

X

THE

VINDICATION

OF

CAPTAIN JOSEPH TREAT,

LATE OF

TWENTY-FIRST REGIMENT UNITED STATES INFANTRY,

AGAINST THE

ATROCIOUS CALUMNY

COMPREHENDED IN

MAJOR GENERAL BROWN'S OFFICIAL REPORT OF THE BATTLE
OF CHIPPEWAY.

“Who steals my purse steals trash—’tis something, nothing;
’Twas mine, ’tis his, and has been slave to thousands;
But he who filches from me my good name,
Robs me of that which not enriches him,
And makes me poor indeed.”

SHAKESPEARE.

PHILADELPHIA...PRINTED.

.....

1815.

TO JAMES MADISON,

PRESIDENT OF THE UNITED STATES.

SIR,

To whom can I so properly inscribe the following sheets, as to yourself? since the abuse which compels me to appeal to your justice, and the public sympathy, reached me through the medium of a commission, signed by your hand, and conferred upon me without solicitation.

The fitness of the application will I hope supercede the necessity of an apology for the intrusion, and secure your approbation of the tresspass I make on your time.

To you it will not be improper to remark, what may be well applied to every fellow citizen; that the rights of persons and of property, and the very existence of the republic, depend on the inflexible maintenance of the letter of the constitution and the law. Admit a latitude of construction for the extension of power, and you throw down the barriers of the public safety, and insensibly mould the palladium of our liberties, into that form which may best suit the grasp of ambition.

It is not for redress of my personal injuries, however unmerited and extreme, that I have ventured to

intrude the recital of those injuries on your attention ; proved as they have been by testimony on which a military tribunal has vindicated my honor ; but it is to warn you of the perfidy, the violence, and usurpation, of which the officer is capable, whom blind fortune has imposed on you for the chief of the national military force ; that you may assert the supremacy of the laws, and prevent the recurrence of similar outrages, on the rights of those who have the right to look up to you for protection.

Every encroachment on the laws, however minute, is a step towards despotism ; and therefore the slightest infraction of them should be instantaneously checked ; or the precedents of yesterday, may become laws to day, and political expediency may readily be converted into stilts for power to-morrow ; mounted on which, those, who administer the government, may trample the governed into the dust.

The articles of war clearly define the few rights of a soldier, and these ought to be stedfastly guarded, as well by a strict observance of the compact with the state, as by that chaste sense of delicacy and honor, which has been considered the peculiar attribute of military men ; but if a military chief, to gratify his caprice or resentment, or to blazon forth his character for sensibilities to which he is a stranger, can rob a subordinate of his sword, and expel him from his legitimate corps, then military tribunals become superfluous ; by the same exertion of power he may make appointments to command, and thus save the president of the United States the responsibility of nominating, and the senate that of confirmation.

Or, if a military chief may, WITH IMPUNITY, SUS-

pend an officer from command, on a groundless pretext, and, disdainng all explanation, promise him a court of enquiry into his conduct ; if he may, after making such promise, prejudge the object of his blind wrath, and in an official despatch recommend that he should be arbitrarily stricken from the honorable rolls of the army, without a hearing, and in violation of the sacred charter of the land : if, when pressed for the promised enquiry, the chief, to elude it, should, by his official organ, inform the applicant that he was not on the rolls, and could not have an enquiry : if, on the declaration of this injured officer, that in the alternative of being refused an enquiry, he should apply to the secretary of war for redress, this chief, dreading the appeal, should suddenly shift his ground, again recognize as an officer, the subject of his vengeance, and abandoning the enquiry, which he had repeatedly promised, should charge him with an infamous crime, and cause him to be arrested : if the arrested officer, unaffected by this menace, remaining firm to his purpose, should be peremptorily ordered for trial on the 3d of October, 1814, before a general court martial then in session at Fort Erie, and yet should not be able to procure a copy of the charge on which he was to be arraigned, until the 12th of the same month, on which day said court was dissolved, and he still continued in arrest : if, after repeated subsequent applications for a hearing, this arrested officer could not obtain a trial until the 5th of April, 1815, although several general courts martial had been holden during the interval : if, after all these arbitrary delays and denials of justice ; after the denunciation of the chief (on the 5th of July, nine months before) who held

up his subordinate as a spectacle of reproach to the army, and a subject of villification to licentious prints ; after depriving him of all participation in the scenes of glory which awaited his comrades in arms : I repeat, sir, if after these multiplied privations, indignities, and wrongs, the proceedings of the general court martial, before which this officer was tried, should not furnish a shadow of cause for his arrest ; and if by a solemn court of law and honor, selected by the accuser himself, the injured citizen should be honorably acquitted of the foul offence imputed to him, by the author of his wrongs ; then, I will most respectfully enquire, what is the effect of the law, and where is the security to the feelings or fame, the rights or interests of subordinate officers, against the outrages of ignorance and brutality ? The facts are before you, and the decision must rest upon your own mind.

But it can not be overlooked, sir, that in a government whose venality and corruption, has long been a popular theme, the hand of criminal justice seized on a military commander, for inflicting an arbitrary punishment on a non-commissioned officer, and that governor Wall, in spite of wealth and patronage, for this crime, expired on a gibbet.

Removed from the ranks of honor, and smarting under the sense of the wrongs I have suffered ; I hope I may be excused for invoking your attention to the fundamental interests of the people, over whom you have been called to preside, involved as they have been, in a case so extraordinary in a free commonwealth.

Suffer not pretensions to services, nor military rank and eclat,—*by whatever means attained*, to sanction despotic rule, or screen the oppressor from merited

punishment. In your hands I must hope the fountain of justice will continue undefiled ; that men elevated to stations high and honorable, in trust for a young and glorious nation, will feel themselves bound to preserve its purity by their vigilance, and at every hazard and every sacrifice, transmit the rich inheritance to posterity ; nor permit the source to be polluted, because too soon the poison will be diffused to the remotest streams, and then the blood of our fathers will have flowed without effect, and we shall have lived in vain.

With the best wishes for your fame, and happiness, and for the honor, prosperity, independence, and justice of our country.

I remain, sir, with high consideration and respect,

Your most obedient,

humble servant,

JOSEPH TREAT,

(Late) Capt. 21st Infantry, U. S. Army.

NARRATIVE.

THE wanton and unjustifiable misrepresentation of my conduct, made by major general Brown, in his report of the battle of Chippeway, renders it a duty to my country, my friends, and myself, to lay before the public a full and authentic statement of my case—I will,

“A round unvarnished tale deliver :”

“Nothing extenuate—nor set down aught in malice.”

On the night of the 4th of July, 1814, when general Ripley's brigade arrived at its place of encampment, near Chippeway, a picquet guard was detailed from that brigade and placed under my command ; with orders to take my station between two other guards already posted ; to connect my sentinels with theirs, and to form a chain around the left and rear of the second brigade.

Neither the position of these guards, nor that for my own, were shewn to me, although I applied specially to the inspector for that purpose.* However, after much difficulty, I found them, and took my position on the margin of the woods, about half a mile in rear of the second brigade, as directed by the assistant inspector general, major Orne ; the guard was kept in

* See depositions of corporals Gale, Fellows, and Barton, pages 19, 25, and 29.

good order, but contrary to military rule, was not visited by any officer of the day, although in the proximity of the enemy.

About eight o'clock on the morning of the fifth, brigade major Clark ordered me to march my guard into camp, and on arriving within fifteen or twenty rods of the left flank of the camp of the second brigade, near major Biddle's artillery, I was fired on by a party of the enemy who were concealed in the woods on my left flank; the ground would not admit of a full front, and I was marching at the head of my guard in file: when they were fired upon, some of my men from the rear broke and retreated; I succeeded in keeping the rest compact, marched with them, and found those who had left me halted by major Biddle; I immediately incorporated the whole, and took my post on the right; for a statement of my own conduct and that of the guard, I must refer to the testimony adduced on the trial. One of my men was reported to me to be wounded, the route we had taken was through a meadow of very high grass, and as but a few minutes elapsed, he was not at once missed. But he was now found and brought in.

Gen. Brown, in his official account of the battle of Chippeway, stated, that he ordered me "on the spot to retire from the army," but this was not the case. The fact is, as stated in testimony, that after I had ordered a wounded man to be removed to camp, general Brown, personally, and "on the spot," ordered me to march with my guard into the woods, in pursuit of the same party of the enemy that had fired on me; which order I promptly obeyed; and after marching more than a mile in quest of the enemy,

who had retired, I returned with my guard in good order to camp, and was then immediately suspended from command by the verbal order of general Brown, delivered me by captain Vose, commanding officer of the 21st regiment.

Surprized at this unmerited treatment, and presuming that general Brown must have been under an impression, that I had left the station at which I had been posted in the night without orders, I requested major Clark to call on the general, and tell him that I had been commanded by him to return to camp. Major Clark did so ; but the general replied to him that, " he saw the affair himself, and wished no further information on the subject," and immediately after issued the following general order :

" GENERAL ORDERS.

Adjutant General's Office,
Chippeway, July 5, 1814.

" A transaction degrading to the command, occurred under the major general's eye this morning.

" Captain Treat's attempts to excuse himself, in that his detachment was a return picquet, makes the thing worse.

" Captain Treat shall no longer serve in the 21st regiment ; nor in this division, during the campaign.

" By order of major general Brown.

(Signed)

" C. K. GARDNER,

" Adjutant General."

That, major general Brown, dares to exercise an authority which belongs *exclusively* to the law, and by a conduct unprecedented in free governments, brings

the charge, tries the cause, and passes the judgment, combining in his single person the functions of accuser, witness, jury, and judge.

Cut to the soul by this outrage on my honor, in the face of the whole army, I appealed to general Ripley, the commanding officer of the brigade, for advice ; he delicately declined all interference, but recommended me to call on general Brown, and explain my conduct plainly to him, and, if, necessary, request a court of enquiry to examine into it.

Accordingly about noon I called on general Brown, at his marquee, and respectfully observed to him, that I wished to explain the causes which had thrown the guard of my command into the disorder in which he had seen it in the morning : The general replied, “ I saw the transaction myself, and wish no further information on the subject : you may retire, sir.”

About four o'clock in the afternoon, the volunteers and Indians under the command of general Porter, filed to the left, towards Chippeway, and soon met the Indians and right flank of the enemy, whose whole force had crossed the Chippeway, and were advancing towards our camp.

Generals Scott's and Ripley's brigades, which had encamped in parallel lines, were immediately paraded, and gen. Scott's brigade being in front, he advanced over Black-creek bridge ; and, about 5 o'clock, met, fought, and beat, the enemy, on the plains between Black creek and the Chippeway.

The battle lasted nearly an hour, during which period, gen. Ripley, with his brigade, remained under arms, in full view of the engagement, awaiting orders

from general Brown ; but he received none, until the enemy was beaten and had began to retire, when gen. Ripley received orders to advance by the skirt of the woods on his left, and turn the enemy's right flank ; which orders were executed with all the promptitude possible, under the circumstances of the ground ; but the order came too late, and of consequence the enemy, whose whole force might have been taken, was suffered to effect his retreat over the Chippeway.

The cause of general Brown's having kept the second brigade stationary, and in camp, while the first brigade was engaged with a superior force, in its front, when by a simple co-operative movement, made seasonably, the enemy might have been compelled to surrender, remains to be explained.

When the 21st regiment paraded, I, having been suspended from command, *volunteered* my services with a *musket* ; and on the movement of the regiment to flank the enemy, such was the confidence placed in me by major Vose, who was then the commanding officer of the regiment, that he requested me to lead a platoon.

On the sixth, I again called on general Brown, and demanded a court of enquiry, which he then promised to order for me, so soon as the situation of the army would permit ; and at the same time gave me permission to take up my residence in the town of Buffalo, in which place he arrived on the 26th or 27th ; and there again, on the 30th, I renewed my demand for a court of enquiry ; which was again promised me by general Brown, through his aid-de-camp, major Austin, at the close of the campaign, or sooner if the situation of the army should render it practicable.

Seeing no immediate prospect of obtaining justice, or being restored to my command, I requested, and obtained permission to be absent, until the second of October, at which time I returned to Fort Erie, and reported to the adjutant general, colonel Gardner, and once more demanded a court of enquiry.

He observed, "it is too late to obtain a court of enquiry, for you are now off the rolls of the army, and cannot have an enquiry or a trial."

I observed to him, that, although I might be improperly struck off the rolls, I presumed that general Brown, having promised me a court, would not forfeit his word; I added, that if he would not grant my request, I must immediately apply to the secretary of war for redress.

Colonel Gardner then said, he would inform general Brown, and give me an answer the next day.

On the 3d October, I called on colonel Gardner, when he informed me, that general Brown had ordered him to place me in arrest, in which situation I was then to consider myself, for trial before a general court martial then sitting at Erie, and that the charges would be produced before the court on the 4th.

I had the liberty of the camp until the 7th, on which day I was ordered to confine myself to my quarters; but on application to the adjutant general, I was allowed the limits of the guards.

The charge against me was handed to the court on the 11th, a copy of which was delivered to me by captain Watson, the judge advocate, on the morning of the 12th, but on that day the court was dissolved.

On the 13th, general Izard having assumed the command, the army marched down the Niagara.

I was permitted to return to the town of Buffalo, where I was compelled to remain until the 1st of November; when I applied to major general Izard, and obtained his permission to repair to Sackett's Harbor, whither general Brown had marched with his division, leaving me behind him, in confinement.

I arrived at Sackett's Harbor on the 24th of November, reported to the adjutant general, and here again demanded a trial before a general court martial then sitting at that place; but—the court was not furnished with the charges against me.

About the 1st of January, 1815, at my request, a general court martial was ordered, of which colonel Bedel was president, and captain Pratt, judge advocate.

But on the 14th I was informed that the court was not furnished with any charges against me, and that gen. Brown could not attend to my trial until after his return from Washington, for which place he would set off in a few days. This court was also dissolved (I think) in March.

Finally, after suffering nine months unmerited disgrace, during three of which the arbitrary will of general Brown, prostrated law and justice, and after my *sixth* application, on the 5th of April, a general court martial was ordered for my trial, of which col. M'Feeley was president, and lieutenant Anderson, judge advocate.

The court met on the 6th. There was still an embarrassment respecting charges; none had been delivered to the court—and, to remove this obstruction to my trial, I called on colonel Jones, the adjutant

general, who informed me that he was not in possession of a charge against me.

I then tendered to him the copy of the charge, with which I had been served in October, which colonel Jones showed to general Brown, who approved it, and added colonel Gardner to the list of witnesses; it was handed to the court on the 14th April, when my trial commenced, which terminated on the 8th of May, 1815, in *my honorable acquittal*.

But once more the hand of justice was arrested by my persecutor, and it was not till the 24th of June, that he deigned to act upon the sentence of the court, and set me at liberty.

It was, no doubt, an unwelcome office to the general, to be obliged to acknowledge the honorable acquittal of an officer whom he had so wantonly and unjustly accused, and so far his tardiness may be palliated.

But, the *manner* in which major general Brown discharged this last duty to his victim is worthy of record,* as it paints in glowing colors the characteristics of his mind; and when this shameful evidence of his conduct and disposition is compared with his report of the battle of Bridgewater, the situation of an officer, under such a commander, can never be very enviable nor desirable by any one who respects himself or his profession.

JOSEPH TREAT,

(Late) Captain 21st Infantry.

* See his approval of the sentence of the court martial.

PROCEEDINGS
OF
A GENERAL COURT MARTIAL,
HELD AT SACKETT'S HARBOR,
IN THE STATE OF NEW YORK,
BY VIRTUE OF THE FOLLOWING ORDER.

“ GENERAL ORDERS.

“ Sackett's Harbor, April 5, 1815.

“ A general court martial of seven members, will convene to-morrow, at 10 o'clock, in the quarters lately occupied by lieutenant col. Smith, for the trial of captain Treat, and such persons as may be brought before it.

Colonel M'FEELEY, President.

MEMBERS.

Lieut. Col. SMITH,	Major M'ILHENNY,
Major CROOKER,	Captain CRANE,
Captain BOYLE,	Captain WHITE.
Captain SEYMOUR, Supernumerary.	
Lieut. Anderson, 13th Inf. Judge Advocate.”	

APRIL 6, 1815.

The court met in obedience to the above order.

PRESENT.

Col. M'Feeley, President ; lieut. col. Smith, major M'Ilhenny, major Crooker, capt. Boyle, capt. White,

capt. Seymour, Members ; lieut. Anderson, Judge Advocate.

The court was informed, by a note from the adjutant general's office, that the indisposition of captain Crane would prevent his attendance ; in consequence his place was supplied by captain Seymour, the supernumerary.

From not having received the charges in the case of captain Treat, *his* case was deferred until,

FRIDAY, APRIL 14, 1815.

PRESENT.

Colonel M'Feeley, President : lieut. col. Smith, major M'Ilhenny, major Crooker, captain Boyle, captain White, captain Seymour, Members ; lieut. Anderson, Judge Advocate.

The court next took up the case of captain Joseph Treat, 21st infantry, who, having previously heard the court sworn, and been asked if he had any objections to any of the members of the court, and replying in the negative, was arraigned on the following charge and specification, preferred against him by colonel C. K. Gardner, adjutant general, on an order from major general Brown.

CHARGE—Cowardice before the enemy.

SPECIFICATION—When commanding a return picquet, which was fired on by a small party of the enemy, at the plains of Chippeway, on the morning of the 5th July, 1815—running in a cowardly manner with his picquet guard from the fire of this party of the enemy—and misbehaving himself in sight of the enemy, in his manner of retreating before this party.

To which charge and specification the prisoner pleaded “*not guilty.*”

Corporal GALE, 21st *infantry*, witness for the prosecution, duly sworn, says: After our brigade arrived at Chippeway, a picquet was wanted to fill up the vacancy that the sentinels of the other brigade did not fill. It was about 12 o'clock at night when the brigade arrived; immediately upon arriving, captain Treat was ordered to take charge of a picquet; to fill up the vacancies that the other picquet did not; I belonged to the picquet. Capt. Treat asked the officer who gave him charge of the picquet, to go with him and shew him where to station it. He told captain Treat, it was no use to go; he could find it as well as himself. Capt. Treat marched the picquet on, and found the end of the line of sentinels of the other picquet. It being dark, it was some time before captain Treat could find the sentinels of the picquet. He then placed his sentinels, but they would not reach to the other picquet which he had not found. He then stationed his guard at a place, and went in search of the other picquet, but could not find it. He then returned, took a sergeant with him and went again, and then found it; after he had found it, he took sentinels enough to reach from the first picquet he had found unto the next one. He then returned and took a patrol out to patrol from the guard to Black Creek; next morning about 7 or 8 o'clock, the brigade major, I believe, came and ordered the picquet in immediately; there being some firing of small arms towards Chippeway. He immediately called in his sentinels, marched in double files towards camp; we had got about opposite the other picquet, they were betwixt us and

the woods ; it was very tall grass, and we did not see the picquet ; they were sitting down ; as soon as the firing commenced, they rose up ; I thought, as well as others, that it was the picquet firing upon us. A number of our men rose and asked the other picquet why they were firing on their own men. A great part of the guard were new recruits, and as they kept a firing, many of them fell back ; as they fell back capt. Treat spoke to them and ordered them to form. It did not seem to answer much purpose ; they continued falling back ; he repeated it a second time, told them to halt and form ; by that time a great part of the guard had got to the fence, about five or six rods from where we had been fired upon. Capt. Treat followed after them to try to stop them ; by the time he got to the fence, a number of the men had got as far back as where capt. Biddle's artillery was ; those who had got there, capt. Biddle stopped. Capt. Biddle came up to the fence where capt. Treat had stopped the main part of his guard. One of the men spoke and said, that there was a man wounded in the field ; capt. Treat said he did not know there was one there, but immediately marched his guard back and brought him off. Gen. Brown came up and told him to march his guard to where he had been fired upon, in search of the enemy. He immediately marched them, but found no one ; he marched them about a mile—I should say into the woods, till he came to a small road, and there an officer came up and told him to march his picquet into camp ; he then marched the picquet in. I cannot say positively, but believe it was the day we had the battle of Chippeway. When

capt. Treat was on the picquet, he complained and seemed to be very lame.

QUESTION. *By the Court.*—During the fire upon your picquet, did capt. Treat appear to be cool and collected?

ANSWER. He did; very much so.

Q. *By the Court.*—Do you know the strength of the party of the enemy who fired upon you?

A. I do not; I did not see them.

Q. *By the Judge Advocate.*—Did you ascertain that it was not the other picquet who fired upon you?

A. Afterwards we did, from the smoke appearing in the edge of the woods.

Q. *By the Court.*—Did capt. Treat exert himself to stop those men who retreated to capt. Biddle's artillery?

A. He appeared to try all in his power to stop them, as I thought; the left of the picquet, as he was marching in double files, fell off; he told them to stop a number of times.

Q. *By the Court.*—Did capt. Treat bring the guard into camp in good order?

A. He did; the wounded were carried in before capt. Treat marched the guard into the woods?

Q. *By the Court.*—Were all the guard marched into camp except those that were wounded?

A. All except four; four it took to carry the man off that was badly wounded; the others that were wounded marched themselves.

Q. *By the Court.*—How many were wounded?

A. Three; one of which was accidentally by a bayonet in his leg by one of our own men.

Q. *By the Prisoner.*—How far was the guard from

major Biddle's artillery when fired upon by the enemy?

A. I think it was six or seven rods from major Biddle's artillery to the fence, and five or six from the fence to where we were fired upon.

Q. *By the Prisoner.*—Was not the guard when fired upon directly in front of major Biddle's artillery?

A. The guard appeared to be in a direct course between major Biddle's artillery and the enemy; the men who fell back said that they thought major Biddle's artillery was about to fire, and they were in the way of it.

Q. *By the Prisoner.*—On the first fire did not many of the men kneel down in the grass, and did not I immediately order them to rise and face to the left, the direction from which the firing was?

A. You did; such was the case.

Q. *By the Prisoner.*—Did not the guard break immediately after the second fire, and about half the guard retreat over the fence to major Biddle's artillery?

A. They did; I should judge it was about half the guard who retreated.

Q. *By the Prisoner.*—Did not I repeatedly order the men to halt and form, previous to major Biddle's halting them?

A. You did, and halted about half the guard at the fence.

Q. *By the Prisoner.*—Was not I in rear of the men who broke from the guard, and between them and the enemy?

A. You were.

Q. *By the Prisoner.*—Did you hear me give any

orders for the men to retreat, previously to my ordering them to retreat for the purpose of forming them on those halted by major Biddle ?

A. I did not.

Q. *By the Prisoner.*—Did major Biddle or myself, order the guard to march to the place where the wounded man lay, after receiving orders for that purpose from general Brown ?

A. Captain Treat took command of the guard and marched them back.

Q. *By the Prisoner.*—After arriving where the wounded man lay, did not I order some of the men to carry him into camp to the surgeon's tent ?

A. I do not recollect as to the surgeon's tent ; but you ordered them to carry him into camp.

Q. *By the Prisoner.*—Did major Biddle accompany the guard any further than to the wounded man ?

A. He did not any further than that, and I do not know of his going any further than to the fence.

Q. *By the Prisoner.*—Did you consider that major Biddle assumed the command of the guard, or did you hear him give any orders for their movement, or any words of command to the guard after halting the men near his artillery ?

A. I did not.

Q. *By the Court.*—Was there a subaltern in this guard ?

A. There was.

Q. *By the Court.*—Who was he ?

A. I do not know, but believe he belonged to the 17th infantry.

Q. *By the Court.*—Of what number did the guard consist ?

A. About forty privates.

Q. *By the Court.*—Did gen. Brown give the order to captain Treat to march into the field and bring off the wounded man ?

A. I did not hear him.

Q. *By the Court.*—Did general Brown come up to the guard before the wounded man was brought from the field ?

A. I believe they were about formed to march back when general Brown arrived ; but I am not certain.

The court adjourned until to-morrow, 10 o'clock, A. M.

SATURDAY, APRIL 15, 1815.

The court met pursuant to adjournment.

PRESENT.

Colonel M'Feely, President ; lieut. col. Smith, major M'Ilhenny, major Crooker, captain Boyle, and captain Seymour, Members ; lieut. Anderson, Judge Advocate.

On account of the indisposition and absence of captain White, the court adjourned until Monday, 10 o'clock, A. M.

MONDAY, APRIL 17, 1815.

The court met pursuant to adjournment.

PRESENT.

Colonel M'Feeley, President ; lieut. colonel Smith, major M'Ilhenny, major Crooker, captain Boyle, and captain Seymour, Members ; lieut. Anderson, Judge Advocate.

On account of the continued indisposition and absence of capt. White, the court adjourned until to-morrow, 10 o'clock, A. M.

TUESDAY, APRIL 18, 1815.

The court met pursuant to adjournment.

PRESENT.

Colonel M'Feeley, President ; lieut. colonel Smith, major M'Ilhenny, major Crooker, captain Boyle, captain White, and capt. Seymour, Members ; lieut. Anderson, Judge Advocate.

Corporal FELLOWS, *21st infantry*, witness for prosecution, duly sworn, says : On the night of the 4th July, 1814, at about 11 or 12 o'clock, I was detailed, on our first arrival at the plains, where we encamped, for a picquet guard, commanded by captain Treat.— Major Orne, inspector general, ordered him to station his guard, so as to fill up a particular vacancy between two others. Capt. Treat desired him to go with him to shew him where it was ; major Orne pointed out a particular direction, told him it was somewhere in that direction, but did not know exactly where ; that capt. Treat could find it as well as he could. Accordingly capt. Treat marched his guard in that direction, and after some time found the sentinels of one of the guards ; he proceeded from that and posted his sentinels out in the direction of their line, but found no other guard ; I think he sent a sergeant next, to look for the other guard—he returned without finding it ; he afterwards went himself with a sergeant to look for it ; after a considerable time he found where the other guard was. He then altered the line of sentinels he had placed, so as to extend from one guard to the other. We were not disturbed during the night, nor visited by any officer ; immediately after placing the sentinels anew, there was a patrol sent out. Next morning about 7 or 8 o'clock, the

brigade major came with orders to take off his guard and march them in immediately ; he then had the sentinels taken off post, the guard formed, and marched them towards camp in files. When we were about two thirds of the way to camp, we were fired upon by a party on our left, from the woods. Upon their firing I faced round myself towards the left, and saw a smoke in the woods ; saw no enemy, but the smoke alone. Upon the first fire a considerable part of the the men lay down in the grass ; I myself took my musket and cocked it, expecting we should have an order to fire. By that time I discovered some of the guard falling back ; I expected by that there had been an order for it from the officer ; as I was in the rear, it would have been difficult for me to hear the word of command ; I did not hear. Soon after the first ones began to fall back, they all, I believe, faced round and began to retreat. Upon that, captain Treat spoke out pretty loudly, to halt and form, several times. By that time the forward ones had got to a large felled tree, forward of us in the direction of our line ; I expected the guard would form behind that tree, as it was but a little distance where we started from. Accordingly a considerable part of them stopped behind this tree and commenced a fire. As the rest of them continued to fall back they followed after them, till they came up to a fence near captain Biddle's artillery. By this time the ones who had first fallen back and kept forward, had got nearly to captain Biddle's company ; when captain Biddle turned out, halted them, and ordered them back. I cannot exactly recollect whether captain Treat marched the part of the guard with him, to that part of it halted by captain Biddle,

or that part of it joined captain Treat; but the two were formed together. At that time general Brown came up to us. One of the men then mentioned, there was a wounded man left behind. General Brown asked captain Treat why he had left the man on the ground. He answered, he did not know there was a man wounded. The man who was wounded, was wounded near the rear of the guard; the grass was so high that the man could be seen but a short distance after falling. General Brown then ordered capt. Treat to march his guard to the ground and bring off the man that was wounded. He marched his guard unto the ground. He then received another fire, which wounded another man, not so as to disable him from getting off himself. Captain Treat then ordered some men from the right to take the man who had first been wounded to camp; he then marched his guard to the woods in the direction he saw the smoke. When we came up to the place, the enemy had left it. He then marched his guard some way in that direction, into the woods, till we came to a road; we discovered no enemy. He then followed the road to the left, and soon met colonel Gardner, adjutant general; he ordered the guard to return to camp. Captain Treat then marched the guard to camp and dismissed it.

Q. By the Court.—Did captain Treat at the time his guard was attacked exhibit any marks of fear or trepidation?

A. I did not notice that he did.

Q. By the Court.—Did he, in your opinion, exert himself to prevent his guard from retreating, and from any misbehavior before the enemy?

A. I think he did.

Q. *By the Court.*—Do you know what led captain Treat, after he had returned into the field for the wounded man, to march in the direction of the enemy?

A. It was general Brown's orders.

Q. *By the Court.*—When general Brown ordered capt. Treat to march his guard to bring off the wounded man, was not his guard already formed for that purpose by capt. Treat?

A. The guard was formed by capt. Treat: I do not know for what purpose.

Q. *By the Court.*—Where was capt. Treat when the first man was wounded?

A. He was in front of his guard as they were marching in files towards camp.

Q. *By the Prisoner.*—At what distance was the guard from major Biddle's artillery when fired on by the enemy?

A. I think about ten or twelve rods.

Q. *By the Prisoner.*—At what distance do you think the enemy was from the guard when fired on?

A. I think about sixty rods.

Q. *By the Prisoner.*—Did major Biddle give any words of command to any other part of the guard except those he halted?

A. I do not recollect that he did.

Q. *By the Prisoner.*—Was not the guard composed mostly of new recruits?

A. Part were new recruits; I cannot tell what number.

Q. *By the Court.*—What was the strength of this guard?

A. I think there was about fifty non-commissioned officers and privates including the patrol of riflemen;

the whole commanded by capt. Treat, and a subaltern whom I did not know.

Q. By the Prisoner.—Was the guard kept in good order during the night, and when marched into camp, until fired on?

A. It was.

Q. By the Court.—Was the guard finally conducted into camp in good order, when ordered in by colonel Gardner?

A. It was.

The court then adjourned until to-morrow, at 10 o'clock, A. M.

WEDNESDAY, APRIL 19, 1815.

The court met pursuant to adjournment.

PRESENT.

Colonel M'Feeley, President; lieut. col. Smith, major M'Ilhenny, major Crooker, captain Boyle, captain White, and captain Seymour, Members; lieut. Anderson, Judge Advocate.

Corporal BARTON, *21st infantry*, witness for prosecution, sworn, says: On the evening of the 4th July, 1814, between 11 and 12 o'clock, I was detailed for picquet guard, under the command of captain Treat. Major Orne, assistant inspector general, came to the guard and ordered capt. Treat to take post; capt. Treat asked major Orne, where the guard was to be posted; major Orne pointed to the woods in the direction the guard was to march; the reply major Orne made to captain Treat, when he asked him where the guard was to be posted, was, that he did not know exactly himself; but told him it was to fill up the vacancy between the guards already posted. Captain Treat

started with his guard ; major Orne went a few rods with him and returned back ; after some time we came up to a sentinel of one of the guards ; captain Treat went from him to where the guard was stationed ; the guard of captain Treat remained with the sentinel ; when captain Treat returned, he said he could get no information where the other guard was stationed ; captain Treat started with the guard again, and it was some time before he found the other guard ; when captain Treat found where his guard was to be stationed, he ordered the relief to be taken off, and accordingly it was ; the relief was posted ; captain Treat went himself with it ; when captain Treat returned, he ordered a patrol sent ; patrols were kept out during the night ; the guard, I thought, was kept in good order during the night ; it was not visited by the officer of the day, or any other officer, until 7 or 8 o'clock next morning, when lieutenant Clark, brigade major, second brigade, came to the guard and ordered captain Treat to call in his sentinels, and march his guard immediately into camp ; the sentinels were called in and were marching into camp ; when they arrived to within about fifteen rods, I should say, of the left flank of the camp, where captain Biddle's company of artillery was stationed, the guard was fired on from the woods ; at which the men generally squatted down in the grass ; the grass was very high ; captain Treat immediately ordered the men to rise and front ; the men rose up and directly we received another fire ; upon which a number of the men, I should say nearly twenty, from the rear flank of the guard, broke and run towards camp ; captain Treat ordered them repeatedly to halt and form ; the men did not pay any regard to

what he said ; they run until they got near captain Biddle's artillery, when captain Biddle turned out and halted the men. About the time the men were halted by captain Biddle, I heard some person from towards camp, near captain Biddle's artillery, say, as if they spoke to captain Treat, "Clear away for the artillery ;" captain Treat then ordered the men who were with him, to march up to where those were who had been halted by captain Biddle ; when he marched up to where the men who had been halted by captain Biddle were, captain Treat ordered one of the sergeants to count them, and see if they were all present ; about that time general Brown came up ; I heard the sergeant observe to captain Treat, that there was one man left behind wounded, where the guard was fired upon ; general Brown ordered captain Treat to march his guard back and fetch off the wounded man ; the guard was marched back, and the man was found, and capt. Treat ordered a corporal and three men to take him immediately into camp. Gen. Brown then ordered capt. Treat to march his guard into the woods in pursuit of the enèmy ; captain Treat immediately marched his men into the woods, whence the firing was ; the guard had marched into the woods a piece ; we saw a party of men ; captain Treat then ordered the guard to halt ; he found they were a party of our own men out ; they were marching in the same direction captain Treat was marching his guard ; captain Treat then turned with his guard to the left, and took a circuit through the woods, I should judge about a mile ; made no discoveries of any enemy ; marched out into an old road ; when colonel Gardner, adjutant general, rode up to captain Treat and ordered him to march his

guard into camp ; the guard accordingly was marched in and dismissed.

Q. *By the Court.*—Did capt. Treat appear cool and collected when fired on by the enemy ?

A. I thought he did.

Q. *By the Prisoner.*—Did you hear me give any orders for the men to retreat, previous to marching the men up to form on those halted by major Biddle ?

A. I did not.

Q. *By the Prisoner.*—Did I not use exertions to prevent the men from running ?

A. I thought so ; capt. Treat repeatedly ordered the men to stop and form themselves.

Q. *By the Prisoner.*—Did you know that there was a man left wounded on the field until the guard was formed near capt. Biddle's artillery ?

A. I did not.

Q. *By the Prisoner.*—At what flank of the guard were you ?

A. In front, when marching in files.

Q. *By the Prisoner.*—What distance do you suppose it was from where the guard was fired on, to the woods where the enemy was posted ?

A. I should judge it was at least eighty rods.

Q. *By the Prisoner.*—Did I not halt the part of the guard that was with me, at or near a large tree and fence, and order them to make ready, about the time some person cried out " clear away for the artillery" ?

A. You did.

Q. *By the Prisoner.*—Was not the guard composed mostly of new recruits ?

A. I should say about half of it was.

Q. By the Prisoner.—Did you at any time see the party of the enemy who fired at you ?

A. I did not.

Q. By the Prisoner.—Did you consider capt. Biddle as assuming command, or did you hear him give any words of command, except halting those who retreated to his artillery ?

A. I did not consider him as taking command, and the only order I heard him give was, to pull down two or three lengths of the fence.

Q. By the Judge Advocate.—Was capt. Biddle's artillery directly upon the flank of the camp, or some distance from it ?

A. It was near the flank, but I think there was a part of the 23d on the left of it.

Q. By the Court.—What regiments did the guard belong to ?

A. The 21st, and a company of the 17th, attached to the 21st.

Q. By the Court.—Were the recruits of the 21st, or of the 17th ?

A. Of both.

Q. By the Court.—How could you tell that those of the 17th were recruits ?

A. They were encamped next to the company that I belonged to ; and frequently told me that scarcely any of them had ever been in action.

Q. By the Court.—Do you know the reason of capt. Treat's halting his guard when he saw a party of men in the woods ?

A. He ordered the guard to halt ; for that he discovered some men, and did not know but that they were the enemy.

Q. By the Prisoner.—Were not most of the men of the guard who were detailed from the 21st, from capt. Vose's company of new recruits?

A. There was a number of them from that company; I cannot exactly tell the number.

Q. By the Prisoner.—Had the guard been regularly detailed?

A. They were taken from the right of the regiment, consisting of the 17th, and part of capt. Vose's company.

Q. By the Court.—Do you recollect of the guard being fired on, and a man wounded, at the time capt. Treat marched back for the wounded man?

A. The guard was fired on, and a man wounded through the shoulder.

Q. By the Court.—Did capt. Treat appear to be intimidated when he first saw the party in the woods?

A. I did not observe that he did.

The court then adjourned until to-morrow, 10 o'clock, A. M.

THURSDAY, APRIL 20, 1815.

The court met pursuant to adjournment.

PRESENT.

Colonel M'Feeley, President; lieut. col. Smith, major M'Ilhenny, major Crooker, captain Boyle, captain White, and captain Seymour, Members; lieut. Anderson, Judge Advocate.

Sergeant HOLT, *21st Infantry*, witness for prosecution, sworn: On the evening of the 4th July last, I was on the plains near Chippeway; was detailed for picquet guard under the command of captain Treat. Captain Treat received orders from major Orne, that

his guard was to be posted to fill up a vacancy between two other guards, that were then posted. Captain Treat asked major Orne, if he would go with him and shew him where the guards were. Major Orne told captain Treat that he did not know where the guards were himself, but that he must march his in, and find them. After a good deal of difficulty, captain Treat found the guards, and posted his sentinels and sent out a patrole. The guard was kept in good order during the night; the guard was not visited by any officer during night; until next morning about 7 or 8 o'clock, when lieutenant Clark, the brigade major, came to captain Treat, and ordered him to march his guard immediately into camp. Captain Treat called in his sentinels, and started his guard to march into camp; and had got to within fifteen or twenty rods of the left flank of our camp, when we were fired upon by the enemy; the men seemed to lie down in the grass the first fire; captain Treat ordered them to rise and form facing the woods; the men rose, and as they received the second fire, part of them, from fifteen to twenty, broke and ran towards captain Biddle's artillery; captain Treat was very lame at that time; he ordered the men to halt and form; they paid no attention, until they were halted by captain Biddle; then captain Treat marched his guard up to captain Biddle, and sent a sergeant out to see if there were any missing; the sergeant told capt. Treat that there was one wounded; general Brown came up at the same time, and told captain Treat to march his guard back and bring off the wounded man; captain Treat marched his guard back, and sent three

or four of the men to carry the wounded man into camp ; then general Brown ordered captain Treat to march his guard into the woods in pursuit of the enemy ; captain Treat marched in nearly a mile, and discovered no enemy ; he came out to an old road where he expected the enemy had retreated, and col. Gardner came up and ordered captain Treat to march his guard into camp ; captain Treat marched his guard into camp, and they were discharged.

Q. *By the Prisoner.*—At what distance do you think the enemy must have been from the guard when fired on ?

A. About eighty rods.

Q. *By the Prisoner.*—Did you at any time discover the party of the enemy who fired on the guard ?

A. I did not.

Q. *By the Prisoner.*—When the guard broke, did I not use every possible exertion to halt and form it ?

A. You did.

Q. *By the Prisoner.*—Did I not halt the part of the guard that remained with me, near the fence, and order them to make ready ?

A. You did.

Q. *By the Prisoner.*—Did you not at that time hear some person call out to me to “ Clear away for the artillery to rake the woods ? ”

A. I did ; but did not know who it was.

Q. *By the Court.*—Was there a picquet guard of the American army in the direction of the enemy that fired upon you, and between you and them ?

A. There was a small party, I should say, of ten or twelve men, who appeared to be scattered.

Q. By the Court.—What became of that guard?

A. I believe they remained there; but I don't know what became of them.

Q. By the Court.—When the guard returned to the field to bring off the wounded man, what occurred there; were you not fired upon again?

A. Captain Treat ordered the wounded man to be carried into camp, and the guard then marched into the woods; I do not recollect that we were fired upon.

Q. By the Court.—During the fire of the enemy upon the guard, did captain Treat appear to be perfectly cool and collected?

A. I saw nothing in him but what he was.

Q. By the Court.—Did captain Treat finally march his guard into camp in good order?

A. He did.

The court then adjourned until to-morrow, 10 o'clock, A. M.

FRIDAY, APRIL 21, 1815.

The court met pursuant to adjournment.

PRESENT.

Colonel M'Feeley, President; lieut. col. Smith, major M'Ilhenny, major Crooker, captain Boyle, captain White, and captain Seymour, Members; lieut. Anderson, Judge Advocate.

On account of the absence of witnesses in the case of capt. Treat, the court adjourned until to-morrow, 10 o'clock, A. M.

SATURDAY, APRIL 22, 1815.

The court met pursuant to adjournment.

PRESENT.

Colonel M'Feeley, President; lieut. col. Smith, major M'Ilhenny, major Crooker, captain Boyle, captain White, and captain Seymour, Members; lieut. Anderson, Judge Advocate.

The court, from absence of witnesses, deferred the case until

FRIDAY, MAY 5, 1815.

The court met pursuant to adjournment.

PRESENT.

Colonel M'Feeley, President; lieut. col. Smith, major M'Ilhenny, major Crooker, captain Boyle, captain White, and captain Seymour, Members; lieut. Anderson, Judge Advocate.

The court proceeded in the case of captain Treat, 21st infantry.

Major BIDDLE, *of the corps of Artillery*, duly sworn, says: I was on the left flank of the camp, on the 5th July, 1814. The regulars of the army were formed in two lines; the left flank was formed *en potence*, the two lines met; I was stationed in the angle. There had been frequent firings in the course of that morning. At about the time alluded to in the charge, there was a firing much nearer the camp than any I had heard before; upon hearing the firing I called my men to the pieces. As I had them ready to fire, I looked towards the place the firing came from, and saw a party of men running into camp, and they jumped over a fence that was not very far from me. When I saw them jumping over the fence, and in this confusion, I hallowed out to them to halt. I

came towards them, and took hold of the first man I could lay hold of, and ordered the rest to form upon him. I formed them, and was told that there was a wounded man left where they had first been fired upon, by one of the guard. I think gen. Brown came up about this time; I am not certain whether at this time or afterwards; it was somewhere about the time. I ordered them to move forward, to pull down the fence, and advance to where the wounded man lay. I had the wounded man put in a blanket, and general Brown at that time ordered the officer who commanded the guard to resume his former station; to go to where he had been stationed. Gen. Brown appeared displeased at the conduct of the officer who commanded the guard. I stated to him that it would have been almost impossible for any officer who had been with the men to have halted them; but did not see any exertion of the officer to stop the guard. The guard I saw go into the woods, but the party of the enemy had retreated.

Q. By the Court.—Who was the officer that commanded the guard?

A. I presume it was capt. Treat, but did not at that time know him; at some period of the transaction capt. Treat said, that the reason of his retreating was his fear of being in the way of captain Biddle's artillery.

Q. By the Court.—While the guard was retreating in the confused manner you state—did you observe the officer of the guard at all?

A. I did not.

Q. By the Court.—Was the officer of the guard with those men halted by you near your pieces?

A. I cannot say ; but believe the whole of the guard was there ; I saw no officer until I had arrived at the fence ; I then saw an officer, who repeated my order to throw down the fence.

Q. *By the Court.*—Was the guard in a direct line between your artillery and the enemy, at the time of its breaking?

A. I believe it was.

Q. *By the Court.*—Was the officer of the guard with the guard at the time you took up the wounded man?

A. He was.

Q. *By the Court.*—Did the officer of the guard appear cool and collected at the time you observed him?

A. I do not recollect that I observed him ; I only heard him repeat the order, and make the apology to general Brown. So far as I observed him, I should say he was cool and collected.

Q. *By the Prisoner* —How far was your artillery from the guard when fired on?

A. I suppose about 220 yards from my artillery ; or probably 200.

Q. *By the Prisoner.*—Did I not halt and form a part of the men near the fence, and then form them on those you had halted, when I joined you near the fence ?

A. It might have been so, but I do not recollect it.

Q. *By the Court.*—Do you recollect whether the soldiers who took the wounded man back, were composed of the guard, or of your company ?

A. Of the guard.

The witness here further stated that he would, probably, have fired, had not the guard been in his way.

Q. *By the Court.*—Did you or any other person in your hearing, call out “Clear away for the artillery?”

A. I heard no person.

The court then adjourned until to-morrow, ten o'clock, A. M.

SATURDAY, MAY 6, 1815.

The court met pursuant to adjournment.

PRESENT.

Colonel M'Feeley, President; lieut. colonel Smith, major M'Ilhenny, major Crooker, capt. Boyle, capt. White, and captain Seymour, Members; lieutenant Anderson, Judge Advocate.

The evidence for the prosecution having closed,

Captain GILBERT, *late of the 23d infantry*, witness for the prisoner, says: On the morning of the 5th July, 1814, I was standing by a rail fence on the plains near Chippeway, U. C. about fifteen or twenty rods from the left flank of the camp, facing towards the camp; when captain Treat's picquet was fired on by a party of the enemy from the woods, the men broke and fell in the grass, and captain Treat immediately called to the men to rise and form, and the order was obeyed; when they were fired upon a second time; the guard broke, and I judge about one half of the guard from the left, rushed towards camp, in the direction of capt. Biddle's artillery; about the same time I had observed them making preparations, as I supposed, to fire from captain Biddle's artillery, and called to captain Treat to clear away his men and give the cannon a chance to

rake the woods, his men being directly between capt. Biddle and the enemy. I then left my situation, and went to turn out my own company; I afterwards saw captain Treat and captain Biddle returning with the men in the direction where they first were fired on.

Q. *By the Court.*—How far distant were you from the guard when it was first fired on by the enemy?

A. About five rods.

Q. *By the Court.*—Were you previously acquainted with captain Treat?

A. I was.

H. *By the Court.*—Did you distinctly observe capt. Treat attempting to rally the men?

A. I did; I knew it to be him.

Q. *By the Court.*—Did all of the guard retreat as far as major Biddle's artillery before they were rallied?

A. A part of the guard were halted, and a part came over the fence; what took place after I came away I know not; only that I heard a fire after I left them; and afterwards discovered them returning to the ground where they were first fired upon.

Q. *By the Court.*—Was capt. Treat cool and collected when the enemy fired upon his guard?

A. Before the first fire I did not see capt. Treat, but afterwards thought he was very cool and collected when rallying the men; the first time his words were, "rise and form."

Q. *By the Court.*—Was that portion of the guard, which broke and run away, the most distant from capt. Treat?

A. It was.

Q. *By the Prisoner.*—Do you think I used every

proper exertion to halt and form the men when the guard broke ?

A. The time was very short, but I thought captain Treat used every exertion in his power when I saw him.

Q. *By the Prisoner.*—After part of the guard broke away and retreated, did you not see me with a part of the men near the fence about the time you called out to “Clear away for the artillery ?”

A. The time I called out to clear away for the artillery, a part of the men were coming over the fence, and a part had been halted by capt. Treat before getting up to the fence.

Q. *By the Prisoner.*—How far do you suppose it was from where the guard was fired on to the woods ?

A. I suppose seventy or eighty rods ; I should say so from the balls being pretty well spent when they came into camp.

Lieut. LARNED, *21st Infantry*, witness for prisoner, sworn, says : On the last of June, previous to our crossing the Niagara, the duty devolving on commandants of companies was very arduous, caused by a multiplicity of it coming on at once, such as making out muster rolls, semi-annual muster rolls, monthly returns, and inspection returns, likewise drawing and delivering out clothing to the men ; and at this time capt. Treat (who commanded a company) was very lame, and in bad health, and had to perform all the duty himself, as his subaltern was under arrest and very sick.

On the night of the 2d July, we crossed the foot of the lake, from Buffalo to Erie ; on the morning of the 4th, capt. Treat and myself were ordered by gen.

Ripley, to recross the river to Buffalo, and collect the scattered soldiers of the second brigade, who were in the hospital and able to do duty, and also the baggage belonging to the officers of the same brigade. After collecting the men, to the number of forty or fifty, and supplying them with arms and accoutrements, and collecting the baggage, we re-crossed the river, and arrived at our camp opposite Black Rock, at the moment the second brigade were striking their tents, which was, as near as I can recollect, about 3 o'clock in the afternoon. We then marched down the Niagara, and arrived on the plains near gen. Scott's camp about 11 o'clock at night. A picquet guard was immediately detailed, and the men were taken mostly from a detachment of recruits marched on by captain Vose, and from a detachment of the 17th regiment, who, as I understood, were principally recruits also. Capt. Treat and myself were detailed with the guard, and while waiting for directions from the inspector general, the adjutant discovered a mistake in the detail as it respected myself, and I was relieved by licut. Morrow. Capt. Treat observed to the adjutant, that he was unfit to mount guard, as he was very lame and quite worn down with fatigue. The adjutant observed that he could be relieved as soon as the officer of the day should visit them, which would be in a short time. About 4 or 5 o'clock in the afternoon of the 5th July, when the battle commenced between gen. Scott and the enemy, the second brigade was paraded in the rear, and the 21st regiment was marched out to turn the right flank of the enemy and cut off his retreat.— Capt. Treat at this time having been suspended from

command, volunteered and went with his company and carried his musket.

Dr. EVERETT, *21st infantry*, witness for prisoner, sworn, says: Some time in the month of June last I called on captain Treat, at his request, who informed me, that the night preceding, while visiting the guards as officer of the day, he was thrown from his horse, and bruised in several places, especially on his leg: I attended him, and recollect he was very lame, and had a tumor formed on his leg, which unfitted him for duty for some time, and that it was against the opinion and advice of Dr. Allen and myself, that he performed the march from fort Erie to Chippeway, on the 4th July; that he called on me on the 5th ensuing, for advice relative to his lameness; and that I considered him unfit to perform military duty, in consequence of his leg, as well as that of his feet, which had become much swelled and inflamed by the march of the fourth.

The court adjourned until Monday, 10 o'clock, A. M.

MONDAY, MAY 8, 1815.

The court met pursuant to adjournment.

PRESENT.

Colonel M'Feeley, President; lieut. colonel Smith, major M'Ilhenny, major Crooker, capt. Boyce, capt. White, and captain Seymour, Members; lieutenant Anderson, Judge Advocate.

The evidence on both sides having closed, the prisoner made the defence in writing which is hereto annexed.

MR. PRESIDENT, AND

GENTLEMEN OF THE COURT,

Too long already, and too severely, has my character suffered from the prejudice of public opinion, excited by major general Brown's official report of the battle of Chippeway, and the unparalleled length of time I have been compelled to remain, under arrest, for me not to desire a termination to my injuries, by an impartial investigation before a qualified tribunal; and it is highly gratifying to my feelings, to come before such a court, composed of gentlemen whose experience in the field, and in courts of honor, render them competent judges, in cases of the highest importance.

The subject of the charge against me, originated in an event which could not have been foreseen, or prevented by me, or any officer, placed in a similar situation, and ought to be viewed rather as a misfortune than a fault. But my case is altogether without precedent. I have been arraigned before the public, and condemned without a trial, or even a hearing; denied the privilege of offering any thing in palliation of my alleged offence, or in proof of my innocence. This, gentlemen, is neither the law nor the liberty of our country.

The military laws of our country are sufficiently rigid for the punishment of the highest offence, "The rights of the soldier are but few, and these should be sedulously guarded." The Rules and Articles of War authorise courts of enquiry to be held, when demanded by the accused; and in some cases this is the last and *only* resort, to which an officer can appeal

in vindication of his honor : this right should not be denied him under any pretext whatever : but my request for an immediate enquiry was not complied with, at a time when I could have availed myself of the testimony of many highly respectable and important witnesses, some of whom have since fallen, while gloriously fighting for their country ; others are now at too great a distance for me to obtain their testimony or attendance before this court.

Mr. *President*—Many circumstances on the part of the prosecution having occurred to procrastinate my trial, my anxiety to bring it to a close, and the short time I have to arrange the testimony, will I hope be a sufficient apology, to a candid court, for the unprepared state in which I submit my defence. The statements of many of the witnesses being in substance the same, I will not occupy the time, nor weary the patience of the court with a recapitulation of evidence.

Gentlemen, it appears by the evidence adduced on the part of the prosecution, that late in the evening, near midnight, of the 4th of July last, on the arrival of the second brigade at its place of encampment, near the plains of Chippeway, a picquet guard of about forty men, who were chiefly recruits, and a patrol of ten more, were entrusted to my command, and ordered into the woods. Sergeant Holt, corporals Gale, Fellows, and Barton, all non-commissioned officers of the guard, and witnesses before you for the prosecution, have been particular in stating the manner in which the whole duty was performed, till seven or eight o'clock in the morning of the fifth, when I was ordered, by brigade major Clark, to march my guard into camp. They state to you that this was, also,

performed in the usual manner, and in good order, until the guard arrived within about fifteen or twenty rods of the left flank of the camp of the second brigade, commanded by general Ripley, where capt. Biddle's company of artillery was stationed.

They all agree in their several statements, that, when arrived at this point, the guard was fired on by a party of the enemy, concealed in the woods, about eighty rods distant; that, on the first fire of the enemy, most of the men kneeled, or lay down among the grass, which was very high; that, I immediately ordered them to rise and front the enemy; that, they did so when they received another fire, and that then the greater part of the guard retreated.

That immediately I ordered them to halt and form; that about half of the men *did* halt near a fence, and formed, fronting the enemy; and that I ordered them to make ready; that the other part of the guard, although frequently called after by me to halt, continued to retreat in disorder, until they were halted by capt. Biddle, near his artillery.

They distinctly state to you, that at the moment I had prepared that part of the guard that remained with me to fire on the enemy, as soon as he could be discovered in his covert, some person in the rear called to me—"Clear out for the artillery to rake the woods:" that I *then* ordered that part of the guard to fall back, and marched them up, and formed them on those previously halted by captain Biddle.

They all concur in stating that I used every possible exertion to halt and form the guard, frequently and repeatedly ordering those who fled to "halt and form," that I neither abandoned my guard nor position, until

I was noticed that the artillery were about to rake the woods ; that I then brought off that part of the guard which I had been enabled to influence and retain with me, *in good order* ; that during the whole time I appeared cool and collected.

It is amply proven, and stated in evidence, that the position which the guard occupied, was in a direct line between captain Biddle's artillery, and the enemy ; and you, gentlemen, can readily judge of the propriety of moving out of such a position, when you consider the short distance between me and the artillery, and the great distance between me and the enemy, and whether my motives were cowardly or discreet.

This, gentlemen, is the only transaction on that day that can give any color to, or furnish any grounds for the charge of which I am accused.

I will now call your attention to the other witnesses' evidence, and the concurrent circumstances of their testimony.

Captain Gilbert's testimony, confirms the statements of the non-commissioned officers, as far as it relates to my conduct, and that of the guard when fired on ; with the additional circumstance that it was *he himself* who called to me to clear away for the artillery, and that he was induced to do so in consequence of his observing the artillery apparently preparing to fire.

You will readily perceive that captain Gilbert's situation was peculiarly favorable to observe the transaction, as far as he professed to know any thing of it, being only about five rods distant.

Major (then captain) Biddle, as he stated to the court, previously to his giving his testimony, appears

to have but an imperfect recollection of the transaction; indeed, from his situation, he could not have observed much of that part of the affair on which, I presume, the charge is founded: as he stated to you, that it was only when he heard the firing, he first turned out and paraded his company, and then looked towards the woods in the direction of the enemy.

At that time he saw some men running in confusion over a fence towards camp, and that he was immediately employed in stopping and forming them; the only part of his testimony which directly relates to the charge against me is wholly negative:

“That *he did not see me* use any exertions to halt the guard,” and in fact did not *observe me at all*.

The reason is obvious: his attention was engrossed by his own command, and by the fugitives from mine.

He, however, states further, “That he thinks that he halted and formed the whole of my guard.”

You must, I think, be convinced that he is under a mistake, in this particular, since four witnesses, who bore a part in the transaction, distinctly state to you *the reverse*; and captain Gilbert, who was much better situated to see the whole transaction than major Biddle, has distinctly stated that I did halt a part of the guard near the fence, when he called to me to remove my guard, which was after the men had broke away whom captain Biddle halted.

Then what became of this party I had with me? the non-commissioned officers who were with this part of the guard by the fence, state, that after hearing a person call to me to remove, I marched and formed it on those previously halted by capt. Biddle.

Then, surely, captain Biddle could not have halted and formed *all my guard*; captain Gilbert states, that he knew me well previously, and is certain that I was with this party to whom he called to remove out of the way of the artillery.

Major Biddle also states, that he took command of the guard, and marched back, and took off the wounded man.

Major Biddle might have considered himself in command of the guard—but, *I did not*—nor did the non-commissioned officers, as they have expressly stated, consider him as commanding the guard, nor did they ever hear him give any orders or word of command, except, to pull away, or throw down, part of the fence which obstructed their march.

Major Biddle further states, that he observed to general Brown, and gave it as his opinion at the time, that no officer, situated as I was, could have halted the men; and that, had not the guard been in the direction of the enemy, he would probably have fired into the woods.

He states, that, so far as he *did* observe my conduct “it was cool and collected.”

I will now call your attention to another circumstance; the wounded man who was left on the field.

It was clearly proven to you that the grass was high; that a great part of the men kneeled or lay down on the grass during the first fire; that I was in the front or on the right of my guard marching by files, that the man who was wounded was in the rear, or left flank, that the four non-commissioned officers who have been before you, knew not that any man was wounded until the guard was formed near captain

Biddle's artillery; can it then be supposed that, employed as I was, in rallying, halting, and forming my men, the most of whom were recruits, who never had been in action, and had scattered and retired on the second fire of the enemy, could have known the circumstance? or if I *had*, was it my duty to neglect the guard, and remain by the wounded man?

The court will please to recollect that my guard was a return picquet, just arrived within fifteen or twenty rods of the army, which was flanked by artillery; that, the enemy was in the woods, eighty rods distant; and that the enemy was so close that the balls reached the encampment.

Under these circumstances, I conceive that, had my guard not broken, it would not have been my duty to advance upon the enemy without particular orders; and strictly speaking, it would be more than could be required of me to halt at all; it would literally have been obeying my orders to have retired, or marched immediately to camp—but, the feelings of a soldier predominated.

The court will please to recollect that instead of general Brown's "immediately, and on the spot, ordering me to retire from the army," he ordered me with my guard, to march into the woods in pursuit of the enemy: you have also proof of the prompt manner in which that order was executed.

Lieutenant Larned states to you the duty I had performed the day before; as also that on that day, after being deprived of my command, I volunteered my services with a musket, and went out with my regiment, when it was ordered to flank the enemy at Chippeway.

Dr. Everett states to you, that I was unfit for duty, in consequence of lameness, and that it was contrary to his advice, that I marched on the 4th from Erie to Chippeway.

From all these circumstances, and a review of my whole conduct during that day, the court can judge whether I manifested any disposition to avoid duty, or shrink from danger.

The court will please to recollect the information given by the judge advocate, "that the testimony given by sergeant Holt, corporals Gale, Fellows, and Barton, *would have been corroborated by the evidences of all the soldiers of the guard present, if it had been thought necessary to have adduced them.*"

Respecting testimony, I have one circumstance to regret, which is, that

General Brown and colonel Gardiner, witnesses for the prosecution, although duly notified, DID NOT ATTEND.

Mr. President, and Gentlemen—I believe that I have recapitulated every part of the testimony, both for and against the prosecution, that could have any possible bearing; although, I think, that no part of the charge or specification is proven, but on the contrary, that *the whole is fully and clearly disproved.* I will, with the permission of the court, make a brief recapitulation of the testimony, and a relation of facts and incidents which may give the court (if possible) a clearer view of the case.

It has been stated in the course of the testimony, that, at the time I took command of the guard, I was lame, and worn down by fatigue; that, although unfit

for duty, I promptly performed it, so far as was in my power:

That, without being shewn where to post my guard, I found it out at midnight, took the proper station, and kept it in good order during the night; that after being ordered, it was marching into camp in good order, when fired on by the enemy; and that when the guard broke, I used every endeavor to halt, rally, and form my men; that, after rallying and forming with the assistance of captain Biddle, I marched my guard on to the field, and ordered the wounded man to be carried to camp; then, by order of general Brown, I marched into the woods in pursuit of the enemy, as far as was prudent or necessary.

That, after returning to camp in good order, I was suspended from command; and on the same day, when the 21st regiment was ordered out to the battle of Chippeway, I went with my company as a volunteer.

Gentlemen, such are the facts on which my prosecutor founds the charge of "Cowardice."

Were it expedient, I could produce from the officers* with whom I had the honor to serve, the most satisfactory evidence of my good conduct, from the day of my appointment in the army, until the fifth of July; and to prove the correctness of my conduct on *that day*, I want no other evidence than the facts now before the court.

Whatever the motives may have been, which induced my prosecutor to adopt the unprecedented mode he has pursued in my case, it does not render the effect any less severe or afflicting to the *sensibilities of a soldier*.

* See Appendix, No. III, IV, and V.

Whether his conduct towards me has been just, or military—or the reverse, it would not here become me to determine: that rests with you; but in order to give a full view of the subject, however painful it may be to my feelings, I must refer to general Brown's official report of the battle of Chippeway, and his general order of the 5th of July.*

For the publication of these extraordinary documents, there could be no other authority or foundation than barely a "suspicion of cowardice," as there had been neither enquiry nor evidence to ascertain the fact; and the only effect it could have, was to wound the feelings of one, whom neither the tongue of slander, nor the finger of malignity could have attainted, nor attached to his character the palest hue of dishonor.

Can there not be made an official report of a battle without sacrificing some devoted victim on the altar of ambition?

Gentlemen, I must leave it to your own feelings to conceive my situation—for I cannot describe it, nor the emotions that rend my heart; being deprived of my command, driven from my regiment, and separated from my companions in arms, to whom I was bound by the strongest ties of friendship, which naturally exist in the hearts of those who have together borne the toils and privations incident to the life of a soldier.

Nothing could have supported me under this load of misfortune, but a consciousness of my own innocence, and a hope that the majesty of truth would

* See Appendix No. I, II.

soon prevail, and dispel the cloud by which I was enveloped.

Mr. President, and Gentlemen of the court—The candid and patient investigation of the testimony, the fair and impartial manner in which the court has conducted my trial, demand my most sincere acknowledgements, and will ever be remembered with the most grateful emotions.

Gentlemen, you are my judges: to your charge I entrust my life; and what is infinitely more dear to me, my honor; I deposit it in honorable hands—your decision will be just.

If you find me guilty, let my punishment be equal to the offence; if innocent, you will acquit me with honor.

JOSEPH TREAT,

Captain 21st Infantry.

Sackett's Harbour, 8th May, 1815.

The court having heard the evidence and the defence of the prisoner, as above, directed the room to be cleared, and proceeded to pronounce sentence.

After mature deliberation on the testimony adduced, the court find the accused, captain **JOSEPH TREAT**, of the 21st infantry, *not guilty* of the charge or specification preferred against him—and **DO HONORABLY ACQUIT HIM.**

The above is a true copy from the original.

WM. ANDERSON, Junr.

Lieut. 13th Inf. and Judge Advocate.

APPROVAL OF THE SENTENCE OF THE COURT.

COPY

Of the sentence of a General Court Martial, and approval of the same by major general Brown, in the case of capt. Joseph Treat, of the 21st infantry.

ADJUTANT GENERAL'S OFFICE,
Sackett's Harbor, 3d July, 1815.

After mature deliberation, the court find the accused, captain Joseph Treat, of the 21st regiment, *not guilty* of the charge or specification preferred against him, and *do honorably acquit him*.

Taking into consideration all the circumstances relating to capt. Treat's case, major general Brown believes it to be his duty to approve the sentence of the court. But he embraces this opportunity to say, that he has never seen an instance of American soldiers, such as capt. Treat's command, abandoning their officers in the face of an enemy. This is not the character of the soldiers our country breeds. So far as the experience of the major general goes, they have ever stood by their officers, so long as their officers were disposed to stand by their *colors* or *their honor*.

It would appear, however, from the testimony before the court, that the men composing the picquet guard, commanded by capt. Treat, on the morning of the 5th July, 1814, were an exception to the general rule, and therefore he is honorably acquitted.

I certify that the above is a correct copy of the original, handed into this office.

BENJ. F. LARNED

Acting Assist. Adj. General.

APPENDIX.

No. I.

The following is a copy of the order alluded to in the defence.

“ GENERAL ORDERS.

Adjutant General's Office,
Chippeway, July 5, 1814.

“ A transaction degrading to the command, occurred under the major general's eye this morning.

“ Captain Treat's attempts to excuse himself, in that his detachment was a return picquet, makes the thing worse.

“ Captain Treat shall no longer serve in the 21st regiment; nor in this division, during the campaign,

“ By order of major general Brown.

(Signed)

“ C. K. GARDNER,
“ Adjutant General.”

True Copy.

(Signed)

JNO. W. HOLDING,
Lieut. and Adj. 21st Infantry.

No. II.

Extracts from General Brown's Official Report of the Battle of Chippeway, dated 7th July, 1814, referred to in the Defence.

“ Early on the morning of the 5th (July) the enemy commenced a petty war upon our picquets, and as he was indulged, his presumption increased; by noon he showed himself on the left of our exterior line, and

attacked one of our picquets as it was returning to camp.

“ Captain Treat, who commanded it, retired disgracefully, leaving a wounded man on the ground. Captain Biddle, of the artillery, impelled by feelings highly honorable to him as a soldier and officer, promptly assumed the command of this picquet, led it back to the wounded man, and brought him off the field.

“ I ordered captain Treat, on the spot, to retire from the army, and as I am anxious that no officer shall serve under my command, who can be suspected of cowardice, I advise that captain Treat and lieutenant ——,* who was also with the picquet, be struck from the rolls of the army.”

No. III.

Sackett's Harbor, July 6, 1815.

We, the undersigned, officers of the late 21st regiment U. S. infantry, having served during the late war, with captain Joseph Treat, of the same regiment, bear testimony to the correctness of his conduct as an officer; to the uniformity of his deportment as a gentleman, and to his firmness and courage on every occasion in which he has met the enemy.

JOSIAH H. VOSE,

Late Major 21st Infantry.

SULLIVAN BURBANK,

Brevet Major 21st Infantry.

P. PELHAM,

Captain 21st Infantry.

BENJ. F. LARNED,

Brevet Captain 21st Infantry.

JOHN W. HOLDING,

Brevet Captain 21st Infantry.

* The copy is exact, the name of lieutenant *Morrow*, was omitted; but he had a brother, *member of congress*; nevertheless, the conduct of the lieutenant was beyond reproach or suspicion.

No. IV.

Portsmouth, N. H. Aug. 25, 1815.

SIR—I have received and read the report of your trial before a general court martial, on the charges which appeared against you in general Brown's official account of the battle of Chippeway. Having witnessed your gallant conduct at Chrystler's Field, but a few months before; and having always considered you as an attentive and vigilant officer, nothing could have surprised me more than the exhibition of such charges against you. I am happy to find they were without foundation. The result of this long sought for investigation is no less gratifying to your brother officers than it is honorable to yourself.

Accept, sir, the assurance of
my respect and esteem,

T. UPHAM,
Lt. Col. late 21st Reg.

Capt. JOSEPH TREAT, Boston.

 No. V.

Sackett's Harbor, July 8, 1815.

To Captain Treat of the late 21st Regiment of Infantry.

SIR—We, the undersigned officers of the late 13th regiment of infantry, who have been stationed at Sackett's Harbor, cannot submit to a separation from you, without tendering you a memorial of their sense of the propriety of your conduct, while enduring a protracted arrest, rendered peculiarly aggravating by the nature of the charge preferred against you; and we also proffer you our sincere congratulations on your receiving an honorable acquittal, rendered more

grateful to your feelings, by the procrastination of the approval of the proceedings of the court martial before which you were tried.

We admire your patient endurance of a situation calculated to generate obloquy, and shall ever deem you a man of suffering merit.

Respectfully yours, &c.

ROBT. SMITH GARDINER,

Captain late 13th Infantry.

W. ADAMS,

Captain late 13th Infantry.

THO. W. DENTON,

Lieutenant late 13th Infantry.

CHARLES HARRISON,

Lieutenant late 13th Infantry.

G. HELMBOLD,

Lieutenant late 13th Infantry.

REUBEN HUMPHREY,

Lieutenant late 13th Infantry.

E. C. CLARK,

Lieutenant late 13th Infantry.

H. H. MINTON,

Lieutenant late 13th Infantry.

FRANCIS T. HELM,

Lieutenant late 13th Infantry.

CHAS. F. IRWIN,

Lieutenant late 13th Infantry.

NO. VI.

Sackett's Harbor, 8th July, 1815.

DEAR SIR—The undersigned having understood that you are about to depart from this vicinity, avail themselves of the present opportunity of paying the tribute of justice, by proffering to you this written testimonial of their friendship and respect.

Your military and personal merit, as communicated to us by officers who had been associated in command

with you, on the western frontier, made a favorable impression on us ere we had the pleasure of a personal acquaintance with you. The predilection excited by such representations, on your becoming personally and particularly known to us, soon ripened into the most cordial esteem.

We have viewed with unceasing admiration your calm and manly fortitude, and resignation, manifested in situations the most trying to the feelings of an officer and a gentleman. We have seen you triumph over a combination of circumstances, peculiar, imposing, and formidable in the last degree.

We tender you our hearty congratulations on the final result of your recent military trial, so highly honorable to yourself, so gratifying to your friends and acquaintances. Into whatever part of the world fortune may hereafter lead you, you will bear with you our grateful recollections for the past, and our ardent wishes for your future peace, prosperity, and happiness.

We are, sir, with esteem and respect,

Your most obedient servants,

N. FOSDICK.

WILLIAM VAUGHAN.

JAMES BROOKS.

AMOS HOLTON.

W. GREEN.

F. P. MARKHAM.

WM. KING.

J. TOWNSEND.

The above are among the most respectable gentlemen of the neighborhood in which they live.

