55TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1647.

THOMAS G. TIERNON.

JULY 5, 1898.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. MCDONALD, from the Committee on Military Affairs, submitted the following

REPORT.

[To accompany H. R. 1217.]

The Committee on Military Affairs, to whom was referred the bill (H. R. 1217) directing the Secretary of War to revoke the order dishonorably discharging Thomas G. Tiernon, late captain of Company H, Tenth Ohio Volunteer Infantry, and to issue to him an honorable discharge to date from the 12th day of December, 1861, have considered the same and respectfully report as follows:

Col. F. C. Ainsworth, in charge of the Record and Pension Office, has furnished the committee with the following statement:

RECORD AND PENSION OFFICE, WAR DEPARTMENT,
Washington City, January 11, 1897.

DEAR SIR: In reply to your letter of the 7th instant, in which you request to be furnished with the facts of record concerning the dismissal of Thomas G. Tiernon as a captain of Company H, Tenth Ohio Infantry, and a draft of a bill to be presented to Congress with a view to the amendment of his record, I have the honor to transmit herewith an official statement of the record of Captain Tiernon, together with a draft of a bill which, if enacted into a law, will accomplish all that is desired in the case.

Very respectfully,

F. C. AINSWORTH,
Colonel, United States Army, Chief Record and Pension Office.

Hon. J. H. BROMWELL,
House of Representatives.

Case of Thomas G. Tiernon, late captain Company H, Tenth Ohio Infantry.

It is shown by the records that Thomas G. Tiernon was mustered into service June 4, 1861, as captain Company H, Tenth Ohio Infantry Volunteers, to serve three years. He was granted a leave of absence for twenty days, in Special Orders, No. 8, paragraph 2, Headquarters Department of West Virginia, dated October 15, 1861, and, "having been absent without leave for twenty days or more and having rendered no report to his regiment," was dismissed the service in General Orders, No. 15, Headquarters Department of the Ohio, dated December 12, 1861.

On December 3, 1864, the adjutant-general of the State of Ohio transmitted to this Department the application of Thomas G. Tiernon for restoration to the rank of

captain, Tenth Ohio Infantry, and for an honorable discharge as of the date of the expiration of the term for which he contracted to serve.

Captain Tiernon testified, October 7, 1864, as follows:

"That he raised Company H, Tenth Ohio Volunteer Infantry, and was elected and commissioned captain thereof, which position he held until December 12, 1861, when he was discharged from the service of the United States by General Buell's General Orders, No. 15, for 'having been absent without leave for twenty days or more and having rendered no reports to his regiment.'

"Affiant says that said order, as far as it affected him, was issued by reason of erroneous representations made to General Buell by the major of the said Tenth Ohio Volunteer Infantry, then in command of the regiment; that in fact the said regiment was in the city of Cincinnati en route west from Virginia according to orders, on the 1st day of December, A. D. 1861, and remained there for several days thereafter; that affiant was in the city of Cincinnati on leave of absence at that time; that on the arrival of the regiment in said city affiant reported in person for duty before the expiration of his leave of absence to Capt. John O'Dowd, who then had command of the regiment; that on the 1st day of December, and for the time the regiment remained in Cincinnati, affiant had charge and command of his company and issued passes to his men, etc., in accordance with instructions from the commander of the regiment; that affiant was absent but seven days at the time of the issuing of said order No. 15; that this absence was caused by affiant's being required to attend to the duties of a civil office—city commissioner—which office affiant held when he volunteered; that this absence was verbally authorized and encouraged by the late Brigadier-General Lytle, then colonel of said regiment, as there was no immediate occasion for affiant's services with his company, and as his services were of very great pecuniary importance to the city of Cincinnati on account of affiant's personal knowledge and familiarity with the nature of the cases to be disposed of; that this absence is the only charge ever preferred against affiant; that this affidavit is made that a speedy examination of affiant's case may be made, and that said order, so far as it affects affiant's case, may be revoked, as it conflicts with General Orders, No. 40, of the War Department (April 15), 1862, and that affiant be restored to his rank and honorably discharged, as his time of enlistment has expired."

The following indorsements appear upon the affidavit of Captain Tiernon:

(1) We have long known Capt. Thos. G. Tiernon, and were for a time officers with him in the same regiment during the war, and know him to be a brave and efficient officer, and know that he served with distinction in several of the engagements in western Virginia.

JOHN O'DOWD,
Late Captain Tenth Ohio Volunteer Infantry,
now Colonel One hundred and eighty-first Ohio Volunteer Infantry.

JOHN E. HUDSON,
Late Major Tenth Ohio Volunteer Infantry,
now Lieutenant-Colonel One hundred and eighty-first Ohio Volunteer Infantry.

JAS. T. HICKEY,
Late Captain Tenth Ohio Volunteer Infantry,
now Captain One hundred and eighty-first Ohio Volunteer Infantry.

R. M. MOORE,
Late Lieutenant-Colonel Tenth Ohio Volunteer Infantry.

(2) This is to certify that during the month of December, 1861, the undersigned was the civil engineer of the city of Cincinnati, and performed, during Capt. Thos. G. Tiernon's absence, a portion of the duties of his office, viz, city commissioner; that the undersigned informed Captain Tiernon, when the Tenth Ohio Volunteer Infantry Regiment left Cincinnati during the month of December, 1861, that he must remain for a few days in order to personally attend to official business.

THOS. J. PETER.

(3) HEADQUARTERS HAMILTON COUNTY MILITARY COMMITTEE,
Court-House, Cincinnati, October 26, 1864.

Respectfully referred to his excellency, Governor Brough, for further action, with recommendation that the prayer of the petitioner be granted.

HENRY MACK,
Chairman Hamilton County Military Committee.

M. A. JACOBI,
Secretary Hamilton County Military Committee.

(4) To His Excellency Governor BROUGH:

We, the undersigned citizens of Cincinnati, have been for many years acquainted with Captain Tiernon, and believing that his dismissal was in consequence of some

mistake of the facts and has worked a wrong and injury to him, would be glad to see him restored to his position and rights in the premises.

Cincinnati, October 26, 1864.

P. MALLON.
L. A. HARRIS, *Mayor of Cincinnati.*
HENRY P. BOUMAN.
BENJ. EGGLESTON.
CHAS. THOMAS.
STANLEY MATHEWS.
THOS. SHERLOCK.

(5) From the sworn statement and the names of the signers to this petition, as well as from my knowledge of Tiernon's former services, I join in recommending that he be restored to his rank with the understanding that his resignation is to date from the time he ceased to belong to the service by virtue of the order he asks to have rescinded.

W. S. ROSECRANS, *Major-General.*

(6) I join in the foregoing recommendation. I have known Captain Tiernon a long time, and always thought highly of him. His character entitles his case to favorable consideration.

W. S. GROESBECK.

In support of Captain Tiernon's application, John O'Dowd, late a captain of the Tenth Ohio Infantry Volunteers, testified, October 7, 1864, as follows:

"That he is now a captain in the One hundred and eighty-first Ohio Volunteer Infantry; that he was a captain in the late Tenth Ohio Volunteer Infantry; that he knows Capt. Thomas Tiernon; that the said Thomas Tiernon was captain in Company H, Tenth Ohio Volunteer Infantry; that the said captain was reported absent when he was actually on duty and in actual service; that the order dismissing the captain evidently was issued on an erroneous representation of the facts of the case; that he was reported absent twenty days without leave and dismissed accordingly by an order dated December 12, 1861. * * * ; that affiant was acting colonel, commanding the Tenth Ohio Volunteer Infantry, for several weeks before the date of said order, and that when, in pursuance of orders, the said regiment was passing through the city of Cincinnati, Ohio, the said Captain Tiernon reported to the said affiant for duty and was assigned to duty by verbal orders from said affiant; that affiant ordered Captain Tiernon to take command of his company as it marched through Cincinnati, and that said order was complied with by the said Captain Tiernon; that said regiment arrived in Cincinnati on the 1st day of December, A. D. 1861, and remained there several days thereafter; that affiant soon after his arrival at Cincinnati reported to Col. J. W. Burke, now absent from this city, and delivered the command of the regiment to him; that affiant believes that it would be simply an act of justice to one of the original officers of the Tenth Ohio Volunteer Infantry to have the orders dismissing him from the service revoked, and that he should be reinstated and honorably discharged the service, his time of enlistment having expired."

On December 15, 1864, the governor of the State of Ohio was informed by the Adjutant-General of the Army that, by direction of the Secretary of War, "the disability resulting from the dismissal of Captain Tiernon is removed, and that he may be recommissioned should his excellency so desire."

Renewing his application for relief, Captain Tiernon testified, on January 11, 1896, as follows:

"That he was absent with leave obtained from Colonel Lytle of said regiment on duty as city commissioner of the city of Cincinnati, closing up the public business of said office, when, without his knowledge and contrary to all usages and justice, he was discharged as and for absence without leave; that he asks that all the papers in said case be examined and that he may be permitted to file additional evidence if same should be required, and that he be granted an honorable discharge and restored to all things lost by and through said wrongful discharge."

A petition by the survivors of the Tenth Ohio Infantry Volunteers has been submitted in support of Captain Tiernon's application, as follows:

"HEADQUARTERS TENTH OHIO VOLUNTEER ASSOCIATION,
"*Cincinnati, August —, 1896.*

"SIR: We, the survivors of the Tenth Regiment Ohio Volunteer Infantry in Association assembled, do most respectfully pray that you cause to be set aside the order mustering out of the service Capt. Thomas G. Tiernon, late of Company H, Tenth Ohio Volunteers, for absence without leave.

"We believe said order did great injustice to a brave, honorable soldier, and entails on his family a stigma that should be erased.

"We, and each of us, know Captain Tiernon had leave of absence, when he returned to his home, for the purpose of attending to public business connected with the office of city commissioner, which he held at enlistment, and that, as soon as said public business was in a condition to permit he did return to the regiment at Louisville, Ky., where he learned for the first time that an order had been issued dismissing him from the service because of his absence without leave, he having overstayed his leave some days.

"In view of all which we humbly pray you to cause the order to be revoked and an honorable discharge issued to said Capt. Thomas G. Tiernon, and for which we will ever pray.

"JOHN J. MURPHY,
"*President Tenth Ohio Association.*
"DENNIS ENNIS,
"*Secretary Tenth Ohio Association.*
"WILLIAM H. FEENEY,
"MATTHEW BYARL,
"*Company D.*
"THOS. H. CORCORAN,
"*Company E.*
"VALENTINE BUSAM,
"*Company K.*
"THOMAS O. BROWN,
"MALACHI BOUGHEN,
"*Company C.*
"JOHN MOSER,
"*Company K, Tenth Ohio Volunteer Infantry.*
"JAMES FOLEY,
"*Companies A and I.*
"RUDOLPH SUBAUM,
"*Company B.*
"PHILIP C. MARMION,
"*Captain Company D, Tenth Ohio Volunteer Infantry.*
"CHAS. WEBER,
"*Company B, Tenth Ohio Volunteer Infantry.*
"Capt. JAMES P. SEDAM,
"*Company G, Tenth Ohio Infantry.*
"JOSEPH CONNELLY,
"*Company H, Tenth Ohio Volunteer Infantry.*
"JOHN SULLIVAN,
"*Company G.*
"DANIEL TWOHIG,
"*Company A.*
"JOHN SPERRY,
"*Company B.*

"The SECRETARY OF WAR,
"*Washington, D. C.*"

On October 15, 1896, G. W. Truss, of Cincinnati, Ohio, testified in the case, as follows:

"He served in Company E, Tenth Regiment Ohio Volunteers, and was in the city of Louisville, Ky., in the month of December, 1861, when Capt. Thomas G. Tiernon reported for duty to Lieutenant-Colonel Burke. That this was on the 13th or 14th of December, 1861. I had not at that time heard of the order dismissing him from the service, which I afterwards learned had been issued on the 12th of that month.

"I have known Captain Tiernon from my birth to his death. He was a man of generous and brave impulses, and made every effort to rejoin his command, but failed because of the order being issued before his arrival at Louisville.

"I have no interest in any application he may have made."

In a letter dated at Jacksonville, Ala., December 26, 1896, Joseph W. Burke, president and manager of "The Tredegar Mineral Railway," and formerly colonel of the Tenth Ohio Infantry Volunteers, addressed the Secretary of War as follows in behalf of Captain Tiernon:

"I beg leave to join in the application of my comrades, the officers and men of the Tenth Ohio Infantry Volunteers, for the revocation of the order discharging Capt. Thomas G. Tiernon of that regiment on the charge of absence without leave.

"The facts are as follows:

'After the battle of Carnifex Ferry, September 10, 1861, in West Virginia, Captain Tiernon was granted leave of absence for some period, and accompanied Colonel Lytle, Captain McGroarty, and several wounded officers to Cincinnati. This order was granted by General Rosecrans.

"The regiment remained with the Department of West Virginia until the following November, when it was transferred to the Department of the Ohio and to the command of Gen. D. C. Buell. At this date I was in command of the regiment, and received an order to report the names of all officers and men absent from the regiment. Not having any official notice that Captain Tiernon's leave of absence had been extended, and he being absent from the regiment at the time, his name was reported in the list made up by the regimental adjutant from his company reports and rolls.

"I thought at the time that the order was severe, unnecessary, and unjust, as we were all at that time citizen soldiers, and did not regard military laws and regulations with that strictness that was necessary in a military sense. Captain Tiernon held a prominent official position in the city government of Cincinnati at that time, and I believe if the facts had been understood in his case the order would have been rescinded. He was a brave man and a good soldier, and I have no hesitation in joining in the request in the interests of justice."

On January 6, 1897, Mrs. Bridget Tiernon, of Price Hill, Cincinnati, Ohio, widow of Captain Tiernon, was informed that the action of the Department, of December 15, 1864, in removing the disability to reenter the service, imposed upon Captain Tiernon by his dismissal, was merely a declaration that the Government would not object to again receiving him into the service should the governor of his State see fit to recommission him, but did not affect his dismissal or entitle him to an honorable discharge, and that, the order of dismissal having been carried into execution, it is beyond the power of an executive officer to revoke, modify, or set it aside, however unmerited or injudicious that order may be deemed to have been.

Considering all the circumstances of this case, and it appearing from the above report that Captain Tiernon was, at the time his leave of absence was granted, an important official of the city of Cincinnati, whose presence was imperatively demanded at that time for the transaction of public business; that during the time that his regiment was passing through Cincinnati he reported to his colonel for duty and actually discharged all the duties of his military rank; that acting under verbal instructions from Col. William H. Lytle, the commander of his regiment, he remained in the city of Cincinnati to complete the public work that had called him there and had every reason to suppose that the extension of time was duly authorized by his commanding officer; owing also to the lax methods of granting leave during the early part of the war by civilian officers, and that Captain Tiernon afterwards, and before the close of the war, endeavored to secure a reversal of the order dismissing him from the service, and that no court-martial was held prior to his dismissal which might have given him an opportunity to make his defense and explanation, and which would probably have resulted in his absence being excused, your committee believes that in justice to Captain Tiernon, who is shown by the above statement to have been a gallant and efficient officer during the time he was in the service, the order dishonorably dismissing him should be revoked, and that an honorable discharge should be issued to him in lieu thereof.

The committee therefore recommend the passage of the bill with the following amendment:

Provided, That no pay, bounty, or other emoluments shall become due or payable by virtue of the passage of this act.

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