1925

Courts-Martial

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NOTES

COURTS-MARTIAL

Courts-martial are instituted for the trial of moral and military offenses. These courts existed as early as the reign of James II, and probably had their origin in the ancient Courts of Chivalry. The latter have fallen entirely into disuse. The last trial before a Court of Chivalry was that of Lord Audley in 1497, but the trial of the Earl of Warwick in 1499 took place before the Court of the Lord High Steward.

Bouvier defines a court-martial as a "military or naval tribunal, which has jurisdiction of offenses against the law of the service, military or naval, in which the offender is engaged." Greenleaf says: "A court-martial is a court of limited and special jurisdiction." "It has all the elements of a court. It has judges to hear the evidence and determine the facts, and apply the law. It has parties, prosecutor and defendant. It has pleading and formal trial, renders judgment and issues process to enforce it. In short, it does everything within the sphere of its jurisdiction which any judicial tribunal can do to administer justice."

The constitutional power, authority and jurisdiction of a court-martial is found in article I, section 8 of the United States Constitution, as follows: "The Congress shall have power . . . ; 12. To raise and support armies . . . ; 14. To make rules for the government and regulation of the land and naval forces, and . . . ; 18. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof."

The power of the court-martial was formerly more extensive than now, and was often exercised in a more arbitrary manner. Blackstone denounced this unlimited power by contrasting it with the certainty and precision of the common law, and expressed his sympathy with those who were subject to its jurisdiction in the following terms: "How much, therefore, it is to be regretted that a set of men whose bravery has so often preserved the liberties of their country should be reduced to a state

1 Bouvier Law Dictionary.
2 Greenleaf on Evidence, 47.
3 People v. Van Allen, 55 N. Y. 31.
of servitude in the midst of a nation of freemen."

In those days the civil courts were ever jealous of the powers exercised by the military courts. So jealous were they at one period in England's history of this power, which they regarded as usurped, that the members of a court-martial who passed sentence and brought about the execution of a soldier or civilian were regarded as murderers, and were in some instances tried and convicted of murder. The power of these courts has been very much restricted and limited since that period.

The law governing courts-martial is found in the statutory enactments of Congress, particularly the Articles of War, in the regulations and instructions sanctioned by the President for the government of the army and navy and in the customary military law. By the act of August 23, 1842 the army regulations were made a part of the law of the land. However, as In re Fair, the finding and judgment of "not guilty" by a military court-martial was not a bar to the prosecution of the same act by the civil authorities. This goes to the extent that the construction placed by a commanding officer of a military department upon the Articles of War and the rules and regulations promulgated by the President through the secretary of war is not binding upon the judiciary.

The power vested in the military courts is not a part of the judicial power of the United States within the meaning of the Constitution, and such courts are not included in the judicial department of the government. In the case of Kurtz v. Moffitt, one Kurtz, a deserter from the army of the United States, was, without any warrant or express authority, arrested by Moffitt and Fields, police officers of the city of San Francisco, and citizens of the state of California, and held by them for the purpose of being delivered to the military authorities of the United States and to be tried according to the laws of the United States. Kurtz claimed immunity from being arrested for a military crime by persons not military officers, and having no express authority from the United States or from such officers to arrest

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4 1 Bl. 416.
5 U. S. Rev. St. Secs. 1342 and 1624 as Amd.
6 Ex P. Reed, 100 U. S. 13.
7 15 U. S. St. at L. 510.
8 100 Fed. 149.
9 115 U. S. 487.
him. Here the Supreme Court ruled that a police officer of a state, or a private citizen, has no authority as such without any warrant or military order, to arrest and detain a deserter from the army of the United States. The court said in rendering this decision: "The rules of the common law that a peace officer or a private citizen may arrest a felon without a warrant, has been generally held by the courts of the several states to be in force in cases of felony punishable by the civil tribunals. But, that rule has never, so far as we are informed, been judicially extended to the case of an offender against the military law punishable exclusively by courts-martial."\(^{10}\)

In the matter of territorial jurisdiction of a court-martial the law imposes no limitation. The jurisdiction of such courts extends over the whole territory of the United States; and where an army is within the territory of another government, whether in time of peace or war, its courts-martial may exercise jurisdiction over all persons and offenses subject thereto wherever the army may happen to be at the time.\(^{11}\)

A soldier of the United States convicted of murder in Tennessee, by a court-martial, while that state was in the military occupation of the United States, was not subsequently amenable to the laws of that state then in force, for the same offense, for the reason that the court-martial had exclusive jurisdiction to try and punish offenses of every grade committed by persons in the military service while the army was in enemy's territory.\(^{12}\)

The offenses within the jurisdiction of the courts-martial are those set out by the Articles of War or by the several statutory provisions. These offenses may be classed as purely military, or those which are also offenses against the general law. However, military courts (with special reference to military commissions) are not tribunals for the adjusting of controversies between private individuals in regard to property. A controversy between husband and wife in regard to alimony does not fall within its jurisdiction.\(^{13}\) Courts-martial are supreme while acting within the sphere of their exclusive jurisdiction.\(^{14}\)

\(^{10}\) Fresh v. Payne, 43 Barb. 569; Dynes v. Hoover, 20 How (U. S.) 625.
\(^{11}\) Winthrop Military L. (2nd Ed.) 104.
\(^{12}\) Coleman v. Tenn., 97 U. S. 509.
\(^{13}\) State v. Stillman, 7 Cold (Tenn.) 340.
\(^{14}\) Carter v. Roberts, 177 U. S. 496; Dynes v. Hoover, supra (10); U. S. v. Maney, 61 Fed. 140.
The jurisdiction of a court-martial may be greatly extended in time of war both as to persons and offenses. It is provided by section 30 of an Act of Congress, approved March 3, 1862, chapter 75: "That in time of war, insurrection or rebellion, murder, assault and battery with an intent to kill, manslaughter, wounding, shooting or stabbing with an intent to commit murder, robbery, arson, burglary, rape, assault and battery with an intent to commit rape, and larceny, shall be punishable by the sentence of a General Court-Martial or Military Commission, when committed by persons who are in the military service of the United States, and subject to the Articles of War; and the punishment of such offenses shall never be less than those inflicted by the state, territory or district in which they may have been committed."

Section 38 of the same act provides:
"That all persons who, in time of war or rebellion against the supreme authority of the United States, shall be found lurking or acting as spies in or about any fortifications, posts, quarters or encampments, of any of the armies of the United States, or elsewhere, shall be tried by a general court-martial, or military commission, and shall, upon conviction, suffer death."

A court-martial is of a temporary and special jurisdiction. In this respect it differs widely from the civil courts. When the object of its creation is accomplished it ceases to exist. "A court-martial organized under the laws of the United States is a court of special and limited jurisdiction. Its authority is statutory and must be strictly pursued," says Mr. Chief Justice Waits in Runkle v. U. S. The common law knew no distinction between citizens and soldiers, so that if a life guard deserted he could only be sued for a breach of contract; and if he struck his officer he was only liable to an indictment or an action of battery.

The secretaries of war and navy have the power to convene general courts-martial; the former as the regular constitutional organ of the President for the administration of the military affairs of the nation, and the latter by authority of statute. The commanding officer of an army, an army corps, a division, or a separate brigade, or the superintendent of a military

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2 Campbell's, Lives of Ch. J., 91.
3 U. S. St. L. 621, 131 sec. 10.
academy may convene general courts-martial whenever necessary. In the naval service the power of convening general courts-martial is possessed by the commander-in-chief of a fleet or squadron and the commanding officer of any naval station beyond the continental limits of the United States. The President has the authority to appoint general courts-martial in every case where that power is granted to general officers even though the power is not conferred upon him specially. In *Swaim v. U. S.*[^9] Mr. Justice Shiras said (in quoting Mr. Justice Drake in an earlier decision): "As commander-in-chief the President is authorized to give orders to his subordinates, and the convening of a court-martial is simply giving an order to certain officers to assemble as a court, and, when so assembled, to exercise certain powers conferred upon them by the Articles of War."

Statutes of the various states provide for courts-martial for the trial of members of the militia. In *People v. Daniel,*[^20] it was held that courts-martial were necessary incidents to the "discipline" of the state militia and the provisions of the Constitution of the state of New York requiring the militia to be "armed and disciplined." A militiaman may be tried and punished in accordance with the federal statutes when called into actual service by the governor in pursuance of an order of the President. This question was settled in *Martin v. Mott.*[^21]

Great stress is laid upon the necessity of legally convening and organizing the court-martial. If not legally convened and organized its acts are void. A court-martial entirely composed of officers in the regular army of the United States is without jurisdiction to try an officer or soldier of other forces when convened for that sole purpose.[^22] Except officers of the marine corps, detached for service with the army by order of the President, may be associated with officers of the regular army or the forces of the marine corps so detached.[^23]

A general court-martial may consist of any number of officers from five to thirteen, inclusive. A court-martial of less than thirteen members is not a lawful court if that number can be

[^9]: See (17) supra.
[^20]: 165 U. S. 553.
[^21]: 50 N. Y. 274.
[^13]: 186 U. S. 49.
[^14]: U. S. Rev. St. 1342 art. 78.
convened without manifest injury to the service. Attorney-General Wirt suggested that, in every case of life and death, at least the President should be satisfied of the manifest injury which the service would have sustained in convening a court of thirteen before he gives his sanction to a sentence of death by a smaller number.\textsuperscript{24} When the number of members present is not less than five the jurisdiction of the court-martial will not be impaired.\textsuperscript{25} But where the court is of the minimum number, the incompetency of one member renders the proceedings void \textit{ab initio}. In \textit{U. S. v. Brown},\textsuperscript{26} the proceedings of the court were declared void, one member of the court being not competent to sit. In this instance the membership was thus reduced below the minimum required by law.

In the foregoing article I have endeavored to give only a general idea of the history, jurisdiction and composition of courts-martial, dealing almost exclusively with general courts-martial. A more detailed exposition would set forth the various kinds of courts-martial in addition to the general, as special and summary, the organization and jurisdiction of each, the procedure before and during trial, with special reference to the rules governing the admission and exclusion of evidence, and the carrying into effect of sentence.

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\textsuperscript{24} 1 Op. Atty.-Gen. 229.  
\textsuperscript{26} 206 U. S. 240.