

MINERVA; or, ANTI-JACOBIN.

TWO & ANALY DOLL. PER ANN. Payable half Yearly.

PUBLISHED (WEEKLY) BY WILLIAM BOYLAN.

TWO DOLLARS PER ANN. Payable in Advance.

Vol. 9.]

RALEIGH, (N. C.) MONDAY, JUNE 11, 1804.

[No. 426.]

FROM THE FREDERICK-TOWN HERALD

COLONEL BUTLER'S TRIAL.

The well known and established reputation of the officer implicated—the honorable interest in his behalf unconfined even by the limits of party distinction—and a variety of independent circumstances, have all conspired to produce in an uncommon degree and to keep alive general attention & curiosity in every part of the Union as to this case, of which it is at last in our power to announce to the public a complete and authentic statement. By recurring to our Journal for December last, it will be found that on Monday the 21st of November the General Court Martial, ordered for the trial of Col. Thomas Butler assembled in this town; that the court, of which a correct list was then given, proceeded to business on the Wednesday following; that on Monday the 5th of December, the testimony having been gone through with and closed on both sides, Col. Butler's defence was delivered to the court; and on the next day, Tuesday the 6th, the court concluded their determination. The long interval of suspense for more than three months which elapsed since the court decided, without the sentence having been made known, or the proceedings returned by Gen. Wilkinson, the arresting officer, and commander in chief, to whom they were transmitted, induced Col. Butler, who has waited the intermediate while at this place and at Washington, to apply to the Secretary of war on the subject, from whom he derived the information on which we are now permitted to publish. Before presenting the defence and the sentence of the court, it seems proper however, and more agreeable, without regarding the order of time, first to offer Col. Butler's letter to the Secretary of war which led to a knowledge of the sentence, and the correspondence that followed in immediate connection.

City of Washington, Feb. 23, 1804.

SIR,

The lapse of time that has taken place since the close of my trial, at the town of Frederick, has laid me under the necessity of addressing you once more on that unpleasant subject.

In your favor of the 19th of December last, you gave me to understand that I might expect a return of the proceedings of my trial in twenty or twenty-five days from that date. Sixty-five days have passed off without my having received any further information whatever. This unexpected delay in the promulgation of the proceedings, has added much to my impatience. 'Tis true sir, my situation may excite no great degree of sympathy, yet it certainly demands attention and justice, which is all I seek for. Then, permit me to request of you, to state my case to the President of the United States, as I cannot suppose, that he can be in possession of the merits of my trial, and suffer such a load of injuries as have been heaped upon me, to remain so long unremoved. It is now nine months since my arrest took place, at Fort Adams on the Mississippi, from which post I was ordered to the state of Maryland for trial, and after having performed a journey of upwards of fifteen hundred miles in the heat of summer, my trial was put off from the 10th of September to the 20th of November, which delay I bore without complaining, and now I appeal, not only to your own feelings, sir, but to the feelings of every man of sense and honor, to say, if the treatment which I have received since the commencement of that business, has not been such, as the principles of honour, & the laws of my country will not sanction.

I am with respect,
Your humble servant,
THOMAS BUTLER,
Col. 2d Reg. Inf.

The hon. H. Dearborne.]

In consequence of the above letter, Maj. Rogers was directed by the secretary of war to wait on Col. Butler, and know if he would dispense with the secretary's making a statement of his case to the president until after the arrival of another mail from New-Orleans, which was assented to.—Another mail having arrived without bringing any new intelligence relative to his case from Gen. Wilkinson, Col. Butler was invited to an interview with the secretary on the 4th inst. who stated that as he had before that received a letter from the general, dated the 24th January, announcing that he had received and approved of the sentence of the general court martial relative to Col. Butler, and that the sentence would be published in orders within a day or two after the said date, there could of

course be no impropriety in his (the secretary's) letting the col. know the nature of the sentence. (We have been thus particular, at the request of Col. Butler, who is now in Frederick, as to the language used by the secretary; because in the colonel's appeal to the President, which follows, the ground on which the secretary of war deemed himself justifiable in making known the sentence does not appear as accurately and as fully as he himself might wish.) The secretary then related the decision of the court, such as the reader will presently see it. Whereupon Col. Butler observed that if the court had found him guilty of disobedience under the first specification, for not cutting off his hair agreeably to the general's order, they must have judged from the letter of the order, without taking into view whether the order was legal or not, that he could not submit to the decision without an appeal to the President of the United States, and asked if he was at liberty to use the information, which the secretary had been pleased to communicate, as the foundation of such an appeal.—This was granted. And the following note was addressed to the secretary, accompanied by the appeal, to be delivered in form to the President.

City of Washington, March 8, 1804.

SIR,

I have the honor of inclosing a letter addressed to the President of the United States, which, I will thank you to deliver in that form, deemed by you most respectful. It is open, that you may have an opportunity to examine the first part to see if correctly stated. I am sir, with respect

Your humble servant,
THOMAS BUTLER.

Hon. H. Dearborne.] Col. 2d Reg. Inf.
His Excellency the President of the United States.

SIR,

Before entering on a subject, to the merits of which I must beg leave to solicit your excellency's attention; it will be necessary to state as a data, that on the 4th instant the hon. secretary of war, honored me with a conversation in his office, respecting my late trial. After his having expressed much surprise why the commanding general had so long withheld the promulgation of the proceedings, he observed, that as the general must have acted on those in my case before that period, he could not conceive that there was any impropriety in his informing me, that I stood acquitted by the court, of all the charges exhibited by the general except the first specification, viz. "disobedience to the general order of the 30th of April, 1801, regulating the uniform of the hair."

Taking for granted, sir, that this is the state of the case; I have reason to suppose from the decision, that the court decided on the letter of the order, without having taken into view, whether the order itself was of such a nature, and so supported by legal authority, as to render obedience indispensable. Presuming the court had not taken into view the latter position, I feel myself impelled by self respect, to appeal to your Excellency, from the decision of the court, with a hope, that you will be pleased to re-consider the merits of that specification.

I feel sensible, sir, how delicate this subject is, and I, with every military man must intimately feel how unfortunate it is, that any general order should render its discussion indispensable. Yet I hope and trust, that it never will be conceded, that any citizen entering into the military service of his country, thereby puts himself out of the protection of the laws, that his honor, his conscience, his moral principles, his private and natural rights are no longer under his own guardianship, but surrendered up to whomsoever may be his military superior. With deference, Sir, I have at all times believed, that the power given to every officer by his commission, is the authority of the laws and constitution of his country, vested in him as the legitimate organ. The expression then of the superior officer's will, whilst confined to subjects over which the laws have given him authority, is the command of the law itself, and must be implicitly and promptly obeyed. But if directed to subjects over which the laws has given him no authority, but which on the contrary the laws and constitution of the United States, have secured as inviolable to every citizen, whether in a civil or military capacity, then I contend, please your excellency, that the order of the 30th of April 1801, being unsupported by legal authority, contains not

the essence of a military command. And had the court entered into an investigation of the legal merits of that order, they could not have held it in any higher point of view, than the expression of will from one individual to another, which no duty required him to respect, & no power compelled him to obey.

I would fondly hope, please your Excellency, that it will not be said, such principles as these are subversive of military subordination; for I flatter myself, that my character as an officer is so well established, as not to admit a doubt of my obedience to the orders of superiors in rank, and at all times to have paid implicit obedience to the laws of my country.

Experience, please your Excellency, has taught me to believe, that the proper exercise of legal authority is sufficiently comprehensive for every purpose of military duty, that the power given to superiors is large enough to embrace every possible case the public service could require. But if it were not, still the power of a general must be circumscribed by the laws, else the consequence would be, that his will alone would bound his authority, whether it directed the execution of things moral or immoral, treasonable or patriotic, honorable or base.

I presume I am correct, sir, in observing that it is the indispensable duty of every officer placed over others in command, never to pass those limits, which the laws of good sense, sound policy, morality, religion and of his country must give to all delegated authority. That the order of the 30th of April, 1801, surpassed these limits, never was a question with me; because the proper and constitutional authority of the United States, had made rules and regulations for the government of the army, which I conceived were as imperative to the commanding general, as to the centinel at his door. These acts as distinctly mark the power of the one, as the duty of the other. The one becomes criminal if he exceeds his authority; the other when he performs his legal duty should have nothing to fear, but receive the ample protection of the laws of his country. Has then congress by its acts, given power to any military officer, to compel an inferior in rank to any act of mutilation, to deprive himself of any private or natural right; I think, I may with safety answer no—there are no such acts;—there has been no such power delegated; and when any officer, by an order, attempts to legislate on subjects not submitted to his authority, he usurps that authority which the constitution vests in congress alone.

I hope your Excellency will pardon any expressions that may appear too strong in this address, and impute them to their true cause, namely, to the feelings of a man smarting under a load of oppression; view him, sir, as ordered by his commanding general from one of the most extreme posts of the United States, to the state of Maryland for trial, upwards of fifteen hundred miles, kept near ten months in a state of suspense, and at an expence too heavy for any officer to bear; and all this in direct violation of the 23d article of the appendix to the rules and articles of war; as there was many intermediate posts. Permit me to observe, sir, if a general can assume such authority as this, he has it completely in his power to ruin any officer in the army.

Let me hope, sir, that you will take into consideration the merits of the specification before alluded to, and by turning to my defence on that part of the charge, you will see my reasons for not conforming to that order, without troubling your Excellency with any further details.

I am respectfully, your
Excellency's humble servant,
THOMAS BUTLER,

Col. 2d Reg. Inf.

City of Washington, March 8, 1804.

It may here be right to remark, that the 23d article of the appendix to the Rules & articles, referred to in the preceding letter, as having been violated in the treatment dealt to Col. Butler, is in these words:—

"Article 23d.—The commanding officer of any post or detachment, in which there shall not be a number of officers adequate to form a general court martial, shall in cases which require the cognizance of such a court, report to the commanding officer of the detachment, who shall order a court to be assembled at the nearest post or detachment and the party accused, with the necessary witnesses, to be transported to the place where the court shall be assembled."

In answer to his representation of Ap-

peal to the President, the secretary of war returned Col. Butler the following reply.

War Department, March 14, 1804.

SIR,

The memorial accompanying your letter of the 10th inst. was in conformity with your request, presented to the President of the United States, who referred it to the secretary of war for his decision thereon. It has therefore become his duty to make such observations on the subject of the said memorial, as the nature of the case requires. Presuming it to have been your intention, that your memorial should be considered in the nature of an appeal from the sentence of the general court martial, to the President of the United States, which sentence had been approved by the proper officer.—It will only be necessary to observe, that there exists no law, custom or usage, within the knowledge or recollection of the secretary of War, by which the President is authorised to take cognizance of such an appeal; although the President of the United States has by law ultimately to decide on proceedings of court martials in certain cases, it does not appear that he possesses any legal controul over the sentence of any court martial duly approved, by the proper officer, except by interposing the constitutional power confided to him of pardoning offences.

I am respectfully,
Your humble servant,
H. DEARBORNE.

Col. T. Butler,

The President having thus declined an interference with the sentence of the court martial, the sentence remains as it was, such as we are now enabled to extract it from a copy of the minutes of the court, with which Col. Butler was furnished a few days since by the politeness of the secretary of war. It is unnecessary here to insert the charges and specifications against Col. Butler, to which a sentence applies, because they will be found precisely quoted in the opening of his defence. Nor is it necessary to report the evidence on which the sentence was founded, because the evidence was all written, and is particularly detailed in the defence, and because on the specification for not cutting off the hair, the only one which affects Col. Butler in the opinion of the court, there was no evidence offered and none required as to the mere fact of his not having conformed to the General's pleasure in that particular.

Frederick-Town, Dec. 6, 1803.

The court after mature deliberation are of an opinion that the prisoner is guilty of disobedience of the general order of the 30th of April, 1801, and (taking into consideration his long and faithful services and his general character as an officer) do sentence him, under the 5th article of the 2d section of the rules and articles of war to be reprimanded in general orders.

The court are, also of opinion, after due investigation, that the prisoner is not guilty of the second and third specifications, and that he did according to the true intent and meaning of the orders of the 9th of April, 25th May, and 8th of June, 1802, faithfully perform his duty, and do therefore acquit him.

The court then adjourned to 10 o'clock to-morrow morning.

J. BERBECK, President.

December 11, 1803.

JAMES HOUSE, Judge Advocate.

Such is the sentence of the court martial, in the latter part of which we believe there will be a general sentiment of concurrence throughout the country in favour of the party acquitted. In estimating the former part of the sentence, which is a conviction of disobedience to a certain alleged order from the commander in chief, it would perhaps be difficult to resort to any better standard than the very clause of the rules and articles of war, which the court have referred to. By the 5th article of the 2d section of those rules, it is declared that—

"Any officer or soldier who shall strike his superior officer, or draw or shall lift up any weapon, or offer any violence against him, being in the execution of his office, on any pretence, whatever, or shall disobey any lawful command of his superior officer, shall suffer death, or such other punishment as shall, according to the nature of his offence, be inflicted upon him, by the sentence of a court martial."

By this article it appears that, with respect to the "command of a superior officer," an inferior is punishable only for disobedience to, "any lawful command,"