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DEFENCE

OF

COMMODORE JESSE DUNCAN ELLIOTT,

OF THE UNITED STATES NAVY,

READ BY THE

HON. GEO. MIFFLIN DALLAS,

BEFORE THE NAVAL COURT MARTIAL AT PHILADELPHIA,

JUNE 20, 1840.

WITH LETTERS AND DOCUMENTS EXPLANATORY OF PORTIONS OF THE DEFENCE.

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# DEFENCE

OF

## COMMODORE ELLIOTT.

The trial of this officer on numerous charges and specifications, commenced before the Naval Court Martial, at the Navy Yard, in the County of Philadelphia, on the 11th of May, 1840, and continued from day to day until the 20th of June following. The Court was composed of nine naval Captains:—Captain JACOB JONES, President, Captain LEWIS WARRINGTON, Captain JOHN DOWNS, Captain EDMUND P. KENNEDY, Captain CHARLES W. MORGAN, Captain F. C. PARKER, Captain DAVID CONNER, Captain JOHN D. SLOAT, and Captain GEORGE W. STORER—JOHN M. READ, Esq. acted as Judge Advocate.

The evidence having closed on the 15th instant, four days were allowed for the preparation of the defence, which was handed in on the 20th inst., at 11 o'clock in the morning, by COMMODORE ELLIOTT, and read by the Hon. GEO. MIFFLIN DALLAS, his Counsel, as follows:—

MR. PRESIDENT,

AND GENTLEMEN OF THE COURT,

After an arduous career of six and thirty years in the Navy of the United States, my only desire, under the circumstances which now surround me, is to avoid saying a single word, or doing the slightest act, that might be injurious to any branch of that service, or derogatory to the rank I hold in it. The few plausible imputations before you, which have been carefully distilled from the incidents of my last command, and which it is thought may derive from combination an importance they could not enjoy separately, are not of a nature to alarm my sense of honor, or to awaken any fear that my whole life has been spent in vain. Come what may on the present occasion, the distinguished fellow officers who compose this Court, shall find me acquiescing, with entire candor and confidence, in the conclusions of their dispassionate judgments. I have yet strength and zeal to devote to our cherished country, but I am also old enough to be quite sure, that the past, with whatever of usefulness and reputation may have attached to it, is hoarded safe beyond the reach of calumny or envy, while the

future, be its pains and solitudes what they may, must be brief.

In sober truth, gentlemen, the pursuit to which I have been subjected, is, in its origin and character, and as a precedent, far more dangerous to the noble arm of national defence and glory to which we are attached, than it can be hurtful to myself individually. Permit me, with unfeigned deference, to explain my meaning. I have no desire to complain of persecution, to woo your sympathies by pointing out the peculiar difficulties of my position, nor to inveigh against the proscriptions of political party or the reckless assaults of the press; these are topics which might mislead or be misconstrued:—but I do desire to urge upon your attention certain general and glaring features of this prosecution;—to awaken you, as legitimate guardians of the highest interests of the American Navy to their inevitable results, and to invoke your most strenuous and unwavering efforts to defeat them. Were it the last act of my life, I should, dying, rejoice in having been instrumental, through the finding of this tribunal in rescuing our gallant corps from the perilous aschiefs to which I advert.

The experience of those who hear me must have satisfied them that nothing is practically more difficult than to reconcile the incontestible rights of free citizens, and the courtesies of polished department, with the hourly exigencies of military discipline and subordination.— They whose duty it is to order, cannot always pause to measure their words, and adapt them to the precise privileges or pretensions of those whose duty it is to obey. A thousand uncontrollable causes intervene to prevent them.— This may be regretted, but cannot be remedied. Nevertheless discipline and subordination must be maintained: their purposes are too vital and paramount to be abandoned; their operations cannot, without the most pernicious consequences, be arrested by frivolity, or relaxed by favoritism. Once waive their necessity;—sanction the idea that regulations are cobwebs to be broken through at pleasure, that rank is entitled to no deference, that commands may be disputed or denied, that the superior officer should silently submit to having his admonitions “repelled” by flat contradiction, and be content with the “forbearance” that leaves him personally unassailed;—that the settled gradations of authority, with their designated channels of communication, are idle formalities; and what will become of the naval system, of whose fruits the American people have heretofore been so justly proud?—what will become of the best bulwark which free institutions can organize against foreign aggression.

I do not at this moment, propose an elaborate application of these principles to the cases before you;—a fitter occasion as to each will present itself hereafter:—but I venture to assert that no reflecting man can have followed the developments of this trial, and have marked with discrimination its sources, without a deep conviction that almost every one of the various charges and specifications, find their real roots in a restless intolerance of discipline—in that prudent and perverse spirit which seeks distinction by defying subordination—in that false ambition which hopes to attain eminence by resisting and humbling established authority. Else wherefore is it that I am here for having repressed a personal altercation between two of the officers under my command on the arena of a thronged race-course? Else, wherefore is it that I am here for having inflexibly refused to consider the result of a flagrant violation of law, civil, military, and divine, as entitled to official indulgence and indirect sanction? Else wherefore am I here, for having transferred a chaplain from a frigate to a schooner, confiding his safety to the same winds, waves, and boat, to

which I entrusted distinguished officers and excellent seamen? Else, wherefore am I here for having, unarmed, forborne to shoot down as mutineers, scores of as brave and faithful tars as ever carried their country’s flag unsullied to the close of a protracted cruize, but whom the culpable negligence of inferior officers had betrayed into the temporary disorders of intoxication? I am here, gentlemen, yes, I am here, solely because my sense of duty and my experience have had to deal with some who can brook no government, suffer no control, except that which they themselves exercise!

Nor is the alarming tendency of this prosecution less obvious in the novelty and incongruity of its pretended legal foundations. If what I may be permitted to characterize as *the law* of several of the charges obtain recognition, the officers of the American Navy have unconsciously become the slaves of a secret, unsettled, and capricious domination. It is in vain that the Constitution of the United States has expressly forbidden the making of *ex post facto* laws:—it is in vain (in the language of one of the best and wisest of our Judges) “the genius, the nature, the spirit of our governments, amount to a prohibition of such acts of legislation;”—it is in vain that the great first principles of reason and of the social compact repel them, if, at the mere discretion of power, and in order to suit the exigencies of private malice, actions long deemed innocent are suddenly denounced as crimes, and penal enactments, made elastic for oppression, are stretched and tortured beyond their just and natural application. I am willing to obey—it is the fundamental lesson of military life—but let me know for whom and for what my obedience is claimed. I am old in submission to the laws, usages, and principles of my country: I am yet unborn to the vassalage of hidden and entrapping rescripts. When I tell the Court, as their careful consideration of the proofs will verify, that of the twenty-two specifications, ranged under the third and eighth charges, every one of them delineates as criminal, that which had before, and in countless distinguished instances, been regarded as strictly right or harmless, and what no legislative provision, no executive injunction, no judicial sentiment or decree had ever intervened to proscribe or discourage, may I not say that here is a large and fearful stride towards an arbitrary and destructive system?

Nor is this the worst. It would seem as if, to attain the ends of this unprecedented proceeding, certain preconceived and universal rules of honor were to be reversed, and that henceforward the affection and respect of our fellow-



men were to be repudiated as badges of shame. Do American officers and American seamen cease to be American citizens? In assuming the profession of arms, and devoting their lives, to the national defence and glory, have they lost the humble right of being beloved, or the invaluable privilege of manifesting their attachment? Why is it that my merely receiving a testimonial of esteem and gratitude from a numerous body of men as free and fearless as myself, is represented as scandalous and immoral, or unbecoming and unofficerlike? *That* and *that* only, without a single one of the innumerable qualifying epithets elsewhere used, is the bald imputation of the first specification, of the third charge and of the fourth specification of the eighth. What does it mean? Is it designed to stigmatize "*en masse*" the seamen who navigate our ships and fight our battles, as too degraded to be actuated by virtuous and independent motives, or too vulgar to approach without polluting their professional chief? I enter my solemn protest against so undeserved and sweeping a denunciation. I demand for the free spirit, the personal courage, the manly intelligence of the crew of the Constitution—nay, I claim for the great class of mariners in the naval service of our country, an exemption from this lordly and contemptuous ban. They are a hardy, adventurous, and disinterested race, early trained to a knowledge of their rights, but submissive to the law—quick to resent petty tyranny, but kind and confiding to their friends; easily moved to avenge a wrong, but generous as bold, and always patriotic. Surely the warm-hearted, tribute of such men cannot disgrace the loftiest in pretension. Surely he whose stern duty it is to exact from them constant privation, and unlimited obedience, may innocently delight in a gift which attests his having, in some measure reconciled the character of their commander, with that of guardian of their happiness and interests. Is it not strange, gentlemen, that according to the moral alembic of this prosecution, we should be tauntingly reproached with what constitutes our pride!

It is essential to the purpose of these remarks, that their true bearing should not be mistaken. I have no desire to review with unnecessary severity the errors of intemperate passion, which have from the first and perseveringly marked the conduct of my accusers, nor the cool or careless, the designing or deluded, misjudgments of those by whom these accusations have been encouraged and adopted; much less do I impute to the organ of government before this Court, who has moulded the

materials furnished him into the only structure of which they were susceptible, their vague and discordant character. But I insist upon the broad and conservative principles, that crimes are not to be fabricated on the spur of every discontent, out of acts in themselves unimportant and indifferent—that what the eminent captains who preceded me have repeatedly done unceasured and unassailed, shall not abruptly be proclaimed as guilt in me, and that that only shall be specified as crime, subject to the jurisdiction of a Court Martial, which is clearly cognizable by some one or other of the articles, rules, and regulations of the Navy. Let me more pointedly illustrate the ground thus taken. Agreeably to the 2d article of the first section of the Act of Congress of the 23d of April, 1800, entitled, "An Act for the better government of the Navy of the United States," I admit that an officer may be tried, convicted, cashiered, or punished at discretion, upon the third charge exhibited here, of "*Scandalous conduct tending to the destruction of good morals*"—but I wholly deny the competency of any accuser, private or public, subordinate or in authority, to range in maintenance of this charge, a series of conduct or conversation, having not the remotest imaginable connection with "*morals*," and to ask, first, that the charge shall be esteemed to be sustained by the specification, and second, that the specification shall take its character from the charge. Were such a course permitted, the ordinary intercourse of social life, the casual incidents of convivial enjoyment, the consultations of confidential friendship, and every proceeding not at once appreciated in every respect by every body, would become the basis of trial and condemnation. The law would dilate or contract to cover every case presented, and instead of being a fixed, limited, and precise rule, would vary to accommodate the prejudices, the caprices, or the tastes of its expounders. What, "*scandal and tendency to the destruction of good morals*," can be predicated of my publicly accepting a present from my crew? What, "*scandal and tendency to the destruction of good morals*," can be attributed to my embarking useful animals on board the Constitution? What, "*scandal and tendency to the destruction of good morals*," can be ascribed to my openly employing men in feeding and otherwise protecting these animals? And what, "*scandal and tendency to the destruction of good morals*," can be inferred from my having notoriously, and by regular requisitions, consumed in the erection of stalls for their comfort and safety, certain boards, plank, nails, canvass, and junk?

If these specifications describe matters that are really offences, cognizable under some other comprehensive provision of law, let them not be set forth under *this*, to which no ingenuity can possibly apply them. If there be no article or regulation to the standard of which they can be rallied, would it not be wiser, juster, safer, and better, to recognize the truth, and to own that they are not offences at all? Let me add, without wishing in the slightest degree, to restrict the import of the legal phraseology, that it is difficult to avoid perceiving, on reading the Act of Congress, the exact nature of the irregularities or indecencies against which its modest generality is directed:—"any officer or other person in the Navy, who shall be guilty of oppression, cruelty, fraud, profane swearing, drunkenness, or any other scandalous conduct tending to the destruction of good morals;" a momentary glance at the statute of the British parliament from which this provision was drawn, and which is less delicate in its terms, perfectly explains the allusion.

I cannot gentlemen, omit to remark upon another peculiarity of the investigation through which you have passed, whose inconvenient and dangerous consequences I have painfully witnessed. It will be recollected that the precept issued by the Honorable the Secretary of the Navy for the organization of a Court of Inquiry, instead of being restricted to the only charges which engaged the least attention, and as to which it was cheerfully sought, authorized an examination into every incident of my life, important or unimportant, during the four years of active, anxious, and laborious public service, connected with my command in the Mediterranean. If there be in the annals of naval government, a parallel inquisition recorded, it has escaped my research. Though not so designed, it operated instantly as an invitation to every one on whom the discharge of my military duties had borne with any severity to come forward and seek his revenge; to find in the lapse of time, in the confusedly remembered incidents of distant days, and in the perverted reasoning of moody and long indulged mortification or enmity, ample means of assailing me at unguarded points, and of giving plausibility to stories and insinuations which no memory, however tenacious, could pretend to retain with the fullness and accuracy necessary to perfect explanation. It placed me at once as a target for all the discontented, for all who hated bitterly or felt spitefully, for all who thought themselves aggrieved, or were ready to believe that others had been so. If this be esteemed a just ordeal, the precedent,

first set in my case, may be useful to the American Navy:—if it be esteemed otherwise, as on my soul I believe it to be as unjust as it was new, long may it remain without imitation—long, very long may it be before a brother officer, however honorable and innocent, shall be forced to undergo it! What have been its obvious results? Looks, words, gestures—nay, even tones of voice—things which can scarcely be remembered from day to day, have miraculously outlived years, and are reported as positively as if of last hour's growth:—the setting sun, the rising wind, the rate of sailing, the time of tide, the transfer of provisions at any given hour four years ago, have been narrated with a hardy confidence that throws into shade almanacs and log books: while blindness itself could scarcely fail to see the dove-tailing, corroborating, mutually countenancing and encouraging indications of a gradually formed, extensive, and if you please, unconscious combination to destroy.

It may not be amiss to show briefly a few of the singular contradictions and inconsistencies into which the prosecuting witnesses were thrown by the test of cross-examination—rendering it manifest how little reliance could be placed upon their real recollections. I am not anxious to inculcate a harsher conclusion.—When, however, it is considered that a correct appreciation of the truth or falsehood of many of the specifications might, (such is their nature!) depend upon the insertion or omission, at particular emergencies, of a single word or qualifying phrase—when a slight circumstance remembered, or forgotten, or evaded, might be the illuminating index of motive or feeling, it cannot fail to inspire great caution and doubt, if we detect irreconcilable discrepancies in the sources of testimony. Opposite assertions cannot both be true, and the witnesses who make them, unintentionally but fatally disprove and impeach each other.

Is it not something to shake your confidence in the statement of Lieut. Charles G. Hunter, that he should at one time vehemently assert that I shook the cane *over* his head—but, at another time when the impossibility of my having done so by my distance from him is overwhelmingly proved, that he should vary the phraseology to shaking the cane *at* him?

Is it not something to awaken an apprehension lest the solemnity of the occasion may not be adequately felt or the memory be very feeble, when the same gentleman on Monday morning positively avers that he saw Chaplain Lambert on the immediately preceding Sunday evening at the office of the Judge Advo-

cate, but on Tuesday morning recalls his avowal, and has reason to believe that he mistook the fact!

Is it not something to bewilder the best exponents of evidence, when Lieut. McBlair represents the Constitution as going into Hampton Roads on the *first of the flood*—Lieut. Bullas, at *half flood*—and Sailing-master Muse at *high tide*?

Is it not something to embarrass your choice and keep you suspended between the greater knowledge of the officer and the superior sanctity of the clergyman, when Lieut. Watson tells you unhesitatingly that the ship in the harbor of Suda *was* hove to, while Chaplain Lambert as positively tells you she *was not*?

Is it not something to inspire misgiving, that Passed Midshipman Barton should declare that he had received no orders not to go on shore from the Shark, while Lieut. Totten asserts that he in person communicated those very orders to him?—that the same passed Midshipman Barton denied that he was left at Smyrna at his own request, when the letter of Dr. Boyd to his father Dr. Wm. P. C. Barton, unequivocally states that he was?—and that the same passed Midshipman Barton should depict “*the blood as madly gushing through the hand-ges*” of his wounded limb, when Dr. Woodworth says that such a phrase is a “*figurative expression*,” which he does not understand, and that the hæmorrhage was slight?

Is it not something inexplicable, as an operation of mere memory, that Purser Hambleton should inform you that Captain Boraem, in reporting to some of the crew after dinner on the day of anchoring at Hampton Roads the reply of the Commodore to their inquiry when the ship would proceed to Norfolk, said “*as soon as the pilot would carry her*” while Lieut. Bullas pronounces it to have been “*as soon as the animals were out of the ship*” and while Capt. Boraem himself admits neither statement to be correct, but alleges his reply to have been, “*that afternoon or next morning*”?

Is it not something irreconcilable that Passed Midshipman Anderson’s recollection should warrant his declaring that some of the stalls of the animals were attached or nailed to some of the trucks of the guns, while Carpenter Sagee who constructed them all, peremptorily affirms that nothing of the sort was done in any one instance?

And is it not something, a little more than singular, that Lieut. Bullas should declare that two of the pieces of plate, the pitcher and waiter, had not the inscription engraved on them at the time when they were exhibited to the

crew on the berth deck, while Mr. Hutchinson who sent them from his house, and Captain Boraem who received them on board, just prior to that exhibition, aver that *they had*?

God grant, gentlemen, that these direct and almost extravagant contradictions and discrepancies on points bearing upon the merits of the specifications, be accidental!

I have endeavored to analyze the eight charges, with their thirty four specifications, to divest them of their mere descriptive or exaggerating epithets and to systematize their substance so as to present distinct and comprehensive answers to all and each of them. It is obviously unnecessary for me to follow them one by one, successively and according to their present arrangement, as some of them are mere repetitions under different heads, and others only varied by slight additions or omissions, more formal than material. As it is my intention, so I hope this Court will find on candidly and carefully considering what I shall say, that no allegation made in any shape, to which the evidence has the least application, has been suffered to pass without its just and ample notice.

Of the thirty-four, specifications *seven* of them may be characterized as purely personal, affecting three individual complainants, namely, Lieut. Charles G. Hunter, Chaplain Thomas R. Lambert, and Passed midshipman Charles C. Barton. The replies to these specifications will therefore best marshal themselves under the names of their respective originators.

Of the remaining twenty-seven specifications, *eight* are extracted from what I may be permitted to distinguish as the Crew’s present of Silver Plate; *eleven others* are deduced from the fact, with its necessary incidents, of my having brought to the United States on board the John Adams and the Constitution, the *animals* enumerated; *five others* are compounded out of the transient scene of alleged mutiny at Hampton Roads; and the *three* last apply to the infliction, on two Mahonese servants and a seaman, of *extra punishment*.

I propose, therefore to answer all the thirty-four specifications, and of course the eight charges, for specifications once removed, charges necessarily fall to the ground, under the following distinctive heads, pursuing an order conformable to what may be esteemed their relative dignity or importance. 1. *The animals.* 2. *The alleged mutiny at Hampton Roads.* 3. *The Crew’s present of Silver Plate.* 4. *Passed midshipman Charles C. Barton.* 5. *Lieut. Charles G. Hunter.* 6.

*Chalain Thomas R. Lambert. 7. Extra Punishment.*

### I. THE ANIMALS.

Under this head, my remarks without more detailed analysis, will apply to the 5th, 6th, 7th, and 8th specifications of the 3d Charge; specification of the 6th charge; specification of the 7th charge—3d, 8th, 9th, 10 h and 11th, specifications of the 8th charge.

It is certainly true, gentlemen, as a general proposition, that the guilt or innocence of an accused, should be determined without reference to the expediency or in expediency, the policy or impolicy of the law which is said to have been violated. The power to legislate is not vested in any courts, civil or military, nor is it within their competency to abate the force or qualify the injunctions of acts of Congress. And were I able to discover in any statute an express or implied prohibition of the offences imputed to me within this category—were I not necessarily driven by the vagueness of the terms of the charges, to show their inapplicability to the matters specified, I should not feel, as in fact I do feel, bound as well as able, independently of substantive and special justification, as a devoted friend of the American Navy, to convince this tribunal, that what is here characterized as “*scandalous conduct tending to the destruction of good morals,*” or “*unbecoming and unofficerlike conduct,*” was in strict accordance with a wise national policy, long actuating our fellow citizens at large, long sanctioned by the government, and especially useful to our branch in reconciling its otherwise seeming idleness in times of profound peace, and its necessarily heavy cost, to the sympathies, affections, and opinions, of a vast body of our countrymen.

I refer, it will be remembered, at the outset, to the broad assertion that I acted criminally in bringing to the United States, from foreign lands, two animals on board the John Adams, and twenty three on board the Constitution. After encountering this, it will be my duty to enter into closer details, and to satisfy you, that being right in the general purpose, it would be absurd to ascribe guilt to me on account of its necessary incidents, or its temporary though unavoidable consequences. If I might bring these animals home in one or more vessels of war under my command, I cannot persuade myself to believe that I shall experience any embarrassment in convincing those whom I address that they were stowed

away as conveniently as possible, in reference to armament or crew; and that I was not wrong in providing them with food, nor in securing them by stalls, nor in having somebody to pay them the proper attention on the voyage, nor in having them safely lauded on anchoring in Hampton Roads.

In early life, gentlemen, it so happened that I contracted an habitual respect and a strong taste for agricultural pursuits, as well as some knowledge of the difficulties with which the farmers in our new and thinly settled regions have to contend. The sudden death of a father, who fell by the hand of a savage while in the actual military service of his country, leaving to his widow and children nothing but the invaluable inheritance of a good name, hurried a younger brother with me into the profession I have ever since followed. But the storms of ocean, the wanderings of seamanship, the occasional and absorbing bustle of battle, with the many cares created by a temperament somewhat too ardent and heedless, have never extinguished my fondness for the labours of the husbandman, and the desire to contribute, to the extent of my ability and means, to their solace and encouragement. Men never cease to relish what they loved as boys, and rarely do we outgrow even an exaggerated estimate of the importance of our first occupations. The basis of all other arts—the oldest and most universal—the art which employs nine-tenths of every community—the one which as certainly produces individual happiness as it is essential to national prosperity—the art which invigorates bodily health, assuages mental infirmities, fosters virtuous sentiments, inspires moral independence, and gives to the institutions of liberty their wisest, purest, and sternest protectors—that art has always seemed to me to be the art of agriculture. Heretofore this conviction found its origin perhaps in habit or inclination—it is now confirmed by reflection and experience. It is very possible that in my zeal to improve the resources of those who cultivate the soil, I may have done that which in the eyes of men whose tastes and opinions take a different direction, appears strange if not ludicrous. Indeed it is obvious that many of my young and accomplished accusers refrained with difficulty from sneers and smiles, when their polite lips were doomed to utter the words “*Jackasses;*” and even the Honorable Secretary of the Navy, if I correctly appreciate the tone of the letter he addressed to me on the 15th day of November, 1838, deemed the dignity of his pen as much lowered by the phrase as was the flag of the Consti-

tution outraged by floating over such unmentionable creatures. The blood of the Arabian or Andalusian racer rescues him from contumely; perhaps his immediate destination, to grace the fashionably thronged turf, secures to him a silent and solid glory; while the homely and humble "Jackass," whose qualities endear him only to the homely and humble farmer; whose value is not swiftness but steadiness, not pride but patience, not beauty but bottom, must meekly bear the burden of contemptuous scorn. And yet, this dejected drudge has been praised for the peculiarities which constitutes his merits in my eyes; and I am tempted, in vindication of my taste, and in some measure to propitiate the offended dignity of the Secretary of the Navy, and of my polished assailants, to remark with the author of those praises, that "WASHINGTON, so justly named the *Father of his Country*, was the first who introduced this useful animal into the United States, and his laudable example has since been imitated by a small number of agriculturists."

Wherefore, then, may I ask, with these sentiments and objects, was I precluded, upon general principles, from making these animals accompany me in the vessels of war which I commanded? I have proved incontrovertibly to this Court, by measures taken, and conversations held contemporaneously with the purchase of the animals, and by their subsequent distribution throughout the United States, that my avowed and real purposes were what I have now stated. Was it, nevertheless, scandalous and immoral, unbecoming and unofficer-like!

*First*, It was no where directly or expressly condemned by any law or regulation, and the very same thing had been done over and over again, by older and more enlightened and abler officers than myself, without the slightest reproach or objection. You have it distinctly from the lips of uncontradicted witnesses, that—

*Commodore Stephen Decatur*, in 1805, brought in his ship to the United States, four Arabian horses.

*Commodore Isaac Chauncey*, in 1818, several horses.

*Commodore Wm. Bainbridge*, in 1826, six animals—a bull, a heifer, a ram, a ewe, a jack, and another.

*Commodore John Rodgers*, in 1827, four jacks and jennies.

*Commodore Read*, in 1824, one horse.

*Commodore Patterson*, three animals once, and again a flock of sheep.

*Commodore Crane*, six or seven jacks and

jennies; and another irreproachable and high minded captain, whose valor adorned his country with one of her brightest chaplets, considered it not unworthy of his imitation. I need hardly remark, as it is notorious and indisputable, that none of these distinguished men were treated with categorical impeachment and censure, much less with imputations of scandalous, immoral, and unofficerlike conduct. Such treatment was reserved for me alone.

*Second*. Nor is it possible with any consistency or justice, to consider the bringing of these animals amenable to blame, when a variety of analogous acts and proceedings, accompanied by the utmost publicity, are of daily occurrence. It would really seem as if the subject of importation, in order to provoke censure, must be substantially useful, and appropriate to relieve the toilsome pursuits of the humble classes of our countrymen:—should it be useless, merely ornamental, and limited to scenes of luxury and fashion, like charity, it will cover a multitude of sins. Take for illustration, the enormous, ponderous, and almost shapeless mass of marble, in procuring and embarking which on the coast of Greece, Commodore Patterson employed the seamen of his squadron for weeks, and encumbered his ship during a protracted cruise. It has stood for many years a disfigured and incomprehensible monument of ancient sculpture in front of the Philadelphia Academy of the Fine Arts, no doubt deservedly an object of learned criticism or idle curiosity, but contributing not the fifty millionth fraction of its own weight to the benefit of nine-tenths of our population. Let me not be understood as finding fault; I have done a similar act myself, (not yet discovered to be wrong) in presenting to the Girard College a huge granite sarcophagus of immense antiquity, procured on the heights of Beyroot at much private expense, and removed to my ship with great difficulty:—what I mean to say and to insist upon is, that you cannot, as the Naval Department always has, countenance and encourage such importations as these on board our ships of war, without at least refraining to censure the bringing of animals, unless a decided preference is to be accorded to inanimate, unproductive, and useless articles of fancy or fashion, over living creatures of immediate utility and of permanent improvement.

And now, gentlemen, after these remarks, does not my defence on this point become irresistible, when I adduce the positive written instructions of the Navy Department, not merely warranting, but inviting the very proceeding alleged to be criminal? These instructions pen-

ned by an able lawyer and statesman, then at the head of our service, are dated the 27th day of June, 1837, and came into my hands as commander of the squadron in the Mediterranean, by regular transmission from my predecessors on that station. They refer to the very policy on which I have commented, to the very motives by which I have proved myself actuated. They are in the following clear and comprehensive language. "It will probably be in your power, while protecting the *commercial*, to add something to the *agricultural* interests of the nation, by procuring information respecting valuable animals, seeds, and plants, and *importing such as you can conveniently without inattention to your more appropriate duties, or expense to the government.*"

The construction of this authority admits of no perplexity. The importation on board our ships of war of valuable animals is distinctly and directly encouraged. It does not pretend to confer a new power, not before known to exist and be exercised by our naval commanders, but recognizes the power already in being, and exhorts to its active use. The government wisely judged it expedient and just that *agriculture* should share with commerce in a perfectly reconcilable extent, the benefits incident to our active and costly employment during times of peace:—it desired to inculcate this mode of being doubly useful to the country—and it doubtless saw in the practice the means of kindling among our farmers, and far through the interior, sympathies and interests in our behalf such as prevail among merchants and along the seaboard.

What then was meant in the official instructions by "*importing*" animals? Does it not necessarily authorize all the incidents attendant upon such an act? Does it not justify the occupation of adequate space on board the public ship? Does it not warrant the employment of such agents and such means for the care of the quadrupeds as a public ship affords? Surely it cannot and will not be imputed to a high functionary of the American government, that he worded his instructions in order to mislead and entrap—that he intended to allure the naval commanders into "*importation*," and then disclaim having specified any privileges of room, of protection, of attendance? When he empowered us to "*import*" valuable animals, he sanctioned all the unavoidable accompaniments or consequences of our doing so, equally as when was authorized the transportation of specie, equally as when were permitted loads of live stock to be stowed for messes, equally as when were allowed private persons,

our own citizens or foreigners, to be received on board, and to be conveyed as passengers from one place to another. And yet to so refined and ingenious an extent has the opposite construction been narrowed, that it seems to be regarded as evidence of my having transcended Secretary Southard's authority, that the horses brought in the Constitution had temporarily "*discolored*" the deck, and left some straggling tufts of their hair upon the stauncheons of the ship! Nay, indeed, if I am not mistaken in the scope of the suggestion, it is thought that though I might "*import*" the animals, I was bound to be my own groom, or import grooms as well as animals, and that to bestow upon them any of the time or labor of any portion of the crew was improper and illegal. Driven to so attenuated an extreme are my accusers, that in order to criminate, they abandon the dictates of practical common sense.

Undoubtedly, gentlemen, when workings of fancy are substituted for fact, and we are asked to imagine all the evils which *might* spring from almost any act, it is easy to delineate a very gloomy picture. Nothing is quite so harmless, but it can under some circumstances become dangerous if not fatal. I can readily admit that the presence of a single animal in a ship *might* possibly affect the comfort of her men; that messing and sleeping places *might* be interfered with; that even the battery *might* be encumbered; that the force and efficiency of the ship *might* be impaired; and that she *might* become unequal to sustain the honor of the flag in an emergency. These grave and resounding consequences *might* follow upon consequences infinitely less ostensible than the one supposed. But then again the converse is equally maintainable, and a hundred animals *might not* produce any one of those direful results.—Hence it is that the instructions of the Secretary of the Navy prescribe no limit or condition whatever, except the one which would exist unexpressed, namely, that the authorized importation must be unaccompanied by "*inattention to more appropriate duties or by expense to the government.*"

The facts as proved by all the witnesses incontestably show that I was not guilty of "*inattention to more appropriate duties*," and a rapid review of their chief features may not be inappropriate or tedious.

1. The animals were embarked on board the Constitution at Mahon, in the island of Minorca, the customary rendezvous or head quarters of the American armed vessels stationed in the Mediterranean Sea, after having been collected and kept on a farm in the neighborhood. On the

13th of June, 1838, my tour of duty as commander of the squadron was over, and I had nothing more to do, at the close of a four years' cruise, than to stretch directly across the Atlantic with my single ship, and regain our own country. It was a period of perfectly profound peace. The ruffled aspect of our relations with France, which at one time excited my utmost vigilance, had tranquilly dispelled, leaving a smoother surface than had existed for years before, and not the slightest shade of controversy floated upon the horizon of international politics to awaken doubt or apprehension. Every thing seemed, every thing was secure, settled, and serene, and his mind must have been morbidly disordered who could entertain the remotest suspicion that my frigate *might*, in the centre of Christendom, and at that moment of universal amity, have encountered obstacle or rudeness of any sort.

2. Previous to embarkation, I consulted fully and freely with my officers, and to commander Boraem, certainly discharging the functions of Captain, I gave the undisputed and positive order, which became generally understood throughout the ship, that in case of any unanticipated emergency, the animals with all their encumbrances should be immediately thrown overboard. The arrangements for their convenient accommodation, first clustering amidships, and subsequently against the sides between the guns, approved as the very best by every witness who has described them, were constructed in eighteen hours by carpenter Sagre, were carefully kept by him unconnected with the guns, their carriages and tackle, and were so slightly fixed, that at a moment's warning, and in less than fifteen minutes, the deck could have been effectually cleared of any obstruction.

3. Little offensive as such animals are, generally indeed objects of attraction and kindness to seamen, every care was taken to prevent their proving sources of even fancied annoyance.—Nine persons to have them in charge were designated and systematized, thus limiting to an easily spared number, the temporary relief from other duties of the ship—the stalls were scrupulously preserved in a condition of cleanliness and purity, and were located on the gun-deck and near the port holes, with special reference to a free circulation of air during a summer month, and the few berthing or messing places with which they interfered were utterly unimportant on board a ship whose crew fell short by *forty-four* of her regular complement. Let me add, as overwhelmingly attesting the success of those arrangements, that of the four hundred

and fifty on board, not a solitary officer or man has ventured at your stand to aver that the presence of these animals in the ship impeded his duties, affected his health, or impaired his comforts:—that the medical gentlemen have uniformly conceded their entire wholesomeness, and that not more than three or four partially sick men, were ever heard during the whole voyage to ascribe their natural restlessness at night to the noise of their hoofs. Every seaman was satisfied and pleased.

Having then, gentlemen, the clear and express authorization of the Secretary of the Navy for the importation of these valuable animals, where, I ask, was there any "*inattention to my more appropriate duties?*" Is it to be found in fact, or in fancy? Is a conclusion of solemn justice to be reached through realities and truth, or through exaggerating verbiage and fiction?

It is unnecessary to advert particularly to the instance of my sending to the United States more than a year before the Constitution returned, and by the John Adams, two similar animals, farther than to remind the Court that the incorporation of this among the specifications only shows that my accusers were wholly unapprised or regardless of the instructions of Secretary Southard, and that they deemed the laws and usages of the Navy equally violated by the importation of two, as of twenty such creatures: that nevertheless that valuable officer, Captain Stringham, with emphasis repelled the consciousness of having been required to do what was "*unbecoming and unofficerlike:*" that he pronounced the arrangements he had made to have been unattended by the least embarrassment; that he denied the efficiency of his sloop to have been weakened; and that neither he nor any of his officers, had ever considered the circumstance worthy of being reported to the Navy Department. It was reserved for I know not whom to disinter this transaction, and to make it swell what I hope I may be pardoned for terming the sweeping drag-net of the eighth charge exhibited against me.

One short additional explanation, and I will detain you no longer under this head. I understand the stores which I am alleged in the specification of the *sixth charge* to have "*unnecessarily expended,*" and in the specification of the *seventh charge* to have "*wasted,*" are identically the same stores which I am subsequently alleged, in the 10th specification of the *eighth charge*, to have used for my own private benefit. They are almost all such as were appropriated to the accommodation of the animals, and in that light are carried to my account. How

they can be regarded as "*unnecessarily expended*," or as "*wasted*," according to the unbroken current of evidence you have heard, I am utterly at a loss to conjecture. I presume this to be merely a formal variation of the same imputation. My known, and declared, and proved intention, according to the established practice and principles of our service, was to have returned them in kind, or to have paid for them. They were notoriously obtained by regular requisition at the times and in the quantities represented to be wanted, and I gave directions that lists of them should be properly kept and handed to me. Such lists never reached me. Carpenter Sagre has sworn that the one he prepared remained long after it had been prepared, undelivered in the hands of Gomella, erroneously thought to be my steward, and Lieut. Bullus has confessed, on cross-examination, that the list he made for rough memoranda, was compiled for use before the Court of Inquiry, (although the subject, as one for scrutiny, was accidentally started there without having been heard of before,) and that he never communicated it to me. Had the list been submitted to my inspection, and ascertained to be correct, its really small amount would have left me without excuse for not restoring or paying: but once made the basis of attack and investigation, it would have ill become me secretly to ratify it, and so apparently to shrink from a full and public development of its origin and character. It is now as publicly as unquestionably shown that these articles cannot be traced to my use, and that if, contrary to what I have proved, as to leading items, like the tent of Captain Boraem, they were applied wholly to my private purposes, yet were so applied from time to time, in making, or repairing, or cleansing the accommodations for the animals. In the opinion I have formed after much reflection, most of them, as absolutely necessary to effectuate the safe and convenient importation which the Secretary's instructions invited, should be ranged under the general expenses of the ship, and many of them, of old canvass, the proof shows to have been returned; but be this as it may, having early made my intention in relation to them distinctly known, I shall prefer fully liquidating their value.

## II.—THE ALLEGED MUTINY AT HAMPTON ROADS.

Under this head my remarks will apply without more detailed analysis, to the 1st and 2d specifications of the 4th Charge; 12th, 13th, and 14th specifications of the 8th charge.

The discipline of the squadron in the Me-

diterranean, while under my command, is conceded to have been well and efficiently maintained; and every officer of the Frigate Constitution has felt himself obliged to confess that the conduct of her crew, during all his experience, throughout her three years absence, until she again anchored in the waters of the United States, was unexceptionable. I speak now of the general deportment, activity, order, and obedience of the men; not considering the fact of Lieut Bullus having punished, in the course of one morning, and in the absence of Captain Boraem and myself, thirty or forty or seventy, nor the occasional other irregularities committed by detached groupes or single individuals, set forth in the Book of Punishment, as indicating any thing beyond the casual and transient ebullition or forgetfulness to which masses of men, under the best rules, and of the best dispositions, are prone.

The Captain of an armed vessel who has tried and knows the real character of his crew, and who appreciates the responsibility of his public trust, is not always called upon even in emergencies, to execute his duties with force, terror, and destruction. Such resorts may be the very ones he should avoid, for, however much they might manifest the power with which he is invested, or the uncompromising rigor of his command, they may be ill-suited and ill-timed to the circumstances, and by aggravating the very mischiefs he wishes to remedy, defeat his just purposes altogether. How best to manage men, and sailors especially, is an art, or a tact, of slow acquirement. The flourish of the cat, the rivetting of the irons, the brandishing of the cutlass, the volleys of marines, may be all good in their way, and all are confided to the tempered discretion of him who has at the same time committed to his charge the lives of officers and crew, the public prosperity, and the honor of the flag. Who doubts, since the evidence thrice repeated before this court, that a very large proportion of the crew of the Constitution, had, owing to the culpable carelessness of subordinate officers, become intoxicated on the afternoon and evening of the 31st of July, 1838, after anchoring before the town of Hampton? and who doubts that this intoxication was impelled and excited by the conscientious belief of many that their contracts of service having expired, and their feet once planted on their native shore, they were free from the restraints of military discipline, and entitled to set them at defiance? Men thus conditioned and thus actuated, become dangerous and formidable only when exasperated by unnecessa-



ry severity, and leagued in combination for a common object—while yet more perverse than provoked, more talkative than daring, more quarrelsome amongst themselves than conspiring against others, they may be vigilantly watched or separately confined, but are neither to be feared nor massacred. I know, gentlemen, that this is a lesson of prudence, which the rash spirit of youth and the recklessness of irresponsible levity can with difficulty comprehend. With such, the silly pertness or noisy insolence of a drunken tar is too apt to be answered with hot haste, and to lead to consequences alike disproportionate and painful. With such, I doubt not, that forbearance is another word for tameness, that to refrain from punishing is submission to disorder, and that our own American blood had better deluge an American deck and stain American waters, than that any mode short of violence should check or appease the follies of drunkenness. These are not, however, the sentiments of weather-beaten age, nor do I entertain the slightest apprehension of their being adopted by a tribunal of American Captains.

It is possible, the professional talent of the Judge Advocate has proved it to be so, to cluster and condense the half dozen incidents of a half dozen hours into almost as few lines, and to give them by strong phraseology, a pungency redolent of crime. With no other foundation than the disorder to which I have referred, I am gravely charged with having witnessed a *mutiny* and doing nothing to repress it! I take issue on both points, and deny, on behalf of the noble crew of the Constitution, that they ever mutinied, and second, assert it to be incontestibly proved, that that which is misnamed a mutiny was by the commander of the ship, or by myself, fearlessly, and thoroughly, and judiciously repressed.

1. I do not think I have yet heard, or that I shall hereafter hear the scene at Hampton Roads denominated a mutiny by any military man. None of the officers who have detailed its various and unconnected irregularities have committed their professional intelligence and discrimination quite that far. The nearest approach to it, and yet far distant, were the pregnant expressions of Lieut. Bullus, who thought it "*almost a mutiny.*" Lieutenant McBlair says it was no insurrection, only a *general disregard of orders.* Dr. Washington avers distinctly that it was not a mutiny:—Passed midshipman Muse says the disorder and fighting was among the men themselves, and not resistance to the officers. Midshipman Anderson says there was no violence toward

the officers. Assistant Surgeon McLeod says, the crew were settling their quarrels among themselves, and he saw no resistance to the officers. Carpenter Sagre says there was no attempt to resist the officers. Captain Boraem himself seemed to think that it would have been exceedingly preposterous to order out the marine guard to repress a mutiny when none existed: Lieut. Hardy characterizes the whole proceedings as a "*drunken row or frolic:*" and the veteran boatswain, Nicholas Steinbaugh, and gunner Thos Riley, with Price, Holcomb, Richards, and Paul, overwhelmingly establish the truth of this uniform statement.

But, gentlemen, what is a mutiny? It is certainly an offence of which one seaman can be guilty as well as a hundred. Its essential characteristic is not numbers, but active, subversive purpose. It is, however, not drunkenness; nor is it abusive insolence; nor is it quarrelling; nor is it disobedience; nor is it threatening; nor is it all these in combination. Nor are mere "*mutinous words*" or "*mutinous conduct*" to be taken for the more substantive and precise crime, as is accurately observed in the admirable treatise of Capt. Wm. Hough on the practice of Courts Martial. The definition of perhaps the ablest writer upon the subject, Capt. Thos F. Simmons, meets at once the comprehension of every discerning mind, and conveys a distinct and just idea:—Mutiny says he, "*is individually resisting by force, or collectively rising against or opposing military authority, such acts arising from alleged or pretended grievances of a military nature:*" and "*it must be proved by facts, not by words alone, or by words at all, except in connection with facts, since even traitorous words against his majesty are not punishable as mutiny.*" Nothing, no matter how aggravated, can be denominated mutiny, which does not satisfy this description:—it must be "*resisting by force,*" "*rising against or opposing military authority.*" It will strike every member of this Court, as tending to derange and confound the scale of punishments, as cutting every penal buoy adrift, and as setting the whole classification of offences afloat without compass, chart, or soundings, if every improper or wanton misbehaviour can be exaggerated beyond its real character.

When, according to Capt. Simmons, "*traitorous words against his majesty,*" uttered from the ranks of a British army, or by the crew of a British frigate are not mutiny—when mere words are incompetent to establish that crime, is it not exacting rather beyond what is reasonable from you to expect, that you will give more

potent efficacy to vapid and absurd epithets muttered against Lieut. Bullus by men in irons or in liquor?

Strange mutiny, this, gentlemen! which is unaccompanied by forcible resistance; whose only clamor is dissension and quarrel among the mutineers themselves; whose single weapon is a wash-bucket, and whose chief victim is a pugnacious black; which is without any aim, without any concert, without any pretension: amidst which the commodore, the captain, the lieutenants, the midshipmen, and even the surgeons are bustling and busy, unharmed, unassailed, unresisted: which opens with an inebriated row, dwindles to an inebriated "*sky larking*," and closes in the profound silence of an inebriated sleep!

And let me ask, whence sprung the drunken disorder and how was it quelled?

Prior to the return of the men who had been engaged in landing the animals near Hampton, not a symptom of turbulence or riot was exhibited. Commander Boraem brings down to its realities the exaggerated and contradictory statements of others, in relation to that part of the crew who, on the day of anchoring, and immediately after dinner, were anxious to ascertain when the vessel would proceed to Norfolk, and he states without hesitation or qualification, that their number did not exceed fifteen, that their deportment was perfectly respectful and proper, and that when he answered them, they retired contentedly and tranquilly. At every repetition, or cross-examination, each witness harmoniously replied that the great origin of all the confusion which prevailed during the afternoon and evening, was the liquor obtained on shore and brought to the ship. It is suggested, if it be not expressly averred in the specification, that had the frigate gone directly up to her port of destination, instead of coming to anchor in the Roads, no disorder would have occurred. This may be true, but can scarcely be considered very logical, if it be stated as an argument to show that the disorder is attributable as a consequence to our anchoring. It was neither a natural necessity nor presumable effect of such a cause. The detention was unavoidable—it was known to be unavoidable as soon as we took our pilot off Cape Henry Light. To him the exact state of the tide and the position of the bar were familiar. Some of my youthful accusers have indeed ventured bravely on the opinion, that the wind and current being inward our stopping was not essential; this is but a shoot from the same stock of heroism which disdains either prudence or patience, and I trust they may live

to be old enough and cool enough to take counsel from their pilot, to endure the safety he promotes, and not rush with superfluous valor into the perils of shoals and flats. But independent of the actual necessity for coming to anchor, the commander of the Constitution might for many reasons, deem it expedient. I believe it to be no uncommon trait in the character of my brother officers, that they feel a generous and manly pride in the appearance of their ships in entering harbor, in the neatness and freshness of their equipments, and in the absence of all the disfigurations which every voyage more or less produces; nor am I aware that this sentiment has ever been or ever will be discouraged by their country or its rulers. Although authorized to bring with me the animals on board and sedulous in maintaining their cleanliness, I must own having felt an eager wish to divest the deck of the Constitution of their encumbrance before reaching Norfolk, and I availed myself as promptly as possible of the delay before Hampton which the state of the tide enforced.

And now I ask any candid and honorable man to say whether, from the established character and conduct of my officers and men, or from the known habits of the Naval service of the United States, I could and ought to have foreseen, as a natural result of the landing of these animals, when and where I did, that intoxication, riot, and insubordination, would, for the first time, disgrace the ship? Whence was I justified in deducing an apprehension so unfounded on any thing which a long cruise had displayed? Why was I to suspect that the midshipman or the boatswain would be unwisely selected? that supervision and control would be relaxed by those whose duty it was to exert them, and who had never before failed to exert them? That seamen heretofore steady and true to discipline, should suddenly abandon themselves to licentious misrule? Surely it cannot be meant to insist that I had no right to direct the landing of the animals at all; and yet if I had that right, clearly and incontestibly, and no natural cause existed for misgiving, is it not somewhat oppressive that the gist of the laboured and highly wrought specification numbered twelve, of charge the eighth, is my "*having occasioned*" all the disorder there evidently portrayed, "*by employing the crew and boats*" in the exercise of that right? Let us be wary, gentlemen, aye, so wary as to be motionless and still—let us forbear the use of any privilege, the exercise of any authority, no matter how auspicious the appearances of things, lest some unseen and unknown subor-

dinate, at the farthest remove in the graduated scale of military organization, should prove faithless to his duty, and involve us alike in his vices and his mischiefs.

It is here that I am bound, professionally bound, unyieldingly to withstand what appears to me an equally disloyal and desperate effort to confound all gradations of rank and all distinctions of responsibility. In reference to an order given, for what, as the naval chief, am I answerable? Certainly for its lawfulness, its expediency, its prudence—but never for the manner of its execution; that lies first with him to whom the order is delivered, is then transferred from one recipient to the next, and so step by step, until it finally reaches and rests with him whose eye must see or whose hand must enforce its fulfilment. When I instructed Captain Boraem in general words to cause the animals to be landed, it became his duty either to superintend and direct the operation himself, or to assign that duty to Lieut. Bullus, or to some other officer, by whom again some inferior might be invoked to take its charge, and on which last agent should be duly and regularly thrown the responsibility for the safety, sobriety, and return of the boats and men. Upon any other rule of action, no commander is safe who does not personally follow the order he issues from his own lips or pen, through every channel of conveyance, preserving it from corruption or change at each advance, and witnessing its consummation; and as a strict corollary, justice and security would require that at a given moment the number of commanders should be precisely equal to the number of orders then to be executed. It does not become me, in this presence, to extend this view, by argument or illustration—its intimation even was perhaps unnecessary. And yet, plain and primary as it is, how completely and perseveringly is it overlooked or repudiated, when not merely the acts and omissions of Captain Boraem and of Lieut. Bullus, in their respective spheres of duty, but those of midshipmen or boatswains, with all their consequences, are formally accumulated at my door? If, indeed, as he more than hinted, I exonerated Captain Boraem, in a private conversation, from the responsibilities of his executive post, is it to be understood that a similar derogatory arrangement relieved every one else under my command, and that all were freed by my large and indiscriminating readiness to answer for all things, to do or not to do with impunity? Gentlemen, I am content to bear, nay, I claim to bear the burden rightfully annexed to my rank and station; the facts in evidence would

save me harmless were my assumption much broader, but I am not willing to see the barriers and avenues which mark the lines and limits of naval discipline entirely prostrated or defaced.

That I commanded the American squadron in the Mediterranean Sea; that I hoisted my broad pendant on board the Constitution by the special instructions of the Secretary of the Navy, dated the 8th of August, 1835, and conformably to the twenty-third chapter of the rules regulating the civil administration of the Navy, to which he particularly referred; that while on that foreign station I appointed Commander William Boraem the Flag Captain of my ship, on the 1st of December, 1836, agreeably to the thirty-seventh chapter of said rules; that this appointment was immediately communicated to, and subsequently on the 23d day of February, 1837, acknowledged and ratified by the Chief of the Department; that every communication I addressed to the government, and every one I received from it, described and recognized my position as commander of the squadron; and that every document, report, account, letter, or order, connected with the discharge of my military duties, emanating from any quarter, so delineated me, are facts so indisputably and glaringly proved by the original papers themselves on your record, that I must confess my utter amazement at having witnessed the introduction of a single piece of testimony by the judge advocate as rebutting all this, by showing that I was originally, on the 28th February, 1835, ordered to take command of the frigate Constitution only! Whence has come this order of the 28th February, 1835, and wherefore is it adduced? The question is a pregnant one, and I must be pardoned for carrying it out. It is drawn from the files of the Navy Department, and it is laid before this Court as evidence of the restricted nature of my command. When offered by the Judge Advocate, it will be recollected that through my counsel I enquired the object for which it was offered, and was candidly answered as I have mentioned. Indeed, it could have no other possible application to the case.

See, then, Mr. President, in this striking instance, a melancholy illustration of the manner in which I am treated! This solitary short letter is detached from a long series of official correspondence, addressed to me by the same Secretary of the Navy—it imports that my command was confined to one vessel only, and the proof of that fact being deemed essential to my overthrow before the Court, it is for that purpose adduced; and yet, Sir, on the very pile whence this has been torn, so near that careless-

ness itself could not fail to find it; must be, ay, *must* be, the order penned by Secretary Dickerson, on the 8th of August, 1835, only six months subsequently, the original of which I was fortunate enough to have at hand and to place on your table, directing me to proceed "to the Mediterranean and relieve Commodore Patterson in the command of the United States squadron on that station."

I know not, gentlemen, whether this be a result of accident or design; it might in either aspect have proved fatal to me. Nor do I feel solicitous to know how or from whom this mutilated and deceptive piece of rebutting evidence was obtained and forwarded for use here. Of one thing I am quite sure, that it has failed to establish, even formally, as fact, that which every one of you, every one of my accusers, and every man, woman, and child in this nation, knows to be utterly and absolutely false. If that fragment of official record was read to establish that I was *not* commander of the American squadron in the Mediterranean, but merely of a single frigate, it is impossible to exaggerate the delusion under which the American government, the American navy, the American people, and all with whom I had intercourse, personal or official, during my cruise, laboured and continued to labour.

That order of the 28th February, 1835, is the wretched shift of a desperate pretension, that being no more than the Captain of the Constitution myself, I was not entitled to a Flag Captain, and that therefore Commander Boraem would not be invested by me with the responsibilities and rights to which I called him. Failing the competency of that order thus to narrow my command, the conclusion is inevitable, namely, that Captain Boraem's appointment, known to and acquiesced in by the Secretary of the Navy, devolved on him the very executive duties which these specifications charge me with neglecting. The distinction between the duties of one who is "commander of a squadron," and of one who is merely "a Captain or Commander" of a single vessel, is broad in principle and express in enactment. It is made in the rules and regulations presented for our service, which we cannot have the inclination, as we certainly have not the power to dissolve our disregard; agreeably to these, Capt. Boraem was, *in their very terms*, "responsible for the whole conduct and good government of the ship, and for the due execution of all rules and regulations which concern the several duties of officers and company of the ship, and who are to obey him in all things which he shall direct them for the service of the United States."

When a staid and intelligent tribunal like this shall resolve to nullify the positive provisions of the law, to relieve a flag Captain from the very responsibilities which that law imposes, and to hold another answerable, whom the same law, for enlarged and comprehensive purposes, has expressly relieved; when, in fact, such a tribunal shall claim to be above and indifferent to the written and unequivocal rules of its government, to the salutary usages and principles of the navy—then, but not till then, will I expect to see overthrown, as useless or mischievous, the settled, legal, safe, convenient, just and wise system of graduated accountability under which we have so long flourished.

The disturbances at Hampton were, in a measure imputable to a practical evil which almost every experienced officer in the navy has at one time or other encountered. I mean the expiration of the seamen's contracts of service before the voyage is completed—their resolute claim to be at once exempted from duty and discipline, their demand to be discharged as soon as the anchor is down, and the universally prevailing opinion that, except on occasions of imminent peril or absolute necessity, their services cannot be compelled or retained. The occurrence with Commodore Isaac Hull, when just arrived off New York with the United States, in 1827, is one of the very many illustrations that might be made. The Court will recollect that Captain James Armstrong delineated the scene briefly but strikingly. All hands were piped to dinner; in fifteen minutes after three cheers resounded from the deck—the officers hurried forth to ascertain the cause, and found the crew collected in a body—Commodore Hull, at a glance, understood the proceeding and immediately authorized Captain Armstrong to permit one hundred men to go ashore at a time:—No! no! was their exclamation; "that wont do, Commodore! our times are out, we have faithfully done our duty, *we are free men, and we want to go.*" What was the reply of the able and gallant hero, who tore our first trophy from the maritime prowess of Great Britain? Did he marshal his marines, assert his authority, enforce obedience? Did he resolve to drench his deck with the blood of the mutineers? Not he! but turning indignantly round, he bade them to "*clear out then,*" and in twenty minutes every soul was gone.

This subject, always a delicate and impracticable one, had engaged my attention while at Mahon. The letters, addressed to me by the Honorable the Secretary of the Navy, several months before I sail-

ed homewards, and dated the 1st of January, and 15th of April, 1838, which have been laid before you, attest my sense of its real embarrassments. Lieut. Hardy of the Marines has told you of the consultation held with my officers in relation to it, and of the conclusions to which we were driven by our united reflections. In order to preserve my valuable crew, I was at one time obliged to relax from the ordinary language of shipping articles respecting the moment at which the voyage should be deemed at an end and themselves at liberty to depart. I do not enlarge upon this topic with any pleasure; there are reasons obvious to every naval officer why its peculiarities should be touched as lightly as possible; they are found in the extreme difficulty of harmonizing in a system yet undegraded by impressment, the wants of the service with the rights and freedom of its agents. The Act of Congress passed on the 2d day of March 1837, with whose provisions I was little familiar, while it proves that our national legislators are themselves alive to this matter and solicitous to provide a remedy, also proves, by its circumspection, how very limited and doubtful is the extent to which they can constitutionally go. For my own part, gentlemen, I felt at Hampton Roads, on being reminded by some of the men that their times were out, pretty much as Commodore Hull did at New York, and hence I was anxious that pilot boats should be obtained by means of Lieut. Drayton, and the signal given as early as possible to carry off the dissatisfied.

The allegation that I took no measures to repress the misconduct of the crew was signally disproved, even in its narrowest import, from the lips of my accusers themselves. Constantly on deck, repelling by mere gestures or words the absurdities of some, bringing to obedience and ironing the perversities of others, exhorting and tranquilizing on the fore-castle, encouraging and relieving the fears and fatigues of my first lieutenant, and only retiring to my cabin after having gone through out a silent and slumbering ship, and after receiving from Captain Boraem, as he himself has frankly testified, the report, at eleven at night, that all was well, I know not upon what basis of fact it can be pretended that I was backward or inactive. Pardon me, gentlemen, I do know—it is that I pursued the dictates of an undisturbed judgment instead of those of vindictive passion—it is that I cherished and saved the lives of my fellow men, instead of butchering them in a state of insensate brutality—it is that I forbore to kill scores of those who claimed to be no longer subject to my command—in fine it is that the noble Constitution was not to suppose a fancied, lashed into a frightful mutiny, and hundreds of intoxicated sailors maddened into battle against dozens of their officers.

I will add nothing more as to this alleged mutiny except to say to this Court and my country, that painful and perplexing as the sudden and unlooked for tumult was, the most searching review which my memory can make of its incidents, leaves me, in reference to my own conduct, without an error to regret, or a feeling to condemn.

### 3. THE CREW'S PRESENT OF SILVER PLATE.

Under this head my remarks will apply, without

more detailed analysis to the 1st 2d 3d and 4th Specifications of Charge Third—and the 4th 5th 6th and 7th Specifications of Charge Eighth.

Commander William Boraem on the 8th of January 1837, more than three years and five months ago, addressed to me a letter saying "a sum of money has been placed in the hands of Lieut. Bullus and myself by the Crew, with the wish that we should purchase a Service of Plate to be presented to you as a testimony of their respect. The amount received has been expended in accordance with that wish; and I now, Sir, in the name of the Crew, solicit your acceptance of the accompanying Service of Plate, which I am happy in being made the medium of presenting to you."

Accompanying this letter, and placed with it upon a separate table in the cabin of the Constitution were four pieces of worked silver,—two tureens a pitcher, and a waiter,—on each of which was engraved the following simple inscription "*Presented as a mark of respect to Commodore J. D. Elliot of the United States Navy, by the Crew of the Constitution.*"

Although at this time, and for some weeks before Capt. Boraem, as he has himself explicitly acknowledged, was living with me in the cabin on terms of private confidential intercourse, and although under such circumstances I might well imagine that colloquial and friendly consultations in relation to a matter so purely personal would, at least, not be perverted, yet so it happens, that the acceptance of what he then declared himself "*happy in being the medium of presenting,*" connected with a few short conversations which preceded as well the tender as the acceptance, constitute the sole ground on this subject for the charges of "*scandalous conduct tending to the destruction of good morals,*" and of "*unbecoming and unofficerlike conduct.*" It is painful to suppose that Captain Boraem or Lieut. Bullus sought interviews on this delicate transaction, utterly unconnected with their official duties, only in order to draw from me some unreflecting phrase which might be caught up and treasured for future use.

But it is consolatory to feel and know that, notwithstanding my open and confiding frankness, not a word or an act has been related which viewed with the ingenuousness natural to honorable minds, and not tortured to indulge a preconceived suspicion of vulgar meanness, can possibly bring into question my motives or my sentiments.

I accepted the plate thus proffered "*in the name of the crew,*" and this, and this alone, is averred to be criminal. I took from the hands of an officer high in rank, and from a man enjoying my unlimited personal confidence, what he did not deem it derogatory to offer, but on the contrary, "*felt happy in being made the medium of presenting.*" I took it exactly as he tendered it, and by simply so doing, I have subjected myself to arraignment and trial!

As similar transactions are constantly taking place in every country; as scarcely a daily journal appears that does not record some such manifestation of mutual kindness between individuals; I am bound to suppose that in the eyes of those who impeach my acceptance of a present, there must have been some peculiarities in it, which give to what is otherwise an ordinary and innocent affair,

a totally opposite character. What these poisonous ingredients were, I have not been told, and am left to conjecture as well as I may. Had the accusation specified the noxious particulars, and enabled me to turn at once to the pith and marrow of the supposed offence, much trouble would have been spared and more justice done me. As it is, the Court must pardon me while I attempt to analyze in order to repel a charge so vague and indefinite.

I do not know that it has ever been clearly settled how far the administration of military law can penetrate into the social relations and strictly individual actions of military men. There are, we all feel, certain spheres within which we claim to act as we please, with absolute independence, unchecked but by our own sense of right. These are spheres as to which no uniform rule can be assigned, which do not involve illegality, vice, or dishonor and which every gentleman, with every shade of opinion and every variety of taste, must regulate exclusively for himself. They are beyond and above civil regulation, and cannot well be subjected to martial authority. Would it not be deemed strange, if the Chief of the Naval Department, happening to be a zealous champion of what is known as the Temperance Cause should, in the sincere spirit of amendment and reform, convoke Courts to determine whether this or that officer were not guilty of "*scandalous conduct tending to the destruction of good morals*" by non-adhesion to a pledge of total abstinence? Would it not be deemed equally strange, if another Chief, animated by a truly chivalrous spirit, should resolve to enforce, through the agency of the same tribunals, his code of minor morals, his principles of politeness, and his conceptions of true courtesy? Or, suppose, in the progress of intolerant perfection, that it should be esteemed evidence of the "*unbecoming and unofficerlike*" to keep such or such company, to form such or such intimacies, to acknowledge such or such friendships? These are questions which admit of only one series of answers; the courses suggested would be pronounced wrong, because invasive of essential and inviolable rights. And yet are they not directly illustrative of the case before you? Who is to teach me which of my fellow beings I ought and which I ought not to respect and love? Who is to teach me to discriminate between the heartfelt offering of the grateful tar and the glittering gift of a Peruvian Vice King; to reject the former as derogatory, to accept the latter as ennobling? By what compulsion am I to be instructed in the exalted and mysterious delicacies of refinement which cling to those who are above, and spurn those who are below? The lesson, gentlemen, however, valuable, would be too dearly bought if its principle subject us all, in our private relations and our moral sentiments, to perpetual question and controul. Our service, instead of the gallant and generous one it is, would degenerate into a corps of mutual spies, and the bravest and the best would in succession sink under some charge of eccentric or heedless department, of coarse taste, or speculative error.

Is there anything in the relation that subsisted between myself and the crew of the Constitution, which forbade the acceptance of their present? It is a serious mistake to reason and judge upon this topic, with the supposition that American seamen

are personally dependent on their officers. They are not so! Their contracts, their pay, their protection, their discipline, and their duty are well defined and certainly guaranteed by the laws. They may be and doubtless are sometimes treated with capricious harshness, and sometimes cheated by mercenary frauds; and so are the operative of every sort, on shore as at sea; but while faithfully fulfilling the stipulations of their enlistments, competent to their tasks, and obedient to orders, they need fear the frown or court the favor of no one.

Subordination and subserviency are never to be confounded; the former leaves to the humblest his independence of private action and thought, the latter takes it from the highest.

It has fortunately been in my power conclusively to prove the motive which prompted the proceedings on the part of the crew. Several of them now industrious and successful mechanics, wholly unconnected with myself or the Navy, have, with great precision and intelligence, detailed to this Court its origin and design. Springing from a manly abhorrence of calumny, its impulse was not flattering or fawning, but merely vindication and justice. It was to disprove a base denunciation that *they* moved, who of all human beings, were the best judges of its truth or falsehood. Had the libel not reached them through the merchant vessels at Mahon, had they not seen me, in the columns of a paper pourtrayed as a black-hearted and malicious sea tyrant, they would probably never have perceived an adequate object for their testimonial. And let me frankly acknowledge, that when, at the lapse of some weeks, after enduring the pain and mortification which a sense of unmerited obloquy creates, I first heard of the spontaneous movement among the generous tars, I felt the consoling force of such a refutation too deeply not to give it a grateful welcome.

The manner in which this business is elaborated through several accessorial specifications, its inherent delicacy, and its liability to be misrepresented by gossiping insinuations, demand from me more attention than the evidence on which it has been constructed would otherwise warrant.

It is worthy of remark that the Judge Advocate produced but four witnesses from whom the slightest elucidation of the matter was elicited; Purser Hambleton, Lieutenant Bullus, Captain Boraem, and Mr. J. P. Hutchinson, American Consul at Lisbon, the last gentleman having been subpoenaed by myself. The evidence of Purser Hambleton was altogether formal, tending only to establish the authenticity of the subscription papers, upon which he had paid to Captain Boraem the sum of \$584.50. The evidence of Mr. Hutchinson, gave as to every material feature a distinct and triumphant explanation of my conduct. So that the only accusatory testimony, and that when stripped of its vague and unfounded implications essentially unimportant, is deduced from Captain Boraem and Lieutenant Bullus. I cannot help considering it as singular that, reposing upon the mere light presumptions to be wrung from the statements of these two, the organ of the Government was never directed to resort for positive facts and unimpeachable developments to the hundred other resources accessible to his summons.

As early as the 14th of December 1836, a num-

ber of the crew of the Constitution, while she was yet at anchor before Mahon, addressed a letter to Captain Boraem and Lieutenant Bullus, stating that they had resolved to present me a service of plate, that in order to do so, they had collected among themselves a sum of money, and that they wished these two gentlemen to make the purchase and execute the purpose in their name. The office was assumed without the least hesitation:—and as soon as an opportunity occurred, by our arrival off Lisbon on the 4th January 1837, my *two friends* entered upon its discharge. Until this period, the proof is uniform and incontestible that I was neither conversed with, nor consulted upon the subject, and took no part or lot, directly or indirectly, in the proceeding.

Captain Boraem and Lieutenant Bullus landed with the known intention of selecting or ordering a suitable service of plate: and repaired at once for advice and aid to a gentleman, equally upright, experienced and honorable. Mr. Hutchinson, who has represented his country and protected its Commercial interests at the capital of Portugal for near thirty years, accompanied them promptly to the store of the artizan, and kindly intimated his impressions in order to guide their choice. It was impossible exactly to accommodate the prices asked for any preferred pieces of the silver to the amount confided by the Crew to their management, and Mr. Hutchinson first and frankly suggested to Captain Boraem the propriety of speaking to me on the subject, with a view to ascertain whether the design of the Crew might not be executed conjointly with a purchase by myself, so as to accomplish both more handsomely and usefully. Captain Boraem deemed the topic one on which I could not be consulted with delicacy: but Mr. Hutchinson thought differently, and volunteered to see me. The Court will recollect how frequently this gentleman repeated that I was reluctant to say or to do any thing about it:—that I insisted upon considering it a matter to be arranged exclusively between the Crew and their special agents; and that I finally yielded only after remonstrances and representations which seemed to give to my scrupulous abstinence an air of mawkish and affected modesty.

Desirous of buying, as in fact I did buy on my own account and with my own means, for use in my Cabin, twice the quantity of plate that could possibly have been obtained to effectuate the aim of the crew, I went with Mr. Hutchinson, at his earnest request, to Lisbon, and as he has positively and accurately represented, I agreed to the plan he himself devised and urged relative to the intended present. Not one more word passed—not another step of any kind was taken in which I participated. The four pieces of plate, marked with the inscription, left by the workman for a day at the house of our Consul, were brought on board the Ship, placed upon the berth deck for inspection by the Crew, who examined them with unabated kindness of feeling towards myself, and were then transferred to my apartment, with the complimentary letter I have cited, by Captain Boraem.

It is undoubtedly true—the fact was perfectly known to every one of the gentlemen who took

the least concern in the transaction; to no one better than to Captain Boraem—that I had been persuaded by Mr. Hutchinson to defray from my own purse whatever might be the difference between the cost of the selected articles, and the sum appropriated by the Crew, and as soon as the bill for these four pieces, thus engraved, thus adopted, thus presented, and thus accepted, was handed in, its aggregate was, without any discrimination whatever, first paid by Captain Boraem to Mr. Hutchinson, and then by Mr. Hutchinson to the manufacturer.

It has never occurred to me, until this accusation was shaped into form, that the appreciation of a complimentary testimonial could be graduated by its sizes, its expensiveness, or the number of its parts. The sword, Mr. President, which at the opening of this trial, I deposited in your hands, would not be *less* cherished were it, scabbard and all, of rusty old iron, nor *more*, were it studded with brilliants, and perhaps I may be pardoned, at this moment, for adding that the single medal conferred upon me in 1814, by the representatives of my country, is just as inestimable to me as if it had been accompanied by a hundred counter parts. I speak to men whom I know to be capable of understanding this:—to whom the sole value of such a gift is in the sentiment it betokens and perpetuates. Captain Gallagher, of the *Vandalia*, who received in 1830 from Purser Barry the amount subscribed by his crew with which he might purchase on his arrival in the United States, the memorial of their affection and respect, expended the sum upon a single vase:—while the same flattering feelings were manifested in 1823 towards Captain Robert T. Spence, of the *Cyane*, in the designation, as with me, of a set or service of plate. The compliment can hardly be considered greater in the one case than in the other:—and I am quite sure that to neither of these distinguished officers could it make one particle of difference whether the esteem indicated were attested by one or a dozen pieces. When Commodore McDonough, the good, the gallant, and the glorious McDonough, permitted in 1819 the crew of the *Guerriere* to fasten to his side a sword to remind him of their devotion, do you suppose that he paused one instant to count its cost, or to scrutinize its ornament? And when Lieutenant Commandant Kenyon, of the *Peacock* in 1826, or Lieutenant McKinney, of the *U. States*, in 1834, were similarly graced, I cannot presume that because lower in the scale of rank, they entertained a single sentiment less elevated and pure. Why then, Gentlemen, should it be imagined that any other cause than accident or misconception added to the two tureens believed to have been especially chosen by Mr. Hutchinson and Captain Boraem on behalf of the crew, the pitcher and waiter? Assuredly their presence, in no conceivable respect, augmented the real warmth or worth of the generous tribute! Most assuredly, the plain and unostentatious inscription conveyed as cheering a recollection when indelibly affixed but once, as if it had undergone a thousand repetitions.

If, indeed, it were not in the contemplation, at the time, of Mr. Hutchinson or Captain Boraem, to embrace the pitcher and the waiter as part of the

crew's present, why were they sent unitedly with the two tureens to the Consular residence?—why were they sent there, as has been unequivocally proved, with the inscription already upon them? why were they thence, in the same association, transferred to the deck of the Constitution, and submitted to the gaze of the crew? Why, then, and still thus, under the orders and eyes of Captain Boraem himself, were they covered by his letter of presentation? And why, after the whole transaction had for some days been completed, was the manufacturer's bill, coupling them with the tureens and confined exclusively to those four pieces, although I had myself bought several more, paid undistinguishingly in one round sum? With all this, I had absolutely nothing to do:—it was left entirely, and really without a thought, in the hands of others. And permit me, Gentlemen, frankly to ask how it could possibly happen, unless both Mr. Hutchinson and Captain Boraem were themselves, at the period, under the impression that the pitcher and waiter were intended as accompaniments of the tureens, they could see them pass through all the ceremonial to which I have adverted, and never once, as has been unhesitatingly acknowledged, hint to me in the most distant manner, the existence of some misconception or mistake, if in truth, they deemed such a misconception or mistake worthy of notice? Let me not be understood as in the remotest degree doubting or disputing the present impression as to his original intent, expressed by Mr Hutchinson; but of the precise scope of that intent I was not apprized, and without exact knowledge, or without my attention being drawn to it, the rectification of any inadvertence or error committed by the Silversmith, or any body else, was wholly beyond my power.

It is proper that I should remark also, that in preparing the inscription, unambitious and didactic as the phraseology is, I took no part. Mr. Wells, than whom I know no gentleman of purer integrity or taste, held the pen, both as to this and the equally unostentatious letter of Captain Boraem. He has unqualifiedly attested the fact of the unassisted, unprompted originality of his compositions, and he is too calm and dispassionate a man to trifle at his age with the reputation for unsullied virtue he inherits from his revolutionary grandsire, and has long himself illustrated. When this gentleman emphatically denied, under oath, that in any thing he had written, or said, or done in respect to the plate, he was urged, or prompted, or authorized by me, I regarded and still regard, the mere airy presumption arising out of his having held the station of my secretary as effectually dispelled.

I should here close my answer to these more ungenerous and unpleasant than important specifications, were I not reminded of two incidents introduced by Lieut. Bullus, which are capable of distortion, and ought therefore to be noticed. I refer to the circulation among the crew of a second subscription list, and to the brief conversation said to have preceded it in my cabin.

1. One of the crew who annexed his signature to the second list, Nicholas Mermeir, now pursuing his mechanical occupation, unconnected with, and wholly independent on the naval service, has stated

that it originated with the men, and that its object was to make up the deficiency of the first subscription, caused by the transfer of some who had signed it to other vessels of the squadron. Mr. Wells, who was presumed in a spirit of morbid suspicion to have started it, and in the same spirit presumed to have been commissioned by his chief, has signally and peremptorily repelled both branches of the imputation. He has, with a natural indignation denied ever to have received authority or direction from me for any such object—ever to have applied for, or ever to have obtained a cent from any of the crew—and declared his preference to quitting the service at any time, rather than undertake a duty so unbecoming in the one to propose, or the other to execute.

2. Lieut. Bullus alleges that two or three days after he had declined any farther agency about the plate, in the cabin, and in the presence of Mr. Wells, I suggested the idea whether, as the crew might desire to carry out their intention fully, it would not be proper to apprise them that their subscription fell short in the price to be paid. Mr. Wells emphatically asserts that he never heard any conversation of the sort.

Were I to be placed upon the solemnity of my own oath, I am ready and willing to give it an equally positive denial—not that I can speak with any recollection of the circumstance at all, but that I know such a suggestion would have been utterly foreign to my feelings and determination. Could it possibly have dropped from my lips, while they were holding no converse with either my head or my heart, I chose for it a strange recipient in the gentleman who had moodily withdrawn from the transaction, leaving it wholly in the hands of Captain Boraem and the Consul! But believed or disbelieved, what weight can be given to an idle and casual expression, withdrawn as soon as uttered, for Lieut. Bullus himself represents that I instantly acceded to his view of the subject. Had there been horrid guilt in the conception, yet

Evil into the mind of God or man

May come and go, so unapproved and leave

No spot or stain behind!

In sober truth, gentlemen, all of these specifications, beyond the simple and acknowledged acceptance of the present, are a web of subtle suspicions, which can catch no belief from unprejudiced and ingenuous minds. They, and they only, who are already disposed to be entangled in meshes of such weavings, who are willing to find in the highest ranks of our navy the paltry and debasing motives which would discredit the lowest:—who are eager to distort and discolor every phrase and look, can possibly grasp at this "*unreal mockery*," and hope to "*clutch*" in its airy nothing, the substantial dishonor of an American Captain.

#### 4. PASSED MIDSHIPMAN CHARLES C. BARTON.

Under this head, my remarks will apply, without more detailed analysis, to the 1st, 2d, and 3d specifications of Charge First.

Nothing more rapidly or more justly exasperates the public mind than a wanton exercise of delegated power, for cruel and oppressive purposes. I should not respect my countrymen as I do, were they less



apt than they are to sympathise with the victim of persecution. Their intolerance of all malicious, all unnecessary inhumanity, is the pervading characteristic of their history, their institutions, their legislation, and their habits. When, therefore, Mr. President I found, shortly after my return to the United States in 1833, that a long continued and yet unwearied effort had been made during my absence, through the public press, by private correspondence, and by industrious disseminations from mouth to mouth, to forestal the truth, to stigmatize me as a tyrant, and to set against me the deep current of univereal indignation, by monstrous and redoubling misstatements respecting my treatment of Passed Midshipman Barton, I should have bowed to the fate thus prepared for me, had I not believed as much in the justice as in the sensibility of my country. Upon this case, and upon that of Lieut. Hunter, pushed with an asperity alike indefatigable and bitter, overleaping the boundaries of military jurisdiction, and entering into the heats and storms of unsparing party, I could discern no means of justification except by soliciting a Court of Inquiry. It is hard, gentlemen, very hard, at my time of life, to bear a reputation for cruelty. I hoped to disabuse my fellow citizens—to prove to them that I was not the odious and malignant monster I had been depicted—and if indeed there had been sufferings which awoke a generous sympathy, to point out their rash and real author in the sufferer himself. I have already done so, with a gratifying consciousness of complete success, and I will again do so now.

The incidents on which have been founded the complaints of Passed Midshipman Barton, are referred to the 30th of November, 1835, and 5th of January, 1836. At those dates, and between them, the frigate Constitution and the Schooner Shark were the only vessels of our Mediterranean Squadron lying at Smyrna. Portions of the Austrian, French, British, Russian and Turkish fleets, under their respective admirals, rode at anchor in the same harbor. I had, some weeks before, received from Captain Ridgway, in command of the Shark, a request to be supplied with additional officers, and, for reasons which I offered to develop, but which this court excluded as irrelevant, I had transferred Passed Midshipman Barton to that vessel, with directions that he should not be permitted to visit the shore. These orders were sworn by his superior officers, Captain Ridgway, and Lieut. Potten, to have been communicated to Mr Barton; how they were obeyed, rather how they were evaded and violated, cannot fail to be remembered. On the 3d of November, quitting his post as officer of the deck, and affecting to assume a duty assigned to another, he proceeded to shore in the launch, encountered his antagonist, Passed Midshipman Wood, in a duel, and was wounded in the leg, the ball from Mr Wood's pistol fracturing the bone below the knee. The fight was public, notorious, almost ostentatious, in the presence of eight or ten of the boat's crew, and of at least twenty strangers. Assistant Surgeon Woodworth bandaged the limb while yet upon the field, and administering a stimulant wished to extract the ball without delay. Mr Barton, however, insisted on being taken in a sail

boat on board the frigate Constitution, instead of going to the Shark, which he could have reached as readily, and to which he belonged. I was then absent from my ship. The first lieutenant, yielding to the representations of Dr Boyd, had him hoisted, in a cot, out of his sail boat, on to the deck of the frigate, and the Surgeon forthwith exercised his skill in operating upon, adjusting, and carefully bandaging the injured limb. After this was completely and satisfactorily done, at the expiration of about an hour and a half from the reception of Passed Midshipman Barton, into the Constitution, I returned on board, and these events were immediately reported to me. I ordered that he should be taken to his own vessel;—Dr Boyd remonstrated on his behalf against the removal; I did not yield to the remonstrances, but repeating my order, he was taken to the Shark, with every circumstance of care, gentleness and attention which his unfortunate and painful condition required. It is this order for his removal, and this order only, that constitutes the sum and substance of my alleged cruelty and oppression. Let me, however, divest the case of other matters, apparently only introduced into it as make-weights, and I will then consider the real light in which this order is to be regarded.

On reaching his vessel, Passed Midshipman Barton, in the charge of his fellow officers, and with medical attendance, was placed in his own apartment. His wound was unquestionably severe and distressing, but from Dr Boyd and Dr Egbert, he experienced every possible professional aid and alleviation: so much so, indeed that in the short space of *three days*, Dr. Boyd, who had so strenuously opposed his being taken from the Constitution, proposed that he should be carried from the Shark to the shore; a proposition to which I gave my ready assent, directing comfortable quarters to be obtained for him, and ordering all the facilities for his conveyance which could suggest themselves either to my own mind or that of the physician. His lodgings, selected by others, were reported to me, and have been proved to you, as in every respect unexceptionable; he was visited by his companions; he was faithfully nursed; and when at the expiration of about four weeks, the course of duty required the American ships of war to leave that harbour, on the 5th of January, 1836, he was in the language of Dr Boyd's letter to his father, Dr William P. C. Barton, "*doing well in every respect,*" and "*left in Smyrna at his own request.*" Before sailing I directed the Purser of the Shark, Mr Fauntleroy to make adequate pecuniary arrangements for his maintenance and comfort. That gentleman in execution of my orders gave him an advance of three months pay, and addressed a note to Mr David Oulley, then our Consul, engaging to honor his drafts at the rate of his legal compensation, or (\$75) per annum if he remained ill after the first of April following. It is very possible that this note might have been accompanied by mere solemnities of form:—had either the Purser, or Passed midshipman Barton, or any one else deemed it insecure at the time, it could have been moulded to meet all possible contingences. It was, however, an act of the Purser's own, by which he doubtless conceived himself car-

rying into full effect the purposes I had indicated, giving, in case of necessity, to Passed midshipman Barton, complete command over his entire pay. It is worthy of remark that this young gentleman, in the course of his excited testimony, could not avoid the admission, that had this money arrangement been met as it was meant by Purser Fauntleroy, and understood by himself, it would have been all sufficient. The reason of its failure may now be considered buried in the same grave with one who maintained during a long public service as American Consul at Smyrna, a high and universally appreciated character for hospitality, amiability and worth.

Passed Midshipman Barton remained disabled, and necessarily unhappy at Smyrna, for nearly six months beyond the period to which his pay had been advanced, and the "bill of credit" which Mr. Fauntleroy designed for his permanent relief proved unproductive. During this time I was in active movement with the squadron. Certainly I had hoped from the promising condition of his wound in January, that he might regain the Shark in the course of the Spring, or Summer; and in August, while writing to Mr. David Offley, the official representative of our government at Smyrna, I observed with as much precision as could have characterised a direct order, that, "*should Mr. Barton be in a state to join his vessel, he can meet her at Malta early in October.*" This was immediately and formally communicated to him; but contrary to the suggestion of Mr. Offley, he preferred a direct return to the United States, and embarking on board of a small private schooner in the month of September, reached home before the year expired, during which his duel had withdrawn him from the duties of the service.

Unreflecting, unwarrantable, and perverse as has been his conduct in the unremitting effort to make his commanding officer answerable for pains and privations which were the unavoidable consequence of his own wilful disobedience, and which he should have had the manliness to recognise and the fortitude to bear as the very penalties which his spirit braved in the combat with Passed Midshipman Wood, I do not think it necessary for my vindication to make one of the very many comments that might be made on the inconsistent follies of his deportment at Smyrna and since. Let them be regarded and forgotten as the natural offshoots of physical suffering and mental anxiety. It can indeed be ascribed to nothing but personal, and I trust transient peculiarities of behaviour and temper, that in a city where Americans have long been favorites, to which our naval and commercial marine is constantly resorting, where the mild and beneficent nature of our government is well understood, in which such a man as Mr. David Offley was the guardian, adviser, and friend of every distressed countryman, and especially of Mr. Barton, and where another of our fellow citizens, Mr. Stith, was almost equally distinguished, he should have experienced embarrassment or mortification of any kind. Be this, however, as it may, I had left him as I supposed, as the Purser supposed, and as he himself supposed, amply provided against the future:—the unforeseen, and to me, to this day,

inexplicable cessation of his resources I was never directly apprised of. The briefest note confided for transmission to Mr. Offley would undoubtedly have soon reached me at one port or another; but that he confesses was not written; and, thus because busily occupied in cruising, attentive to the public objects of my command, and kept totally uninformed of the straits into which the private means of Passed Midshipman Barton were unexpectedly thrown, in a distant quarter of the Mediterranean, I am gravely arraigned for barbarous usage and "*cutting him off*" upon the "*generosity and charity of strangers.*" Gentlemen you must excuse me for saying that the accusation has been too clearly disproved to be now esteemed other than preposterous.

Let me go back, then, to the only point on which the slightest stress can possibly be laid, the mere order that he should be removed from the Constitution to his own vessel, the Shark.

I shall not pause to press upon the discriminating notice of this Court the elaborated declamation with which the second specification on this subject is ingeniously swollen—it is probably what Dr Woodworth's downright and sterling candor would denominate "figurative expression;" but, why, except as a rhetorical artifice it is introduced at all, I cannot comprehend. Surely it was unnecessary to blazon the pistol or gun-shot wound, to set forth the stinging in a cot, the array of the surgeon, his operations, and the pain he inflicted—the lowering over the side of the frigate, the hoisting over the side of the schooner, and then lowering down the hatch head foremost, with the accompaniments of excruciating pain, torture, and agony. I neither fractured the tibia transversely nor splintered it into fragments; I knew nothing whatever of the details of the injury, and had strong reason to believe, as a short time proved, that Dr. Boyd's feelings exaggerated the danger; and I took no part in the arrangement or process to effectuate the removal, leaving it exclusively to the care and supervision of the medical officers and others by whom it was conducted with acknowledged gentleness and scrupulous kindness towards the wounded man.

We may all imagine the acute pangs of a wound like that given by Passed Midshipman Wood—they are the terrible consequences to which the unfortunate party in a duel voluntarily exposes himself—they will extort from the hardiest and sternest their natural sighs, and groans, and screams—but give them to their true and obvious cause—give them to the fight and the fracture, to the skill of the adversary or the chances of battle, and do not, in momentary and unjust irritation, ascribe them to him whose order, whether it were for removal from the deck to the steerage of the Constitution, or to the steerage of the Shark, must necessarily, however brief the space or mild the movement, partially disturb and afflict.

I owe it, gentlemen, to myself to say, that had I adopted the alarms of Dr. Boyd—had I not put those alarms to a test which they did not stand, and which convinced me that they were in a measure feigned—I might have hesitated about the order of removal. Nay, I will go further, and frankly

say, that had the gloomy apprehensions of Dr Boyd been realized in the loss of Passed Midshipman Barton's limb, I might have lastingly regretted not having compromised with my strong sense of duty, and sacrificed my own judgment to the persuasions of others. But when in a few days Dr Boyd himself seemed relieved from all solicitude, and now that we behold this young gentleman in the full possession of his strength, suppleness, and fair proportions, I can feel no other sentiment but that of approving pride in the recollection of having firmly persevered in doing what my conscience suggested to be right.

It is exceedingly easy to apply, with plausibility to almost any military order, the epithets "cruel" and "oppressive." How many of them would really be so if they did not emanate from the obligations of duty? When, however, their source is traced to that—when individual malice is not merely not affirmed but incontestably negated—when the injunctions are plainly and purely acts of official judgment and responsibility, they should not be calumniated by harsh expletives, no matter how distressing the consequences that flow from them. An order which shortens a seaman's allowance to a miserably pittance—an order which subjects his bare back to the lash of a resolute boatswain's mate; an order which consigns him to hand-cuffs and solitude for weeks—an order which sends him amid the terrors of the storm to scrutinize aloft the shivering spars or cracking cordage—an order which compels him to receive silent and motionless, the death-dealing volleys of an approaching enemy, is readily styled cruel and oppressive, and certainly would be so, if uncalled for, wanton and malicious. But he who withholds such orders on their fitting occasions, who shrinks before visionary or substantial dangers, and surrenders all power to do good by fearing to do harm, whatever may be his other virtues, had, at least, better for his country and himself, never assume the command of an American frigate.

It is a matter of perfect notoriety that ever since the memorable and melancholy duel in which Lieut. Charles G. Hunter, and several other naval officers figured in this city, in the year 1831, the government, obeying an overwhelming popular impulse, has sought to discourage the practice. As Commander of the Mediterranean Squadron, whatever might be my personal opinions, I could not be insensible to the strong exhortations I received upon the subject, nor could I fail to recollect that as the deadliest type of "quarrelling," it is expressly prohibited by one of the very articles under the force of whose phraseology I am now myself arraigned. Neither had I been so deaf nor so blind, as not to have heard and seen the deplorable extent to which our character as a civilized people had suffered throughout all Europe, among the bravest and the most chivalrous, owing to the reckless, causeless, useless, and merciless system by which our controversies of honor were determined. When required to say how Passed Midshipman Barton should be treated, I felt the influence of these considerations, and of more than these. He had violated my positive orders; he had abandoned his post of duty; he had conducted his

duel with flagrant publicity, and he had, without the slightest warrant or necessity, avoided the Shark to which he belonged, to intrude himself into the Constitution signaled by the broad pendant of the Commander. The eyes of all the great European fleets were attracted to my ship. It was impossible not to feel and perceive, that as the representative chief of our nation in that quarter and at that moment, my conduct was to attest the moral sentiment of the American people, the efficiency of their laws, and the discipline of their navy. These are objects with which peared not trifle, for which I have long risked and am yet ready to sacrifice my life, and to uphold which, at every hazard, the Commander who falters is recreant to his highest and most sacred trusts.

There was a time—I advert to it for illustration, not for presumptuous comparison—when the best man, take him for all in all, that has adorned the annals of humanity, was branded with the charge of cruelty—when the British press, in its countless forms and ceaseless marches, teemed with clamorous invective against the inexorable chief, who, deaf even to the prayer which begged a soldier's death, sent the accomplished Major Andre, as a convicted spy, to an ignominious halter. Petitions, entreaties, remonstrances, public and private influence, were accumulated in vain; they wasted their power, unheeded by him who saw the safety of his country in a signal example. And who then in America, or who now in the world, dare impeach the character of that dreadful sentence? And yet, where is its justification except in the paramount obligation of patriotic duty?

No! gentlemen, the fundamental principles of military action are not to be slighted or abandoned. The order for the removal of Mr. Barton to the Shark was cruel in no aspect in which it can possibly be viewed compatibly with the evidence. Its propriety beamed to me more palpable at every additional moment which the differing opinions of others afforded for reflection. I gave it, and renewed it, as I now approve it, under the profound conviction that all the circumstances imperiously demanded it from the Commander of the American Squadron.

5. LIEUTENANT CHARLES G. HUNTER.  
[Under this head my remarks will apply without more detailed analysis, to the 1st and 2d specifications of Charge Second.]

He can have paid but slight attention to the American Navy, who has failed to observe in the ranks of its inferior officers, an alarming progress of insubordination. From whatever causes it may arise, the fact is conspicuous and undeniable. There may exist some defect in the system which it would be wise to detect and remedy, or there may be required some united and energetic recurrence to first and essential principles, in order to arrest the mischiefs of novel pretension. We are fast losing the compact and steady and solid character of former times. The habits and usages which preceded the war of 1812, are endangered by notions and practices that sap the foundation of military discipline. Age, experience, length of

service, rank, command, are all too apt to be deemed and dealt with as old-fashioned and exploded. A hardy and reckless self-sufficiency perpetually starts up to confront, controvert, and embroil. As I solemnly believe that this is the spirit which has brought me to your bar, and that the complaint of Lieut. Charles G. Hunter, idle, frivolous and vexatious in every aspect, is one of its most characteristic demonstrations, your decision must carry with it, for good or evil, an importance alike permanent and general.

My deportment towards Lieut. Hunter on the race-course at Mahon, on the 14th of April, 1837, is charged to have been "*provoking and reproachful.*" It is often, gentlemen, very "*provoking*" to be manifestly in the wrong, and no reproof is so galling as the one which is deserved. When Lieut. Hunter, excited as he confesses by the race, loudly and impetuously contradicted the assertion of his brother officer,—when he repeated with an oath his contradiction—and when, as if to remove all doubt of his inflamed feelings, he proclaimed his readiness to say it as well elsewhere and at any time, as then and there, who that heard his vehemence, his imprecation, his unequivocal defiance, could avoid fearing that without prompt and authoritative interference, he would rashly forget what was due to his country, her uniform, and her character, as he seemed already to have forgotten himself. Here were two young gentlemen of my Squadron, on the eve of reaching that point of personal altercation, at which another advance between men of irascible courage becomes irrevocable:—who were surrounded by some thousands of strangers, amongst them General Obregon, the Governor of the Island, and groups of military or civil representative agents from all parts of Europe: who by a single additional false step or hot word, might convert a scene of amusement into one of turbulence, mortification and shame—who were in the presence and within the hearing of their naval chief; and yet that chief is seriously arraigned for suddenly and effectually enforcing silence, for suddenly and effectually doing that which his omitting to do would have shown him to be unworthy of his station and trust!

At the distance of eight or ten or twelve feet, with a crowd of persons interposed between myself and him, necessarily preventing my rapidly reaching him for softer remonstrance, I called to Lieut. Hunter, abruptly if you will, hastily if you will, loudly if you will, to "be silent, and not to separate the gentleman from the officer." I was mounted—I held in my hand the small stick customarily used as a substitute for the spur—I stretched forth my arm as well to indicate with certainty which of the Lieutenants Hunter, (for they *two* were the disputants) I addressed, as to give impressiveness to my language:—and how was I answered!—by the immediate acquiescence and composure which the occasion demanded! No! says my accuser himself, I turned round to my commanding officer, and in the face of thousands, conspicuous as he was, advanced towards him and "*repelled*" the charge "*firmly!*" No! says Lieut. Rhodes, he repelled the charge "*positively,*" with the same unaltered manner in which he had spoken to Lieut. Bushrod W. Hunter! No! says Lieut. Davis, he repelled the charge "*forbearingly!*" No! says Lieut. Johnston, he repelled the charge "*quite respectfully under the circumstances!*" I replied to him that his attitude, words, tone, and manner towards myself were a repetition of the

very thing he was disclaiming—"you are doing it now, sir!"—but the spirit of denial was up and rite—the spirit which the poor sailor cannot be mastered by for an instant without incurring a mutineer's penalty, and I was again met with a flat contradiction—"I AM NOT, SIR!" I peremptorily ordered him to his vessel, and then he obeyed.

Gentlemen, in this short scene you have vividly depicted, as in the presence of each other, the opposing principles of action now struggling for ascendancy in the Navy of the United States. Lieutenants Charles G. Hunter, Davis, Rhodes and Johnston, for whom, as individual gentlemen, I entertain not the shadow of ill-will, and as to whom, if energetically arrested in their suicidal course of repugnance to control and discipline, I might foresee the highest honors and purest rewards of their profession—have unfolded, in a way not to be mistaken, the cancerous disease which is eating out the strength and vitality of the corps. It is not my cause alone that I am advocating—it is that of the proud flag, whose stars can never be dimmed while we remain true to the examples and lessons of the past—it is that of the country which looks to our cemented force for glory and protection—it is that of my accusers themselves, who have only to keep down their feverish impatience, to abide their time, in order to enjoy the fruit of promotion—a fruit unattainable except through prolonged subordination, and at last, turning to ashes, unenviable and distasteful without it.

#### 6. CHAPLAIN THOMAS R. LAMBERT.

Under this head my remarks will apply, without more detailed analysis, to the 1st and 2d specifications of Charge the Eighth.]

While at anchor with the Constitution and Shark in the harbour of Suda, in the island of Candia, on the 28th of July, 1837, I addressed the Rev. Thomas R. Lambert the following note:—"Sir, as you were received on board this ship for temporary service, and as the squadron may avail itself of the advantages of your spiritual instructions, you will please repair on board the United States schooner Shark, and report for duty, until you meet with the frigate United States, to which vessel you were originally attached. I am induced to this transfer in the wish that the squadron in these seas may share equally the aid which, as Chaplain in the Navy, you may render our service abroad."

This order was handed to Mr. Lambert, while at dinner in the Ward-room, either shortly before, or shortly after, 3 o'clock:—and was conformable to a suggestion I had made in the course of the morning to Lieut. Pearson, then in command of the Shark.

During that whole day, the communication between the two vessels was constant—they lay in sight, though apart about three miles—provisions, in considerable quantities, were sent from one to the other—and officers and seamen were coming and going without interruption or difficulty of any sort. There were at that time on board of the Constitution, as travellers, whom I was specially directed to receive, His Excellency Lewis Cass, the ladies of his family, and some of his diplomatic suite.

Mr. Lambert made his preparations for departure: and the gig of the Shark, the same commodious, well-conditioned and well-manned boat in which Lieut. Pearson had twice come to the frigate and twice left her, was waiting at the side to convey him. In the mean while, the expediency of getting under weigh, and of stretching through the mouth of the harbour, before night, had occurred to me, and suitable directions were given. That amiable, as well as discerning and judicious officer, Lieut. Harwood, was on duty on deck—Lieut. Watson was stationed on the fore-castle—the American Minister and his Secretary took leave of Mr. Lambert—his companions, collecting at the gangway, did the same; and he shoved off from the Constitution at about 5, or half

past 5 o'clock in the afternoon. Not a human being of all who witnessed the proceeding, entertained or expressed the remotest suspicion, that the slightest danger lurked in any one circumstance of sea, wind, skill or sky. Though incumbered by his unusually large and heavy chest, interfering with her convenient management, and subjecting those in her to occasional splashes of water, the boat bore him safely, though tardily, to the Shark; and on the following morning I received by letter the very first intimation of his discontent with either his transfer or its incidents. Such are the facts—the whole of the facts—upon which have been framed two specifications of "unbecoming and unofficerlike conduct!"

There is a class of men whose calling, independent of any other consideration, claims for them a scrupulous respect. I admit the claim, broadly and unreservedly;—and shall withhold every stricture, however obvious, by which it might even seem to be forgotten.

But, gentlemen, do you think it quite reasonable, or quite fair, that the first of the two specifications, founded exclusively upon my official note, should allege that its civility was "false pretence," and its object "private pique?" I am utterly unaware that a particle of proof, beyond the face of the note itself, has been adduced to sustain the allegation; and though like other complimentary formularies, the sincerity of my language might be doubted by a modest recipient, yet the possibility of its real truth should rescue it from so harsh an interpretation. However polite I might feel myself authorised, if not bound, to be towards Mr Lambert, nothing required a resort to degenerate hypocrisy. His transfer could have been as brief and trenchant as that of Midshipman Muse or Midshipman Ringgold. Its milder aspect is easily referred to its true cause, and can readily be appreciated. And is it more reasonable, or more fair, after the clear and consistent course of testimony which you have heard respecting this transaction, that I should be said in the second specification, to have "obliged" him to leave the ship, "while under way," "in a small boat," "unnecessarily and improperly exposing his health and safety?" Certainly the order he obeyed emanated from me:—assuredly it was an order reverence to me:—but did Mr Lambert, directly or indirectly, upbraid me of his reluctance to change his quarters? Did he intimate to the officer of the deck that the arrangements for his leaving the frigate were unsatisfactory? Did it occur to Lieutenant Harwood, or to any other of his numerous and ardent friends, that additional means for his security and comfort in his transit to the Shark should or could be provided? And how is it that I can possibly be answerable, not merely for the oversight and neglects of those within whose province of duty all the details of execution lay, but also for every trifling accident which the cumbersome character of his luggage or the hurry of the moment produced? I do not think there is a just measure of christian charity extended to me in these respects:—and it is to be feared that the reverend complainant has unconsciously and without appropriate self-examination, permitted something—I know not what—unconnected with the stated accusations and unrevealed in the evidence, to rankle in his bosom, embitter his sentiments, and warp his judgment. God grant nevertheless, gentlemen, that on a stricter review of his acts and motives, in the tenacious and protracted pursuit, of his fellow man, upon which he entered three years ago, as to matters so utterly unimportant, he may be able to obtain his own forgiveness as unqualifiedly as I accord him mine.

#### VII. EXTRA-PUNISHMENT.

Under this head my remarks will apply to the 1st, 2d, and 3d specifications of Charge Fifth.

It may be considered, Mr President, as among the most curious and eloquent traits of this prosecution,

that although I have been charged with cruelty and oppression, and glowingly delineated as a malignant tyrant—although the wide range of a four years' cruise has been thrown open to be hunted by keenscented and banded pursuers—yet but three, aye, three only, paltry inflictions of alleged illegal punishment, upon as many out of the thousand seamen in my squadron, are even pretended to be directly or indirectly imputable to me. Am I mistaken when I say to the experienced captains whom I address, that in practice such departures from the exact words of naval regulations, few and far between, and springing from peculiar and transient circumstances, are unworthy of their attention? Am I mistaken when I assert that they constitute, if admitted to be proved, not the shadow of a foundation upon which my country or my government can discriminate in its judgment between myself and my predecessors in command? If it has been intended by their introduction among the charges to appeal to, and arouse against me, the popular repugnance to corporal punishment, in any sense or to the smallest extent, let me feel so illegitimate an aim by remarking that not a solitary one of my crew has here, or elsewhere, or ever, taxed me with harshness or severity—that the accusation comes from those very inferior officers who are, by their own avowed and covert practices, least excusable in making it—and that to no body of men on earth would I more confidently submit the decision as to my habitual lenity and lawfulness of correction, than to the host of American mariners whom it has been my lot, throughout a career of untiring activity, to discipline and govern.

The three men said each to have received two dozen lashes, instead of the authorised one dozen, were Francisco Lasano, Richard Lascelles, and David Floyd. The two first were natives of the Island of Minorca, were accustomed to ship for the short cruises performed up the Mediterranean from Mahon and back, and to be employed on board the frigate U. States as the servants of Lieutenants Hunter and Davis; the other on board the Shark, also as a servant. These Mahonese, always unruly and quarrelsome, on one occasion, while on shore, attacked the hospital steward, boat him with as little mercy as manliness, and left him dangerously wounded in the head. The police of the town, exasperated by their misconduct, appealed to me for their punishment, and I sent word to Captain Wilkinson of the United States, and Captain Pearson of the Shark, to have them whipped and dismissed the service. This was done, as I presumed, in the usual manner, and without any other than the ordinary results.

David Floyd was an American seaman, who, during my absence from the ship, being guilty of riotous and mutinous behavior, was ordered by Captain Boraem to be punished with two dozen lashes. Lieutenant Harwood interposed, had him remanded, and deeming the offence more than commonly serious, resolved that he should be formally tried by a Court Martial, to which he proposed preferring the proper charges. The necessary result of such a proceeding would have been, as the Book of Punishment can attest, and this Court well knows, the infliction of seventy-five or a hundred lashes, by judicial sentence.—While the matter was thus pending, I returned to Beyroot, where the frigate laid, and on receiving from Captain Boraem the assurance that Floyd was an excellent hand, and that his culpability was the consequence of an only and occasional irregularity, I thought it better to rescue him from his otherwise unavoidable fate, without at the same time sanctioning a bad example, and advised that he should be punished as originally directed, and restored to his duty. My advice was adopted, and perhaps no one understood better than did David Floyd, what he had escaped by my intervention.

I have reviewed these three cases upon the presumption of my being legally answerable for them,

but that might well be controverted both in law and in fact. Captain Boraem, as flag captain of the Constitution, with the entire discretion vested in his hands, had himself determined upon the quantum of punishment in Floyd's case—it was neither altered nor witnessed by me. Captains Wilkinson and Pearson, with precisely the same power in reference to the frigate United States and schooner Shark, can alone, in strictness, be held responsible for "*the whole conduct and good government*" of their respective vessels. Neither of them, on the receipt of a message from me through Lieutenant Totten or Midshipman Maffit, respecting Lasano and Lascelles, sent to *myself* to ascertain whether it was inadvertently given or mistakingly delivered, and it is impossible not to see how easily, either in the issuing or transmission of the order in that particular case, a mistake may have occurred by the mere insertion or omission of one short word. Had I directed Lieutenant Totten that the offenders, the two Mahonese servants, should receive two dozen lashes, the implication would naturally and legally conform to the regulation—its unlawfulness arises by superadding the monosyllable "*each*." On both the culprits the correction was "*inflicted*," with the authority and in the actual presence of their own immediate commanding officers.

Gentlemen, my defence, necessarily extended to a tedious length, is now closed. I have purposely avoided several topics which, though really unconnected with my own innocence or guilt, may possibly be esteemed entitled to notice. The copious ma-

terials on your record with which I might overwhelmingly have retaliated upon my detractors, remain scarcely touched. Think you I could not have developed a carefully concocted and closely veiled system of persecution? Think you I have been blind and insensible to the extraordinary incidents which preceded my being arraigned in person at your bar? Think you I do not feel with what restless force the conduct of the chief prosecuting witnesses armed me, especially by their wanton, merciless, and abortive attack upon a virtuous, intelligent, plain, and unoffending citizen, whose grand demerit seemed after all to consist in the mildness of his manners, and his lack of epaulette or tinsel? But I forbore, and still forbear, under an inextinguishable and zealous attachment to our noble service. For *that* my powers of endurance are exhaustless, my readiness to make any sacrifice constant and unabated. Uphold *that*, gentlemen, vigorously, sternly, uncompromisingly, and I am content. Let not its yet glittering escutcheon be dimmed and sullied by a deed of dark prejudice or foul injustice—let not its true and tranquil honor be displaced by a counterleit and clamorous substitute—let not the solid fruits of tried and triumphant discipline be exchanged for the vapid promises of new principles of order and of action—let the Navy of the United States remain unshaken at its base, resting firmly on its past and settled usages, adorned by the fadeless laurels of its founders, living or dead, and lifting its doric column to the confiding gaze of a generous people. Act thus—as act thus you will—and I am fearless of your judgment!

JESSE DUNCAN ELLIOTT.

We have been obligingly favoured with a number of original letters addressed to Commodore Elliott, by the Presidents of our leading Seminaries of learning, and by other persons, acknowledging the receipt of interesting and valuable donations of coins, antiques, medals, &c., which were brought from the Mediterranean on board the Constitution, at the close of the cruize so recently and thoroughly investigated. It appears to us mere justice, in reference to the character and motives of Commodore Elliott, that some of these letters should be made public, and we have therefore selected the subjoined as accompaniments to his defence.

We also add a general list of the articles he distributed almost as soon as he returned to the United States, and a statement of the manner in which the animals he brought with him have been disposed of.

Philadelphia, November 5, 1838.

Sir,—It gives us great pleasure to perform the duty assigned to us, of informing you that your valuable present to the city of Philadelphia, of an ancient and beautiful sarcophagus, has been accepted and will be disposed of in the manner you proposed.

In tendering to you the sincere thanks of Councils for having selected the Girard College as the depository of this rare and interesting relic of ancient art, we beg leave to express our own sense of the important and happy effects on the taste and refinement of our own country, produced by the introduction of such objects from abroad.

We have the honor to be, with great respect, your obedient servants,

W. M. MEREDITH,  
President Select Council.  
WM RAWLE,  
President Common Council.

Board of Trustees of the Girard College  
for Orphans, Dec. 17, 1838.

Dear Sir,—I execute a very agreeable duty in presenting to you the enclosed copy of a vote of thanks adopted at the last meeting of this Board for your highly acceptable donation to the College. To this testimonial by my colleagues, I beg leave to add the expression of my own sense of the enlightened curiosity which collected so many valuable objects, and the very liberal spirit with which you have disposed of them.

With great respect, yours,  
N. BIDDLE, President.

Com. JESSE D. ELLIOTT, U. S. Navy,

Board of Trustees of the Girard College  
for Orphans, Dec. 6, 1838.

At a meeting of the Board of Trustees of the Girard College for Orphans, held last evening, it was

Resolved, That the President of this Board be requested to tender the thanks of the Board to

Commodore Elliott for the articles presented by him to the Girard College.

From the minutes.

JAS. BAYARD, Secretary.

Senate Chamber, May 18th, 1839.

Dear Sir,—In reply to your request of this forenoon, that I would communicate such information as I possessed in relation to certain presents made by Commodore Elliott to the Legislature of Pennsylvania, I state—they consist of two paintings in oil, the one purporting to be a copy of a likeness of Christopher Columbus, and the other of Americus Vespuccius, from originals in the Florentine Gallery of Paintings, together with the figure of an American Eagle, carved by an American citizen, in marble from Alexandria Troas.

The Senate charged the Joint Committee of the State Library with the disposition of these presents, and they directed me, as the Chairman of that Committee, to place them in the Chamber of the Senate, where they now are.

The pictures are, (judging by the eye,) eighteen to twenty inches in length, by twelve to fourteen in breadth. They are enclosed in frames of wood, kind unknown to me, naturally of a light yellow colour, without ornament or even mouldings, and coated on the face with varnish.

The figure of the Eagle might in my opinion, be enclosed in a box of nine or ten inches square.

I received them from the present Governor of the Commonwealth in the state in which they now are—that is, not enclosed in a box or envelope of any kind.

I am, sir, very respectfully, your most obedient servant,

ABM. MILLER,

Chairman of Joint Committee on the Library.  
Hon CALVIN BLYTHE.

Sydenham, near Philadelphia,

October 2, 1838.

My dear Sir,—Returning last week from Wash.

ington, I found your favour of the 11th of September, but it was only yesterday that I received the drawings and coins to which it refers.

I scarcely know how at present to aid the wish you cherish for putting our government in possession of the interesting memorials spoken of in your letter as subservient to the Smithsonian Institution. It being uncertain when or how that Institution is to be called into being, the whole depending on the future legislation of Congress, I should be at a loss under present circumstances what step to take. If I might venture a suggestion it would be, that the memorials in question be retained until it be seen what course Congress seems likely to take, when I would at all times be happy to join others better qualified, and with more opportunities than myself, in any efforts that circumstances might render practicable to give effect to your very laudable design.

With great respect and esteem, I am yours very faithfully,

RICHARD RUSH.

Treasury Department, March 30, 1839.

Sir,—I have the honor to enclose herewith to you a copy of a letter, received this morning, from President Lord, of Dartmouth College, returning thanks for the donation of ancient coins, which your liberality furnished me an opportunity of presenting to that institution in your behalf.

I am respectfully your obedient servant,

LEVI WOODBURY.

JESSE D. ELLIOTT, Esq.

Captain U. S. Navy.

Dartmouth College, March 26, 1839.

To the Hon. Levi Woodbury,  
Secretary of the Treasury,

Sir,—It gives me great pleasure to acknowledge the receipt of your favour of December last, which arrived in my absence from College, with the accompanying and very acceptable donation of ancient coins for the cabinet of the institution.

This direction which you have given to the liberality of Commodore Elliott, is particularly gratifying in view of recent resolutions of the Trustees to increase their historical and other collections.

With very respectful consideration, I am, dear sir, your obedient servant,

N. LORD.

Kenyon College, Oct. 2, 1838.

Dear Sir,—I have just returned from a long absence from home, and received your kind favour of August 13th, mentioning your having deposited with the agent of the Ohio Rail Road Company, certain specimens of antiquities for the cabinet of

this College. I beg you, sir, to receive my cordial acknowledgments in behalf of this institution for so kind a consideration, and believe me to be, with sentiments of high consideration, your obliged friend and servant,

CHAS. P. MCILVAINE.

Commodore J. D. ELLIOTT.

—  
Antiquarian Hall,

Worcester, Mass. March 28, 1839.

Dear Sir,—I have the honor, in behalf of the American Antiquarian Society, to express their thanks for the present of rare and interesting coins made by you to the society through Governor Lincoln. They constitute a valued addition to our collection, and like all other matters appertaining to our Library, will, so far as practicable, be made of public use. The number of coins now in our possession is small but select, and those which we have the pleasure to receive from you, will not be without some companions appropriate to their own age and dignity.

I am sir, very respectfully your obedient servant,

SAML. F. HAVEN, Lib. A. A. S.

Commodore J. D. ELLIOTT.

—  
Williams College, Nov. 26, 1838.

Com. J. D. ELLIOTT,

Dear Sir,—I have recently received for the benefit of the Museum of this College fifteen ancient coins with descriptions, and a fragment of the ruins of an ancient city, for which, as I understand from Mr. Porter of Boston, we are indebted to your liberality and public spirit. It gives me much pleasure to acknowledge the receipt of this very handsome donation and to assure you that the articles shall be so disposed of as to promote the object for which they were given. If any thing could add to the popularity of our Navy, I think it would be an imitation on the part of its officers of the example you have so honourably set of promoting the objects of curious and scientific research.

Most respectfully yours,

M. HOPKINS, Prest. of College.

P. S. The fragment is supposed to be of Memphis, but no description came with it.

—  
Jefferson College, Canonsburg,

Jan. 28, 1839.

Dear Sir—I must beg you to accept an apology for not answering sooner your favour of the 8th of November last, accompanied with a valuable donation of coins for the use of the college. The coins were presented to the lyceum of the college and your generosity noted. I would have immediately written and acknowledged the receipt of



the donation, for which we are sincerely grateful, but I was at a loss at that time as to the place where to direct a letter, whether to Washington City or Norfolk. I observed your letter dated at Carlisle, and have since learned that this is the place of the residence of your family. You refer to my being a graduate of Carlisle, which suggested to my mind the pleasant recollection of my fellow students, among whom was a Mr. Elliott, as I believe your brother.

You are kind enough to mention that you had at Norfolk a marble column brought from Syria, placed in the hands of Dr. Miller, subject to our order. Will you be kind enough to suggest in what way we could most conveniently have it transmitted, as we have no direct communication with Norfolk. If it were sent round to Philadelphia, we could readily receive it in that direction. We have a Lyceum in the College, under its direction, containing many valuable collections. Your favor will be deposited here and marked to your liberality.

Very respectfully, yours, &c.

M. BROWN.

Washington, Pa., Nov. 15, 1838.

Dear Sir,—I had the pleasure of receiving your favour of last month, kindly and patriotically offering to the college here a choice selection of ancient coins. Many things requiring my immediate attention caused me to defer a reply.

The Trustees and Faculty were immediately made acquainted with your proffer, which was thankfully accepted, and I was directed to present to you their thanks. This I did immediately in our town papers. Be pleased to retain them and we will send for them by the earliest opportunity.

I am with respect and esteem, dear sir, your friend and servant,

RICHARD HENRY LEE.

University of Virginia, Sept. 26th, 1838.

Sir:—Towards the end of August I had the gratification to receive your letter of the 6th of that month, bestowing on the University the curious specimens of antiquity therein mentioned. A part of those only has come to hand, viz: an *Antique Vase* found in the Channel of Corfu; an *Eagle* of Marble from Alexandria of Troas, sculptured by an American artist; a fragment from the Temple of Bacchus at ancient Tyre; a *Small Vase* taken from a Tomb on the Island of Cerigo. The other two specimens, owing to the very great difficulty which has existed for some time in transporting packages, especially of any considerable weight, from Richmond to this place, have not yet been received—we may expect them however in a short time. I have for a very long time delayed acknowledging your letter and donation, in hopes that the whole might be mentioned as received—but the delay has been so great that I was unwill-

ing longer to withhold the respectful acknowledgements which are due to your liberality, and which our feelings require.

I have great pleasure in performing the agreeable task of conveying to you the thanks of the University for the valuable contributions which you have kindly made to the collection contained in our museum. And I may assure you that the remains of antiquity which you have presented to us will not only be preserved on their own account, but that they will be continually associated with the kindest feelings of regard for the distinguished Naval Commander, to whose liberal tastes, and sympathy with the glory and art of other days, we owe them.

I am, Sir, with considerations of the highest respect, your obedient Servant,  
GESSNER HARRISON, Chairman of Faculty.

#### Articles presented by Commodore Elliott, to

##### 1. *The Girard College:*

A Roman Sarcophagus, weighing about 3,500 pounds.—A cabinet of gold, silver, and other metallic coins.—Four boxes of Antiquities collected in Palestine and Syria.—A limb of one of the cedars of Lebanon.

##### 2. *Dickinson College:*

A cabinet of ancient coins.—Other antiquities from Palestine and Syria, Corinth, Athens, Crete, &c.

##### 3. *Washington College:*

A collection of ancient coins.

##### 4. *Jefferson College:*

A capital of a column obtained in Cæsaria.

##### 5. *Princeton College:*

A collection of ancient coins.—A specimen of the marble from Alexandria Troas, and Cæsaria Palestine.

##### 6. *Cambridge College:*

Some specimens of marble from Cæsaria Palestine, and Alexandria Troas.

##### 7. *Williams' College:*

A capital of a column from Cæsaria Palestine.

##### 8. *Dartmouth College:*

A collection of ancient coins.

##### 9. *Kenyon College:*

A collection of coins and a piece of a column from Alexandria Troas and Cæsaria Palestine.

##### 10. *College in Missouri:*

A collection of coins.

##### 11. *The Transylvania College:*

A collection of ancient coins.

##### 12. *The Medical College at Baltimore:*

A Mummy, disinterred at Memphis, Egypt.—A curbstone of a well, from Cæsaria Palestine.—A marble sill from the Temple of Minerva on the plains of Troy, and a column from Cæsaria, Palestine.

##### 13. *The Charlottesville University:*

Two marble balls obtained at the Dardanelles, about eight feet in circumference.—A marble head of Bacchus from Tyre, Syria.—A Vase fished up at the point where the battle of Actium was fought between Cæsar and Pompey.—A large marble column, removed from Alexandria Troas.—An

Eagle made from a piece of marble removed from Minerva Somnes, Greece.

14. *William and Mary College*:

An Ibis.—A column removed from plains of Troy.

15. *The Baltimore Cathedral*:

A painting representing the Illumination at St. Peter's and St. Angela.

16. *The College at Georgetown*:

Casts of the Popes.

18. *Prospect Hill, N. Carolina*:

A column from Marathon.

18. *The Literary and Philosophical Society at Charleston, S. C.*

A collection of ancient coins.

19. *To the Navy Department or Government*:

Two colossal balls from the Dardanelles.—A Sarcophagus from Beyroot, Syria.

20. *American Antiquarian Society of Worcester Massachusetts*:

A parcel of ancient coins.

21. *The Legislature of Pennsylvania*:

A copy of an original painting of Columbus and Vespuccius.—An Eagle made from marble removed from Alexandria Troas.

*The Animals brought home were disposed of as follows*:

1. *A Jack*:—in possession of the Honorable

John Forsyth, sent to Georgia, to propagate, on shares.

2. *A Maltese Jenny*:—Sent to Mr. Hubbs' plantation, Tennessee.

3. *A Jack*:—Sent to Elizabeth city, Virginia, to propagate, on shares.

4. *A Jack*:—Sent to Dauphin county, Pa. to Charles Carson and John C. M'Allister—owned jointly by Com. Elliott and Thomas B. Jacobs.

5. *A Malta Jack and a large bay Arabian Horse*:—Sent to James A. Gallagher, to propagate in the Counties of Cumberland, Franklin and Dauphin, Pennsylvania, and belonging to Com. Elliott.

6. *Three Andalusian Hogs*.—*Two broad-tailed Syrian Sheep*—*Minorca Chickens*, Grain, Grass and Garden seeds:—Sent to Mr. T. B. Jacobs, Lancaster county, Penn.

7. *One Minorca Jack*:—Sent to propagate in Lancaster county, Penn'a., and belonging to Com. Elliott and T. B. Jacobs.

8. *One Superior Arabian Mare*:—Presented to Mrs. Jacobs.

9. *Four Arabian Mares, One Andalusian and Three Arabian Colts*:—Sent to Mr. John T. Barr, State of Missouri, belonging to Com. Elliott, and propagating on shares.







WERT  
BOOKBINDING  
Quantville, Pa.  
March, April, 1955  
WERT 2-11-55-24

