

NAVAL COURTS-MARTIAL. The Powers of Naval Courts-martial.—The Sentences of Defaulting Paymasters Set Aside by Secretary of the Navy.

The following is the full text of Secretary of the Navy's late order touching late sentences of a naval court-martial. From it, it appears that a naval court-martial has no power to punish by imprisonment...

Navy Department, Washington, March 25.—At a Naval Court-Martial, convened Oct. 29, 1870, at the Navy Yard, Washington, D. C., Passed Assistant Paymaster Charles H. Lockwood of the navy was tried on the charge of "scandalous conduct tending to the destruction of good morals" and "embezzlement," was found guilty of both charges and sentenced "to be dismissed from the navy; to be imprisoned for five years in such place of confinement as the Secretary of the Navy may designate, and to be fined in the sum of \$500."

After some hesitation, I have arrived at the conclusion that so much of the sentence in this case as imposes the and imprisonment should be set aside. The act of July, 1862, "for the better government of the navy," whether giving to naval courts-martial the power to adjudge the punishment of death in certain specified cases further provides, in Article 6, that in the particular cases where the punishment may be death, the court may, at its discretion, impose imprisonment for life, or for a term; and that, in these cases, the sentences may be carried into execution in the penitentiaries under the control of the United States Marshal, or the use of which may have been allowed by the Legislatures of the States. This is the only special provision applicable at this time which specifically confers upon naval courts-martial the power of imprisonment as a punishment, and gives the use of the civil prisons at the command of the government for the carrying out of the sentences of naval courts. This provision is by its terms confined to certain specified offenses of the highest grade, and is not intended for the punishment of a very serious nature, affecting the character of the service as well as the interests of the government, and not among those for the punishment of which Congress has provided specially in this article. By every principle of legal construction the specific restrictions of the article referred to limit the general powers given to naval courts-martial for the punishment of other offenses not included under its provisions, and the words "Such punishment as a court-martial shall think proper to inflict," when afterwards used in the act, and referring to offenses of a lower grade, not within the limits of article six, must be construed as referring to legal punishment other than that which is, in the provisions of that article, submitted to those of a higher grade. This conclusion seems to me inevitable. The ruling of the department since the passage of the act has generally been in accordance with it, and is a case of great importance, its propriety being maintained by the Attorney-General, against adverse opinion, with a becoming steadfastness. But the same conclusion is naturally reached on general principles. The general powers of punishment given to naval courts-martial are, of course, limited by the power and means legally at the command of the department for their enforcement. They must, therefore, refer only to such punishments as are sanctioned by the laws, regulations, and customs of the service, and they can never extend to a mode of punishment which has no proper or legal means of executing. In this view the impossibility of a pecuniary fine, as a punishment, is not a legal restriction of the powers given to naval courts-martial by the act, but a restriction referred to, since neither the court nor the department has in its command the process or other means of enforcing and collecting such a sentence of imprisonment for a term of years by a naval court-martial as a punishment for an offense, for the punishment of which the department has no means of legal imprisonment legally at its command, is on the same principle, clearly nugatory. The use of the civil prisons for the carrying out of the sentences of naval courts-martial is given only by article six (6) of the act before referred to, and is, by the specific restriction of that article, confined to the offenses of the highest grade, and therein referred to. This use is not at the command of the department for the punishment of the offenses found in this case.

The only other means of confinement at the command of the department is in the confined prison quarters on ships, or in some of the cells which are provided at the marine barracks in the various navy yards. These are intended and chiefly used for short terms of punishment for the enforcement of discipline, and for the temporary safe keeping of prisoners held for trial for serious offenses. Necessary of narrow compass, and not constructed nor intended for the confinement of long imprisonment, they are neither commodious nor secure, and have not the proper arrangements to make them healthful, beneficial, or of human. While criminals of the highest grade, convicted of crimes, are liberated trial by jury, under the careful provisions of the criminal law, are guarded in their imprisonment, and are subject to the strictest supervision for and regulating their moral, mental, and physical health, and looking to their improvement and ultimate reform, I do not feel that imprisonment for long terms, in cells like those I have mentioned on the sentence of a court-martial, under the summary processes of military law, for the offenses found in this case, is either authorized by law, or sanctioned by custom, or justified by humanity. The discipline of the naval service must be strict, the tribunals for its enforcement must be summary, and their legal sentences should be carried into execution without regard to technicalities which do not affect the substantial rights of persons, or the interests of the service. But in the case of serious offenses, for offenses not against discipline or under military law, and where the confinement is in a cell, I am unwilling to exercise the discretion imposed upon me for the execution of such a sentence, the legality of which is doubtful when enforced by military authority for offenses which may be punished and properly punished by the criminal courts of the country. The provisions of the act of 1862, which may be said to sustain this sentence, are not, in my opinion, applicable under proper constitutional construction, and the restrictions of the act itself to these offenses at the times when they are found to have been committed, if they were otherwise, the same objection of want of power of proper execution would apply with equal force, since this act makes no provision on that subject. There are other reasons of a somewhat technical nature which might seriously obstruct the execution of this sentence, and which I have mentioned in the course of this sentence which impose a fine and imprisonment, but I prefer to put my decision on the broader grounds of legal authority and proper administration. The sentence in this case is therefore approved, and so much of the sentence of the court as sentences the accused therein to be dismissed from the service, and to be confined in a cell, and so much thereof as sentences them to be imprisoned, is disapproved and set aside. At the same court Paymaster Richard Washington was tried on the charge of "scandalous conduct tending to the prejudice of good morals, good order, and naval discipline," and "embezzlement," and upon an "additional charge" preferred after the commencement of his trial of "neglect of duty." The facts developed by the trial of his officer present a case materially different from what the department has been led to suppose when the first charges were framed; and the court have found that the main allegation against him, that he had converted the public money entrusted to him to his own use, is not sustained by the proof. The evidence and findings in this case show the account to have been guilty of neglect of duty only, under extraordinary circumstances. The sentence of fine and imprisonment is therefore, and on account of the recomposition of the charges by the court, set aside, and the sentence of dismissal mitigated to suspension from duty, and pay for six months, to take effect from the date. Paymaster William G. Marcy and James S. Spauld, and Passed Assistant Paymaster Charles H. Lockwood, will be confined with the sentences of the court, from this date cease to be officers of the navy.

Approved, U. S. GRANT, Secretary of the Navy.

—Miss Kellough's newly-purchased residence at Cold Spring will be called "Gretchen's Cottage."

—In the present House of Representatives there are seventeen ex-Confederate officers.

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