

A

TREATISE

ON

NAVAL COURTS MARTIAL.

CHAPTER I.

OF THE NATURE OF NAVAL COURTS MARTIAL.

THE necessity of establishing laws and regulations for the guidance and direction of an armed force, either by land or sea, in all civilized states, has been universally acknowledged. Varying according to the temper and character of the chief in authority, such regulations have, in a greater or lesser degree, been sanguinary and oppressive; ordained as they are, to preserve a large proportion of men, rendered by nature and circumstances turbulent, in awe and restraint, to act as one great body, for the good of the country in whose service they are employed. The effect of these laws

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extended only to those citizens, or others, who attended military expeditions; being in general also temporary, and ceasing to have any force on the attainment of the object for which they were immediately established. It is little more than a century since they experienced the legislative sanction of this kingdom. In the 22nd year of the reign of George II. the several laws and statutes relative to the regulation of his Majesty's naval forces were collected and digested into one act of parliament, the operation thereof commencing on the 25th of December, 1749; part of which act, commonly known by the name of The Articles of War, is directed to be publicly read on board every one of his Majesty's ships and vessels of war in commission, once a month at least; but the part thus inculcated on the ship's company is restricted to articles No. 1 to No. 36, as that which is deemed most necessary to be impressed on their minds. Some very material alterations and amendments were made in this code, by an act passed in the 19th of George III. which, repealing *the 12th and 13th articles*, inserted the same clauses with an addition, by which courts martial were empowered "to mitigate the sentence of death to such

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other punishment as the nature and degree of the offence was found to deserve:" *these* were the articles as they originally stood, which bore so hard against Admiral Byng in 1757; and of which his judges complained, as subjecting them to the melancholy necessity of pronouncing on him sentence of death.

The act of the 19th year of our present Sovereign likewise repeals and makes void, to all intents and purposes, that part of a former act, which prevented members of courts martial from quitting the ship in which a trial was begun, or to go on shore until sentence was pronounced, (unless in cases of illness, to be judged of by the court,) upon pain of being cashiered*; and states the inconvenience and prejudice it occasioned to the health of the officers summoned to attend as members of courts martial. Therefore the members may now quit the ship, go on shore on public duty, or private business, and mix in society, from the time the court adjourns, until they re-assemble; but the necessity of their meeting every day to form a court (Sundays excepted) remains still in force, and can by no means be dis-

* Act 22 Geo. H. sec. 15.

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pensed with, so long as a sufficient number of members can attend, to constitute a legal court martial. In addition to sickness being admitted as a reason for members absenting themselves, it extends also to cases of an extraordinary and indispensable nature, to be judged of by the court.

MEMORANDUM.

On Tuesday the 9th day of Feb. 1796, a court martial was assembled on board his Majesty's ship Prince George, in Portsmouth Harbour, composed of the following members :

PRESIDENT,

Rear Admiral Sir Roger Curtis.

* Rear Admiral Harvey. Rear Admiral Bligh.

CAPTAINS,

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| Chas. Edmd. Nugent. | * Edmund Dodd. |
| * Sir Chas. Cotton. | John Thomas. |
| * J. H. Whitshed, | Sir Richard Bickerton. |
| Robert Montagu. | Edward Thornborough. |
| Sir James Saumarez. | * James Vashon. |

Moses Greetham, Esq. Deputy Judge Advocate.

and proceeded to the trial of Captain James Norman †, late of his Majesty's ship Medusa,

† Captain Norman was on half-pay when he was tried. It is rather prejudicial to an officer to be tried whilst on half-pay; as the court have it not then in their power to

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for his alledged inattention in convoying to England the Jamaica fleet. A statement of facts was transmitted from the Admiralty to the president, on which the trial was grounded, and John Sewell, Esq. of London, agent for the planters and merchants resident in Jamaica, appeared in court, and carried on the prosecution in their behalf: he was attended by Mr. Shaw, counsel for the underwriters.

Without entering into the particulars of this trial, I shall only attend to an extraordinary circumstance, which occurred on Thursday the 25th February, being the 15th day of the trial, and the third day after Captain Norman had entered upon his defence. Admiral Harvey*, and four of the captains*, members of the court, had orders from the Admiralty to proceed immediately to sea, on the utmost emergency, as the Dutch fleet had got out of the Texel. This being communicated to the court, they

mitigate or soften his sentence, by dismissing him from the command of his ship, as in the case of Captain Molloy; but must either divest him of time in his rank, or cashier him from the service intirely, which deprives him of his half-pay, or pass the sentence, as in this instance:—unless where the offence renders capital punishment indispensable.

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deemed it, in the words of the act, an extraordinary and indispensable occasion; and in virtue of the powers lodged in them by the act of parliament of the 19th George III. which repeals part of the 15th section of the act of the 22nd George II. respecting members not going on shore until sentence is pronounced, and extends the cause of absence, (which was before confined to cases of sickness only) *to other extraordinary and indispensable occasions*, subject to the judgment of the court,—they permitted the five members to withdraw, and absent themselves from the trial. The remaining eight members continued their sitting until judgment was pronounced, on Monday, the 29th February, to the following effect:

“That the charges have been in part proved against the said Captain James Norman; but, in consideration of want of obedience to signals, and other circumstances attending the voyage, the court doth adjudge him only to be reprimanded, and to be continued on half-pay for the remainder of his life; and the said Capt. James Norman is hereby reprimanded, and ordered to be continued on half-pay for the remainder of his life accordingly.”

The urgency of the service was such, that

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the Admiralty did not wait until information could be received whether the court had deemed the orders the members were under of sufficient force for them to judge it expedient to permit those officers to absent themselves from the court martial; but sent Admiral Colpoys and four captains immediately down to Portsmouth to supersede Admiral Harvey and the four members, in case they should find them sitting at the trial. On their arrival (Friday morning) they found they were gone down with their ships from Spithead to St. Helens; whereupon they returned to London, as the members who had been withdrawn could not, after two days' absence, resume their seats at the court martial.

As the expediency of the cause of absence is to be judged of by the court, and no mention is made of the necessity of its being permitted unless with consent of the parties on the side of the prosecution and defendant, it would appear that the court was not obliged to ask, if there were any objection to the members withdrawing themselves, and submit the decision of the trial to the judgment of the remaining members: yet the question was asked, and both parties consented, which so far was satisfactory. Had,

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however, the parties refused and remonstrated, still the court was competent to over-rule the objection.

It is particularly expressed in the 13th section of the 22d George II. that nothing in the act shall empower the Lord High Admiral, or the commissioners for executing the said office, to direct or ascertain the number of persons of which any court martial shall consist; yet in the act of the 19th of George III. which repeals and alters part of the 15th section of the before-mentioned act, it in some measure encroaches on the spirit of the 13th section: for although it is not probable that the lords commissioners of the Admiralty would be influenced to give orders for any member or members to proceed to sea but in cases of public emergency, yet it is possible that a power of such magnitude might, in trials of particular political cases, be warped to serve such ends, in order to remove members who might be looked upon with a jealous eye, as leaning to or favouring the cause of the officer on his trial.

Before the 19th of George III. there was no power for the court to grant leave for members to absent themselves but in cases of sickness: if the service then required the ship commanded by any member to be

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sent to sea, an officer was ordered on board to act in his stead, as was the case even on this trial; for, in the early part of it, when the court was full, acting captains were appointed to take the command of the *Robuste* and *Ramillies*, in the room of Captain Thornborough and Sir Richard Bickerton, and the ships proceeded to sea.

The intention of the legislature, in confining the members on board ship until sentence was pronounced, appears to have been in some respect similar to that which directed the formation of juries, who are not to separate until a verdict is given (although it is requisite for juries to be *unanimous* in their opinion; whereas in courts martial the *majority* decide) in order to prevent them from being tampered with, or their judgment biassed, by discoursing or communicating with persons without doors: but the length of time a court martial may be obliged to sit, perhaps three or four weeks, or even more, rendered the repeal of this restriction indispensable.

These amendments, although passed in 1779, were subsequent to Admiral Keppel's trial; whose court martial assembled on the 7th January in that year, on board his Majesty's ship *Britannia*, in Portsmouth Har-

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bour; and from thence adjourned to the governor's house at Portsmouth: being the first naval court martial held on shore, since the laws and statutes relative to the regulation of the navy were reduced into one act of parliament. This adjournment was authorized by an act framed partly to accommodate Admiral Keppel, who complained of his ill state of health, and also to afford more room for the reception of the great number of witnesses called upon this remarkable trial, as well as of a crowded audience, composed of several persons of the most exalted rank and stations in the kingdom.—As, however, the principal amendment in the act just mentioned had not passed, the members of the court martial could not be permitted to separate, and did not stir out of the governor's house or garden until sentence was pronounced; in the same manner as if the court had continued to have been held on board the *Britannia*, where it first assembled. The members of this court martial signed a letter, addressed to the Secretary of the Admiralty, representing the hardship of their long confinement, (which, from the day they first assembled to that on which they pronounced the sentence, extended to *thirty-six days*!) and intreating the Lords Com-