

D. Q. ROUSSEAU.

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 bill H. R. 913.]

The Committee on Military Affairs, to whom was referred House bill 913, for the relief of D. Q. Rousseau, have examined the same, and report it back with an adverse recommendation.

As will be seen from reports from the Adjutant-General's Office, printed herewith, Lieutenant Rousseau was wholly retired with one year's pay, as an act of clemency on account of his age and long service, instead of enforcing the sentence of dismissal by court-martial.

ADJUTANT-GENERAL'S OFFICE,  
March 20, 1886.

SIR: I have the honor to return herewith House bill 913, providing for the restoration and retirement of David Q. Rousseau, late first lieutenant Fifth Cavalry, which bill was referred to the Department by the chairman of the Committee on Military Affairs, House of Representatives, for information, &c.

David Q. Rousseau served as a corporal and sergeant in the First Kentucky Infantry from May 17, 1846, to May 17, 1847, and as a lieutenant in the Fifth Kentucky Infantry from September 9, 1861, to October 20, 1862, when he resigned. He was appointed a second lieutenant in the Fifth United States Infantry March 7, 1867, and was promoted to be first lieutenant March 20, 1879.

He was tried by court-martial at Fort Keogh, Montana, in June, 1879, upon charges of drunkenness on duty; conduct unbecoming an officer and a gentleman; disobedience of orders; violation of the twentieth Article of War; and conduct to the prejudice of good order and military discipline.

He was found guilty of some of these charges and sentenced to be dismissed. In view of the circumstances of the case, and of the recommendations made by the court and by the reviewing authority, the President decided to order Lieutenant Rousseau before a retiring board instead of giving effect to the sentence of the court. He was examined by a retiring board at Fort Leavenworth, Kansas, in September, 1879, and the board, "after maturely considering the evidence adduced, finds that First Lieut. David Q. Rousseau, Fifth Infantry, is incapacitated for active service, and that such incapacity results from causes not incident to the service."

The following indorsements appear upon the proceedings and findings of the board:

"HEADQUARTERS OF THE ARMY,  
"Washington, D. C., October 13, 1879.

"It is respectfully recommended that Lieutenant Rousseau be wholly retired from the service.

"W. T. SHERMAN,  
"General."

"EXECUTIVE MANSION,  
"November 14, 1879.

"Ordered, That Lieutenant Rousseau be wholly retired from the service.  
"R. B. HAYES."

Accordingly, by an order of November 17, 1879, Lieutenant Rousseau was wholly retired from the service, with one year's pay and allowances, under the provisions of section 1252, Revised Statutes.

I annex hereto copies of two reports of the Judge-Advocate-General reviewing the proceedings of the court-martial, which specify, in detail, the nature of the offense charged, the evidence adduced, the recommendations made, &c., and upon which reports the order for Lieutenant Rousseau's examination by a retiring board was given.

Very respectfully, your obedient servant,

R. C. DRUM.

*Adjutant-General.*

The SECRETARY OF WAR.

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WAR DEPARTMENT, BUREAU OF MILITARY JUSTICE,

July 25, 1879.

Respectfully returned to the Secretary of War, in connection with the full report of this Bureau upon the case of Second Lieut. D. Q. Rousseau, Fifth Infantry, dated the 19th instant.

The within is a communication from R. G. Redd, A. A. Surgeon, addressed to Hon. J. S. Williams, United States Senate, in which interest is invoked for Lieutenant Rousseau in case his trial should result unfavorably. The writer refers to the advanced age of the accused, his honorable character, and his services in the Mexican war and in the recent war.

Mr. Williams, in indorsing this communication, expresses "the hope that the President will hold up his approval of the finding of the court, and give the poor fellow one more chance to save his honor and his commission."

In his review of this case General Terry remarks:

"Lieutenant Rousseau's conduct, since he came into this department, has been such as to make his withdrawal from active service an imperative necessity."

And, on considering all the evidence, in connection with the recommendation of the members of the court and the comments of the reviewing officer, the conclusion was arrived at by this Bureau that, if the sentence were not confirmed and ordered to be executed by the President (which was, and is, the recommendation of the Bureau), the only indulgence that, with a due consideration for the welfare of the service, could be extended to the party, would be to retire him "wholly" from the Army, pursuant to section 1252, Revised Statutes.

W. WINTHROP,

*Acting Judge-Advocate-General.*

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WAR DEPARTMENT, BUREAU OF MILITARY JUSTICE,

July 19, 1879.

To the SECRETARY OF WAR:

The record of trial by general court-martial of Second Lieut. David Q. Rousseau, Fifth Infantry, is respectfully submitted for the action of the President, with the following report:

Lieutenant Rousseau was arraigned at Fort Keogh, Mont., on the 4th June last, under the following charges:

CHARGE 1.—Drunkenness on duty.

*Specification 1.*—In that the accused, while on duty with his company (G, Fifth Infantry), escorting public funds in charge of Paymaster Arthur, was drunk. This near Fort Custer, Mont., April 14, 1879.

*Specification 2.*—And again drunk while on the same duty, on the day following, April 15.

*Specification 3.*—And again on the day following, viz, the 16th of April last.

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

*Specification.*—In this, that the accused did enter, in a drunken condition, the officers' club room at Fort Keogh, holding in his hand a cocked and loaded revolver, with the intention of intimidating therewith his commanding officer, Col. J. N. G. Whistler, and compelling him to go to his quarters. This April 19, 1879.

CHARGE 3.—Disobedience of orders.

*Specification.*—In that accused, having been ordered by Colonel Whistler, his commanding officer, to go to his quarters, did disobey. This April 19, 1879.

CHARGE 4.—Violation of the 20th Article of War.

*Specification 1.*—Using, in the presence of citizens, the following disrespectful and threatening language against his commanding officer: "Damn Colonel Whistler, the old imbecile; I will go for him some day." This April 19, 1879.

*Specification 2.*—And in the presence of Colonel Whistler, his commanding officer, encouraging a civilian employé, whom the former had ordered to his quarters, not to obey, by saying: "Good boy, good boy; don't you go." This April 4, 1879.

*CHARGE 5.*—Conduct to the prejudice of good order and military discipline.

*Specification.*—In using the following threatening language to his superior officer, First Lieutenant Logan, Fifth Infantry: "You know a d—d sight. If you fool much with me I will kill you, G— d— you." This April 19, 1879.

Charge 5th was withdrawn by the judge-advocate before the close of the trial, because of the absence of Lieutenant Logan, the only witness.

Under the remaining charges, the court find the accused as follows:

Guilty under charge 1 and its specifications; not guilty under charge 2 as laid, but guilty of conduct to the prejudice of good order and military discipline; and not guilty under charges 3 and 4, and sentence him to be dishonorably dismissed the service.

Attached to the record is a recommendation to clemency, based on the "advanced age and services of the accused, he having served in the Mexican war, war of the rebellion, war with the Sioux and Cheyennes in 1876, '77, '78, as well as on account of the distinguished services of his brother, General Rousseau, in saving the State of Kentucky from joining the rebellion, and his subsequent brilliant services during the war."

The court recommends that "the accused be ordered before a retiring board prior to the publication of these proceedings, believing that his habits have been engendered by the peculiarities of climate and the severity of the hardships incident to his service."

It is further advised that the sentence of dismissal be remitted, should the accused be retired as suggested by the court. The recommendation closes with the following observation: "In urging upon the President the exercise of mercy, the undersigned would think that the fact that the accused, a man who well knew from long residence among them the views and designs of those who endeavored to break up the Government in 1861, and from his experience as a soldier well knew what war meant, and then deliberately cast his lot with the United States, and journeyed a long distance to a place where he could enter the service of the United States, and by his continuance in that service deserves, in the opinion of the undersigned, clemency."

The reviewing authority, General A. H. Terry, commanding Department of Dakota, forwards the proceedings approved, for the action of the President, and remarks:

"I join in the recommendation of the court that Lieutenant Rousseau be placed on the retired list of the Army, and in case that is done that these proceedings be not published. But I deem it my duty to say that I do not recommend clemency in any other form. Lieutenant Rousseau's conduct since he came into this department has been such as to make his withdrawal from active service an imperative necessity."

Under the charge alleging drunkenness on duty while escorting public funds in April last, the evidence is conclusive that accused was continuously and disgracefully intoxicated during the three successive days alleged, and a detailed statement of the facts established seems uncalled for. The accused sought to persuade the court that he was not on duty at the time, no special duty having been required of him during the march, but the defense was manifestly untenable, and his conviction under the charge was justified both by law and fact.

The evidence under the second charge shows that on the 19th of April last, soon after accused's return from the escort duty above described, he visited the officers' club room, at Fort Keough, in a state of such conspicuous intoxication that General Whistler, the post commander, who happened to be present, immediately directed him to go home and go to bed. He refused to do either, and retorted by advising General Whistler to go to bed himself. He soon quitted the room, however, and was supposed to have obeyed. He returned, notwithstanding, in about thirty minutes, still so drunk as to be incapable of self-control, and challenged the post surgeon, Dr. Girard, to a game of billiards. Dr. Girard persuaded him once more to leave the room, and saw him to his quarters. Within the hour the accused once more made his appearance, this time armed with a loaded revolver, which he carried in one hand behind his back. The steward of the club room seized the pistol at once, and with the assistance of several other officers there present the accused was disarmed, taken to his quarters, and placed under guard. The next morning he had partially recovered from his condition of drunkenness, and the guard was taken off. It was shown in evidence that at the post-office of the post, before his first entering the club room, he had boasted to the postmaster that he meant to "go for the old man," and that while being taken home by Dr. Girard, as above stated, and on the morning following when Dr. Girard visited him at his quarters to inquire into his condition, the accused referred in plain and unmistakable terms to General Whistler as the person for whom he had brought the pistol, and whom he intended, by means of it, to terrify into a retreat to his quarters in retaliation for having on a previous occasion, sent the accused to his room in disgrace.

It is in evidence also that this was not the first instance of Lieutenant Rousseau drawing a pistol upon General Whistler, for whom he appears to entertain a settled aversion.

The acquittal of the accused under charge third was the result of a doubt on the minds of the court whether General Whistler's direction to the accused to go home and go to bed was not in the nature of a friendly caution rather than a command involving punishment for a failure to obey.

The acquittal under charge four, while the testimony given leaves no doubt of the substantial accuracy of the specifications, was justified by the condition and character of the proofs; those offered to sustain the allegation of disrespectful language failing to establish beyond a reasonable doubt that the words uttered by the accused were aimed at General Whistler, the latter's name not being mentioned, and the proofs under the second specification being open to the objection of being hearsay only, no witnesses being within reach of process who had heard the advice given by the accused.

Charge five, as has been already stated, was withdrawn by the Judge-Advocate.

It would appear that this officer was a habitual inebriate, whose value and usefulness as an officer have been destroyed by his intemperate habits, and whose longer retention in active service cannot but be detrimental to the discipline and *morale* of the Army.

In view of the confirmed character of the intemperance of this officer, the recommendation of the court is not concurred in, it being the opinion of this Bureau that the retired list is not to be regarded as an asylum for drunkards. The confirmation of the sentence is therefore advised. Should it, however, be thought proper to refer Lieutenant Rousseau's case to a retiring board, the only form of retirement which, in the judgment of this Bureau, could be ordered therein, consistently with the interests of the service, would be the retirement *wholly* from the Army, authorized by sec. 1252 Rev. Stat., and which is in effect a species of summary dismissal.

W. WINTHROP,  
*Acting Judge-Advocate General.*

[Indorsement on the foregoing.]

The President directs that Lieutenant Rousseau be brought before a retiring board.

G. W. MCCRARY,  
*Secretary of War.*

AUGUST 5, 1879.