No. 9.

RECORD OF THE PROCEEDINGS

OF A

GENERAL COURT MARTIAL,

HOLDEN

AT THE COURT-HOUSE IN SALEM, IN THE COUNTY OF ESSEX,

Monday, Sept. 28, 1812,

BY ORDER OF HIS EXCELLENCY

CALEB STRONG, Esq.

Governor and Commander in Chief of the Militia of the Commonwealth of Massachusetts,

ON THE COMPLAINT OF

LIEUT. COL. SAMUEL BRIMBLECOM AND OTHERS

AGAINST

EBENEZER GOODALE,

Major General of the Second Division of the Militia.

Published by order of the House of Representatives for the use of the Members.

CAMBRIDGE:

PRINTED BY HILLIARD AND METCALF.

1812.

GENERAL ORDERS.

Head-Quarters, Boston, 13 *Oct.* 1812.

THE General Court Martial, whereof Maj. Gen. Jonathan Davis is President, appointed for the trial of Maj. Gen. Ebenezer Goodale of the Second Division, upon the complaint of Lt. Col. Samuel Brimblecom and others, as set forth in six articles or specifications of charge against him, having sat and tried the said Maj. Gen. Ebenezer Goodale, upon the complaint aforesaid, have adjudged that he is not guilty of the 1st and 3d articles or specifications of charge, but that he is guilty of the 2d, 4th, 5th, and 6th articles or specifications of charge in said complaint, and thereupon have sentenced him to be removed from his office, and adjudged him disqualified for and incapable of holding any military office, under this commonwealth, for the term of five years. The Commander in Chief, having seen and fully considered the proceedings and sentence of the court, approves thereof; and orders that the same be carried into effect.

The General Court Martial, whereof Maj. Gen. Jonathan Davis is President, is dissolved.

By order of the Commander in Chief,

WILLIAM DONNISON, *Adj. Gen.*

A true copy, Attest,

WILLIAM DONNISON, *Adj. Gen.*

RECORD.

PRESENT

Maj. Gen. JONATHAN DAVIS of the 7th Div. *President.*

MEMBERS.

Brig. Gen. NATHANIEL AUSTIN, 1st Brig. 3d Div.
Brig. Gen. DAVID TRACY, 1st Brig. 9th Div.
Brig. Gen. ARNOLD WELLS, 3d Brig. 1st Div.
Lt. Col. RICHARD E. NEWCOMB, 2d R. 2d B. 4th Div.
Lt. Col. JOSEPH FARNSWORTH, 5th R. 1st B. 7th Div.
Lt. Col. PETER OSGOOD, 2d R. 3d B. 1st Div.
Lt. Col. JONATHAN PAGE, 5th R. 1st B. 3d Div.
Lt. Col. CALEB HOWARD, 3d R. 1st B. 5th Div.
Lt. Col. SOLOMON K. CHAMBERLAIN, 3d R. 2d B. [9th Div.
Maj. ISRAEL DEANE, 3d R. 2d B. 5th Div.
Maj. ALANSON KNOX, 4th R. 1st B. 4th Div.
Maj. THOMAS WHEELER, 3d R. 1st B. 7th Div.

SUPERNUMERARIES.

Maj. THOMAS DRURY, 1st R. 1st B. 7th Div.
Maj. JOSEPH EDGARTON, 2d R. 2d B. 3d Div.

Judge Advocate.

Maj. JOHN VARNUM, 2d Div.

Maj. JONATHAN PERKINS, 1st R. 1st B. 2d D. *Marshal.*

The complainants and respondent, on being called, answered. The orders for holding the court and postponing the same were then read by the Judge Advocate; the originals, being papers marked No. 1 and 2, are annexed to these proceedings. The court was then ordered to be opened, which was done in due form by the Marshal.

The Judge Advocate then proceeded to administer to the President and each of the members aforesaid, singly, and the

President to the Judge Advocate, the respective oaths, prescribed in and by the 31st section of an act of the Legislature of the Commonwealth of Massachusetts, passed March 6, 1810, entitled "An act for regulating, governing, and training the militia of the Commonwealth." Maj. Thomas Drury and Maj. Joseph Edgarton, supernumeraries, after being sworn, took a seat near the court.

Gen. Goodale then handed to the Judge Advocate a paper, which was read to the court, requesting a delay of thirty minutes, which was granted. The original being marked No. 3, and annexed to the proceedings.

The Judge Advocate then demanded of Gen. Goodale if he had any objection against, or challenge to either of the court: and thereupon he answered, that he had not. The same question being put to the complainants, they answered that they had no objections to make.

Gen. Goodale was now called to plead to the complaint of Lt. Col. Samuel Brimblecom and others against him, which was read to him by the Judge Advocate. A certified copy of which, being marked No. 4, is annexed to these proceedings. Which being read, the Judge Advocate demanded of said Gen. Ebenezer Goodale, whether, of the charges in the aforesaid complaint, he was guilty, or not guilty.

Gen. Goodale then handed a paper containing his answer; the original of which is marked No. 5, and annexed to the proceedings. Hereupon the court was cleared; and after consultation, the doors were ordered to be opened; and the court directed the Judge Advocate to inform Gen. Goodale, that "The court consider, that in a free government every citizen "soldier is to be considered as amenable for his conduct to "the public tribunal; and that promotion ought not to shut "the door to free inquiry. The situation however of Gen. "Goodale, as commanding officer of the division, in the absence, or after the discharge of Gen. Derby, and his present "station are not essentially variant, in the opinion of this "court. The court therefore decide, that the respondent "shall be held to answer to the four first charges in the com-

plaint aforesaid." Hereupon Gen. Goodale handed his answer to the four first charges in the complaint, which is paper marked No. 6, and annexed to the proceedings.

The Judge Advocate then moved the court for audience of evidence in behalf of the government, which was granted. Isaac Cushing, being duly sworn by the Judge Advocate, was interrogated, and answered as follows.

Quest. Did you present the charges against Capt. Bowditch, as set forth in the complaint aforesaid, to Gen. Goodale, and at what time?

Ans. I saw the *second set* of charges delivered to Gen. Goodale, at some time between the tenth and fifteenth of December last.

General Goodale here acknowledged, that the two sets of charges against Capt. Bowditch were delivered to him, at the time and in the manner as set forth in the complaint aforesaid. The original order for holding the Court of Inquiry on Capt. Bowditch was here read to the court, being paper marked No. 7, and annexed to the proceedings.

Samuel Briggs, being duly sworn, was interrogated, and answered as follows.

Q. By J. Ad. What do you know relative to the third charge in the complaint aforesaid?

A. In 1804 I joined the Salem Cadet company, now under the command of Capt. Bowditch, and have received no notice of a discharge, except a notice to do duty in Capt. Chamberlain's company; but I did not do duty there. The day after I received the first notice, I went, with Mr. Cook, to Gen. Goodale, to know if he had given any order to have us discharged from the Cadet company; and he said he had not. We then agreed to meet Gen. Goodale at Mr. Webb's shop in the afternoon, and met accordingly. We then made our circumstances known to General Goodale, and he advised us not to do duty in the militia companies; for we had not been discharged from the Cadet company, and were still members.

Q. By Gen. Goodale. When and how did you cease to be a member of the Cadet company?

A. I never did cease to be a member.

Q. By same. What advice did Gen. Goodale give you, and in what terms, at Webb's?

A. He advised us not to do duty in the militia companies, and told us, if we were not warned in the Cadet company, we should be clear of duty.

Q. By same. What reason did he assign for giving this advice?

A. He did not assign any reason, but said he had given no order to have us discharged.

Q. By same. Was not the militia law than examined, and did not Gen. Goodale then declare it was his opinion you had not been discharged?

A. I do not recollect that the law was examined, but the brigade book was, and it did not appear there, that we had been discharged. I have not done military duty since July 4, 1811.

Q. By same. Why did you not do military duty?

A. Capt. Bowditch did not warn us, and Gen. Goodale advised us not to do duty in the standing militia?

Q. By same. Did he advise you not to do duty in the Cadet company?

A. No; he said if we were not warned in the Cadet company, we should be excused from military duty.

Q. By same. Did he tell you, that you were *not liable* to do duty in the Cadet company?

A. No; I presume he knew we were members of the Cadet company.

Benjamin Webb, being duly sworn, was interrogated as follows.

Q. By J. Ad. What do you know relative to the third charge in the complaint?

A. In Sept. 1811, Mr. Nathan Cook, one of the expelled members of the Cadet company, called on me, and requested me to go with him to Brig. Maj. White, and see if there was any record of his discharge in the brigade books. I then held an Ensign's commission in the Cadet company. Maj. White

told us, that Gen. Goodale would probably be in town that afternoon, and meet the persons expelled from the Cadet company at my shop; and Gen. Goodale and Maj. White met them there accordingly. They told Gen. Goodale they considered themselves members of the Cadet company; but had received notice to do duty in the standing militia companies; and requested his advice, whether they should do duty or not in the militia companies. Gen. Goodale then told them, they were to all intents and purposes members of the Cadet company; that Capt. Bowditch had no right to discharge them, and would be compelled to receive them back again. He also advised them not to pay any attention to the notices of the officers of the standing militia to do duty in their companies. He suggested to them, they had better call on the officers, and inform them they were members of the Cadet company.

Q. By Gen. Goodale. Did Gen. Goodale repeatedly enjoin on the members of the Cadet company, to call on the officers of the standing companies, to notify them they were members of the Salem Cadet company?

A. He did once, at the suggestion of Maj. White.

Capt. Samuel Chamberlain, commander of a company of militia in Salem, being duly sworn, was interrogated as follows.

Q. By J. Ad. What did Gen. Goodale say to you relative to prosecuting Samuel Briggs for a fine, for neglect of duty in your company?

A. Said Briggs was enrolled in my company last fall, and as he was warned, he came to me to make his excuse; and said Gen. Goodale and Maj. White told him he was a member of the Cadet company; but I told him I did not think that was any excuse. He also said, he could fetch it from under their *hands*, that he was a member of the Cadet company. I told him, if he could bring it from under Capt. Bowditch's hands it would answer. I called on Gen. Goodale last spring, and asked him if he was going to call a court of inquiry on Capt. Bowditch, and he answered yes, and said he should have done it before, if they had not treated him impolitely. I told him

if he was not going to call it, I should sue Briggs for his fine; and he said, I wish you would; or why dont you.

Q. By Gen. Goodale. Did Gen. Goodale express his opinion on the question of liability of the members of the Salem Cadet company to perform military duty in the standing companies, as a question of law; and did he not advise a legal trial for the purpose of having the question examined and determined by a competent tribunal; and was not this question a frequent and common subject of doubt and dispute?

A. I took it, from what he said, that he wished me to try it, to see if I could hold him or not; but somebody else tried it, and that saved me the trouble.

Q. By same. Was not Gen. Goodale frequently, and urgently pressed to communicate his opinion on this question, by yourself?

A. Yes, frequently, and he did not appear to be determined.

Q. By court. How came Samuel Briggs on the roll of your company?

A. I do not know, for he was warned by the Clerk, under my general order to warn all in my ward. I called on Capt. Bowditch, and he told me Briggs was *not* a member of his company.

At half past 3 o'clock P. M. the court was ordered to be adjourned to 10 o'clock tomorrow morning, which was done in due form by the Marshal.

Court-House, Salem, Tuesday, Sept. 29th, 1812.

The court met agreeably to adjournment, and on being called, all answered in their places. The supernumeraries, on being called, answered. The court was then ordered to be opened, which was done in due form by the Marshal. The complainants and respondent, on being called, answered. The record of the proceedings of yesterday was read.

Ebenezer Worcester was duly sworn, interrogated, and answered as follows.

Q. By J. Ad. What do you know relative to the 3d charge in the complaint aforesaid against Gen. Goodale?

A. I inlisted into the Cadet company in 1805, and have considered myself a member to this time. On the fourth of September last I was informed by the Clerk of the standing company of militia, in whose limits I resided, that he was about to enrol me in his company: and afterwards was notified to do duty in the company. But I did not do duty there, and refused to vote at elections, because I did not consider myself a member of that company. I was present at Webb's shop, during the conversation referred to, and when the brigade book was brought, it appeared there recorded, that I was discharged from the Cadet company, at my own request; but I informed Gen. Goodale, that I did not request it; and he said he had not authorized that record to be made, and I was a member of the Cadet company, as much as I ever was, and advised me not to do duty in the standing militia, and that if I was not warned in the Cadet company, I should be clear of duty. He also advised me to call on the Capt. of the militia company, and make my excuse, which I followed, although it was different from my own opinion.

Q. By deft. For what reason did Gen. Goodale advise you to try the question of your liability to do duty in either of the companies?

A. He did not give me any reason.

Q. By same. What was the conversation at that time?

A. I do not recollect much of it; we were conversing about the complaint against Capt. Bowditch, and having heard, that Gen. Goodale was not going to notice the complaint, because he was not officially notified of the discharge of Gen. Derby, I asked him if that was the case, and he said "something of that kind." He also asked me several times, why I would not have a trial on the complaint against me, for neglect of duty in the standing militia, and urged me to have it tried.

Benjamin Webb was again called on the 4th charge.

Q. By J. Ad. What do you know relative to Gen. Goodale's delegating his authority to Brig. Maj. White to discharge privates from volunteer corps?

A. Last May I heard him acknowledge that he had dele-

gated such authority to Maj. White, for it was inconvenient for him to attend to these things. He also said, that Maj. White did all the business in his absence; and that he had told the Captains in the several companies to call on Maj. White whenever they wished any privates discharged from their companies, for he had given Maj. White a general order for that purpose.

Leverett Saltonstall Esq. being duly sworn, was interrogated, and answered as follows.

Q. By J. Ad. What do you know relative to Gen. Goodale's authorizing Maj. White to discharge privates from volunteer companies?

A. I was counsel for Mr. Pope and Mr. Worcester before J. E. Sprague Esq. in their trial, which took place last spring, on a complaint for not doing duty in the standing militia. Their defence was, that they were members of the Cadet company, and not liable to do duty in any other company. Gen. Goodale was called as a witness to testify, whether they were discharged from the Cadet company or not, as he was the only officer who had power to discharge them; I asked him if he had discharged said Pope or Worcester; and he testified that he could not recollect discharging either of them; for he left that business to Maj. White. He said Capt. Bowditch had applied to him for some discharges, and he referred him to Maj. White, and said, Maj. White attends to that business; and the soldiers were acquitted accordingly.

J. E. Sprague Esq. being duly sworn, was interrogated, and answered as follows.

Q. By J. Ad. Upon what grounds did you acquit Pope and Worcester, who were tried before you for neglect of duty in the standing militia?

A. The ground of their defence was, that they were members of the Cadet company, and not liable to do duty in the standing militia. There was so much doubt of the legality, and correctness of their discharge from the Cadet company, that I acquitted them. I could not see the evidence of their discharge.

Q. By same. What did Gen. Goodale say about delegating his authority to Maj. White to discharge privates from volunteer companies?

A. After the examination of a number of witnesses the court was adjourned on account of the absence of Gen. Goodale; but immediately Gen. Goodale came in, and the court was again opened. Gen. Goodale was inquired of if he had given orders to discharge either of the persons on trial, from the Cadet company; he answered, that he had ordered some discharges from the Cadet company, but could not determine that he had ordered the discharge of either of the persons on trial, as he kept no memorandum of them.

Q. By court. Did Gen. Goodale state that he had given orders to Maj. White to discharge them?

A. No.

Q. By court. Did not Gen. Goodale state, that he had given a general order to Maj. White, to discharge privates from volunteer companies?

A. No; but said he had given orders to Capt. Bowditch to call on Maj. White with particular names, and he would give them a discharge. I think he said he had given Capt. Bowditch such orders more than once.

Capt. Elijah C. Webster, late commander of a company of Artillery in Danvers, was duly sworn, interrogated, and answered as follows.

Q. By J. Ad. What do you know relative to Gen. Goodale's authorizing Maj. White to grant discharges from volunteer companies?

A. I called on Gen Goodale, last winter, for the purpose of procuring the discharge of a private in my company; and he requested me to direct a line to Maj. White, and he would discharge him. He also said, if I wished any others discharged from my company, I must send their names to Maj. White, and he would discharge them. I accordingly wrote to Maj. White, and named the person I wished to have discharged; and after some time I called on Maj. White to procure the certificate of the discharge; when he informed me he had sent

the certificate to me in a letter, and entered the discharge in the brigade book, and I notified the private accordingly. I did not make any application to Gen. Goodale for a discharge at that time.

Capt. J. C. King, commander of the Salem Light Infantry, was duly sworn, interrogated, and answered as follows.

Q. By J. Ad. What do you know relative to Gen. Goodale's authorizing Maj. White to discharge privates from volunteer companies?

A. I do not recollect any conversation with Gen. Goodale on that subject within one year.

Q. By same. Have you procured any discharges from your company within one year?

A. Yes, I made application to Maj. White, and I am not certain but my requests were sometimes directed to Gen. Goodale and delivered to Maj. White; and Maj. White gave me the certificates of the discharges requested.

Q. By court. How were the certificates authenticated?

A. Signed by the Brig. Major, by order of the Brig. General.

Capt. Jacob Peabody, commander of a company of Artillery, being duly sworn, was interrogated, and answered as follows.

Q. By J. Ad. What do you know relative to Gen. Goodale's authorizing Maj. White to grant discharges from volunteer companies?

A. Sometime last fall, I met Gen. Goodale in the street, and told him I wished to procure the discharge of two privates in my company, and he requested me to call on Maj. White: accordingly I called on Maj. White, and wrote, with my pencil, the names of the two persons I wished to have discharged, and Maj. White sent me the certificates of their discharge. I told him one of them requested his discharge, and the other did not, but I wished to be rid of him. Gen. Goodale also told me, if I wanted any more men discharged, I must call on Maj. White, for he did not trouble himself about those things.

Maj. Joseph White, late Brig. Major of the 1st Brig. 2d Div. being duly sworn, was interrogated, and answered as follows.

Q. By J. Ad. Did Gen. Goodale ever authorize you to grant discharges of privates in volunteer companies?

A. I have always made it a rule to consult him on that subject; but I will not say, some discharges have not been granted without his being consulted. He never gave me any written order, and I do not recollect any general verbal order for that purpose; but sometimes he has neglected to hear the whole circumstances, but said, grant them, and there will be no difficulty.

Q. By court. Was Gen. Goodale ever present with you when discharges were granted?

A. I do not recollect that he ever was.

Q. By J. Ad. Did you not acknowledge before Joseph E. Sprague, Esq. that you had a general order to discharge privates?

A. I said I had a general order, but I alluded to an order in February 1811, when Gen. Goodale was going on a journey; and I never had occasion to act under that order. The order was never recorded; I considered it of no consequence; and it is now mislaid, or lost.

Q. By court. Was that order ever countermanded?

A. No, it never was.

Q. By deft. At what time, for what purpose, and on what occasion was the order you refer to given?

A. I think it was in Feb. 1811, and for the purpose of transacting the ordinary business of the brigade during his absence, and on account of his absence.

Q. By court. Was the order you received limited to Gen. Goodale's absence?

A. I do not recollect distinctly, but I think it was not.

Q. By J. Ad. Did you ever have any written order from Gen. Goodale to discharge any person, whatever, from volunteer companies?

A. No, he gave me verbal orders only.

Q. By court. Did you consult Gen. Goodale about the discharge of Ebenezer Worcester?

A. I think I did.

Q. By same. Did Gen. Goodale ever sign any certificate of discharge?

A. I do not recollect any.

Q. By same. Are all the discharges in the brigade book, now before the court?

A. Yes.

Q. By same. To whom were the certificates of the discharge of the persons tried before Joseph E. Sprague, Esq. delivered?

A. I do not recollect; sometimes I gave them to the persons applying, to carry to their Captains, and sometimes I sent them to the commander of the company, from which they were discharged; but I think I gave them to Capt. Bowditch.

Q. By deft. Did not Gen. Goodale frequently call on you in Salem and consult and instruct you about these discharges?

A. Yes, and about all the other business in the brigade.

Q. By same. Was Gen. Goodale consulted about the application for the discharge of the two persons referred to by Capt. Peabody?

A. I recollect Capt. Peabody spoke to me about a drummer who was refractory, and wished him discharged, but I do not recollect whether I consulted Gen. Goodale, or not.

Q. By court. Was Gen. Goodale consulted about the applications of Capt. King and Capt. Webster?

A. I have no doubt he was in all the cases; and I do not recollect any case in which he was not consulted, except an application of Capt. J. C. King, on the 3d of Feb. 1812, for the discharge of a number of persons who have removed out of the division. In that case the discharge was granted without consulting him.

Samuel Briggs was again called.

Q. By J. Ad. What did you hear Gen. Goodale say about the authority given Maj. White to discharge privates from volunteer companies?

A. In September last, when Mr. Cook and myself went to him to see if we were discharged from the Cadet company, he said he had given Maj. White orders to discharge any privates at the request of any commanding officer of a company, and repeated it several times.

Ebenezer Worcester was again called.

Q. By J. Ad. Did you hear Gen. Goodale acknowledge that he had authorized Maj. White to discharge privates from volunteer companies?

A. Yes, he said he had given such orders; and had directed several privates, who called on him for discharges, to Maj. White, for he attended to those matters, and Gen. Goodale testified to the same.

Q. By court, to L. Saltonstall Esq. Are you convinced that Gen. Goodale stated, in the trial before J. E. Sprague Esq. that he had given authority to Maj. White to discharge privates?

A. Yes, and I think Mr. Sprague must be mistaken.

5th Charge. Robert Rantoul Esq. being duly sworn, was interrogated, and answered as follows.

Q. By J. Ad. Please to relate what you know relative to Gen. Goodale's conduct in withholding a request for the discharge of Col. Lovett of the first Brigade and second Division?

A. Col. Lovett has been deranged in mind since December last, having some lucid intervals; on the 4th of April last, having a lucid interval, called on me and consulted me about procuring his discharge. An application for that purpose was made and signed by him, and left with me. On the 7th of April I delivered the same request to Gen. Goodale, and informed him of Col. Lovett's situation, and requested him to approve of the application, which he consented to, and immediately signed it. I then consulted him about forwarding the same to the Adjutant General's office, when he said he should soon be in Salem, would see Maj. White, and have it forwarded; at the same time he told me if he obtained the discharge, he should keep it, till the contested election of Brigadier General was settled. Sometime afterwards I was informed, it had

not been forwarded, and called on Gen. Goodale, the 22d of April, and he informed me he had not forwarded it; and I requested him to give it to me, that I might forward it and procure the discharge. He refused to deliver it to me, and said it should not go out of his hands, till there was a Brig. General elected in the brigade. Sometime in June I called at the Adjutant General's office to inquire if Col. Lovett was discharged, and found he was not; but the Adjutant General informed me, that he was instructed to make out the discharge. The application appeared to be received in the Adjutant General's office on the 8th or 9th of June.

Q. By J. Ad. Has Col. Lovett been deranged constantly since the 7th of April last?

A. Yes, and has been totally unqualified to attend to any business.

Q. By same. Did Gen. Goodale use any threatening language towards any of the electors of Brig. General?

A. After I had intimated to him, that I should make a representation of his conduct, if he did not forward the application for the discharge of Col. Lovett, he then said that he should be obliged to take notice of certain officers in the brigade, for their conduct at the former election of Brig. General.

Q. By J. Ad. When you first applied to Gen. Goodale for the discharge of Col. Lovett, did he promise to forward the application?

A. Yes, as I before stated.

Q. By court. Did Col. Lovett attend either of the elections of Brig. General?

A. I think he did attend the first election.

Here was produced and read to the court, a certified copy of the proceedings relative to the first election of Brig. General, being marked No. 8, and annexed to the proceedings.

6th Charge. Maj. Joseph Stearns, late commander of a company of militia in the 5th Reg. 1st Brig. 2d Div. being duly sworn, was interrogated, and answered as follows.

Q. By J. Ad. Did Gen. Goodale, in May last past, request you to sign an obligation to support Maj. Elijah Flint as Col.

of the said 5th Reg. on condition he would vote for Col. David Putnam as Brig. General?

Here Gen. Goodale handed the court a paper written as follows, viz.

"*General Court-Martial, Salem, September 29th*, 1812.

"Commonwealth vs. Ebenezer Goodale, Maj. Gen. 2d Div.
"Massachusetts militia.

"The Defendant objects to the admission and hearing of "any testimony in the trial of this case, which may relate to "any conversation, any declaration, or act, had, performed, or "expressed by him, at any time when he was not exercising "the authority of his station as Maj. General, or acting offi-"cially as an officer in the Massachusetts militia.

"Signed, EBENEZER GOODALE."

The original, being marked No. 9, is annexed to the proceedings.

Hereupon the court was ordered to be cleared of spectators, which was done by the Marshal. After consultation the doors were ordered to be opened, and the Judge Advocate was advised to inform Gen. Goodale, that "the court consid-"er, that an officer is responsible for any conversation, declar-"ation, or act, had, performed, or expressed by him, relating "to the militia, at any time while in commission, and that in "so doing he exercises the authority of his station. They "therefore determine that it is expedient to examine the wit-"ness offered."

Immediately after this determination of the court was made known to Gen. Goodale, he handed to the Judge Advocate a paper written as follows, which was read to the court, viz.

"*General Court-Martial, Salem, September 29th*, 1812.

"Commonwealth vs. Ebenezer Goodale, Maj. Gen. 2d Div.
"Massachusetts militia.

"The Defendant declines further to answer to the sixth "specification of charge exhibited against him, because

"he says, that the crime, or offence therein complained of, has "not been fully and plainly, substantially and formally de-"scribed to him, and thereupon prays the judgment of the "court.

"Signed, EBENEZER GOODALE."

The original, being marked No. 10, is annexed to these proceedings. Also read to the court the first clause in the 12th article of the Bill of Rights.

The court was hereupon ordered to be cleared of spectators for consultation, which was done by the Marshal. After deliberation the doors were again opened, and the Judge Advocate ordered to inform Gen. Goodale, that—"The court "consider, that the sixth specification of charge is as fully and "plainly, substantially and formally described, as the nature "of the complaint and military usage require. They are "therefore of opinion, that General Goodale be required to an-"swer to the same."

At a quarter past 3 o'clock the court was ordered to be adjourned to Thursday morning next at 10 o'clock, which was done in due form by the Marshal.

Court-House, Salem, Thursday, October 1, 1812.

The court met agreeably to adjournment, and on being called, all answered in their places. Maj. Joseph Edgarton, a supernumerary, on being called, answered. Maj. Thomas Drury, the other supernumerary, was excused on Tuesday.

The court was ordered to be opened, which was done in due form by the Marshal. The complainants and defendant, on being called, answered. The record of the proceedings of Tuesday was read.

Maj. Joseph Stearns was again called.

Q. By J. Ad. Did Gen. Goodale, in May last, request you to sign an obligation to support Maj. Elijah Flint for Col. of the 5th Reg. on condition he would vote for Col. David Putnam as Brig. General?

A. Gen. Goodale, on Saturday preceding the election of

Brig. General, which was on the 25th of May, 1812, offered me a paper, written in these words,—"We, officers of the 5th "Reg. pledge our sacred honors to support Elijah Flint, pro- "vided *he acts his own opinion* in the choice of a Brig. Gener- "al;" and requested me to sign it, which I did. [It was here admitted by Gen. Goodale, that the foregoing is a true copy of the paper presented to Maj. Stearns.] I told him, I calculated to vote for Maj. Flint, if there was an opportunity; he said he did not doubt it, but he wished to convince Maj. Flint he would be supported; for a number of persons had been to him, to convince him, if Col. Putnam, who then commanded the 5th Reg. should be promoted, he would be superseded. He said Capt. Jonathan Ingersoll and others had told Maj. Flint there was a determination of the officers in the 5th Reg. to supersede him, and he only wanted the paper to convince him there was no such determination, or combination to supersede him.

Q. By same. Was there any other paper shewn you to sign, and where is the original?

A. I never saw any other paper. The original was destroyed by Gen. Goodale after the Court of Inquiry was ordered on him, and a few days before the court was holden.

Q. By court. Did Gen. Goodale give any reason for destroying the original paper?

A. No; but I requested him to tear off my name, and he destroyed the paper. There were then six or seven signatures to the paper.

Q. By J. Ad. Was Maj. Flint elected Colonel after Col. Putnam was promoted?

A. No, he was superseded; but I believe all who signed the paper voted for him.

Capt. Eliphalet Pettee, late commander of a company in the 5th Reg. being duly sworn, was interrogated as follows.

Q. By J. Ad. Did Gen. Goodale request you to sign any paper to support Maj. Flint, provided he would vote for Col. Putnam as Brigadier General?

A. He shew me a paper, in the market in Salem, on Sat-

urday preceding the election of Brigadier General, similar to the one referred to in Maj. Stearns' testimony, and said he understood Capt. Ingersoll and others had tried to influence Maj. Flint, that he would be superseded, if he voted as he did before, or for Col. Putnam, and said he wished to shew Maj. Flint there was no combination to supersede him, and I signed the paper.

Q. By same. Who are the present Majors of the 5th regiment?

A. Joseph Stearns, who has just testified, and myself.

Lt. Benjamin Porter of the 5th Reg. being sworn, testified as follows.

Q. By J. Ad. Did Gen. Goodale request you to sign an obligation to support Maj. Elijah Flint for Colonel of the 5th Reg. if he would vote for Col. David Putnam as Brigadier General?

A. Yes, something of that kind took place last spring, I think on the Saturday preceding the election of Brigadier General in May. He met me in the street, and after some conversation, said they were going again to try for Brigadier General, and said Capt. Ingersoll and others had been to Maj. Flint and told him, if he voted as he did before, there was a combination to supersede him. It was generally understood he voted for Col. Putnam at the former election. He asked me if I should vote for Maj. Flint, and pulled a paper out of his pocket, he said for those to sign, who would support Maj. Flint, and to do away the impression on his mind. I told him I should not sign it, nor vote for Maj. Flint, and did not wish to have my mind influenced. He said he did not wish to influence me nor any other person; and repeated it several times; and said he wished me to act my own mind; but if I meant to vote for Maj. Flint, he wished me to sign the paper.

Capt. Solomon Richardson of Middleton, of the 5th Reg. being duly sworn, testified as follows.

Q. By J. Ad. Did Gen. Goodale request you to sign an obligation to support Maj. Flint for Colonel, if he would vote for Col. Putnam as Brigadier General?

A. On Sunday morning, the day before the election of Brigadier General in May, Gen. Goodale called on me, and said, that Capt. Ingersoll and others had been to Maj. Flint to make him believe it was agreed among the officers of the 5th Reg. to supersede him, provided there should be a vacancy of Colonel, and took out a paper, similar to the one referred to in Maj. Stearns' testimony, and said he only wanted to convince Maj. Flint there was no such agreement among the officers; and I signed it.

Q. By court. Had he any other business with you at that time; or did he come solely for that purpose?

A. I do not recollect that he had any other business.

Lt. Asa Tapley of the 5th Reg. being duly sworn, testified as follows.

Q. By J. Ad. Did Gen. Goodale request you to sign any paper, obligating yourself to vote for Maj. Flint for Colonel, if he would vote for Col. David Putnam as Brigadier General?

A. On Saturday morning preceding the election of Brigadier General, he handed me a paper to sign, similar to the one mentioned in Maj. Stearns' testimony, and said I might sign it, if I pleased. I asked him the use of that paper; he said Capt. Ingersoll and others had been to Maj. Flint to persuade him, if Col. Putnam should be chosen Brigadier General, the officers of the 5th Reg. had combined to supersede him, that he only wanted to convince him there was no combination, and I signed it.

Q. By court. Was this combination against Maj. Flint in consequence of his voting for Col. Putnam at the former election?

A. No, nothing of that kind was said.

Q. By same. Did you ever hear of this combination to supersede Maj. Flint, except from Gen. Goodale?

A. Yes, a few days previous to the election I heard of such a combination, but cannot recollect from whom.

Q. By same. How many names were on the paper when you signed?

A. I do not recollect; I think I was not the first. I signed on Saturday morning, preceding the election.

Capt. Benjamin Putnam of the 5th Reg. being duly sworn, testified as follows.

Q. By J. Ad. Did Gen. Goodale request you to sign an obligation to vote for Maj. Flint, if he would vote for Col. David Putnam as Brigadier General?

A. On Monday previous to the election of Brig. General in May, he offered me a paper, similar to the one referred to in Maj. Stearns' testimony, and I signed it. He said Capt. Ingersoll and others had been to Maj. Flint, and told him there was an agreement or combination to supersede him, if he voted for Col Putnam; and said he should like to have me sign it, to do away the influence made on Maj. Flint. I asked him if he expected to get all the officers in the Reg. to sign it; he said he did not know, but he meant to offer it to them all, and if they pleased, and had not agreed, or combined against Maj. Flint, have them sign it. I took a copy of the paper after the court of inquiry was ordered on Gen. Goodale, and a day or two before it was holden.

Ensign Ira Preston of the 5th Reg. being duly sworn testified as follows.

Q. By J. Ad. Did Gen. Goodale request you to sign any paper obligating yourself to vote for Maj. Flint?

A. No, but I had some conversation with him after the first, and prior to the second election of Brig. General; and I think he said he thought Col. Putnam injured at the former election, and asked me if I should vote for Maj. Flint, if there should be a vacancy in the 5th Reg. I said I should not; and he said—"perhaps I have gone too far;" and I replied, I did not wish to expose him.

Q. By deft. What did you mean by saying you would not expose him?

A. I meant I would not tell of it, unless I was called on for that purpose.

Philip Dale, being duly sworn, testified as follows:—

Q. By J. Ad. What do you know of Gen. Goodale's interference in the election of Brig. General in May last?

A. About the fifteenth or sixteenth of April last, I was at Gen. Goodale's house at his return from Salem, when he said he had been to take depositions about the election of Brigadier General. I inquired how he succeeded, and he said very well. I inquired if he was likely to obtain a commission for Gen. Putnam; and he said he should have it, that he was going to Boston tomorrow, and that it lay solely with him. I said I thought it lay with the Governor;* and he then said he did not mean so, but he meant to use all his influence, and should get the commission tomorrow. Afterwards, in July, he was at our house, and said he had favored Col. Putnam's election.

Q. By same. Did Gen. Goodale threaten to arrest any of the officers in the brigade?

A. No; but he said some of the officers treated him very unhandsomely, and he had a good mind to arrest them. I think he named a Mr. Lamson of Beverly, a Quarter Master of a regiment, who acted as Adjutant to Col. Lovett in distributing orders for the first election of Brigadier General.

Capt. E. W. Flint of the 5th Reg. being duly sworn, testified as follows.

Q. By J. Ad. Did Gen. Goodale request you to sign any paper to obligate yourself to support Maj. Flint for Colonel, provided he would vote for Col. David Putnam for Brigadier General?

A. On Saturday preceding the election of Brigadier General he requested me to sign a paper, written in nearly these words:—"We, the officers of the 5th Reg. do pledge our words "and sacred honors to support Maj. Elijah Flint for Colonel, "provided he will vote for Col. David Putnam for Brigadier "General." There were no names on the paper. Afterwards he shew me the other paper, referred to by the other witnesses, with six or seven of the names of the officers of the 5th Reg. on it, viz. Capt. Stearns, Capt. Pettee, Capt. Putnam, Capt.

* The late Gov. *Gerry;* who is referred to wherever the expression *Governor* is used in these testimonies.

Richardson, Lt. Samuel Wilkins, Ensign David Richardson—I do not recollect any others. He urged me very much to sign the paper; and said he had seen some of them, and if I would sign it first, they would all sign it;—that he was then going to Middleton, and they would sign it there. He said some of them had given their words to support Maj. Flint, and I asked him why that was not sufficient; he said, unless something could be brought from under the hands of the majority of the 5th Reg. they should lose Maj. Flint's vote. He said Capt. Ingersoll and others had tried to persuade Maj. Flint he would be superseded, if he voted for Col. Putnam. There had been some alteration in the brigade, and I told him, I thought Col. Putnam would not be elected; he said he *should* be elected; for he said, if some of the officers appeared at the election, he would arrest them for some previous misconduct; and I think he named Col. Lovett, who was deranged, and Maj. Dodge, both electors in the brigade. He also said, if he could get a tie, Col. Putnam would be commissioned, for Doct. Kittredge would write to the Governor, and his influence was so great he would be commissioned. He also said, the officers of the 5th Reg. must meet and agree to support Maj. Flint, "or we "shall lose his vote, or he will not vote for Col. Putnam."

Q. By same. What conversation had you with Gen. Goodale on the Saturday preceding the election of Brig. General?

A. On Friday or Saturday previous to the election of Brigadier General, I saw Maj. Flint go up to Gen. Goodale's, and the General requested me to go there and give my answer, that I would vote for the said Flint for Colonel. I went part way and stopped, and told him I had rather not go; but he said so much I went: he said, "if Maj. Flint sees you hanging back, it will "all be over, and Putnam will lose his election." I met Maj. Flint in the yard, and Gen. Goodale said to me, in the presence of Maj. Flint, "well, you will support him, wont you?" I said, I dont know but I shall. Maj. Flint said, if he was going to be superseded, he had better stay at home.

Q. By court. If you had made up your mind to support Maj. Flint, what objection had you to signing the paper?

A. I thought it would not look well to sell my vote, and I told him I should be ashamed of it. Gen. Goodale said it might be kept secret.

Q. By J. Ad. Did not Gen. Goodale tell you, that in the presence of Col. Hovey's friends, he expressed himself favorable to his election?

A. Yes; but he said he was determined that Col. Hovey should not be elected. This was after the first, and prior to the second election.

Q. By same. Did Gen. Goodale tell you, that if Col. Hovey's friends were not at the poll, on the 25th of May, he should close it immediately?

A. He said if Col. Hovey's friends were not there, he should close the poll in four minutes from the time appointed for the election, and they might help themselves if they could.

Q. By deft. At what time was the paper handed to you for your signature?

A. I think on Friday or Saturday before the election of Brig. General; and the second paper, having the signatures, was shewn to me on Saturday preceding the Court of Inquiry on Gen. Goodale.

Q. By same. What did you mean, by saying you would not sell your vote; was any bribe offered?

A. I meant I would not obligate myself to vote for any body, and would not sign that paper.

Col. Jethro Putnam, being duly sworn, testified as follows.

Q. By J. Ad. Have you ever had any conversation with Gen. Goodale about the election of Brig. General?

A. On the 26th of May last, the day after the election, Gen. Goodale said, the election was made, and Col. David Putnam was chosen. He said he rode from the place of election to the State-house in Boston in less than an hour and an half. The distance is more than fifteen miles. He also said, he had exerted himself as much to save Gen. Putnam's election, as he should for his own salvation.

David Wilkins, being duly sworn, testified as follows.

Q. By J. Ad. Please to relate what you heard Gen. Good-

ale say on the 26th of May about the election, or appointment of Brig. General?

A. On the 26th of May I asked Gen. Goodale who was chosen Brig. General the day before; he said nobody, there was a tie. He also said, after the election, he went to the *Council Chamber* in Boston in an hour and an half. That two other gentlemen went the same afternoon; one was Lt. Col. Samuel Brimblecom, and I do not recollect the other. He also said he worked as hard to save the commission, or election of Gen. Putnam, as he should for his future salvation.

Q. By same. Did Gen. Goodale say, if Col. Lovett was present he should not vote?

A. He said he could not vote, for he was not in his right mind.

Capt. Jonathan Ingersoll, being duly sworn, testified as follows.

Q. By J. Ad. What did you say to Maj. Flint about the combination to supersede him?

A. I am not in the militia, and never have been since the revolutionary war. In May last I was requested to visit Gen. Goodale at his house; and in the course of conversation he said his military business had engrossed much of his attention; and the business of Col. Lovett was introduced. I told him I understood Col. Lovett had applied for a discharge, and he [Gen. Goodale] withheld the necessary paper. He acknowledged the paper was in his hands; but he said that Gen. Donnison told him that no resignation from this Brigade should be accepted, till after the election of Brig. General. I told him, if that was the case, he had better relieve himself from the responsibility, by forwarding the papers to the proper office. He repeated, it would be useless, for there was a positive order. I asked him, if there should be vacancies by death, if they would not be filled; and he said yes. I then told him, that I considered Col. Lovett dead, as to his usefulness, and voting. At the same time he observed, he thought Col. Hovey ought to have been elected, and at the second election he undoubtedly would be. I then asked him which

of the candidates was the oldest in commission, and he said Col. Hovey. Afterwards, having heard that Gen. Goodale was exerting his influence on Maj. Flint, I called on said Flint, and told him I had full evidence, that if he was made a dupe of in the election of Brig. General, he would not be elected Colonel, but would be superseded. I did not tell him there was a combination among the officers of the 5th Reg. to supersede him, for I never heard of any such combination.

Q. By deft. Who was elected Col. of the 5th Reg.?

A. I understood Maj. Goodale resigned and was not a candidate, and Capt. Gardner was elected Colonel.

Q. By same. What did you mean by Maj. Flint's being a dupe in the election of Brig. General?

A. During the week preceding the election of Brig. General, having had full evidence that Gen. Goodale was endeavouring to influence the officers different from what he told me; therefore I was convinced there was deception at the bottom, and that Maj. Flint would not be supported. I called on Maj. Flint, and told him of my impressions. The manner in which I became acquainted with Gen. Goodale's exertions, was from common report about the street.

Maj. Daniel Hayes, being duly sworn, testified as follows.

Q. By J. Ad. What conversation had you with Gen. Goodale about the election of Brigadier General?

A. Sometime after the first, and before the second election, we were called on to give depositions before Justice Punchard concerning the first election. Gen. Goodale appeared to be in a passion, and said some of the officers did not treat him well, and named Maj. Dodge and Maj. Smith. He observed he had formerly been in favor of Col. Hovey, but now he was of a different opinion, and meant to do all he could in favor of Col. Putnam; and if the officers did not treat him better, he would arrest them; he would not be abused by any of them. He said he would go and see the Governor, and let him know all about the business. I told him not to do any thing which was not correct, for we should watch him. He also said he would do every thing in his power to effect the election of Col. Putnam.

Capt. Jesse Putnam, being duly sworn, testified as follows.

Q. By J. Ad. What conversation had you with Gen. Goodale about the election of Brigadier General?

A. About the sixteenth or seventeenth of April I was in company with Gen. Goodale, and asked him if the first election would be set aside; he said it was uncertain, but it would make no difference if it was; for Col. Putnam would get his commission if there was another meeting; for there would probably be a tie, and Putnam would get his commission. I told him I did not believe he would, if there was a tie; for Putnam was the youngest, and the Governor would not commission him. He said he knew he would. I asked him how he knew it; he said he had been to see the Governor, and if the election was set aside, it was on the condition that Putnam should be commissioned if there was a tie at the second election. I told him I did not think the Governor could or would do it; he said he knew he would, *by a standing order.*

At half past 3 o'clock the court was ordered to be adjourned to 10 o'clock tomorrow morning, which was done in due form by the Marshal.

Court-House, Salem, Friday, Oct. 2, 1812.

The court met agreeably to adjournment, and on being called, all answered in their places. Maj. Joseph Edgarton, a supernumerary, on being called, answered. The court was then ordered to be opened, which was done in due form by the Marshal. The complainants and defendant, on being called, answered. The record of the proceedings of yesterday was read. It was agreed that the field officers of the 1st Brig. and 2d Div. were ordered to meet on the second of April, 1812, for the choice of Brig. General, and Col. David Putnam was returned as being duly elected; against which election a remonstrance was offered to the Executive, and an investigation directed, which was had, and the election set aside. A new election was ordered on the twenty-fifth of May, when the officers met, and after balloting several times, no choice was made, an equal number of votes being given for Col.

Hovey and Col. Putnam. Col. Putnam was appointed, and commissioned by the Governor as Brigadier. All the papers relative to said elections, which are in the brigade book, are copied, and annexed to these proceedings, being marked No. 8. A copy of the election report, and the return of Gen. Goodale, relative to the meeting of officers on the twenty-fifth of May, were read to the court, being papers marked No. 11 and 12.

Lt. Col. Samuel Brimblecom, of the 1st Brig. 2d Div. being duly sworn, testified as follows.

Q. By J. Ad. From whom did you receive your orders to attend the election of Brigadier General on the twenty-fifth of May?

A. I received them directly from Maj. White, as Aid de Camp to Maj. Gen. Goodale, and not through the commanding officer of the brigade. I received the order to attend the election of Brigadier General in April from Col. Lovett, as senior officer of the brigade. I received the order to detach soldiers from Col. Hovey, as senior officer of the brigade.

It was here admitted, that Col. Lovett was the senior Colonel in the brigade, and that he was deranged in mind.

Q. By same. Were you at Boston on the twenty-fifth of May, and what was your business?

A. I went to Boston to present a remonstrance against the proceedings at a meeting for the choice of Brigadier General on that day. I arrived there about one o'clock in the afternoon, and gave the remonstrance to Gen. Donnison at his house. On my return I met Gen. Goodale and Col. Perly Putnam at the corner of Court-Street, and they told me they had been in town half an hour.

Q. By deft. Did Gen. Goodale preside at said election on the twenty-fifth of May?

A. Yes; and presided fairly and impartially at that time.

Q. By same. Did Gen. Goodale propose to delay the proceedings, if any of the officers requested it; and did they request it?

A. They did not request it, and he did not propose it.

Maj. John Russell, of the 1st Brig. 2d Div. being duly sworn, testified as follows.

Q. By J. Ad. From whom did you receive your orders to attend the election of Brigadier General on the twenty-fifth of May; and to what regiment do you belong?

A. I belong to Col. Hovey's regiment of artillery, and received my orders direct from Maj. Gen. Goodale, and not from the senior officer of the brigade. [The original order is annexed to these proceedings, and marked No. 13.]

Col. Amos Hovey, commander of a regiment of artillery in the 1st Brig. 2d Div. being duly sworn, testified as follows.

Q. By J. Ad. From whom did you receive your orders to attend the election of Brigadier General on the twenty-fifth of May?

A. I received an order from Gen. Goodale, similar to the one sent to Maj. Russell, of my regiment, and no other orders.

Q. By same. Did you about the second of May receive an order from Gen. Goodale, directed to you, as senior officer of the brigade, on account of the indisposition of Col. Lovett, to cause the draft of the militia in the brigade, according to the requisition of the President?

A. I am not positive about the time, but I did receive a division order from Gen. Goodale, directed to me as senior officer of the brigade, to draft the militia in the brigade, according to the requisition of the President; and I issued my orders accordingly.

Q. By same. From whom did you receive your orders to attend the election of Brigadier General in April?

A. I received them from Col. Lovett, as senior officer of the brigade.

Q. By deft. Did you request Gen. Goodale to see the Governor, and ascertain the manner of taking depositions relative to the first election of Brigadier General?

A. I think I did; the electors were notified, by a civil officer, to give their depositions relative to the first election, and I wished him to ascertain the correctness of that notice; and I do not know of any other business he had with the Governor.

Q. By court. What was the order in the course of time in which you received your orders?

A. I received my orders concerning the first election, from Col. Lovett in March. I then received an order direct from Maj. Gen. Goodale to attend the second election; the next order was from Gen. Goodale, directed to me as senior officer of the brigade, requiring me to draft the militia, &c.

Q. By deft. Did Gen. Goodale preside fairly and impartially at the election on the 25th of May?

A. I saw nothing dishonorable at that time.

Q. By court. Were all the electors in the brigade present at that election?

A. They were all present except Col. Lovett, who was deprived of his reason, and Maj. Fairfield, who was absent at sea. The balloting began very soon, and was finished very soon. An account of the transaction was made out, and returned to the Adjutant General's office, as I supposed, signed by the Major General, and witnessed by myself, as senior officer of the Brigade. Gen. Goodale dissolved the meeting, and we understood nothing more could be done.

Maj. John Russell was again called.

Q. By J. Ad. What do you know about the remonstrance against the election in May?

A. We ascertained that Gen. Goodale was going to forward the proceedings of the meeting immediately; and we had some conversation about the result, and concluded to forward a remonstrance, which was done immediately by Col. Brimblecom.

Here the Judge Advocate stated to the court, that the evidence in behalf of the government was closed.

Gen. Goodale moved the court for audience of evidence in his behalf, which was granted. He then produced copies of certificates from Dr's. Holyoke, Peabody, and Oliver, which were read by the Judge Advocate to the court; the originals being annexed to the proceedings of the Court of Inquiry in

the Adjutant General's office. They are marked No. 14, 15, and 16, and annexed to these proceedings.

Capt. Ebenezer Bowditch, being duly sworn, testified as follows.

Q. By deft. What has been the state of your health for eighteen months past?

A. Very poor. Two years ago last July I snapped the chord of my leg, and since that time I have been a cripple; I have not been able to do military duty since that time, except on horseback.

Q. By same. Has your health been such that you could not attend a Court-Martial from Sept. 1811 to June 1812?

A. Yes; but I am able to walk about, and do some business in my shop, and my physicians recommend riding on horseback, which I practise as much as possible. In December last I met my company in the Court-House to explain the business, for which I was complained of, and was with them an hour and an half, but sat by the fire till the company was paraded. My health was about the same last December as at the present time.

Q. By J. Ad. Are you not now a detached officer; and have you ever made any excuse on account of ill health?

A. No, the officer who detailed me knew the state of my health.

Q. By same. Did you ever apply for a discharge?

A. Yes, last June, not since.

Q. By deft. Was Gen. Goodale acquainted with the state of your health last fall and winter?

A. Yes, he frequently saw me, and I told him I was not able to attend a Court-Martial.

Q. By same, to Maj. White. Did not Gen. Goodale, when he saw Capt. Bowditch at the trial before J. E. Sprague Esq. immediately order a Court of Inquiry?

A. Yes, when he saw Capt. Bowditch there he said, if he was able to attend that court, he was able to attend a Court of Inquiry; and immediately ordered me to issue the orders for a Court of Inquiry; which I did accordingly.

Q. By same, to same. Did not Gen. Goodale, on the 18th of April, state to the Governor the situation of Col. Lovett; and what was the conversation?

A. I was present with the Governor, Gen. Donnison, and Gen. Goodale, when Gen. Goodale informed the Governer that he had a request for the discharge of Col. Lovett and others. The Governor asked what was the situation of Col. Lovett, and we both represented, that he was incapable of transacting any business, as he was deranged in mind. The Governor said no discharge of officers in the 1st Brig. 2d Div. must be granted, till after the election of Brigadier General, and told Gen. Donnison accordingly. This was at the Council-Chamber; but the Council were not present. Our business was to make a representation of the proceedings at the first election of Brigadier General, and to return the depositions taken concerning that election.

Q. By court. Did the Governor give any reason for the order not to permit any requests for discharges to pass?

A. No, but only gave the order; and I did not hear any thing said about the effect it would have on the approaching election. I do not recollect, that Gen. Goodale shew the request for the discharge of Col. Lovett; but only said he had it with him.

Q. By same. Did Gen. Goodale give any reason, why he wished the discharge of Col. Lovett?

A. No; but only said he had the application, and expressed no wish or opinion.

Q. By same. Did the Governor understand there was to be another election of Brigadier General?

A. He understood, perfectly, the situation of the brigade, and directed the Adjutant General to give General Goodale a copy of an order for the election of Brigadier General, that the same might be legal.

Q. By same. Were there any discharges granted in that brigade between the first and second election?

A. None; Col. Smith died a short time previous to the first election, and the vacancy was filled before the second election.

I stated to the Governor I had several requests for discharges; but he said they must all remain, and I have them now.

Q. By deft. For what reason did Gen. Goodale issue his orders directly to the different Colonels and Majors?

A. It was in consequence of the difficulty with Col. Lovett, who frequently paid no attention to them; and Gen. Donnison advised him to issue the orders himself to every elector, and prevent difficulty.

Q. By same. Was not doubt expressed at the time, who was the legal commander of the brigade, whether Col. Hovey or Col. Lovett, in consequence of Col. Lovett's derangement of mind?

A. I cannot state any thing positively on the subject, although I have some faint recollection of such conversation.

Q. By court. Was any record made of the proceedings at the second election of Brigadier General?

A. There does not appear to be any such record, but I, undoubtedly, have the papers concerning it.

It was here stated to the court, that neither the complainants nor defendant had any further evidence, which they wished to offer to the court.

The defendant requested an adjournment till tomorrow morning, for him to prepare his defence. At 2 o'clock the court was ordered to be adjourned to 9 o'clock tomorrow morning, which was done in due form by the Marshal.

Court-House, Salem, Saturday, Oct. 3, 1812.

The court met agreeably to adjournment, and on being called, all answered in their places. Maj. Joseph Edgarton, a supernumerary, on being called, answered. The court was ordered to be opened, which was done in due form by the Marshal. The complainants and defendant, on being called, answered. The record of the proceedings from the commencement of the court to the present time was read, and acknowledged, by all concerned, to be correct.

Gen. Goodale's defence was then offered in writing, and

read to the court. The original is annexed to these proceedings, and marked No. 17.

A replication, and observations on the evidence by the complainants were offered in writing, and read to the court. The original is annexed to the proceedings, and marked No. 18. The Judge Advocate then observed to the court, that the complainants and defendant had discussed the evidence so fully, that it was unnecessary to take up the time of the court in a recapitulation of the it. He summed up the evidence, both for and against Gen. Goodale, very briefly, and submitted the same to the court.

The court was then cleared, and the Judge Advocate put the following question to each of the members of the court separately, beginning with the lowest in grade.

"From the evidence which has been adduced, both for and against Maj. Gen. Ebenezer Goodale, and what he has offered in his defence, are you of opinion that he is guilty, or not guilty, of the first article or specification in the complaint of Lt. Col. Samuel Brimblecom and others exhibited against him?" The court decided, that of the first specification of charge the said Goodale is not guilty.

The question being put in the same form upon the second article, or specification of charge in said complaint, the court decided, that of the second specification of charge in said complaint, said Goodale is guilty.

The question beign put in the same form upon the third article or specification of charge in said complaint, the court decided, that of the third specification of charge in said complaint, said Goodale is not guilty.

The question being put in the same form upon the fourth article or specification of charge in said complaint, the court decided, that of the fourth specification of charge in said complaint, said Goodale is guilty.

The question being put in the same form upon the fifth article or specification of charge in said complaint, the court decided, that of the fifth specification of charge in said complaint, said Goodale is guilty.

The question being put in the same form upon the sixth and last article or specification of charge in said complaint, the court decided, that of the sixth and last specification of charge in said complaint, said Goodale is guilty.

The court having taken into consideration the several offences of which it hath adjudged, and deemed Maj. Gen. Ebenezer Goodale of the second division of the Massachusetts militia to be guilty, after full and mature deliberation being had, do sentence him to be removed from office, and do adjudge him disqualified for, and incapable of holding any military office under this commonwealth, for the term of five years.

JOHN VARNUM, *Judge Advocate 2d division.*

JONATHAN DAVIS, *President.*

Saturday, 3d Oct. 1812, 2 *o'clock* P. M.

The record being certified as above, after examining the same, the doors were again opened, and the court ordered to be adjourned without day, which was done in due form by the Marshal.

JOHN VARNUM, *Judge Advocate.*

Boston, Oct. 13, 1812.

Approved, and ordered to be carried into effect.

CALEB STRONG.

NOTE, BY JUDGE ADVOCATE.

Daniel W. Lincoln and David Cummings, Esquires, were counsel for Gen. Goodale in his trial. Although they were not permitted to address the court, all questions proposed by them were put the witnesses; and all motions and authorities produced by them were communicated to the court, by the Judge Advocate.

APPENDIX.

No. 1.

GENERAL ORDERS. *Head-Quarters, Boston, Aug.* 10, 1812.

COMPLAINT having been exhibited to the Commander in Chief by Lt. Col. Samuel Brimblecom and others of the second division, against Maj. Gen. Ebenezer Goodale of the said division, for divers offences against the laws for regulating, governing, and disciplining the militia of this Commonwealth, the Commander in Chief has thought fit to order, and doth hereby Order, That a General Court-Martial be appointed for the trial of the said Maj. Gen. Ebenezer Goodale, upon the charges contained in the said complaint; and the Adjutant General of the state will cause him to be arrested from his command, until he shall answer to the said complaint, and be thereof acquitted, or otherwise discharged according to law.

The General Court-Martial will be constituted as follows:

PRESIDENT.

Maj. Gen. JONATHAN DAVIS, of the 7th Division.

MEMBERS.

One Brigadier General and one Lieut. Colonel from the 1st division.

One Brigadier General and one Lieut. Colonel from the 3d division.

One Lieut. Colonel and one Major from the 4th division.

One Lieut. Colonel and one Major from the 5th division.

One Lieut. Colonel and one Major from the 7th division.

One Brigadier General and one Lieut. Colonel from the 9th division.

The Judge Advocate of the 2d division will give due no-

tice to the complainants, cause the witnesses to be summoned, and attend his duty before the court.

Major Jonathan Perkins, of the 1st Reg. 1st Brig. 2d Div. is appointed Marshal of said court.

There will be detailed four officers to attend the said Court-Martial, at the commencement thereof, as supernumeraries; and in case of challenge, sickness, inability, or absence of one or more of the original members, the supernumeraries will be called to take seat, as members of said court; and those not wanted, will be permitted to return home. The supernumeraries will be detailed from the following divisions:

From the first division one Major,
From the third division one Major,
From the fifth division one Major,
From the seventh division one Major.

The said Court-Martial will sit at the Court-House in Salem, on Tuesday, the twenty second day of September next, at ten o'clock beforenoon, for the trial of Maj. Gen. Ebenezer Goodale, upon the charges aforesaid;—of which all officers and other persons concerned will be notified, and required to give their attendance.

The Adjutant General will furnish the court and Maj. Gen. Ebenezer Goodale with an attested copy of the complaint in due season.

The proceedings and judgment of the court, the minutes of the evidence, and all papers, filed or given in evidence before the court, will be laid before the Commander in Chief, as soon as may be, after the court shall have closed its sitting.

The commanding officer of the second division will order a Subaltern's Guard to mount during the sitting of the court.

By order of the Commander in Chief,

WILLIAM DONNISON, Adj. Gen.

Adjutant General's Office, Boston, Aug. 10, 1812.

The foregoing is a true copy of the General Order.

Attest, WILLIAM DONNISON, Adj. Gen.

No. 2.

Head-Quarters, Boston, Aug. 27, 1812.

THE General Court-Martial, appointed by the General Order of the 10th of August current, to be holden at Salem on the 22d day of September next, for the trial of Maj. Gen. Ebenezer Goodale, is postponed to Monday, the 28th day of said September, at ten o'clock beforenoon, then to be holden at the same place mentioned in the said order for the purpose aforesaid; whereof all persons concerned will take notice, and govern themselves accordingly.

By order of the Commander in Chief,

WILLIAM DONNISON, Adj. Gen.

No. 3.

THE Defendant has not been acquainted with the names of the Officers who have been detailed to compose this Court-Martial on trial of his case; and has not had opportunity to ascertain the correctness of their detail, and their competency to decide thereon. He prays delay for thirty minutes, to inquire of the same, before he shall be called to plead to the charges exhibited against him.

EBENEZER GOODALE.

No. 4.

To his Excellency CALEB STRONG, *Esq. Governor and Commander in Chief of the Militia of the Commonwealth of Massachusetts.*

THE subscribers complain of Ebenezer Goodale, Esq. Major General of the Second Division of the Militia of Massachusetts, and exhibit against him the following charges, viz.

First.—The said Ebenezer Goodale, while Brigadier General of the first Brigade second Division of the militia of Massachusetts, and acting Major General thereof, viz. in September, A. D. 1811, received a set of charges against Ebenezer Bowditch, Captain of the Salem Cadet company, a company in the first Brigade and second Division aforesaid, dated September 1811:—and of the following purport, viz.

" To Ebenezer Goodale, Esq. Brigadier General of the first Brigade second Division of the Militia of Massachusetts, and commanding officer of said division.

" The subscribers complain of Ebenezer Bowditch, Captain of the Salem Cadet company, and exhibit against him the following charges:—

" 1. The said Bowditch excused a private belonging to his company, viz. Jonathan P. Saunders, for unnecessary absence from training on the fourth day of July, last past.

" 2. The said Bowditch paraded his company for training by his own orders two several days only in the year 1810, in addition to the company inspection on the first Tuesday of May in said year, and so neglected to call out his company as often as is required by law.

" 3. The said Bowditch has been guilty of neglect of duty in not returning the name of Jonathan P. Saunders, in his return of the list of the names of the men belonging to his company, to the commanding officer of the regiment, in April, 1811: —and in not returning the name of said Saunders, in his annual return in May, last past.

" 4. The said Bowditch has been guilty of unmilitary and illegal conduct, and of wilfully oppressing and injuring persons under his command, by illegally giving the names of privates belonging to his company to the Clerks of the militia companies, within the bounds of which they respectively reside, and illegally causing the said privates to be enrolled in the said militia companies and to do military duty in the same, when they had never been discharged from his, the said Bowditch's, company.

" 5. The said Bowditch has been guilty of unmilitary, unofficerlike, and illegal conduct, and of wilfully oppressing

and injuring persons under his command, by fraudulently and illegally procuring the discharge of two privates belonging to his company, viz. Ebenezer Worcester and Daniel Millet, without their knowledge, and contrary to their wishes, and by giving the names of the said Worcester and Millet to the Clerks of the companies, within the bounds of which they respectively reside, that they might be enrolled in the said militia companies, and made to do duty in the same; all which has been done by said Bowditch since the first day of August, last past.

" 6. The said Bowditch has been guilty of neglect of duty, in not instructing his company in the company exercise and evolutions, when paraded by his order on the fourth day of July, last past.

" 7. The said Bowditch has expended the money, which he has received of the Clerk of his company, without consulting the other commissioned officers of the said company.

" 8. The said Bowditch has excused privates belonging to his company, viz. Jonathan Tucker, Francis H. Boardman, Aaron Porter, jun. Simeon Flanders, and Cornelius D. Stanwood, for unnecessary deficiency in their equipments at two company trainings, within the year now last past.

" 9. The said Bowditch was guilty of unmilitary, unofficerlike, and illegal conduct, in receiving several persons into his company, at a company training on the fourth day of July, last past, and permitting the said persons, who did not belong to the said company, to parade as privates with the said company.

" 10. The said Bowditch has been guilty of unmilitary and illegal conduct by making the following false statement, in his annual return of said company in May last: viz.—He returned Christopher Turner and Isaac Needham, jun. as both being completely equipped according to law, when in fact the said Turner and said Needham did not parade with the said company—and their arms and equipments were not produced at the company inspection on the first Tuesday of May last:—Also he returned Jonathan Tucker, Francis H. Boardman,

Simeon Flanders, and Cornelius D. Stanwood, privates in said company, as completely equipped according to law, when in fact the said Tucker, Boardman, Flanders, and Stanwood, did not, nor did either of them, produce, at the said inspection, a single article or equipment, as required by law.

"Wherefore the subscribers pray, that a Court-Martial may be ordered for the trial of the said Bowditch upon the charges aforesaid, and that he may be dealt with relative to the same as the law and justice shall appertain.

"Signed, ISAAC CUSHING, and others."

To which said Goodale never attended, nor ordered a Court-Martial, as was his duty, but behaving in an unofficerlike, illegal, and unmilitary manner, has neglected so to call a Court-Martial, assigning as a reason, their being dated prior to his being notified by the Governor of the resignation and discharge of Maj. Gen. Derby, of the Division aforesaid.

Second.—The said Goodale, while acting in the capacity aforesaid, viz. on the eleventh day of December, 1811, received another set of charges against said Ebenezer Bowditch in the same words, and of the same purport as before mentioned, dated ninth December, 1811, to which said Goodale has never attended, (although he at that time had received official notice of Gen. Derby's resignation and discharge,) but behaving in an unofficerlike, unmilitary, and illegal manner, has neglected to do his duty in that particular, has not ordered a Court-Martial, but refused and still refuses so to do; thereby exempting from military duty several persons, who are members of said Bowditch's company, and causing them to be deprived a most important privilege—the right to vote in choice of officers, and all other privileges to them belonging.

Third.—The said Goodale, since he has received official notice of the discharge of Maj. Gen. Derby, has been guilty of the most degrading, ungentlemanlike, and unofficerlike conduct, by advising the persons (who are said to be discharged from the Cadet company illegally, as per charge fourth in the complaint against said Bowditch) not to obey the notification of the several Captains of the militia companies to do milita-

ry duty in the companies of the wards, within which they reside; and afterwards, viz. immediately after the annual training in May last, advising and requesting a Captain or Captains of said militia companies to prosecute at law said persons (so said to be discharged) for their fines for non-attendance at said company training.

Fourth.—The said Goodale, both since he has been Major General of the Division and while Brigadier General, has been and was guilty of unmilitary conduct, by illegally delegating his authority, &c. to officers under him, particularly his having given his Brigade Major general orders to discharge privates and others, from any volunteer corps within the brigade, upon any application of any commanding officer, and others equally illegal; thereby giving the management and direction of the brigade, and even of the division, to persons who were not authorized by law to perform the same.

Fifth.—The said Goodale has been guilty of unmilitary conduct, and of wilfully injuring and oppressing persons under his command, and even depriving the officers of the brigade the right of choosing their Brigadier General, by withholding a request for a discharge of a Lieutenant Colonel within said brigade, who, by a visitation of God, is deprived the use of his reason, and thereby rendered unfit any longer to hold a commission as Lieutenant Colonel; and so preventing the filling of an existing vacancy in said brigade.—And,

Lastly.—The said Goodale, in an unofficerlike manner, at and before the late meeting of the Field Officers for the election of a Brigadier General for the first brigade, interfered in said election, by undue and improper influence, biassed the minds of the electors, and used his office as an instrument of overawing and influencing the voters, so that, by his electioneering arts and contrivances, equally degrading to the soldier and dishonorable to the citizen, the said Field Officers were restrained and prevented from making a choice of said Brigadier General; and in consequence thereof the senior officer in said brigade has been superseded, according to the intent of

said Major General, and general dissatisfaction and discontent produced through said brigade.

Wherfore the subscribers pray, that a Court-Martial may be ordered for the trial of said Ebenezer Goodale upon the aforesaid charges, and that he may be dealt with relative to the same as the law and justice shall appertain.

SAMUEL BRIMBLECOM, Lt. Col. of 4th Reg. Inft.
DANIEL HAYES, Maj. of Artillery.
JOHN RUSSELL, Maj. of Artillery.
JACOB PEABOBY, Capt. of Artillery.
JESSE PUTNAM, Capt. of Artillery.
THEODORE MORGAN, Capt. of Infantry.
JOSHUA BECKFORD, Lt. of Artillery.
DAVID FOSTER, JUN. Lt. of Artillery.
JOSEPH M'COMB, Lt. of Artillery.
BENJAMIN WEBB, 3d, late Ensign of Cadets.
NATHAN COOK,
JONATHAN P. SAUNDERS,
EBENEZER WORCESTER,
ISAAC CUSHING,
SAMUEL BRIGGS,
CHARLES TURELL,
CORNELIUS D. STANWOOD,
JESPER POPE,
DANIEL MILLET,
JOHN MEAD,
} Members of the Cadet company.
JOSEPH EDWARDS, Capt. Light Infantry.

Salem, 2d June, 1812.

Adjutant General's Office, Boston, Aug. 10, 1812.

I HEREBY certify, that the foregoing is a true copy of the original complaint, filed in the Adjutant General's Office.

WILLIAM DONNISON, *Adj. Gen.*

No. 5.

To the first, second, third, and fourth articles of charge exhibited against him on the complaint of Lt. Col. Samuel Brimblecom and others, the said Maj. Gen. Ebenezer Goodale declines to plead or in any wise to answer, because he says, that the specifications therein contained relate entirely and solely to acts of impropriety, imputed to him while he was in commission, and acted in the capacity and with the authority of Brigadier General; that he was then subject to complaint, and entitled and amenable to a trial; that his official conduct in that rank might have been justified, or his promotion have been prevented; and thereupon he prays the judgment of this court, if he shall be held to plead to the said articles of charge.

EBENEZER GOODALE.

To the fifth article of charge, the said Goodale for plea says, *he is not guilty.*

EBENEZER GOODALE.

To the sixth and last article of charge, the said Goodale for plea says, *he is not guilty.*

EBENEZER GOODALE.

No. 6.

THE said Goodale, protesting that he is not bound by law or military usage to answer to the four first articles or specifications of charge, for plea to them severally saith, that thereof *he is not guilty.*

EBENEZER GOODALE.

No. 7.

Commonwealth of Massachusetts.

DIVISION ORDERS. *Danvers, June 15, 1812.*

THE Major General, having seen and considered the complaint of Isaac Cushing and nine others, members of the Cadet company in the first brigade and second division of the militia of this Commonwealth, against Ebenezer Bowditch, Captain of said company, for unmilitary and illegal conduct, which is more fully set forth in said complaint, a copy of which is hereto annexed, thereupon Orders, That a Court of Inquiry be holden for the purpose of examining into the truth of the charges alleged in said complaint; and that said Court of Inquiry report a state of facts.

The Court of Inquiry will consist of—Maj. Samuel W. Phelps, President, and Capt. David Larcum of the third, and Capt. Eliphalet Pettee of the fifth, regiments of infantry.

Maj. John Varnum, Judge Advocate of the second division, will attend said court, and do and perform all the duties, which by law appertain to him before the said Court of Inquiry, and relating to the same.

Brig. Gen. David Putnam will cause to be furnished to the officers in the first Brigade, who are to constitute the court, a copy of this order; and will cause the said Capt. Ebenezer Bowditch to be furnished with a copy of said complaint and of this order in due season.

The court will sit at Ward's tavern in Salem on Monday, the sixth day of July next, at ten o'clock in the forenoon; of which all persons interested will take notice, and govern themselves accordingly. And the Judge Advocate will cause to be summoned all witnesses necessary to be examined before said Court of Inquiry, and will give due notice to the complainants of the time and place of the sitting of said court.

The proceedings of the said Court of Inquiry, the minutes of the evidence, and all papers given in evidence, will be laid

before the Major General, as soon as may be after the court shall have closed their inquiry, for his determination thereon.

By order of Ebenezer Goodale, Maj. Gen. 2d Div.

JOSEPH WHITE, jun. Aid-de-camp.

BRIGADE ORDERS. *Salem, June* 19, 1812.

SIR,

THE foregoing is a true copy of the Division Orders of the 15th instant; of which you will take notice, and govern yourself accordingly.

By order of David Putnam, Brig. Gen. 1st B. 2d D.

DAVID CUMMINGS, Brig. Maj. & Ins.

Maj. JOHN VARNUM.

No. 8.

DIVISION ORDERS. *Salem, March* 16, 1812.

THE office of Brigadier General of the first Brigade being vacant in consequence of my promotion, you are hereby ordered forthwith to notify and warn a meeting of the field officers of said brigade, to be holden on Thursday, the second day of April next, at Berry's tavern, in Danvers, for the purpose of electing a Brigadier General to fill the vacancy aforesaid.

By order of Ebenezer Goodale, Maj. Gen. 2d Div.

JOSEPH WHITE, jun. Aid-de-camp.

Lieut. Col. JONATHAN H. LOVETT, commanding officer 1st Brig. 2d Div.

Head-Quarters, Cambridge, April 3, 1812.

THE Commander in Chief, having received from Maj. Gen. Goodale, of the second division, the return of the election of Lieut. Col. David Putnam to be Brigadier General of the first brigade in said division, and having also received a remonstrance from Lieut. Col. Amos Hovey, and other field officers

of said brigade against said election, is desirous of obtaining all the information possible touching said election, and therefore orders, that Maj. Gen. Goodale cause affidavits to be taken before a magistrate, in order to shew all the material facts relating to said election, in regard to its legality or illegality; and he will cause notice to be given to the remonstrants and others concerned, of the time and place appointed by him for that purpose. Witnesses may be produced by any person concerned, to be examined, and have their affidavits taken touching the said election, and they may be interrogated by any general or field officer who may be present, on the subject of the said election. All the affidavits which may be taken in pursuance, together with copies of the orders issued for said election, and a certified copy of the election report, will be transmitted to the Commander in Chief as soon as may be.

By order of the Commander in Chief,

Signed, WILLIAM DONNISON, Adj. Gen.

To his Excellency Elbridge Gerry, Esq. Governor of the commonwealth of Massachusetts, and Commander in Chief of the same.

Respectfully represent the subscribers, field officers in the first brigade in the second division of the militia of said Commonwealth—That in pursuance of division orders, dated 21st March last, the Lieut. Colonel commanding the said second brigade in said division ordered the field officers thereof to meet on Thursday, the second of April current, at Berry's tavern in Danvers—that on said second of April, a number of said officers accordingly did meet—that when assembled they were required by the Maj. General of said division to vote for a Brigadier General of said brigade, which office has for some time been vacant; and in the result, Lieut. Col. David Putnam was declared by the Major General presiding, to be duly elected. Against this election and these proceedings, the subscribers humbly beg leave to remonstrate and protest, for the following reasons, viz.

First. Because that previous to such election the electors in said brigade had not ten days notice thereof, as is by law required.

Secondly, Because no notice was in any manner given to many of the legal voters in said brigade.

Thirdly, Because the cause and purpose of the meeting were not made known to any of the voters, formally or informally.

Lastly, Because all the proceedings at said election have been wholly informal and illegal—depriving the qualified and legal electors of all opportunity of exercising their rights and privileges, according to the constitution and laws of the commonwealth. All which facts and allegations they are ready to substantiate and prove.

Wherefore your memorialists respectfully request your Excellency to cause due inquiry to be made in the premises, and a new election, or meeting for the same to be had according to law. And as in duty bound will ever pray.

AMOS HOVEY, Lieut. Col. Reg. Art. 1st B. 2d D.
SAMUEL BRIMBLECOM, Lieut. Col. 4th Reg.
DANIEL HAYES, Maj. 1st Reg. Art.
JAMES APPLETON, Maj. 2d Reg. 1st B. 2d D.
JOHN RUSSELL, Maj. 1st Reg. Art.

Danvers, April 2, 1812.

Adjutant General's Office, Boston, April 3, 1812.

I hereby certify that the foregoing is a true copy of a remonstrance filed in the Adjutant General's office.

Signed, WILLIAM DONNISON, Adj. Gen.

To his Excellency Elbridge Gerry, Esq. Governor of the commonwealth of Massachusetts, and Commander in Chief of the same.

YOUR subscriber, one of the field officers of the first brigade and second division of the militia of this commonwealth, and commandant of the second regiment of said brigade, begs leave respectfully to represent to your Excellency, that,

whereas it is provided by the laws of this commonwealth that Brig. Generals shall be chosen by the field officers of their respective brigades, and that said electors shall have ten days' notice previous to the day of said elections. And whereas it has been understood by the subscriber, that Col. David Putnam, of the fifth regiment of said brigade, was declared to be elected Brigadier General of the abovementioned brigade, on Thursday, the second day of April inst. at Berry's tavern in Danvers, the subscriber protests against said election to your Excellency, for the following reasons, viz.

Because the subscriber had no notice whatsoever, either formal or informal, that a Brigadier General was to be chosen at Danvers on the second inst. and therefore did not, nor had he an opportunity to exercise his elective rights in the choice of said Brigadier General, rights which your subscriber highly prizes, and of which he ought not to be deprived by the mismanagement or ignorance of those concerned in the appointment of said election.

Wherefore your subscriber prays, that your Excellency may institute such inquiry relative to the premises, as has been immemoriably practised in conformity to the laws and usages of this commonwealth. And as in duty bound will ever pray.

Signed, BENJAMIN DODGE, Maj. 2d R. 1st B. 2d D.

Gloucester, April 4, 1812.

Adjutant General's Office, Boston, April 6, 1812.

I hereby certify, that the foregoing is a copy of the original remonstrance filed in my office.

Signed, WILLIAM DONNISON, Adj. Gen.

Maj. Gen. GOODALE,

SIR,

AFTER you have taken the affidavits mentioned in the General Orders, I think it will be proper for you to make a statement in writing of any thing which may occur to you as proper to be represented to the Commander in Chief about the affair of the election and proceedings under the order—and please to send a list of the election, and mention who were present and who were absent at the election.

Your ob't. servant,

Signed, WILLIAM DONNISON.

A true copy, attest, DAVID CUMMINGS.

Commonwealth of Massachusetts.

GENERAL ORDERS.

Head-Quarters, Cambridge, 18 *April,* 1812.

THE Commander in Chief, having taken into consideration the petitions and remonstrances of Lt. Col. Amos Hovey and others, Field Officers of the first brigade and second division of the militia, against the election of Lt. Col. David Putnam to be Brigadier General of the said brigade, for the causes set forth in the said petitions and remonstrances, and having also duly considered of the several affidavits, taken in pursuance of directions touching the legality of the said election, that due notice was not given of the said election, and that it ought to be set aside: He therefore declares the said election void, and directs that the Major General give orders for a new choice.

By order of the Commander in Chief,

Signed, WILLIAM DONNISON, Adj. Gen.

DIVISION ORDERS—Second Division.

Danvers, 22 April, 1812.

THE Commander in Chief having set aside the election of Lt. Col. David Putnam to be Brigadier General of the first brigade in said division, as illegal for want of due notice—you are hereby ordered to appear at Berry's tavern in Danvers, on Monday, the twenty fifth day of May next, at ten o' clock beforenoon: for the purpose of electing a Brigadier General to fill the vacancy in said first brigade.

By order of Ebenezer Goodale, Maj. Gen. 2d Div.

Signed, JOSEPH WHITE, jun. Aid-de-camp.

THE Field Officers of the first brigade were served with copies of the above order, as follows:—First regiment April 22, 1812—Second regiment April 18, 1812, with an order to elect Colonel, and fill vacancies—Third regiment April 28, 1812—Fourth regiment April 23, 1812—Fifth regiment April 22, 1812—Regiment of Artillery April 23, 1812—Battallion of Artillery April 29, 1812.

Salem, 2 Oct. 1812.

THE foregoing copies, viz. Division orders for first meeting, 2d April—Protest of Lt. Col. Amos Hovey and others—Protest of Maj. Dodge—Order of the Commander in Chief to take affidavits—Letter from the Adjutant General—General Orders of 18 April, and Division Orders of 22 April 1812, are taken from the journal of the 1st Brig. 2d Div. Mass. militia, and are true and correct copies of the same, as therein recorded.

Attest, DAVID CUMMINGS.

No. 9.

General Court-Martial, Salem, Sept. 29, 1812.

Commonwealth vs. Ebenezer Goodale, Maj. Gen. 2d Div. Massachusetts militia.

THE Defendant objects to the admission and hearing of any testimony in the trial of this case, which may relate to any conversation, any declaration or act, had, performed, or expressed by him at any time, when he was not exercising the authority of his station as Major General, or acting officially as an officer in the Massachusetts militia.

EBENEZER GOODALE.

No. 10.

General Court-Martial, Salem, Sept. 29, 1812.

Commonwealth vs. Ebenezer Goodale, Maj. Gen. 2d Div. Massachusetts militia.

THE Defendant declines further to answer to the sixth specification of charge exhibited against him, because he says, that "the crime or offence," therein complained of, has not been "fully and plainly, substantially and formally described to him," and thereupon prays the judgment of the court.

EBENEZER GOODALE.

No. 11.

ELECTION REPORT of the proceedings had at the town of Danvers on the twenty fifth day of May, 1812, for the choice of Brigadier General in the first Brigade second Division of the militia.

Officers to be elected.	*Names of candidates.*	1st Ballot. *No. of votes for each candidate.*	2d Ballot. *No. of votes for each candidate.*	3d Ballot. *No. of votes for each candidate.*	4th Ballot. *No. of votes for each candidate.*	*Names of persons actually chosen.*
Brigadier General.	Amos Hovey.	nine.	nine.	nine.	nine.	Votes equal, and no choice.
	David Putnam.	nine.	nine.	nine.	nine.	

EBENEZER GOODALE, *Presiding Officer.*

Witness, AMOS HOVEY.

I hereby certify, this is a true copy, JOHN G. POWARS, *Clerk Adj. Gen. Off.*

No. 12.

Danvers, May 25, 1812.

Adj. Gen. WILLIAM DONNISON,

SIR,

PURSUANT to Division Orders of April 18th and 22d, for the choice of a Brigadier General to fill the vacancy in the first Brigade in the second Division, occasioned by my promotion, the field officers in said Brigade met at Berry's tavern in Danvers, on Monday, the twenty fifth day of May inst. at 10 o'clock A. M. and after the meeting had been opened and the Division Orders read, the electors were informed that their votes would be received for the above purpose in five minutes. They were accordingly received, and after counting and sorting, the whole was found to be eighteen—necessary to make a choice ten.—Lieut. Col. Amos Hovey had nine votes, and Lieut. Col. David Putnam had nine votes. A reasonable time was then allowed for the electors to proceed to the second ballot, which produced the same result. Also, a third and fourth ballot, the votes in each ballot being the same; viz. nine for each candidate.

By order of Ebenezer Goodale, Maj. Gen.

Signed, JOSEPH WHITE jun. Aid-de-camp.

A true copy, attest, D. CUMMINGS.

No. 13.

DIVISION ORDERS—Second Division.

Danvers, April 22, 1812.

THE Commander in Chief having set aside the election of Lt. Col. David Putnam to be Brigadier General of the first Brigade in said Division, as illegal for want of due notice—

You are hereby ordered to appear at Berry's tavern in Danvers on Monday, the twenty fifth day of May next, at ten o' clock beforenoon, for the purpose of electing a Brigadier General to fill the vacancy in said first Brigade.

By order of Ebenezer Goodale, Maj. Gen.

JOSEPH WHITE, jun. Aid-de-camp.

Maj. JOHN RUSSELL, Reg. Art. 1st B. 2d D.

No. 14.

(Copy.) *Salem, July* 6, 1812.

THIS may certify, that Capt. Ebenezer Bowditch was under my care on account of a febrile disorder, from Jan. 1811 to midsummer, and that he continued in low health for several months; that his complaints have revived again this season, and is still so infirm as to be obliged to continue his medical regimen.

Signed, E. A. HOLYOKE, *Physician.*

No. 15.

(Copy.) *Salem, July* 7, 1812.

THIS may testify, that I was called upon to visit Capt. Ebenezer Bowditch on the 4th of July 1810, who had a few minutes previous received an injury in his right leg. I found he had ruptured a tendon a little below the calf of the leg, and that he was unable to use it without very considerable pain. After prescribing applications which I thought proper, I directed him to avoid all attempts to exercise it for the present. I am personally knowing to his inability to walk upon it without great inconvenience for a number of months, and that for as much as three months he was under the necessity of using crutches.

Signed, NATHANIEL PEABODY.

No. 16.

(Copy.) *Salem, July* 24, 1812.

This may certify, that the subscriber attended Capt. Ebenezer Bowditch in the month of September last, at which time he was sick with a fever, and confined to his chamber for several weeks. His health has of late been very infirm, and has often incapacitated him from attending to his business and military concerns in the course of the past year.

Signed, B. LYNDE OLIVER.

Adjutant General's Office, Boston, Sept. 25, 1812.

I hereby certify, that the foregoing is a true copy of a certificate annexed to the proceedings of a Court of Inquiry on Maj. Gen. Goodale.

Attest, WILLIAM DONNISON, *Adj. Gen.*

No. 17.

Mr. President & Gentlemen of the Court,

Honor is a soldier's conscience. Reputation is a treasure dearer than existence, which he will guard with jealousy, and defend with life. Good report is essential, confidence is vital to his official being. A soldier's character should not only be free from crimination, but above all imputation. No reproach should stain his shield, nor even the shadow of suspicion should obscure its lustre. To a soldier, distrust would be painful and accusation dreadful, except the proud consciousness of innocence and of meritorious deserving promise vindication of his honor, and triumph over error and malevolence. With pleasure I have expected this investigation of my military conduct; with alacrity I meet it. From a court, composed of soldiers, observant of their duty, and tenacious of their rights,

a brother soldier may confidently anticipate a just and impartial judgment. The miscellany of charges exhibited against me having nought of form but technical phraseology, incongruous as if the scraps and sweepings, the waste and remnants of an attorney's desk had been accidentally and carelessly collected, and casually thrust into an heap, indiscriminately mingled, and reduced to the anomalous compound of accusation now presented. The militia law might be pleaded to with as much certainty as this complaint. The four first specifications complain of official acts, said to have been performed by me at the time when I was in the commission and acted in the capacity of Brigadier General. Having been elected and qualified for the office of Major General, I cannot descend from that rank and station, resume the command of a brigade, and appear and answer as a Brigadier General. If I had been guilty of misfeasance or neglect of duty in that office, my conduct was then subject to investigation, and I was then entitled to an opportunity of defending my military character. My justification would have silenced accusation, or my condemnation have prevented my elevation to the eminence at which envious and malevolent ambition have made their stoop. My official acts as Brigadier General are now beyond the question and censure of this court; but its order, and considerations of personal honor and public situation, require a reply to the charges that reflect on them.

The first specification alleges, that I received a set of charges against Ebenezer Bowditch, Captain of the Salem Cadet company, in September, A. D. 1811, and that I failed to order a Court-Martial thereon. What is this set of charges? Jonathan P. Saunders and others complain, that Capt. Bowditch excused him for "unnecessary absence from training on the fourth of July, 1811." Jonathan P. Saunders unnecessarily neglects to perform the military duties enjoined by law, and required of him by his commander:—He renders an insincere and hollow apology for his omission, and is excused:—He then complains of Capt. Bowditch for his confidence and indulgence to him, and has the effrontery to accuse ME of misfeasance in

refusing to order a Court-Martial to try Capt. Bowditch for being duped by the imposture of Jonathan P. Saunders and others. What mockery is this?—But I will not trouble the Court-Martial with comments on this "set of charges;" as Capt. Bowditch is not now on trial, it is immaterial what were the causes of complaint against him. The law had intrusted me with judicial authority to decide on the sufficiency of the charges. If that authority has been exercised without any sinister intention or corrupt motive, fairly, impartially, and conscientiously, I am without fault. If my opinion should have been erroneous, it has been honest; and I am no more responsible for this exercise of my discretion, than this court will be for their judgment in the present case. Error is the nature and destiny of man, not his crime.

The second specification is like the first, varying only in formal expression of the same charges.

The third specification accuses me of inconsistency and duplicity. It was a question on which many doubted, and many differed whether certain persons, "who were said to have been discharged from the Salem Cadet company illegally," continued to be members of that corps, or belonged to the several standing companies within whose territorial limits they severally resided. I recommended a prosecution, that the case might be submitted to the investigation of a complete tribunal, and be determined by legal authority.

The fourth specification charges me with delegation of my authority to subordinate officers. A regular gradation of office from the first in command to the private soldier has been arranged and appointed in every military system. The discretion of the chief in authority is the informing soul that controls, impels, and directs the motion of every member and fibre of the material frame. Their action is the execution of the will of this commanding mind. Their agency is the doing of the principal, their execution is his performance, their ministration is his act. The purpose of subordinate officers is the performance of such business as the chief might direct. Nothing but profound ignorance of military usages can account for

a complaint against me for having employed the officers assigned to me by law in the discharge of their appropriate and appointed duties. My Brigade Major acted by my direction and on my responsibility. If the whole business of an army should be performed by the chief in person, he must be endowed with the capacity of omnipresence for its accomplishment, with the hundred hands of Briareus for its execution. These observations have been offered to expose the futility of the pretences of my accusers, which have been substantially refuted and disproved by the correct testimony of Maj. White.

The remaining specifications criminate my conduct in my office of the Major General of the second division, and demand my answer, although their uncertain nature renders a definite reply difficult, and though I am under no obligation to plead to charges of so vague and indeterminate description.

The direction of the Cammander in Chief to me requiring the retention of all applications for discharges from office, until after the election of a Brigadier General; and his orders to the Adjutant General that he should refuse to receive and allow any such, answer the fifth specification, and exculpate my conduct in this particular.

The testimony of every witness, who has been examined on this point, proves the fairness and propriety of my proceedings in conducting the elections appointed for the choice of a Brigadier General. The difference is great of the situation of an officer in the militia establishment, from one in a regular army. The latter appears continually in martial character; the former occasionally, only in the communication of military orders, or in the casual and temporary exercise of command. At all other times, the military is mersed in the civil capacity, or rather, the military office rests in abeyance in the intervals of its employment. The sword is changed for the ploughshare, and the spear for the pruning hook. The citizen soldier assumes the martial attitude as circumstances may require, and departs from it when occasion ceases. He returns to his private occupations a private man, and as such enjoys like unrestrained liberty to express his sentiments and regulate his ac-

tions, even in relation to martial subjects, as any other man, and is fully entitled and authorized freely to form, and as freely to express his opinions in such case as the one described in the complaint, as any member of the community. But did the defendant abuse the authority of his official station, to awe, to influence, or to control the electors in this choice of Brigadier General? Did he employ entreaties or threats, did he entice by promises, or induce by rewards, or intimidate by denunciations any elector, and prevail with him to vote for a particular candidate? The court's record of evidence denies the fact. If the defendant has conducted indiscreetly, extra officially, he is liable to censure and removal, by address of the legislature, but not to trial by a Court-Martial. While the defendant acted officially, he acted impartially. As a citizen, in civil capacity, it was his right and his duty to be frank and explicit in the expression of his opinions of any man or any matter, and he was bound in honor to remove any bias from the mind of any elector, which might have been induced by a belief or supposition of a combination or conspiracy to prevent the election or influence the vote of that elector. The dispatch, with which the official return of the proceedings of the second election of the Brigadier General was made to the Commander in Chief, was the punctual and prompt discharge of my duty, and in no wise reprehensible.

The evidence in the case is in possession of the court. I forbear to make any comment, for it is fairly before them, and subject to their consideration. To their candor and justice I trust the issue of this cause. Let no regard for my fellowship in arms, no allowance for the difficulty of exercising command in the militia, influence the judgment of this tribunal. I demand an impartial examination. I challenge a severe and exact scrutiny, and expect an unbiassed decision. The defendant begs permission of the court to express his acknowledgments to the Judge Advocate for his candor, fairness, and liberality in conducting the proceedings at this trial.

EBENEZER GOODALE, Maj. Gen. 2d Div.

Salem, Oct. 3, 1812.

I certify, that the foregoing is a true copy of the original defence, exhibited by Gen. Goodale, and read to the Court-Martial in his trial.

JOHN VARNUM, *Judge Advocate.*

No. 18.

The complainants against Maj. Gen. Ebenezer Goodale beg leave to submit the following observations upon the charges exhibited, and evidence produced in support of them.

THE first and second charges in the complaint are acknowledged to be true.

Before the court form a judgment on these charges, the first question to be considered by them is, whether the commander of a division is by law obliged to inquire into all complaints agaist officers under his command, or is at liberty to act on them or not, according to his own pleasure.

The complainants will not contend that a commander of a division is bound to act on a complaint, which upon the face of it may be frivolous. No doubt the subject is within his discretion; but he is bound at his peril to use a sound discretion. If Gen. Goodale was not obliged to act on complaints in all cases, was he at liberty to neglect that against Capt. Bowditch? The complaint was signed by several respectable persons, and the charges are of a very aggravated nature. They accuse Capt. Bowditch of partiality, of a violation of the militia laws, of making false returns of his company, of oppressing the soldiers under his command, of illegally excusing privates from duty and of disenrolling them from his company, and thus depriving them of important privileges to which they were entitled.

If these charges were true, there was abundant cause for a Court-Martial. Was it his duty then to take time to inquire into the truth of the charges?—That would have been the very business of the court he should have called. The charges on the face of them were of a most important nature, and de-

manded his attention. Many of the facts stated in them were within Gen. Goodale's own knowledge, for he stated to Ebenezer Worcester and Samuel Briggs, that he had not consented to their discharge from Capt. Bowditch's company, and that Capt. Bowditch had no authority to discharge them, and therefore advised them to claim their rights in his company. Should the latitude contended for be given to the discretion of a commanding officer, the consequences might be extremely pernicious to the militia. An officer, who should happen to be a favorite of the commander of the division, might be protected from punishment for any misconduct. The case before the court presents a strong view of the evils that may result from this principle. Several persons have been excused from the important duties, and denied the important privileges of soldiers, and dissatisfaction and confusion introduced into the company, which is now in a disorganized condition. Is there then any adequate reason for the neglect of Gen. Goodale for nine months after the complaint, mentioned in the first charge, and seven after that mentioned in the second charge, to pay any attention to them? The reason assigned by him for not noticing the first complaint is, that when it was dated, he had not been officially notified of the resignation and discharge of Maj. Gen. Derby—but he received this notice shortly afterwards, and the complainants apprehend it was then his duty to have acted on this complaint, which was then regularly before him.

But the excuse relied on by Gen. Goodale, is the state of Capt. Bowditch's health. Capt. Bowditch says, that Gen. Goodale called on him in December last, and informed him he should call a Court of Inquiry on him, and that he told Gen. Goodale the state of his health would not admit of his attention to it then, and requested a postponement of it till warm weather. It will be for the court to consider whether the solicitude discovered by Gen. Goodale to consult the entire convenience of the accused, as to the time of his trial, was consistent either with his duty or his dignity. The General, it appears, called on Capt. Bowditch and inquired of him, whether

he was able to attend a Court of Inquiry. If the accused felt guilty of the charges alleged against him, would he not be inclined to think himself unable to submit to a trial?

It appears that Capt. Bowditch wished a delay on account of his health, and in June requested a discharge. Was this conduct of the respondent according to military usage? The complainants apprehend that the regular course would have been to have arrested Capt. Bowditch and deprived him of his command, and for the court to have ascertained whether his health would have supported the labor of a trial by the certificates of physicians or surgeons, and to have adjourned from time to time, if necessary, until he was able.

Gen. Goodale has proved, that he did call a Court of Inquiry, and therefore he says he has done his duty. The order for this Court of Inquiry appears to be dated thirteen days after the complaint against himself. It will be for the court to determine what influence this circumstance might have had in inducing the General to act on the complaint against Capt. Bowditch. The complainants also remark—that the officers who composed that Court of Inquiry were not detailed from the roster, according to law and military usage, but were all appointed by Gen. Goodale. And they had no authority to give any opinion on the evidence, which seems to be a principal object in such cases. A Major was also appointed President of the court.

In courts martial the law requires that the President of a division court-martial "shall in no case be under the rank of Lt. Col. Commandant," and it is presumed he ought to hold the same rank on Courts of Inquiry, for the same reasons exist; and though the law does not expressly require it, courts martial and courts of inquiry are there considered together, and seem to be placed on the same footing. The question then arises, whether this court was ordered and holden accordingly to law—and if it was not, whether Gen. Goodale has in effect yet acted on the complaint against Capt. Bowditch.

As to the 3d charge, the complainants would briefly observe, that they trust it is fully supported by the testimony of

Mr. Webb, Mr. Worcester, and others, and should the court be of the same opinion, it is presumed they cannot fail to pronounce it "degrading, ungentlemanlike, and unofficerlike conduct."

4th charge. It appears by the evidence of Captains Peabody, King, and Webster, that Gen. Goodale told them to apply to Maj. White, whenever they wanted the discharge of privates from their respective independent companies. Mr. Webb and Mr. Briggs also testify that Gen. Goodale acknowledged he had given authority to Maj. White to grant these discharges. It is true that Maj. White testifies that the only general order Gen. Goodale ever gave him, to his recollection, was when he [Goodale] was going a journey of several weeks in February, 1811; and that, he says, directed him to transact the general business of the brigade. Now here is evidence of a general order, as extensive as that mentioned in this charge; and though Maj. White never acted under it, that does not excuse Gen. Goodale in granting it. But there is conclusive testimony on this point given by L. Saltonstall and Ebenezer Worcester, who say they heard Gen. Goodale testify under oath before Joseph E. Sprague, Esq. that he could not tell whether particular persons had been discharged from the Salem Cadet company, because Maj. White attended to *that business*, and that he had referred Capt. Bowditch, and also privates to him upon that subject. It also appears in evidence under the third charge, that Gen. Goodale told Ebenezer Worcester and others that he had never authorized their discharge from the Cadet company. And it does not appear that he ever complained of Maj. White for discharging them without authority. Gen. Goodale says it was for the convenience of those officers who wanted their discharges, and that the intention was, that they should apply through the Brigade Major to him, he living in Danvers. But he referred Capt. Webster of Danvers to Maj. White, and also Capt. Peabody, who applied to him personally for the discharge of two privates.

The manner in which these discharges are entered in Maj. White's records, is no proof that they were made by order of

Gen. Goodale, because Maj. White himself says, that the entry of the discharge of several privates from Capt. King's company, which appears to be by the General's order, was made by himself, and the men were discharged by him, without consulting Gen. Goodale.

If the facts mentioned in this charge are proved, the question then arises, whether it is illegal or unmilitary conduct.

The complainants consider the power to discharge privates from volunteer companies to be a *particular power*, vested by law in the Brigadier General, and one which he cannot transfer. The *particular confidence* is placed in his discretion. The most pernicious consequences would arise from the practice of transferring this power. It cannot be necessary to describe them. They are strongly exhibited to the court in the situation of the Salem Cadet company. By this practice, individuals may be oppressed, and companies disorganized by officers, who are not responsible for so doing.

The complainants cannot forbear to notice the irregular and unmilitary manner, in which this power was exercised by Gen. Goodale, according to his own explanation. The law makes the Brigadier General the judge between the Captain and the private, and he should not deprive a person of the privilege of belonging to a volunteer company, into which he has enlisted at a considerable expense, without an opportunity of being heard. How much less then can this very important power be delegated to another. The field officers of a brigade have shewn their confidence in the Brigadier General by his election. The Brigade Inspector is appointed by the Brigadier General alone, may be a man disagreeable to the other officers, is of inferior grade to him, selected by law for the exercise of this power, and is a mere ministerial officer to register and execute his orders.

5th charge. The facts stated in this charge are clearly proved by Robert Rantoul, Esq. Was it not unmilitary conduct? Is it not contrary to usage in like cases? Look at the conduct of Gen. Goodale, as it appears in evidence in this case.

He waited on the Governor personally, and stated the situation of the brigade, and the Governor ordered that no discharges should pass in this brigade until a Brigadier General was elected, and then Gen. Goodale kept Col. Lovett's request nearly two months in his pocket. Did the conversation with the Commander in Chief excuse Gen. Goodale for withholding Col. Lovett's request so long a time? The complainants apprehend that he was not bound to notice any order not in writing, that no such order can be the least excuse for his not doing his duty, which obliged him to forward Col. Lovett's resignation to the Adjutant General's office. Had he done this, he would then have done *his duty*, and the responsibility would have rested entirely with the Commander in Chief. There must have been some particular and powerful reasons to have impelled the General to the Council Chamber, for it surely cannot be usual for commanders of divisions, when resignations are offered to them, to wait on the Governor, and inquire whether he will grant discharges. Such a custom would open a door for incalculable mischief, should there unfortunately be a Commander in Chief, who would connive at and assist a Major General in procuring appointments for favorite officers.

6th charge. All the charges made against Gen. Goodale, to which the attention of this court has been called, are important, but this is of the highest nature that can be exhibited against a man in an important military command. It has been objected that this charge is not "fully and plainly, substantially and formally described," as is required in the first clause of the 12th article of the Bill of Rights of Massachusetts: This, it will be observed, is part of the same article, in which it is provided, that "every subject shall have a right to be fully heard by himself or his counsel at his election;" and yet it has been decided in all courts martial since the formation of the Bill of Rights, and correctly decided, that a defendant cannot be heard by his counsel before them. The whole of this article, it is humbly presumed, refers principally, if not entirely, to trials in our courts of law, and not to

courts martial or maritime. But is it true that the offence is not "fully and plainly, formally and substantially described" in the charge? It is as much so as the nature of the crime admits of, as is usual in military complaints, and as justice requires. To have been more particular would have burthened the complaint with all the particular acts and conversations produced in evidence in support of this charge.

The respondent is accused of "interfering in the election of a Brigadier General," and of "using undue and improper influence, with a design to bias the minds of the voters," and thus to effect the election. This is the substance of the offence, and as a consequence, it is stated that the senior officer has been superseded, according to the intent of Gen. Goodale, and general dissatisfaction and discontent produced. Under this charge the respondent cannot be taken by surprize—he is sufficiently notified on what ground he is to meet the complainants, and it was to be presumed that an officer in the high rank of the respondent, would have been fearless of any evidence that could have been brought to support such a charge. Is this charge supported by the testimony that has been produced? It appears from the evidence of Captains Pettee, Flint, Stearns, Richardson, Lt. Tapley, Lt. Porter, Ensign Preston, and others, that on the Saturday and Sunday previous to the election of Brigadier General, in May last, Gen. Goodale called on them in Danvers, Middleton, and Salem, and requested them to sign a paper he produced to them, promising to support Maj. Flint as Colonel of the 5th Regiment, if he would *act his own mind* in the choice of a Brigadier General, or in other words, if he would vote for Col. Putnam *for Brigadier General!* Capt. Flint further testifies, and in a manner which entitles him to the fullest credit, that the General urged him to sign an obligation pledging his *word* and *sacred honor* to vote for Maj. Flint as Colonel—if he would vote for Col. Putnam as Brigadier General, telling him "if *he* would sign it, all the others would," that "he was going to Middleton, and they would sign it there," that "they had agreed to vote for Maj. Flint," (which shews a previous attention to the bus-

iness) but that "they should lose Maj. Flint's vote for Col. Putnam, if he could not see something from under the hands of a majority of the officers of the regiment, to shew that he should not be superseded if he voted for Col. Putnam," and when the witness refused to sign the paper, saying, he should be ashamed of it, the General said, "it may be kept a secret."

In several conversations Gen. Goodale told Capt. Flint that "Col. Putnam *should* be chosen;" that "if some officers came forward to vote, he should arrest them for former misconduct;" that "if he could get a tie, Dr. Kittredge, who had great influence with the Governor, was to write to him, and Putnam would be commissioned;" that "the officers must have a meeting, and agree to support Maj. Flint, or we shall lose his vote." He went after the witness to go to his house when Maj. Flint was there, and when the witness hesitated on the way, said, "if he sees you hang back, it is all over, and Putnam will lose his election." He said also, that "if Col. Hovey's friends were not at the pool at the time appointed, he should close it precisely in four minutes, and they might help themselves if they could;" and at the same time he told Capt. Flint, that "before Col. Hovey's friends he expressed himself favorably to his election, but was determined Putnam should be elected." And there is every reason to believe him sincere in his determination, not only from his conduct, as we have stated it, previous to the election, but at this time and afterwards. The four ballotings were concluded in fifteen minutes, the report was made on the spot, and he and Col. Perley Putnam, a brother of the candidate for Brigadier General, rode to the Council-Chamber with it from Danvers plains, more than fifteen miles, in less than an hour and a half, as he told Col. Jethro Putnam and David Wilkins, adding, that "he had exerted himself as much to save Col. Putnam's commission, as he could have done if it were to gain his own salvation!!!"

Does not all this amount to an improper and unofficerlike interference in the election, and the use of an undue influence to bias the minds of the electors? For what did Gen. Goodale

repeatedly visit the Commander in Chief? Why ride through the 5th regiment on the Saturday and the Sabbath day previous to the election? Why did he retain Col. Lovett's request for a discharge, and ride furiously to Boston with the election report? Instead of visiting the Governor for directions, should he not have studied the law and military usages for a knowledge of his duty, and have been content to obey the lawful, *regular orders* of his superior officers? Instead of riding about for the purpose of securing a vote for a favorite candidate, should he not have kept entirely aloof from the contest? Should he not have transmitted Col. Lovett's request to the proper office after expressing, as he did, his approbation of it to Robert Rantoul, Esq. and his opinion of Col. Lovett's state of mind to others, by threatening to prevent his voting if he attended the election? And is it any excuse, that the Governor told him, *after he had stated the situation of the brigade*, that no discharges should pass till after the election of a Brigadier General? Instead of carrying the report of the election to the Council Chamber himself, should he not have deliberately made his return through the proper channel? Such extraordinary conduct can be accounted for on no ordinary motives. The complainants would suggest to the notice of the court, that the Governor's office expired a few hours after the last hasty visit of Gen. Goodale, and that in the meantime Col. Putnam was appointed and commissioned. It is also a fact that a respectable *senior* officer has been superseded, according to the intent expressed by Gen. Goodale to several of the witnesses.

General Goodale contends that his only motive in procuring the written promises of the officers to vote for Maj. Flint on certain conditions, was to counteract the influence of Capt. Ingersoll and others, who had told him there was a combination to supersede him, if he voted for Col. Putnam. Capt. Ingersoll, the only person named, says he never used any such influence, never told Maj. Flint there was such a combination, but only gave it as his opinion, that he would be made a dupe of if he voted for Col. Putnam, and would be superseded, notwithstanding their promises to the contrary, because he had

evidence of Gen. Goodale's insincerity as to Col. Hovey. And it appears that Capt. Ingersoll's prophecy was correct, and that Maj. Flint was superseded. There is then no evidence of such influence having been used on Maj. Flint.

Did the defendant's conduct admit of any explanation that would excuse him, would he not have called on Maj. Flint, who was present during his defence, to testify whether he had attempted to influence him in his vote?

But even if it were true that others had attempted to influence Maj. Flint, of which there is not a particle of evidence, would that be any excuse for the conduct of Gen. Goodale? Can any circumstance justify him in attempting to gain the vote of Maj. Flint for Col. Putnam, and of binding six or seven officers to vote for Maj. Flint? for it must be noticed this conduct had a double operation, affecting the freedom of the election of a Brigadier General, and of a Colonel who was to be afterwards elected.

But Gen. Goodale was not guilty of this conduct with his epauletts on his shoulders, his sword by his side, or at the head of his division; and therefore he says he is not liable to be tried for it before a Court-Martial, because he was not acting in his official capacity.

It is the pride of our country, that our highest militia officers are but citizen soldiers. The two characters are so blended, that actions which seem to be in their private capacity, have frequently a most important military influence. The principle here advanced would lead to great absurdity and mischief. The highest offences are committed by officers when not on parade or acting before the public. Suppose two Colonels of Regiments were lawfully ordered by their superior officer on a particular duty; and one Colonel should not only refuse to obey, but exert himself, and succeed in forming a combination for the same purpose among the officers and men in the other regiment: while he is busy in effecting this conspiracy he is acting in his private capacity; but is it not also acting in a most important manner in his official capacity, and using his official influence? And shall he not

be liable to be punished for his misconduct? So, to procure the election of a particular candidate to an office, the offence of using improper influence is necessarily committed, when not acting strictly in an official capacity. In the case before us, Gen. Goodale only appeared *as an officer* the few minutes that he presided at the election, when there was no opportunity for him to use any influence, and no motion to discover partiality. But he was in reality using official influence in a most important sense, when he was playing a deep game to gain Maj. Flint's vote, by endeavouring to secure him the office of Colonel. Situated as he was, holding so exalted an office in the militia, his influence as an officer was inseparable from his influence as a man; and indeed when he was acting on a military subject, he was acting as a Major General, and must be liable for his conduct, unless an officer by the slightest artifice may be guilty of the grossest misconduct with impunity.

The smallest interference in an election by on officer in Gen. Goodale's situation, is a high offence. The value and indeed existence of our elective rights, depend entirely on their freedom and purity. An interference is a violation of the rights of all the voters. In the militia it tends to destroy that nice sense of honor, which is the soul of a soldier, and to reduce elections from the honorable exercise of opinion to mere intriguing cabals.

And the complainants cannot but observe, that an interference so constant, and of the nature proved in this case, looks much like *an attempt to bribe.* Money is not necessary to bribery. To attempt to gain the vote of another by holding out to him the hope of reward by honors or offices is as much bribery, as the offer of gold. An attempt to procure votes in this way discovers such a low sense of elective rights, that it has always been deemed just, to pronounce a person, guilty of such conduct, unworthy to hold an elective office himself.

The conduct of an officer in the high and honorable rank of the respondent, should be watched with jealousy, for it has necessarily a great influence on those under his command.

On the officer, much depends the character of the corps under him, from the commander of a company to the General of a division. It is of extreme importance that he should not even be suspected of dishonorable or unmilitary conduct, for it must lessen confidence in him, and tend to insubordination and confusion. But if high offences against military usages and the law of the land are tolerated in high officers, it will remove restraint from those of inferior rank, and the militia will be in danger of general disorganization. While therefore it is the duty of courts martial carefully to shield the *honor* of a soldier from false accusations; yet, whenever the charges exhibited have been supported by evidence, however unpleasant the task, their duty and their honor oblige them to say *guilty*, and to inflict a punishment demanded by the offence, such as shall shew their disapprobation of the crime, and deter others from imitating the pernicious example.

SAMUEL BRIMBLECOM, Lt. Col. for himself
and in behalf of the complainants.

Salem, Oct. 3, 1812.

I certify, that the foregoing is a true copy of the statement read by the complainants in the trial of Maj. Gen. Goodale.

JOHN VARNUM, *Judge Advocate.*

☞ LEVERETT SALTONSTALL, Esq. assisted the complainants in preparing their reply to the defence of Gen. Goodale on the trial.