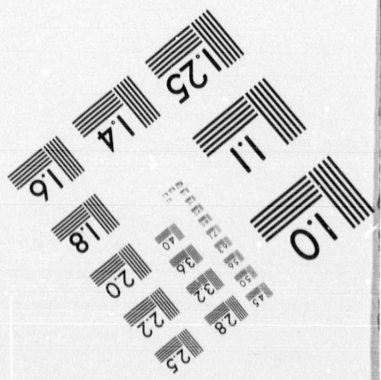
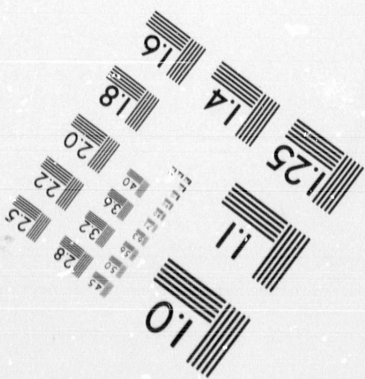
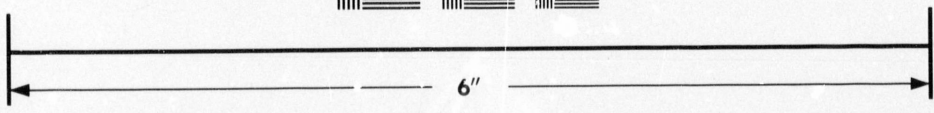
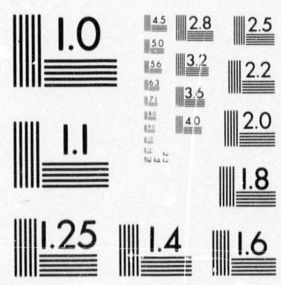


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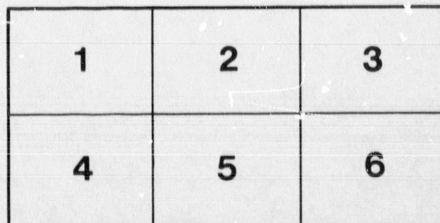
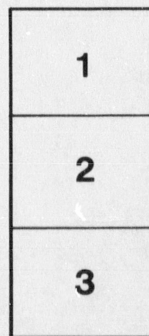
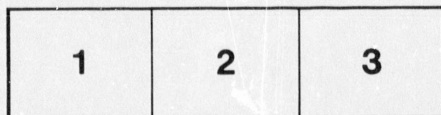
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MEMORIAL

OF

*Arthur Ernest Hatheway,*

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To his Excellency,

THE RT. HON. SIR FREDERIC A. STANLEY,

GOVERNOR GENERAL OF CANADA,

OTTAWA, CANADA.

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## MEMORIAL

OF

## ARTHUR ERNEST HATHEWAY.

To his Excellency,

THE RT. HON. SIR FREDERIC A. STANLEY,

GOVERNOR GENERAL OF CANADA,

OTTAWA, CANADA.

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Your Memorialist respectfully sheweth as follows: He was born in the City of St. John, in the Province of New Brunswick, Dominion of Canada, on the 7th day of June, A. D. 1863, and is now and has always been a law-abiding and loyal subject of the Government of Great Britain.

Heretofore on three separate occasions the government has graciously extended its good offices in his behalf in an effort to obtain from the government of the United States of America just and fair compensation to him for and on account of his false and illegal imprisonment by the military authorities of the said United States, in the Territory of Wyoming, from the 20th day of February to the 23rd day of March, inclusive, A. D. 1885; through the efforts of his government three propositions for payment have been made, one of \$132.00, another of \$500.00, and a third of \$1000.00, each of which has been refused by him because an inadequate sum was offered; the latter offer of \$1000.00 was declined as per letter of his counsel, Simon W. Hatheway, Esq., to The Hon. G. Powell, under secretary of state for the Dominion of Canada, dated March 22nd, 1889. Vouchers prepared for the signature of Memorialist were forwarded to him as he is informed, but such vouchers never reached him, and have never been signed by him, and he knows not where they are; if they ever come into his hands he will return them unsigned through the proper channel.

He again humbly solicits the good offices of his government and in support of his prayer therefor submits this brief of facts already presented and not denied by the government of the United States so far as he is informed, together with additional facts bearing upon and aggravating his claim for compensation, and also a brief of the law and precedent governing cases like that of Memorialist.

The undisputed facts are, briefly stated, substantially as follows:

On the 20th of February, A. D. 1885, he was engaged in the lawful business of general merchandising in the town of Big Horn City, in the county of Johnson and Territory of Wyoming, in the United States, where he had uniformly conducted himself as a quiet and law-abiding commorant of the United States and of the said Territory. Between the hours of six and one-half and seven and one-half o'clock in the evening of said day, while he chanced to be in a public hotel in said place, he was seized by a body of United States soldiers, armed with carbines, under the command of a sergeant, and told he would be shot if he attempted to escape; no warrant of arrest was produced or authority therefor, but he was given to understand that his arrest was in pursuance of orders emanating from one Charles C. Compton, a

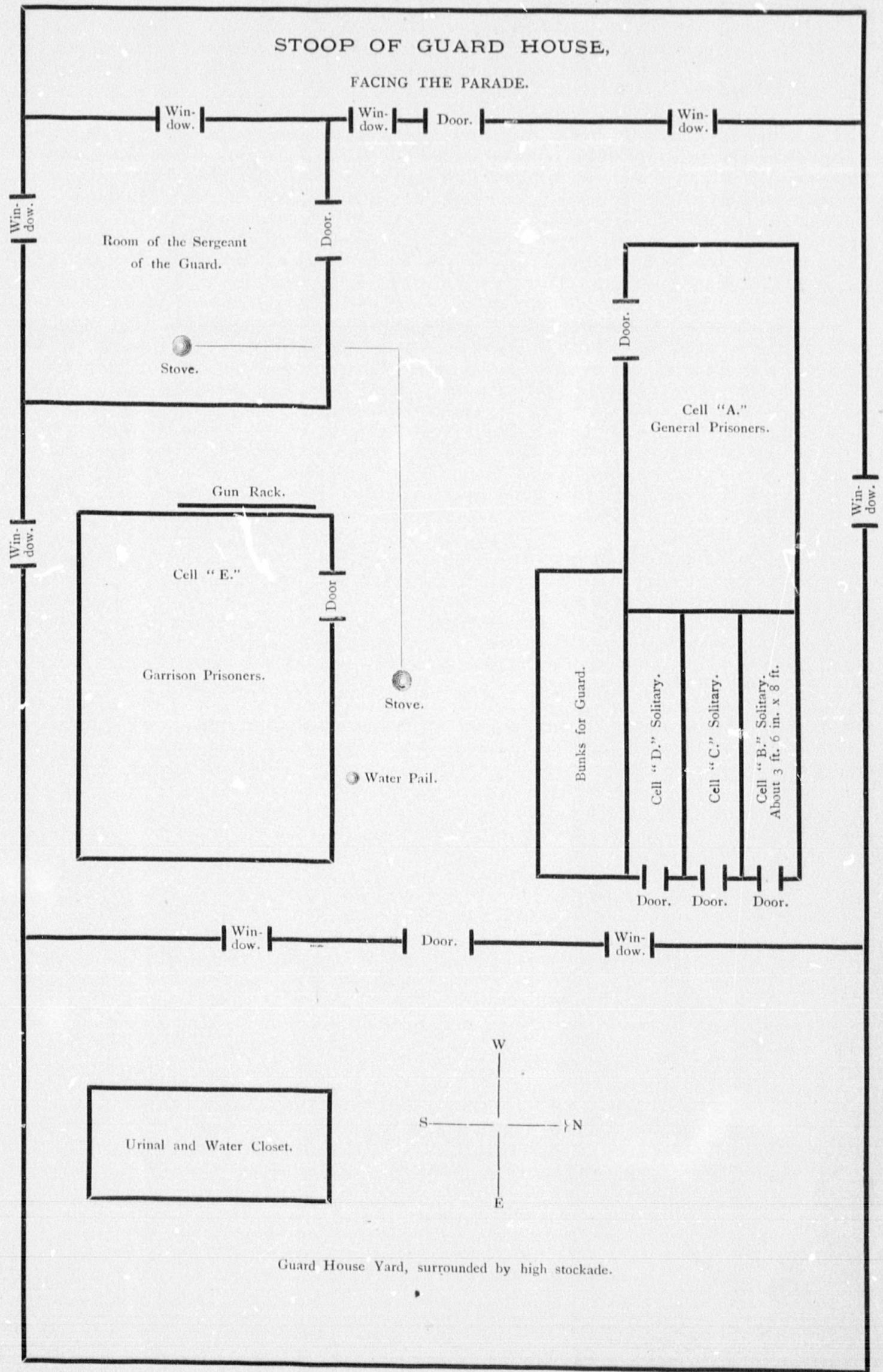


Colonel of United States Cavalry, and Commandant of the Post of Ft. McKinney, Wyoming Territory; he was told he was a deserter from the United States Army, and a horse-thief; he stoutly denied the accusing statements of the military guard, and truthfully and accurately disclosed his identity and nationality; but notwithstanding his statements of his innocence and that he was a British subject, he was ironed by being handcuffed, in the public room, and permitted no bed that night but a sofa; a guard stood over him all night long with his carbine in hand; he was kept under guard substantially the same way during the 21st, but in the evening of the 21st the irons were removed from his wrists to his feet; but he was still denied a bed and kept under guard; on the morning of the 22nd of February, the irons were removed and he was put into a wagon between two soldiers and driven to a ranch on Pine Creek where he was placed, still under guard, in an out-house and there kept till the 23rd, when he was taken to Fort McKinney, a distance of thirty miles from the town of Big Horn City; on arriving at Fort McKinney, all his private papers, letters, money, and every thing in his pockets but his tooth brush were taken from him by the United States soldiers and he was confined in the cell marked A in the appended ground plan of the guard house of Fort McKinney, which was the scene of his prolonged confinement.



STOOP OF GUARD HOUSE,

FACING THE PARADE.



He was subjected to the indignity of undressing and exposing his person in a nude condition soon after arriving at Fort McKinney before soldiers present, and later in the afternoon was ordered to stand in a line with other prisoners and compelled to stand up with them; the name of A. J. Heath was called three times and he was ordered to answer; he refused to answer and said "I am not Heath, but Hatheway, and I will not answer to any name but Hatheway." An officer then said "That man in civilian's clothes step out;" he being the only man in civilian dress stepped out, when he was reconducted to cell A (see plan) and an official document was presented to him whereon he found these words "Q. M. Department, Fort McKinney, Wyoming, A. J. Heath, Private, Co. K, 5th Cavalry; four blankets;" he told the officer, whom he afterwards ascertained was one Capt. Wm. C. Forbush of the 5th U. S. Cavalry, that he could not sign that paper as his name was not Heath, whereupon he was again ordered by the officer to sign the paper by the name of Heath, but he again refused; he was then told by Capt. Forbush: "You may either sign that paper or freeze; you will not get any blankets until you sign the name of Heath." Capt. Forbush then ordered him to be placed in solitary confinement; he has since learned that this was done by order of Col. Compton; he was then taken to cell marked B (see ground plan appended) and locked up. This cell is about three and one-half feet wide by about eight feet long, with stone floor; side and door of wood interlaced with strong iron bars; no opening for light and ventilation, except in the roof, which was of interlaced iron; door solid and cell devoid of furniture of any kind; cell also damp, very cold and so dark that he could not see to eat; he was deprived of bedding and covering, except his overcoat, which had not been taken from him; the night was very cold and sleep was impossible; he was kept confined in this dark and damp cell until the 26th, without blankets or bedding or warmth, and in cell A from the 26th to the 1st day of March without blankets or bedding, but was a little better off for warmth; during this period he was subjected to frequent examinations; Colonel Compton and other officers were repeatedly told he was not Heath. Once he was taken to a soldier in the sick quarters who said he thought he was the *younger* and *taller* of two Heaths and again a sergeant said he thought he was the *older* and *shorter* of the two Heaths; he offered to purchase blankets but was denied the privilege; he was denied the privilege of going near the fire to warm himself from and after being confined in cell B, and until March 1st he was confined in cell A with a *convict* named Hughes. He was denied all communication except one interview with his counsel, and except also the examinations by the soldiers; he was denied pen and ink, though allowed a pencil; his letters were all inspected by the military. The continued strain so effected him and he was so evidently sick on the 1st of March that he was allowed the liberty of the guard-house; on the 10th of March he was allowed the privilege of the garrison and on the 18th of March was sent to the hospital; at nine o'clock the same night he was awakened and ordered to take his bed again to cell A and was conducted there by a soldier with carbine in hand; on the 19th of March he was again sent to hospital where he remained till March 21st, when he was again confined in the guard-house, this time in the room of the sergeant of the guard, but he was allowed a stove and bedding; on March 22nd he was paroled for the garrison and subsequently returned to the hospital; on Monday, March 23rd, he was allowed the freedom of the garrison and between two and four o'clock in the afternoon Col. Compton told him he might leave Fort McKinney.

Additional facts bearing upon and aggravating his claim for compensation are in brief as follows, as will more fully appear by sworn statements appended hereto and made a part hereof: It is shown by the affidavit of Claimant marked Exhibit J, that during the time he was confined without fire or blankets, bedding or furniture of any kind in the cell marked B on the plan of the prison heretofore submitted in this case and made a part thereof, between the 23rd and 26th of February A. D. 1885, after he had been ordered into solitary confinement, having refused to sign the name of Heath at the request of one Capt. Forbush, and after having been told by said officer he might freeze if he would not so sign, and that he could not have any blankets if he did not sign the name of Heath, an officer came to the cell B where he was confined, with three nice blankets and said in effect to him: "Here, Heath, are three nice warm blankets you can have if you will sign this receipt;" he told that officer he would sign his own name, that of Hatheway, but not the name of Heath; the officer seemed to be very angry at his refusal and took the blankets away. He was then very cold, in truth and in fact nearly frozen as it seemed to him; his suffering was almost unendurable, but he made up his mind to suffer any pain or hardship imposed rather than sign a false name to any paper, and he did not sign. (See Claimant's affidavit marked Ex. J.) It is further shown by claimant's affidavit attached hereto and marked Exhibit K, that before his confine-



ment as herein shown he was troubled with kidney disease which was augmented by reason of that imprisonment and exposure incident thereto; that prior to his imprisonment he never was troubled with rheumatism, but during his imprisonment as herein set forth and exposure to the intense cold and dampness of the cell, he was afflicted with stiffness of the limbs and pains in his side and shoulders, and after his release, on or about the 15th day of May A. D. 1885, he was attacked with a well defined case of rheumatism which lasted for about two and one-half months, and was directly traceable to that imprisonment, and exposure incident thereto. Attacks of rheumatism have recurred from time to time ever since, in periods varying from one to two months, and he has been under medical treatment for a period aggregating in all, since his imprisonment, not less than nine months on account of rheumatism contracted in that cell during his imprisonment. His physician, Dr. A. C. Bishop, of Butte City, Montana Territory, who treated him, died on or about the 18th day of April, 1888, but he has used the remedies prescribed by Dr. Bishop since to alleviate his sufferings from said disease. (See affidavit of Claimant marked Ex. K hereto attached.)

It is further shown by the affidavit of Helen S. Hatheway, the mother of Claimant, that he was gently nurtured and cared for in his minority; that he had been subject to kidney disease; that he had attained his majority but about eight months prior to his illegal arrest and imprisonment; that he had never belonged to or drilled with any military company whatever, so that there was an utter absence of those drill marks by which soldiers are at once recognized as such; that he knew nothing at all about military matters; that he had raised about \$2,000.00 on his property in Canada, of which he had become possessed on attaining his majority, and taken a portion of these funds to Big Horn City, Wyoming Territory; that she was informed of the arrest of her son about Feb. 26, 1885, and on that date she telegraphed the identity and citizenship of her son, which information was, as she has been informed, at once communicated to Col. Compton; that counsel was employed at St. John. N. B., and in Boston, and evidence of her son's identity prepared and quickly forwarded by mail; that no time was lost in fully acquainting the military authorities as to her son's identity, and with means of satisfying themselves as to his identity; that her anxiety was intense and her suffering great, during the period of his incarceration, but she was not informed of his cruel treatment in having been confined in an unheated, wholly unfurnished cell, and refused bedding or blankets, or permission to approach a fire, and that she did all possible to secure the release of her son.

It is a fact that the thermometer not infrequently marks 30 degrees below zero, Fahrenheit, at Fort McKinney, Wyoming, during the months of February and March.

The law and precedent governing Memorialist's case are well settled both in Great Britain and the United States.

It is not disputed to be a clear case of false imprisonment, which is defined by Sir William Blackstone to be: "any confinement or detention of the person without sufficient authority." (3rd Blackstone's Com. p. 127.)

It is true that both in the British Empire and the United States, the only available remedy which the law can give for such a wrong is an award of money estimated as an equivalent for the damage suffered.

The measure of damages in cases of false imprisonment was very ably considered and fully settled by the Lord Chief Justice of England, in 1763, in the case of Huckle vs. Money, reported in 2nd Wilson, p. 205, Michaelmas Term 4 Geo. 3. An award of three hundred pounds sterling had been made by the jury in the case of each of several printer's devils for six hours' false imprisonment, and the Lord Chief Justice on reviewing the case on motion for a new trial said: "I shall now state the nature of the case as it appeared upon the evidence  
" at the trial; a warrant was granted by Lord Halifax, Secretary of State, directed to four  
" messengers to apprehend and seize the printers and publishers of a paper called the  
" 'North Briton, number 45,' without any information or charge laid before the Secretary  
" of State previous to the granting thereof and without naming any person whomsoever in the  
" warrant. Carrington, the first of the messengers to whom the warrant was directed, from  
" some private intelligence he had got that Leech was the printer of the 'North Briton, number  
" 45,' directed the defendant to execute the warrant upon the plaintiff, (one of Leech's  
" journeymen) and took him into custody for about six hours, and during the time treated him  
" well; the personal injury done to him was very small, so that if the jury had been confined  
" by their oaths to consider the personal injury only, perhaps twenty pounds damages would  
" have been thought sufficient; but the small injury done to the plaintiff or the inconsiderable-

“ness of his station and rank in life did not appear to the jury in that striking light in which  
“the great point of law touching the liberty of the subject appeared to them at the trial; they  
“saw a magistrate over all the King’s subjects exercising arbitrary power, violating Magna  
“Charta, and attempting to destroy the liberty of the Kingdom by insisting upon the legality  
“of this general warrant before them. \* \* \* \* \* To enter a man’s house by virtue  
“of a nameless warrant in order to procure evidence, is worse than the Spanish Inquisition,  
“a law under which no Englishman would wish to live an hour. It was a most daring public  
“attack made upon the liberty of the subject \* \* \* \*. I cannot say what damage I  
“should have awarded if I had been on the jury but I directed and told them they were not  
“bound to any certain damages \* \* \*. Upon the whole I am of the opinion the damages  
“are not excessive.”

The law as here laid down was the law of the North-American Colonies before the independence of the United States, and is the law to-day in both Great Britain and the United States. Addison in his work on Torts, Edition 1887, p. 163 says: “When the assault is  
“accompanied by a false charge affecting the honor or character and position in society of  
“the plaintiff the offence will of course be greatly aggravated and the damages proportionally  
“increased, and if the plaintiff has been assaulted and imprisoned under a false charge of  
“felony, when no felony had been committed, or when there was no reasonable grounds for  
“suspecting or charging the plaintiff, exemplary damages will be recovered.”

In the case of Kilbourn vs. Thompson, 103 United States reports, p. 168, Mr. Justice Miller, in pronouncing the opinion of the Supreme Court of the United States said: “The  
“general doctrine that the person who procures the arrest of another by judicial process, by  
“instituting and conducting the proceedings, is liable to an action for false imprisonment,  
“where he acts without probable cause, is not to be controverted.”

The authorities are numerous in both England and the United States sustaining the position that arrest *without* judicial warrant, process and legal warrant is also false imprisonment.

In the case of Kilbourn vs. Thompson, cited supra, which arose in the District of Columbia, in the United States, Kilbourn had been arrested on an order of the House of Representatives and was detained in the custody of the Sergeant-at-Arms of the House, Thompson, for a month and a half, about. It was not disputed that during his mild imprisonment he lived sumptuously at the expense of the government of the United States, and that he was permitted to suffer no special indignity; his alleged offense was contempt of the House of Representatives in refusing to answer at the bar of the House, certain questions propounded to him in an investigation conducted by a Committee of the House. Upon action brought against the Sergeant-at-Arms for false imprisonment, the jury first awarded the sum of \$100,000.00; this was set aside by the court as excessive; on a second trial an award of \$60,000.00 was made by the jury, which was also set aside on the same ground, and another trial had, resulting in a verdict of \$37,000.00, upon which the court allowed a judgment of \$20,000.00 to be entered in Kilbourn’s favor on his abatement of \$17,500.00.

Sutherland in his work on Damages, Vol. III, page 731 says: “The injury of being illegally restrained of one’s liberty is akin to that suffered from assault and battery. The  
“injured party in such cases, even though the act complained of be done without malice, is  
“entitled to recover the expenses reasonably incurred to procure discharge from the restraint,  
“for loss of time, interruption of his business and the suffering, bodily and mentally which  
“the wrong may have occasioned. The filthy condition of the jail in which the plaintiff was  
“confined, or any other discomforts or deprivation, may be shown to enhance compensatory  
“damages for mental anguish and discomfort. The plaintiff may recover for loss of work  
“not only up to the time of the suit, but also for the time lost after the suit, if by the arrest  
“he failed to get work he otherwise would have obtained.”

The public arrest of Memorialist under the charge of horse-stealing has been shown in the testimony heretofore submitted, and was particularly damaging to Memorialist’s character in the section where he was arrested, wherein no felony, not even murder, is held by the community in greater abhorrence. The indignity heaped upon him in being shackled with irons on his wrists and ankles for more than thirty-six hours; the deprivation of a bed during two nights at a public house which was the scene of his arrest; his intimidation by reason of the sentry standing over him continuously during this period with loaded carbine; the assurance of instant death in case he attempted to escape; his confinement in an out-house,



without bed, at the ranch on Pine Creek en route to Fort McKinney, a sentinel with loaded carbine still standing over him; his brutal treatment at Fort McKinney, having been confined in the dark, damp, cold and confined space as shown, in cell B, devoid of furniture of any kind; the denial to him of bed, bedding or blankets, and assurance of officers that he might freeze if he would not sign the name of Heath; the refinement of cruelty in placing before him three nice warm blankets when he was suffering intensely with cold from physical exhaustion incident to three sleepless nights spent without bed and under guard of a soldier with loaded carbine accompanying the alluring blankets with the assurance that they were his if he would falsely sign the name of the deserter Heath, whose identity his jailors were attempting to fasten upon him; his subsequent incarceration without blanket or bedding of any kind or furniture in the cell, with the convict named Hughes; his denial of permission to approach the fire in the intense cold of a Wyoming winter, constitute ten days of suffering such as is scarcely conceivable among prisoners held by English speaking people. Enlightened humanity stands appalled at the knowledge of cruelties like these inflicted upon prisoners exiles to the mines of Siberia in Russia; but in no other country can a parallel be found in this day for the cruelties to which Memorialist was subjected.

The law of both Great Britain and the United States is so well settled in the matter of false imprisonment, and adjudicated cases are so numerous in England, the Dominion of Canada and the various states of the United States, that it is deemed unnecessary to encumber this memorial with further citations from elementary writers or judicial decisions; a few cases in diplomacy are, however, appended, showing abundant precedent for proper compensation to Memorialist as claimed. Both Great Britain and the United States have constantly insisted upon fair compensation where the subject of the one or the citizen of the other had been subjected to false imprisonment.

In the case of Alfred Pierrepont Edwards, a citizen of the United States, for false imprisonment by the military authorities of China, in 1841, reported in Executive Document No. 29, House of Representatives, 40th Congress, 3rd Session, it is shown that on the morning of the 17th of November, 1841, Edwards left Whampoa in an open boat for Canton; when passing quietly by the island of Honan he was hailed by a party of Chinese military, stationed at that island, and ordered to come ashore. He promptly obeyed the order and immediately on reaching the land a large party of Chinese soldiers, amounting to several hundred under the command of an officer of rank, rushed upon him in the most savage manner, and without the slightest provocation secured his hands by binding them behind his back with a cord in so cruel a manner as entirely to impede the circulation of the blood; his pockets were then rifled after cutting them entirely off his coat; his money, watch and various articles of value were also taken from him, he not offering the slightest resistance; a heavy iron chain of the size of a common ox-chain and weighing several pounds, was then placed around his neck and secured in front by a large lock; he was then conducted to a loathsome cell by a strong guard armed with loaded match-locks, swords and spears, and left in confinement for several hours under guard of four soldiers, bound and chained in the most painful manner, momentarily expecting to be massacred by Chinese soldiers; he was then taken across the island and placed in a boat under guard of forty soldiers and rowed over the river to Canton and literally dragged by the chain attached to his neck for about four miles to the place of the Clum-Tuck, or Vice-Roy of the Emperor of China's principal representative in that part of his Empire; after remaining in close confinement for several hours he was taken before the Mandarin, or chief magistrate, still bound and chained, to be examined. By the intercession of an acquaintance he was released and assisted to his lodgings. The key to the lock which confined the chain to the neck had been lost and it became necessary to lay his head on an anvil and by repeated blows by a chisel and sledge hammer to remove the chain from his neck; he suffered afterward from the effects of his bad treatment. The explanation of his arrest was — mistaken identity. His imprisonment lasted but a few hours. He was awarded and paid on representation of his government, by the Chinese government, the sum of \$10,000.00, with interest for eighteen years, \$21,600.00, or in all the sum of \$31,600.00. No actual damage was shown in this case beyond that to his person. (See claims against China 3rd Session, 40th Congress, 1868 and 1869, pp. 100 and 160.)

There is a strong similarity between the case of Edwards and that of Memorialist, in that each was arrested by the military of the nation in which he was commorant; each was a case of mistaken identity; each was shackled with irons, and guarded by soldiers with arms in their hands; each suffered afterwards from the effects of his harsh treatment; but Edwards'

imprisonment lasted but a few hours, while Memorialist's lasted for many days and nights, and his treatment was the more rigorous of the two in that he was left to the severity of a February winter in Wyoming as one of the incidents of torture; Edwards did not suffer in his business or reputation, while Memorialist was wholly destroyed in both at the place of his domicile.

In cases referred to in report of Robert S. Hale, agent and counsel of the United States, papers relating to the treaty of Washington, Vol. VI., p. 68, the case of William Patrick, the claimant, a British merchant, domiciled in New York, was, on the 28th of August, 1861, arrested and committed to Fort LaFayette, where he was detained till the 13th of September following, when he was discharged. His arrest was based on the charge that the firm in New York, of which he was a member, and which had a branch house also at Mobile, Ala., was a channel for carrying on correspondence between rebels in Europe and those in the insurrectionary states. Representation by highly respectable citizens of New York, of Mr. Patrick's loyalty were made to the Secretary of State, and the British Minister also interfered in his behalf. Investigation showed that the charge against him was without foundation, and he was discharged after a confinement of seventeen days. The proofs established Mr. Patrick's social standing to be high, and also to have been in conduct marked by loyalty and good faith to the government of the United States during the rebellion and to have furnished liberal contributions to its aid. His arrest was undoubtedly caused by false or erroneous information.

On behalf of the claimant punitive damages were claimed. On the part of the United States it was insisted that no such damages could be allowed; that Mr. Patrick, domiciled within the United States, was exposed in the same degree with citizens of those states to arrest on false charges or erroneous information, and that, having been discharged within a reasonable time for inquiry to be made, he was not entitled to claim damages against the United States; that if any damages were awarded they should be such only as would afford him fair compensation for the injury inflicted. The Commission awarded \$5,160.00, or about \$300.00 per day, Mr. Commissioner Gurney (the British Commissioner) dissenting on the question of amount.

In the same report, p. 64, is reported the case of John Carville Storin, a British subject, No. 23, who was arrested at Cumberland, Maryland, in October, 1861, on the charge of disloyalty, in attending secession meetings in Cumberland and being the means of transmitting information to the enemy. He was taken to Ft. McHenry and there detained about five weeks and discharged without trial. He alleged that his business as a manufacturer at Cumberland was stopped and in effect destroyed. He alleged ill treatment while in confinement. Proofs were taken on both sides on the question of his disloyal conduct and it was contended on the part of the United States that the facts justified his arrest as a disloyal person, openly giving aid and comfort to the rebellion by his language and expression of sympathy in a village situated on the frontier of the enemy's country, and where such conduct involved danger to the military operations of the United States.

The Commission gave an award to the Claimant of \$8,300.00, all the Commissioners joining. In the same Report p. 66, case No. 51, is reported the case of John J. Shaver, a British subject, who was arrested at Detroit, Mich., Oct. 15th, 1861, and confined in Ft. LaFayette and Ft. Warren until Jan. 6th, 1862, two months and twenty days. His loss of situation was pressed in assessing damages. He was awarded \$30,204.00, or about \$375.00 per day.

Other cases might be cited from the same report which were pressed by the British government to damages before the Commission under the treaty of Washington, but enough have been cited to show the tendency of precedent.

One other case illustrative of the attitude of the United States upon the subject of false imprisonment, at this time, will be cited, namely, that of Charles Adrian Van Bokkelen, a citizen of the United States who was imprisoned by the Republic of Hayti without sufficient legal warrant though under the forms of law, for a period of less than fifteen months. Under a protocol of agreement between the governments of the United States and Hayti the case was submitted to an arbitrator who awarded claimant the sum of \$60,000.00, by his award dated December 4th, 1888. Protocol of agreement signed May 24th, 1888.

But it is submitted that in none of the cases herein cited, in which awards have ranged from \$4,000.00 to over \$10,000.00 per month, have the specially aggravating circumstances existed which surround and attach to the case of Memorialist. The case of Edwards against China approaches most nearly his, yet Edwards was released within a few hours while



Memorialist was confined thirty-two days, of which time ten days involved continuous and excruciating physical suffering, and all the time was attended with great bodily discomfort and mental anxiety.

Again no reparation affecting the reputation of Memorialist has been offered. The Secretary of War at Washington, on the 17th of March, 1885, telegraphed the mother of Memorialist as follows:

"Your telegram received. My attention has already been drawn to the case of your son and I have given orders which will insure justice being done in the matter. (Signed), Wm. C. Endicott, Secretary of War." (See copy of telegram hereto attached marked Exhibit M and made a part hereof.)

On the 23rd of March, six days later, R. C. Drum, the Adjutant General of the United States Army, telegraphed United States Senator George F. Edmunds of Vermont, as follows: "Arthur Ernest Hatheway, who was held as a deserter at Fort McKinney, Wyoming, has been acquitted by a Court Martial. Particulars of the trial not yet known. (Signed), R. C. Drum." (See copy of telegram hereto attached and made a part hereof marked Exhibit P.)

On the 28th of March eleven days after the order of the Secretary of War which was intended to insure that justice would be done, George Ruggles, an Assistant Adjutant General of the United States Army wrote Mr. S. W. Hatheway, of counsel in the case, as follows: "In reply to your letter of the 28th ultimo, enclosing papers in the case of Arthur Ernest Hatheway, who was recently arrested as a deserter from the army, I have the honor to inform you that *the man* was acquitted by a general court martial; and that telegraphic instructions for his immediate release were given by the Department on the 25th instant." (See original letter hereto attached and made a part hereof marked Exhibit R).

By reference to the proceedings of the Court Martial already a part of this case on file, it will be seen the War Department at Washington was misled and gave erroneous information respecting the acquittal of Memorialist, as per the communications just quoted.

If Memorialist's information is correct, as he believes it to be, the Court was convened under Special Orders No. 96, issued by Maj. Genl. O. O. Howard, Head Quarters, Department of the Platte, dated Nov. 1st, 1884, and subsequent Special Orders issued from the same Head Quarters in 1885, Numbered 2 and 4. If the record can be relied upon, that Court did not try this Memorialist at all; the record discloses the trial of *Private Alfred Heath*, Troop K, 5th. U. S. Cavalry, upon two charges, one of desertion, the other horse-stealing.

Memorialist has never been furnished with the findings of that court before which he in fact was compelled to appear and which did in fact try him, and he is not informed what the findings actually were but it is in evidence in this case already, upon the sworn statement of Charles H. Burritt, Esq., his counsel at the trial by that court, affidavit dated Sept. 9th, 1885, as follows: "The special plea entered by me was substantially that my client was not Alfred Heath and that he was Arthur Ernest Hatheway and had never been enlisted in the United States Army. The proof was overwhelming and undenied that Alfred Heath was a deserter and a horse-thief. It was also clearly established that my client's special plea was true, and notwithstanding this, the Court Martial, as I learned with surprise, when the verdict was made public, completely ignored the special plea and contrary to the evidence rendered a verdict that *Alfred Heath was "not guilty."*

So that it was Private Heath, and not this Memorialist, who was acquitted by the Court Martial, and statements to the effect that Memorialist was acquitted are in fact not true so far as this Memorialist is informed and believes; no attempt has ever been made, so far as he is aware, to publish his acquittal of the charge brought against him, if he was in fact acquitted, either in the army, at his home in St. John, at the town of Big Horn where he was arrested or elsewhere, but on the contrary the tendency of the proceedings have been since the trial as well as at the trial, as he believes, to suppress correct information of his arrest, treatment pending trial and at the trial, and all the circumstances surrounding the case; that it has been the wish of the officers of the Army of the United States involved in the proceedings to hush the matter up as far as practicable. In no sense had the order of the Secretary of War, issued with a view that justice be done in the matter, been executed. He has received no official acknowledgment of the wrong inflicted upon him, and no offer of adequate compensation in money. There has been received by S. W. Hatheway, Esq., of Counsel for Memorialist a communication from the Second Auditor of the United States Treasury, of which the following is a copy, said communication having reached Counsel since the preparation of this memorial was commenced:

TREASURY DEPARTMENT, SECOND AUDITOR'S OFFICE, }  
WASHINGTON, D. C., June 22nd, 1889. }

S. W. HATHEWAY, ESQ., No. 34 School St., Boston, Mass.

Sir, — Referring to letter of this Office addressed to you on the 23rd ult., stating the action of the accounting officers of the Treasury, in the case of Arthur Ernest Hatheway, I have the honor to inform you that, at the request of the Secretary of War, the Second Comptroller has reconsidered the action of his office in the premises and has allowed the sum recommended by the Secretary of War, viz.: \$1,000.00. A draft for which amount, payable to the order of Arthur E. Hatheway, will be forwarded, through the Department of State, to the British Minister, Washington, D. C.

Respectfully yours,

J. N. PATTERSON, Auditor.  
By M. C. T.

As stated in the opening of this memorial the offer of one thousand dollars was respectfully declined by letter of Memorialist's said Counsel, to the Honorable G. Powell, under Secretary of State, for Canada, dated March 22nd, 1889, to which attention was invited. Memorialist has not changed his attitude in this behalf since his former declination of the proffered sum for the reason heretofore assigned: That the same is wholly inadequate. It is submitted that any sum less than ten thousand dollars is inadequate. It has been shown he lost not less than \$3,000.00 in property at Big Horn City in consequence of his arrest and imprisonment; His counsel fees at Fort McKinney, paid and unpaid, together with his expenses in counsel fees and other costs at St. John and Boston pending his imprisonment and other expenses incident thereto, will not be less than \$500.00; he has suffered not less than nine months in the aggregate with rheumatism, traceable directly to his imprisonment, since his release, during which time he was under the care of a physician, and consequently unable to pursue his ordinary avocations, for which it is submitted the sum of \$2,000.00 is a very reasonable compensation; and it is further submitted that \$4,500.00 is a reasonable, if not an inadequate sum in compensation for his mental and physical sufferings during his incarceration, together with the injury done his credit and destruction of his business in consequence of the charge of felony brought against him, when no felony had been committed in fact. His case falls, too, within that class wherein exemplary damages are awarded, and the law and precedent bear him out in his view that the sum of \$10,000.00 is but a reasonable demand; he therefore requests the representation of his case upon a basis of that demand.

The good Offices of Memorialist's government are further invoked to the end that if reasonable compensation be denied by the government of the United States upon the presentation herein asked, then that the government of the United States be requested and urged in the alternative to consent to the submission of the case of Memorialist to arbitration under a protocol of agreement between the two governments, one referee to be chosen by each government and they two to choose a third, the compensation of referees to be paid by the United States, and any award to be paid by the United States within six months from the date of such award.

Dated at WASHINGTON, D. C., June 27th, 1889.

Respectfully submitted,

ARTHUR ERNEST HATHEWAY, Memorialist.  
By J. M. VALE, of his Counsel.

TERRITORY OF MONTANA, }  
COUNTY OF MISSOULA. } s. s.

I, Arthur Ernest Hatheway, being first duly sworn, do state on oath in the matter of my imprisonment at Fort McKinney, Wyoming Territory, in addition to sworn statements heretofore made, that during the time he was confined without fire or blankets, bedding or furniture of any kind in the cell marked "B," on the plan of the prison heretofore submitted in his case and made a part thereof, between the 23rd and 26th of February A. D. 1885, after he had been ordered into solitary confinement, having refused to sign the name of *Heath* at the request of one Capt. Forbush, and after having been told by said Officer he might freeze



if he would not so sign, and that he could not have any blankets if he did not sign the name of Heath, an Officer came to the cell "B", where he was confined, with three nice blankets and said in effect to affiant "Here, Heath, are three nice warm blankets you can have if you will sign this receipt;" affiant told the Officer he would sign his own name, that of Hatheway, but not the name of Heath. The Officer seemed very angry at affiant's refusal and took the blankets away. Affiant was then very cold, in truth and in fact nearly frozen as it seemed to him; his suffering was almost unendurable, but he made up his mind to suffer any pain or hardship imposed rather than sign a false name to any paper, and he did not sign.

ARTHUR ERNEST HATHEWAY.

Subscribed and sworn to before me, a Notary Public, in and for the County and Territory aforesaid, this 19th day of June, A. D. 1889.

FRANK H. WOODY, Notary Public.

EXHIBIT K.

TERRITORY OF MONTANA, }  
COUNTY OF MISSOULA. } s. s.

I, Arthur Ernest Hatheway, being first duly sworn, do depose and say, that I am the identical person who was confined by the Military Authorities of the United States of America, at Fort McKinney, in the Territory of Wyoming between February 20th, 1885, and March 23rd, 1885; that before said confinement I was troubled with kidney disease which was augmented by reason of that confinement and the exposure incident thereto; that prior to said confinement I never was afflicted with rheumatism, but during my said confinement as aforesaid, and exposure to the intense cold, and the dampness of my prison cell while it lasted, I was afflicted with stiffness of the limbs and pains in my side and shoulders, and after my release, on or about the 15th day of May, 1885, I was attacked with a well defined case of rheumatism which lasted for about two and one-half months, and was directly traceable to that imprisonment, and the exposure incident thereto.

That attacks of rheumatism have recurred from time to time ever since, in periods varying from one to two months, and that I have been under medical treatment for a period aggregating in all since my said imprisonment as above stated, not less than nine months, on account of rheumatism contracted in that cell during my said imprisonment. I further state that the Physician (Dr. A. C. Bishop) of Butte City, Montana Territory, who treated me, died on or about the 18th day of April, 1888, but that since his death, whenever I was attacked with said disease, I have used the remedies that he prescribed for me to alleviate my sufferings from said disease.

ARTHUR ERNEST HATHEWAY.

I, Frank H. Woody, a Notary Public in and for Missoula County, Montana Territory, do hereby certify that the foregoing affidavit was subscribed and sworn to before me at Missoula, Missoula County, Montana Territory, on this 15th day of June, 1889, by the said Arthur Ernest Hatheway, and that the said person above named is well and personally known to me, and that he is a person to whose affidavit full faith and credit are due.

FRANK H. WOODY,

Notary Public.

EXHIBIT L.

In the case of

ARTHUR ERNEST HATHEWAY,

Affidavit of HELEN S. HATHEWAY, widow;

of St. John, N. B., Canada.

I, Helen S. Hatheway, widow of Thomas Hatheway, of the city of St. John in the Province of New Brunswick, Dominion of Canada, on oath depose and say:

I live in said St. John where I resided almost continuously since my marriage to said Thomas Hatheway, and raised to adult age seven of our children the youngest of whom is Arthur Ernest Hatheway.

I am now temporarily residing in Dedham, in the state of Massachusetts for my health, having come here this spring from said St. John. I was here also in the year 1885 and in February 1885 was residing in Dedham Village with my daughter Agnes A. Hatheway then an invalid, now Mrs. C. W. Lombard of Missoula, Montana, where also I have two sons in business, married and having large families.

My said son Arthur Ernest Hatheway is now my youngest son. He became twenty-one years of age on June 7th, 1884. For several years before that he had been visiting from time to time in the states of Maine and Massachusetts and for some months in the year or winter of 1883-4 he was at the Sheep Ranch of Weatherbee and Billings, at or near Rock Creek, Wyoming, seeking a situation. Said Weatherbee is George W. Weatherbee of Dedham, one of the Selectmen of this town.

My husband died December 12, 1871. Up to that time we had lived in comfort, if not luxury, and for some years afterward my circumstances were such that my children had no occasion to do any kind of work to help me, but in the year 1883 a large amount of our property had been dissipated and rentals of real estate in St. John had much decreased so that my son Arthur Ernest noticed the enforced change in our manner of life and he then became ambitious to do something to restore my impaired fortunes. This led to his journey to Rock Creek, Wyoming, and his stay for some months there and in Laramie City, and when he returned in the spring of 1884 it was with the avowed intentions of raising money on his property in St. John as soon as he came of age and going into business in the West. I was opposed to it because I knew him to be of delicate constitution, never robust. He had been out at Missoula for a year on a visit to his brother Thomas Gilbert Hatheway and while there had worked as a boy for Eddy, Hammond & Co. and came home with his earnings and a good recommendation, proud of his success, but it was evident he could not stand such hard work. He has always showed symptoms of weakness in the region of the kidneys. However, business matters were growing worse with us, property was rapidly depreciating in St. John, my daughter's health was wretched and I was suffering from bronchial troubles and the boy was determined to strike out and make money, and so in September 1884, immediately after coming of age, he mortgaged his St. John property for about Two Thousand dollars and went out to Big Horn, Wyoming, a place of which he had seen glowing advertisements in the newspapers and which he knew was not far from Ft. McKinney, a United States Military Post. From there he wrote frequently to myself and his sister encouraging letters, that he had bought land and erected a building and was beginning to start a business that should grow to be a general store like that he had worked in at Missoula. The next I heard was, on or about Feb. 26th, 1885, I received a telegram from Charles H. Burrirt, Esq., of Buffalo, Wyoming, that my said son was arrested for desertion, that the authorities claim enlistment December, 1879 and the telegram added "Telegraph immediately his whereabouts at that date, I am his counsel."

I did the best I could — the best we could, my invalid daughter and myself — we made haste to Boston, ten miles, and retained counsel for my son and telegraphed to lawyer Burrirt and engaged counsel at St. John, N. B., directing them to prepare the necessary evidence, and I personally saw all the persons whom I thought likely to help.

We all thought there was some dreadful conspiracy to hurt my son. He had never even in play drilled or acted soldier and had never enlisted in any company or military service, volunteer or regular. It was difficult for me to remember back five or six years to tell his actual whereabouts in December, 1879 and in my excitement I got things confused and there was much trouble in preparing the affidavits. I was not at my St. John home and had not near me friends who could assist me to recall dates so as to be correct and I was advised that



such evidence to be submitted to a Court Martial must be accurate. I was also under great fear and excitement for I knew that Court Martials were very strict and that the United States Army Officers in the West were over anxious to catch deserters and my counsel and friends could not allay my fears. Myself and my daughter and all the friends we could enlist went to work and by March 2, 1885, working continuously from the time I received the telegram we succeeded in sending to Mr. Burritt for use in my son's defense the affidavits of Benjamin Weatherbee, George W. Weatherbee, F. W. Baker, Anna M. Dean, S. Jennie Dean, Carrie E. Butman, Simon W. Hatheway, Agnes A. Hatheway and myself, also a second affidavit of Geo. W. Weatherbee and second of myself. I also wrote letters to many persons about the matter and so did my daughter Agnes A. Hatheway, and my son's Boston counsel wrote to George F. Hatheway, Warren Morse, Sir Leonard Tilly of New Brunswick, the United States Secretary of War, the British Minister at Washington (enclosing to him copies of certain affidavits) Arthur Ernest Hatheway, Charles H. Burritt, and others advising about the matter and calling for further evidence, &c., &c.

The telegram which I sent to Charles H. Burritt, Esq., in answer to his to me, was dated and sent I think Feby. 26, 1885, and read substantially as follows: "My son Arthur Ernest is British subject, became of age last June. December seventy-nine, lived with me in Dedham. Affidavits by mail." And its substance was communicated by said Burritt (so he states) to Col. Compton commanding at Fort McKinney early in March, 1885, or before March 1885. From this time on during the whole month of my son's imprisonment my excitement and fears and the agitations and excitement of my daughter so injurious to her health continued unremitted, and we were writing letters and sending telegrams in every direction and necessarily long distances to awaken interest in the case and make sure that no point was neglected. My daughter and several persons in Dedham who knew my son made ready to go out to be present at the Court Martial as witnesses and all the calculations had to be made and their time arranged for and business arrangements made.

Early in March we received information of the circumstances of his arrest, how the United States authorities had accepted as informers men of the lowest standing, utterly disreputable persons, and had offered these men the usual reward of thirty dollars for bringing in the alleged deserter and that these men had declined the offer, which was as I am informed a most suspicious circumstance, that in declining the offer they had informed the United States Army officers that they "could get Hatheway any time as he would not run for he "owned property in Big Horn," and that two weeks later the soldiers came and took him at nightfall. These circumstances we were advised indicated a degree of negligence or recklessness that could hardly be attributed to anything but conspiracy, in which one or more of the arresting parties were interested, and our counsel could not deny but the case looked desperate and we were obliged to keep doing our utmost. To defray part of the expenses and to give counsel at Buffalo an earnest of our intention to pay for his services, we had to raise money, and as it was in the middle of a quarter and I could get no income except from St. John properties on the next rent day, May 1st, my daughter mortgaged her piano to raise a little money for our need. Of course we have since paid these counsel fees and expenses except to the Boston counsel, and all these are to be repaid by my son.

My husband, during all his lifetime, was prosperous in business and was considered well-to-do or even rich, as compared with other merchants in the Province of New Brunswick, and he enjoyed the acquaintance and confidence of such men as Hon. Charles Tupper, now the Canadian Minister of Finance, Hon. Sir Leonard Tilley, for long time Governor of New Brunswick, Hon. John Boyd and many other distinguished men in Canada.

We lived a long life together, and of our twelve children seven now survive, by six of whom I am a grandparent, and I was already in 1885 entitled to be spared such grief and affliction as was caused by the wicked arrest and imprisonment of my youngest son, a victim to his imprudent zeal in my behalf, venturing into a wild country and trusting too confidently to the power of the United States Government to protect persons going there to settle, in answer to invitations extended to them in most flattering terms by corporations created or favored by that Government.

I have very carefully read over and considered this affidavit, and I feel as if I ought to use stronger language to describe the condition of mind of myself and daughter and all our family and friends when the news came of my son Arthur Ernest's arrest on those false charges and for the whole month of his imprisonment. Distant two thousand miles or nearly that from the scene of his ill-treatment, four hundred miles from my nearest son, eight day's

time for a letter one way, only some one in my position can realize my agony of doubt and fear. I was persuaded to believe it was detention merely, not incarceration, and that was well, for had I known that my boy was in a damp cell in solitary confinement and denied bedding for three February nights, the suffering would have been beyond my strength; and my son, only his mother can realize what was his suffering. The best was for him; his delicate health and his striking resemblance to my daughter Louisa, who had passed away after years of suffering, made him especially dear to us, and all were considerate of him, eager to show him kindness in every way, and the first awakening he had to the rough world was when armed soldiers placed manacles on his wrists and marched him thirty miles to a prison. I believe that that horrible outrage must account for the depression of mind and sickness of body which, he writes me, now frequently interfere with his efforts and prevent his success. The mere mortification of it was enough to break him down, to prevent his taking hold with energy on any new enterprise and to aggravate the weakness of his youth which he was making so brave an effort to overcome.

I recall now that owing to bad weather my telegram to C. H. Burritt, Esq., in answer to his first telegram was delayed several days, and in the meanwhile I was advised that in case, by reason of our failure to intervene in the cause, my son should be convicted, he would be sentenced to ten year's imprisonment in Fort Leavenworth for the alleged desertion, if not shot, and that the mere accusation of horse-stealing was considered in that country a justification of lynch law. I attach hereto a letter received by me from Charles H. Burritt, Esq., by due course of mail about March 6, 1885.

HELEN S. HATHEWAY.

COMMONWEALTH OF MASSACHUSETTS.

NORFOLK, s. s.

DEDHAM, May 23, 1889.

Then personally appeared the above named Helen S. Hatheway and made oath that the foregoing statement by her, subscribed in my presence, is true.

Before me,

SIMON W. HATHEWAY, Justice of the Peace.

PAPER MADE A PART OF EXHIBIT L.

Buffalo, Johnson County, Wyoming Territory,

February 26th, 1885.

Mrs. Helen S. Hatheway, Dedham, Mass.

My dear madam:

I sent you last evening a message by wire, briefly advising you that your son Arthur Ernest Hatheway was under arrest, charged with desertion from the United States Army. The charge against him is: That under the name of Alfred Heath, he enlisted in the army December 26th, 1879, and on the evening of July 14th, 1881, he deserted from Fort Laramie, Wyoming, taking with him a government horse and a pistol. It can be seen at a glance that the whereabouts of your son on December 26th, 1879, and July 14th, 1881, is of the utmost importance. Your son's statement is as follows: Born June 7th, 1863, at St. John, New Brunswick — his father is dead — his mother's name Helen S. Hatheway, now living at Dedham, Massachusetts; in 1878 and 1879 was attending school at Dedham, Mass. Left Dedham in the fall (probably November) 1880 and went to Missoula, Montana. Was some time in the employ of a surveyor named Armstrong, whose present whereabouts is unknown. Then entered the employ of Eddy, Hammond & Co., General Merchants, Missoula, Montana, remaining until September, 1881. Then returned to Dedham. Left Dedham in July, 1883 and



came to Rock Creek, Wyoming; was in the employ of Weatherbee & Billings until January or February, 1884. Then returned to Dedham. Remained in Dedham until September 13th, 1884, and then came to Buffalo and Big Horn, residing at the latter place until February 21st, 1885, when he was arrested. I am not certain whether he was in the employ of surveyor Armstrong, or Eddy, Hammond & Co. on July 14th, 1881; have written to Eddy, Hammond & Co. to find out. The Post Commandant, Col. Compton, has put me in possession of all the evidence concerning him that the government has, and unless I can find some testimony conclusive as to his occupation and residence on either December 26th, 1879, or July 14th, 1881, I am very much afraid that he will be convicted and sentenced to the military prison in Kansas for a long term of years. If you have any letters from him written in July, 1881, send them to me by return mail. The court of inquiry as to his identity will be held probably on Saturday of this week; failing to establish his identity he will be discharged from arrest and that will end it. Should his identity be established as the military authorities claim, he will be tried by a General Court Martial, now convened, and if his story is true we must have witnesses from Dedham to prove it. If your son was in Dedham, December 26th, 1879, and attending school, your evidence would be of the utmost importance. I have received no fee from your son (all his effects have been seized), and in case he should be unable to pay me I shall look to his family for compensation. The charge of desertion is not very serious, but the taking of the government horse and pistol is a serious offence and if he is convicted the punishment will be severe. If he is unjustly convicted you must resort to the President and War Department for a pardon, in which instance there will be a long and tiresome delay and your son will be imprisoned of course. I therefore need not urge upon you further the necessity of diligence in the matter and I trust you will give this immediate attention. I will defend him as counsel before the military courts here, and do my best endeavors to establish his innocence, but in all that I do I must have the hearty co-operation of his family and friends, or my efforts I fear cannot avail. I have written to his uncle, S. W. Hatheway, 34 School Street, Boston, Mass.

With kind regards and my sincere sympathy in this trouble, I am very truly yours,  
CHARLES H. BURRITT.

EXHIBIT M.

WASHINGTON, D. C., March 17, 1885.

MRS. HELEN S. HATHEWAY,

Your telegram rec'd. My attention has already been drawn to the case of your son and I have given orders which will insure justice being done in the matter.

WM. C. ENDICOTT, Sec'y War.

EXHIBIT P.

WAR DEPT., March 25, 1885.

HON. GEO. F. EDMUNDS, Senate.

Arthur Ernest Hatheway, who was held as a deserter at Fort McKinney, Wyoming, has been acquitted by a Court Martial. Particulars of trial not yet known.

R. C. DRUM.

EXHIBIT R.

WAR DEPARTMENT, ADJUTANT GENERAL'S OFFICE, }  
WASHINGTON, March 28th, 1885. }

Mr. S. W. HATHEWAY, Attorney,  
No. 34 School St., Boston, Mass.

SIR:—

In reply to your letter of the 28th ultimo, enclosing papers in the case of Arthur Ernest Hatheway, who was recently arrested as a deserter from the Army, I have the honor to inform you that the man was acquitted by a General Court Martial; and that telegraphic instructions for his immediate release were given by the Department on the 25th inst.

Very respectfully, your obedient servant,

GEO. D. RUGGLES,

Ass't Adjutant General.

