

THOMAS F. RILEY.

JULY 1, 1886.—Laid on the table and ordered to be printed.

Mr. STEELE, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany bills H. R. 3867 and 5165.]

The Committee on Military Affairs, to whom were referred the bills (H. R. 3867 and 5165) for the relief of Thomas F. Riley, have carefully considered the same, and report them back with adverse recommendations, believing that said Riley was properly dismissed from the service upon the charges and specifications printed herewith.

Your committee also print a letter from the Secretary of War and a review by the Judge-Advocate.

WAR DEPARTMENT,
Washington City, March 26, 1886.

SIR: In response to your requests of the 6th and 15th instants for information on House bills 3867 and 5165, providing for the restoration of Thomas F. Riley to the rank of captain in the Twenty-first United States Infantry, I have the honor to transmit herewith a statement of the military service of Captain Riley, a copy of the general court martial order dismissing him from the service, and a copy of the review of the trial by the Judge Advocate-General, which, it is believed, fully afford the information desired by you in this case.

Very respectfully, your obedient servant,

S. V. BENÉT,

Brigadier-General, Chief of Ordnance, and Acting Secretary of War.

Hon. E. S. BRAGG,
*Chairman Committee on Military Affairs,
House of Representatives.*

WAR DEPARTMENT,
ADJUTANT-GENERAL'S OFFICE,
Washington, March 24, 1886.

Statement of the military service of Thomas F. Riley, late of the United States Army, compiled from the records of this office.

He enlisted July 1, 1863, as private of ordnance; promoted first-class private of ordnance November 1, 1865, and was discharged May 1, 1866, by reason of appointment as second lieutenant Twelfth Infantry, March 23, 1866; transferred to Twenty-first Infantry September 21, 1866; promoted first lieutenant, Twenty-first Infantry, October 29, 1867; unassigned April 19, 1869; assigned to Twenty-first Infantry August 16, 1869, and promoted captain, Twenty-first Infantry, June 28, 1878.

He joined the Twelfth Infantry June 6, 1866, and served therewith in Virginia to April, 1869, when, with the Twenty-first Infantry, he went to Arizona, and served there to September 25, 1871; on leave to January 5, 1872; conducting recruits to and in California to May, 1872; with company at Camp Harney, Oreg., to April 15, 1873;

on general recruiting service at Newport Barracks, Ky., to June 28, 1875; with company at Camp Harney, Oreg., to September 7, 1876, and at Fort Boise, Idaho, to July 14, 1877; in the field, in the campaign against Nez Percé Indians, to October 9, 1877; at Fort Boise, Idaho, to November 6, 1878, and at Fort Klamath, Oreg., to February 1, 1880; in arrest and awaiting sentence of general court-martial until dismissed August 15, 1880, see General Court-martial Orders, No. 42, July 21, 1880, from this office, copy herewith.

L. C. DRUM,
Adjutant-General.

[General Court-Martial, Orders No. 42.]

HEADQUARTERS OF THE ARMY,
ADJUTANT-GENERAL'S OFFICE, Washington, July 21, 1880.

I. Before a general court-martial which convened at Vancouver Barracks, Washington Territory, March 16, 1880, pursuant to Special Orders No. 23, Headquarters Department of the Columbia, Vancouver Barracks, Washington Territory, February 12, 1880, and of which Col. Henry A. Morrow, Twenty-first Infantry, is president, was arraigned and tried—

Capt. Thomas F. Riley, Twenty-first Infantry.

CHARGE I.—“Drunkenness on duty, in violation of the Thirty-eighth Article of War.”

Specification 1.—“In this, that he, Capt. Thomas F. Riley, Twenty-first Infantry, having been regularly detailed in charge of three military convicts, with orders to take them to Vancouver Barracks, Washington Territory, did become drunk, and did, while in that state, allow the guard and the conveyance containing said military convicts to get a number of miles the start of him, and did remain away from the detachment until after it had camped in the Cascade Mountains, about thirty-four miles from Fort Klamath, Oregon. This at or near Fort Klamath, Oregon, on or about September 16, 1879.”

Specification 2.—“In this, that he, Capt. Thomas F. Riley, Twenty-first Infantry, while commanding Fort Klamath, Oregon, was drunk. This at the place above-named on or about October 17, 1879.”

Specification 3.—“In this, that he, Capt. Thomas F. Riley, Twenty-first Infantry, while on duty as officer of the day, was drunk. This at Fort Klamath, Oregon, on or about October 25, 1879.”

Specification 4.—“In this, that Capt. Thomas F. Riley, Twenty-first Infantry, while on duty as inspecting officer of his company at Sunday morning inspection, was drunk. This at Fort Klamath, Oregon, on or about October 26, 1879.”

Specification 5.—“In this, that he, Capt. Thomas F. Riley, Twenty-first Infantry, having been regularly detailed on guard as officer of the day, and having received his instructions from his commanding officer as to his duties, did become so drunk as to be unable to perform his duty, and so violent as to necessitate his confinement under a guard specially detailed for the purpose. This at Fort Klamath, Oregon, about 11 o'clock p. m., on or about February 1, 1880.”

CHARGE II.—“Conduct unbecoming an officer and a gentleman, in violation of the Sixty-first Article of War.”

Specification 1.—“In this, that he, Capt. Thomas F. Riley, Twenty-first Infantry, while in a drunken condition, did proceed to the room of one Hiram Fields, a Government employé, who was dangerously sick, and did then and there act in such a drunken manner as to cause First Sergeant Menhennet, Company F, Twenty-first Infantry, to go and find an officer and get him to take the said Captain Riley away from the said dying Field. This to the disgrace of the service and the uniform which he wore, in the presence of citizens, enlisted men, and a woman. This at Fort Klamath, Oregon, on or about Sunday, October 26, 1879.”

Specification 2.—“In this, that he, Capt. Thomas F. Riley, Twenty-first Infantry, did become drunk, and did, while in that condition, yell, roll, and wallow, and did swear, cry, and give forth in an exceedingly loud tone of voice profane, insulting, and vulgar utterances in the presence of enlisted men and officers. This to the scandal and disgrace of the service, at about 11.30 o'clock p. m., on or about February 1, 1880, at Fort Klamath, Oregon.”

CHARGE III.—“Disrespect to his commanding officer, in violation of the Twentieth Article of War.”

Specification.—“In this, that he, Capt. Thomas F. Riley, Twenty-first Infantry, did repeatedly apply abusive and opprobrious epithets to his commanding officer, Capt. Stephen G. Whipple, First Cavalry, and did also say, repeatedly, ‘You are only a captain, G—d— you, same as I am, and you can’t put me in arrest, nor no other cav-

alry s— of a b—,' or words to that effect. This at Fort Klamath, Oregon, in the presence of officers and enlisted men, at about 11 o'clock p. m., February 1, 1880."

CHARGE IV.—"Mutiny, in violation of the Twenty-second Article of War."

Specification.—"In this, that he, Capt. Thomas F. Riley, Twenty-first Infantry, did, while in custody of his commanding officer, Capt. Stephen G. Whipple, First Cavalry, who was assisted by Lieut. J. W. Duncan, Twenty-first Infantry, post adjutant, call out in a loud tone of voice, 'Men of F company, my company, come to the rescue of your captain; we can whip the cavalry s— of b—,' repeating the same in similar words and phrases many times, attempting thereby to cause his company to mutiny and release him from his lawful custodians, and by his yells causing many of the enlisted men to turn out of their beds. This at Fort Klamath, Oregon, at about 11 o'clock p. m., February 1, 1880."

ADDITIONAL CHARGE.—"Violation of the 61st Article of War—conduct unbecoming: an officer and a gentleman."

Specification.—"In this: That he, Captain Thomas F. Riley, 21st Infantry, having pledged his honor as an officer and a gentleman, in the fact of giving a written promise to the department commander, Department of the Columbia, through the acting assistant inspector-general of said department, to abstain from the use of all spirituous, wine, or malt liquors, while he, the said Riley, was serving in the Department of the Columbia, under any and all circumstances, unless prescribed as medicine by a physician, who is at the time to be informed of said pledge, did, in violation of said pledge, and with a total disregard of the aforesaid promise, become drunk. This at Fort Klamath, Oregon, on or about February 1, 1880, to the scandal and disgrace of the service."

To which charges and specifications the accused, Captain Thomas F. Riley, 21st Infantry, pleaded "Not guilty."

FINDING.

The court, having maturely considered the evidence adduced, finds the accused Captain Thomas F. Riley, 21st Infantry, as follows:

CHARGE I.

Of the 1st specification, "Not guilty."
Of the 2d specification, "Not guilty."
Of the 3d specification, "Not guilty."
Of the 4th specification, "Not guilty."
Of the 5th specification, "Guilty."
Of the charge, "Guilty."

CHARGE II.

Of the 1st specification, "Not guilty."
Of the 2d specification, "Guilty."
Of the charge, "Guilty."

CHARGE III.

Of the specification, "Guilty."
Of the charge, "Guilty."

CHARGE IV.

Of the specification, "Guilty."
Of the charge, "Guilty."

ADDITIONAL CHARGE.

Of the specification, "Guilty."
Of the charge, "Guilty."

SENTENCE.

And the court does therefore sentence him, Captain Thomas F. Riley, 21st Infantry, "To be dismissed the service of the United States."

II. The proceedings and findings, so far as necessary to sustain the sentence, and the sentence of the general court-martial in the foregoing case of Captain Thomas F. Riley, 21st Infantry, having been approved by the proper reviewing authority and the record forwarded, in accordance with the provisions of the 106th Article of War for the action of the President, the following are his orders indorsed thereon:

EXECUTIVE MANSION,
Washington, July 21, 1880.

The sentence in the foregoing case of Captain Thomas F. Riley, 21st U. S. Infantry, is hereby confirmed.

R. B. HAYES.

III. By direction of the Secretary of War, the sentence in the case of Captain Thomas F. Riley, 21st Infantry, will take effect August 15, 1880, from which date he will cease to be an officer of the Army.

BY COMMAND OF GENERAL SHERMAN:

R. C. DRUM,
Adjutant-General.

WAR DEPARTMENT,
Bureau of Military Justice, June 5, 1880.

SIR: The record with accompanying report, of the recent trial by general court-marshal of Capt. Thomas F. Riley, Twenty-first Infantry, is respectfully submitted. Captain Riley was brought to trial at Vancouver Barracks, Washington Territory, in March last, under the following charges and specifications:

CHARGE 1.—Drunk on duty, in violation of the thirty-eighth article of war.

Specification 1.—In that accused, having been regularly detailed in charge of three military convicts to be taken to Vancouver Barracks, did become drunk, and in that state did allow the guard and conveyance to get a number of miles the start of him, he not rejoining them until thirty-four miles from Fort Klamath, Oregon.

This September 16, 1879.

Finding.—Not guilty.

Specification 2.—And was drunk on the 17th of October, 1879, while in command of Fort Klamath.

Finding.—Not guilty.

Specification 3.—And was drunk while officer of the day, at Fort Klamath, October 25, 1879.

Finding.—Not guilty.

Specification 4.—And again was drunk at Fort Klamath, October 26, 1879, while on duty as inspecting officer of his company, on Sunday morning inspection.

Finding.—Not guilty.

Specification 5.—And yet again, having been regularly detailed as officer of the day, and received his instructions as such, did become so drunk as to be unable to perform his duties, and so violent as to necessitate his confinement under a guard specially detailed for the purpose. This at Fort Klamath, February 1, 1880.

Finding.—Guilty.

CHARGE 2.—Conduct unbecoming an officer and a gentleman.

Specification 1.—In that while in a drunken condition, the accused did visit the room of one Hiram Fields, a Government employé dangerously ill and dying, and did there conduct himself in so drunken a manner as to cause Sergeant Menhennet, Company F, Twenty-first Infantry, to go in search of an officer to take the accused away. This to the disgrace of the service, and in the presence of enlisted men and citizens, on the 26th of October, 1879.

Finding.—Not guilty.

Specification 2.—In that accused did become drunk at Fort Klamath, on the 1st of February, 1880, and while in that condition did yell, roll, and wallow, and did swear, cry, and give forth in an exceeding loud voice, profane, vulgar and insulting utterances, in the presence of enlisted men and officers, to the scandal and disgrace of the service.

Finding.—Guilty.

CHARGE 3.—Disrespect to his commanding officer.

Specification.—In repeatedly applying abusive and approbious epithets to his commanding officer, Capt. Stephen G. Whipple, First Cavalry, and in saying repeatedly, "You are only a captain, G—d— you, same as I am; and you can't put me in arrest, nor no other cavalry son of a bitch."

This at Fort Klamath, in the presence of officers and enlisted men, February 1, 1880.

Finding.—Guilty.

CHARGE 4.—Mutiny, in violation of the 22d Article of War.

Specification.—In that the accused, while in custody of his commanding officer, Captain Whipple, First Cavalry, assisted by his post-adjutant, Lieutenant Duncan, Twenty-first Infantry, did shout repeatedly, "Men of F Company! my company! Come to the rescue of your captain! We can whip the cavalry sons of bitches!" thereby attempting to cause his company to mutiny and release him from his lawful custodians, and by his yells causing many of the enlisted men to turn out at 11 p. m.

This February 1, 1880.

Finding.—Guilty.

ADDITIONAL CHARGE.—Conduct unbecoming an officer and a gentleman.

Specification.—In that having pledged his honor in a written promise to the department commander to abstain from all intoxicating fluids "so long as he should serve in the Department of the Columbia, under any and all circumstances, unless pre-

scribed as medicine by a physician previously informed of said pledge," the accused did become drunk at Fort Klamath to the scandal and disgrace of the service, on the 1st of February, 1880.

Finding.—Guilty.

The accused plead in bar of trial (1) that the court was not complete, inasmuch as two of its members had been relieved without the personal sanction and knowledge of the department commander, by an illegal order issued by the assistant-adjutant general of the department during the absence of General Howard; (2) that the fact that another officer was detailed on the court by the same illegal order, to serve in the place of one of those thus unlawfully relieved, showed that the statement in the order that no other officers could be detailed without manifest injury to the service was false; and (3), that the court was without jurisdiction, inasmuch as the charges and specifications had not been seen and acted on by the department commander.

In reference to the additional charge and specification, the accused plead (1) that the officer who signed them was the personal aid of the department commander, and that General Howard is thereby shown to be the accuser in the case; (2) that the pledge referred to was illegal; (3) and being without consideration, was therefore null and void and no contract; and (4) that it was virtually given under an order from the department commander; which (5) was an illegal order; (6) and that the pledge was therefore in fact no pledge, being merely given in obedience to an order; and lastly that the charge and specification had never been seen by the department commander.

The court having overruled all the foregoing pleas in bar, the accused plead not guilty under every specification and charge.

The court then proceeded to investigate the case on its merits, and having found the accused under the specifications as shown above and guilty under every charge, sentenced him to be *dismissed the service of the United States*.

Appended to the proceedings is a unanimous recommendation of the accused to clemency made "in consideration of and sympathy for his family, and in the hope that such clemency will be appreciated by Captain Riley, and that his conduct in the future will be satisfactory to his superiors."

General Howard sustains the decision of the court in its action upon the several pleas in bar; expresses his opinion touching the charge of mutiny to be that as accused was *non compos mentis* at the time, and no actual mutiny resulted from his acts, he should not have been convicted of that most terrible of military crimes; and approves the sentence and transmits the record for the action of the President, concurring in the recommendation of the court.

Of the many pleas in bar of trial entered by the accused, but one, and that the first, deserves a brief consideration; and on this one it is believed the judgment of the court was quite correct. The plea had for its basis the following state of facts: The court was convened by an order of General Howard, dated February 12, 1880, to meet at Vancouver Barracks on the *second* of the following *March*. On the *8th* of *March*, before the transaction of any business by the court, an order was published by the assistant adjutant-general of the department, in the usual form and reporting on its face to be by order of General Howard, relieving two members of the detail, and appointing Major Graham, of the Fourth Artillery, in their stead. But at the time this second order came out, General Howard had left his department and gone to Washington, and the fact was publicly known. The court, therefore, in doubt of the legality of the order of March 8, applied to the assistant adjutant-general, through its judge-advocate, for official information on the subject, and was informed by that officer that though the order in question had been issued subsequent to General Howard's leaving for Washington, it had been done in compliance with his orders given before departure that Major Graham should be put on the court in case a vacancy should occur and another member be required. The court thereupon ruled that the order was illegal, and that Major Graham should not be permitted to sit as a member of the court.

It is clear that if the detail of Major Graham was illegal because made in the absence of General Howard, as it undoubtedly was, the relieving by the same order of the two other members of the court was in like manner without authority.

And the action of the remaining members of the court in proceeding to the trial of the accused in the absence of those officers is that which, in Captain Riley's judgment, entitles him to challenge their right to try his case, and justifies his plea in bar that the court was fatally incomplete.

The plea is not good, and its rejection by the court was right, for no matter what the reason for the absence of any members of the detail, so long as the court remained in numbers above the minimum of five, it remained a legally constituted court and its proceedings were valid. The two absent members might, without impairing its legality, have refused to obey the order to attend; or might have died while *en route* to the place of session; or illness may have prevented their compliance with the order; or a higher authority than that of the department commander might have directed them upon another and more important duty, as indeed was the case with the two non-

appearing members, for they were called to San Francisco with their companies, in anticipation of civil disturbance. Whatever the cause of their failure to be present as members of the court, their absence in no way affected the validity of the court's proceedings, so long as the legal minimum of members was left to transact the business laid before it. While, therefore, the reduction of the court, by an illegal order, to a number of members less than that originally intended by the department commander might justly stimulate the reviewing authority to greater watchfulness in examining the proceedings of the court, there is no ground for holding, as the accused insists, that its proceedings should necessarily be pronounced for that reason of no validity.

The remaining pleas cannot have been believed by the accused to be of serious weight, and need not be discussed in this report.

The facts elicited in evidence may now be briefly considered.

The findings of not guilty under specifications 1, 2, 3, and 4, of charge 1, are in one sense justified by the testimony, for while the accused is shown to have been on such occasion, alleged therein, somewhat under the influence of liquor, he does not appear to have been what, in strictness, may be described as drunk. His condition each time was a willful violation of the pledge of total abstinence he had voluntarily given to the department commander in writing; but this forms no part of the several specifications in question, and calls, therefore, for no observation in this part of the report.

The drunkenness of the accused on the first of February last, while officer of the day at Klamath, was excessive, and the occasion of great disturbance and scandal in the garrison. The evidence shows that Captain Riley drank steadily during the entire day, and by evening had become extremely noisy and turbulent. About 11 p. m. the noise made by him in his quarters was so disgraceful as to compel the post commander, Captain Whipple, of the First Cavalry, to go there in person with his adjutant to quell the disturbance and arrest the accused.

On Captain Whipple ordering him in arrest and directing him to surrender his sword, the accused refused to obey, and this with so much vehemence and mutinous conduct and language as to make it necessary to seize him and take off his sword and belt by force. This the adjutant did, both he and the accused falling to the floor in the struggle. The accused was then removed from the room by force, the post commander and the adjutant being compelled to drag him away. As soon as they got him into the open air Captain Riley began to yell and shout, threw himself down, rolled and fought against his arrest, and shouted over and over again to the men of his company to come to his rescue and whip the cavalry sons of bitches, and many of them turned out of their quarters in consequence. His conduct was so violent that it became a matter of necessity to summon the guard to get him to the adjutant's office, where Captain Whipple had decided to confine him for the night. During the accused's disgraceful struggle against his commanding officer's arrest he repeatedly applied to him language of a grossly abusive, insulting, and mutinous character; among other things saying at intervals, "You are only a captain, G— d— you, same as I am. You can't put me in arrest, nor no other cavalry son of a bitch."

On reaching the adjutant's office with his prisoner the commanding officer ordered a special guard to be detailed at once, and Captain Riley was kept confined all night. He spent the night walking up and down the room, refusing to go to bed and frequently endeavoring to pass the guard. The morning following he was transferred to the guard-house, where he was closely confined for thirty-six hours, and was finally released when his senses had returned to him and he could be trusted once more with freedom.

The drunkenness of the accused on the evening and night in question is shown by the testimony to have been so excessive as to amount to absolute frenzy, and the disgrace of it is aggravated, if aggravation be possible, by its publicity; for the wallowings of the accused on the ground, his tears, curses, and imprecations, his fighting with Captain Whipple, and his mutinous shouts to his company for rescue all took place in the presence and sight of the garrison of the post, who were roused from sleep by his yells and execrations, and thronged out to see it.

The dismissal of the accused would seem to be fully justified by the events of this single night, but this is far from all. The record shows that Captain Riley's addiction to liquor of recent years had been so marked as to have led him into frequent disgrace and trouble, and that he had given, on the 19th of the previous October, a promise in writing to General Howard "to abstain from the use of *all* spirituous, wine, or malt liquors, under any and all circumstances, unless prescribed as medicine by a physician, who is at the time to be informed of this pledge." Yet there is no question that he violated his promise, though probably not to an extent which would have justified his conviction of drunk on duty under the third and fourth specifications of charge 1, so early as the 25th and 26th of the same month of October, and again on the 1st of the following February, when he succeeded in temporarily maddening himself with drink.

The acts of intemperate use of liquor which are alleged in the first and second

specifications under the first charge took place while the accused was under a verbal pledge, and before he had been induced by fear of serious results to put his promise in black and white.

A few words in reference to the allegation in specification 1 of the second charge will conclude this report.

In this he is charged with visiting, in a drunken condition, the room of a civilian named Fields, who was dying at the time, and there conducted himself in such a manner, under the influence of drink, as to cause others present to procure his removal from the chamber. The court acquit him, it is true, because the testimony as to the extent of his intoxication at the time is conflicting, and because it is shown that his visit was intended for a friendly one, upon a man for whom he had a warm regard. But that he was somewhat in liquor on the occasion is placed beyond a doubt, and it is no less certain that the nurse was so desirous he should go away in consequence of the effect on the patient of the accused's exhilarated officiousness that he requested Sergeant Menhennet to find a commissioned officer to effect this, and that an officer came in consequence and took him off. On this as on the other occasions alleged in the first three specifications of charge 1 the accused may not have been, and probably was not, visibly and positively drunk, but there can be no hesitation in believing from the proofs that he felt and was considerably affected by the liquor he had swallowed.

To the charge of violation of his pledge of total abstinence the accused offers a double defense, which is in fact an aggravation of his crime, for he claims that his promise was without consideration, and was therefore not binding as a contract; and he further represents that he obtained from Dr. Reagles, acting assistant surgeon at the post, a general verbal authority to drink whisky and brandy with quinine *ad libitum* for the benefit of his health. This conduct of Dr. Reagles, who is now fortunately no longer in the employ of the Government, is commented on by General Howard with deserved severity in his indorsement on the record: "The conduct of Acting Assistant Surgeon Reagles," General Howard says, "cannot be too severely censured. With the full knowledge that the accused was endeavoring to restrain a harassing appetite, and that he was pledged to do so, Dr. Reagles puts into his hands a suicidal knife. His unwritten permission to take whisky or brandy whenever the accused felt like it was neither professional nor right."

Captain Riley shows by several letters and certificates which are appended to the record that his character for energy and courage is good. He entered the service as an enlisted man in 1863, was promoted to a lieutenancy in the Twelfth Infantry in 1866, and to a captaincy in the Twenty-first Infantry in 1878.

The court's recommendation of the accused to clemency and the approval of this recommendation by General Howard have already been referred to in this report. Believing, however, that the interests of the service should be held superior to those of Captain Riley's wife and children, I withhold my concurrence in what I cannot but feel to be the unwisely lenient recommendation of the court, which seems in my judgment to rest on insufficient grounds.

W. M. DUNN,
Judge-Advocate-General.

HON. ALEXANDER RAMSEY,
Secretary of War.

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