

upon having recourse to a Court of Inquiry, ordered that Court, handed to it certain specific charges for investigation, which the Court did investigate, and its report was transmitted by the proper channel to be put into his hands as the convening and confirming officer, and it is by him alone that the proceedings can be reviewed.

My authority for this statement will be found in the "Manual of Military Law," page 160, which directs that "after the proceedings are signed, they are forwarded to the convening officer, who has the power to direct the reassembly of the Court as often as he may deem necessary, should he be of opinion that the Court has failed in carrying out the investigation to the extent desired, or that their report is not sufficiently full or explicit."

Then as to the manner in which, under certain circumstances, a Court should be assembled or censured, allow me to quote from a military text-book by Major-General Sir C. Napier, entitled, "Remarks on Military Law," and especially on the subject of the reprimanding of Courts. It is stated:—"I have known prisoners to be fully acquitted by the Court, yet reprimanded, and therefore punished, and consequently the Court was also reprimanded by implication. I have known Courts directly and violently censured for refusing to pass a sentence in accordance with the opinion of a Commanding Officer. Now, let me ask if judges, sworn to do justice, and actuated by a high sense of honor, are to be reprimanded for acting according to their conscience or their oath? That men may have viewed matters in a false light is easily conceived, and for this reason the power of revising the sentence has most prudently been given to him who assembles a Court, approves of the proceedings, and carries the sentence into execution. The Commanding Officer so invested with the power to approve, and confirm or revive, the proceedings of a Court, though he has probably taken a general view, may be supposed to come fresh to the details of the subject, quietly reads over the whole, and if he detects error, he sends for the President of the Court, and explains—calmly and dispassionately—his opinion of the proceedings, pointing out what appears to him to be wrong. If the Court agrees with him, it alters its opinion, and the Commanding Officer approves and confirms, or wholly rejects it. But while he expresses his total dissent in opinion, it seems to be unjust that he should have the right to reprimand a set of conscientious men because they differ in opinion with himself."

These are but a few of the rules and ideas by which all military Courts are judged, and in my own experience I have never known them departed from until now; and I think that, had you been consulted on the subject, your experience also would have enabled you to say at once to the Hon. Major Atkinson that any censure or rebuke of my action should, at all events, proceed from Sir Donald McLean, the authority who convened the Court, and who alone could condemn its proceedings if necessary.

And now to advert to the letter under acknowledgment. Major Atkinson states that he has perused the proceedings of the Court with no little astonishment, "both at the manner in which I took the evidence and at the conclusion at which I arrived." With respect to the manner in which I took the evidence, I must be allowed to say that I am in no way responsible for the manner in which it was taken, for it was my duty to take down the words of each witness, and the evidence is so recorded; and as to the conclusion at which I arrived, I will advert before I close.

As to the first charge, the sale of a Government mare, with respect to which Major Atkinson expresses himself "at a loss to understand how I could have contented myself with the very imperfect evidence with which I was apparently satisfied," my answer is, as I have said before, that it was my duty to receive and record the evidence as it was adduced, and he is perhaps not aware that every evidence whose statement is recorded (excepting Cook's) was produced by Craig, the prosecutor. Their statements, so far from being imperfect, served, in the opinion of the Court, to establish the innocence of Captain Rowe.

Major Atkinson records his opinion that "this case (of the mare) was one of grave suspicion, and it was clearly my duty to have called upon Major Cooper, whom I must have known would have given important testimony." Now, I am bound to say that an officer who proceeds to the investigation of any subject actuated by or who entertains "grave suspicions," enters upon the case in a most unfair and improper character; and if it were known or even supposed that he did so, would, in my opinion, impose upon himself the severest reprobation. I am happy to say that I allowed myself to entertain no "suspicions" whatever in adjudicating upon this case. And as to the statement that it was "clearly my duty to have called upon Major Cooper, whom I must have known would have given very important testimony," I answer, that I was not made aware by the prosecutor that Major Cooper could give important testimony; and the assumption that I ought to have been aware that he could give such testimony, I cannot admit. And I, as constituting the Court, had good grounds for not insisting upon the presence of Major Cooper, when the best evidence of which the case was susceptible was obtained by me in the statement of Mr. Lovell, who was one of the evidences also named by Craig, the prosecutor.

In the second page of his letter, Major Atkinson states that, in the course of the investigation into the matter of this mare, "four points were clearly established, notwithstanding the lax and careless way in which I conducted the inquiry;" and here I would beg to say that I would plead guilty to so severe an accusation, if I had allowed myself to take into consideration these four to him so clearly established points, represented as he represents them. They are not the questions or charges which I was ordered by Sir Donald McLean to inquire into, but are collateral or consequential allegations arising out of the evidence given in the course of the investigation, with which it was not my duty to interfere.

Major Atkinson suggests, in the third page of his letter, that the charge against Captain Rowe, in respect of the sale of the Government mare, "was divisible into two parts:—1st. Had the mare been sold for £35? And 2nd. Supposing this to be proved, had Captain Rowe applied the £5 to his own use; and if not, what had become of it?" But into these two parts I do not think the accusation of the prosecutor is divisible.

The very specific first charge I was "ordered to inquire into was that Captain Rowe was authorized