

## RULES AND ARTICLES OF WAR.

FEBRUARY 18, 1861.

Mr. HUGHES, from the Committee on Military Affairs, submitted the following report in the form of a bill, which was laid upon the table and ordered to be printed.

*Proposed act for establishing rules and articles for the government of the armies of the United States.*

SECTION —. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That, from after the passing of this act, the following shall be the rules and articles by which the armies of the United States shall be governed :

ART. 1. Every officer in the army of the United States, before entering upon the duties under his first commission, shall take the following oath or affirmation : “ I, A B, do solemnly swear (or affirm, as the case may be,) that I will bear true allegiance to the United States of America against all their enemies or opposers whatsoever, and observe and obey the legal orders of the President of the United States, and of the officers appointed over me, according to the rules and articles for the government of the armies of the United States.”<sup>1</sup>

ART. 2. Any officer or soldier who shall use contemptuous or disrespectful words against the President of the United States, against the Vice-President thereof, against the Congress of the United States, or against the chief magistrate or legislature of any of the United States in which he may be quartered, shall suffer such punishment as may be inflicted on him by the sentence of a general court-martial.<sup>2</sup>

ART. 3. Any officer or soldier who shall behave himself with contempt or disrespect towards his commanding officer, shall be punished, according to the nature of his offence, by the judgment of a general court-martial.<sup>2</sup>

ART. 4. Any officer, non-commissioned officer, or person duly enlisted in the military service of the United States, who shall begin, excite, or cause any mutiny or sedition in any troop or company in said service, or in any party, post, detachment, or guard ;<sup>3</sup>

<sup>1</sup> Article 1 of existing code was of temporary force; the one here substituted is of general effect.

<sup>2</sup> Articles 2 and 3 of existing code are omitted as unnecessary ; the acts which they concern can be fully reached under article 99 of that code, which will be repeated here as article —. The article here proposed is substantially the same as No. 5 of present code. It is more brief, however, though quite as comprehensive ; the word “ cashiered ” is omitted, but the power thus to punish an officer still remains in the court ; and the general gravity of the offence is here enhanced by restricting trial therefor to general courts-martial. Article 3, above, is the same as article 6 of the act of April 10, 1806, with the addition of the word “ general ” before court-martial.

<sup>3</sup> It is proposed, as far more convenient and impressive, to group together all the articles which concern acts that may be capitally punished. They are so arranged in the act for the government of the English armies.

ART. 5. Or any officer or person duly enlisted in the military service of the United States, who shall join and engage with others in any mutiny, sedition, or any combined resistance to constituted military authority, in any troop or company in the said service, or in any party, post, detachment, or guard ;<sup>4</sup>

ART. 6. Or any officer, non-commissioned officer, or soldier, who, being present at any mutiny, sedition, or combined resistance to regularly-constituted military authority, does not use his utmost endeavor to suppress the same, or coming to the knowledge of any intended mutiny, does not, without delay, give information thereof to his commanding officer ;<sup>4</sup>

ART. 7. Or any officer, non-commissioned officer, musician, artificer, private, or other enlisted man, who shall strike his superior officer or non-commissioned officer, or shall draw or lift any weapon, or offer any violence against him, being in the execution of his office, or on any pretence whatsoever ;

ART. 8. Or any enlisted soldier who shall strike a member of the guard, or shall draw or lift a weapon against him, the same being in the discharge of his lawful and assigned duty or service ;<sup>5</sup>

ART. 9. Or any officer, musician, artificer, private, or enlisted man, who shall disobey any lawful command of his superior officer ;<sup>5</sup>

ART. 10. Or any sentinel who shall be found sleeping upon his post, or shall leave it before he shall be regularly relieved ;<sup>6</sup>

ART. 11. Or any officer belonging to the service of the United States, who, by discharging of fire-arms, drawing of swords, beating of drums, or by any other means whatsoever, shall occasion false alarms in camp, garrison, or quarters ;<sup>7</sup>

ART. 12. Or any officer or soldier who shall do violence to any person who brings provisions or other necessaries to the camp, garrison, or quarters of the forces of the United States, employed in any parts out of the said States ;<sup>8</sup>

ART. 13. Or any officer or soldier who shall misbehave himself before the enemy, run away, or shamefully abandon any fort, post, or guard, which he or they may be commanded to defend, or speak words inducing others to do the like, or shall cast away his arms and ammunition, or who shall quit his post or colors to plunder and pillage ;<sup>9</sup>

ART. 14. Or any person belonging to the armies of the United States

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<sup>4</sup> Article 7 of present code it is here proposed to divide into two separate articles. One person may foment, begin, excite, or cause a mutiny, and for that should be punished under a separate, clear, and distinct article, as hereinbefore provided by the proposed article 4 ; while article 5, above, makes it clear and beyond dispute what shall and who may constitute a mutiny, about which doubts and discussions have occurred in the army under article 7 of the present code. Article 6, ante, is the same with article 8 of existing act, except that it is made more explicit and comprehensive by the addition of the words, "or combined resistance to regularly-constituted military authority."

<sup>5</sup> Article 7 ante, and articles 8 and 9 above, are proposed in lieu of article 9 of existing act, and have been framed to meet the various questions which are constantly coming up before courts-martial as to the precise intent of article 9 of the act of April 10, 1806. Article 8 above provides for an omission in the present article 9, by making it in certain cases a capital offence to strike a member of the guard—a most necessary provision of law.

<sup>6</sup> Same as article 46 of existing act.

<sup>7</sup> Same as article 49 of existing act.

<sup>8</sup> Same as article 51 of existing act.

<sup>9</sup> Same as article 52 of existing act.

who shall make known the watchword to any person who is not entitled to receive it according to the rules and discipline of war, or shall presume to give a parole or watchword different from what he received;<sup>10</sup>

ART. 15. Or whosoever belonging to the armies of the United States, employed in foreign parts, shall force a safeguard;<sup>11\*</sup>

ART. 16. Or whosoever shall be convicted of holding correspondence with, or giving intelligence to the enemy, either directly or indirectly;<sup>12</sup>

ART. 17. Or any officer, non-commissioned officer, enlisted soldier, employé of any department of the military establishment, or any other person, who shall combine with others to force any commanding officer, in the service of the United States, of any garrison, post, or fortified place, to give up the same to the enemy, or to abandon it;<sup>13</sup>

ART. 18. Or any officer, or any non-commissioned officer, musician, or private soldier, who having been duly enlisted in the military service of the United States, and shall in time of war desert the same;

Shall suffer death or such other punishment, according to the degree of his offence, as may be adjudged by a general court-martial duly convened and organized, and confirmed by the competent authority to review the sentence so adjudged.

*Provided*, That no person shall suffer death but by the concurrence of two-thirds of the members of a general court-martial; and provided that no sentence of a general court-martial in time of peace, extending to the loss of life of an officer or enlisted man, or to the dismissal of a commissioned officer from the service, or which, either in time of peace or war, respect a general officer, shall be carried into execution until after the whole proceedings of the trial shall have been transmitted to the Secretary of War, to be laid before the President of the United States for his approval or disapproval and final orders in the case.<sup>14</sup>

ART. 19. Any officer who shall be convicted by a general court-martial of unofficerlike or other dishonorable conduct, to the discredit of the service, shall be cashiered.<sup>15</sup>

<sup>10</sup> Same as article 53 of existing act.

<sup>11</sup> Same as article 55 of existing act.

<sup>12</sup> Here ought to be inserted an article of the tenor of No. 57 of the present code.

<sup>13</sup> Same as article 57 of existing act.

<sup>14</sup> The article here proposed is more comprehensive than article 59 of the act of April 10, 1806, as it is made to embrace civil employés connected with the armies of the United States, and indeed any person of whatsoever vocation or station of life who may so offend; and, as such act in a civilian were a military crime outside wholly of the provisions of the civil law, the article above gives, as of right ought to be the case, full jurisdiction to a military tribunal to take cognizance of and punish any citizen who may commit the crime involved. Immediately after article 59 should follow one of same tenor and effect as No. 56 of the articles now in force, the word *general* being inserted before the words "court-martial."

<sup>15</sup> Here are placed (it is submitted in the proper connexion and for greater convenience for reference) so much of article 87 now in force as concerns the vote necessary to make the sentence of death legal; and so much of article 65 as qualifies the power of a reviewing officer to approve and carry into execution the sentence of a court-martial extending to the loss of life of officer or soldier, dismissal of an officer, or punishment of a general officer.

<sup>16</sup> This varies slightly from the letter of article 83 of the act of April 10, 1806; but is submitted as more clearly expressing the spirit and intent of that article, about which there has been much discussion in the army.

ART. 20. Any officer who shall be found drunk on his guard, party, or other duty for which he shall have been especially detailed, shall be cashiered on conviction by a general court-martial of having so offended.<sup>16</sup>

ART. 21. Any commissioned officer, storekeeper, or commissary, who shall be convicted at a general court-martial of having sold without a proper order for that purpose, embezzled, misapplied, or wilfully, or through neglect, suffered any of the provisions, forage, arms, clothing, ammunition, or other military stores belonging to the United States, to be spoiled or damaged, shall at his own expense make good the loss or damage, and shall moreover forfeit all his pay, and be dismissed from the service.<sup>17</sup>

ART. 22. Every officer who shall be convicted before a general court-martial of having embezzled or misapplied any money with which he may have been intrusted for the payment of the men under his command, or for enlisting men into the service, or for any other purpose, shall be adjudged to refund to the United States the amount so embezzled or applied, and shall forfeit all pay and allowances then due him and be cashiered.<sup>18</sup>

ART. 23. Any non-commissioned officer, enlisted soldier, retainer to the camp, or employé in immediate connexion with the military service, who shall be convicted by a garrison or regimental court-martial of having embezzled, misapplied, or appropriated to his own use or profit any company or recruiting fund, or funds accruing from sales of post or other military bakery, or other money intrusted to him on any public account, or of having sold, lost, or spoiled, through neglect or wilfulness, the savings of rations of any description, his horse, arms, accoutrements, or other public property, or any military stores or supplies in his immediate charge, shall be adjudged to make good the loss or damage established against him, and shall be otherwise punished at the discretion of said court-martial.<sup>19</sup>

ART. 24. Every officer, commanding a company or troop, shall be charged with the arms, accoutrements, ammunition, clothing for immediate issue, and other public stores belonging to such company or troop, and shall regularly and duly account for the same quarterly to the treasury of the United States, in such manner and according to such forms as may be instituted from time to time by the War Department; and, in default thereof, shall be dismissed by the

<sup>16</sup> So much of article 45 of existing code as relates to non-commissioned officers and soldiers omitted here, to be elsewhere provided for.

<sup>17</sup> Article 36 of existing code.

<sup>18</sup> Submitted in lieu of article 39 of existing code, and made to apply only to officers, and the word "general" is inserted before court. So much of article 39 as is omitted, will be found embraced elsewhere.

<sup>19</sup> The article here submitted embraces so much of article 39 of the existing code as relates to non-commissioned officers and soldiers and the substance of articles 37 and 38 of same act. Retainers to the camp and employés with troops are also made amenable to courts-martial, for the class of offences included in the article above, as they ought to be. This is peculiarly necessary for the protection of public property; it is quite compatible with their military relations at the time and the ends of law and justice; and such an article of war will be of a general benefit to the service, as well as security to the public interests.



President, unless he shall explain such failure or omission to the satisfaction of the President.<sup>20</sup>

ART. 25. Every officer of the army intrusted with public money, for disbursement or other purpose, shall duly account for the same quarterly to the treasury of the United States, according to such forms and in such manner as may from time to time be determined and directed by the War Department: *Provided*, That all such accounts shall be required to be rendered within three months after the expiration of each successive quarter, if by any officer stationed within the United States; and within six months, if stationed in a foreign country; and in default thereof, he shall be dismissed the service, unless he can explain such failure or omission to the satisfaction of the President.<sup>21</sup>

ART. 26. Every officer who shall knowingly make a false return to the Department of War, or to any of his superior officers authorized to call for such returns, of the state of the regiment, troop, or company, or garrison under his command, or of the arms, ammunition, clothing, or other stores thereunto belonging, or in relation to public money in his charge, shall, on conviction thereof before a general court-martial, be cashiered.<sup>22</sup>

ART. 27. When any officer, non-commissioned officer, soldier, retainer to the camp, or military employé shall be accused of a capital crime not involving a military crime under the 4th, 5th, 7th, or 8th of the foregoing articles of this act, or of having committed any offence such as is punishable by the known laws of the land, it shall be the duty of the commanding officer and officers of every troop or company to which accused shall belong, or be in any way connected, upon application duly made, to deliver over such accused person or persons to the civil authorities, to be dealt with according to the civil law.

If any commanding officer or officers shall wilfully neglect, or shall refuse, upon application aforesaid, to deliver over such accused person or persons to the civil magistrates, or to aid and assist the officers of justice in apprehending such person or persons, the officer or officers so offending shall be cashiered.<sup>23</sup>

<sup>20</sup> This is in lieu of article 24 of act of April 10, 1806, which is virtually obsolete, and of more effect in our service.

<sup>21</sup> This is substantially the law as it stands (Sec. 2 of act approved January 31, 1823,) concerning the disbursement of public money. It is here properly placed as an article of war for more easy reference in relation to military disbursing officers.

<sup>22</sup> Substantially the same as article 18, section 1, of act of April 10, 1806, but is more comprehensive, as will be seen.

<sup>23</sup> The article here submitted is somewhat different from article 33 of existing code. More brief by the omission of double legislation, it is yet more definite and quite as comprehensive as that article, and clears up a doubt in the construction of said article; that is, it expressly gives the *military tribunals* superior jurisdiction in cases when one of the military establishment shall, while offending against either the 4th, 5th, 7th, or 8th of these articles, take the life of any one. A court-martial, in view of the *object of all punishment*, is clearly the tribunal which can best punish such offences resulting in homicide; a soldier in resistance to the authority of a superior, or in a mutiny, might kill that superior under circumstances which, under the civil law, could be made manslaughter; therefore, having compromised himself by violation of either one of the articles in question, and become

ART. 28. Every officer in quarters, camp, or on the march, shall keep good order, and to the utmost of his power repress and redress all abuses and disorders, whether by beating or otherwise maltreating any citizen, or disturbing fairs or markets, or by committing any kind of tumult or riot to the disquieting of the citizens of the United States, by any officer, enlisted soldier, or retainer to the camp, under his command; and to this end shall have power, in case of non-commissioned officers, soldiers, or retainers to the camp, to convene a regimental or garrison court-martial for the investigation of the complaint, which court-martial shall be competent to award reparation to the party or parties injured, so far as the same can be done by stoppage of the pay of the offender or offenders so convicted, as well as otherwise punish him or them at its discretion.

And, in cases where a commissioned officer shall be the alleged offender, it shall be the duty of said commanding officer, on due complaint, to prefer charges duly setting forth the precise nature of the act or acts alleged; upon which charge or charges said officer or officers shall be arraigned and tried by a general court-martial, and, upon conviction thereof, shall be punished according to the nature of his offence at the discretion of said court-martial.

Any commanding officer convicted by a general court-martial of having failed to discharge his duty, as hereinbefore enjoined, shall be dismissed the service or otherwise punished as said court-martial may adjudge.<sup>24</sup>

ART. 29. No commissioned officer shall be discharged the service but by authority from Congress or in the execution of the sentence of a general court-martial.<sup>25</sup>

ART. 30. After a non-commissioned officer or soldier shall have

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subject to the penalties of his military crime, by an aggravation really of the crime, might by committing in further resistance a homicide, and thus escape from the consequences of the capital crime. The fact is, if a soldier kills a superior while doing either of the acts embraced in the articles in question, in view of the law he has committed a more heinous crime than any ordinary *murder or homicide*; and it is but in accordance with the analogies of the civil law that he should be tried by that tribunal—a court-martial—which is empowered by law to impose the severest penalty. All citizens of the United States who enter the army for the time being are in an *exceptional condition*, subject necessarily to an *exceptional special code* adapted to that condition, and when the provisions of that code are adequate for his punishment in the event of any crime, he should be left to the tribunals established under it. In my belief, the law, as it stands, was designed to do all here provided; but it is best to clear away all doubts and chances for conflict of authority.

<sup>24</sup> Article 32 of the existing code is virtually without force. The one here proposed in its stead, as will be perceived, makes ample provision for the prompt reparation for and punishment of the class of offences embraced, and is confidently submitted as materially better than article 32 aforesaid, which, while enjoining justice to be done, makes no provision whatever to enable the commanding officer to do what is enjoined upon him.

<sup>25</sup> Instead of article 11 of existing code the two articles above are submitted, and a question constantly mooted under existing laws set at rest. There is no public necessity for giving to the President the power to dismiss an officer of the army without trial, except when Congress has expressly given him that power, as, for example, in section 3 of the act approved January 31, 1823, concerning the "disbursement of public money," an enactment the existence of which must support the construction of those who contend that the President has no lawful right to *dismiss* an officer without trial, except by virtue of some *special enactment*, and that the exercise of the power specified in article 11 aforesaid refers expressly to such *special enactments* and to cases in which Congress had directed the disbandment of a portion or the whole of the army.

been duly enlisted and sworn he shall not be discharged the service before his term of service has expired but by order of the President, the commanding officer of the military department or district in which he may be stationed, or by the sentence of a court-martial, duly confirmed, and no discharge shall be sufficient except it be made in writing and is signed by the commanding officer of the regiment or of the post or detachment to which said non-commissioned officer or soldier is attached at the time of such discharge.—(See note 25, on preceding page.)

ART. 31. Any non-commissioned officer or duly enlisted soldier who shall, in time of peace, be convicted by a general court-martial of having deserted the service of the United States shall forfeit all pay and allowances that may be due him from the United States, on any account whatsoever, at the date of his desertion, and be otherwise punished as the court-martial shall adjudge, provided that no more than fifty lashes shall be inflicted as a part of the punishment for said offence; and that in case said non-commissioned officer or soldier shall be continued in the service, he shall, in addition to all other penalties imposed by the court-martial, be made to serve for a period equal to that lost to the United States by his absence, and up to the date of the publication of the sentence. And such non-commissioned officers or soldiers may be tried and punished as before said, notwithstanding the term of his enlistment may have elapsed previous to the time of his apprehension or trial, or the confirmation of the sentence.<sup>26</sup>

ART. 32. No non-commissioned officer or soldier shall enlist himself in any other regiment, troop, or company, without a regular discharge from the regiment, troop, or company in which he last served, on the penalty of being reputed a deserter and suffering accordingly.<sup>27</sup>

ART. 33. All non-commissioned officers and soldiers who shall be found one mile from the camp without leave, in writing, from their commanding officer, shall suffer such punishment as shall be inflicted upon them by the sentence of a court-martial.<sup>28</sup>

ART. 34. No officer or soldier shall lie out of his quarters, garrison, or camp, without leave from his superior officer, upon penalty of being punished, according to the nature of his offence, by the sentence of a court-martial.<sup>29</sup>

ART. 35. Every non-commissioned officer and soldier shall retire to his quarters or tent at the beating of the tattoo, in default of which he shall be punished according to the nature of his offence.<sup>30</sup>

ART. 36. Any non-commissioned officer or soldier who shall, without leave from his commanding officer, absent himself from his troop,

<sup>26</sup>Article 18, ante, covers cases of desertion in time of war. The one above embodies present legislation for such an offence in time of peace in one article, and is somewhat more explicit and stringent, desertion being the bane of our service.

<sup>27</sup>This is same as article 22 of existing code, with the omission of so much as relates to penalty, &c., in case any officer should receive, entertain, &c., believed to be a mere surplusage.

<sup>28</sup>Idem as article 41 of act of April 10, 1806.

<sup>29</sup>Idem as article 42 of act of April 10, 1806.

<sup>30</sup>Differs from article 45 of act of April 10, 1806, only in the word *tattoo*, which is substituted for "retreat," in accordance with the actual discipline of the service.

company, or detachment, shall, upon being convicted thereof, be punished, according to the nature of his offence, at the discretion of a court-martial.<sup>3 1</sup>

ART. 37. No officer, non-commissioned officer, or soldier shall fail in repairing at the time fixed to the place of parade, of exercise, or other rendezvous appointed by his commanding officer, if not prevented by sickness or other evident necessity, or shall go from the said place of rendezvous, without leave from his commanding officer, before he shall be regularly dismissed or relieved, on the penalty of being punished according to the nature of the offence by the sentence of a court-martial.<sup>3 2</sup>

ART. 38. Any officer or soldier who shall without urgent necessity, or without the leave of his superior officer, quit his guard, platoon, or division shall be punished according to the nature of the offence by the sentence of a court-martial.<sup>3 3</sup>

ART. 39. All officers, of what condition soever, have power to part or quell all quarrels, frays, and disorders, though the persons so concerned should belong to another regiment, troop, or company; and either to order officers into arrest, or non-commissioned officers or soldiers into confinement until the proper superior officers shall be acquainted therewith; and whosoever shall refuse to obey such officer, though of an inferior rank, or shall draw his sword upon him, shall be punished at the discretion of a general court-martial.<sup>3 4</sup>

ART. 40. In cases where a court-martial may think it proper to sentence a commissioned officer to be suspended from command, they shall have power also to suspend his pay and emoluments for the same time, according to the nature and heinousness of the offence.<sup>3 5</sup>

ART. 41. Whenever any officer shall be charged with an offence against the Rules and Articles of War he shall be arrested and confined in his barracks, quarters, or tent, and deprived of his sword by the commanding officer. And any officer who shall leave his confinement before he shall be set at liberty by his commanding officer, or by a superior officer, shall be cashiered.<sup>3 6</sup>

ART. 42. Non-commissioned officers charged with any violation of these Rules and Articles of War may be, and all enlisted men shall be, confined in charge of the guard until tried by a court-martial, or until released by proper authority: *Provided*, That no officer, non-commissioned officer, or other enlisted soldier shall be held in arrest or under confinement for a longer period than eight days, except for trial before a general court-martial.<sup>3 7</sup>

<sup>3 1</sup> Idem as article 21 of the act of April 10, 1806. Indeed this article could be omitted, as article — would very properly embrace such an offence against discipline.

<sup>3 2</sup> Idem as article 44 of the act of April 10, 1806.

<sup>3 3</sup> Idem as article 50 of the act of April 10, 1806.

<sup>3 4</sup> Idem as article 27 of the act of April 10, 1806.

<sup>3 5</sup> Idem as article — of act now in force.

<sup>3 6</sup> Idem substantially as article 77 of act now in force.

<sup>3 7</sup> In this article is embodied the custom of the service in connexion with non-commissioned officers, who are only arrested in their barracks, unless for some grave crime. Here, too, are properly placed the restrictions as to period of arrest or confinement without trial.



ART. 43. No officer commanding a guard, or any provost marshal, shall refuse to receive or keep any prisoner committed to his charge by an officer belonging to the forces of the United States: *Provided*, The officer committing shall at the same time deliver an account in writing, signed by himself, of the crime with which the said prisoner is charged.<sup>38</sup>

ART. 44. No officer commanding a guard, or any provost marshal, shall presume to release any person committed to his charge without proper authority for so doing, nor shall he suffer any person to escape, on the penalty of being punished for it by the discretion of a court-martial.<sup>39\*</sup>

ART. 45. Every non-commissioned officer or soldier who shall enlist himself in the service of the United States shall, at the time of his so enlisting, or within six days afterwards, have the articles for the government of the armies of the United States read to him, and shall, by the officer who enlisted him, or by the commanding officer of the troop or company into which he was enlisted, be taken before the next justice of the peace, or chief magistrate of any city or town corporate, not being an officer of the army, or where recourse cannot be had to the civil magistrate, before the adjutant of any regiment present or of the post, or the judge advocate of any court-martial, and in his presence shall take the following oath or affirmation: "I, A B, do solemnly swear, or affirm, (as the case may be,) that I will bear true allegiance to the United States of America, and that I will serve them honestly and faithfully against all their enemies or opposers whatsoever, and observe and obey the orders of the President of the United States, and the orders of the officers appointed over me, according to the rules and articles for the government of the armies of the United States;" which justice, magistrate, or other functionary hereinbefore prescribed, is to give the officer a certificate signifying that the man enlisted did take the said oath or affirmation.<sup>40</sup>

ART. 46. Every colonel or other officer commanding a regiment, troop, or company, and actually quartered with it, may give furloughs to non-commissioned officers or soldiers, in such numbers and for so long a time as he shall judge to be most consistent with the good of the service; and a captain or other inferior officer commanding a troop or company, or in any garrison, fort, or barrack of the United States (his field officer being absent) may give furloughs to non-commissioned officers or soldiers for a time not exceeding twenty days in six months, but not to more than two persons to be absent at the same time, excepting some extraordinary occasion should authorize it.<sup>41</sup>

ART. 47. The commanding officer of every regiment shall, as soon as practicable after the end of every month, transmit to the War Department, through channels and according to forms to be prescribed from time to time by the War Department, an exact return of the regiment, specifying the *names* of all officers, non-commissioned officers, and private soldiers who have joined the regiment within the

<sup>38</sup> Idem as article 80 of act of April 10, 1806.

<sup>39</sup> Idem as article 81 of act of April 10, 1806. \*See note 49.

preceding month, or who have ceased to be members thereof from any cause whatever; and in case of the absence of any officer, non-commissioned officer, or soldier, the reasons for and the time of absence shall be fully set forth opposite their respective names. In like manner, the commanding officer of every garrison, or independent troop, company, or detachment in the service of the United States, shall, as soon as practicable after the end of every month, transmit to the War Department, to the headquarters of the army, and to the headquarters of the department or district, an exact return of the garrison, or independent troop, company, or detachment under his command, specifying the names of the officers then absent, with the reasons for and the time of their absence. And in like manner, also, all company commanders will make monthly company returns, according to prescribed forms, to their regimental headquarters. And any officer who shall be convicted of having, through neglect or design, omitted sending such returns hereinbefore enjoined, shall be punished according to the nature of his offence at the discretion of a general court-martial.<sup>42</sup>

ART. 48. All troops in the service of the United States shall be mustered on the last day of February, April, June, August, October, and December, in accordance with such forms and by such mustering and inspecting officer as may from time to time be prescribed by the War Department, or, in the absence of any specially appointed officer, by the commanding officer of each regiment embodied, or by the commanding officer of each separate post, detached command, troop, or company.<sup>43</sup>

ART. 49. At every muster the commanding officer of each regiment shall give to the mustering officer quadruplicate muster-rolls, made according to forms to be prescribed by the War Department, embracing the names of all the field and staff officers, and non-commissioned staff officers, of said regiment; and in like manner, at every muster, the commanding officer of each troop, company, or detachment there present shall give to the mustering officer quadruplicate muster-rolls, embracing the names of every officer, non-commissioned officer, and private soldier belonging to said troop, company, or detachment; and in case of the absence of any officer, non-commissioned officer, or private soldier, the commanding officer of the regiment, troop, or company shall insert in the muster-rolls, opposite the names of the respective absent officers and soldiers, the reasons for and time of absence. One muster-roll of the field and staff of each regiment, troop, or company shall be transmitted by the mustering officer to the Department of War, through the proper channels, as speedily as the distance of the place will admit.<sup>44</sup>

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<sup>42</sup> As far as article 17 of the act of April 10, 1806, goes, the one here proposed does not differ; but it is more comprehensive, accords with the usages and needs of the service, and fixes *as law* what hitherto was left to regulation, leaving at same time due latitude for necessary changes by regulation.

<sup>43</sup> Here to take place of article of present code. The practice in the army and the regulations on the subject-matter are embodied as a law, which should be the case.

<sup>44</sup> This article embodies the practice now followed, and it ought to replace the obsolete article 13 now on the statute book.

ART. 50. At every muster the senior medical officer of each hospital, post, regiment, or detached command shall give to the mustering officer quadruplicate muster-rolls, made according to forms to be prescribed from time to time by the War Department, of the hospital stewards, matrons, and of all soldiers in hospital, sick or on duty, detached from their companies; and to secure the proper performance of this duty, whenever a soldier in hospital is detached from his company so as not to be mustered with it for pay, his company commander shall certify and send to the hospital his descriptive list and account of clothing, containing all necessary information relating to his account with the United States, which descriptive list will be returned with the soldier whenever he shall be returned to his company, with the addition of all payments, stoppages, and issues of clothing while in hospital or detached from his company, duly certified to. One copy of the muster-rolls thus prescribed will be transmitted in the same manner as all other muster-rolls.<sup>45</sup>

ART. 51. Every officer who shall be convicted by a general court-martial of having, with design, signed a false muster-roll, or mustering officer so convicted of having authorized or knowingly permitted the signing of muster-rolls wherein such false muster is contained, shall be cashiered, and shall be hereafter disabled to have or to hold any office or employment in the service of the United States.<sup>46</sup>

ART. 52. Any officer who shall be convicted by a general court-martial of having, with design and knowledge, signed a false certificate in relation to his pay and allowances, or on any account whatever, shall be cashiered.<sup>46</sup>

ART. 53. No officer or non-commissioned officer, or other enlisted soldier, shall send a challenge to another officer or soldier, or accept a challenge if received, upon pain, if a commissioned officer, of being dismissed; and if a non-commissioned officer or soldier, of being punished at the discretion of a general court-martial.<sup>47</sup>

ART. 54. It shall be the duty of every officer commanding an army, regiment, company, troop, post, or detachment, who has knowledge that a challenge has been given or accepted by any officer or soldier under his command, to immediately cause the arrest and bring to trial such offenders, including all seconds or carriers of challenges to duels, if officers or soldiers, who are hereby made subject to the same penalties as the principals in the same.<sup>47</sup>

ART. 55. All public stores taken in the enemy's camp, towns, forts, magazines, or trains, whether of artillery, ammunition, clothing, for-

<sup>45</sup> This article embodies, as far as the subject-matter is concerned, paragraphs of 1124 and 1128 of the Regulations of the Army, edition of January 1, 1857, now in force. Whenever a matter such as this can be regulated by law, it would seem best to do so.

<sup>46</sup> Modifications and condensation of articles 14 and 15 of act of April 10, 1806, to suit the present establishment. Articles 16 and 17 of that act it is deemed necessary to re-enact, as their subject-matter clearly can be reached under other articles. Whosoever should muster a person as soldier who is not a soldier clearly would make a false muster, and it were *surplusage* to declare it so by special article.

<sup>47</sup> The phraseology of these articles is changed from that of articles 25 and 26 of present code, but the provisions are believed to be substantially the same and quite as efficient. The omission about the commanding officer of a guard has merely effect to clear the article of unnecessary matter. Article 28 of present code is omitted, it being, as will be seen, virtually of no effect.

age, provisions, animals, or other military supplies, shall be secured for the service of the United States, in accordance with regulations to be prescribed from time to time by the War Department, or, in the absence of such regulations, by the general commanding an army in the field. And any neglect or disobedience of such requirements on the part of a commanding or proper staff officer, shall be punished at the discretion of a general court-martial.<sup>48</sup>

ART. 56. Every officer, or provost marshal, to whose charge prisoners shall be committed, shall, within twenty-four hours after such commitment, or as soon as he shall be relieved from his guard, make report, in writing, to the commanding officer, of their names, their crimes, and the names of the officers who committed them, in accordance with forms to be prescribed from time to time by the War Department, on the penalty of being punished at the discretion of a court-martial.<sup>49</sup>

ART. 57. If upon marches, guards, or in quarters, different corps of the army shall happen to join or do duty together, the officer senior in rank by commission in the army of the United States, the marine corps, or militia on duty there, shall command the whole, and give orders for what is needful to the service, unless otherwise specially directed by the President of the United States, according to the nature of the case: *Provided*, That no officer holding a commission in one of the civil staff corps shall be eligible to the command of troops by virtue of said commission, and that no officer of the marine corps or militia shall command an officer of the same grade in the army.<sup>50</sup>

ART. 58. Officers having brevets or commissions of a prior date to those of the corps or regiment of which they are members, shall on detachments take place according to the rank held under said brevets or commissions of a prior date, in the army of the United States: *Provided*, Said detachment is not composed of the same regiment or corps, and shall be embodied for same special service.<sup>51</sup>

ART. 59. No officer of the army, on behalf of the United States, shall directly or indirectly make or enter into any contract, bargain, or agreement in writing, or otherwise, with any member of Congress,

<sup>48</sup> Believed to be more comprehensive than article 58 of the act April 10, 1806.

<sup>49</sup> This is substantially the same as article 82 of present code. It ought to follow 44 of these articles, and be numbered 45.

<sup>50</sup> The above is proposed in lieu of article 62 of present code, which is as follows: "If, upon marches, guards, or in quarters, different corps of the army shall happen to join, or do duty together, the officer highest in rank of the line of the army, marine corps, or militia, by commission there on duty or in quarters, shall command the whole, and give orders for what is needful to the service, unless otherwise specially directed by the President of the United States, according to the nature of the case." The reasons for the proposed change from the phraseology of the article here quoted, will be appended at length.

<sup>51</sup> This in lieu of so much of article 61 of act April 10, 1806, as will not be found embodied in article — of this series. Article 61 of the code in force is as follows: "Officers having brevets or commissions of a prior date to those of the regiment in which they serve, may take place in courts-martial and on detachments, when composed of different corps, according to the ranks given them in their brevets or dates of their former commissions; but in the regiment, troop, or company to which such officers belong, they shall do duty and take rank, both in courts-martial and on detachments which shall be composed of their own corps, according to the commissions by which they are mustered in the said corps."



such as is inhibited by section 4 of the act approved April 21, 1808; and any officer so offending, on conviction thereof by a general court-martial, shall be dismissed the service.<sup>52</sup>

ART. 60. No disbursing officer, or officer directing the disbursements of public money, shall either directly or indirectly be concerned or interested in the purchase for sale to the department of the public service in which he is engaged, of any article required in the services of that department, on penalty of being punished therefor according to the nature of the case, at the discretion of a general court-martial.<sup>53</sup>

ART. 61. All officers, enlisted soldiers, and retainers to the camp, are to behave themselves orderly and decorously in quarters and on their march. And any officer or soldier convicted by a general court-martial, or in case of an enlisted soldier or retainer to the camp, by a regimental or garrison court-martial, of having wilfully damaged, mutilated, or despoiled any fields, gardens, orchards, or grounds, or enclosures of any sort thereto, or of having maliciously injured or destroyed any property whatsoever, belonging to citizens of the United States, unless by order of the commander-in-chief of an army, (besides such penalties as they are liable to by the law of the place,) shall be punished according to the nature and degree of the offence at the discretion of said general, regimental, or garrison court-martial.<sup>54</sup>

ART. 62. Every military post may have one sutler, who shall be appointed by the Secretary of War for a term of three years, unless sooner removed, on the nomination of the council of administration of said post, approved by the commanding officer thereof: *Provided*, That no member of the council of administration or commanding officer shall directly or indirectly be interested in the business with the sutler so appointed.<sup>55</sup>

ART. 63. All commanding officers are hereby required to see that persons appointed to suttle shall keep on hand such articles of good quality as are needed by the soldiers, and that the same are sold to them at a reasonable rate to be fixed by a council of administration approved by the commanding officer of the post, on inspection of certified invoices of the actual cost of said articles at the time and place, when and where presented. And any sutler who shall be convicted by a council of administration of having exhibited false invoices or an incorrect account of the cost of his supplies, shall be adjudged to forfeit his appointment as a sutler, and be disabled from holding thereafter the appointment of sutler at any military post or with any

<sup>52</sup> This is the substance of section 4 of act of Congress approved April 21, 1808, except as to penalty, which is here made dismissal from the service in lieu of a fine, and therefore more in accordance with ordinary military punishment.

<sup>53</sup> This is presented in lieu of a regulation, paragraph 902, and, it is submitted, reaches the object in view better than that paragraph, though it omits a part of it. It ought not to be left to regulations.

<sup>54</sup> This is a substitute for article 54 of act now in force, and is believed to be more comprehensive; retainers to the camp are also included, as they ought to be, for it is known to officers of the army that this class are more commonly addicted to the class or disorders than soldiers.

<sup>55</sup> This regulates by law the appointment of sutler, and is in accordance with the method followed.

army or command in the service of the United States. *Provided*, that all investigations into such a charge against a sutler, shall be made, in all respects, in accordance with the rules of procedure of a court-martial, on due notice and specifications to the sutler, and in his presence, unless he shall wilfully absent himself; but no action of the council of administration shall be final until approved by the War Department.<sup>56</sup>

ART. 64. All sutlers duly appointed shall not be permitted to have their houses open for business to soldiers between the hours of tattoo and reveille, on pain of losing their appointment when reported therefor by the commanding officer of the post to the Secretary of War. And all sutlers shall be exempt from any tax or burden in any shape other than an authorized reasonable assessment, for the benefit of the post fund, to be regulated and determined by the council of administration, approved by the commanding officer.<sup>57</sup>

ART. 65. All sutlers and retainers to the camp, including teamsters and all other persons whatsoever, employed with the armies of the United States in the field, or with troops on the frontier in the Territories of the United States, though not enlisted soldiers, are to be subject to orders according to the rules and discipline of war.<sup>58</sup>

ART. 66. No convicted criminal, or person in jail or other custody for a criminal charge, shall be enlisted in the military service of the United States.<sup>59</sup>

ART. 67. No wagon or forage master in the service of the United States, or agent of the Quartermaster's department, shall be interested or concerned, directly or indirectly, in any means of transportation employed by the United States, nor in the purchase for sale, either directly or indirectly, of any property procured for the United States, except as the agent of the United States.<sup>60</sup>

ART. 68. The President of the United States, general-in-chief of the armies, or other general officer commanding an army, or officer commanding a separate military department, may appoint general courts-martial, whenever necessary, which may consist of any number of commissioned officers, from five to thirteen, but not less than thirteen, when that number can be convened without manifest injury to the service; nor shall any officer be tried by officers of an inferior rank to his own, if it can be avoided. *Provided*, That whenever the general-in-chief, or a general officer commanding an army, or a colonel commanding a separate department, shall be the accuser or prosecutor of any officer in the army of the United States under his command, the general court-martial for the trial of such officer shall be appointed by the President of the United States, whose confirmation of the

<sup>56</sup> The above article covers the grounds of article 30 of the present code, with additional provisions, the propriety of which are apparent at a glance.

<sup>57</sup> Substance of article 29 of present code, and of part of article 31, providing all that would seem necessary to be fixed by law.

<sup>58</sup> A substitute of apparent propriety for article 60 in force.

<sup>59</sup> This embraces the substance of section 6 of act approved March 2, 1833, but is more explicit.

<sup>60</sup> This is a re-enactment of section 11 of act approved July 5, 1833; it is made to embrace agents of Quartermaster's department also, and is submitted as altogether better than the section as it stands.

finding and sentence and orders in the case must be had before the sentence can be carried into effect.<sup>61</sup>

ART. 69. Any general or other officer competent to appoint a general court-martial, shall also appoint, from the officers of the army under his command, a judge advocate for said court-martial, who shall prosecute in the name and behalf of the United States, and who shall administer to each member of the court, before they shall proceed with any trial, the following oath:

You, A B, do swear, (or affirm, as the case may be,) that you will well and truly try and determine, according to evidence, the matter now before you, between the United States of America and the prisoner to be tried, and you will duly administer justice, according to the provisions of "An act establishing rules and articles for the government of the armies of the United States," without partiality, favor, or affection; and if any doubt shall arise, not explained by said articles, according to your conscience, the best of your understanding, and the custom of war in like cases; and you do further swear, that you will not divulge the sentence of the court until it shall be published by the proper authority; neither will you disclose or discover the vote or opinion of any particular member of the court-martial, unless required to give evidence thereof, as a witness, by a court of justice, in a due course of law—so help you God. And which judge advocate, as soon as he shall have administered the foregoing oath as enjoined, shall take an oath administered by the senior officer of the court, in the following words:

"You, A B, do swear, that you will not disclose or discover the vote or opinion of any particular member of the court-martial, unless required to give evidence thereof, as a witness, by a court of justice, in due course of law, nor divulge the sentence of the court to any but the proper authority, until it shall be duly disclosed by the same. So help you God."<sup>62</sup>

ART. 70. The officer highest in rank of a general court-martial will be the president thereof, who will keep due order and decorum while said court-martial is assembled, and be the organ of the court in the conduct of its business. He will speak and act for the court in each case where the rule has been prescribed by law, regulation, or its own resolution, and shall countersign or authenticate the record of all proceedings of said court before the same may be transmitted to the proper authorities for further action. And who is further empowered, in case the judge advocate appointed by the authority convening the

<sup>61</sup> The article here presented is a substitute for article 64 in force. It also embodies, as would seem in proper place and connexion, so much of No. 65 as relates to the power to appoint a court-martial, supplies glaring defects in that respect in that article; also as much of article 75 as it is believed necessary to re-enact, and sections 1 and 2 of act approved May 29, 1850. All of which should fitly be embraced in one article.

<sup>62</sup> In this article will be found the substance of so much of act approved March 16, 1807, as provided for appointment of a judge advocate, except in the case specified in article 70 of this series. It also embraces all of article 69 of code in force, except the incompatible duty imposed in that article as counsel, under certain circumstances, for prisoners.

court does not attend, to appoint an officer to discharge the duties of that office.<sup>63</sup>

ART. 71. Officers appointed as members of a general or other court-martial will take place in said court in the order of their rank in the army, under commission from the President of the United States: *Provided*, That no officer shall take place in any court-martial composed wholly of officers of his own regiment or corps by virtue of any brevet commission or commission of a prior date to that held in his regiment or corps.<sup>64</sup>

ART. 72. The judge advocate of every general court-martial shall be its organ for making and keeping an accurate, complete record of its proceedings, legibly written, without interlineation or erasures; which record must show that the court was organized as the law requires; that its members and the judge advocate were duly sworn in the presence of the prisoner after he has been asked, whether he had any objections to any member, and his answer thereto, as well as the action of the court, in case of objections on the part of a prisoner. And further, the authority under which said court acts in the case, as well as the rule, action, or decision of the court on every question of evidence, law, or procedure raised during the trial or session of the court by any member thereof, the prisoner or judge advocate; it being expressly enjoined that no such question or point shall be determined by the court until the same shall have been made a part of the record, not to be expunged therefrom, although decided adversely, or subsequently reconsidered and overruled. Said record of the proceedings in each separate case presented to the general court-martial having been approved by the court, as shown by the signature of the president, shall be further certified and authenticated by the signature of the judge advocate, and by him transmitted, without delay, to the officers who appointed the court, or to any successor in command, should there be one.<sup>65</sup>

ART. 73. The judge advocate, when appointed as hereinbefore provided, and in possession of the charges or allegations against the prisoner or prisoners who are to be tried, shall summon the necessary witnesses, both for the United States and such as the prisoner or prisoners shall aver to be necessary to his or their defence, when satisfied that the testimony is material for the ends of justice.

ART. 74. The summon of the judge advocate shall be obeyed by all officers, enlisted men, or retainers to the camp, and in default thereof the person so offending shall be punished at the discretion of a general court-martial; and the said summon, in case of persons not of or connected with the military establishment of the United States

<sup>63</sup> The above article provides, as ought to be done by law, who shall be president, and defines his duties in accordance with present regulations, paragraphs 863, 869, and 872 in part; also embraces so much of section 21 of act approved March 16, 1802, as gives power to president of a court, in certain cases, to appoint a judge advocate.

<sup>64</sup> This article settles by law how officers shall take place on courts-martial, and to that extent is a substitute for paragraph 865 of Army Regulations. It also embraces substantially so much of article 61 in force as relates to rank by brevet on courts-martial.

<sup>65</sup> Here the duties of a judge advocate are explicitly defined, as also certain rules of procedure, now matters of regulation, and which can and ought to be regulated by law, as is done in relation to civil courts.



whose testimony shall be deemed clearly essential for the ends of justice, may be directed to the marshal of the district in which said witness or witnesses may reside, and which said marshal shall, by himself or by his deputy, serve without delay, in the same manner as if issued from any district or circuit court of the United States; and the summon or subpoena thus served shall have all the force and authority to constrain the attendance of the person or persons so summoned, and involve the same penalties for default as has been or may be provided by law for subpoenas issued from either of the courts of the United States: *Provided*, That all such delinquent witnesses shall be proceeded against in the district or circuit court of the United States having jurisdiction in the State or Territory of the United States where such delinquent shall reside.<sup>66</sup>

ART. —. In cases requiring the cognizance of a general court-martial, the officer competent to appoint the same, if in his judgment it shall appear for the interest of the service, may direct said court to be assembled at another post than the one at which the prisoner may be stationed, but which may be most convenient thereto and for the trial, and the party or parties, with all material witnesses, shall be transported to the place specified; but every order appointing a court-martial shall specify the place at which it shall be assembled.

ART. —. When a prisoner arraigned before a general or other court-martial or military commission shall, from obstinacy and deliberate design, stand mute, or answer foreign to the purpose, the court shall proceed to the trial and judgment as if the prisoner had regularly pleaded "not guilty:" *Provided*, The records in the case shall exhibit the facts in connexion with his action. And in cases where the prisoner arraigned shall enter a plea of "guilty" to the allegations made against him, nevertheless, if the extent of punishment for his offence be left discretionary by law, the judge advocate shall introduce sufficient evidence in support of the allegations to determine the precise degree of the offence committed.

ART. —. When a member shall be challenged by a prisoner he must state his cause of challenge, of which the court shall, after due deliberation, determine the sufficiency, and decide accordingly; but no challenge to more than one member at a time shall be received by the court, nor shall the challenged member participate in the discussion or vote on the question to determine the validity of the challenge.

ART. —. Inasmuch as the members of a court-martial in their action necessarily perform the functions of jurors to determine the facts in issue and determine the finding; and as judges not only fix and adjudge the penalty, but decide all questions of law, evidence, and procedure coming before them, any member of the court can, if

<sup>66</sup> It is of the utmost importance that courts-martial should be empowered to issue subpoenas in this manner, and *no evils can arise* from such grant of authority. A court-martial, in its sphere, is as much a court of the United States as any known to the law; and the more it is assimilated to a civil court, the more care and precision will be exercised in its actions.

<sup>67</sup> This article is substantially the same as article 86 of present code, with addition of substance of paragraph 866, Regulations of the Army.

he think proper, draw up and file, with the proceedings of the court, a dissenting opinion from that of the majority of the members of said court on any point or question of law, evidence, or procedure decided by the court, which dissenting opinion shall briefly set forth the grounds, nature, and scope of his dissent, and shall be signed by the officer or officers so dissenting.

ART. —. All persons who give evidence before a court-martial, court of inquiry, or military commission, are to be examined on oath or affirmation in the following form: "You swear or affirm (as the case may be) the evidence you shall give in the cause now in hearing shall be the truth, the whole truth, and nothing but the truth, so help your God." And on the trial of cases not capital before a court-martial, depositions may be taken before any justice of the peace and read in evidence, when the same shall have been duly made in answer to written interrogatories, as well on the part of the judge advocate as on the part of the accused; which interrogatories and answers when taken, having been certified according to the law of the place in connection with depositions in civil actions, shall be then transmitted by mail or private hand to the judge advocate of said court for presentation to the court by the party demanding the taking of said depositions in due order.

ART. —. Any officer, enlisted soldier, or employé of any staff, corps, or department, who may be serving with the forces of the United States out of the United States, or out of the territory or domain of the United States, who shall be accused of treason, or of any felony, misdemeanor, or other civil offence, which, if committed in any of the States of the United States, or within the limits of the national domain or territory, would be punishable by a court of ordinary criminal jurisdiction, and not by a court-martial of any description, shall be tried by a general court-martial, appointed by the general or other officer in command having power under these articles to appoint general courts-martial; and said officer or soldier, if found guilty, shall be liable, in case of an offence, which, if committed in the United States, would be capital, to suffer death or such other punishment as, by the sentence of such general court-martial, shall be awarded; and in case of any other offence, to suffer such punishment, other than death, as, by the sentence of such general court-martial, shall be awarded: provided, no such punishment shall be of such a nature as shall be contrary to the current usage of the several States of the Union, or be carried into effect until confirmed by the general or other officer under whose authority such court was appointed; and in all cases where such court-martial shall have convicted any such officer or soldier of any offence punishable with death, it shall be lawful for such court-martial, instead of sentencing such offender to death, to adjudge him to be kept in penal servitude for a term of not less than four years; and in all cases when such court-martial shall sentence any officer or soldier to death,

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This corresponds with and condenses articles 73 and 74, but is more explicit and full, and regulates by law, manner, and style of deposition, as should be done.

Some such a law as this should be enacted to legalize and regulate what is necessary in such an emergency and condition of affairs as existed when our troops occupied Mexico, and when military commissions were appointed and exercised authority.

it shall be lawful for the general or officer in chief command of the forces of the United States, by whose authority such court was assembled, instead of causing such sentence to be carried into execution, to order such officer or soldier to be kept in penal servitude, or to be imprisoned with or without hard labor for such period of time as to him may seem meet. And it shall be lawful for such officer or soldier, so convicted and sentenced by such court-martial, to be confined, for the period adjudged, in any jail or penitentiary most convenient, to which any judge of the circuit or district courts of the United States shall be competent to condemn any person convicted in his court for so offending, and therein to undergo such prescribed punishments as it may be lawful for any such judge of any court of the United States to award; and for due and sufficient warrant for such confinement and punishment, a warrant, setting forth the sentence of the court-martial as confirmed, signed by the general or other officer herein made competent to appoint such court, shall be received and obeyed as if issued by, and under the seal of, any circuit or district court of the United States.

ART. —. It may be lawful for a general court-martial, in lieu of, or in addition to, corporal punishment of a non-commissioned officer, musician, artificer, or other enlisted soldier or employé of a staff department in the field, convicted of any of the offences not specifically punished under these rules and articles of war, to award partial or absolute forfeiture of all claim to pension on discharge, and of all additional pay, or pay which might have accrued from length of his service. And whenever forfeiture of all claim to pension on discharge shall form part of the sentence, such enlisted soldier shall be dishonorably discharged from the service.

ART. —. No commissioned officer convicted of any offence by a general court-martial shall be suspended from doing duty or from pay; but it shall be lawful for the court to sentence the officer so convicted to partial loss of army, corps, or regimental rank, by reducing him, if a field officer, one or more files in the list of his grade in the particular corps or arm of the service to which he may belong; and if under the rank and degree of a field officer, one or more files in the list of the regimental rank in which he may be serving. And in all cases of an officer so sentenced to loss of rank, when approved by the President of the United States, the loss shall be absolute, and have effect under all circumstances and on all duties. But if, when the officer convicted shall be one at the foot of the list in his grade or rank in any corps, regiment, or arm of the service, it may be lawful for the court-martial to sentence him to remain without promotion for a period of time not to exceed five years.

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This article is based on one in force in the British service. It is confidently submitted as far better calculated to serve the ends of punishment than the present practice of suspension from rank and command for a mere period of time, with partial loss of pay for that time; for by suspension from rank and command, the services of the officer for the time are lost to his corps or regiment, and thus to the service of the State; while loss of pay, without any material gain to the State, is eminently calculated to involve the officer in pecuniary embarrassments, to his social degradation, and, in no small measure, impair his future usefulness when restored to duty. The true punishment always, in such instances, it would seem apparent, would be delay in promotion.

ART. —. Any person in attendance before a general or other court-martial as a witness, who, being duly sworn, shall refuse to give evidence, when directed by the court, touching any matter; or refuse to answer any question that the court may legally demand; or refuse to produce any document in his power or control which may be legally called for, shall, if an officer, soldier, or employé of any staff, corps, or department, be tried therefor, and, on conviction by a general court-martial, be punished at the discretion of such court; and if not in the service of the United States, then shall be liable to be attached in the nearest circuit or district court of the United States for any State or Territory upon complaint made, in like manner as if such witness, after being duly summoned or subpoenaed, had neglected to attend upon a trial in any proceeding in the court in which such complaint shall be made: *Provided, always,* nothing shall be construed to enforce answer on part of any witness which may tend to criminate himself or other person not on trial.

ART. —. Any commissioned chaplain who shall be guilty of misconduct or vicious behavior derogating from the sacred character with which he is invested, or of conduct unbecoming an officer and a gentleman, shall, on conviction before a general court-martial, be discharged from his office.

ART. —. Any soldier who shall malingering, feign, or produce disease or infirmity, or shall wilfully do any act, or wilfully disobey any orders, whether in hospital or otherwise, thereby producing or aggravating disease or infirmity, or delaying his cure, shall be tried for disgraceful conduct by a general court-martial, and, on conviction, be liable to such punishment as the court-martial may adjudge.

ART. —. No enlisted soldier absent without leave for a less period than thirty days, and who shall voluntarily deliver himself up within that time to the commander of his corps or regiment, or of the company to which he belongs, shall be tried for or convicted of desertion, but shall be punished at the discretion of a general or court-martial, first making good to the United States any expense incurred in attempting his apprehension or restoration to the service.

ART. —. Courts of inquiry, to consist of three officers, with a judge advocate, to conduct the examination and record the proceedings, may be ordered to examine into the nature of any specified transaction, accusation, or imputation against, or in relation to, the official conduct of any officer, enlisted soldier, or employé in connexion with the military service, under the following circumstances and conditions, and none others, viz:

I. When specially directed and appointed by the President of the United States.

II. When convened, at the request of the person accused, by order of the President of the United States, general-in-chief of the army, general commanding an army in the field, or officer commanding a separate military department.

III. When any officer shall think himself wronged by any superior,

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Some such an article, it is thought, may induce some good men to return to the service who have been led to desert without reflection of the nature of their crime.



by whom he shall have been refused redress after a due application therefor, he may complain of and specifically allege said wrong and grievance to the officer commanding a military department or a common superior, and the officer to whom complaint is duly made shall direct it to be investigated by a court of inquiry: *Provided*, That the officer complained of shall have the right to appear in person or by friend before the court and explain or justify the acts complained of, or disprove the allegations made against him.

IV. Or when any enlisted soldier or employé connected with the military service shall complain to his commanding officer, or some common superior, that he has been wronged by his captain or other officer, said commanding officer or common superior shall direct the complaint to be investigated by a court of inquiry.

Any court thus assembled under either of the foregoing provisions shall have the same power to summon witnesses and examine them under oath in the same manner as has been provided in the case of a court-martial; and its proceedings shall be duly recorded, as have been prescribed for a court-martial.

ART. —. The senior officer present of a court of inquiry will be its president, under the same rules which have been prescribed for a court-martial. He and the judge advocate shall authenticate all record of the proceedings by their official signatures, which the judge advocate will then transmit, through channels to be prescribed from time to time by the War Department, to the officer directing the court. All such proceedings may be admitted as evidence by a general court-martial in cases not capital, provided oral testimony cannot be obtained.

ART. —. The judge advocate shall administer to the members of a court of inquiry the following oath: "You shall well and truly examine and inquire into the matter now before you, and report thereupon according to the evidence before you, without partiality, favor, affection, prejudice, or hope of reward." "So help you God."\* After which the president shall administer to the judge advocate or recorder the following oath: "You, A B, do swear that you will, according to your best abilities, accurately and impartially record the proceedings of the court, and the evidence to be given in the case in hearing: So help you God." The witnesses shall take the same oath as witnesses sworn before a court-martial.

"The court can ask any questions that appear proper to elucidate the case." Now, to what extent does this *elucidation* permit the court to ask questions? Many courts give this rule such a narrow application as to defeat its *vitality*. A member of a court can surely ask any question that a member of a jury can, or that a judge on the bench can, inasmuch as in a trial they discharge the functions of both these in a civil court. The fact that a court can assume a question either of the judge advocate or prisoner, omitted in the proper place, "if the question is in itself proper," shows the real latitude of the court; which is further confirmed by the rule, that if new matter is elicited by the court, the party affected has the right of re-examination.

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\* This oath is submitted as of more definite correct phraseology than the one in use, article 93 of present code.

We witnessed once a cross-examination permitted to the defence clearly out of rule. The questions were all evidently for the purpose of discrediting the witness on the stand, in which the precept is well established that no question can be put for the purpose of discrediting such witness touching independent facts. For example, it was not a legitimate question in this instance to ask witness details of a former fight between witness and the prisoner, that fight not being in issue in any way, and also certain questions about the name under which he had enlisted. However, Kennedy (good authority) says a witness may be cross-examined as to his motives which actuate in the testimony he may give.

Questions which tend to degrade witness, if touching matter in issue, may be put, and must be answered. But if not relevant to the issue, (that is, touching the facts in issue,) the question may be put, but prisoner cannot be made to answer unless he chooses to do so, and the party who asks it is bound by it, and cannot be allowed to falsify it by evidence.—(208.)

The cross-examination must be confined to matters alleged in the accusation, or to matter already stated in the evidence on behalf of prosecution.

When a question shall have been objected to, the proceeding is to hear the reasons of the objector and the answer of propounding party before decision; either party may support his position by written arguments, which become part of records.

The law presumes that every person acts legally and performs all the matters which he is required by law to do.

Much of the cross-examination of May, yesterday, was out of rule. The questions were evidently for the purpose of discrediting the witness; and the rule is well established that no questions can be (for that purpose) asked touching collateral and independent facts, such as clearly was the case in questions about the quarrel between May and prisoner, his enlistment.

If the facts specified should, if proven, fail to establish the charge itself under which the specification is placed, the charge should be rejected by the court; and this the court may do, and indeed ought in any very palpable case to do, before the arraignment of the prisoner. Hence it were well always for the court to examine the charges themselves before calling the prisoner into court.

It is a very common vice in charges to be made to embrace the 9th article of war, when the specifications really only allege acts punishable under other articles, as for example the 99th.

A prisoner virtually or in effect makes a plea of not guilty when he declares he is ignorant of which he said or did on the occasion specified; any subsequent declaration that he supposes, however, he "must be guilty," as soldiers often say, should be permitted to change the nature of the plea. The idea seems to prevail with some members of courts that prisoners in such cases, however, desire to enter the plea of "*guilty*" under the belief that such a plea will benefit him on the trial by estopment of investigation on part of the judge advocate as to the gravity or degree of his acts. These members are

also of the opinion that such a plea would have the effect in question—an opinion, it is submitted, without warrant of law or well-grounded custom.

Some members of courts contend that an objection having been raised to a question in case there should be a *tie* vote on it, the question is cast aside, which is simply absurd. The effect of such vote is against objection of course. Some, too, in case of objection, think the question shall be, "Shall the question be put or not?" The real question is, clearly, "Shall the objection be sustained?"

Where a person, such for an example as an officer or non-commissioned officer, has been acting in a public capacity under an instrument of writing, such as a commission or warrant, is said commission or warrant to be held as the "*primary*" evidence of the appointment, or will it be sufficient to show public functions or capacity by that testimony?

It is said by "Simmons" that a court, before proceeding to arraign a prisoner, should be cleared, and examine the charge, and judge of their propriety, not only as to the precision of the language used, but also as to jurisdiction, &c.—(See pages of De Hart, 100 and 110.)

A plea of "guilty" having been made, it is within the right of the prosecution to introduce testimony to show to the court the precise character of the offence within the description of it in the specification, which, however, should be precise, and all specifications should be required to be specific and detailed in their language and relation of the affair or conduct involved.

In the case of Lieutenant Howard, tried at Fort Steilacoom, April 27, 1859, before a court of which Colonel Wright was president, the specifications, in an attempt at compactness, were emasculated materially, and to such degree as to enable the accused to avail himself of his plea of "guilty" to the specifications as they stood, to avoid an examination of the chief witness on part of prosecution, and a *detailed* account of all the facts connected with the affair, and on which the charges and specification had been based; the specification alleges that the accused did "strike with his fist," and did abuse *First Sergeant John Leonard*, 9th infantry.

It is a maxim of law that no person impressed with a military character by an act of Congress can be held amenable to the rules and articles of war "without a positive provision to that effect."—(Mr. Wirt's opinion, page 204, quoted by De Hart, page 36.)

The practice pursued of handing questions to the president before enunciation to the court is attended with some prejudice to the efficient cross-examination of a witness who may be false-swearing, as it gives time for reflection, &c.

The thoughtless practice of many members of saying, when questions are asked the exact pertinence of which they do not see, that the question has already been asked, or that such and such have already been said, utterly defeats the objected cross-examination.

The practice decided in the Haller court was that each member should propose a sentence before any vote was had on the sentence at all.

I have known a question objected to, and the objection having been overruled by court, a record of the objection was not made on the record, though desired to be of record by the objector, a member of court. This, it is submitted, was a gross error in practice, contrary to well-grounded precedents.

Properly no paper or proposition made to a court-martial should be *enunciated* before it shall have been made a part of records, and anything once being on the record it cannot be expunged. This is a well-settled practice. I know courts have on occasion agreed in session to omit from their record propositions which had been rejected, doing so to avoid trouble from the judge advocate; but the practice surely is irregular, and must lead to abuse. The record should show what was done.