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On the Relief of J. Chickering

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S. Rep. No. 644, 45th Cong., 3rd Sess. (1879)

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IN THE SENATE OF THE UNITED STATES.

JANUARY 23, 1879.—Ordered to be printed.

Mr. SPENCER, from the Committee on Military Affairs, submitted the following

REPORT :

[To accompany bill S. 1260.]

The Committee on Military Affairs, to whom was referred a bill (S. 1260) for the relief of John W. Chickering, have had the same under consideration, and submit the following report :

Mr. Chickering was a first lieutenant in the Sixth United States Cavalry, and was dismissed the Army by sentence of a court-martial upon a charge of drunkenness on duty, which sentence was approved by W. W. Belknap, then Secretary of War, on the 27th day of January, 1875. This bill is to reinstate him in the Army, in the cavalry arm of the service, with his previous rank and date of commission, and promotion in the line is suspended by the terms of the bill for that purpose. He is to receive no pay for the time he has been out of the service.

His petition, on file with the record, claims in substance that he was unjustly and harshly treated; that, in fact, he was not guilty of the offense charged, and that the evidence adduced upon the court-martial did not warrant, either in law or in fact, the judgment of dismissal pronounced against him. He now prays Congress to review this testimony and the action had thereon, in order that he may show the facts set forth in his petition to be true. The charge, specification, and testimony are as follows :

CHARGE.

Drunk on duty in violation of the 45th Article of War.

Specification.—In that First Lieut. John W. Chickering, Sixth Regiment of United States Cavalry, having been detailed and on duty as “officer of the day” of the First Cavalry battalion of an expedition against hostile Indians, was found drunk. This, at or near the camp of the First Cavalry battalion on the Canadian River, near Oasis Creek, Texas, on or about the 25th day of September, A. D. 1874.

To which charge and specification the accused pleaded as follows :

To the specification, not guilty.

To the charge, not guilty.

The proceedings and testimony are as follows :

All persons witnesses in this case and not members or officers of the court were then instructed to withdraw and remain in waiting, and did so withdraw.

Second Lieut. THOMAS B. NICHOLS, Sixth Cavalry, a witness on the part of the prosecution, being duly sworn, testified as follows :

By the JUDGE-ADVOCATE :

Question. What is your name, rank, and regiment?—Answer. Thomas B. Nichols; second lieutenant, Sixth Cavalry.

Q. Do you know the accused? If so, please state who he is.—A. First Lieutenant John W. Chickering, Sixth Cavalry.

Q. State what you know, if anything, about the accused being drunk on duty.—A. On the 24th day of September, 1874, at the camp of the first battalion of cavalry, on Oasis Creek, Texas, Lieutenant Chickering, the accused, was detailed as officer of the day of the camp. As battalion adjutant I formed the guard about 5 p. m., and on the arrival of the accused I turned it over to him. I immediately entered my tent, and

in a few moments was ordered by the commanding officer to place the accused in arrest, which I proceeded to his tent and did.

Q. What was the condition of the accused at the time?—A. He was intoxicated.

Q. What description of intoxication?—A. Dividing intoxication into three states, I think the accused was in the second state. He was too intoxicated to perform his duty. The intoxication was shown by the looks, manner, and gait of the accused. It was intoxication from the use of ardent spirits, apparently.

Q. Are you or not acquainted with the mode of action or manner of the accused when he is under the influence of intoxication from the use of ardent spirits?—A. Yes, sir.

Q. Describe the manner and actions of the accused on this occasion.—A. His manner was as though he was confused, and actions, as shown by his gait, unsteady.

Q. What military force did the First Cavalry battalion, Sixth Cavalry, then form a part of?—A. The Indian Territory expedition, Col. Nelson A. Miles, Fifth Infantry, commanding.

Q. What military operations was this expedition then engaged in?—A. In an offensive war against the Indians—hostile Indians.

Cross-examined by the ACCUSED:

Q. With what acknowledgment did I receive the guard from you?—A. By nodding your head.

Q. How far from the guard was I when you turned the guard over to me?—A. Not more than three or four yards.

Q. What was the distance from my tent to where the guard was formed?—A. About seventy-five yards, more or less.

Q. What was the nature or character of the ground over which I was obliged to pass in going from my tent to the place where the guard was formed?—A. It was rough ground, covered with bushes and stubble.

Q. Was it not exceedingly difficult for a person to pick his way through at any time?—A. It was tolerably difficult.

The accused had no further questions to ask.

By the COURT:

Q. What was there in the manner and actions of the accused that led you to believe he was intoxicated from the use of ardent spirits?—A. His confused manner and unsteady gait and his looks.

Q. How long before the accused assumed his duty as "officer of the day" did he receive his detail for that duty?—A. About two hours.

Q. Did the accused, within your knowledge, drink any intoxicating liquor during that day?—A. I did not see the accused drink anything that day.

Q. What is the usual manner or mode of action of the accused when he is under the influence of intoxicating liquor?—A. Exactly as I described it on this occasion.

There being no further questions to put to this witness, his testimony was read to him, pronounced correct, and he withdrew.

Maj. CHARLES E. COMPTON, Sixth Cavalry, a witness on behalf of the prosecution, having been duly sworn, testified as follows:

By the JUDGE-ADVOCATE:

Question. What is your name, rank, and regiment?—Answer. Charles E. Compton; major, Sixth Cavalry.

Q. Do you know the accused? If so, please state who he is.—A. I do; First Lieutenant John W. Chickering, Sixth United States Cavalry.

Q. State what you know, if anything, of the accused being drunk on duty.—A. On the 26th day of September, 1874, the accused reported to me as officer of the day for the camp of the first battalion, Sixth Cavalry, Indian Territory expedition, on the Canadian River, near Oasis Creek, Texas, to receive the usual instructions from the commanding officer to the officer of the day. At this time he was so drunk that I caused him to be relieved as officer of the day and placed in arrest.

Q. Who was commanding officer of the camp at the time?—A. I was.

Q. Was the accused on any duty when he reported to you? If so, what was it?—A. He was officer of the day.

Q. Where did this occur?—A. At the camp of the first battalion Sixth Cavalry, Indian Territory expedition, on the Canadian River, near Oasis Creek, Texas.

Q. What military operations was the First Cavalry battalion engaged in at the time?—A. It was in active campaign against hostile Indians.

Cross-examined by the ACCUSED:

Q. Did you recognize or receive me as officer of the day?—A. I did not give the accused any instructions or say anything to him on account of his condition.

Q. How far was I from you when I reported?—A. Perhaps six or eight feet. It might have been ten. I do not recollect precisely.

Q. What is the nature and character of the ground over which I was obliged to pass

in going from my tent to where the guard was formed?—A. Sandy and somewhat covered with grass and dwarfed sunflowers; I think that is the only flower I recollect seeing there, where we were camped.

Q. Was it not difficult for a person to proceed from one place to another in camp?—A. Not at all; not, I might say, during the day-time. There were about the camp a few patches of plum-bushes which one might have some little trouble in getting through at night. I do not mean trouble; I mean annoyance.

The accused had no further questions to ask.

There being no further question, to put to this witness, his testimony was read to him, pronounced correct and he withdrew.

Capt. TULLIUS C. TUPPER, Sixth Cavalry, a witness on the part of the prosecution, having been duly sworn testified as follows :

By the JUDGE-ADVOCATE :

Question. What is your name, rank, and regiment?—Answer. Tullius C. Tupper; captain, Sixth Cavalry.

Q. Do you know the accused? If so, please state who he is.—A. I do; Lieutenant Chickering, Sixth Cavalry.

Q. Did you see the accused on the day on which he is alleged to have been drunk on duty?—A. I did.

Q. What was his condition when you saw him?—A. He was intoxicated.

Q. What duty were you on that day?—A. I was officer of the day.

Q. What description of intoxication?—A. He was intoxicated to that degree that had he been under my command I would not have intrusted him with the performance of any duty. I would call it maudlin.

Q. Where was this?—A. In the afternoon, about the twenty-fifth or twenty-sixth of September, 1874.

Q. At what hour in the afternoon did you last see the accused?—A. I presume about an hour before sundown; near five o'clock p. m.

Q. What were his manner and actions at that time?—A. His utterance was thick; his language incoherent. He gave me the impression that he was so much intoxicated he did not know what he was about.

Q. Where did this occur?—A. At the camp of the first battalion of cavalry, on Oasis Creek.

Cross-examined by the ACCUSED :

Q. Where was I when you last saw me?—A. Leaving my tent.

Q. How long had I been in your tent?—A. Fully two hours, I think.

Q. Who was present at that time?—A. Captain Morris, of the Eighth Cavalry, was present a portion of the time. He left before the accused.

Q. What was my manner of salutation on my entrance?—A. I do not recollect anything peculiar concerning his manner of salutation.

Q. Did I drink anything while in your tent?—A. You did not.

The accused had no further questions to ask.

By the COURT :

Q. Was the accused on duty at the time you saw him in the condition you described in your testimony?—A. Not that I know of.

Q. Who relieved you as officer of the day on the day in question?—A. I was not regularly relieved. I did not appear at guard-mounting.

Q. Who succeeded you as officer of the day?—A. The accused was detailed to relieve me. The accused was detailed as officer of the day.

Q. What was the condition of the accused at the time of guard-mounting?—A. I did not see him at the time of guard-mounting. I last saw him probably three-quarters of an hour before guard-mounting on that day.

There being no further questions to ask this witness, his testimony was read to him, pronounced correct, and he withdrew.

The JUDGE-ADVOCATE announced that the prosecution here rested.

Maj. CHARLES E. COMPTON, Sixth Cavalry, a former witness on the part of the prosecution, being recalled for the defense, gave additional testimony as follows :

By the ACCUSED :

Question. Was I under your immediate command from the 11th day of August to the 24th day of September, 1874? If so, please state in what manner I have performed my military duties during that time.—Answer. You were, and your military duties up to that time were performed in a very satisfactory manner.

Q. State during that time the kind and nature of the duties required of me and under what circumstances.—A. The usual routine duties of an officer of his rank. He was engaged part of the time with his company, a part of the time in command of a

detachment of the same company in an action against hostile Indians on the 30th day of August, 1874.

The accused had no further questions to ask.

The JUDGE-ADVOCATE declined to cross-examine the witness.

There being no further questions to put to this witness, his testimony was read to him, pronounced correct, and he withdrew.

Trumpeter FRANK GEREMIAH, of Company D, Sixth Cavalry, a witness on the part of the defense, having been duly sworn, testified as follows:

By ACCUSED:

Question. What is your name, rank, company, and regiment?—Answer. Trumpeter; Frank Geremiah; Company D, Sixth Cavalry.

Q. On what duty were you on or about the 26th day of September, 1874?—A. I was orderly trumpeter of the first battalion.

Q. Did you see me on that day, and under what circumstances?—A. I saw him on several occasions. The first was when I delivered the commanding officer's compliments, Colonel Compton, and said that the herd was straying around and that it should be kept closer to camp. The next was an order from the adjutant; I could not tell what the order was, but I think it was for a board of survey, when I delivered the adjutant's compliments saying that he would be officer of the day. This was between three and four o'clock. I saw him several times passing around, through the day.

Q. Did you notice anything peculiar in my manner or actions at any of the times you saw me, and particularly at the delivering of the detail for officer of the day?—A. No, sir; I did not.

Q. What was my manner on receipt of the detail for officer of the day, and what did I say?—A. He acted perfectly sober, was standing to attention, and said "Very good."

Q. Where was I at this time?—A. About five or ten paces from his quarters. I believe he was going up to Major Tupper's quarters.

Q. Did you notice any signs of intoxication upon me at this time?—A. I did not.

Q. Had there been would you have noticed it?—A. Yes, sir; I would have noticed it.

The accused had no further questions to ask.

Cross-examined by the JUDGE-ADVOCATE:

Q. At what hour did you give the detail to the accused?—A. Between three and four o'clock in the afternoon.

There being no further questions to put to this witness, his testimony was read to him, pronounced correct, and he withdrew.

Sergeant WILLIAM T. CLAYTON, of Company D, Sixth Cavalry, a witness on the part of the defense, having been duly sworn, testified as follows:

By the ACCUSED:

Question. What is your name, rank, company, and regiment?—Answer. Sergeant; William T. Clayton; Company D; Sixth Cavalry.

Q. On what duty were you on or about the 26th day of September, 1874?—A. Acting quartermaster-sergeant of Company D, Sixth Cavalry.

Q. Did you see me on that day? If so, under what circumstances and on what occasion?—A. Yes, sir. I was standing opposite Captain Irwin's tent, and I saw Lieutenant Chickering come out of Captain Irwin's tent. He then had his hand to his throat. He walked into Captain Irwin's tent and put on his belt. He had a pair of government boots on and changed them for a pair of light ones. He then brushed his coat and walked out of the tent. He went to the rear of the tent, toward Major Compton's tents, when the doctor stopped him and spoke to him. I did not hear what the conversation was. I have nothing further to say. I was called away to the kitchen-tent at that time.

Q. At what other time during the day did you see me?—A. In the fore part of the day, when Lieutenant Chickering ordered me to have four picket-posts put up.

Q. How did I appear on the times referred to, as to sobriety?—A. Perfectly sober.

The accused had no further questions to ask.

Cross-examined by the JUDGE-ADVOCATE:

Q. How far were you from Captain Irwin's tent when you saw the accused going from there?—A. I was about thirty feet, sir.

Q. Can you distinguish government boots from other heavy boots at that distance?—A. Yes, sir.

Q. What were you doing while the accused was employed as you describe in his tent?—A. Standing idly at the picket-line.

Q. What attracted your attention so particularly to the actions of the accused in

the tent?—A. Nothing particularly attracted my attention to him except that I saw him going from Captain Tupper's tent to his own or to Captain Irwin's tent. They both stopped in one.

Q. How far was the picket-line from the tent of the accused?—A. About thirty feet, as I said before; between twenty-five and thirty feet, as near as I can go.

There being no further questions to put to this witness, his testimony was read to him, pronounced correct, and he withdrew.

JOHN MURPHY, citizen, a witness on the part of the defense, having been duly sworn, testified as follows:

By the ACCUSED:

Question. What is your name, and who are you?—Answer. John Murphy, a citizen.

Q. In what capacity are you employed?—A. Servant for Lieutenant Chickering.

Q. Were you aware of my being detailed as "officer of the day" on or about the 26th day of September, 1874?—A. Yes, sir.

Q. Did I make any preparation for the same just before going on guard? If so, state what I did and what I said.—A. Yes, sir; he asked me where were his clean boots, and I brought them. He asked me then for his side-arms, and I brought them to him. He put them on, and then asked if the guard was long being waiting. I told him about three minutes. He then asked me for a clothes-brush, and he brushed his clothes, started from the tent toward his guard. The last I saw of Lieutenant Chickering was within four or five paces of the guard.

Q. Did you see anything unusual in my manner or actions? Had there been anything wrong or out of the way would you have noticed it?—A. No, sir, I did not. Yes, sir, I would.

Q. What was my condition as to sobriety?—A. He was sober, and he did not drink while he was at his tent, until he went over to his guard, sir.

The accused had no further questions to ask. The Judge-Advocate declined to cross-examine.

Upon this testimony Lieutenant Chickering was found guilty of the charge, and sentenced to be cashiered, notwithstanding the recommendation of Capt. E. P. Ewers, Fifth Infantry, Capt. Wyllys Lyman, Fifth Infantry, and Lieut. George W. Baird, Fifth Infantry, who were members of the court and constituting a majority thereof, respectfully requesting, in view of Lieutenant Chickering's honorable record as an officer, the clemency of the reviewing officer might be extended toward him. General Pope approved the findings and sentence, and refused to concur in the recommendation for clemency.

The following is the order of Secretary Belknap approving the proceedings, findings, and sentence:

WAR DEPARTMENT,
Washington City, January 27, 1875.

In conformity with the 65th of the Rules and Articles of War, the proceedings of the general court-martial in the foregoing case of First Lieutenant John W. Chickering, Sixth Cavalry, have been forwarded to the Secretary of War for the action of the President of the United States.

The proceedings, findings, and sentence are approved.

W. W. BELKNAP,
Secretary of War.

Your committee here quote from the able report of Senator Maxey on the bill (Senate 352) authorizing the restoration of George A. Armes to the Army, by which it will be observed the case of Lieutenant Chickering falls within the rule adopted by your committee in the Armes case:

The material and essential fact—that which is essential to the validity of the order of dismissal, to wit, that the President has reviewed the proceedings and confirmed the sentence, nowhere affirmatively appears. It would be as difficult to sustain this paper as evidencing that fact upon authority, as to sustain a record of a court of criminal jurisdiction in a capital case, which did not show affirmatively the appearance of the accused, his arraignment, his plea, the election, impaneling and swearing of the jury, the hearing of evidence and argument, the charge by the court, the return into court of the verdict, the judgment thereon, &c., &c. In short, nothing on principle can be taken by intendment in a case like this, involving the character of

the accused, and the very fact that the law makes the President the final reviewing officer *only* in cases of sentences of death and of dismissal from the service, shows the jealousy with which the law wisely protects the character of the officer from unjust aspersion and accusation. Were there nothing in the way but the orders of June 7, 1870, and June 2, 1872, the committee would feel constrained to recommend a bill authorizing and instructing the President to review the case. It is manifest that the President's duty in this regard is judicial, and therefore cannot be performed by any one save the President himself. The record of *his* judgment, of *his* "decision and orders," may, of course, like any ministerial act, be performed by another hand, but the *judgment*, the *decision*, the *orders* in the case, must result from the operation of his mind and conscience.

It nowhere appears that the proceedings, findings, and sentence were laid before the President for his action, either affirmatively or negatively, and there can be no doubt in the minds of your committee that the mandatory laws which require that the proceedings, findings, and sentences of a court-martial shall, at least, be laid before the President for executive action, were ever complied with. Hence if the views of Senator Maxey, above quoted, be correct, and your committee have already sustained them in the Armes case, then Lieutenant Chickering's dismissal was *coram non judice*. It follows, therefore, that he has never been legally out of the Army. It will be perceived by the following letter, filed with the record, from Mr. O. L. Pruden, assistant secretary to the President, addressed to Lieutenant Chickering, that no record of executive action upon the proceedings of the general court-martial in his (Chickering's) case could be found upon the books of the Executive Mansion.

EXECUTIVE MANSION,
Washington, April 8, 1878.

DEAR SIR: In reply to your inquiry of the 5th instant, I have to say that I do not find any record of action upon the proceedings of the general court-martial in your case upon the books of this office.

It may be proper to add that the records of this office with respect to courts-martial cases are incomplete.

A call to the Capitol on official business immediately after the receipt of your note on Friday last and my absence from the city on Saturday prevented an earlier reply to your inquiry.

Very respectfully, yours,

O. L. PRUDEN,
Assistant Secretary.

To Mr. JOHN W. CHICKERING,
437 Seventh Street, N. W., Washington, D. C.

Careful consideration of the testimony adduced upon the trial would go to show that if the proceedings had been thoroughly and properly reviewed in a spirit of charity and liberality, contradistinguished from prejudice or vindictiveness, no other conclusion could have been reached but that Lieutenant Chickering had not been proved guilty as to the *gravamen* of the charge. Also, that the sentence of being cashiered the Army, regardless of the favorable recommendation of the majority of the members of the court and an honorable and enviable record of thirteen years' service and three brevets for gallant and meritorious demeanor on the field of battle, was extreme, unwarranted by the proof, and, your committee trust, without precedent.

The evidence for the prosecution does not show the perpetration, either by word or deed, of an overt act, such as an intoxicated person would be likely to commit. If a flushed face or a confused manner and unsteadiness of gait established *prima facie* a charge of drunkenness, without the commission, directly or indirectly, of a single offensive or objectionable act, your committee believe a precedent would be established which might seriously affect society and work irremediable injustice to individuals.

Captain Tupper, a witness for the prosecution, who testifies that Lieutenant Chickering was intoxicated, upon cross-examination admits that Lieutenant Chickering had been fully two hours in his tent prior to his (Tupper's) discovery of said intoxication, and yet, during the two hours while he was in company with him in his tent, it appears by Captain Tupper's testimony Lieutenant Chickering drank nothing; and this occurred immediately preceding guard-mounting, at which time it was charged that Lieutenant Chickering was intoxicated.

Lieutenant Nichols, a witness for the prosecution, upon being questioned by the court, admitted that Lieutenant Chickering, to his knowledge, had not drunk anything that day. Nowhere does it appear in the record of the testimony that any witness, either for the prosecution or defense, had seen Lieutenant Chickering drink or partake of any intoxicating liquor whatever on that occasion.

Four witnesses testified on behalf of the accused, who saw him constantly that day, that he acted perfectly sober and was not intoxicated. It will be observed that Sergeant Clayton testified that Lieutenant Chickering put on his belt, changed his boots, brushed his coat, and walked out of Captain Irwin's tent to proceed to guard-mount, and that he ordered the witness during the day to erect four picket-posts.

The weight of testimony, in view of non-commission of any overt act on Lieutenant Chickering's part, would argue for, rather than against, his sobriety. Lieutenant Chickering, it appears, had just returned a few days previously from a dangerous and fatiguing pursuit of hostile Indians, in which he had ridden about ten days and traveled a distance of over one hundred miles with his command, during which time it rained continuously.

The premises considered, your committee are of opinion that the testimony was of a character creating a reasonable doubt, and to such extent that it should have redounded to the benefit of the accused. In fact, the case for the prosecution was weak, and the offense was not proven. This view seems to be attested by the fact that a majority of the court, evidently entertaining the impression that the findings were not properly predicated, recommended the accused to the clemency of the reviewing officer, a recommendation which General Pope might have reasonably entertained. Even if the offense had been proved, the fact that the accused committed no overt act should have entitled him to a mitigation more merciful and adequate.

Your committee are of opinion that to cashier a meritorious officer on such evidence was a sentence extreme, if not cruel.

Your committee find, as a conclusion of law, that the order of the Secretary of War approving the proceedings, findings, and sentence shows on its face that the same was never laid before the President, as required by law, and therefore the proceedings, findings, and sentence stand to-day as never having been properly approved and carried into effect. The Secretary of War has no authority in law to expel an officer from the Army of his own motion, which appears to have been performed by Secretary Belknap in this case. It therefore follows that Lieutenant Chickering, in contemplation of law, is still an officer of the Army.

It is deemed proper by your committee to append the following testimonials of character which appear in the record:

HEADQUARTERS FOURTH ARMY CORPS,
Camp Harker, June 5, 1865.

HON. E. M. STANTON,
Secretary of War:

I have the honor to recommend to your excellency, for promotion in the Regular Army, Capt. John W. Chickering, Eighty-eighth Illinois Volunteers.

I have known this young officer during the past year and in the tedious campaign

ending in the battle of Nashville, as well as the campaign of Atlanta. I have often noticed him as a constant hard worker, a gallant and ready officer. Captain Chickering is a young man, of *sobber* habits, of good education, and, from his experience and tried valor, I would recommend him for his present rank of captain in the Regular Army, if that position be disposable; failing in this, I would recommend him for a lieutenancy. Captain Chickering has had frequent mention in reports of battles.

Very respectfully,

D. S. STANLEY,
Major-General, Commanding.

HEADQUARTERS SECOND DIVISION, FOURTH ARMY CORPS,
Camp Harker, Nashville, Tenn., June 7, 1865.

CAPTAIN: In taking leave of you as a member of the Eighty-eighth Illinois Volunteer Infantry, detached upon my staff, I take the occasion to express my regrets to lose your services and society. You have performed your duty faithfully to the country during its struggle for the maintenance of the Union and have participated in many bloody battles. You have performed your duties cheerfully and well as a member of my staff, and it gives me pleasure to say that in your intercourse with me and with each other the most pleasant relations have existed; a more harmonious staff I have never met during a service of more than nineteen years as a commissioned officer.

Trusting that you may reach your home in safety, and that you may be successful in life, and we may meet again,

I am, very truly, your friend,

W. L. ELLIOTT,
Brevet Major-General, U. S. A., Commanding.

Capt. J. W. CHICKERING,
Eighty-eighth Illinois Volunteers, Assistant Commissary of Musters.

HEADQUARTERS THIRD DIVISION, FOURTH ARMY CORPS,
Camp near Nashville, June 8, 1865.

TO HONORABLE SECRETARY OF WAR:

SIR: Capt. John W. Chickering, Eighty-eighth Illinois Volunteers, and assistant commissary of musters, Second Division, Fourth Army Corps, is an intelligent and active young officer.

He has served with credit to himself and usefulness to the country. He desires to remain in the military service, and to that end desires an appointment as captain or lieutenant in the Regular Army.

Supposing that the condition of the country, growing out of the great and wicked rebellion, will cause an increase of the Regular Army and military establishment, and that the appointment of worthy young officers from the volunteer forces in the Regular Army would increase its efficiency, I request, respectfully, the appointment of Captain Chickering. His official record is sustained by the reports of commanders, and to them reference is respectfully made.

I am, very respectfully, your obedient servant,

THOS. J. WOOD,
Major-General Volunteers.

HEADQUARTERS FIRST DIVISION, FOURTH ARMY CORPS,
Camp Harker, Tenn., June 17, 1865.

GENERAL: It is with pleasure that I recommend Capt. J. W. Chickering, of the Eighty-eighth Illinois Volunteers, to a position in the Regular Army.

Captain Chickering served under my command during the campaign resulting in the capture of Atlanta, Ga. I always found him to be prompt, brave, and in every way the faithful and able officer.

The interest of the same would be benefited by the retention of this officer in the Army, as he is truly a gentleman in every particular and worthy and well qualified.

I am, general, very respectfully, your obedient servant,

NATHAN KIMBALL,
Brevet Major-General United States Volunteers.

Brig. Gen. L. THOMAS,
Adjutant-General, United States Army.

NASHVILLE, TENN., July 5, 1865.

To whom it may concern:

I take pleasure in saying that I have known Capt. J. W. Chickering, Eighty-eighth Illinois Volunteers, and assistant commissary of musters, Second Division Fourth Army Corps, for a long time in actual service with the corps, and have found him always a gallant, brave officer and a kind gentleman, competent for any position in the Army, and worthy of confidence.

Respectfully,

W. GROSE,
Brigadier-General Volunteers.

LOUISVILLE, KY.,
October 22, 1865.

CAPTAIN: As you are about to leave the service of the United States, I take this opportunity to express my admiration of your ability, faithfulness, and efficiency as a soldier. I remember the various engagements in which you took a part from the time your regiment entered the service in 1862, until actual fighting ceased west of the Blue Ridge, and no person in our brigade displayed greater personal courage or rendered better service in the line of their duty than yourself. I hope your future may be as prosperous and happy as your past has been honorable and useful.

I am, respectfully, your obedient servant,

W. W. BARRETT,
Brevet Brigadier-General, United States Volunteers.

J. W. CHICKERING,
Captain and Commissary of Musters.

HEADQUARTERS MILITARY DIVISION OF THE TENNESSEE,
OFFICE CHIEF COMMISSARY OF MUSTERS,
Nashville, Tenn., November 14, 1865.

DEAR SIR: It is with great pleasure that I inform you that, your work being so nearly completed, the War Department has, on my application, authorized your muster-out of the United States service.

Upon discharging you, I take the opportunity of expressing my high appreciation of your service, which has been so ably performed.

Your willingness to remain in the service so long a time after the discharge of your regiment, to devote yourself to the arduous duty of assisting to muster out an army, deserves some acknowledgment, and I sincerely trust that the brevet commission for which you have been recommended will in due time be received.

For your kindness and attention during our official intercourse, you have my personal thanks, and with the hope that you may live long to enjoy the pleasant memories of field and camp,

I subscribe myself, your friend,

ALFRED L. HOUGH,
Captain and Brevet Major, Chief C. of M., Mil. Div. of Tenn., U. S. A.

Captain J. W. CHICKERING,
Eighty-eighth Illinois Infantry Volunteers

HEADQUARTERS MILITARY DIVISION OF THE MISSOURI,
Chicago, June 14, 1869.

Respectfully forwarded.

First Lieutenant and Brevet Captain Chickering, U. S. Army, formerly of 22d Infantry, served during the war of the rebellion in my division (of infantry), of the Army of the Cumberland. He was then in the 88th Illinois Volunteer Infantry, and one of the most deserving young officers under my command.

Captain Chickering's record and standing in the Regular Army since his appointment thereto is, I am informed, good. He is anxious to be placed on some active duty. In case an opportunity should occur, whereby his services can be used for the benefit of the government, I hope this paper will be considered.

P. H. SHERIDAN,
Lieutenant-General U. S. A.

A true copy.

JAMES W. FORSYTH,
Lt. Col. and A. D. C. Bvt. Brig. Gen. U. S. A.

The following is from Maj. Gen. Wagner's official report of the late battle of Franklin, Tenn.:

My staff acted with great gallantry and efficiency. I am under especial obligations to Capt. E. G. Whitesides, 125th Ohio Volunteers, A. A. A. G., Capt. J. W. Chickering, 88th Illinois Volunteers, commissary of musters, and Capt. J. L. Morgan, 93d Illinois Volunteers, division inspector, who are able, competent, and meritorious officers, and deserving of great praise for their efforts in rallying the troops.

WASHINGTON, February 2, 1876.

DEAR SIR: In answer to your communication of this date, I beg leave to say that, as you are aware, a court which makes a finding of guilty upon a charge under the 45th Article of War, as in your case, has no discretion or alternative in passing sentence, which is prescribed in the article itself, viz, dismissal.

Thus a finding of guilty under this article precludes any consideration of the degree of the offense.

Yours, sincerely,

W. LYMAN,
Captain Fifth Infantry.

Mr. CHICKERING.

FORT WAYNE, MICH., January 17, 1876.

DEAR CHICKERING: Among your many friends in the Army, none more sincerely sympathize than myself, and I think yours was an exceptionally hard case. I will say to you, to be shown my friends or acquaintances, that I knew you during nearly three years in the volunteer service during the war, and you served over three years in my regiment in Dakota, the most of that time at my post. You filled places of responsibility and positions requiring industry and intelligence, and filled those places well. I never knew you in a single instance to be absent, sick, or wanting in any respect, when called on for duty.

When you were left out of the Twenty-second by consolidation you were regretted, and you left with the respect of all. We believed you intelligent, energetic, and honest. I would add more, but believe this will convince any of my friends that I thought well of you and your services, and that I would like to see you fairly on your feet again.

Wishing you success and happier days, your friend,

D. S. STANLEY,
Colonel Twenty-second Infantry.

J. W. CHICKERING.

This is to certify that John W. Chickering, late first lieutenant Sixth Cavalry, was under my command at Fort Wallace, Kansas, and I considered him a good and efficient officer, and believe that if he is reinstated in the Army there will be no cause of complaint on his part.

LOUIS T. MORRIS,
Captain Eighth Cavalry.

SAINT DENIS, BALTIMORE COUNTY, Md.,
December 21, 1875.

MY DEAR SIR: In case it may be of any service to you in your future movements in life, I wish to express in this letter the opinion I have formed of you since we have been connected in business, nearly a year.

Your conduct toward me has been on all and every occasion that of a gentleman. You have always been sober, trustworthy, and diligent in whatever I have had occasion to request you to do.

You have my most sincere and best wishes for your future welfare and success.

And I am, most truly, your friend,

GEO. GRAY,
Civil Engineer.

J. W. CHICKERING.

SAN FRANCISCO, May 11, 1878.

DEAR SIR: In reply to your communication of the 22d ult., in which you ask me to make a statement of your services and character while you were serving in my company (D) of the Sixth Cavalry, I would state that I have known you since the month of June, 1871, when you joined the company as its first lieutenant, and that you served continuously in, the greater part of the time under my immediate command, till the month of September, 1874, during which time I have always found you to be an honest, faithful, and efficient officer in every respect. During the time referred to the company was employed in scouting duty from camp near Fort Hays, Kans., in 1871; from Fort Wallace, Kans., in 1872; from camp near River Bend, Cal., in 1873; and in the Indian Territory expedition against the Kiowa, Comanche, and Arapahoe Indians in 1874; in the latter campaign, and particularly in a charge made by a battalion of the command (under Colonel Compton) on the 31st of August, on a band of Indians, you were conspicuous for coolness and daring gallantry. I would also state that for some months previous to the expedition in which your unfortunate trouble occurred you were *strictly* temperate in your habits.

Very respectfully, your obedient servant,

JOHN A. IRWIN,
Late Captain Sixth Cavalry.

JOHN W. CHICKERING,
(Late First Lieutenant Sixth Cavalry, U. S. A.,) Washington, D. C.

There is filed in the record a certificate from the Third Auditor of the Treasury, dated January 22, 1878, showing that the accounts and returns of John W. Chickering, both as captain of the Eighty-eighth Illinois Volunteer Infantry and as lieutenant of infantry and cavalry of the Army of the United States, have been examined, found correct, and closed. This shows Lieutenant Chickering to have been a prompt and upright officer, who has disbursed necessarily large sums of the public money as quartermaster and as commissary at Fort Sully, Dakota Territory, and at Carlisle Barracks, Pennsylvania, also upon recruiting service, with integrity, honesty, and fidelity.

A drunken, worthless officer is not likely to be trusted with the disbursement of large sums of public money, or, if trusted, to pass honorable and commendatory examination of the rigid scrutiny of the accounting officers of the Treasury as has Lieutenant Chickering.

At the first session of the Forty-fourth Congress a bill passed the House of Representatives to correct Lieutenant Chickering's Army record, this with a view to his reinstatement; but Senator Cockrell, of your committee, reported adversely upon the same, not upon the merits of the case, but because the bill, by its terms, was in antagonism with the law of promotion. The bill now under consideration is not open to the same objection, and is judged upon its merits alone.

The testimony, *ex parte*, shows Lieutenant Chickering's habits to have been uniformly temperate and sober. Attention is directed to the letter of Capt. John A. Irwin, Sixth Cavalry, and the captain of the company to which Lieutenant Chickering belonged, who certifies to his good character and gallantry, especially commending his demeanor and daring in a charge made by his battalion on the occasion of a desperate fight with the Arapahoe, Kiowa, and Comanche Indians.

There is another important point involved in this case to which reference should be made. This officer was arraigned upon the charge of being "drunk on duty," in violation of the forty-fifth article of war, now known as the thirty-eighth article of war, which reads as follows:

ART. 38. Any officer who is found drunk on his guard, party, or other duty, shall be dismissed from the service. Any soldier who so offends shall suffer such corporal punishment as a court-martial may direct.

To make an officer liable to dismissal under this article, it must appear that he *was so on duty*. The evidence in this case fails, in the opinion of your committee, to show that fact, unless it could be *technically* so con-

sidered. The violation of this article of war could not have occurred technically; it must have been positive and direct in order to have brought the accused within its provision. The following is the report of the House Committee on Military Affairs of the Forty-fourth Congress, by which it will be observed and noted that the House committee examined this case with the same conclusions as those arrived at by your committee :

The Committee on Military Affairs, to whom was referred the bill (H. R. 1909) for the relief of John W. Chickering, having duly considered the same; ask leave to submit the following report :

This is a bill to amend an Army officer's record. From the record furnished from the War Department, it appears that this officer was tried by court-martial in December, 1874, and sentenced to be cashiered. The court consisted of but five members, the minimum allowed by law, three of whom afterward recommended Chickering to the clemency of the reviewing officer.

Your committee have examined the evidence, and find the same to be contradictory, and the weight of evidence seems to be in favor of the officer. The main question involved was whether or not the officer was on duty, and at best he could only be considered technically so.

Lieutenant Chickering has been in continuous service from the commencement of the late war, and his meritorious services are fully attested by Generals Sheridan, Stanley, Elliott, Kimball, and others. No such charge was ever brought against him before, and under all the circumstances the punishment is severe and excessive.

This bill requires no back pay for services not performed, and merely restores this officer after a suspension from rank and pay for a period of over one year. They therefore report back the bill, and recommend its passage.

The record is voluminous, and the questions involved are important. Your committee, therefore, are of opinion that this is an exceptional case; that Lieutenant Chickering is entitled, both legally and equitably, to the relief he seeks, and therefore recommend the passage of the bill.

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