

STEPHEN O'CONNOR.

JULY 1, 1886.—Committed to the Committee of the Whole House and ordered to be printed.

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

R E P O R T :

[To accompany bill H. R. 798.]

The Committee on Military Affairs, to whom was referred the bill (H. R. 798) for the relief of Stephen O'Connor, having had the same under consideration, beg leave to report :

That by the action of the President in reappointing O'Connor to the Army within three months after his dismissal by court-martial he could not have considered his offense a grave one, and thought the sentence of dismissal greater than the charges justified. It is true that, by a protest of the officers of his regiment being sent to the Senate, he was not at once confirmed, and that appointment expired by limitation; but he was subsequently reappointed, the appointment dating from the date of his prior appointment, and was confirmed, which would indicate that the Senate did not look upon his offense as having been so grave as to have demanded this sentence of dismissal.

If it was right to restore Lieutenant O'Connor to the Army, in the opinion of your committee he should have been restored to the place from which he was dismissed.

Your committee therefore report the bill back, with a favorable recommendation.

In support of these views, we print herewith the military history, report of the Adjutant-General, and copies of documents from the Bureau of Military Justice.

To whom it may concern :

I was born in Syracuse, State of New York, and raised, from youth, in the State of Illinois. Joined the Eighth Infantry, U. S. Army, as an enlisted man, June 21, 1860; crossed the plains same year and served in Arizona, New Mexico, and Texas until May 9, 1861, at which date I was surrendered prisoner of war to the Confederate Earl Van Dorn, by Brevet Lieut. Col. I. V. D. Reeve, captain Eighth Infantry; remained a prisoner of war until December 10, 1862, at which date I escaped from military prison camp, near San Antonio, Tex., and crossed the Rio Grande River at Eagle Pass, 180 miles from San Antonio; and from thence to Monterey, State of New Leon, Mexico, 100 leagues; and from the latter point to Matamoras, Mexico, 100 leagues; and from thence to the mouth of the Rio Grande, 35 miles; making a total march, on foot, of 815 miles. Reached New Orleans by means of United States naval transport, and was forwarded by General Banks to Fort Columbus, New York Harbor, from which point I joined my regiment, in the Army of the Potomac, in May, 1863, with which I served during the Gettysburg campaign. Also served in the city of New York during the

riots of 1863. Rejoined the Army of the Potomac in April, 1864, and served in Ninth Army Corps during the Wilderness campaign, as color-sergeant of my regiment. Was with the forces in front of Petersburg until July 9, 1864, at which time I re-enlisted in my regiment for a period of three years. On October 9, 1864, my regiment was transferred to the Fifth Corps, General Warren's, and participated in the operations of Poplar Grove Church and Hatcher's Run; remained with the army before Petersburg until early winter, when my regiment was transferred to Buffalo, N. Y., in anticipation of Confederate invasion from Canada, after which the regiment was ordered to report to General Hancock at Baltimore, Md., where we remained until early in 1866. Subsequently the regiment served in Virginia, North Carolina, and South Carolina, during the reconstruction of those States. From August, 1863, until November, 1866, I had passed through the grades of private, corporal, sergeant, and quartermaster-sergeant.

Was examined for promotion and commissioned second lieutenant Eighth Infantry to date from December 28, 1866, and first lieutenant January 4, 1869. During the Army reduction of 1869 I was placed on unassigned list because of insufficient rank to remain in my regiment.

Served on reconstruction duty in Virginia during the election for the adoption of the new constitution of that State and conveyed the election returns of Clarke County, Virginia, to Richmond.

During August, 1869, was attached to General Stanley's regiment, the Twenty-second Infantry, and served in Dakota Territory until January, 1871, at which time I was permanently assigned to the Twenty-third Infantry; with this regiment I served in Oregon, Washington Territory, California, Arizona, Wyoming Territory, Nebraska, and Kansas, and remained with it until I was dismissed in March, 1877.

Was appointed second lieutenant Twenty-third Infantry by President Hayes, to date from June 9, 1877, and have served constantly and faithfully since that time in Indian Territory, Kansas, and New Mexico, commanding Indian scout company during the Indian troubles of 1881 on the Mexican border in New Mexico, during which time I was constantly in field along the Chichuahua and Sonora border.

Have been at Fort Mackinac, Michigan, since June, 1884.

STEPHEN O'CONNOR,
Second Lieutenant Twenty-third Infantry.

FORT MACKINAC, MICH., November 16, 1885.

[General Court-Martial, Orders No. 33.]

HEADQUARTERS OF THE ARMY,
ADJUTANT-GENERAL'S OFFICE,
Washington, March 16, 1877.

I. Before a general court-martial which convened at Fort Leavenworth, Kans., February 8, 1877, pursuant to Special Orders No. 18, dated January 29, and No. 25, dated February 7, 1877, Headquarters Department of the Missouri, Fort Leavenworth, Kans., and of which Col. J. C. Davis, Twenty-third Infantry, is president, was arraigned and tried—

First Lieut. Stephen O'Connor, Twenty-third Infantry.

Charge.—“Conduct unbecoming an officer and a gentleman.”

To which charge and its specifications the accused, First Lieut. Stephen O'Connor, Twenty-third Infantry, pleaded “not guilty.”

FINDING.

The court, having maturely considered the evidence adduced, finds the accused, First Lieut. Stephen O'Connor, Twenty-third Infantry, as follows:

Of the first specification, “guilty, excepting the words ‘the said shades being the property of said * * *’, and excepting the words ‘berate, browbeat, and intimidate the said * * * and,’ and excepting the word ‘her’ where it occurs the last two times, and inserting the words ‘the said * * *’ after the words ‘apology from’; of the words so excepted, not guilty.”

Of the second specification, “guilty, excepting the words following, in the order in which they respectively occur: ‘Maliciously’; ‘injure, vilify and’; ‘citizens’; ‘malicious and’; ‘he, the said Lieutenant O'Connor, well knowing the statements contained in said circular to be false’; ‘the health of said * * * was seriously affected’, and ‘much’; of the words so excepted, not guilty.”

Of the charge, “guilty.”

SENTENCE.

And the court does therefore, in conformity with the Sixty-first Article of War, sentence him, First Lieut. Stephen O'Connor, Twenty-third Infantry, "to be dismissed from the service."

II. In conformity with the One hundred and sixth Article of War the record of proceedings in the case of First Lieut. Stephen O'Connor, Twenty-third Infantry, has been transmitted to the Secretary of War, and by him submitted to the President, who approves the proceedings, findings, and sentence, and directs the sentence to be duly executed.

III. First Lieut. Stephen O'Connor, Twenty-third Infantry, ceases to be an officer of the Army from the date of this order.

By command of General Sherman :

E. D. TOWNSEND,
Adjutant-General.

[General court-martial, Fort Vancouver, Wash. Case tried. First Lieut. Stephen O'Connor, Twenty-third Infantry.]

GENERAL ORDERS, }
No. 16. }

HEADQUARTERS DEPARTMENT OF THE COLUMBIA,
Portland, Oreg., June 16, 1871.

I. Before a general court-martial which convened at Fort Vancouver, Wash., pursuant to paragraph 3, Special Orders No. 74, of June 1, 1871, from these headquarters, and of which Maj. E. H. Ludington, Assistant Inspector-General, is president, was arranged and tried:

First Lieut. Stephen O'Connor, Twenty-third Infantry.

CHARGE I.—"Violation of the Sixth Article of War."

Specification 1.—"In this, that First Lieut. Stephen O'Connor, Twenty-third United States Infantry, having been directed by his commanding officer, and at the same time the inspecting officer of the battalion, *i. e.*, Maj. Alex. J. Dallas, Twenty-third United States Infantry, to desist from sending from the ranks to the guard-house Private Mayhew S. Hutchinson, Company D, Twenty-third Infantry, did immediately give, without the knowledge of his commanding officer, instructions to his first sergeant, to confine the said Private Hutchinson for the same offense, already condoned by his commanding and inspecting officer, at the conclusion of the inspection then proceeding, thereby treating his aforesaid commanding and inspecting officer with contempt and disrespect. All this at or near Fort Vancouver, Wash., on or about the 30th day of April, 1871."

Specification 2.—"In this, that the said First Lieut. Stephen O'Connor, Twenty-third Infantry, having been directed by his commanding officer to report in writing for what cause Private Mayhew S. Hutchinson, Company D, Twenty-third Infantry, had been confined in the guard-house immediately after the battalion inspection, did reply thereto, reciting substantially as the cause the same offense which had already been condoned by his commanding and inspecting officer, and did add to his reply the following words, to wit: 'Charges will be preferred against him for this violation of the Forty-fifth Article of War, in order that discipline may be maintained in my company, and also that my authority as commanding officer of the company may not be affected,' these words being contemptuous and disrespectful to the aforesaid commanding officer. All this at or near Fort Vancouver, Wash., on or about the 30th day of April, 1871."

CHARGE II.—"Insubordinate conduct, to the prejudice of good order and military discipline."

Specification 1.—"In this, that First Lieut. Stephen O'Connor, Twenty-third United States Infantry, having been directed by his commanding and at the same time inspecting officer of the battalion, *i. e.*, Maj. A. J. Dallas, Twenty-third United States Infantry, to desist from sending from the ranks to the guard-house Private Mayhew S. Hutchinson, Company D, Twenty-third Infantry, did immediately give, without the knowledge of his commanding and inspecting officer, instructions to his first sergeant to confine the said Private Hutchinson for the same offense, already condoned by his commanding and inspecting officer, at the conclusion of the inspection then proceeding, thereby behaving in a highly insubordinate manner, to the prejudice of good order and military discipline. All this at or near Fort Vancouver, Wash., on or about the 30th day of April, 1871."

Specification 2.—"In this, that the said First Lieut. Stephen O'Connor, Twenty-third Infantry, having been directed by his commanding officer to report in writing for what cause Private Mayhew S. Hutchinson, Company D, Twenty-third United States Infantry, had been confined in the guard-house immediately after battalion

inspection, did reply thereto, reciting substantially as the cause the same offense which had been already condoned by his commanding and inspecting officer, and add to his reply the following words, to wit: 'Charges will be preferred against him for the violation of this Forty-fifth Article of War, in order that discipline may be maintained in my company, and also that my authority as commanding officer of the company may not be affected;' all of which was insubordinate conduct and prejudicial to good order and military discipline. All this at or near Fort Vancouver, Wash., on or about the 30th day of April, 1871."

To which charges and specifications the accused, First Lieut. Stephen O'Connor, Twenty-third Infantry, pleaded "Not guilty."

FINDING.

The court having maturely considered the evidence adduced finds the accused, First Lieut. Stephen O'Connor, Twenty-third Infantry, as follows:

Charge I.

Of the first specification, "Not guilty."

Of the second specification, "Guilty, except the words 'reciting substantially as the cause the same offense which had already been condoned by his commanding and inspecting officer,' and also except the words 'these words being contemptuous and disrespectful towards the aforesaid commanding officer' and of the excepted words not guilty, and attach no criminality to his action."

Of the charge, "Not guilty."

Charge II.

Of first specification, "Not guilty."

Of the second specification, "Guilty, except the words, 'reciting substantially as the cause the same offense which had already been condoned by his commanding and inspecting officer,' and also except the words 'all of which was insubordinate conduct and prejudicial to good order and military discipline,' of the excepted words not guilty, and attach no criminality to his action."

Of the charge, "Not guilty."

And the court does therefore honorably acquit him, First Lieut. Stephen O'Connor, Twenty-third Infantry.

II. The commanding general is unable from the evidence in the case to reach the conclusion that has been reached by the court. The question involved is one of discipline and its determination is vested by law in the discretion of the commanding officer. For the proper exercise of this discretion he is responsible to superior authority, but his decision is conclusive upon his subordinates unless and until it be modified or reversed by the same or higher authority.

The remedy for any wrongful exercise of this power is by appeal or by complaint under the Thirty-fourth Article of War, and not by assuming to decide a question, the decision of which belongs only to the commanding officer. The qualified finding upon the second specification of the first and second charges is not approved, but Lieutenant O'Connor will be released from arrest and resume his sword. The remainder of the proceedings and findings are approved.

By command of Brigadier-General Canby:

LOUIS V. CAZIARC,
First Lieutenant Second Artillery Aid-de-Camp,
Acting Assistant Adjutant-General.

Official:

H. R. ANDERSON,
Aid-de-Camp.

FORT MACKINAC, MICH.,
November 2, 1885.

DEAR SIR: In reply to your letter of October 24, 1885, I have to state that I have known your brother, Lieut. Stephen O'Connor, of the Twenty-third Infantry, since 1871, and during that time he has served at posts with me, been in the field with me, and is now and has been serving at this post under my command since June, 1884.

I have always considered him one of the most faithful, reliable, and intelligent officers in the regiment under all circumstances.

Very respectfully,

GEO. K. REAVY,
Capt. Twenty-third Infantry, Bvt. Lieut. Col., U. S. A., Com'd'g Post.

Mr. WILLIAM O'CONNOR,
Norton, Kans.

ADJUTANT-GENERAL'S OFFICE,
March 17, 1886.

SIR: I have the honor to return herewith, House bill 798, for the relief of Stephen O'Connor, which was referred to the Department by the chairman of the Committee on Military Affairs, House of Representatives.

The bill authorizes the President to appoint Stephen O'Connor, now second lieutenant in the Twenty-third Infantry, to be a first lieutenant with the date of rank formerly held by him, that is, with rank as first lieutenant from January 4, 1869.

This rank and date would place him at the head of the list of first lieutenants of the regiment. He now stands at the head of the list of second lieutenants of his regiment, first for promotion to first lieutenant.

I inclose herewith a brief statement of the military services of Lieutenant O'Connor, with the order of dismissal, &c., copy of a report of the Judge-Advocate General of the Army, reviewing the facts and circumstances relating to his dismissal, upon which report he was reappointed to the Army in the grade of second lieutenant; copy of a letter from the chairman of the Senate Military Committee of January 23, 1878, upon the subject of Lieutenant O'Connor's reappointment, and of the protest of officers of the Twenty-third Infantry, referred to therein, against the appointment, and of the reply of the Secretary of War thereto.

It is believed that these papers will give all material facts touching the merits of the case.

Very respectfully, your obedient servant,

R. C. DRUM,
Adjutant-General.

The SECRETARY OF WAR.

WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE,
Washington, March 17, 1886.

Statement of the military service of Stephen O'Connor, of the United States Army, compiled from the records of this office.

He served as an enlisted man in the Eighth Infantry from June 21, 1860, to March 26, 1867, when he was discharged by reason of appointment as second lieutenant, Eighth Infantry, to rank from December 28, 1866; was promoted first lieutenant January 4, 1869; became unassigned May 3, 1869, and was assigned to the Twenty-third Infantry January 1, 1871.

He joined his regiment as an officer April 1, 1867, and served with it in North Carolina and South Carolina to May 13, 1869; was awaiting orders to July 1, 1869; on registering duty in Virginia to July 13, 1869; awaiting orders to July 22, 1869; on duty with Twenty-second Infantry in Dakota to January 30, 1871; joined Twenty-third Infantry February 15, 1871, and served therewith in Washington Territory (being tried by general court-martial; see general court-martial orders No. 16, headquarters Department of the Columbia, June 16, 1871, copy herewith) and in Arizona to August, 1874, and in Wyoming to December 1, 1875; on leave to August 1, 1876; with regiment at Omaha Barracks, Nebraska, to November 18, 1876, and at Fort Leavenworth, Kans., until dismissed from the service March 16, 1877. (See general court-martial orders No. 33, headquarters of the Army, Adjutant-General's Office, 1877, copy herewith.)

He was appointed second lieutenant, Twenty-third Infantry, June 9, 1877, and his appointment expired by constitutional limitation December 3, 1877.

He was reappointed February 11, 1878, with rank from June 9, 1877.

He joined his company June 24, 1877, and served with it at Fort Leavenworth, Kans., to November 3, 1877, and was on leave until his appointment expired December 3, 1877.* He again joined his regiment February 28, 1878, and served with it in Kansas and Indian Territory to January 2, 1880; was on leave to March 13, 1880; with regiment in Indian Territory, Colorado, and Kansas to October 1881, and in New Mexico to December 24, 1882; on sick leave to January 15, 1883; with company in New Mexico to June 1, 1884, and at Fort Mackinac, Mich., to present date.

R. C. DRUM,
Adjutant-General.

* His appointment as second lieutenant expired December 3, 1877, the Senate having adjourned on that date without action on his nomination. He was reappointed February 11, 1878, and was duly confirmed and commissioned second lieutenant with rank from June 9, 1877.

WAR DEPARTMENT, BUREAU OF MILITARY JUSTICE,
May 28, 1877.

SIR: I have the honor to report as follows upon the within application of Mr. Stephen O'Connor, late first lieutenant, Twenty-third Infantry, to be reappointed to the Army:

In the case of this officer, who has recently been dismissed the service (see G. C. M. O., 33, c. s.), the principal charges related to his sending through the garrison a "circular" in which he reflected upon the acts of the wife of an officer of the command. The original circular, which had been mislaid, was not forthcoming at the trial, but the same having since been found is produced by Mr. O'Connor as showing that it was in fact considerably milder in its language than as recited in substance, from memory, by the witnesses on the trial. Mr. O'Connor therefore claims that the testimony of these witnesses unfairly prejudiced his case, which, on this account, is entitled to be reconsidered.

But this circular had in fact reached this Bureau before the completion of its formal review of the case, and is recited in full in a postscript to the report of March 3 last.

* * * It was not then viewed as materially contradicting the testimony given in regard to its contents, and I may now add that I cannot think that the finding or sentence would have been different had the circular been offered in evidence.

In my judgment, therefore, the production of this paper, since the trial, can scarcely be said to give any new aspect to the merits of the case as tried.

It is, however, to be said that there is much in the *military record* (now first fully presented) of Lieutenant O'Connor to commend his application for reappointment to a favorable consideration.

From his within personal communication to the General of the Army, his "military history," as obtained from the Adjutant-General's Office, and his warrants and discharges exhibited to this Bureau, it appears that he has been for seventeen years a good and faithful soldier, having served as private, corporal, sergeant, color sergeant, and quartermaster sergeant in the Eighth Infantry, and subsequently (having been promoted from the ranks) as a second and first lieutenant in the Eighth and Twenty-third Infantry. Having been surrendered, with his command, by Twiggs, in Texas, in 1861, he escaped, after remaining a prisoner for eighteen months, rejoined his regiment, and served during the Gettysburg and Wilderness campaigns and at the siege of Petersburg. The "character" stated in his discharge papers is "excellent," and it is only fair to add that his trial by court-martial in 1871, referred to in the "military history," resulted in his being "honorably acquitted."

Upon his recent trial the members of the court, as stated in the report, unanimously recommended him to clemency, this probably in part on account of his previous good character as a soldier, and in part because the court believed that in the matter which gave rise to the charges he had acted under very considerable provocation.

It is thus believed that, in the dismissal of Lieutenant O'Connor, the Army lost a useful and efficient officer, whose experience was of no little value to the service. His offense, grave and indefensible as it was, seems not to have proceeded from any inherent vice of character, but rather from a high temper, which, when irritated, became temporarily beyond his control.

In the belief that the severe lesson which he has received may prevent any recurrence of offense on his part, I am induced to conclude that his recent conviction and sentence should not be regarded as constituting an insurmountable objection to his reappointment to the Army as a second lieutenant.

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

Hon. G. W. McCrary,
Secretary of War.

[Indorsement.]

Respectfully referred to the Adjutant-General.

The President directs that the within-named Stephen O'Connor be appointed second lieutenant in the Army.

GEO. W. McCrary,
Secretary of War.

JUNE 7, 1877.

UNITED STATES SENATE CHAMBER,
Washington, January 23, 1878.

SIR: The inclosed communication, from General Jef. C. Davis, was received by me, as chairman of the Committee on Military Affairs. Pending its reference to you, I entered a motion in executive session to reconsider the confirmation of Lieutenant O'Connor, and have the honor to request that you will cause me to be informed at

an early moment whether, in your opinion, the circumstances and facts will justify the Senate in consenting to the appointment of Lieutenant O'Connor as an officer of the Army.

Very respectfully, your obedient servant,

GEO. E. SPENCER,
Chairman Committee on Military Affairs.

The SECRETARY OF WAR.

FORT LEAVENWORTH, KANS.,

January 14, 1878.

To the Military Committee of the Senate,
Washington, D. C.:

SIRS: On the 16th of March, 1877, First Lieut. Stephen O'Connor, of the Twenty-third Infantry, was dismissed from the service "for conduct unbecoming an officer and gentleman." He was subsequently nominated by the President as a second lieutenant of this regiment, and served as such for some months. The Senate having failed to act upon this nomination, Mr. O'Connor is now out of service. He is at present in Washington, and (it is understood) is using every influence, not only for a re-appointment in the service, but for actual reinstatement in the position from which he was dismissed as first lieutenant.

Mr. O'Connor's conduct during his short service with this regiment, as second lieutenant, was not conducive to its harmony and good feeling, and his reappointment to it will undoubtedly result in most decided injury to its morals.

Believing that it is not only the privilege but the duty of the officers of each regiment to do all in their power to maintain intact, and at its highest point, the honor, tone, and social life of their regiment, we, the officers of the Twenty-third Infantry, respectfully represent the unfairness of forcing upon our association a person who has been dismissed from among us for "conduct unbecoming a gentleman," and we do earnestly protest against the reappointment of Mr. O'Connor to this regiment in any capacity whatever.

RICHARD I. DODGE, lieutenant-colonel Twenty third Infantry.

G. M. RANDALL, captain Twenty-third Infantry.

J. T. HASKELL, captain Twenty-third Infantry.

W. C. MANNING, first lieutenant Twenty-third Infantry.

W. F. RICE, first lieutenant and regimental quartermaster Twenty-third Infantry.

G. W. POLLOCK, captain Twenty-third Infantry.

R. I. ESKRIDGE, captain Twenty-third Infantry.

J. H. PARDEE, first lieutenant Twenty-third Infantry.

LEA FEBIGER, second lieutenant Twenty-third Infantry.

I have no objection to Mr. O'Connor's appointment to any other regiment in the service, but I am firmly convinced that his assignment to the Twenty-third Infantry will work injuriously to its interests, and to the interests of the service at large.

P. T. BRODRICK, first lieutenant and adjutant.

Concurring in remarks of the adjutant:

W. L. CLARKE, first lieutenant Twenty-third Infantry.

CHARLES H. HEYL, second lieutenant Twenty-third Infantry.

S. ALLEN DYER, second lieutenant Twenty-third Infantry.

E. B. PRATT, second lieutenant Twenty-third Infantry.

F. L. DODGE, first lieutenant Twenty-third Infantry.

G. A. GOODALE, first lieutenant Twenty-third Infantry.

I have not served much with Mr. O'Connor, but am strongly of opinion that his being sent back to the regiment would be injurious to its interests.

J. J. COPPINGER, captain Twenty-third Infantry.

C. WHEATON, captain Twenty-third Infantry.

[Indorsement.]

FORT LEAVENWORTH, KANS.,

January 18, 1878.

This communication is respectfully forwarded by me as colonel of the regiment. Lieutenant O'Connor was, as is stated within, dismissed the service, and subsequently reinstated by his appointment as second lieutenant, and assigned to the regiment again. He never was, as well as I can learn his history in the regiment, a very popular officer. When he was dismissed his sentence was looked upon by me as severe, but just.

Since his reinstatement and return to the regiment he does not seem to have given much evidence that his punishment has been of any benefit to him.

Personally, I have not the least prejudice for or against this officer; but, at the same time, I am of opinion that his return to the regiment would not be likely to redound to his own interest or that of the regiment.

JEF. C. DAVIS,
Colonel Twenty-third Infantry, Commanding Regiment.

WAR DEPARTMENT,
Washington City, January 25, 1878.

SIR: In answer to your communication of the 23d instant, I have to say that the record of the trial of Lieut. Stephen O'Connor, as well as certain evidence discovered after the trial, was carefully considered before he was nominated for reappointment; the conclusion was that his reappointment was due him as a matter of fairness and justice. I am still of that opinion.

Very respectfully, your obedient servant,

GEO. W. McCRARY,
Secretary of War.

HON. GEORGE E. SPENCER,
Chairman Committee on Military Affairs, United States Senate.

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