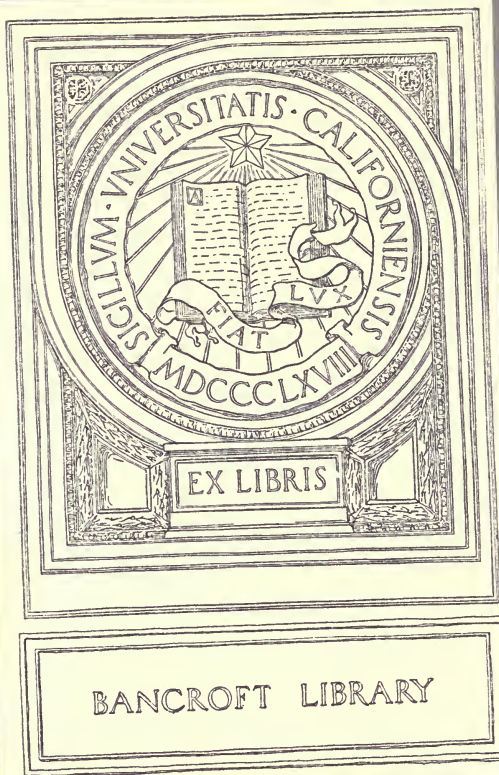


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No. 6403



Devlin, John S., ed.

THE
MARINE CORPS IN MEXICO;

SETTING FORTH ITS CONDUCT AS

ESTABLISHED BY TESTIMONY

BEFORE

A GENERAL COURT MARTIAL,

CONVENED AT

BROOKLYN, N. Y., SEPTEMBER, 1852,

FOR THE TRIAL OF

FIRST LIEUT. JOHN S. DEVLIN,

OF THE U. S. MARINE CORPS.



WASHINGTON:
PRINTED BY LEMUEL TOWERS.
1852.

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RECORD.

NAVY DEPARTMENT, *August 10, 1852.*

By virtue of the authority contained in the act of Congress, approved the 23d of April, A. D., 1800, for the better government of the Navy of the United States, a Marine General Court Martial is hereby ordered to convene at the Marine Barracks, Brooklyn, on Tuesday the 24th day of August, A. D., 1852, or as soon thereafter as practicable, for the trial of 2d Lieutenant J. H. Strickland, and for such other persons as may be legally brought before it.

The Court is to be composed of the following named officers—any five of whom are empowered to act, viz :

Capt. ABRAHAM N. BREVOORT,	U. S. Marine Corps.
“ HENRY B. TYLER,	“
“ and Bvt. Maj. GEO. H. TERRETT,	“
“ “ ARCH. H. GILLISPIE,	“
1st Lieut. BEN. E. BROOKE,	“
“ and Bvt. Capt. WM. A. T. MADDOX,	“
“ “ ROBERT TANSILL,	“
1st Lieut. JOHN C. GRAYSON,	“
2d Lieut. ISRAEL GREEN,	“
Supernumerary—AUG. S. NICHOLSON.	Members.
HENRY WINTER DAVIS, Esq., Judge Advocate.	

JOHN P. KENNEDY,
Secretary of the Navy.

Capt. A. N. BREVOORT,
U. S. Marine Corps, Portsmouth, N. H.

NAVY DEPARTMENT, *August 12, 1852.*

SIR: Brevet Captain Tansill has been relieved from duty as a member of the General Court Martial ordered to convene at Brooklyn on the 24th inst., and Captain J. L. C. Hardy has been appointed a member in his stead.

I am, respectfully, your obedient servant,
JOHN P. KENNEDY.

Capt. A. N. BREVOORT,
U. S. Marine Corps, Portsmouth, N. H.

NAVY DEPARTMENT, *August 13, 1852.*

SIR: Second Lieutenant Israel Green has been relieved from duty as a member of the General Court Martial ordered to con-

vene at Brooklyn on the 24th inst., and 1st Lieutenant Jabez C. Rich has been appointed a member in his stead.

I am, respectfully, your obedient servant,
JOHN P. KENNEDY.

Capt. A. N. BREVOORT,
U. S. Marine Corps, Portsmouth, N. H.

NAVY YARD, *August 26, 1852.*

SIR: The Marine General Court Martial of which you are the presiding officer, is, in compliance with its request, communicated through the Judge Advocate, hereby authorized to hold its future sittings at the Navy Yard, New York.

I am, respectfully, your obedient servant,
JOHN P. KENNEDY.

Capt. A. N. BREVOORT,
U. S. Marine Corps, New York.

NAVY YARD, BROOKLYN, *August 31, 1852.*

And the Court having thus closed the trial of the said Lieut. J. H. Strickland, and the Judge Advocate having produced to the Court charges and specifications preferred by the Secretary of the Navy against 1st Lieutenant J. S. Devlin, of the U. S. Marine Corps, who is under arrest by order of the Secretary of the Navy, and ordered for trial, and has reported himself to the Judge Advocate to await the orders of the Court in that behalf.

The Court now proceeds to organize itself for that purpose.

The Court convened in pursuance of the hereinbefore recited precept and orders of the Secretary of the Navy. Present, the following members, comprising the Court, that is to say:

Capt. A. N. Brevoort, U. S. Marine Corps, Henry B. Tyler, J. L. C. Hardy; Capt. and Bvt. Majors George H. Terrett, Arch. H. Gillispie; 1st Lieuts. Ben. E. Brooke, Jabez C. Rich; 1st Lieut. and Bvt. Capt. Wm. A. T. Maddox; 1st Lieut. J. C. Grayson, and Bvt. 1st Lieut. Aug. S. Nicholson; Supernumerary, and Henry Winter Davis, Judge Advocate, and 1st Lieut. John S. Devlin, the accused.

And thereupon the Judge Advocate proceeded to read the precept by virtue whereof the Court is convened, as recorded at page 1. And the Judge Advocate also read the letters from the Secretary of the Navy, dated 12th, 13th, and 26th August, 1852, as given at the beginning of this record, assigning Captain J. L. C. Hardy and 1st Lieutenant Jabez C. Rich, for duty as members of this Court, instead of Brevet Captain Tansill and 2d Lieutenant Israel Green, relieved, and authorizing the Court to hold its future sittings at the Navy Yard, New York.

And thereupon the accused, John S. Devlin, Lieutenant of the Marine Corps, being called, appears in open Court, and the Judge

Advocate, demands of the accused, 1st Lieutenant J. S. Devlin, whether he has any exception or cause of challenge to make or allege against the said Court, or any member or members thereof, who are now about to be sworn for trial of certain charges and specifications of charges preferred by the Secretary of the Navy against him; the said 1st Lieutenant J. S. Devlin.

Whereupon the said 1st Lieutenant J. S. Devlin, makes the following application to the Court, in writing, which is in the following words, viz :

"UNITED STATES OF AMERICA against JOHN S. DEVLIN, upon charges and specifications preferred against him by the Hon. the Secretary of the Navy of the United States :

*"To the honorable the Court Martial assembled
at the U. S. Navy Yard, Brooklyn :*

"The undersigned respectfully petitions the Court as follows : That he desires to appear by counsel to aid and assist him in his defence, and to cross-examine the witnesses introduced on the part of the Government, and hereby nominate as such my counsel, Nat. F. Warring, Esq., counsellor-at-law of the city of Brooklyn ; and prays the Court to enter an order or direction to that effect.

JOHN S. DEVLIN."

BROOKLYN, *August 31, 1852.*

The original whereof is annexed, marked No. 1. And thereupon the Court orders that Lieutenant J. S. Devlin, have the aid of the counsel selected by him, subject to the usual restrictions in Courts Martial.

And thereupon the said J. S. Devlin makes the objections to the Court in writing—following which are in the following words, viz :

The original being marked No. 2.

The accused before the Court have been sworn, having been called on by the Judge Advocate to say if he challenges any member of the Court, makes the following objections to the Court :

"*First.* That the following persons are incompetent to act as members of the Court: R. Tansill, John Grayson, Israel Green, and Aug. S. Nicholson, each and every one of them being inferior in rank to the accused, and incompetent to act as judges.

"*Second.* That the order convening the Court is for the trial of Lieutenant J. H. Strickland, and such other persons as may be legally brought before them. The accused cannot be tried by the Court now assembled, until it first appear that he has been legally brought before the Court.

"If not legally brought before the Court, there is no jurisdiction to try, and this must affirmatively appear before the Court can proceed.

JOHN S. DEVLIN."

And thereupon the Court is cleared for deliberation upon the objections so propounded. And the Court being opened, the opinion is announced as follows: That 1st Lieutenant and Brevet Captain Tansill and 2d Lieutenant Green, having been relieved from sitting on the Court, the objection is frivolous, and though 1st Lieutenant Grayson and brevet 1st Lieutenant Nicholson, be inferior in rank to the accused, yet the 35th article for the government of the Navy, authorizes one half of the members of a General Court Martial to be inferior to the accused, and the objections aforesaid to those members is therefore disallowed.

And as to the second objection touching the jurisdiction of the Court to try the said 1st Lieutenant J. S. Devlin, it appears to this Court that the said J. S. Devlin has been formally arrested by order of the Secretary of the Navy, he having formally reported himself to the Judge Advocate as awaiting his trial, and has this day appeared in open Court, and the Court has received charges and specifications of charges, prepared by the Secretary of the Navy, whereon the Court is ordered to try the said Lieutenant J. S. Devlin, as appears from such order hereto annexed, marked No. 10, and such charges and specifications are their sufficient authority to proceed with the trial of the accused, it is therefore ordered that the said objection be not allowed. And thereupon the accused challenges Brevet Major Geo. H. Terrett, as a member of this Court, and assigns as principal cause of challenge, that he is a material witness necessary for the accused on the trial of the charges and specifications against him.

And the Court being cleared for deliberation, and having deliberated, and being opened, and the accused and his council being present, the opinion is announced as follows: That the fact that the accused may desire to examine a member of the Court as a witness, though material and necessary, is no ground of challenge, and the objection is therefore disallowed. And thereupon the accused further says that he challenges the authority of the Court to proceed further with this cause, because while the Court was closed for deliberation, and in the absence of the accused, the Judge Advocate called into the court room two persons, Lieutenant Colonel Wm. Dulany and 1st Lieutenant Isaac T. Dougherty, for the purpose of making inquiry of them.

But the Court is of opinion that the objection is unfounded and disallows the same. The said Court being of opinion that the Judge Advocate may consult with his own witnesses or any other person, without the presence of the accused, without at all impairing the organization of this Court, and the said persons not having been called on to give any testimony before the Court, but having been called by the Judge Advocate alone for private conversation.

And thereupon the accused declares that he challenges 1st Lieutenant Jabez C. Rich as a member of this Court, on the same ground on which he above challenged Captain Terrett, and also on other grounds, which he desires time to prepare and state.

And prior to the offering of this challenge, the said 1st Lieutenant Jabez C. Rich having stated to the Court that he had formerly been so connected with some of the matters about to be investigated, under the charges and specifications in this case, that he was unwilling to act and sit as a member of the Court, and prayed that he might be permitted to withdraw from the said Court during this cause.

The Court is cleared for consideration of the matters aforesaid, the accused having in open Court stated that he consents to the withdrawal of Lieutenant Rich if the Court see fit to allow it on his application, and the Court having heard the further declarations of the said Lieutenant J. C. Rich, that from his previous connexion with the transactions, he feared to trust himself in the trial of the charges, and having deliberated on the matter, and the Court being opened, and the accused and his counsel being present, the opinion of the Court is announced as follows: That not making any decision on the challenge of the accused, the Court allows the withdrawal of the said Lieutenant Jabez C. Rich on his application.

And thereupon Brevet Lieutenant Aug. S. Nicholson sits as a member of this Court.

And thereupon the accused challenges Lieutenant Aug. S. Nicholson on the ground that his feelings are hostile to the accused, they having been on unfriendly terms for three years, and said Lieutenant Nicholson having formed and expressed an opinion on some of the charges and specifications to be tried, and this exception accused offers to support by witnesses.

Thereupon the said Lieutenant Aug. S. Nicholson rose and stated to the Court, that he has not at any time expressed any opinion on any of the charges or specifications to be tried in this cause; and he further states that while it is true, that he and the accused have not spoken for two or three years, yet that no quarrel has taken place between them, and that he entertains no hostile or unfriendly feelings against the accused, but feels able fully and impartially to try the charges preferred against him, and thereupon the accused declares himself satisfied, and withdraws the challenge aforesaid.

And thereupon, there being no further objection, the Judge Advocate proceeds to administer to the President of the Court, and to each member of the Court, the oath prescribed by the 36th article of the rules and regulations for the government of the Navy of the United States, as set forth in the act of Congress of 23d April, 1800. Which oath is duly taken by all and each of the said Court, as therein directed to be administered to them.

And thereupon the President of the Court administered to the Judge Advocate the oath prescribed by the 36th article of the rules and regulations aforesaid for the Judge Advocate. Which oath the Judge Advocate formally and duly took as prescribed by the said act of Congress, 23d April, 1800.

And thereupon the Court being duly organized, adjourned until to-morrow morning, 10 o'clock.

NANY YARD, BROOKLYN, NEW YORK,
September, 1 1852, 11 o'clock.

The Court met pursuant to adjournment. Present: the President of the Court, the members of the Court as sworn on the 31st August, 1852, the Judge advocate, the accused Lieutenant John S. Devlin and his counsel.

The proceedings of the Court of yesterday are read and approved.

And thereupon the Judge Advocate calls on the said 1st Lieutenant John S. Devlin, the accused, to listen to the reading of the charges and specifications of charges preferred against him by the Secretary of the Navy, and the same are read by the Judge Advocate in his presence as follows, viz:

No. 17.

Charges, and specifications of charges, prepared by the Secretary of the Navy, against First Lieutenant John S. Devlin, of the United States Marine Corps.

CHARGE I.

Treating with contempt his superior officers.

Specification.

In this, that the said John S. Devlin, First Lieutenant in the United States Marine Corps, did write and prepare for publication, and did publish or cause to be published, in a newspaper called "The Brooklyn Daily Eagle," published in the City of Brooklyn, in the State of New York, on or about the twelfth day of July, eighteen hundred and fifty-two, a certain written communication, in a certain part of which written article or communication were contained certain disrespectful and contemptuous matters of the tenor and effect following—that is to say:

"Marine Soldiers."

"MR. EDITOR: A detachment of fine looking marine soldiers left this city to-day for Norfolk, by the Steamer Roanoke, intended for the guard of the Sloop St. Louis, about to join the Mediterranean Squadron. The detachment was under the command of that old and faithful officer, Lieutenant Devlin—I wish I could say *Major*, as he has earned that title by bravery in much greater degree than ^many officers who received it. But it is well known that flattery and the favor of the 'stay-at-home drones of headquarters,' are much more available than bravery in procuring promotion in the marine corps."

Which said part of said publication does reflect injuriously upon, and is contemptuous and disrespectful towards, the President of the United States, the Secretary of the Navy at the date of

the publication thereof, and Colonel and Brevet Brigadier General Archibald Henderson, Commandant of the United States Marine Corps, and tends directly to destroy the respect of the officers of the United States Marine Corps for those officers, and to bring them into hatred and contempt, to the great injury of the discipline of the said corps.

CHARGE II.

The using of provoking and reproachful words respecting other persons of the marine corps of the United States.

Specification 1.

In this, that the said First Lieutenant John S. Devlin, of the United States Marine Corps, did write or prepare for publication, and publish or procure to be published, in a certain newspaper called "The Brooklyn Daily Eagle," published in the City of Brooklyn, in the State of New York, on or about the twelfth day of July, eighteen hundred and fifty-two, a certain written communication, in a certain part whereof, were contained certain provoking and reproachful words respecting other persons of the marine corps of the United States, to the tenor and effect following—that is to say:

"Marine Soldiers."

"MR. EDITOR: A detachment of fine looking marine soldiers left this city to-day for Norfolk, by the Steamer Roanoke, intended for the guard of the Sloop St. Louis, about to join the Mediterranean Squadron. The detachment was under the command of that old and faithful officer, Lieutenant Devlin—I wish I could say *Major*, as he has earned that title by bravery, in much greater degree than many officers who received it. But it is well known that flattery and the favor of the 'stay-at-home drones of headquarters,' are much more available than bravery in procuring promotion in the Marine Corps."

Which words were and are provoking and reproachful towards the officers at the date thereof stationed at headquarters, to wit: Colonel and Brevet Brigadier General Archibald Henderson, Commandant of the Marine Corps; Major Parke G. Howle, Adjutant and Inspector of the United States Marine Corps, and Major Augustus A. Nicholson, Quartermaster of the United States Marine Corps.

Specification 2.

In this, that the said First Lieutenant John S. Devlin, of the United States Marine Corps, did write for publication, and publish or cause to be published, in a newspaper called "The Brooklyn Daily Eagle," published in the City of Brooklyn, in the State

of New York, on or about the twelfth day of July, eighteen hundred and fifty-two, a certain written communication in a certain part whereof, were contained certain provoking and reproachful words of the tenor and effect following—that is to say :

“The writer of this article saw the bravery of Lieutenant Devlin put to the test at the storming of Chapultepec, and well did it stand the trial. While other officers halted under fire of the enemy, and sat *flat on the ground*, under cover of an embankment topped with Maguay bushes, he waved his sword that was presented to him by his friends of Brooklyn, and told the marines to follow him, and he would lead them. Many of them did bravely follow his example and were wounded or killed ; he himself received a shot through his chin, the scar of which he will bear to the grave. To his credit, be it said, that while another marine officer who had command of a storming party, singularly escaped without a scratch, he, Lieutenant Devlin, who was quartermaster on that occasion, and had to crave permission to leave his wagon train and enter the fight as a volunteer, gained the distinguished credit of being the only *marine officer whose blood flowed* for his country in the valley of Mexico, except the dauntless Major Twiggs, who was killed at the head of his command.”

Which said words refer to the conduct of Captain and Brevet Major John G. Reynolds, of the United States Marine Corps, who commanded the storming party in the said communication mentioned, at the castle of Chapultepec in Mexico, in September, eighteen hundred and forty-seven, and refer likewise to the conduct of the other officers and marines of the United States Marine Corps engaged in the said attack ; and contain false and slanderous imputations of failure or backwardness in the performance of duty on that occasion, calculated to lead to breaches of the peace on the part of the said officers and marines, so reproachfully and provokingly spoken of.

CHARGE III.

Being guilty of conduct unbecoming an officer and a gentleman.

Specification.

In this, that the said First Lieutenant John S. Devlin, of the United States Marine Corps, did write and prepare for publication, and did publish or cause to be published, in a certain newspaper called “The Brooklyn Daily Eagle,” published in the City of Brooklyn, in the State of New York, on or about the twelfth day of July, eighteen hundred and fifty-two, a certain written communication of the tenor and effect following—that is to say :

“Marine Soldiers.”

“MR. EDITOR : A detachment of fine looking marine soldiers left this city to-day for Norfolk by the Steamer Roanoke, intended for

the guard of the Sloop St. Louis, about to join the Mediterranean Squadron. The detachment was under the command of that old and faithful officer, Lieut. Devlin—I wish I could say *Major*, as he has earned that title by bravery in a much greater degree than many officers who received it. But it is well known that flattery and the favor of the ‘stay-at-home drones of headquarters,’ are much more available than bravery in procuring promotion in the marine corps. The writer of this article saw the bravery of Lieutenant Devlin put to the test at the storming of Chapultepec, and well did it stand the trial. While other officers halted under the fire of the enemy and sat *flat on the ground*, under cover of an embankment topped with Maguay bushes, he waved his sword that was presented to him by his friends of Brooklyn, and told the marines to follow, and he would lead them. Many of them did bravely follow his example, and were wounded or killed; he himself received a shot through his chin, the scar of which he will bear to the grave. To his credit, be it said, that while another marine officer who had command of a storming party singularly escaped without a scratch, he, Lieutenant Devlin, who was quartermaster on that occasion, and had to crave permission to leave his wagon-train to enter the fight as a volunteer, gained the distinguished credit of being the only *marine officer whose blood flowed* for his country in the valley of Mexico, except the dauntless Major Twiggs, who was killed at the head of his command. As an adopted citizen, I feel a pride in bearing this testimony to the bravery of Lieutenant Devlin in Mexico, and although not personally acquainted with that officer, I am well acquainted with the facts, and stand prepared to substantiate them.

“AN OBSERVER.”

Which said communication was, on or about the tenth day of July, eighteen hundred and fifty-two, handed by the said First Lieutenant, John S. Devlin, or by his directions, to James McGann, a Sergeant in the United States Marine Corps stationed at the Marine Barracks, Brooklyn, with the request of the said First Lieutenant, John S. Devlin, that he, the said James McGann, would copy or cause to be copied the said written communication, and that the copy so made should be published in the said newspaper called “The Brooklyn Daily Eagle;” and the said James McGann did so copy or cause to be copied, and did so convey or cause to be conveyed to the office of the said newspaper, the said written communication; and the said written article or communication does falsely and maliciously misstate and misrepresent the operations and conduct of the officers and soldiers of the marine corps engaged in the storming of Chapultepec, in the said article mentioned; and does falsely and maliciously impute backwardness and dereliction in duty to the said Captain and Brevet Major, John G. Reynolds, the marine officer who had command of the storming party in the said article mentioned: and

does falsely and maliciously impute cowardice and dereliction of duty to the officers commanding the marine soldiers, engaged in storming Chapultepec, who, it states, halted under fire of the enemy, and sat flat on the ground under cover of an embankment topped with Maguay bushes, while said article falsely lauds and magnifies the conduct and exploits of the writer thereof, the said First Lieutenant, John S. Devlin; and falsely states the writer thereof to be not personally acquainted with the said First Lieutenant, John S. Devlin; and the said First Lieutenant, John S. Devlin, did procure the said James McGann to copy and convey for publication said article reflecting on the conduct of his superiors in rank, all which acts were unbecoming an officer and a gentleman.

CHARGE IV.

The being guilty of scandalous conduct tending to the destruction of good morals.

Specification.

In this, that the said First Lieutenant, John S. Devlin, of the United States Marine Corps, did write and prepare for publication, and did publish or cause to be published, in a certain newspaper called "The Brooklyn Daily Eagle," published in the city of Brooklyn, in the State of New York, on or about the twelfth day of July, eighteen hundred and fifty-two, a certain written communication of the tenor and effect following—that is to say:

"Marine Soldiers."

"MR. EDITOR: A detachment of fine looking marine soldiers left this city to-day for Norfolk by the Steamer Roanoke, intended for the guard of the Sloop St. Louis, about to join the Mediterranean Squadron. The detachment was under the command of that old and faithful officer, Lieutenant Devlin—I wish I could say *Major*, as he has earned that title by bravery in much greater degree than many officers who received it. But it is well known that flattery and the favor of the 'stay-at-home drones of headquarters,' are much more available than bravery in procuring promotion in the marine corps. The writer of this article saw the bravery of Lieutenant Devlin put to the test at the storming of Chapultepec, and well did it stand the trial. While other officers halted under fire of the enemy, and sat *flat on the ground*, under cover of an embankment topped with Maguay bushes, he waved his sword that was presented to him by his friends of Brooklyn, and told the marines to follow him, and he would lead them. Many of them did bravely follow his example, and were wounded or killed, he himself received a shot through his chin, the scar of which he will bear to the grave. To his credit be it said, that while another marine officer who had command of a storming party singularly escaped without a scratch, he, Lieuten-

ant Devlin, who was quartermaster on that occasion, and had to crave permission to leave his wagon train to enter the fight as a volunteer, gained the distinguished credit of being the only *marine officer whose blood flowed* for his country in the valley of Mexico, except the dauntless Major Twiggs, who was killed at the head of his command. As an adopted citizen, I feel a pride in bearing this testimony to the bravery of Lieutenant Devlin in Mexico, and although not personally acquainted with that officer, I am well acquainted with the facts, and stand prepared to substantiate them, if required."

"AN OBSERVER."

Which said communication was, on or about the tenth day of July, eighteen hundred and fifty-two, by the said First Lieutenant, John S. Devlin, or by his directions to James McGann, a Sergeant in the United States Marine Corps stationed at the Marine Barracks, Brooklyn, with the request of the said First Lieutenant John S. Devlin, that the said James McGann would copy or cause to be copied the said written communication, and that the copy thereof should be published in the said newspaper called the "Brooklyn Daily Eagle," and the said James McGann did copy or cause to be copied said article, and did convey or cause to be conveyed to the office of said paper for publication, the said written communication; and the said article or written communication does falsely and maliciously misstate and misrepresent the operations and conduct of the officers and soldiers of the marine corps engaged in the storming of Chapultepec in said article mentioned: and does falsely and maliciously impute backwardness and dereliction in duty to the said Captain and Brevet Major John G. Reynolds, the marine officer who had command of the storming party of marines in said article mentioned; and does falsely and maliciously impute cowardice and dereliction of duty to the officers commanding the marine soldiers engaged in the storming of Chapultepec, who, it states, halted under the fire of the enemy, and sat flat on the ground under cover of an embankment topped with Maguay bushes, while said article lauds the conduct of said First Lieutenant Devlin, the writer thereof, and contrasts his conduct injuriously with that of the other officers of said marine corps then and there engaged: and does falsely state the writer of said article not to be personally acquainted with the said First Lieutenant Devlin: and the said First Lieutenant, John S. Devlin, did procure the publication of that false and malicious article reflecting on the commissioned officers of the marine corps superior to said First Lieutenant Devlin, through the instrumentality of said James McGann—all which acts were scandalous conduct, tending to the destruction of good morals.

JOHN P. KENNEDY,
Secretary of the Navy.

NAVY DEPARTMENT, August 16, 1852.

The original of which charges and specifications is hereto annexed, marked No. 17, which being read and heard, the Judge Advocate demands of the accused whether he be guilty or not guilty of the said charges and specifications—and thereupon the accused tenders an objection to pleading in the following words, viz: The Court being organized, and the charges and specifications having been read in the presence and hearing of the accused, and he having been arraigned and required to plead to the said charges and specifications, previous to such pleading, now makes the following objection to the Court proceeding any further with the trial of the accused. The order convening the Court, dated 10th August, 1852, is an order for the Court to assemble for the trial of 2d Lieutenant J. H. Strickland, “and of such other persons as may be legally brought before it.”

There is no evidence, nor does the record show, that the accused is legally brought before the Court. The mere attendance of an officer before a Court, is not evidence “*per se*” that he is legally brought before the Court.

JOHN S. DEVLIN.

And the Court being closed for deliberation, and having deliberated, and being opened, the opinion is announced as follows:

That the objection is disallowed and the accused is required to plead to the said specifications and charges as read to him.

And thereupon the accused in open Court plead not guilty to the 1st specification of the 1st charge, and not guilty to the 1st charge.

Not guilty to the 1st specification of the 2d charge. Not guilty to the 2d specification of the 2d charge; and not guilty to the 2d charge.

Not guilty to the 1st specification of the 3d charge; and not guilty to the 3d charge.

Not guilty to the 1st specification of the 4th charge; and not guilty to the 4th charge.

And, thereupon, the Court being ready to proceed with the trial of this cause, the Judge Advocate, in support of the issues on his part, offers the following evidence:

First. The Judge Advocate reads to the Court an agreement of facts with the documents thereto appended—made in open Court, between the Judge Advocate and the accused, which is in the following words:

It is agreed between the Judge Advocate and the accused, in open Court, to admit the following facts, in order to save the time and expense of summoning witnesses.

First. The accused admits that an article or communication in the words and figures, set forth in the specifications in this cause, was published on the 12th day of July, 1852, in the “Brooklyn Daily Eagle,” a newspaper published in the city of Brooklyn, being the same in the specifications mentioned; which communication is in the following words, viz:

"Marine Soldiers."

"MR. EDITOR: A detachment of fine looking marine soldiers left the city to-day for Norfolk, by the Steamer Roanoke, intended for the guard of the Sloop St. Louis, about to join the Mediterranean squadron. The detachment was under the command of that old and faithful officer Lieutenant Devlin—I wish I could say *Major*, as he has earned that title by bravery in much grater degree than many officers who received it. But it is well known that flattery and the favor of the stay-at-home drones of headquarters, are much more available than bravery in procuring promotion in the marine corps. The writer of this article saw the bravery of Lieutenant Devlin put to the test at the storming of Chepultepec, and well did it stand the trial. While other officers halted under fire of the enemy and sat flat on the ground, under cover of an embankment topped with Maguay bushes, he waved his sword, that was presented to him by his friends in Brooklyn, and told the marines to follow him and he would lead them. Many of them did bravely follow his example, and were wounded or killed, he himself received a shot through his chin, the scar of which he will bear to the grave. To his credit be it said, that while another marine officer, who had command of a storming party, singularly escaped without a scratch, he, Lieutenant Devlin, who was quartermaster on that occasion, and had to crave permission to leave his wagon train to enter the fight as a volunteer, gained the distinguished credit of being the only marine officer whose blood flowed for his country in the Valley of Mexico, except the dauntless Major Twiggs who was killed at the head of his command. As an adopted citizen I feel pride in bearing this testimony to the bravery of Lieutenant Devlin in Mexico, and although not personally acquainted with that officer, I am well acquainted with the facts, and stand prepared to substantiate them if required."

"AN OBSERVER."

Second, That the papers marked respectively No 18 and 19 are in the handwriting of the accused, and hereto annexed, viz:

No. 18.

"MR. EDITOR; A detachment of fine looking marine soldiers left this city to day for Norfolk, by the Steamer Roanoke, intended for the guard of the Sloop St. Louis, about to join the Mediterranean squadron. The detachment was under the command of that old and faithful officer Lieutenant Devlin—I wish I could say *Major*, as he has earned that title by bravery in much greater degree than many officers who received it. But it is well known that flattery, and the favor of the 'stay-at-home drones of headquarters,' are much more available than bravery in procuring promotion in the marine corps. The writer of this article saw the bravery of Lieutenant Devlin put to the test at the storming

of Chapultepec, and well did it stand the trial. While other officers halted under the fire of the enemy and sat flat on the ground, under cover of an embankment topped with Maguay bushes, he waved his sword, that was presented to him by his friends of Brooklyn, and told the marines to follow him and he would lead them. Many of them did bravely follow his example, and were wounded or killed. He himself received a shot through his chin, the scar of which he will bear to the grave. To his credit be it said, that while another Marine officer, who had command of a storming party, singularly escaped without a scratch, he, Lieutenant Devlin, who was quartermaster on this occasion, and had to crave permission to leave his wagon train to enter the fight as a volunteer, gained the distinguished credit of being the *only marine officer whose blood flowed* for his country in the Valley of Mexico, except the dauntless Major Twiggs, who was killed at the head of his command. As an adopted citizen, I feel a pride in bearing this testimony to the bravery of Lieutenant Devlin in Mexico; and although not personally acquainted with that officer, I am well acquainted with the facts stated, and stand prepared to substantiate them if required."

"AN OBSERVER."

No. 19.

"NORFOLK, July 12, 1852.

"DEAR SIR: I had intended to have a few words talk with you on the subject of the small matter I entrusted to your care and prudence. Among what things I had to say was, that you might change the matter, as it was got up in a hurry, in any way you pleased, or you might, in fact, do with it as you pleased, but of course leaving me certainly out of the affair. With this view I hope if you moved in the matter that you securely provided for that object, and that you have destroyed the scrap I gave you as a rough outline for your guidance. I would be also most sorry that you should be known in the matter, but I suppose against all these things your prudence made sufficient provision. I delivered the detachment last night between 8 and 9 o'clock, at the barracks, this morning attended there, and obtained my free papers. About an hour since I went on board the 'Oceola' to leave for Washington at 4 o'clock this evening, but her appearance determined me to go by way of Baltimore, which I shall do this evening.

"It will afford me much pleasure to receive a few lines from you in the quickest possible time at Washington, giving all particulars how you managed that little affair.

"I am, dear sir, truly your friend,

MR. JAS. MCGANN.

"DEVLIN."

"You will get this letter Wednesday, and I might have one from you on Thursday. I think I will leave Washington on Friday or Saturday.

"Which letter was postmarked with an official stamp on it and addressed as follows, viz :

"Mr. JAS. McGANN,
"Near Marine Barracks, Brooklyn, N. Y."

Third. That the persons who were stationed at Headquarters of the Marine Corps at the dates in the specifications to the 1st charge, and in the 1st specification to the 2d charge, are correctly stated according to the facts in the said specifications respectively.

And that Colonel Dulany and 1st Lieutenant Isaac T. Doughty, and 1st Lieutenant John S. Devlin, were the officers attached to the Brooklyn Barracks on the 12th July, 1852.

All which facts are to be read in evidence as if testified to by competent witnesses.

And the Judge Advocate produces Major John G. Reynolds, a lawful witness on behalf of the prosecution, who being duly sworn, answers as follows to the following interrogatories:

1. Question by the Judge Advocate.

State to what corps you belong, what your rank is in such corps, where you are stationed, and how long you have been so stationed?

Ans. I am a Captain and Brevet Major of the Marine Corps. I entered the corps 26th May, 1824, as 2d Lieutenant. I am stationed on the recruiting service in the city of New York.

2. Question by the same.

State whether you are acquainted with the accused, how long you have known him, what his rank is in the Marine Corps?

Ans. I know the accused and have known him since 1824. At first in the capacity of Quarter Master Sergeant. He was then stationed in Washington. Subsequently I have known him as a 2d Lieutenant of Marines. I have never been stationed with him, but he was associated with me on detached service in the war with Mexico.

3. Question by the same.

State in what capacity the accused acted when in the Valley of Mexico?

Ans. On that detached service he was appointed as an acting Assistant Quarter Master and Commissary to the detachment of marines acting with the army in Mexico.

4. Question by the same.

State whether you were present, connected, and acting with the division of the United States Army which attacked the Castle of Chapultepec in Mexico; if so, state when such attack and storming took place, and what command you held during such attack and storming?

Ans. I was present on the 10th or 11th of September, 1847. A select party was called for by the General of the brigade to which I was attached, as a pioneering storming party, to consist

of forty men to be drawn from the three regiments from New York, Pennsylvania, and South Carolina, and six marines from the battalion to which I was attached. The storming took place on the 13th of September, 1847. I commanded the pioneering storming party of forty men. I was selected to command them. The position assigned to me by General Quitman commanding the division, whose order was repeated by General Shields, was as follows: I was ordered to proceed on the Tacubaya road towards the Castle, and on my route to arm my men with the implements I had selected the night before—ladders, crowbars, and picks. After passing Drum's battery, thirty or fifty paces to shelter myself and command in the Maguay ditch, till the marine battalion should pass me, when I was to follow in their rear. When the battalion should get into line and commence their fire, I was to advance with my party under their fire.

5. Question by the same.

State whether, and how you executed these orders?

(This question is objected to by the accused as immaterial to the issue, but the objection is disallowed.)

Ans. I sheltered my command as directed, until the passage of the battalion of marines, after which I followed in their rear, which I did for the distance of several hundred yards, when the battalion of marines was halted, and I halted with them. During the time (after my joining the rear of the battalion) it was under a heavy and constant fire from the Castle. At the time of the halt, the fire was very severe. I laid two ladders close together over the Maguay ditch, and passed over towards the Castle, first myself, followed by some seven or eight of my command. Finding it a clear and open field beyond the bushes, which, from my position to the walls of the Castle, extended some two or three hundred yards, and was swept by a field piece of the enemy with grape shot, and by infantry on the wall, I returned with my party, finding it more than useless to attempt an assault in that direction, and determined to wait till the orders governing the battalion should be carried out.

6. Question by the same.

State whether this course was or was not in accordance with the orders of your superior officer, and whether at any time the same was disapproved of by your commanding officer?

Ans. So far as I am acquainted with them, as received from the lips of Colonel Watson, the commanding officer of the battalion, this course was according to the orders of the commanding officer. After I had recrossed the ditch, when Major Twiggs was killed, I made application to Colonel Watson to move forward, and he replied, that he halted by order and could not without further orders.

7. Question by the same.

How long did you maintain that position, and when did you leave it?

Ans. We maintained that position some ten minutes, and did not leave it till the flag was struck upon the Castle. The order was given by Colonel Watson for the troops to shelter, which they did as well as they could, from the exposed position which they held, by means of the Maguay bushes.

8. Question by the same.

State what body of troops Colonel Watson commanded at the time referred to?

Ans. Colonel Watson commanded the main body of the marines; there were several smaller detachments of marines on separate duty. My detachment was not under command of Col. Watson, but I was ordered independently, when the command of Colonel Watson got into position, to advance under their fire. That position was not ever assumed by Colonel Watson's command.

9. Question by the same.

Would it have been in accordance with your order to have advanced without regard to the position of Colonel Watson's command?

Ans. I should have been acting in violation of my orders had I done so?

10. Question by the same.

State whether you saw the accused at any, and what time of the day on the 13th of September, at the storming of Chepultepec above referred to, and whether he took any, and what post, in the said attack; and if any, in what capacity or position he acted?

Ans. I saw him after the Castle had surrendered, on my way to the gates of the Castle. I passed him. He was sitting behind a tree from the Castle, with his hands to his head. I have no knowledge that he had any active position assigned to him officially on that day.

11. Question by the same.

Did he command any detachment of marines in any capacity, on that day?

Ans. He did not by any assignment.

12. Question by the same.

Did he call on any portion of the marines under your command, or under the command of Colonel Watson, telling them to follow him and he would lead them, while the command of Watson was halted, as you have above described?

Ans. Not that I know of. I did not see him at any time while the command was halted. If he commanded any marines, they were surreptitiously obtained and not assigned.

13. Question by the same.

During the time of the halt above described, did any portion of your, or of Watson's command, break their ranks and irregularly advance without or against orders?

Ans. When the command was ordered to shelter, the ranks were already broken. The troops were in column. The ranks were broken. If any passed beyond that point, they passed with-

out orders. None passed that I am aware of. My position was in the rear of the battalion, and I consequently had not an opportunity of observing or judging.

14. Question by the same.

State what officers of the Marine Corps were wounded during the attack on Chepultepec above mentioned?

Ans. Captain Baker and myself are the only two that I personally know to have been there wounded. It was said that the accused and Lieutenant Henderson, were likewise wounded there.

15. Question by the same.

State whether any, and how many of the marines under your command, were wounded or killed during that attack?

Ans. There were two of the storming party of marines wounded, and one or two of those drawn from the several regiments killed, and some seven or eight wounded in the storming party.

16. Question by the same.

Was there any other Marine officer having command of a storming party on that day beside you?

Ans. None other had command of a storming party.

17. Question by the same.

At what point of time was Major Twigg killed?

Ans. While the troops were being sheltered, an officer from the rear came up to where the commanding officer was sheltered, with Colonel Dulany and Major Twigg, near where I was, and directed us to go ahead. Colonel Watson said he was ordered to halt, and could not move. About ten minutes afterwards Major Twigg got up from the shelter and stepped to the middle of the road and faced square to the Castle, and said, by God, I am tired; are those your men, Reynolds, or mine? whereon he immediately received a mortal wound. It was then I asked Watson to move, and he repeated to me what he had already stated to the officer before mentioned.

18. Question by the same.

State whether or no the accused at any time in Mexico after the storming of the Castle of Chepultepec, made any threat of publishing any thing relative to your conduct on that occasion; and if so, what he said?

(The accused objects to the above question as irrelevant under the charges and specifications, there being nothing in them pointing to its subject matter. And the Court having consulted, overrules the objection and order the question to be put and answered.)

Ans. He did make such a threat. While the Marine battalion was quartered in the city of Mexico, on the 1st and 5th of October, in the evening, between 8 P. M. and 3 A. M. On both these days the accused made such a speech, in which he denounced me in the following words: "Where was Captain Reynolds at the storming of Chepultepec; he was lying back, and I am bold to say it; and on my return to my constituents I will publish it in the newspapers; I will publish it to the world."

19. Question by the same.

State whether at either time he more particularly pointed out the plan of the intended publication?

Ans. He said, when I return to my constituents at Brooklyn.

20. Question by the same.

Had the accused ever resided in Brooklyn?

Ans. He resided at Brooklyn at the time that the marines went to Mexico, and then represented a ward of the city as Alderman.

21. Question by the same.

State where General Arch. Henderson, Commandant of the Marine Corps, was stationed during the operations of the Marine Corps in Mexico?

Ans. At Headquarters, Washington City.

(It is here agreed between the Judge Advocate and the accused, that on the 12th July, 1852, William A. Graham was Secretary of the Navy of the United States, as evidence in this trial.)

22. Question by the same.

State whether or not the accused has for any, and what length of time, been acquainted with you?

Ans. He has known me ever since 1824, as before stated.

Which having been read over to the witness, he declared the same correctly recorded.

The Court adjourned till to-morrow morning at 10 o'clock.

NAVY YARD, BROOKLYN, NEW YORK,

10 O'CLOCK, A. M., *September 2, 1852.*

The Court met pursuant to adjournment.

Present, the President of the Court, the members of the Court, the Judge Advocate, the accused, and his counsel.

The proceedings of yesterday were read and approved.

Thereupon the Judge Advocate proceeds with the examination of Major Reynolds.

23. Question by the Judge Advocate.

State where Major Aug. A. Nicholson is now stationed, and where he was during the Mexican war, and what his position is in the Marine Corps?

Ans. He is stationed at Headquarters at Washington city, and was there stationed during the Mexican war, and was there, and is still Quartermaster of the Marine Corps.

24. Question by the same.

State where Major Howle was stationed, and what his duties were at the above period?

Ans. He was stationed at Headquarters Washington, during the Mexican war, and is so still, and is Adjutant and Inspector of the Marine Corps.

Which evidence was read over to the witness, and declared by him correct. And here the Judge Advocate closes the examination in chief of Major Reynolds. And the accused submits an application in the following words, viz:

The accused makes the following application to the Court: That the cross-examination of Brevet Major J. G. Reynolds, be postponed a sufficient time to enable the Court to send to Washington, D. C., and procure a copy of the examination of Brevet Major John G. Reynolds' testimony given by him before a Court Martial in the city of Mexico, in the month of November, 1847, upon a trial of the accused before a Court convened about that date in the city of Mexico, and hereby states under oath, that for the purpose of sustaining his rights, defence, and properly cross-examining the said witness on the present trial, the said examination and testimony are absolutely necessary, and he prays that such cross-examination be suspended accordingly.

Sworn to in open Court this — }
day of September, 1852.

J. S. DEVLIN.

HENRY WINTER DAVIS.

And the Court being cleared for deliberation and having deliberated, and being opened, the opinion of the Court is announced as follows:

The Court will allow the accused to postpone for the present the cross-examination of said Major J. G. Reynolds to enable him to send for the record in the application specified, but the Court will not delay the trial for that purpose, and require the prosecution and defense to proceed, and if the record be not here before the other proceedings are closed except the cross-examination of said Reynolds, the accused will be required to proceed with such cross-examination, or to lose the benefit thereof.

And the Judge Advocate produces Colonel Dulany, a lawful witness produced and duly sworn on behalf of the prosecution, who testifies as follows to the following interrogatories:

Question by the Judge Advocate.

Look at the paper marked No. 19, and say when and from whom you received it?

Ans. On my return from Washington on the 16th July, 1852, I had travelled all the previous night, and went direct to my quarters and went to bed. On getting up about 2 o'clock, I received under an envelope the official letters of the post; among them I found an open letter, which I identify as this letter. Finding it an open letter addressed to the Orderly Sergeant of the post I supposed it to be an official paper, and accordingly read it. I was at a loss to know why he sent it to me, and he said on my asking him, he considered it an act of duty.

Question by the same.

State whether you ever had possession of the paper marked No. 18, and if so, say when and from whom you obtained it?

Ans. I recognize this as a paper handed me by the Orderly Sergeant of the post, which paper I recognize as in the handwriting of the accused Lieutenant Devlin, and the paper was delivered to me by Sergeant Jas. McGann, the person to whom the letter was directed. Upon my suggestion, after knowing of the purport of the letter, and to what it referred I considered it as an act of duty to get possession of the paper No. 18, in my capacity of commanding officer of the post; if it could be done in no other way.

Here the Judge Advocate closed his examination, and the accused propounded the following cross-interrogatories:

Cross-interrogatory by the accused.

Cross-question. On what day did you receive paper marked No. 18, and where did you receive it?

Ans. I received it at corner of Park avenue and some cross street in Brooklyn, one or two days, or a few days after getting the letter No. 19.

Cross-question by the same.

Had you had any previous interview with the accused in relation to the letter No. 19 and paper No. 18, before you received paper No. 18?

Ans. I had not spoken to Mr. Devlin for some days or weeks prior to my leaving for Washington, to the best of my recollection.

Cross-question by the same.

When did you leave for Washington?

Ans. I left, I think, on or about the 6th of July.

Cross-question by accused.

Did you, before you received paper No. 18, hold any conversation with Sergeant McGann in relation to said paper, if so, when and where was such conversation?

Ans. I may have had one or two different conversations with Sergeant McGann and at one or two different places, but when or where exactly I do not recollect. The conversation was, if I recollect aright, respecting Sergeant McGann's connexion with this affair.

And then the accused closed his cross-examination, and the testimony having been read over to the witness, he declared the same properly recorded. But begs leave to state that, on further reflection, he now recollects that one or two of the conversations above alluded to, with Sergeant McGann, were at the private quarters of the witness.

James McGann, a lawful witness, produced by the Judge Advocate, being duly sworn, answered as follows, to the following interrogatories.

Question by Judge Advocate.

Look at paper No. 18 and say whether said paper was ever in your possession, and if so, when, and from whom you received it, and what you were requested to do with it?

Ans. The paper was once in my possession. I don't recollect the exact date, but I think about the 10th day of July, 1852. And I received it from Lieutenant Devlin. I received it on the gang plank of the steamer Roanoke. I think then lying in the city of New York. Lieutenant Devlin said this paper was put into his hand by some person with that party's request that it be published in the Brooklyn Daily Eagle. Lieutenant Devlin asked me if I knew any person, or if I would attend to it—I and he were both just then a good deal hurried. I had been ordered to turn over to Lieutenant Devlin a detachment of 15 men and one corporal, and I was engaged about it then.

Question by the same.

Where were said detachment, and Lieutenant Devlin bound, on board said steamer Roanoke?

Ans. To Norfolk, Virginia.

Question by same.

What did you do with the paper No. 18, handed you by Lieutenant Devlin?

Ans. I put it in my pocket then, I did not look at nor read it till next day, Sunday. When I had read it I copied it. On the following day, Monday, morning, I handed it to a young man, I believe the foreman in the office of the Brooklyn Daily Eagle. I had not been requested to copy it.

Question by the same.

Look at paper No. 19 and say whether said paper was ever in your possession, if so, when you received it, and how?

Ans. I have not a distinct recollection of the date, but the paper has been in my possession. I received it, to the best of my recollection, on the morning of the 15th day of July, 1852. It came through the post-office.

Question by same.

State what you did with letter No. 19, when you received it.

Ans. I kept it in my pocket, or some where, for I think a couple of days; I then handed it with other papers to the wife of Lieutenant Colonel Dulany.

Question by the same.

Where was Lieutenant Colonel Dulany at the time you so handed it to his wife?

Ans. I am not certain that he was in the house at that moment, but I knew he had returned from Washington that morning, and it was for the purpose of being handed to Colonel Dulany that I handed the paper to his wife.

Question by the same.

State to what matter the said letter marked No. 19 related, to what other paper or rough draft, given you by said Lieutenant Devlin?

To this question the accused objects, but the question is ordered to be put by the Court.

Ans. Speaking conscientiously, I must say I don't know to what other paper than paper No. 18 it could refer; but I cannot say that it does refer to that.

And then the Judge Advocate closes the examination of Sergeant McGann, and rests his cause. And the accused declining to cross-examine the said witness, and the said evidence having been read over to the witness, he declares the same to be correctly recorded.

And thereupon the Judge Advocate calls the accused to proceed with his case, and produce his testimony if any he desires to offer to sustain the issues joined on his part.

And thereupon the accused appealed to the Court for time to prepare his case till to-morrow morning, in order that he and the Judge Advocate may settle the interrogatories for the examination of General A. Henderson and John Roache, witnesses at the Marine Barracks, Washington, D. C., to save the time and expense of obtaining their presence for the accused; and thereupon the Court, for that purpose, agrees to allow of the delay, and adjourns till to-morrow morning at 10 o'clock.

NAVY YARD, BROOKLYN, NEW YORK,
September 3, 1852, 10 o'clock, a. m.

The Court met pursuant to adjournment. Present, the President of the Court, the members of the Court, the Judge Advocate, the accused and his counsel.

The proceedings of yesterday were read over and approved. And thereupon the Judge Advocate calls upon the accused to proceed with his defense.

And the accused, to sustain the issue on his part, produces and reads in evidence to the Court, the part of the agreement between him and the Judge Advocate relating to his testimony, the other part having been read yesterday, the part now read being as follows, viz :

And the Judge Advocate on his part admits that Captain Silas Casey, if present, would testify to the effect of the contents of the printed paper hereto annexed and marked A, purporting to be a paper from the said Casey, dated 22d September, 1847, which statement is to be read on behalf of the accused, subject to all legal exceptions as to the competency of the contents, as if said Casey were present, the accused waiving the right to call said Casey as a witness in this case.

The Judge Advocate also admits, the printed paper marked B, as evidence of the order it purports to contain, subject to legal exceptions to the relevancy and competency of the matter thereof.

HENRY WINTER DAVIS, *Judge Advocate*,
J. S. DEVLIN.

The original whereof is hereto annexed marked No. 20, together with the said papers therein referred to.

And the accused further read the said papers in the said agreement mentioned as annexed hereto, and marked A and B, which are in the following words, viz :

A.

MEXICO, *September 23, 1847.*

SIR: I have just received your communication of the 22d inst., and although still confined to my bed, will endeavor to comply with the request of the General. On the 12th inst., I was placed in command of 250 picked men and volunteers of the 2d division of regulars, for the purpose of forming a storming party in the attack on the castle of Chapultepec. By direction of the General-in-chief, I reported (on the evening of the 12th) to Major General Quitman for orders. I organized the party in six divisions, corresponding to the different regimental detachments of which it was composed. The first division was commanded by Captain Roberts, of the rifles, the second by Lieutenant Haskins, 1st artillery, the third by Captain Dobbins, of the 3d infantry, the 4th by Lieutenant Hill, of the 4th artillery, the 5th by Lieutenant Wescott, of the 2d infantry, and the 6th by Captain Paul, of the 7th infantry. Having been provided with scaling ladders, crowbars, powder bags, and all the necessary implements, on the morning of the 13th inst., as directed by the General, I followed the marines in the direction of the castle. Soon after passing Captain Drum's battery we entered a ditch on the left side of the road, the enemy opening quite a brisk fire, but which from our position did no injury. In a short time the marines in our front halted; on perceiving which, I ordered the storming party to take the road and pass them. My orders were promptly obeyed, and they gallantly advanced up the road under a galling and destructive fire. On arriving near the causeway, I received a wound in the abdomen, by which I was unable further to conduct the operations of the storming party. The command devolved on Captain Paul, of the 7th regiment, next to me in rank. After being wounded, I managed to reach a rancho on the road side, a short distance in our rear, where I remained until the action was over, using what strength remained to me in urging forward the stragglers who stopped there.

From the peculiar and desperate nature of the service, and their zealous co-operation, I would recommend the officers composing the storming party, to the special notice of the Commanding-general. Captain Roberts, by his position as commanding the leading division of the column, more particularly attracted my attention. From what I myself witnessed, and from the testimony of others, he, by his activity, zeal, and gallantry, merits the highest praise.

S. CASEY,

2d Infantry, Commanding Storming Party.

F. N. PAGE, *Assistand Adjutant General.*

B.

GENERAL ORDER, No. 3.

WAR DEPARTMENT, ADJUTANT GENERAL'S OFFICE,
Washington, January 28, 1847.

The following regulations has been received from the War Department:

WAR DEPARTMENT, *January 28, 1847.*

The President of the United States directs that paragraph 650, of the general regulations for the army, established on the 1st March, 1825, and not included among those published January 25, 1841, be now republished, and that its observance as a part of the general regulations be strictly enjoined upon the army.

By order of the President,

W. L. MARCY, *Secretary of War.*

The following is the paragraph of the general regulations for the army established the 1st March, 1825, referred to above:

650. Private letters or reports relative to military marches and operations, are frequently mischievous in their designs, and always disgraceful to the army. They are, therefore, strictly forbidden: and any officer found guilty of making such reports for publication, without special permission, or of placing the writing beyond his control, so that it finds its way to the press, within one month after the termination of the campaign to which it relates, shall be dismissed from the service.

By order,

W. G. FREEMAN,

Assistant Adjutant General.

The accused further proves by the certificate of Richard McSherry, Passed Assistant Surgeon, U. S. Navy, and acting Surgeon of Marines, that Lieutenant J. S. Devlin received a severe gunshot through the chin at the storming of Chapultepec, which is admitted by the Judge Advocate, and is in the following words:

"MARINE BARRACKS, CITY OF MEXICO, *Feb. 8, 1848.*

"I hereby certify that Lieutenant John S. Devlin, U. S. Marine Corps, received a severe gunshot wound through the chin at the storming of Chapultepec.

"The wound was obstinate in healing, until a ball, or a portion of one, perhaps one of the *split balls* said to be used by the Mexicans, was extracted.

"After this the healing went on rapidly. Mr. Devlin was then Acting Commissary and Quartermaster, and on that occasion was a volunteer aid of General Shields.

"RICHARD McSHERRY,

"Passed Asst. Surg. U. S. N., and Acting Surg. of Marines."

The accused further reads the following agreement between the accused and the Judge Advocate, in open Court :

"It is agreed that the accused was tried on specification 2d and 4th, of charge 2d, which are hereto annexed, and sentenced to be cashiered, which was remitted by the President, and that the said specifications, charge, and finding, may be read in evidence from the printed statement, as if the record were produced.

"HENRY WINTER DAVIS,
"J. D."

And the specifications and charge and finding, and sentence referred to in the agreement, are read to the Court, and are in the following words, viz :

CHARGE II.

Conduct unbecoming an officer and a gentleman.

Specification 2.

In this that 1st Lieutenant J. S. Devlin, of the Marine Corps, did on or about the 22d September, 1847, while in a state of intoxication, in the presence of several, and in the hearing of many of the officers quartered with the regiment in the city of Mexico, use disrespectful and reproachful language in regard to Captain J. G. Reynolds of said corps, in reference to the storming of Chapultepec, in the following words, viz ; "Where was Captain Reynolds, with his storming party ; he was lying back ; I am bold in the assertion ; I am not afraid to say it, gentlemen ; and when I go back to Brooklyn I will make it known in the public newspapers," or words to that effect, and thus continued his harrangue for a long time, the whole discourse reflecting upon the character and reputation of the said Captain Reynolds.

Specification 4.

In this that 1st Lieutenant J. S. Devlin, of the Marine Corps, did on or about the 1st of October, 1847, at the Marine quarters in the city of Mexico, use reproachful and disrespectful language directed to the said Captain Reynolds, by name, to wit : "Where was Captain Reynolds, with his storming party, at Chapultepec ; he was lying back ; I am bold in the assertion ; I am not afraid to say it, gentlemen, and when I go back to Brooklyn I will make it known in the public newspapers," or words to that effect.

The Court found the accused as follows : Of the 2d specification to the 2d charge, Guilty, except the words "while in a state of intoxication," and the whole of the 4th specification to the 2d charge, Guilty.

The Court does sentence him, 1st Lieutenant J. S. Devlin, of the U. S. Marine Corps, to be cashiered.

Which paper, printed, is annexed, marked No. 22.

And the accused produced to the Court Lieutenant Jabez C. Rich, a witness on his behalf, who being duly sworn, testifies as follows, to the following interrogatories:

Question by the accused.

Are you acquainted with the accused, and how long have you known him?

Ans. I am acquainted with him, and have known him since 1847.

Question by same.

Were you present at the storming of Chapultepec; and if so, did you see the accused there?

Ans. I was, and did see him there.

Question by same.

Look at the annexed diagram of the said battle, and say if you saw Major Reynolds there, and designate the place where you saw him, on the diagram, and the particular situation in which he was placed. The diagram is marked No. 31?

Ans. I did see Major Reynolds on that day, and his position when I saw him, was at the point marked by a dot on the plat, between A. and M. As to his particular situation, after a period of five years, I cannot distinctly recollect. My impression is, that when I last saw him he was sitting down on the roadside.

Question by same.

Did you on the occasion referred to see any officers sitting or lying on the ground; if you did, state the particular place on the diagram, and the names of the officers, and the time?

Ans. I cannot state particularly the time; I had just been relieved from guard. It was just before the assault was made; about eight or nine o'clock in the morning. Certainly not later than that. In passing around the plan designated by the dot on the diagram, I saw sitting on the ground, Colonel Watson, commandant of the regiment, Major Dulany, and perhaps some others not now recollected. Perhaps I had better state that at this time the whole command were sitting down, and doing so by command, to protect themselves from a very heavy fire from the enemy.

Question by same.

Did you see Major Reynolds there?

Ans. My impression is that Major Reynolds was there, but in the rear of Colonel Watson and Major Dulany, some twenty or thirty feet, and near where Major Twiggs was shot, which was near the left of the regiment.

Question by same.

How do you know the fact that the command was sitting down by orders?

Ans. Only by common report. It was perfectly understood throughout the army that the signal for our assault should be the cessation of our cannonade on the castle. I sat down myself, and made my men sit down because I understood it to be the order.

Question by same.

Was Major Reynolds sitting or standing when you saw him on the occasion referred to?

Ans. I cannot say; I think sitting. In fact I am very sure he was.

Question by same.

How near the Maguay bushes were the officers you saw sitting down?

Ans. I suppose some two or three feet—as near as you could get to the embankment. They formed some shelter so far as sight was concerned, but no shelter against shot; my orderly sergeant was shot right alongside of me; he was not killed.

Question by same.

Where did you see the accused upon the occasion referred to in the former questions?

Ans. I saw him near the Castle gate after the point of time at which I had seen the other officers sitting down. It was just during the storming by our party. General Pillow having already entered the castle from the other side. I had passed around the point marked by the dot, with some few men—part of my company. As I passed I saw the accused considerably ahead of myself and of any of the marines, waving his sword, and with a red handkerchief in his hand at the same time. How long he had been round there I don't know. I moved myself because I had been informed by Captain Casey, the aid of General Shields, that the orders were to advance. I make this explanation in order to show how I came to advance without orders from the commandant of the regiment.

Question by same.

Do you know of any other marine officer besides accused, whose blood flowed by a wound received in the field of battle in the valley of Mexico; and if so, state the name of such officer?

Ans. I do not. Lieutenant Baker reported himself as wounded to the surgeon, but whether wounded or not, I don't know. We all know, of course, Twiggs was killed.

Question by same.

How far distant was the marine battalion from the Castle of Chapultepec when it surrendered, and where was the storming party of forty pioneers and Captain Reynolds at that time?

Ans. I can't be exact, but they were within musket shot.

Question by same.

Did or did not the accused, in company with you, call on General Shields at the village of Coyacan, in Mexico, two or three days before the attack on Chapultepec, and request General Shields to assign him for duty in the storming party then being organized?

Ans. Yes, but I don't think it was two or three days; it was but one day before.

Question by same.

How do you know that Lieutenant Baker reported himself wounded, and in what part of his body did he report himself wounded, and did his wound prevent him from doing duty?

Ans. He was on the official list of killed and wounded. It did not prevent him from doing duty.

Question by same.

Did you or did you not know, or was it generally understood, that the signal you have just alluded to of the cannon ceasing to play on the Castle, was intended as a signal for marching in the morning from Tacubaya or near Drum's battery, and not as a signal to remain in shelter at the advanced point where the marines halted and sat down?

Ans. I understood it to be the signal to advance to the attack. I never saw the order. I got this order from my commanding officer as above described. I was on the left of the column, in command of my company under Colonel Watson, on the morning of the attack, after I was relieved from guard.

Question by same.

Do you know whether Major Reynolds was wounded at Chepultepec; if so, say how and when?

Ans. I do not know. Not to my knowledge.

Question by same.

Was or was not Captain Reynolds, with his pioneer storming party, immediately present, assisting at the reduction of Chepultepec; and if so, state the nature and extent of the assistance he rendered?

Ans. I presume he was present, but the Castle was taken long before any of the marines had anything to do with the storming of it.

The accused offers the following question, viz: Do you not know it was a common subject of remark at the time, among the officers immediately after the battle of Chepultepec, that Captain, but now Major Reynolds, with his pioneer party, remained in the rear during the action?

To which question the Judge Advocate objects, and it is not allowed to be put by the Court.

Question by same.

Did the marines, during the action, fire on the enemy while the officers were in shelter; if yea, by whose order and in what order of battle?

Ans. The marines fired on the enemy, and by order of their commanding officers, I suppose. They were sitting on the ground, or lying down; loaded their guns, and got up and fired as fast as they could, the battalion being in line.

Question by same.

Was you present taking an active part as an officer of marines during the whole time the battalion of marines was in Mexico, and to the end of hostilities?

Ans. I landed with the marines, and staid for three or four months after the surrender of the city, but left before the treaty.

Here the accused closed the examination of the witness, and the Judge Advocate propounded the following cross-interrogatories:

Cross-question by Judge Advocate.

At what hour were you relieved from guard on the morning of the 13th September, 1847, and what officer relieved you?

Ans. I was not relieved by any one. The guards were broken up and the men retired to their various regiments. I was acting while on guard under Major Dulany, who was filed officer of the day.

Cross-questioned by same.

Had Captain Casey the command of any particular body of troops in the attack upon Chepultepec?

Ans. I am not aware that he had. I know him to be an aid of one of the Generals.

Question by Captain H. B. Tyler, a member of the Court.

State whether Captain Casey gave you the order to advance when he was passing with his command; or when, and in what capacity?

Ans. I have already stated that I am not aware that he had any command. When I first saw him, it was when the marine battalion were sitting or lying on the ground under the bushes. He came from the rear, and of course reached me before reaching any other marine officer, I being on the left, and said to me what are you doing here, why do you not advance? I replied to him, I have no orders, he said, I give you the order, sir, and I am empowered to order everybody to advance.

Question by same.

Were you not part of Colonel Watson's command, and if yea, how could you pass beyond Colonel Watson's command, Captain Casey being junior to Colonel Watson?

Ans. I can simply state it was in the excitement of an action; we had been under fire for four or five hours, and it was done under the excitement of the moment.

Question by Judge Advocate.

State whether Captain Casey was moving *alone* at the time of the order as an aid, or had he any men following under his order?

Ans. He was alone at the time the order was given. The New York regiment, however, was then passing on towards the Castle, or had already passed. Some of the men in passing said, why don't you come along, and laughed.

Cross-question by same.

State what the reply of General Shields was to Lieutenant Devlin's request to be assigned to duty with the storming party referred to?

Ans. I do not know what the General did upon the request. He was acting during the action as aid to General Shields.

Question by the Court.

Did the New York regiment pass the whole force of the marines, or did it only pass the left of the line where you were?

Ans. They did pass the whole marine battalion to the right, and then turned to the left towards the Castle.

Cross-question by same.

Please look at the paper now shown you, signed by you apparently, and say if it be signed by you, and if so, state what your recollection of the facts relative to the passing of the marine battalion above referred to is after reading it, the paper is marked No. 28?

Ans. It is signed by me. My recollection of the facts is the same as above stated. I refer particularly in that paper to Casey's claiming to have passed them with a storming party. It refers also to the time when the marines were in action, and not to the time when they were lying down before they were ordered into action. After they were in action they were passed by no troops.

And here the examination is closed, and the testimony being read to the witness he declares the same to be correct.

And Captain Terrett being duly sworn on behalf of the accused, testifies as follows to the following interrogatories—

Question by accused.

State if you are acquainted with the accused, and how long you have known him, and whether you were with him in Mexico at the storming of Chepultepec, and what position he held in the marine corps then, and what was the position of said Lieutenant Devlin, and Major Reynolds, and Colonel Dulany, and other officers at the storming, by reference to the diagram; and state the whole operations of the said Lieutenant Devlin, and of said Major Reynolds, during such storming of Chepultepec, and whether either of them, and any others were wounded then?

Ans. I am acquainted with him, and have known him some 20 or 22 years. I was with him in Mexico at that time. He was acting Assistant Quartermaster and Commissary of the marine battalion. When we were ordered to proceed on the Tacubaya road towards the Castle, Lieutenant Devlin was with me till I had nearly reached the angle of the road. When Lieutenant Devlin disappeared ahead of me, he had his sword drawn, waving it over his head and cheering. When I reached the angle marked by the dot on the diagram, I halted on receipt of an order to that effect from the rear, and ordered my men to sit or kneel, as I understood it to be ordered. I did not see him again during the day; to the best of my recollection he had not command of any men when he disappeared. A few minutes after halting, I cast my eyes to the rear, and there I saw Major Twiggs fall, about 15 or 20 paces in my rear. I then observed Major Reynolds, Colonel Watson, and other officers, I suppose 25 or 30 paces in my rear in a sitting or kneeling position. My time was so taken up by the command, my position being on the extreme right, that I did not again observe the party in my rear. The men were somewhat straggling owing to the rapidity of the advance. Lieutenant Devlin's cheering may have operated to encourage the men. Major Reynolds and the other officers were some five or six paces from the Maguay bushes. I was separated from my battalion, when the rest of them entered the Castle, I, with a party of men was in pursuit of the enemy on the San Cosme road, and did not

enter the Castle. During the halt at the angle of the road, some troops, of what command I don't know, marched up to near my position at the corner of the road, filed to the right away from the Castle and broke.

The paper handed to the witness for the purpose of showing a different statement made by him at a former period, relative to the passing of the marine battalion by other troops on the occasion referred to, (and for that purpose only, the paper is marked No. 26,) and is in the following words, viz:

CITY OF MEXICO, *March* 14, 1848.

MR. EDITOR: A statement has been published by Captain Casey, 2d Regiment of Infantry, which, whether wilfully or not, reflects most seriously upon the corps to which we have the honor to belong. The facts of the case are simply these: The marines, instead of halting, were halted by order of General Quitman, and so far from not being ready to advance, did, at the attack, move without orders, the officers of companies having much difficulty in restraining the men from making a rush.

The marines were *not* passed by any body of men. *Certainly* not by the storming party of Captain Casey, nor were they in the back ground at any time during the storming of Chepultepec. The statement and inference of Captain Casey to the contrary notwithstanding: all who were there acted nobly, and we cannot conceive why Captain Casey should make a public attack upon a body of men, any one of whose officers are ready and willing to defend their own honor and that of the corps. And many of whom have seen more of actual service, both at home and abroad, than Captain Casey and those who are willing to give credit to his statements ever dreamed of.

It may be that this statement has been caused by the accusation, totally unfounded, which was made by an officer against another officer, having command of a special storming party attached to Major Twiggs' light battalion. It has been proved most positively that that officer was where he was ordered to be.

We are yet to learn by what rule of military discipline, a junior officer presumes to criticise the action or motives of his superiors, ignorant as he must necessarily be, of his orders or motives of action. The officer commanding the special storming party, composed of forty men, made up from the volunteer division under General Quitman, to wit: New York, 2d Pennsylvania, South Carolina, and a small portion from our own little battalion, receiving orders from General Quitman and Shields. This officer has ever been taught to obey orders under any and every contingency.

Very respectfully, your obedient servants,

(Signed)

JNO. GEO. REYNOLDS, Capt. Marines.
GEO. H. TERRETT, "
J. C. RICH, 1st Lieut. "
W. L. YOUNG, " "

Which being read, the Court adjourned till to-morrow morning at 10 o'clock.

NAVY YARD, BROOKLYN, NEW YORK,

10 o'clock, September 4, 1852.

The Court met pursuant to adjournment.

Present, the President of the Court, the Judge Advocate, the accused, and his counsel.

The proceedings of yesterday were read.

Whereupon the accused objects to the same as improperly containing the paper put into Lieutenant Rich's hands, and signed by him for the purpose stated, in the following words, viz:

The counsel for the accused objects to the record of yesterday's proceedings as read this morning.

The paper read by the Judge Advocate forms no part of the proceedings. The paper having been put into his hands, not as evidence, but as a memoranda for the purpose of refreshing the witness's recollection, which was not read. It cannot be used for the purpose of impeaching the witness, because the statement contained in the paper is immaterial, more especially as he subsequently explained it, and the memoranda is not in witness's handwriting, nor is there any evidence he ever read it.

A memoranda made by the witness contemporaneous with the transaction, and so made under his direction at the time, may be looked at by the witness to refresh his memory, but not for the purpose of making the memoranda evidence, or even part of the record, the accused asks to have that part of the record expunged. And this is asked immediately after the record of yesterday.

But the Court considered the paper aforesaid properly included in the proceedings of yesterday, for the purpose therein stated, and approved of the proceedings as recorded.

And thereupon the accused proceeds with the examination of Captain Terrett, who proceeds in his answers to this question by the accused, put to him yesterday.

Ans. I know nothing of Captain Reynolds being wounded. I only heard that Captain Baker was, but never saw the wound. Lieutenant Henderson was very near me on the San Cosme Road, and a ball passed through his pantaloons and scratched the skin, thereby causing him to jerk his foot up. Twiggs, of course, was killed.

The accused offers the following question:

Have you ever heard from any source whatever, previous to the present time, that Major Reynolds was wounded at the attack on Chepultepec; and if so, from what source, and when did you hear thereof?

Which question being objected to by the Judge Advocate as calling for hearsay evidence, is excluded by the Court.

Question by the same.

In what position was Captain Reynolds and his command, when the Castle was taken, and by whom was it taken?

Ans. I cannot state his position, because I don't know when, or by whom, the Castle was taken.

Question by the same.

What was the nature and magnitude of the battery that held the marines in check. How many guns did it mount, and their size. Did the marines on the right advance within range, or did they halt at the place mentioned, till the battery was silenced and the Castle captured?

Ans. There were some two or three guns, I think, and within range—less than two hundred yards; not in direct range. My impression is they ceased firing just as we advanced. One of these guns was captured by Lieutenant Simms, Henderson, and myself, in pursuit of a large body of the enemy.

Question by the same.

When did accused leave the city of Mexico, and where has he been stationed since?

Ans. The accused, Lieutenant Rich, and myself, left about the 20th March, 1848. I can't say exactly where stationed since.

Question by the Court.

You say the accused waived his sword and cheered the stragling troops. State for the information of the Court the kind of sword he waived, and at what particular point, by reference to the diagram, the cheers were given, as also to what regiment the straglers belonged?

Ans. The particular kind of sword I can't say. The cheers were given from the time the firing commenced till I lost sight of him. There were no other troops but marines, near the place, and there were no troops in advance of me.

Question by the same.

Were the marines, at the storming of Chapultepec, passed by the New York regiment, or any other troops, in the direction of the Castle?

Ans. They were not.

Question by the same.

Did the battalion of marines direct its fire against the Castle, or against a body of troops stationed upon the ramparts, or on either side of the Castle?

Ans. Skirmishers were sent out from the Castle. I directed my men to fire when they could get a good opportunity, and only then. No fire was directed on the Castle itself by me.

Question by the same.

Did you hear any order given by the accused, as aid of General Shields, at the time you state he waved his sword?

Ans. Not as the aid of General Shields?

Question by the same.

Did the marines, at any time, assume a position such as would warrant a party of forty men to advance under the protection of their fire, for the purpose of the operations of mining and scaling?

Ans. I think not; they were three hundred yards off, or more.

Question by the same.

During your association with the accused in Mexico, did he at any time show you a sword, and state it was presented to him by some citizens of Brooklyn.

Ans. He did not.

Question by the accused relative to a question by the Court.

On the field of battle is it usual for an aid to state the capacity in which an order is given?

Ans. It is usual, of course, for them to say from whom the order comes, unless known to the person ordered to be such aid.

Question by the Court.

Had you any official information of the appointment of the accused as aid to General Shields?

Ans. I had none.

Question by the Court.

In what capacity was Captain Casey on the day of the storming of Chepultepec?

Ans. Of my own knowledge I don't know.

Question by the Court.

Did Lieutenant Devlin disappear around the corner, as described by you, before or after the men were ordered to cover, and did he at any time after they were under cover, call to the marines and tell them to follow him and he would lead them?

Ans. As I before stated, I lost sight of him before we halted. I did not hear him at any time making such a call, nor did I see him again after I halted my men.

Additional question by accused.

Did not the accused pass the marines while the men were under cover; and if yea, did not he, as he so passed, wave his sword and cheer the men?

Ans. He had passed them before they were under cover, he having joined me immediately after we had gotten on the Tacubaya road. He joined me in no capacity. He seemed to be acting by himself alone. I lost sight of him just as I halted my men. I did not see him afterwards, but I did not see him turn the angle; it was near the angle, and I suppose he must have turned it.

And here the examination of Captain Terrett is closed, and his testimony, as read to him, he declares correctly recorded.

George Bender, a lawful witness, produced by the accused, being duly sworn, testifies as follows, to the following interrogatories:

Were you at the attack on Chepultepec; and if so, in what capacity; in what company, and under what officer, and are you acquainted with the accused, and how long have you known him?

Ans. I then belonged to Captain Terrett's company, a private. Have known the accused since 21st April, 1847. I was present at Chepultepec. I saw Lieutenant Devlin there when he was wounded; it was on the road from Tacubaya to Chepultepec, near the bend of the road, just beyond where Captain Terrett's men were stationed.

Question by the same.

State the position of the marine officers and soldiers at the time when you saw Lieutenant Devlin wounded. Were they sitting, standing, or lying down, and under any and what shelter?

Ans. Some standing up, some walking along the ditch, and some sitting down, and also several officers of the army and volunteers were there acting in the same way. They came up the same road as we. I did not see them under any shelter; they were standing in the ditch. There was a sort of breastwork along the ditch.

Question by the same.

Where were Major Reynolds and Colonel Dulany, and in what position were they at, and immediately before the time of Lieutenant Devlin being wounded?

Ans. They were in the ditch; I can't say whether sitting or standing; there were Maguay bushes along the top of the breastwork along the ditch.

Here the accused closed his examination, and the Court put the following questions:

Was your battalion exposed to the fire of the enemy at the time you state you saw Lieutenant Devlin; if so, was it from artillery or musketry, or both?

Ans. They were exposed to musketry and artillery.

Question by the same.

How far were you from Lieutenant Devlin when you saw him wounded?

Ans. About ten or twelve paces.

Question by the same.

Was there any water in the ditch you mention, and how deep was it?

Ans. In some parts there was water. It was, say, three or four feet deep. It was deeper on the other side. Some parts of the ditch was dry.

And here the examination was closed, and the testimony having been read over to the witness, he declares the same correctly recorded.

And here, on application of the accused, who states two of his witnesses are absent, and he cannot, without disadvantage, examine Colonel Dulany before those witnesses, Arnold and Lomas, and prays the Court to adjourn to Monday, to enable him to get them, which the Court agreed to do, with the declaration that if the witnesses be not here on Monday, they having been already summoned, no further delay will be allowed.

It is agreed as evidence, that the accused returned from Mexico in April, 1848, and remained in Brooklyn till April, 1849, when he went to the Pacific on a cruise, remaining two years and ten months, and returned to Washington, where he remained two months, and on the 29th March, 1852, joined the Brooklyn station.

The Court adjourned till Monday morning, 10 o'clock.

NAVY YARD, BROOKLYN, NEW YORK,
September 6, 1852, 10 o'clock.

The Court met pursuant to adjournment; present, the President of the Court, the members of the Court, the Judge Advocate, the accused, and his counsel.

The proceedings of Saturday, the 4th September, are read and approved.

And whereupon the accused produces Samuel G. Arnold, a lawful witness, who being duly sworn, testifies as follows to the following questions:

Question by the accused.

Are you editor of the Brooklyn Daily Eagle, and were you so on the 1st day of July, 1852, and thence till the present time?

Ans. I was, and am so editor.

Question by same.

Are you acquainted with John Lomas, and if yea, about how long have you known him, and in what capacity, and are you acquainted with his handwriting?

Ans. I am acquainted with him, and have been probably three or four years. I know his handwriting so far as to tell it with considerable probability; I think I know it. I have known him chiefly as a writer for papers, sometimes for one and sometimes another.

The following question having been offered by the accused in the following words, viz: Was the paper, now produced, and shown to you, and marked No. 23, left at your office for publication; if yea, about what time was it left, and was it or not published, and how long was it at your office, and whether any note accompanied the same?

The same, with the document therein referred to, is objected to by the Judge Advocate; and the Court being of the opinion that the question is improper and the paper is not only not evidence in this Court, but impertinent and disrespectful in its language, refuse to allow said question to be put. The paper referred to being hereunto annexed, and marked No. 23.

The following question was offered by the accused, viz:

Was any private note from any person handed in at your office, accompanying a communication in relation to, or explanatory to the paper No. 18, signed "An Observer?"

Which being objected to by the Judge Advocate, was ordered not to be put by the Court.

Question by the accused.

Look at paper No. 24, and say in whose handwriting the same is?

Ans. I dont think I could say in whose handwriting it is.

Question by same.

Do you recognize the person now pointed out to you as Major John G. Reynolds, U. S. M. C.?

Ans. This is the person I have understood to be Major Reynolds, who called at my office.

Question by same.

About what time did he call at your office, and for what purpose did he say he called?

Ans. He called to inquire in relation to an article which had appeared in the Eagle, under the signature of "Observer," No. 18, perhaps a week after the publication of it.

Question by the same.

When he called, to whom did you refer him for information as to said article?

Ans. I don't remember the name of the person who left the article, but I referred him to that person, who was known to some men about the office.

Question by same.

Who is the foreman in the office of the Eagle, and did you or not refer Major Reynolds to him, when he called in relation to the article?

Ans. I referred him to the foreman, to whom the person was known. The foreman's name was Patrick Campbell.

And now the accused closed the examination of the witness, and the evidence having been read over to him he declares the same correctly recorded.

John Lomas, a witness produced by and on behalf of the accused, being duly sworn testifies as follows, in reply to the following interrogatories:

Question by the accused.

What is your business and employment, and how long have you been engaged in that business?

Ans. I am an attorney at law, and a correspondent for the public press, and have been for 20 years.

Question by same.

Are you acquainted with Lieutenant J. S. Devlin, and how long have you known him?

Ans. I have known him ten or twelve years, intimately.

Question by the same.

Look at paper No. 24, and say in whose handwriting it is?

Ans. It is in my handwriting. It is unlike my ordinary handwriting, but it is in my handwriting, it was written very hastily.

The paper No. 24, referred to in the said answer, is in the following words, viz:

Paper No. 24 is omitted, being the original of paper No. 18, signed "An. Observer" in the handwriting of Mr. Lomas.

Question by same.

What did you do with paper No. 24?

Ans. I gave it to Mr. Devlin, but when I don't know. It was after my return from Washington, which was in the latter part of May or first June, and I went back early in July.

Question by same.

At whose instigation, if any one's, did you write said paper?

Ans. I wrote it of my own volition, after a conversation with some gentlemen in reference to the Mexican campaign, and I

will add with a view of placing Mr. Devlin in a just position before the country, and also, I had no desire at the time to reflect unfavorably on any particular individual connected with the public service or otherwise.

Question by same.

At the time you handed the paper No. 24 to the accused, where was he and on what business was he engaged?

Ans. If I recollect aright it was in the city of New York, in Broadway. What he was about I don't know, except that he was going out of town somewhere.

Question by the accused.

Was he on public or private business at the time?

Ans. I don't know that. He was then going to leave New York.

Question by same.

What did you tell the accused, if any thing, when you handed the paper No. 24 to him?

Ans. Our interview was a brief one, I recollect saying to him, that the manuscript was written on both sides, and if it was printed it would be necessary to have it copied, and I explained to him the reason why the compositors required manuscript to be written on one side only, on his asking the reason.

Question by the same.

What did you understand at the time from the accused was the purpose of his going out of town?

Ans. I don't recollect any conversation as to his intended absence from New York at all.

Question by same.

From what source did you get the information on which you predicated the article?

Ans. I must respectfully decline answering that, for the reasons that the communications to me at the time were considered to be strictly confidential. I have no hesitation in saying, however, that the material allegations there were gotten from Lieutenant Devlin himself, in conversations at different times about his own actions and about the Mexican campaign. Those conversations at the time of their occurrence however had no reference to any publication at that time, and were looked upon as simple narrations in which I and others naturally felt an interest.

The accused offers the following questions:

Look at the paper No. 23 now shown you and say who is the author of it, which question being objected to by the Judge Advocate, was ruled out by the Court.

The accused thereupon offers the following paper to the Court which is in the following words, viz:

No. 23.

To the Editor of the Eagle:

DEAR SIR: On the 12th ultimo you were kind enough to publish a communication of mine under the head of "MARINE SOL-

DIERS," which I intended to be complimentary to a gentleman in the service of the United States) as one of the best and bravest and most efficient officers) whom I have for several years known, and for whom I entertain high and unfeigned regard and esteem. That brief and unpretending letter had reference to the meritorious services of Lieutenant Devlin, of this city, during the Mexican war. Not one iota of the remarks I wrote on the occasion alluded to, not a single syllable would I consent to be expunged therefrom, because I have the most conclusive evidence in my possession of the entire truth of all and every allegation made. I learn, with equal surprise and regret, that the just adulation I humbly sought to pay to a chivalrous and daring soldier, has excited the spleen, the envy, and the jealousy of some of his fellow officers to such an extent that they (or one of them at least) have determined to subject him to the ordeal of a trial by Court-martial, in the vague and false supposition that he instigated, or was the author of the publication which you did me the honor to insert in the Eagle.

It would, perhaps, be the best and the severest rebuke which those persons could suffer, were they permitted to proceed with their absurd and certainly suicidal scheme; because, in all probability, they might be subjected to a scrutiny in relation to their own acts, during the Mexican campaign, which would render them, in the estimation of the community, and of the world, *other* than the heroes which they have hitherto flippantly and fraudulently claimed to be. Let the individuals referred to place themselves in the unfortunate position if they have the folly and the temerity to do so. I most solemnly aver that they neither can nor shall escape unscathed. Whilst with the fullest confidence I can promise that the laurels so bravely won by Lieutenant Devlin shall no longer be withheld from him to be placed upon the craven foreheads of mere pretenders.

OBSERVER.

BROOKLYN, *August 16, 1852.*

The accused now proposes to show by the witness on the stand, that paper No. 23 was delivered at the office of the Eagle by him, together with a private note to the Editor requesting him to publish the same, and to prove that such request for publication of No. 23 was made before charges were preferred against the accused, and before Major Reynolds called at the office of the Eagle, which the Court refuses to allow to be proved, as not appearing to be relevant to any issue in the cause.

And here the accused closes the examination of the witness, and the Judge advocate propounds the following interrogatories:

Cross question by Judge Advocate.

State where you reside, and how long you have so resided, and whether you have at that place pursued your business of attor-

ney and correspondent, or writer of the public press continuously during that time?

Ans. I reside now in New York, on Broadway, and have so resided since 5th August, 1852. Previously to that time for 13 or 14 years I resided in Brooklyn. My business office is now and has been for about three years, in the office of the Sheriff of this county. I have been continuously occupied as above described in Brooklyn and Albany occasionally, during the legislation, and in Washington, when called upon, during the above period. I have been engaged necessarily in my vocation all that time except when sick.

Question by the Court.

Are you a regular or constant correspondent of the Brooklyn Eagle?

Ans. I have no connexion with the Brooklyn Eagle, nor have ever had. Several years ago, I think, I occasionally reported some local news for the Eagle.

And here the examination of the witness was closed by the Judge Advocate, and by the Court, and the evidence having been read over to the witness, he declares the same to be correctly recorded.

Lieutenant Colonel Dulany, a lawful witness, called by accused, being duly sworn, answers as follows to the following interrogatories.

Question by accused.

Previously to the present charges being preferred against the accused, did you have any conversation with Major Reynolds in which he expressed any feeling relative to the accused?

Ans. I had a conversation with Major Reynolds in consequence of an official letter from him relative to Sergeant McGann, in connexion with the publication out of which the charges grew, but he then expressed no feelings either for or against the accused to my recollection.

Here the examination of witness was closed, and the testimony having been read over to him he declares the same correctly recorded.

It is agreed that Lieutenant Devlin left New York for Norfolk in the Roanoke on the 10th of July, 1852.

The Court then here recalls Lieutenant Rich and propounds to him the following question to which he responds as follows, viz:

Look on the paper No. 26 shown you yesterday and state whether or not you are the author of it, and if it be in whole or in part in your handwriting, or in whose handwriting is it?

Ans. I am not the author of the letter, and although the handwriting appears familiar to me, I am not able to say whose the latter part is. But I should suppose the former part to be in the handwriting of Major Reynolds. The latter part is not in my handwriting. My name appended to is in my handwriting.

Question by Court.

When you saw Lieutenant Devlin cheering and waving his

sword, were you at the head of your company, or acting singly in the charge at Chepultepec ?

Ans. At the time specified a part of my company were with me, and Captain Terrett was at the same time near.

And here the examination is closed and the testimony being read over to the witness, he declares the same correctly recorded.

The accused further called Matthew Riordan a lawful witness, who, being duly sworn, testifies as follows to the following questions :

Question by the accused.

State whether you know Lieutenant Devlin, and whether any sword was ever presented to him ; and was the accused, at the time of such presentation, holding any, and what, municipal office in Brooklyn ?

Ans. I know Lieutenant Devlin, and a sword was presented to him by citizens of Brooklyn, when he was an Alderman of the Second Ward, in 1847 or 1848, a short time before he went to Mexico. I have known him for some twelve or fourteen years.

Here the examination of witness was closed, and his testimony being read over to him, he declares the same to be correctly recorded.

Lieutenant B. E. Brooke, a lawful witness produced by the accused, being duly sworn, testifies as follows to the following interrogatories :

Question by accused.

Do you know the accused ; look at the paper now shown to you, No. 25, and say where and when it was in your possession, and what you know relative to the contents of it ?

Ans. When I was at Boston station, among Colonel Watson's effects after his decease, the paper, No. 25, (among others relating to the marine corps,) was handed to me by Mrs. Watson. She said I could do with it as I pleased. I delivered the paper to Lieutenant Devlin, who asked me to certify the fact of my receipt of the letter. I think it to be in Lieutenant Devlin's handwriting. The said paper, No. 25, is as follows, viz :

No. 25.

SAN AUGUSTINE, MEXICO, August 19, 1847.

COLONEL : The regiment under your command being about to engage the enemy, and by resigning the staff appointment of acting assisting quartermaster, which I have the pleasure of holding under you, I will succeed to the command of a company, which will be more in consonance with my feelings.

Therefore, I respectfully tender to you the resignation of my staff appointment.

I am, Colonel, respectfully, your obedient servant,

JOHN. S. DEVLIN,

Act. Ass't Quartermaster U. S. Marine Regiment.

Colonel S. E. WATSON,

Com'g Marine Regiment, Mexico.

Here the testimony of the witness being closed, and having been read over to him, he declared the same to be correctly recorded.

The accused further offers the following extract from the official report of Lieutenant Colonel Wm. Dulany, relative to the conduct of the accused in Mexico at the storming of Chepultepec, which he is allowed to read as evidence by the Judge Advocate, and is in the following words, viz :

"On the morning of the battle of Contreras, 19th August, 1847, when it was hourly expected the marines would be called into action, Lieutenant Devlin tendered to Lieutenant Colonel Watson a resignation of his staff appointment, in order to take command of a company in the field, then commanded by an officer his junior, which was not accepted. Again, on the 7th September, a similar resignation was tendered, and again refused by Lieutenant Colonel Watson, on the ground of not having any other officer so familiar with staff duties. From this decision he appealed to General Shields, which appeal was made in my presence, and proved unsuccessful. The General sustained the decision on the ground of military usage, but on my representing to him the anxiety of Lieutenant Devlin for active service, he appointed him a volunteer aid-de-camp, in which capacity he served in the attack on Chepultepec, where he was for a time separated from the General. Subsequently he was engaged and wounded in the attack, while advancing on the enemies' battery. After the Castle was carried he proceeded, though severely wounded, to the Gareta de Belevu, where he was engaged in the attack on that place, and was among the first to enter the gates of the enemies' capitol.

WM. DULANY,
Major United States Marine Corps.

And thereupon the accused proceeds with the cross-examination of Major Reynolds, the witness produced, sworn and examined heretofore on the part of the prosecution.

Cross-question by accused.

When were you made a Brevet Major ?

Ans. On the 3d of March, 1848, I think.

Question by same.

What particular detached service was the accused on with you in Mexico ?

Ans. In the early part of the campaign he was Quartermaster and Commissioner—a short time he acted as aid to General Shields.

Cross-question by same.

Who was the General who called for the select party of which you speak of in your direct examination, for the storming of Chepultepec ?

Ans. General Shields, after approbation of General Quitman.

Cross question by same.

Were the orders to you relative to the storming of Chepultepec verbal or in writing?

Ans. Verbal.

Question by same.

State particularly what those orders were, and from whom you received them?

Ans. The orders were that I proceed on the Tacubaya road, furnish my men with the implements selected the night before, and after passing Drum's battery thirty or fifty paces, to shelter myself and party in the ditch and wait the passing of the Marines, and to follow in their rear, and when they were in line and commenced firing, to advance under their fire. These orders were given by General Quitman, and repeated by General Shields, they being together, and my party forming in the road at the time.

This question I was not asked at the former trial in Mexico.

Cross-question by same.

State the name of the officer under you in the storming party?

Ans. Only Lieutenant Hare, of the Pennsylvania volunteers. The name of the marine soldiers I don't know.

Cross-question by same.

Did you observe the New York regiment passing you when under shelter?

Ans. No, sir; I did not.

Here Pat.^k Campbell was introduced, and being sworn, duly answers as follows to the following interrogatories:

Question by accused.

Are you foreman in the Eagle office, and do you recollect any person calling at the office for the paper, No. 18, and did you deliver it to him, and did he state who sent him for it?

Ans. I am foreman, I don't know that any one called for this paper; as far as my recollection serves me, this does not appear to be the writing.

Question by same.

Do you recognise any person present as calling for a communication of the nature of the paper No. 18?

Ans. Yes, sir, (pointing to Major Reynolds,) that is the gentleman. I believe the publication was on the 13th; he called about two weeks after.

Here the examination was closed, and the testimony having been read over to the witness, he declares the same correct.

And the Court then proceeded with the examination of Major Reynolds.

Question by accused.

During the period the accused was with you in Mexico, did you have any quarrel with him?

Ans. Yes, sir; a very severe one.

Here the Court adjourned till to-morrow morning at 10 o'clock.

NAVY YARD, BROOKLYN,
10 o'clock a. m., September 7, 1852.

The Court met pursuant to adjournment. Present: the President, the members of the Court, the Judge Advocate, the accused and his counsel.

The proceedings of yesterday were read and approved. The accused thereupon proceeds with the cross-examination of Major J. G. Reynolds.

Cross-question by accused.

Have you from that time to the present been on unfriendly terms with Lieutenant Devlin?

Ans. Yes, sir; I have.

Cross-question by same.

State the origin and cause of such quarrel or difficulty.

Ans. It grew out of improper language of the accused, improperly influencing my son. The time was the 6th September, 1847, at San Augustine, Mexico.

Cross-question by same.

Did you prefer charges against accused on which he was tried in Mexico?

Ans. I did; and appeared as a witness.

Cross-question by same.

State who were present at the time you heard Lieutenant Devlin address his friends, as you have above testified, in his room in Mexico?

Ans. Different officers at different times, Colonel Dulany, Captain Terrett, Lieutenant Rich, Lieutenant Norvell, Henderson, Sims, and Nicholson.

Cross-question by same.

State the whole address as you recollect it, and the circumstances under which it was made?

Ans. On the first time the accused was drunk, and harangued, when Colonel Dulany and Captain Terrett were present, as I have above repeated, and Colonel Delany ordered him to keep silent. He said he would not be gagged, and continued, he said he might leave the room and go to hell.

He said more than I have repeated which I can't now remember. It continued a long time, he evidently knew I was in hearing. This was on the 19th September.

After, on the 1st and 5th October, he repeated what I have above stated, and Colonel Dulany being present, did not interfere. I heard Lieutenant Rich caution him. It is impossible to state the particulars further. There was whiskey in Lieutenant Devlin's room on the occasions. I don't know whether there was any eating going on. I heard them asking each other to drink. On every occasion of his addresses he was drunk.

Accused offered the following question, viz:

Did any person present at the address make any reply, and if so, assenting or dissenting?

Which being objected to by the Judge Advocate as irrelevant, the address being in evidence only to show an intent to make a publication, relative to its subject matter, on Lieutenant Devlin's return, and the Court order it not to be put.

Cross-question by same.

Did Lieutenant Hare or any other officer of the pioneering party under you, decline to stay with you under shelter, and advance round the angle of the road which protected you?

Ans. After the flag was down a general rush was made. The battalion was severed. Lieutenant Hare with my party and the rest of the marines made the rush round the angle referred to on the Castle gate. Lieutenant Hare did not refuse to stay.

Cross-question by accused.

What troops carried the left battery, that kept you in check, and where was the accused at the time?

Ans. I am not aware what troops carried it, I only saw the accused sitting behind a tree.

Cross-question by same.

Will you state the nature of your wound, and did you report yourself to the surgeon or ever show him your wound?

Ans. I was wounded in the outside of my left ankle. It was slight. I showed it to Dr. McSherry, who afterwards told me Colonel Dulany refused to notice my wound, unless he would examine it. It would only make unnecessary uneasiness to my family to report it, so I asked him not to report. I saw Lieutenant Baker's wound, it was a contusion. He refused to show it because Colonel Dulany had made the demand. This I state in justice to Lieutenant Baker. My wound was received I suppose while under cover. It was rather a burn than a wound, and I did not notice it until I was on the road to the Belin gate.

Cross-question by same.

State what you mean when you say "if any marines followed Lieutenant Devlin he must have obtained them surreptitiously?"

Ans. Taking them from the command of other officers.

Cross-question.

Did or did not you and Colonel Dulany agree on reporting the accused to Headquarters, and urging a prosecution against him by Court-Martial; and did you or not go to Washington, exhibit the paper No. 18, obtained from Sergeant McGann, and urge Brevet Brigadier General Henderson, and the Navy Department to proceed to try or prosecute the accused?

Ans. No, sir. I wrote an official note to Colonel Dulany. I also went to Washington for the double purpose of getting a furlough for my son, and getting an investigation as to the authorship of the paper No. 18. I sent paper No. 18 to Headquarters in an official letter.

There was no understanding between myself and Colonel Dulany about a prosecution.

Cross-question by same.

Did you, while in Mexico, strike Lieutenant Devlin in the face with you fist?

Ans. I did.

Cross-question by same.

Have you or not on several occasions threatened to have the accused cashiered; and have you not stated that you would not rest satisfied until you got him out of the corps, or words to that effect?

Ans. Never. On the contrary I have always acted on the defensive, defending my reputation.

Cross-question by same.

State when and where you first saw paper No. 18, and had you seen the publication previously?

Ans. I saw the paper on the 19th July, at the office of the Eagle. I heard of it at my rendezvous from one of my Sergants, a day or two after the publication. I did not see the original paper, No. 18, till after my return from Washington, in August. On the 19th, I asked for the editor. I saw him and told him that the paper reflected on me and others injuriously—that I had, four years ago, cautioned him about publishing articles reflecting on me. He said he did not observe the piece, or consider it as reflecting on any one, but referred me to the other editor, who referred me to the foreman of the office, who answered evasively. He was ordered to speak out if he knew. He said it was an officer of the marine corps. I threatened to prosecute the editor if I did not get the author. He then mentioned McGann as having brought it, and said it had been taken from the office the day previously.

Cross-question.

While at the office was paper No. 23 shown you, or did any person offer to show it to you or state its contents?

Ans. No paper was shown me, nor was there any offer to show me any paper or letter touching the matter. On the contrary, I asked the editor to publish a statement that he did not mean to reflect on any officer by the piece published, but he declined to do so.

The accused offers the following question for the purpose of contradicting the witness, viz: On your examination as a witness on the trial of the accused in Mexico, did you testify that the words used by the accused were as follows, viz: "Where was Captain Reynolds with his storming party? He was lying back, he was not doing his duty. I am free to say it. I will make it known on my return to my home in Brooklyn, by publishing it to the world?"

And the Judge Advocate here hands to the witness the record of his testimony, procured and produced by the accused, for the purpose of contradicting the witness, agreed to be used as if the whole record were produced, to which the accused objects, but the Court allows the witness to examine the record of his testimony before replying to the question.

Ans. Five years or nearly so have elapsed since that answer was given. I have had no minutes to keep the exact language

used by the accused in my mind. But I intended on the testimony given before the Court to use the precise language. If it differed, it was intended to be equivalent of the former language. Inasmuch as it is on the record, I presume I must have used the language imputed in the question.

Cross-question by accused.

Was the language used by the accused with reference to you, on the 22d September, and 1st October, 1847, in Mexico, the same on both occasions?

Ans. They were all of a denunciatory kind, and the language was pretty generally of the same character.

Cross-question by same.

Were the same expressions used in reference to the mode and manner in which he would publish you on his return?

Ans. I believe he made use of pretty much the same words. They were tending to the same point, and in substance the same.

Question by same.

Upon both occasions, did he make use of the words "publish to the world and make it known through the public newspapers?"

Ans. I think he did on both occasions. I am certain he did on the last occasion.

Cross question by Same.

Did you in Mexico testify to any conversation on the 5th of October?

Ans. I don't remember testifying to any conversation in Mexico on the 5th October. But I do so now?

Question by same.

Did Lieutenant Devlin demand satisfaction of you for the blow you gave him in Mexico?

Ans. He did next morning.

And the examination being closed and read over to the witness, he desires to make the following corrections:

That on reflection, and from examining the record of the testimony in Mexico, he is incorrect in saying that the language, used on the 5th October, and 1st October, was the same. He should have said the language on the 22d September, and 1st October, was the same; and from not having shown the paper No. 18, he supposed it to be the printed article, and not the original manuscript from which the publication was made. And he now states that it was the printed article he sent to Washington, and he never saw the original manuscript till the meeting of this Court. And the testimony so corrected he declares correctly recorded.

The accused gave in evidence the following agreement, with the accompanying papers, viz:

"It is further agreed that the accused may read in evidence the following extracts from the reports of General Pillow, General Quitman, General Shields, and General Persifer F. Smith, as published by Congress, Executive Doc., No. 1, 1847."

Extract from General Pillow's report :

"The advance of General Quitman's division, which was to have assaulted upon the left of the division, having fallen under the fire of a battery on the outside of the outer walls, and being unable to scale it in consequence of the want of ladders, were obliged to march several hundred yards to the south, and to enter the very breach through which portions of my command had passed at the commencement of the action."

Extract from General Quitman's report :

"The battalion of marines being posted to support the storming parties, I ordered the assault at all points. The storming parties, led by the gallant officers who had volunteered for this desperate service, rushed forward like a resistless tide. The Mexicans, behind their batteries and breastworks, stood with more than usual firmness. For a short time the contest was hand to hand, swords and bayonets were crossed, and rifles clubbed. Resistance was, however, vain against the desperate valor of our brave troops. The batteries and strong works were carried, and the ascent of Chapultepec on that side laid open to an easy conquest. In these works were taken seven pieces of artillery, one thousand muskets, and five hundred and fifty prisoners, of whom one hundred were officers, among them one General and ten Colonels.

"The gallant Captain Casey having been disabled by a severe wound directly before the batteries, the command of the storming party, of regulars in the assault, devolved on Captain Paul, of the 7th infantry, who distinguished himself for his bravery.

"Lieutenant Fred. Steele, 2d infantry, with a portion of the storming party, advanced in front of the batteries towards the left, there scaled the outer walls through a breach near the top, made by a cannon shot, ascended the hill directly in his front, and was among the first upon the battlements. The young and promising Lieutenant Levi Gaunt, 7th infantry, was of this party. He had actively participated in almost every battle since the opening of the war, but was destined here to find a '*soldier's grave*.'

"The column was re-organized for an attack upon the batteries of the garita of the city, the regiment of riflemen, intermingled with the bayonets of the South Carolina regiment, were placed in advance—three rifles and three bayonets under each arch."

Extract from General Shield's report :

"The other officers and soldiers of the whole command behaved with equal gallantry and good conduct, Lieutenant Colonel Baxter, commanding the New Yorkers, fell mortally wounded in this gallant charge.

"The enemy made another determined stand at a position on the road, above a mile from Chapultepec, behind a strong breast-work across the road, flanked on his right by a field redan, and

protected upon the left by an impassable marsh. This position, however, was soon rapidly carried by the rifles and palmettoes, aided by a well directed fire from Drum's battery."

Extract from General Smith's report :

"I reported to General Quitman at Tacubaya on the morning of the 13th September, and was ordered by him to form the reserve of his column, in the attack on the east side of Chepultepec.

"My brigade consisted of the regiment of mounted riflemen, 1st artillery, and 3d infantry. Two companies of riflemen and two of the 3d infantry were absent on detached service. The main body of General Quitman's command was advanced by the road leading from the east end of Tacubaya, towards the foot of the hill at Chepultepec. In pursuance of the General's directions, I formed my brigade in his rear, and prolonging my right beyond his to cover his right and rear from the enemy stationed near the aqueduct leading from Chepultepec to the city, and I detached two companies of riflemen under Captain Simonson, and afterwards, a third, under Lieutenant Morris, still further to my right and rear, the better to secure the whole. The enemy's principal batteries on this side were discovered to be at the foot of the hill, near where the aqueduct leaves it, so that prolonging my line in that direction brought the regiment of mounted riflemen on my right, immediately in rear of the storming parties under Captain Paul, 7th infantry, and when the attack was ordered, they (the riflemen) entered the battery along with the storming party, and carried the second battery in rear of the first, where several guns and many prisoners were taken."

And thereupon Lieutenant Rich offers to the Court the following explanation of his testimony, which is read by consent as follows, viz: Lieutenant Rich begs leave to state that he has seen the original of paper No. 26, which he yesterday testified, he was not the author of. He finds it in his handwriting, although he had not then nor has he now any remembrance of writing the same.

J. RICH, *Lieut. U. S. M. C.*

And the Court then adjourns till tomorrow morning at 10 o'clock.

NAVY YARD, BROOKLYN,
September 8, 1852, 10 o'clock, a. m.

The Court met pursuant to adjournment.

Present, the President of the Court, the members of the Court, the Judge Advocate, the accused and his counsel.

The proceeding of yesterday are read and approved.

And thereupon it appearing to the Court that John Roach, a witness summoned for the accused, is sick and cannot attend, and

the accused swearing that he expects him to prove the facts following, (if here,) the Judge Advocate agrees to admit said statement as if testified to by said witness, which statement is as follows, viz: The accused states that he confidently expects to prove by John Roach, a resident of the city of Washington, the following facts: First, that said John Roach was a sergeant attached to the company of marines commanded by Lieutenant Young at the advance of the troops at the storming and assault of Chepultepec, and when the marines halted, the accused called to them to follow him, on which the said Sergeant John Roach and a few others did spring up and follow the accused, until said Roach received a severe wound in the thigh, which caused him to remain behind, and the accused with the others advanced onward towards the enemies' batteries.

Second, that John Roach as he ran out saw Captain, now Brevet Major, Reynolds sitting or lying down under cover of the embankment and Maguay bushes.

Third, that he can state the particular place and situation in which Captain Reynolds was during the storming of Chepultepec, and during the fire of the musketry, (the marines being under cover,) that Captain Reynolds remained quiet, permitting a part of his men to retire to the rear.

Fourth, that witness, since the occasion above referred to, heard Captain Reynolds make various threats against the accused, and, among others, that he never would be satisfied until he succeeded in getting accused out of the corps, or words to that effect, or of similar import.

Fifth, that Captain Reynolds for the purpose of carrying out his threats against the accused, made inquiries of the witness, and in his witnesses presence, of several other persons and marines, for the purpose of finding out some charge against the accused.

Sixth, that he saw Captain Reynolds in Washington some time in July or first of August last, and that he stated that he went on to Washington to have accused tried or broke, or words to that effect, or of similar import.

JOHN S. DEVLIN.

Sworn in open Court.

H. W. DAVIS, *Judge Advocate.*

And there the accused closes his case.

And the accused having closed his case, the Judge Advocate proceeds to offer the following rebutting evidence:

Aug. S. Nicholson, a lawful witness, produced and sworn by the Judge Advocate, answers as follows, to the following interrogatories:

Question by the Judge Advocate.

Say if you know John Roach, Sergeant in Lieutenant Young's company of marines in Mexico, and where you saw him on the day of the storming of Chepultepec, and at what point of time

and place was he wounded, and was the accused near him, or how far from him at that time?

Ans. I did; he was orderly sergeant of the company to which I was attached. I saw him at the storming of Chepultepec, with his company, which was somewhere about the centre of the line. He was wounded while advancing on the Tacubaya road, some two or three hundred yards from the corner of the road above referred to and stated, before the marines had taken cover. I saw him fall out of the ranks, with the exclamation that he was wounded, and did not again see him till I saw him in the city of Mexico. At that particular time I don't remember seeing Lieutenant Devlin at all. Some few moments, or a short time before, I saw him at or near the head of the line.

Question by the same.

Did said John Roach or any other marines, spring up from their cover and follow Lieutenant Devlin, on his call, after the marines had taken shelter?

Ans. I did not see Lieutenant Devlin at all after we took shelter, till on the road to the Garita de Belen.

Question by the same.

How far was Roach from you when wounded?

Ans. The company was a small one. He was twenty or thirty paces before me.

Here the Judge Advocate closes his examination, and the accused propounds the following cross-interrogatories:

Question by the accused.

Were you separated from your company at the time referred to in your answer above, and if so, how long were you separated?

Ans. No. I was with my company at that time and place. The company was not separated before they took shelter. When the flag was taken down from the Castle of Chepultepec, there was a general rush, and the companies were all broken and mingled up; they again were separated and arranged in the yard of the Castle, excepting those who kept on with Captain Terrett on the San Cosme road. At the time of the rush I was separated from my Captain, and did not see him again for three days, I think.

Cross-questioned by the same.

Did not your company and the marines halt under cover of a dilapidated *adobe house*, before you halted in the Maguay ditch, and did not Sergeant Roach have left that cover without your notice?

Ans. We did halt at the rancho. He might, by possibility, have left the cover there, but I don't think he did. He did not, however, leave his company there, for it was just after the marines left that place, that he was wounded with his company.

And here the testimony is closed, and the same having been read over, the witness declares the same correct.

The accused, by leave of the Court, propounds the following question to Captain Terrett:

Question by the accused.

While the marines made their first halt under cover of the *adobe* house, did you or not, see the accused rushing forward, and do you or not know that Sergeant Roach and others, advanced at that time with the accused?

Ans. I saw the accused about that time, but have no recollection of seeing him moving. I do not know that Sergeant Roach or any other men, advanced with the accused. He had no men under his command; the halt at the rancho was very short.

The evidence being read over to the witness, is declared to be correct.

And here the Judge Advocate closes his testimony, and the accused closes his testimony. And thereupon the Court proceeds to consider the said case.

And the Judge Advocate submits the case to the Court, with the following observations, which are read to the Court in the following words: (The remarks of the Judge Advocate not being properly part of the record, are omitted.)

And thereupon the accused offers the following request to the Court:

The accused now asks until next Monday to arrange and prepare his defence, and states that the preparation of such defence will require at least that time, as it will occupy a day or two to arrange the testimony preparatory to writing out the defence.

And thereupon the Court order that the time required be allowed.

And thereupon Lieutenant Augustus Nicholson prays to be excused from passing sentence on the accused, since he was objected to by the accused, who, though he withdrew such objection, may still entertain some want of confidence in him.

And thereupon the Court is cleared for consultation, and having consulted in the absence of said Lieutenant Nicholson, the Court is opened, and the Court announces its decision, as follows:

It is the opinion of the Court that Lieutenant Nicholson be not excused.

And thereupon the Court adjourns till to-morrow morning at 10 o'clock.

NAVY YARD, BROOKLYN,
September 9, 1852, 10 o'clock, A. M.

The Court met pursuant to adjournment.

Present, the President of the Court, the members of the Court, and the Judge Advocate.

The proceedings of the Court of yesterday were read and approved.

And thereupon the Court adjourns till to-morrow morning at 10 o'clock.

NAVY YARD, BROOKLYN,
September 10, 1852, 10 o'clock, A. M.

The Court met pursuant to adjournment.
Present, the President of the Court, and the members of the Court.
The proceedings of yesterday are read and approved.
And the Court adjourns till to-morrow morning at 10 o'clock.

NAVY YARD, BROOKLYN,
September 11, 1852, 10 o'clock, A. M.

The Court met pursuant to adjournment.
Present, the President of the Court, and the members of the Court.
The proceedings of yesterday are read and approved.
The Court adjourns till to-morrow morning at 10 o'clock.

NAVY YARD, BROOKLYN,
September 13, 1852.

The Court met pursuant to adjournment.
Present, the President of the Court, the members of the Court, and the accused.
The proceedings of the Court on the 11th September were read and approved.
The President of the Court announced to the accused that he would be called upon for his defence on Wednesday morning at 10 o'clock.
Thereupon the Court adjourned till to-morrow morning at 10 o'clock.

NAVY YARD, BROOKLYN,
September 14, 1852, 10 o'clock, A. M.

The Court met pursuant to adjournment.
Present, the President of the Court, and the members of the Court.
The proceedings of yesterday were read and approved.
Thereupon the Court adjourned till morrow morning, 10 o'clock.

NAVY YARD, BROOLLYN,
September 15, 1852, 10 o'clock, A. M.

The Court met pursuant to adjournment.
Present, the President of the Court, the members of the Court, the Judge Advocate, the accused, and his counsel.
And thereupon the Court asks the said accused, Lieutenant John S. Devlin, if he be ready to proceed with his defence.
And the said Lieutenant J. S. Devlin, declares he is ready, and offers his defence to the Court, which is read in the following words, that is to say: (See defence appended.)

The Judge Advocate submits in reply a few remarks, (which are omitted as not properly being part of the record.)

And, thereupon, the Judge Advocate closes the case, and submits the same to the court.

And, thereupon, the Court being closed, the proceedings are read over by the Judge Advocate which having been heard and considered, the Court does find as follows:

The Court find the first specification of the first charge proven, except the following words, viz: "The President of the United States, the Secretary of the Navy, at the date of the publication thereof," which words the court find not proved.

And the Court find the accused guilty of the first charge.

And the Court find the first specification of the second charge proven. And they find the second specification of the second charge proven.

And the Court find the accused guilty of the second charge.

And the Court find the first specification of the third charge proven, except the words following, that is to say; "Copy or cause to be copied the said written communication, and that the copy so made," and the following words: "did so copy or cause to be copied," and the words: "to copy and," which words they find not proven.

And the Court find the accused guilty of the third charge—proven, except so much thereof as states the request of the accused to Sergeant McGann to copy said article in the specification mentioned.

And the Court find the accused guilty of the fourth charge.

And, thereupon, the Court considering the said charges and specifications and the evidence touching the same, and having fully and maturely deliberated on the same, does pronounce the following sentence—

The Court does sentence the accused, 1st Lieutenant John S. Devlin, to be cashiered the service.

And, thereupon, the Court having closed all business legally before them, adjourns *sine die*.

Capt. A. N. BROVORT, Theodore Library
 " H. B. TYLER,
 " J. L. C. HARDY,
 " G. H. TERRETT,
 " A. H. GILLESPIE,
 Lieut. B. E. BROOKE,
 " W. A. T. MADDOX,
 " J. C. GRAYSON,
 " A. S. NICHOLSON.

HENRY WINTER DAVIS, *Judge Advocate*.

The foregoing sentence is hereby approved this 18th September, 1852.

MILLARD FILLMORE.



~~APPENDIX.~~

D E F E N C E .

UNITED STATES OF AMERICA vs. JOHN S. DEVLIN.

The accused, reserving to himself the benefit of the several objections to the Court, made by him previous to and after the organization of the Court, and to the several objections made and insisted upon by him during the course of the trial, makes the following defence to the charges and specifications against him. To the first charge: "Treating with contempt his superior officers." The word "contempt," as defined by lexicographers, means the act of despising, the act of viewing or considering, and treating as *mean, vile, and worthless*; disdained; and is considered one of the strongest expressions of a mean opinion. For the purpose of sustaining the specification under this charge, the prosecution have introduced the following testimony: The admissions of the accused that paper No. 18, and letter No. 19, are in his handwriting, and also the testimony of Sergeant McGann to the fact of the paper No. 18 being in the handwriting of the accused as evidence, *per se*, that the accused wrote and prepared it for publication. The declaration made by the accused at the time he handed the paper to Sergeant McGann, (see his testimony,) that it had been put into his hand by some person with that party's request, that it be published in the Daily Eagle, is affirmative testimony, offered on the part of the prosecution, and cannot therefore be impeached; the whole testimony must be taken together; the party offering the testimony cannot impeach his own witness, and has no right to travel out of the record (the evidence) to explain or vary that testimony. If then it was handed to him, he did not write it, (that is, he was not the author,) in the sense used in this specification. Nor did he prepare it for publication, nor did he publish or cause it to be published—the mere expression used in Sergeant McGann's testimony. Lieutenant Devlin "asked me if I knew any person, or if I would attend to it," made use of under the circumstances and upon the occasion, (in a hurry,) taken in connexion with the fact that it was originally handed to the accused, is not, nor ought it to be, in a criminal case, where the law is imperative upon the Court, to give the accused the benefit of every reasonable doubt, evidence of a request or direction from the accused to publish it. It was handed to Sergeant McGann to dispose of it as he chose, he had the option to publish it or destroy it. And if he, McGann, did publish it, the accused is at a loss to imagine upon what principle he is to be held accountable for the acts of McGann; and the letter of the accused, No. 19, cannot be resorted to for the purpose of explaining or giving larger scope to

the testimony of McGann, he intrusted to McGann's "care and prudence"—that is, leaving it ~~entirely~~ discretionary with McGann to publish the paper or not; the letter, No. 19, says, "you might in fact do with it as you pleased." McGann never read the paper over until next day, when he copied it, and the following day (Monday) it was left by McGann at the office of the Eagle. McGann's copy has never been produced, and the manner in which it was written, whether on *one side* or both, does not appear. The learned Judge Advocate seemed to put great *stress* on the fact that the paper, No. 18, was written on both sides; take that fact in connexion with the fact that it was to be published, (see Lomas's testimony,) it was to be written only on one side, and it must furnish an irresistible argument in favor of the accused—that he did not intend to copy No. 18 (I mean that particular copy) to be published. I admit that the copying of a libel is a *publication*, but that is not within the specification; he must have "published, or caused to be published, in the Brooklyn Eagle," to come within the specification. That the accused copied the paper, No. 18, from the original manuscript, (and without any malicious intent, for in the absence of proof, malice in the present case cannot be inferred,) is a fact that cannot be disputed. How the mere copying of a paper, and delivering such copy to Sergeant McGann, under the circumstances, can be construed into a contempt of his "superior officers," the accused is lost in conjecture. There was certainly an absence of motive from the testimony in the case, as no unfriendly feelings are proved to exist between the accused and any of his "superior officers," with the single exception of Brevet Major Reynolds.

It would be doing violence to the construction of the English language to make this specification apply to General Henderson, (the prosecution having abandoned the specification as applicable to the President of the United States and the Secretary of the Navy,) and it cannot in this specification be applicable to any other officer—the rule being that the particular persons must be named in the specification, and the particular manner in which the party is or may be affected must be pointed out with reasonable certainty.

Charge 2d. Using provoking and reproachful words respecting other persons of the Marine Corps.

The first specification charges that they are "provoking and reproachful" towards General Henderson, Major Howle, and Major Nicholson.

It is a very difficult matter, the accused submits, under this charge, if he were entirely innocent, to disprove the same. What the officers named in the specification personally might consider provoking and reproachful, is a question exclusively for them to decide. But when the subject is brought before a Court-Martial composed of honorable and chivalric men, such as the present Court is composed of, a common sense construction will be given by the Court to the effect of the words.

It is difficult to say how words in an anonymous communication, emanating from an obscure press, under the signature of "An Observer," could, under any circumstances, provoke men who are at the head of an honorable and brave corps. To make the words reproachful and provoking towards the gentlemen named, it must first be conceded that those persons named in the specification, are "The Stay-at-home Drones of Headquarters," a concession which the accused will not permit or suffer to be permitted as emanating from him. The accused most solemnly protests and insists that his intercourse with the gentlemen referred to, precludes the possibility of any such intention on his part. The accused deeply regrets that in his answer to the 2d specification under charge 2d, he deems it due to the Marine Corps, to which he has been attached more than twenty-eight years, and also necessary to his defence, that he should here examine somewhat in detail the testimony taken. The accused equally regrets that the decision of the Court, admitting declarations made by him in Mexico, about five years since, compelled him to examine this testimony in detail, which he otherwise would have refrained from and left unnoticed, on this record. Brevet Major John G. Reynolds, whose hostility to the accused for about five years, (see his testimony,) having heard of the article having been published, hastened to the Eagle Office and obtained all the information he could; not for the purpose, as the accused insists and the testimony shows, of vindicating his character as an officer, but to gratify his malevolent feelings towards the accused. What officer, the accused ventures to ask, would go from the city of New York to Washington, for the "*double purpose*" of prosecuting the accused and getting a furlough for his son? The accused submits that it is not usual for persons to visit Washington for the purpose of procuring a furlough; and he submits from the facts and testimony in this cause, that he has a right, and this Court ought to infer, that the visit of Major Reynolds to Washington would not have taken place at that time had the communication not been published, and that his principal object in going there was to insist, in person, to have the accused brought to a Court-Martial. And the accused insists that the controversy is more of a private than of a public nature. The accused insists that the language of the communication is, in substance, proved by the testimony not only of Major Reynolds, but also by all the testimony in the case.

And that the language was not used for the purpose of affecting the character of any person. That Major Reynolds and others sat on the ground under cover of an embankment topped with Maguay bushes, during the fire and storming of Chepultepec, and the outer batteries, is abundantly proved, and also that Major Twiggs, who was killed at the head of his command, and the accused were the only marine officers whose blood flowed in the Valley of Mexico. If, then, those public events, collected and published as Mr. Lomas testifies, from "narrations of the accus-

ed and other gentlemen" are proved true, where is the wrong in giving the truth for good and proper ends.

The accused insists that there is no rule or regulation of the Navy Department, prohibiting any person from copying or publishing his or any version of a public transaction after such a lapse of time. The only prohibitory order concerning publications of the Mexican campaign, that the accused is aware of, was that of Governor Marcy, while Secretary of War, dated January 28, 1847, which is appended to this record, and only prohibits publications for *one month* after the campaign to which such publication relates. The accused therefore insists that, if he were so minded, he has a clear right to speak, write, or publish, on public events or transactions that he witnessed in the Mexican war, while unrestrained by any law or regulation on the subject.

Charge 3d. Guilty of conduct unbecoming an officer and a gentleman.

The specification under this charge is not made out. McGann swears that all the accused said upon this subject was, that the accused asked him "if I knew any person, or if I would attend to it," take this testimony in connection with the letter No. 19, and it negatives the idea that the accused requested him to publish the article. The letter expressly says "you might in fact do with it as you pleased;" this by no torture of our language can be construed into a request. The specification must be proved as charged, and proved in such manner as to leave no reasonable doubt in the judgment of the Court as to what the writer of the article intended.

It cannot be said that the article falsely lauds and magnifies the conduct of the accused. The testimony of Brevet Major Terrett, and Lieutenant Rich, fully proves the conduct of the accused upon the occasion referred to, was that of a fearless officer seeking to distinguish himself, and sustain the honor and bravery of the corps to which he belonged. And the accused submits, that it is rarely any newspaper articles, laudatory of the acts of an officer, are published without being colored in such a manner as to give them the effect intended by the writer. The article in the present instance was written, as Mr. Lomas testifies, for the purpose of "placing Lieutenant Devlin properly before the country."

If Mr. Lomas, the writer, saw fit to give it a coloring, the accused ought not to be held responsible for *that* act.

Charge 4th. Guilty of scandalous conduct tending to the destruction of good morals.

The specification under this charge is not made out in any respect, for there is no evidence that the accused had anything to do with the statements contained in the article published, except as stated in the testimony of John Lomas, and the testimony certainly shows an entire absence of all malice, which is the gist of this specification; and if the Court find the accused not to be the original author of the communication, be it true or false, the

accused is not liable for it except so far as he may be amenable for copying it.

The accused proposes to resume this subject in connection with a review of the testimony in his behalf. And first the learned Judge Advocate has termed the evidence of Mr. John Lomas as "most extraordinary testimony." Mr. Lomas stands before this Court uncontradicted in regard to any material fact. And he swears positively that he is the author; "I wrote it," says he "of my own volition, and handed it to the accused," and there is no evidence that the accused read it or knew who was the author of it, nor is there any evidence that the accused knew it was in Lomas' handwriting. Lomas himself says it is not *like his ordinary* handwriting. Secondly, what motive could Lomas have in this case to state a direct falsehood, it is not pretended that he had any inimical feelings towards any member of the marine corps.

The Judge Advocate had notice nearly a week previous to the examination, that Lomas would be examined as a witness, and the facts he was expected to testify to, and had it in his power to have impeached Lomas; as he did not do so the positive testimony of Mr. Lomas must be taken as true in opposition to inferences. The Court are bound to decide the case upon the testimony before them, and they are not at liberty to travel out of the record. To convict the accused, the Court must decide that Lomas has been guilty of wilful and corrupt perjury, by acquitting the accused, the Court rid themselves of that alternative.

The rule of evidence is, a positive fact sworn to shall control circumstances. There is another well established rule in criminal cases, the prisoner must be proved to be guilty beyond all reasonable doubt, and those doubts may arise either upon the proof or the effect of it.

What then is the true state of this case, stripped of all its technicalities. Mr. John Lomas, a friend of Lieutenant Devlin, had long previous to the publication of paper No. 18, had conversations with the accused and other gentlemen of the corps, on the subject of the Mexican campaign, in which all took an interest, and of his own volition writes a newspaper squib, for the purpose, and that alone, (as sworn to,) of doing justice to his friend; he hands it to him in the street in New York, accused copies it, hands it to Sergeant McGann without any special directions; McGann copies it and causes it to be published; this excites the nice feelings of Brevet Major Reynolds, he visits Washington as the champion of the whole marine corps, to protect its integrity, and the honor and valor of the officers connected with it, by preferring charges of a grave nature against the accused, which would never have been brought had he not had personal and private malice to gratify.

The accused insists that the only article of the Navy Regulations which can be made applicable to the charges and specifications against him is article third, which provides that any officer

guilty of oppression, cruelty, fraud, profane swearing, drunkenness, or any other scandalous conduct, tending to the destruction of good morals, shall be cashiered, or suffer such other punishment as a Court-Martial shall adjudge. The accused respectfully insists that there is nothing in the evidence before the Court that brings his case within the said article, and that the Court are bound, in passing upon the evidence, to take all the facts and circumstances into consideration, and especially the following. He, the accused, was for years in the city of Brooklyn after the alleged threat in Mexico, of "publishing Major Reynold's conduct to the world, or to his constituents," and no unfavorable inference should be drawn against him on account of such previous threat, for that *threat* he has been heretofore *tried* in Mexico, and that, *too*, upon the testimony of Major Reynolds; that there is no evidence before the Court that since his return from Mexico he has ever repeated any such threats, or has manifested any ill-feelings towards Major Reynolds. He appeals to the extracts from the several official reports and papers which have been introduced by him for the purpose of showing that he faithfully performed his duty on the occasion referred to, and that he bears scars upon his front as evidence that he did not turn his back upon the enemy.

In conclusion, he solemnly protests that whatever part or agency the Court may attribute to him in relation to the said publication of the *communication* signed "An Observer," he did not design the slightest disrespect to any officer connected with the public service. He may have been indiscreet, nay more, he may have erred in copying the paper, No. 18, and handing it to Sergeant McGann, but it was an error of the head and not of the heart. In hastily reading over the paper as he copied it, it never occurred to him that it might possibly be construed in the manner sought to have it construed by the charges and specifications brought forward in this matter.

With these brief remarks the accused submits this case to the Court, relying confidently and respectfully on their judgment to discriminate between actions and motives.

JOHN S. DEVLIN.





