

could have no right to issue such orders; and that having attempted to controul and dictate in matters over which the laws have not invested him with power, the orders themselves could not be considered merely as an expression of the will or opinion of an unauthorised individual. This being understood it results that a commander cannot, by mere virtue of his dignity, deprive his officers and troops without their assent of any natural right whatever, over which he has not been empowered to legislate. It will not be denied then, I imagine, that every man has a natural right to his own hair, and that it is equally his property by gift of nature as his hands, feet, ears, eyes or teeth. Of this natural appendage, indeed, as on any other, men may set a different value according to their different tastes of ornament, or ideas of comfort & convenience.

To those however who may be disposed to object on the score of its being a petty consideration, I would just suggest at this moment that a similar order to the one now in question for cutting the hair, issued by Prince Edward of Britain, while serving in Canada, had the effect of producing a mutiny among his troops, which nearly cost him his life, and compelled his departure to England, and yet no soldier concerned in this mutinous disobedience was ever brought to trial, except one who had made a second attempt to kill him. Nor indeed, without some authority therefor, can there be any argument why we should be constrained to respect an order for taking off the hair, more than for any act of mutilation, or for any act of privation whatever, for cropping the ears or slitting the nose, for shaving the eye-brows or drawing out the teeth. If those to whom the order is addressed choose to follow its fashion (& I am far from blaming others who may have chosen to do so in this instance) their assent then supplies the force of law. But I repeat it again that unless he can produce his power, the commander cannot compel obedience without being guilty of an act of despotic usurpation. Among the soldiery this could only tend to discontent and tumult, for they will ever expect from their superior reciprocal duties, and their obedience cannot be cheerful and efficient where he is not just or reasonable. Without correct principle in the one, there can be no regular subordination in the other; and although they should be arbitrarily placed beyond the protection of the laws, the fact could not establish the right, however it might excite that abhorrence which an honorable mind ever feels for tyranny in whatever shape it comes.

If therefore, gentlemen, I have not attended to the order of the 30th of April, 1801, if I have not cut off my hair either from some fond whim or because unwilling to be affronted under certain peculiar circumstances with even an appearance of degradation, or perhaps because grown grey with others of my brethren in arms I have contracted some attachment for this badge of service, & am on that account now brought to trial before you, however you might think of it as philosophers, as members of this court it is in your province to enquire whether the order disobeyed was grounded on an authorised power in the commander in chief, without which indeed it ceases to have the essential virtue of an order.—On this footing he has himself placed it, this he has himself referred as a question for your cognizance in the correspondence between us previous to my arrest, where he speaks of a tribunal to determine between us, and by so doing he has in fact acknowledged all I have been contending for as the legal limitation of his powers, and the extent to which he is to be obeyed. The order itself has been recited to you. It purports to regulate the uniform of the hair, of which "the general would give the example." On so serious an occasion, I am loath to detain you, gentlemen, for the trifling purpose of observing how loose and obscure, and how inadequate even to its own object of a uniform cut of the hair must an order be, that refers as a standard to the general's own crop, which few persons not under his immediate command could ever have had an opportunity of seeing. But suppose it to have been so clearly worded as to leave no room for mistake, suppose it relieved from that strange uncertainty, which is always the consequence of wandering beyond a positive prescribed rule of action, let us examine whether or not the commander in chief actually had power to issue and carry into effect any order of the sort whatever. And here, that I may not seem precluded from contesting the point now by a possible impression that I ever did admit his power in this respect, it may first be proper to declare that in applying for permission to wear my hair after the general order appeared it certainly was not my intention to make any such admission;—indeed you must be convinced from the whole course of the subsequent details, that I always mean to deny the power of it should it become necessary to do so. But actuated by no other motive than a reluctance

to disturb the quiet and content of the army, I felt no disposition to bring on a useless controversy at the time for a right which the general was ready to grant as a privilege, the only effect of which I saw would be to dissatisfy others who themselves cared very little about conforming to the order.

What was that really induced him to withdraw that permission or whether it is in the line of any commander's duty so to grant and revoke at pleasure, it is not for me to say. I would not be wanting in a proper respect to our common head, and I will therefore presume that his reasons were the most weighty, powerful and interesting. It is sufficient that a change in his mind, & no previous act of mine had led to the present investigation, in which no alternative is left me but to defend myself by demanding where and how the general was authorised to impose an order such as that of the 30th of April 1801. "Is he authorized by force of any thing in the terms of his commission? No! For then, gentlemen, we might all be equally authorized. Is he authorized by virtue of any general military powers? I apprehend not, since no Congress the Constitution allows,— "To make rules for the government and regulation of the land and naval forces," (which from time to time they have made) since by the same instrument—"The President is Commander in Chief of the army," and since from neither can there be produced a delegation of authority such as the one in question, even supposing it to be included in those provisions. In what way then, is the power now claimed? or did the general mean to tell us, when his order of the 2d of August he asserts that "the cut of the hair is as essential a part of military uniform as the cut of the coat, the color of the facings, &c." But even admitting this, and admitting for an instant an order for "the cut of the hair" to come under the power to regulate "military uniform," I ask the general in other articles a power to regulate our uniform? has he ever attempted to exercise such a power in any other case whatever? and when it has been his wish to introduce a change of dress in any particular, to alter or improve any other item or uniform, has he ever tried it by any other mode than by a mere personal request or recommendation? or can there be found in any part of the orderly book a command from the general about "the cut of the coat or the color of the facings?" If there cannot, and if however anxious in sundry other points to vary or add to our fashions, he has contented himself with a mere private expression of his wish or desire, it must surely have been because he knew himself that he had no power to issue any order whatever to that effect. The general must have known this, because that power belonged to and had been exclusively exercised by the President of the United States, communicated through the secretary of war. As evidence of this I have now in my possession, what you must have all seen, gentlemen, a complete set of rules of "uniform for the army of the United States," dated January the 9th 1799, and signed by the secretary of war "by command of the President." This paper fully establishes the first point, even supposing "the cut of the hair an essential part of military uniform," and of course to be regulated by the same power, yet the power does not in any wise appertain to the general, but has been and is the property of a higher department: and it also establishes another point, contrary to the general's notion, that the cut of the hair is not an essential part of military uniform, for in these rules not one word is said and no direction whatever is given about it. Indeed it is hard to conceive how that, which is a part of a man's person, should be classed as uniform with the dress which is merely a covering for his person.—Or, how a natural gift or right should of course be subject to the same controul and ordinance as that which is merely artificial? or because the proper authority can direct what sort of a coat we are to wear, or might direct that we should wear no coat at all, that therefore not only the same authority but even an inferior improper authority can direct that we shall wear no hair at all, or only so much of it as suits his taste? this I apprehend, is no less repugnant to common sense, than it appears to have been to the general's own consciousness in issuing the order. For why employ arguments, as he did to recommend it to favour? whence the necessity of promising "the general would give the example" of sacrificing his locks? and whence the use of subjoining that the "measure had been sanctioned in America by the first military characters of the British and American army, that it had been recommended by the ablest generals who have lived, and had been adopted by the best troops in the world?" whence, I repeat, the necessity of stating all this, had not the general been conscious and aware at the time that he might persuade, but had no authority to command? where there is authority to command, the style is generally

positive and imperative, for there is no occasion for arguing when you can force.— But where it is felt that nothing more can be lawfully done than to recommend, then there may be need for observation and argument to gain a recommendation respect.

In one observation indeed, employed for that purpose, by the general, he has reminded us of a fact, which may serve strongly to confirm what I have already advanced. I mean where he remarks that "the measure has been sanctioned by the first military characters and recommended by the ablest generals who have lived. True! for not only the first military character, but the first character who has ever lived, I believe sanctioned a similar measure; that is, if I recollect right, our reverend Washington at some period of the revolutionary war once "recommended" to the troops to have their hair cut, I do not precisely remember on what account, but we may be sure it was on a proper and expedient one. But general Washington did not pretend to any thing more than to recommend; he did not affect to issue any positive order for this measure; nor did ever arrest any officer, and assemble a court martial to try him for "disobedience."—Yet, with all due deference, I presume it no disparagement to believe, that no man surely ever had a better understanding of his own duty and powers, that no man ever knew better how to perform the one and exercise the other, and that in a right sense of his own true dignity of character, he cannot even at this time be surpassed. An irresistible inference then arises, particularly considering the urgency of that crisis, that the immortal hero and honoured patriot, whose soul now rests in heaven, but whose memory will ever be respected, did not himself conceive that a commander had a right to enjoin any order for that purpose, except such as was merely recommendatory. And it is in this light at best, and in none more strong, that we can now possibly consider the order of the 30th of April, 1801. As a recommendatory order therefore, it becomes one about which every officer was at liberty to use his own discretion; which at pleasure he might or might not regard according to his own feelings, the sentiment and circumstances that peculiarly influenced him; and for a non-compliance with which he is answerable only to himself, but cannot possibly be punishable as for disobedience, since a refusal to pursue a mere recommendation is neither in fact nor in contemplation of military law any disobedience at all. In this opinion you must pardon me, gentlemen, for imagining that the general has too much intelligence not sincerely to agree with us. You must pardon me for suggesting, that he has rather betrayed the same opinion both in the time and manner of my arrest, and in the formation of the additional charges presented against me. Two years had elapsed since the date of his order, when he thought fit to revive the subject, and for the first time as it respected me to dictate acquiescence. But as I did not conceal my determination on this head, distrustful probably of his authority to subdue that determination, or perhaps well knowing that he really had no such authority, there might be the greater necessity to call in the aid of other complaints, and to hold over me a fancied rod of terror speciously applied as from a difficult, extensive and remote field of accountability, the combined influence of which it might be calculated would effect that obedience to the order in view, which the want of legal validity in the order itself had not been able to effect. I do not impeach the justice of this policy, and still less would I venture to reflect on its mover; but I barely mention it to you as a probable truth, from which you are capable of drawing your own deductions. If such was the policy, however, gentlemen, as it did not then succeed on me, so hope now after a careful scrutiny of my conduct arranged in the other specifications, no reason will be left why it should succeed with you. To that scrutiny I willingly submit myself, not with fear and trembling, gentlemen, because so long in the habit of plain dealing it would be out of all character at this time of life to say that I tremble, when in fact I cannot but feel bold in my own innocence and confident in my own rectitude. Yet I will confess that, having hitherto in times more trying passed through my career of duty without reproach, I had never calculated on being reduced in the downhill of my days to the predicament of this moment, reduced, gentlemen, to the mortifying condition of being obliged to answer, as for disobedience of order, in a trust, wherein it is no arrogance to say I know myself rather entitled to thanks for a correct and successful discharge of duty with the most complete obedience. But the calculations of man are vain, and the pride of his hope every where perishable! I have no right to expect an exemption from the common lot of human disappointment.

[Col. Butler then proceeded on the 2d and 3d charges, and concluded.]

## Great Bargain of Real Estate.

For Sale in Cumberland County,

A NEW Saw and Grift Mill, 1200 Acres of LAND, of which 30 or 40 Acres is excellent Meadow, under good Fence and ditched, which can be overflowed at Pleasure. There is also 15 Acres of said Land cleared and under Fence near the Mill, where there is a good Dwelling House and Out Houses, Garden, a large Barn, Stable and Cow Houses. Any Person inclining to purchase, may have a Stock of Cattle and Hogs, Plantation and Mill Tools, Oxen, Waggon and Cart.

200 Acres adjoining or near the above, one Mile from Fayetteville, and near Blount's Creek.

150 Acres of Land near Taply Johnston's, 20 Miles above Fayetteville, near Cape-Fear River.

### IN FAYETTEVILLE.

20 Acres of Land on Mumford Street, being an Entry by Daniel Ray, also 6 1-4 Acres lately Joshua Hadley's.

2 Acres, a Lot on the North Side of Mumford Street, near John Ellis's

A Store, Warehouse and Lot, on Bow Street, at present occupied by the Subscriber. There is a well finished House with four Rooms upstairs, a large Cellar under the Store, and two Warehouses.

A Dwelling House, large Warehouse, Stable, Kitchen, Smoke Houle, Garden, &c. with every convenience for a large Family, on the Corner of Gillespie and Ruffel Streets, 110 Feet on the former and 300 on the latter. Also a very large and commodious two Story Dwelling House on said Lot, now about half finished.

A Warehouse and Lot in Campbleton, on the Square near Mr. Davis's Dwelling House.

A Dwelling House and Hatter's Shop on Bow Street on leased Ground, at present occupied by Messrs. Goforth and Mipholland.

A large two Story House, Stone Cellar and Lot, on Bow Street, a good Store and Stand for Business, near Mr. Baker's Tavern, occupied present by J. and S. Williams, Merchants.

Cotton Machine, Grift Mill and Lot, near the Lodge, a complete Dwelling House near said Mill, occupied by P. McArthur—this will be sold on the 1st Day of May, at public Sale, at the Court House, for ready Money, if not before disposed of at private Sale.

### In New-Hanover County.

A Plantation of Harrison's Creek, 16 miles from Wilmington, navigable for Craft of any size, to said Place, where the Tide ebbs and flows about two Feet. 640 Acres of good land, 200 of which is excellent rice ground, a small part of which is cleared and under fence, and little inferior to any in the country for fertility; there is a dwelling House & some out Houses, a good Mill seat and much Saw Mill Timber at hand, the range for Cattle & Hogs is excellent, the distance to the sound or sea shore is about 8 miles.

400 Acres of prime Land 8 miles from the above & 12 miles from Wilmington, near Top-fail inlet on the sound, commonly called Porter's Neck, two small fields are cleared on said Land and under tolerable fence, some small Houses thereon. This Land is of the very first quality for Cotton or Corn, the greater part being good Hamock Land and capable of producing any kind of Grain. The range for Cattle & Hogs is very good, plenty of excellent Fish and Oysters at the door, this is a healthy and profitable summer retreat; pleasant in every respect quite open to the Sea.

### In Bladen County.

1280 Acres of Land on Colly's Swamp, six miles from Ashton Barn, and about three miles from Cape Fear river. This is well timbered land with Pine, Lightwood and Turpentine trees in abundance, some of it is fit for cultivation.

### Duplin County.

2000 Acres of Land near the north east branch of Cape Fear river a few miles above Rockfish and on both sides of the road leading from Wilmington to Duplin Court House, this Land is well timbered and good for Tar and Turpentine, and some of it tolerable for cultivation.

The terms of payment will be made easy to the purchaser. Apply to Mr. Evan Jones in Wilmington, or to me in Fayetteville.

I will also sell by wholesale or retail, a large & general assortment of Goods, at my Store here on very moderate terms, for Cash or Country Produce.

All persons indebted to me in any manner, will please come forward before the 1st of January next and make payment, otherwise suits will be commenced.

DAVID ANDERSON.

Fayetteville, 9th March, 1804.

### NOTICE.

I Expect to leave this State in a few weeks and probably for a long time. Having acted as agent for Mr. Gerard Banks, in Wake, for nearly three years, where the transactions have been very considerable, I am desirous and request that all persons who have any transactions unsettled with me in this business, should immediately come forward and adjust their accounts, so that in my absence, there may be no cause for complaint relative to the said transactions under my care. All persons having any claims against the concern, or myself, are requested to render them for settlement without delay.

THOMAS FARISH.

Wake county, May 11, 1804.