other cases of pursuit by dogs, showing from Wirz's statement before the Court his own admission that the dogs were fed on him, and that he had a certain love for them, and therefore he was responsible for whatever injury resulted from their use.

The evidence of many witnesses as to cases of death from confinement in the stocks and the chain gang was then recited, including that of Capt. Hazlett, a regular officer, duty at Andersonville, to show that men were confined in the stocks and in the chain-gang.

Colonel Chipman says: The evidence here briefly recited proves the fact of orders by his accused to place men in the stocks and the chain gang. The case is presented by Wellington Clark and George W. Gray (cases of death by the stocks) as one directly within the general principle of law before cited. Col. C. then quoted the testimony of Clark at great length, and said: The evidence, it is true, does not prove a case of death directly attributable to the stocks, but it is clear that death resulted from a judgment and recommendation of the stocks were one important element in bringing about the condition of the sufferer. It is in accordance with the rule and from the injustice inflicted by the stocks alone, as the recommendation of a fellow prisoner, that the prisoner was driven out, that it is enough to show that the death of the party was accelerated by the malicious act of the prisoner."

George W. Gray is also quoted at greater length, and he is an officer corroborated by that of Kenneth Allen, a rebel soldier.

With regard to the chain gang, Col. Chipman said: There is evidence of more than one death having occurred by this means, but it is vague in the extreme. There is the case, however, of a party defined as to admit no doubt. There the case was confined in the chain gang of twelve, and the facts of which were given on the testimony of Jesse P. Wood, James Duffy, John P. Hinds (a rebel officer) Dr. Edward Hunnicutt (rebel soldiers), Parsons, Tait, and Davidson.

The argument of these witnesses with the evidence of the acts of murder committed immediately under the prisoner's orders, by his own hands, and Col. Chipman says: I submit that his language and conduct as exhibited in the testimony, furnish such evidence of malice as to raise a strong presumption of guilt. (See Wharton's Criminal Law, page 310.) On this principle Colonel C. adverted to numerous well proven declarations and imputations of cruelty, strong language and scenes which the prisoner had evidently, in a little time, that they should sit—and he's ambition to compete with rebel generals in the field by killing off as many Union soldiers as possible, &c., &c., &c. The Court will and I desire to regard the general desire of his treatment of prisoners, exhibiting toward them a malignity of temper of which murder would be but the natural outgrowth. This malice is sufficient to furnish probable cause for the special acts charged against the prisoner, particularly as in almost every instance of murder the act itself was accompanied by a malicious and willful.

The case of Chickamugs Col. C. selected for particular consideration, as it had been selected by the accused for defence, and having several witnesses, he showed the consistency of their narrations in the main, while as to unimportant particulars there is double a that slight variation which always characterized accounts given by different eye witnesses of the same occurrence. And which, as it excludes the idea of concerted falsification, is the strongest evidence for the good faith and veracity of those who testify. The essential facts which stand out clearly in this mass of testimony—so clearly that the prisoner blame if, as I shall presently show, has been driven to substantial admission of them—are that a poor, demoralized cripple, whose imbecile condition was notorious in the stockade and among the guards, ought to be taken from the stockade that he might be protected from the indignities of some of his comrades, who charged that he had reported tunnels to the accused; that after some parley on the part of Chickamugs with the guard, the prisoner came out to the gate, where Chickamugs raved to be taken out of the stockade, stating the reasons for the request; that the prisoner refused to take him out and ordered the guard (who had shown an unwillingness to call the cripple back) to shoot him if he crossed the dead-line; that he did cross the dead-line and the sentry, acting under the direct orders of the prisoner, shot him. He, I submit, is a clear case of murder.

Before quoting further it is proper to remark that the alleged contradictions in the testimony of the witnesses to the Chickamugs affair appear only in the statement of the prisoner, and cannot be discovered in the testimony of the record. It is quite clear that two of the Government witnesses represent the prisoner as having shot Chickamugs with his own hand. Yet the prisoner's version of the affair would make us believe that, and that he proposed to do, Chickamugs was killed by the sentry, "in compliance with the murky fog, unfinished, and contradictory testimony" of the prosecution.

Col. Chipman then quoted from the defence of Captain Wirz text which he argued that the best may of wicked Wirz text with regard to other cases of shooting with the case of Chickamugs, and he then gave Captain Wirz's version of the Chickamugs affair, which was published in the INTELLIGENCER at the time.

Colonel Chipman, resuming his argument, said: I confess that I was greatly surprised when this startling declaration was read for the first time in my hearing and in the presence of the Court, some days ago. This explanation seems to me to admit as fully the guilt of the prisoner that if it had been the mere hypothesis of counsel adopted as the last resort of a desperate defence, I would decline to hold the prisoner responsible for such claiming alone, which I would be bound to believe his counsel had no authority to make. But here we have the solemn statement of the prisoner, published without solicitation and after due deliberation. Charged with the gravest criminality in relation to an occurrence which is attested by a cloud of witnesses, he shows his own explanation which is in clean from his pen, reviewed and signed by his own hand, and put forward before the Court in his presence without an attempt at disavowal on his part, when the impulse which prompted such self-incriminating caution had had time to grow into a circumspect reserve. The main fact upon which the Government insists is that the prisoner ordered the guard to shoot Chickamugs if he should cross the dead-line, and that in the act of crossing it, or immediately after, this wretched imbecile was shot by the sentry in obedience to the prisoner's order. This is not denied in the statement of the prisoner, but is there fully admitted. It is admitted that the prisoner (I quote his language) "told the sentry to shoot him if he came in again." It is admitted that the order was obeyed by the sentry, and that thus Chickamugs was killed. While conceding all this, the prisoner seeks to shield himself under the allegation that the order was given "solely as a ruse;" yet he does not pretend that he gave the sentry any reason to suppose that the order was not to be obeyed; he does not pretend that the act of the sentinel in shooting was anything other than the natural obedience of a subordinate to his superior's order, which had every appearance of being preservative. When the guilty and murderous act is thus admitted, the criminal cannot seek refuge under the vague allegation of an innocent intent, partially when he acknowledges at the same time that the intent was hidden within the recesses of his own breast, and found to shadowing forth at the time in words or acts, but was contradicted by both. The allegation of an innocent intent can not overcome the conclusive presumption of the law, that "a man can anticipate the natural and probable consequences of his own acts." When the motive of a man arraigned for crime shall be taken from his own lips in a retraction of the throat in defence of his acts, courts of justice will have become obsolete.

Before leaving the subject I cannot refrain from making a passing remark on the picture of the prisoner's brutality as painted by his own hand—a picture in singular contrast with another self-portrait embraced in the same statement. In recounting the Chickamugs affair the prisoner says: "I went up to Chickamugs and asked him in a rough tone of voice what his belt was doing there. He say he wanted to be killed. I took my revolver in my hand, and said in a menacing manner that if that was all he wanted I would accommodate him. I scared him a sweat, and he was taken outside by some of the prisoners."

How startlingly in contrast with this has the prisoner depicted himself in another part of his statement. This is his language: "I do trust that this enlightened Court will bear with me in my humble effort to convince it that, while commandant of the prison at Andersonville, I was not the monster that I have been depicted as being; that I did not exercise nor delight in the spectacle of the sufferings, woes, and death of the Union prisoners; that I did not contribute to their sufferings, but that, on the contrary, I did what little lay in my power to diminish or alleviate them, and do more, that although I have been represented as little less than a fiend, there was some remnant of the angel still in that poor jailor's nature."

We are asked to believe that these two portraitures represent one and the same person. If it be so, then our prisoner was at her poor Chickamugs that he outstared and did not recognize that that flower seem manifestly asker him, in a rough tone of voice, "What the hell are you doing there?" was at that very moment yearning with compassion for his wretched condition. The prisoner crippled this discussed that unstern spoken man who, revolver in hand, said to him, "If you want to be killed I will are immediate you," was a "poor jailor" in whom the "remnant of the angel" was struggling to exhibit itself under great difficulties; a lover of mankind in a very embarrassing position, but doing, as he says, "what little lay in his power to diminish or alleviate the sufferings" of those around him; a John Howard, forsooth, whose compassionate heart prompted him, as he tells you, "to take out of the stockade all of the dead, or keep in order the little fellows in pit, in the exciting process of prayer air and healthful exercise, have a tendency of being restored to life or yearning mother and sisters at home." Alas for poor Chickamugs that he did not whisper in the ear of this rough-mannered philanthropist that he too had a yearning mother or sister at home! Was known but that the suggestion might have won for Chickamugs a taper or fate.

But the self-criticism seems to be entire. I submit that in the many features of the trial, showing such what abandon the prisoner gave rein to his malicious purposes, the blight of poor Chickamugs is one of the most decisive and effective.

Col. Chipman then quoted the evidence of Wm. Bull, W. W. Grandell, Jacob D. Brown, Joseph Adler, B. Carrigan, Joseph H. Achuff, Prescott Tracy, and others, to show their murders committed either in Wirz's presence or by his expressed orders.

With regard to the class of murders committed by the prisoner's own hands Colonel Chipman said he would avoid all argumentation, and present as briefly as possible the real sense of the witnesses. He quoted from the testimony of Wm. Wirz to Scott with regard to the death of a Union prisoner by the accused beating him over the head with a pistol; from that of Martin B. Hogan, the stamping upon and kicking a prisoner so that he died; from that of Alexander Conway, that seeing a prisoner for reaching under the dead line for water, causing the prisoner's death; from that of Peter De La Plume, who testified to the fact of a prisoner being struck on the head by a rifle, the blow having been fatal;