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NAVAL.

AN EXAMINATION

OF THE

LEGALITY OF THE GENERAL ORDERS

WHICH CONFER

ASSIMILATED RANK

ON OFFICERS OF

THE CIVIL BRANCH

OF THE

UNITED STATES NAVY.

BY A SURGEON.

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NAVAL.

AN EXAMINATION OF THE LEGALITY OF THE GENERAL ORDERS WHICH CONFER ASSIMILATED RANK ON THE CIVIL BRANCH OF THE NAVY.

It is asserted that the President of the United States, or the Executive, has transcended the power, which the Constitution designed he should exercise, by issuing the General Orders, dated Navy Department, August 31, 1846, and May 27, 1847.* These General Orders, confer on medical officers and pursers in the navy, a relative or assimilated rank; or in other words, these General Orders simply define the position, determine with what classes or grades of officers of the line, officers of the civil branch of the navy shall be arranged in their social relations, and on occasions of ceremony; but carefully announce that the officers

* GENERAL ORDER.

Surgeons of the Fleet, and surgeons of more than twelve years, will rank with commanders.

Surgeons of less than twelve years, with lieutenants.

Passed assistant surgeons, next after lieutenants.

Assistant surgeons not passed, next after masters.

Commanding and Executive officers, of whatever grade, when on duty, will take precedence over all medical officers.

This order confers no authority to exercise military command, and no additional right to quarters.

GEORGE BANCROFT.

NAVY DEPARTMENT, *August* 31, 1846.

GENERAL ORDER.

Pursers of more than twelve years will rank with commanders.

Pursers of less than twelve years, with lieutenants.

Pursers will rank with surgeons according to date of commission.

Commanders and Executive officers of whatever grade, when on duty, will take precedence of all pursers.

This order confers no authority to exercise military command, and no additional right to quarters.

J. Y. MASON.

NAVY DEPARTMENT, *May* 27, 1847.

of the civil branch are not to exercise any military authority, or to be released from proper obedience to it. The General Orders in question do not effect any change in the actual organization of the navy; they neither take away nor give power to any grade of persons in the naval community.

The General Order of the Secretary of the Navy, dated August 14, 1846,* makes a change in the organization of the navy, and virtually creates a new grade in the service. It provides for appointing, by warrant, the oldest passed midshipmen to the grade of master, and places the grade of masters in the line of promotion.

Up to this time, officers of the military branch of the navy, have not expressed any suspicion of the legality of this order, or doubted the authority of the Executive to issue the order.

The General Order of the Secretary of the Navy, dated August 17, 1846,* also makes an important and valuable change in the organization of the naval service. It provides that no naval constructor shall be appointed in the navy, without previous examination and approval by a Board, convened for the purpose, under authority of the Department. This General Order also provides, that no boatswain, gunner, carpenter,† or sailmaker shall be appointed, without previous examination and approval by a Board designated for the purpose.

But the legality of this order stands as unquestioned by the military branch of the navy as the other.

Then, by what authority can the Executive issue General Orders, or Regulations affecting the organization of the naval service, in face of that article of the Constitution which declares, that Congress shall have power "To make rules for the government and regulation of the land and naval forces?" Is Congress competent, under the Constitution, to delegate its power; or is it absolutely necessary that the rules and regulations for the government of the army and navy, must be made by the same process, and under the same formalities as those observed in the enactment of statute laws?

Those who are opposed to the existence of an assimilated rank for officers of the civil branch of the service, place great reliance on this clause of the Constitution, which they have interpreted to suit their own views on the occasion. In support of their opinions they appeal to the act of April 23, 1800; and to the act of February, 7, 1815. The latter act, "to alter and amend the several acts for establishing a Navy Department, by adding thereto a Board of Commissioners," authorizes this Board, "*by and with the consent of the Secretary of the*

* See Navy Register.

† See Navy Register.

Navy," to prepare rules and regulations, for certain purposes, namely, to secure "an uniformity in the several classes of vessels, and their equipments, and for repairing and refitting them, and for securing responsibility in the subordinate officers and agents," but not for every and all purposes? The act provides further that these "regulations, when approved by the President of the United States, shall be respected and obeyed, *until altered and revoked* by the same authority." It may, therefore, be fairly inferred from this act, that the President has power to "alter" or "revoke" any rules which may have been adopted previously by himself, or by his predecessors in office? The Navy Commissioners were merely to act in the matter of rules and regulations, under the sanction of the Secretary of the Navy and President, who are expressly authorized in the act, at any time to revoke or alter any of said regulations, and by inference, to issue new rules and regulations, touching the objects contemplated in the law.

Thus far, then, Congress has delegated its Constitutional power of making rules and regulations for the government of the land and sea forces, to the Executive. Will the opponents of assimilated rank now call in question the right, ability, or power of Congress to delegate its power in this matter? We think not, because they advocate the legality and force of the so-called "Commissioners' regulations." They seem to have overlooked the fact, that this act of February 7, 1815, while it gave authority to make rules and regulations, also gives authority to alter, annul, or substitute other rules and regulations in their place, requiring only, in spirit, that whatever the rules and regulations might be, they should be prepared by the Commissioners, with the consent of the Secretary of the Navy, and approbation of the President of the United States. Therefore, this act absolutely gives full power over the subject, so long as the Board of Commissioners was in existence, or up to the passage of the act of August 31, 1842. If the commissioners were *subordinate* in the power to make regulations, their exclusive acts have no force; and if *co-ordinate*, their power was inherited by the President and Secretary of the Navy, when they officially died on the 31st August, 1842. But the entire control of the whole subject actually rests with the Secretary of the Navy and President of the United States; the Navy Commissioners were merely to suggest, but nothing more. No power was given to them in the premises exclusively; and it is probable that they were associated with the Executive, simply on the ground that the subject was technical, and they were presumed to possess the proper knowledge to enable the Executive to act. As it is, the code of Commissioners' Regulations has become obsolete from

desuetude, and from the fact that many of the rules have been superseded by others. The Commissioners' Regulations gradually fell into disuse from their impracticability, and from the changes which time has brought about in many branches of the naval service. We look into this code in vain to find anything applicable to steamers for their government, equipment, and repairs; or responsibility of naval officers and others serving in them.

If there be any naval officer so bold as to question the right of Congress to delegate its power to the Executive, we commend to his attentive study the concluding paragraph of the eighth section of the Constitution: namely—Congress shall have power—"To make all laws which shall be necessary and proper for carrying into execution the foregoing powers vested by this Constitution in the government of the United States, or in any department or office thereof."

But there is another view of the question of Executive power in the premises.

The Constitution provides that "The President shall be commander-in-chief of the army and navy of the United States." But it is presumed, the framers of the Constitution did not design that he should ever take the field in person, or the sea, under the flag of chief admiral, or alternate between ship and shore, as did a commander-in-chief recently on the coast of California. The title of commander-in-chief, as applied to the President, must not be taken in the ordinary acceptation of the term. The title gives him powers which no commander-in-chief, as the term is ordinarily understood, ever possessed, or ever attempted to exercise. The President's power, as commander-in-chief, extends to absolute and unlimited control over the commission of every officer in the army and navy of the United States. Gentlemen may ascertain this fact by reading their commissions; they will find they are to be in force only during the pleasure of the President of the United States. The President may strike off the name of any officer from the list of the army or navy.

A major proposition must always include the minor, or those necessarily subordinate to it. The President cannot be commander-in-chief of the army or navy in the sense designed, without also possessing the power and authority incident to, and necessary to the exercise of this part of his official duties. It was not necessary for the Constitution to provide that all officers of the army and navy shall obey the commander-in-chief, because obedience from them is incident to the office of supreme control. Various powers are necessarily incident to the commander-in-chief; and if deprived of these incident powers, his efforts to command would be abortive. It is competent for the President, as we have seen,

to annul a commission, with or without assigning his reasons for so doing. He may nominate a midshipman to the office of captain in the navy, and, with the consent of the Senate, set aside all rules of promotion; and in the same manner, promote a second lieutenant from one arm of military service to be a colonel in another. Or, he may place a citizen in command of an army, or fleet provided the Senate approve his nominations. All this has been done, in virtue of the President being commander-in-chief of the army and navy; he is supreme, under the Constitution and laws.

It would be gratuitous, idle to contend that a commander-in-chief of an army, as Lord Wellington at Waterloo, or General Scott in Mexico, because entitled commander-in-chief, possesses the same powers as the President of the United States in his capacity of commander-in-chief of the army: or that, the senior officer of a squadron or fleet on a distant station, acting as commander-in-chief, has the same powers as the President in his capacity of commander-in-chief of the navy of the United States. The powers of the President are of the nature of those of the throne of Great Britain: all the military and naval authority indirectly emanates from him; it is his signature which gives validity to every commission in the service. But such power does not rest with our commanders-in-chief in the army or navy; they are all subordinate, and have no necessity for such powers; they can neither give nor take away commissions arbitrarily, and the acting appointments occasionally given by them, *ex necessitate rei*, are always subject to the approval or disapproval of the Executive.

To descend to smaller matters:—The President has entire control over the costume worn by all persons serving in the army and navy, and may change the uniform dress, as he does in fact, from time to time, without the legality of his act being even questioned or questionable. But a general, serving as commander-in-chief of an army, or a captain, commanding in chief a fleet or squadron, could not regulate the uniform dress of the officers serving under him. Such an assumption of power would be quickly questioned, and an early attempt made to resist it. The right to regulate the uniform dress of the army and navy by the President, is incident to his power as commander-in-chief, and up to this time, no one has suggested that it was the duty of Congress to prescribe the "uniform," under the clause of the Constitution which gives Congress the power to make rules and regulations for the government of the land and sea forces.

The Executive has the right, under the Constitution, to do any thing, issue any order, or regulation which may be necessary to enable him to efficiently discharge his duty as commander-in-

chief. He may direct, for example, the youngest colonel of the volunteers, to march with his regiment, or without it, in advance of the oldest colonel of the army. He may place the youngest captain in the navy, in command of the largest and finest ship in the service; he can order passengers of every class and description to be carried in our public ships, and designate the apartments they shall occupy; and further, he can order citizens to be received with military honours, and to be treated as captains, or commanders, or lieutenants in the navy, as he may deem proper, without being required under the law to assign his reasons. There is no legal impediment to prevent him from giving the cabin to the midshipmen, and the steerage to the captain; or the ward-room to the civil branch of the service exclusively, and place the captain and lieutenants in the same mess. It is true, there is a regulation by the Navy Commissioners on the subject, but the law of February 7, 1815, authorizes the President to "alter" or "revoke" all these regulations. But the Executive will never do any thing unreasonable or absurd, to demonstrate to the service the extent of the powers incident to him as commander-in-chief.

In the creation of assimilated rank then, wherein has the Executive exceeded his constitutional powers? The word or term "assimilated rank," is technical, and simply means classification, or comparative classification. To say a surgeon has the assimilated rank of a major in the army, does not mean that the surgeon has the same authority, power, grade or rank of the major, but that the surgeon is classed or placed in the same class as the major, and the latter is in fact the criterion or measure by which the surgeon's military respectability is measured. He is a major in every respect, except in the right to command soldiers in the field, the right to be promoted to a higher grade; and although the surgeon may, in consequence of seniority, take precedence of the major on occasions of ceremony, &c., the major is never subject to obey him for any strictly military duty.

It is contended by the opponents of the Executive, that rank has been regulated by clear and precise law. But when called upon to produce any "clear and precise law" on the subject, they answer, we do not know that any statutory enactment, defining the rank of officers can be found in any code; but we believe that the rank of officers is determined by the military common law. They define the military common law of the navy to be, "the usage of the sea," "the laws and customs of the sea,"—and to support this position quote the acts of March 2, 1799, and of April 23, 1800. Both these acts simply provide punishments for various crimes and offences, and then, after specifying several crimes, they both conclude, to cover all omissions and defects of knowledge in the legislators of the time, with a sweeping clause to

the effect that all crimes "not specified in the foregoing articles shall be punished according to the laws and customs in such cases at sea;" all of which reminds one of the conclusion of a weary auctioneer's inventory, "and other articles too numerous to mention."—The defects of the naval laws, their indefinite terms, even puzzled the Supreme Court, which expressed the grave opinion, that if there was no law for the formation of a court-martial, it must be formed in accordance with some precedents, or the custom on like occasions. There was good sense in this, because it is quite clear, if there be no law to govern special action, the action must be had, if at all, without reference to anything but the best lights we have in the absence of law. It is related of a grave doctor who was refused calomel when he asked for it, that he declared the case was very plain:—if you have not got it, you cannot be expected to give calomel to your patients—"if you can't get calomel, you don't give calomel, that's all."

Unless we are very much in error, the term common law simply means a rule of action, deducible from common custom or usage, or decisions in accordance with precedents, in cases not covered by statutory enactments, constituting the *leges non scriptæ* of lawyers. Therefore, to establish a common law on any point, it is necessary first to establish that there is a usage, custom or habit, or general opinion on that point. Can we easily, on these principles, settle a military common law for the navy? A former learned Secretary of the Navy declared, on one occasion, there was no usage in the service—that Captains observed no laws or rules in common, but each acting according to his own notions of right, different customs and usages prevailed on board of different vessels—each Captain made rules and regulations for the internal government of the vessel for himself, and these codes differed widely from each other. And the exclamation of a well-remembered officer, long since departed to other scenes, that "laws were not made for post-captains," seems to corroborate the notion, that the usage of the naval service has scarcely settled a single point in it. It is this state of things which has led to the several efforts to establish a universal code of regulations, to cover all points, and give uniformity in the administration of affairs in all vessels of the navy. It was this acknowledged absence of usage, properly so called, which led to the code of regulations, submitted by President Jackson, to Congress, for approval December 23, 1833, and the code of February 19, 1841, issued or designed to be issued by Secretary J. K. Paulding, who directs that these regulations "are to be obeyed until revoked or altered by competent authority." They supersede the Commissioners' regulations? Then we have the code submitted, by Secretary A. P. Upshur, January 13, 1843, to Congress for approval. In

the mean time, various general orders have been issued to cover different points, but the navy is still without any code of regulations, which is generally recognised as conclusively authoritative.

The gentlemen contend for the force of a military common law, and assert that they have precise rights under it. If a military common law exist, it is not limited to the navy, but prevails in all military communities. It cannot give rights to subordinates, and deny the same rights to the supreme head of a military organization; the practice of the crown of England, in the exercise of the functions of commander-in-chief, would, on the military common law principle, give similar rights to the President of the United States.

The opponents of the Executive in this matter, refer to the act of March 27, 1794, which is obsolete, but we do not propose to deny them the benefit of it in the argument. This act (" to provide a naval armament") authorizes the President to provide by purchase or otherwise four ships of 44 guns, and two ships of 36 guns each; and to appoint for each frigate one captain, four lieutenants, one lieutenant of marines, one chaplain, one surgeon and two surgeon's mates, who are to " be appointed and commissioned in like manner as other officers of the United States are." The act further provides for the following warrant officers, for each of the frigates, " to wit: one sailing-master, one purser, one boatswain, one gunner, one sail-maker, one carpenter and eight midshipmen," &c. &c. This act provides for the pay and rations of officers and men, and that if " peace shall take place," " no further proceeding be had under this act."

The opponents infer from this act, although not a word is said about rank, that the Captain is to command all, and the lieutenants ranking among themselves by seniority of commission, as an aggregate, rank all others.

There is nothing in the act itself which authorises this inference; on the contrary, if we confine ourselves to the meaning of the words of the act exclusively, it might be inferred that all who are " appointed and commissioned in like manner," are to be regarded as equals, at least in one sense, without special reference to the nature of their duties. All that can be fairly deduced from this act is that " the naval armament " was to be made up of different grades and denominations of officers, and different classes of vessels; but it does not follow as a necessary consequence that because the captain was to command the whole, that the lieutenants were necessarily the superiors of every other officer named in the law. It is not necessary to examine into the assumption of authority, which has been practised from that time to the present,

because assumption of authority cannot affect the argument in any manner.

Our opponents refer to the act of February 7, 1815, which provides for the creation of a board of navy commissioners, and infer from it that *rank* has been established by law, because the act declares the board shall consist of "three officers of the navy whose *rank* shall not be below a post captain."

It is suggested that legislators are not all skilled in philology, and do not always use such words as will best convey their meaning. The design and purpose of this portion of the act would have been attained, and as clearly understood, had the framer of the law substituted the word *grade* for the word *rank*, which words are not exactly synonymous in their acceptation. If the act had read, "the board shall consist of three officers of the navy whose *grade* shall not be below a post captain," what effect would it have had on the constitution of said board, and what would have been its effect on the argument of our opponents? If we were to say that the military branch of the navy is composed of three *grades* or *degrees*, namely, the *grade* of captains, the *grade* of commanders, and the *grade* of lieutenants, and that the officers of these respective grades *ranked*, that is, were placed in order or arrangement, or precedence, with each other, according to number or date of commission, and that the *grade* of captains *ranked* before the *grade* of commanders, and the latter *ranked* before the *grade* of lieutenants, we should be clearly understood.

As the intention of the law is not varied by the substitution of a word, it cannot be inevitably inferred that *rank* was fixed by law, as the term is understood by our opponents. We might even suppose the word *class* substituted for *rank* in the law, and still perceive that the intention of the act could not be misconstrued, namely, that the board should be constituted of three post captains; consequently, although we contend that the Executive has a constitutional right to declare that surgeons and pursers shall have *assimilated rank* with post captains, it would not follow that he could legally regard surgeons and pursers as members of the grade or class of post captains, and therefore be authorised to substitute surgeons and pursers for post captains, as navy commissioners. The premises are false; such argument is absurd.

It is contended that the operation and objects of a navy are purely military; and, therefore, all persons serving in a navy, no matter what may be their vocation, must be subject to military laws, either statutory or common. And for this reason, it is proper that the position of every man in it, should be clearly defined, relatively to all others of the same community. But we do not admit that all rights, privileges, and courtesies,

belong of right exclusively to the purely military branch. It is against this violent assumption we contend, and not against any right or privilege, which is clearly necessary to the discharge of duty by military officers in the navy.

The opponents of the Executive on the question before us, urge upon our consideration the long apprenticeship necessary to educate the military officers of the sea in their duties. The government receives the boy, and pays him, and instructs him at considerable expense, through a series of years, before he is competent to return an equivalent in service for the money spent upon him. And this fact is brought forward as a reason, why they should be entitled to precedence on all occasions, of those unfortunate men who are educated and instructed at their own expense, or that of their parents, and render an equivalent for their pay from the first hour of their admission into the navy. Our opponents intimate that officers for the civil branch of the service can be picked up anywhere, and at any time among citizens, who are all well enough instructed for the purpose. Consequently, they should be regarded as inferiors in rank, that is, in relative position.

They appeal to the early period of our history, but forget that the commercial marine furnished us with our naval heroes,—Paul Jones, Hull, Decatur, Bainbridge, and the rest; and, therefore, do not imagine that the present merchant marine contains as accomplished seamen as the world ever saw, men who could be converted into efficient officers in the course of a few months, if a necessity for their services should arise.

Our opponents contend that because surgeons and pursers are excluded from the exercise of military command, they are necessarily released from military obedience! and, consequently, since they have assimilated rank, they can no longer be held amenable to military authority at the mess table,—that there is no place where the assertion of military superiority and authority is so necessary as at mess, and that no point is of more acknowledged importance and necessity; and, therefore, it is here that assimilated rank operates most injuriously to the discipline of the service.

This is the purest piece of pretension and assumption. What! Is it possible that a mess, a company of gentlemen cannot be assembled around the social—the family board—without the necessity of the exertion of military authority by the lieutenants of the mess! Is it indeed true, that the assumption of military authority has been habitually exerted, and that all come to table like officers on parade, or soldiers on drill. Is there a manual of table exercise?—handle your spoons, dip, eat away! How can liberal gentlemen, even jestingly admit that this is the case, and forget that the caterer, the head of the mess in fact, is cho-

sen by the whole, and that the surgeon, purser, chaplain, or marine officer, as frequently acts in this capacity as a lieutenant? But admitting that military authority is exerted by the lieutenants at mess-table, it forms in itself, a sufficient reason why all officers of the civil branch should be protected by an assimilated rank.

In the British army, all officers of a regimental mess meet at table on an equality—military rank is for the time laid aside, and all assemble at table simply as gentlemen, and to prevent even the semblance of difference of military rank, the dress of all the officers is precisely the same in many, if not in all regiments. Each officer in turn, serves a week, as President and Vice-President at table; and the youngest ensign as President will be as respectfully appealed to by the senior officer, as the Colonel himself when it becomes his turn to preside. But according to the opponents of an assimilated rank, the mess-table is to afford no relaxation from the formal requirements of a military organization, and the whole period on board ship, sleeping or waking, eating or dressing, from the beginning of the cruise till its termination, must necessarily be passed in military parade, and in humble submission to military authority, no matter by whom exerted. What man from civil life would cheerfully consent to be pent up in a ship on such terms!

The gentlemen of the opposition side of the question urge that the General Order of the Secretary of the Navy is inexpedient, on account of the clause which gives precedence to executive and commanding officers of whatever grade, before any medical officer or purser, without regard to the degree of his assimilated rank. They suppose instances, to show the difficulties to which this exception in favour of the military branch may lead.

The case assumed is nearly, if not precisely this. Commander No. 50 is an executive officer at a navy yard, and commander No. 40 (therefore senior to the other), is on duty on the station, but not as an executive officer. Surgeon No. 20, whose assimilated rank gives him precedence of both these commanders, is also on the same station. These three officers are placed on duty as a Board for a special purpose; and the point is, which of the three, under the order in question, shall preside? The junior commander, No. 50, it is contended, in virtue of accidentally being an executive officer, has a right to precedence of the surgeon, but the surgeon has, under the order, right to precedence of the senior commander, No. 40. Now, although captain 40 might yield to surgeon 20, he cannot, in consequence of his lineal rank, yield to captain 50. This is quite an intricate case, and shows pretty clearly, that the General Order, would have operated better if the exception had not been made in favour of executive officers, since captain 50 cannot perceive that the instant he be-

comes member of a board for a special purpose, he necessarily ceases to be executive officer for the time, and should therefore yield, with captain 40, to surgeon 20, the proper President of the Board, thus constituted.

When an executive officer, first or senior lieutenant of a ship, is appointed a member of a court martial, his functions as executive officer necessarily cease during the session of the court. He takes his place in virtue of his lineal rank; his office of executive officer is not recognised. The same is true of a lieutenant acting as commander, a lieutenant-commanding; he takes his place in the court in virtue of his lineal rank; the accident of temporary command does not elevate him in the contemplation of the law, above the grade of his commission.

This will seem, no doubt, a very monstrous opinion, unless it be admitted, that if the duty required of the Board be of such a character that a surgeon is qualified to take an equal part in it with two commanders, there can be no very imperative reason why his seniority should be set aside. The duty on which such a Board would be convened, would not be purely military; and if seniority were given precedence, as should be the case in such mixed Boards, it is not apprehended that the public service could possibly suffer, or that any such tangled instance would occur. The authority assembling a mixed Board would generally be able to select officers of the proper lineal and assimilated rank to prevent difficulty or collision of the nature suggested, and thus relieve the sensitive commander or lieutenant from the chance of direction by an experienced or aged surgeon or purser; and if he could not, what harm would arise to the service?

If the General Orders conferring assimilated rank made no exceptions in favour of the military officers, but was permitted to take effect according to date of commission, no difficulty could arise. Assimilated rank does not claim to release surgeons and pursers from discharging their respective duties; and it is not likely that the discipline or efficiency of a ship would be injured, even if both the surgeon and purser of the vessel were entitled by their assimilated rank to descend to the boat after the first lieutenant, and to reach the deck before him. In cases of mixed Boards, there could be no case requiring the services of surgeon or purser, which could not be as efficiently and faithfully attended to under the direction of either as under that of a military naval officer. It is not very probable that any case can occur in which the authority ordering the Board could not avoid all difficulty by judiciously selecting his men.

On courts martial, the law requires that officers shall take position according to date of commission; that the senior shall preside, and the junior vote first. There has been one court

martial in the navy at which medical officers and pursers sat as members. The charge tried was murder; the prisoner was sentenced and executed. The majesty of the law was as fully defended, and justice as faithfully executed, as if all the members of the court had been exclusively military officers of the navy. There is no very cogent reason why commissioned officers of any grade or class, in a military community, should be excluded entirely from sitting as members of courts martial. There are certain crimes which all can appreciate, and all are competent to decide upon, according to testimony; and the authority convening a court should have sufficient discrimination to know when to assemble a mixed court. A mixed court would be competent, for example, to try the charges of drunkenness, murder, perjury, violating seals, desertion, fraud, &c.; all of which, unfortunately, are recorded among the occasional crimes in the navy. In a case where the charge involved the professional knowledge or capacity solely of an officer of the military branch, the court should be exclusively made up from the military branch; but if the prisoner be a medical officer or purser, he should be tried by a court, one-third of whose members, at least, should be of his own grade.

It is suggested by the opposition, deprecatingly, that if the Executive have authority to regulate assimilated rank, it is possible that a court martial composed of surgeons and pursers might be directed to inquire into the military acts of the senior captain in the navy, or, as a court martial, sentence him to lose his commission for want of skill in the management of his ship. This seems horrible to contemplate; but it would not be more outrageous than to employ a court martial of captains to determine the professional skill of a surgeon in the management of the sick and wounded, or the religious doctrine or theological ability of a chaplain to instruct seamen in their moral duties.

On a court composed of grades from both the military and civil branches of the navy, the precedence of the grades should be first determined, because the law designs that precedence among those of the same grade shall be according to date of commission. The precedence of the grades of the military branch is soon determined; but it is not so easy to settle the position of the grades of the civil branch, so long as it is asserted that officers of the civil branch of the service have no rank, or even the shadow of military character. The difficulty vanishes the moment they are assigned an assimilated rank; they then fall naturally and easily into their places, and the business of the court, or mixed board, may go forward without hindrance.

If it be determined, for example, that surgeons and pursers shall be assimilated in rank as commanders, and assistant surgeons and assistant pursers as lieutenants, to rank, take precedence ac-

cording to date of commission, a mixed board or court would as readily "come to order" as if it were constituted of one grade exclusively.

The necessity and propriety of establishing an assimilated rank must be obvious when we see the difficulty of settling without it the relative position of members of a court martial, who may be drawn from different branches of the naval service. The same is true of boards of survey on persons or property; where, although there is nothing in the nature of the duty which would disqualify a citizen for discharging it, officers of the line in the navy contend that all duty is military, and therefore it is improper for an officer of the civil branch of the service to preside, because the very first step on a board of survey or inquiry, requires the presiding officer to command, give an order when and where and how the board shall proceed to discharge the duty assigned to it; that it would be monstrous to permit a surgeon or purser, no matter what might be his age and experience, to have the right to say to two young lieutenants, associated with him, for example, to determine whether a barrel of beef or pork were putrescent—they contend it would be monstrous, ruinous to the service, to permit a surgeon to say in such a case, "Gentlemen, we will examine the beef at twelve o'clock on deck;"—and still more terrible would it be to permit the old surgeon or purser to place his signature to the joint report before the others. They contend that this kind of precedence is *de facto* military command, and endeavour to sustain their position by reference to the General Order of the Department, which declares "This order confers no authority to exercise military command."

It is suggested that the meaning is, that no medical officer, in virtue of his assimilated rank, has a right to order an officer of the line to muster his division at quarters, to exercise great guns or small arms, "to make or take in sail," or interfere in any manner with his nautical or military duties. But it cannot mean that he shall not have precedence, in virtue of his assimilated rank, when associated with officers of the line on special duty, such as boards of inquiry, survey, or courts martial. Although belonging to the civil branch, surgeons, pursers, &c., are not civilians, but military in character; and all their duties must be discharged as military men, and not simply as citizens. Although it is not their duty "to point the guns," or trim the sails of the ship to the wind, they are important parts of the military organization of the navy, governed by military laws, and partake of a full share of the inconveniences of military life at sea, and may, without incurring the charge of presumption, claim to have defined, according to military rule, their position, rights, and privileges.

We beg to refer to our own army to illustrate our propositions in the premises; but before doing so, it is necessary to examine an assumption brought forward by the opponents of the Executive.

It is understood that these gentlemen declare that, having made proper inquiry, and diligently investigated the whole matter, they are surprised to find that surgeons and paymasters do not enjoy the assimilated rank of major—that nothing of the sort has ever been conferred upon them, or ever attempted, either by the President of the United States, or the Secretary of War—that the articles of war, and army general regulations, old and new, are all equally silent on the subject—they have anxiously inquired at the Adjutant-General's office, and to their astonishment discover that, in spite of all that has been said on the subject, it is not true.

In reply to this assertion, the gentlemen are confidently referred to the "General Regulations for the Army or Military Institutes," revised by Major-General Scott, and printed at Washington, 1825. It is believed, these regulations were first promulgated under the administration of the War Department, by the Hon. J. C. Calhoun, and subsequently under the administration of the Hon. James Barbour. Reference may be made also to the "General Regulations for the Army of the United States, 1841." But the following extracts from the acts of the second session of the 29th Congress, may be regarded as conclusive testimony on this disputed question.

In the eighth section of an act, entitled, "An act to raise for a limited time an additional military force, and for other purposes," and approved February 11, 1847, may be found the following words: "that the rank of the medical department of the army shall be arranged on the same basis which at present determines the amount of their pay and emoluments, *Provided*, That the medical officers shall not, in virtue of such rank, be entitled to command in the line or other staff department in the army."

Now, what is the basis which determines the amount of the pay of the medical department? The act of Congress which regulates the pay of the medical officers of the army, says: "the surgeon shall receive the pay and emoluments of a major of the staff; an assistant surgeon of five years' standing, the pay and emoluments of a captain, and an assistant surgeon under five years' date, the pay and emoluments of a first lieutenant of the staff." Thus, then, the assimilated rank of the medical officers, relatively to the officers of other staff corps of the army, and as a consequence, relatively to the officers of the line of the army, is virtually established by the laws of the land.

Again: "Chap. 61. An act making provision for an additional number of general officers, and for other purposes," approved March 3, 1847.

"Sect. 13. *And be it further enacted*, That the officers of the pay department, shall have rank corresponding with the rank to which their pay and allowances are assimilated: *Provided*, That paymasters shall not, in virtue of such rank, be entitled to command in the line or other staff department of the army: *Provided, also*, That the right to command in the pay department, between officers having the same rank, shall be in favour of the oldest in service in the department, without regard to the date of commission under which they may be acting at the time."

We now assert, and presume that something more than has yet been shown must be produced to prove the reverse, that both surgeons and paymasters have rank in the army of the United States, both by regulation and law.

The next question to be answered is what is the degree of assimilated rank given to medical officers by law and regulation?

The regulations of the army, 1841, were framed under the administration of the War Department, by the Hon. Joel. R. Poinsett. In the 5th paragraph of those regulations we find that, "staff officers of the army and professors and teachers, and their assistants of the Military Academy without military rank, are not entitled to military command, though they may take their places on Boards and Councils, according to their assimilated rank, and duties of appointment," further, "they (the staff officers) will be classed as follows, viz.:

The Paymaster-General, The Surgeon-General, &c. &c.	As Colonels.
The Surgeons, The Paymasters, &c. &c.	As Majors.
Assistant-Surgeons who have served five years, Military Storekeepers, &c. &c.	As Captains.
Assistant-Surgeons, under five years, Assistant-Teachers of the Military Academy, &c.	As First Lieutenants.

The opponents of the Executive on this question of assimilated rank, with the laws, and army regulations before them, declare that surgeons and paymasters have no military character or rank, and that they cannot in any case be appointed or sit as

President of a Mixed Board, or Council. The above regulation says, "they may take their places on Boards and Councils, according to their assimilated rank."

If surgeons have no rank in the army, no military position relatively to other commissioned officers, by what authority are they made eligible to seats on Boards of Survey and Councils of Administration; why is it that they are almost invariably selected for this service?

If surgeons were without rank or military character of any kind they could not, *to the exclusion of officers with military rank, present on the station*, be detailed for service on Boards and Councils. What then is their military position or rank? It is not that of second lieutenant, or they could not sit, as they do, above a first lieutenant on a Board or Council. It is not that of a first lieutenant, for then they could not sit above a captain. It cannot be that of a captain, for then they could not sit above a major. Nor can it be that of a lieutenant-colonel, or colonel, for the reason that they are never permitted, by courtesy or otherwise, to come up to those degrees of rank!

Now, what is the military position or rank of surgeons in the army? Both the regulations and laws clearly assign to surgeons and paymasters the assimilated rank, or relative military position of majors in the army.

One more point of the army regulations remains to be considered. The 5th paragraph says that "officers of the army, not having military rank, shall in no case be appointed, or sit as President on a Mixed Board or Council;" but the 170th paragraph of the same regulations, declares that "the commanding officer of every post, shall at least once in every two months convene the three officers, including the medical officer, next in rank to himself, which body shall constitute a Council of Administration."

The meaning of these apparently conflicting regulations seems to be this: the surgeon may be detailed as a member of a Board by the military commander of a post, whenever he can sit on it "according to his assimilated rank," or in other words, whenever there is a senior officer with military rank present to preside. It is unreasonable to suppose that the army regulations contain anything which requires that the military rank or assimilated rank of any officer in the army should be violated on any occasion. The surgeon, if he sit on a board, must take his place "according to his assimilated rank;" he must be there not as a physician, but as a military man, and sit in the capacity of a major, or not at all. It is an absurdity to suppose that the regulations of the army require a surgeon to serve one day as a major, another as a captain, and a third as a lieutenant; sitting

at one time on a Board, between two majors, and at another below a second lieutenant!

It does not follow, because a junior officer of the line, a captain for instance, accidentally in charge of a post or regiment, must necessarily have command of the troops, and the general control of all persons on duty at the post; it does not follow on this account that his rights to control all who have no military rank, should also be exercised by the second or third officer of the post possessing military rank. It is not necessary that a junior officer of the line, associated on temporary duty with the surgeon, and both acting under the immediate orders of a common superior, should have precedence of the surgeon.

The captain does not command the post, and with it the surgeon, because he is a captain, but for the reason that he is the senior officer of the line present for duty. The surgeon, in discharging his proper *professional* duties at a post where a captain commands, is not degraded from his assimilated rank of major; the captain is elevated. Whenever the command of a post or regiment devolves upon a captain, he falls into possession of all the rights of a colonel or lieutenant-colonel; he is virtually advanced in grade, and consequently, exercises all the power which legally belongs to the highest officer in command of a post or regiment.

The opponents of assimilated rank and advocates of the supremacy of military rank, under all circumstances, contend that all duties performed by officers and men in a military service is military duty; that precedence is command, and that the right to preside over a board of officers, no matter how constituted or for what purpose, implies the right of command, and that the right of command belongs exclusively to those officers who possess military rank.

The duties which belong to boards of survey, of inquiry, or to councils of administration in the army, strictly speaking, are not military duties. There is nothing in their nature which has any connexion with *armed* service; there is nothing in them relating to the *disciplining* or *control* of troops or men, nothing which strictly appertains to *war* or the *science* of war. They are civil duties, common-place matters of business, such as can be performed by citizens as well as by military men.

There is but one command, and, therefore, but one commanding officer at a post or on board a ship. The right of command, or general control over officers, men and things, does not descend below that military commanding officer; consequently, the president of a mixed board of officers, does not and cannot exercise military command over the board. Further, it may be stated in this place, there is no necessity for the right of control over sur-

geons and their assistants, pursers, chaplains, secretaries, marine officers, &c., being vested in any but the military commander of the ship. It is not required for the efficiency or discipline of the service that any military officer should possess the right to command officers of the civil branch, except the military officer in command. The duties of the surgeon would not be more efficiently, faithfully or skilfully performed by making him subordinate to every military officer on board; nor would his efficiency be lessened by making him subordinate to the captain or commanding officer exclusively.

It is confidently believed that, in the army, while there is a common superior present for duty, one captain has no right to command, and exercises no command over a junior captain or the company of that captain; his right to command, under the circumstances, being limited to the subordinates in his own company. In discharging the ordinary duties of the post, he takes precedence of juniors to him in rank, not as their commanding officer, or in consequence of his limited right to command, but in virtue of the seniority or superiority of his commission. When placed on a mixed board of officers for special duty, (the right of command or of general control being already vested in the common superior) he does not serve as a military commander, but as a member of a special commission, and takes a place, or should take a place on it, according as he is senior or junior to the officers associated with him on the Board, no matter whether their rank be military or relative, lineal or assimilated.

But what is the insuperable objection to an officer without military rank, or even a citizen, presiding over a Board, constituted of officers with military rank as members, engaged in the business of the public?

The Secretaries of War and of the Navy have no military rank; yet, if the Secretary of the Navy were associated, by order of the Executive, with two or four of the senior captains in the navy, to form a board for the consideration of an important naval matter, it is presumed, that the Secretary would be appointed to preside. The chiefs of the several bureaux in the Navy Department have precedence of all officers of the navy, without regard to seniority of commission; there are twenty or more captains on the list, senior to the present chief of the Bureau of Yards and Docks, but he has authority, in virtue of his office, to require obedience from his seniors, who can derive no benefit from their superior military rank. While acting as chief of the bureau, his lineal or military rank becomes passive; it neither gives nor takes away his right to precedence for duty. Officers associated for a special duty, in a similar manner, cease to require the virtue of

military rank to enable them to discharge the duty of a board of survey or consultation.

The chief of the Bureau of Provisions and Clothing, has the right to obedience from captains in all matters pertaining to his office. The head of this bureau should have been an experienced purser; the first chief was a citizen, the second a captain in the navy, and at present the office is under the control of a citizen. The powers of the office are unchanged.

The chiefs of the bureaux have no military rank; if lineal rank were necessary to enable captains in the navy to discharge the duties of bureaux chiefs, it would be absolutely essential to appoint in these situations, not the most intelligent, honourable and skilful, but the oldest officers. The department and public service would be deprived of the benefits arising from discrimination and selection.

There are some instances where citizens, as well as cases where officers with assimilated rank have presided over boards, composed partly of officers with military rank.

In the year 1823, a board was appointed to select a site for an armory in the West. The board consisted of a citizen, Colonel William McKee, as President, Major Lee, civil superintendent of Harper's Ferry Armory, and Major Talcott, of the army, as members. The duties of this commission were to examine the Western country for military purposes, to select a proper site for an armory, and yet a citizen presided. Now, if a citizen could legally preside over such a board, it will be difficult to show why a surgeon cannot have precedence of captains and lieutenants employed on boards for special duty, such as examining the condition of a barrel of beef, rice or beans; or engaged in the purely and important military duty of regulating the tariff on sutler's slops, &c., without violating the principles of military service.

In the year 1816, the President of the United States was authorised by law to employ an assistant engineer, whose allowances were not to exceed those of the chief of the engineer corps, who received the pay of a Brigadier General. The well-known Simon Bernard was appointed under this law, received the pay and emoluments, and, excepting only the immediate command of troops, all the rights, privileges, honours, &c., pertaining to a Brigadier General. No rank, military or assimilated, was ever assigned to General Bernard, either by Congress or the Executive. Nevertheless, from the year 1816 till 1825 was General Bernard permitted to take precedence on all boards, councils, and commissions, of colonels, majors, captains, and all other grades of military officers, including the highest in the naval service.

If military principles in these instances were not violated either in the army or navy, how is it possible that it is necessary to ex-

clude from precedence on boards, &c., the rights of seniority of officers having assimilated rank.

There is a very recent instance in which precedence is given to assimilated rank. The Paymaster-General, according to the General Regulations of the Army, is classed as a Colonel. Under date of 13th January, 1848, an order was issued from the War Department, by direction of the President, calling a court of inquiry on charges against Major Generals Scott and Pillow, &c. That court consists of Paymaster-General Towson, as President, Brigadier-General Caleb Cushing, and Colonel E. G. W. Butler, as members.

It is presumed the Executive and War Department do not suppose that military principles are violated by the detail of this court, all the members of which hold commissions inferior to those of the officers whose conduct is made the subject of inquiry.

A prolific source of difficulty in reconciling different views on the subject before us, probably has its origin in the difference of opinion entertained on the sacred character of military rank. It is possible that on the one hand, officers clothed with military rank entertain exaggerated notions of its nature and scope, while civilians may possibly not perceive in it any thing more than the degree of limited power, just sufficient to enable officers to accomplish the purposes of the republic. Citizens will be slow to conceive, for example, that, because a gentleman holds the commission of a lieutenant or commander in the navy, another gentleman holding the commission of a surgeon or purser, should be required by law always to place his signature below all; that because a gentleman is a surgeon, he can never take the lead in any matter of simple business, if a gentleman who is a commander happen to be present.

Congress does not seem to respect the opinions of those who claim an immunity, a prestige for military rank, which is described as something as dear as life itself; an attribute of the military man, whether of land or sea, which is to give him, on all occasions and under all circumstances, the right of precedence of all who are not clothed with military rank. Congress requires four navy officers of the line to serve as watch-officers in each of the mail-steamers intended to ply between New York and Liverpool. The commanders of these vessels are selected from the experienced captains in the commercial marine. In the third section of the law, entitled "An act providing for the building and equipment of four naval steamships," approved March 3d, 1847, may be found the following:—"And that each of the said steamers shall receive on board four passed midshipmen of the United States Navy, who shall serve as watch-officers, and be suitably accommodated without charge to the government." In all four of these vessels the simple citizen-sailor must necessarily com-

mand, give orders to young men clothed with naval military rank. If they have no rank, as is sometimes contended, why do our opponents propose them as the measure of assimilated rank for assistant surgeons in the navy?

The gentlemen now actively opposing the Executive on this question, urge, on the grounds already alluded to, first, that the General Orders conferring assimilated rank are illegal; second, the conferring of assimilated rank is inexpedient; third, that the degree of assimilated rank conferred is far too high, and end with a proposition, as it is understood, to compromise.

The questions of legality and expediency have been passed in review; it remains to remark on the degree of assimilated rank conferred, and the changes proposed to be made in the arrangement.

The gentlemen in opposition, admitting only for the sake of the argument that Surgeons and Paymasters in the army do enjoy the assimilated rank of Major, (which is equal to the rank or grade of commander in the Navy,) contend that it is unjust or unfair to place surgeons and pursers of the navy on the same level. They argue that in order of precedence, the grade of commander stands *second* in the navy, while the corresponding grade of major stands *fifth* from the head in the army; therefore, surgeons and pursers in the navy should never be classed or ranked with commanders. This numerical comparison could be better advanced as a reason why majors in the army, composing the *fifth* lineal grade from the head, should be classed with midshipmen, who compose the *fifth* lineal grade in the navy from the head; or, that because commanders form the *second* grade in the navy, they should rank relatively with officers of the *second* grade in the army. The proposition is simply thus: The grade of major is the *fifth* in the army; surgeons and paymasters in the army rank as majors. The grade of midshipmen is the *fifth* in the navy; therefore, it being required to place surgeons and pursers of the navy on the same footing with surgeons and paymasters in the army, the question is solved by placing surgeons and pursers of the navy in the same class with midshipmen?

Let us apply this numerical basis in arranging the comparative relations or rank of officers of the army and navy possessing lineal rank, beginning at the bottom instead of the top of the scale:

Navy.		*Army.*
1 Midshipman,	classed as	1 Cadet.
2 Passed Midshipman,	"	2 2d Lieutenant.
3 Lieutenant,	"	3 1st Lieutenant.
4 Commander,	"	4 Captain.
5 Captain,	"	5 Major.

The numerical basis of argument will not be admitted by the navy, for arranging the relative rank of the officers of the two services. This basis can be only available in arguments touching the classification of the officers of the civil branch of the navy?

Another reason advanced against assimilating surgeons and pursers with commanders is, that it requires nearly the third of a century of service (?) in the navy to attain the grade of commander. But all the gentlemen possessing military rank in the navy complain that this is too long—promotion is ruinously slow—and by the time an officer attains a commission which entitles him to command a sloop-of-war, the fire of youthful ambition is quenched, the vigorous prime of life has passed away, and the man is beginning to droop from hope deferred, and he has perhaps around him adult children, or even grand-children, to occupy his thoughts. Should a proposition be brought forward, rendering it obligatory on the government to promote to the next highest grade every officer who had served five years in the grade below, so that every officer of the line would become a commander at the end of fifteen years after entering the navy, and a captain at the end of twenty years, without regard to the wants of the navy,—if such a proposition should be entertained, there is not an officer of the line who would raise an objection. No one could perceive or dream that this rapidity of promotion must ultimately end in the total ruin of the service. The navy would go for it to a man! In vain might the surgeon urge, "it has taken me thirty years hard work to attain the commission of surgeon, which only places me in professional command, and you desire to reach command in your profession in fifteen years." "I have worked hard," says the surgeon, "early and late; I paid money for my profession, while you were paid for studying yours, and yet you think you ought to reach command in your vocation fifteen years before me!" "Sir," the military officer might reply, "what possible injury can you suffer by my promotion. It will not affect your pay, although it benefits mine. You remind me of the story of Procrustes." "Procrustes or not," rejoins the surgeon, "I will use all my efforts against this scheme, unless I gain something too. I will never submit to any man being advanced more rapidly than I am. What! I can never bear such mortifying disparagement as to permit any man to reach command in his profession fifteen years before me!"

"But, my dear fellow," soothingly says the military officer, "don't you see, that your length of service cannot have, fairly, any bearing whatever on my promotion. You are a philosopher, and should not be made unhappy by the prospective good fortune of your brother officers. If you had a chance of improving the condition of your grade, you would think us very churlish to go

against you, simply because we could not participate in your good fortune. Now, think better of it, and give us a lift."

To speak seriously:—Promotion in the navy is entirely too slow to secure energy in the service, and some scheme should be devised to remedy this great evil. Young gentlemen should become lieutenants at the age of from twenty to twenty-three, and commanders about thirty, and captains of frigates at the age of from thirty-five to forty;—accomplish this, and then we will have a dashing navy, capable of exciting the admiration of the world; and then too, not a whisper would be heard against a classification or assimilated rank, which would place assistant surgeons and assistant pursers in the class with lieutenants, and surgeons and pursers in the class with commanders.

It is understood that our opponents propose a modification of the assimilated rank as it now stands. They generously throw away the five or six years of boyhood-midshipman, and propose that, inasmuch as military officers spend twenty-five years from the date of examination which classes them as passed-midshipmen, before they reach the grade of commander, surgeons and pursers shall be classed or assimilated in rank with commanders a quarter of a century after admission into the navy—that surgeons and pursers of less than twenty-five years' standing shall be classed with lieutenants; passed assistant-surgeons with masters; assistant-surgeons and assistant-pursers shall be classed with passed-midshipmen.

The objections to this proposition are that in fact, there is no difference between midshipmen and passed-midshipmen, except that the latter are eligible for promotion; both are warrant officers, they perform the same duties and their right to quarters is the same. They are not eligible to sit as members of courts martial.

Masters are warrant officers, and not eligible to sit as members of courts martial. Further, if the argument adduced against the legality of the General Orders, conferring assimilated rank, be valid, it applies with equal force against the legality of the General Order which places the grade of master in the line of promotion, and therefore the argument necessarily must, if valid, virtually abolish the grade.

The classification or assimilated rank of officers of the civil branch of the navy should not be determined on the basis of the period of service of the military branch. In the abstract, there can be no relation between the period the commander serves to attain his grade and the military position of a purser, or the precedence of the Secretary of the Navy, or of the chief of the Bureau of Yards and Docks. There is nothing in the period of service itself to form the basis of comparison. A passed midshipman is eligible to promotion on the day he may pass his ex-

amination; a lieutenant is eligible to promotion to the grade of commander after serving two or three years at sea; and a single cruise as commander renders the officer eligible to a captaincy in the regular course of service. It is the absence of vacancies alone in the higher grades which renders promotion in the line so discouragingly slow. There is nothing in the intimate nature of the service, or in the naval military principles which govern it, which requires that an officer should serve, man and boy, thirty years to reach the grade of commander. In fact, this slow rate of promotion is against the true interests, the activity and efficiency of the service. It is possible that these defects may be obviated by the creation of a retired list, or by restricting appointments to the absolute wants of the service, or by the contingencies of war, or a desolating epidemic falling on the grades of commanders and captains. Rate of promotion in the line is contingent, dependent on circumstances; but no connexion is clearly established between the rate of promotion, as to time, in the line, and the relative position of a surgeon or purser to the military branch of the navy. The basis of comparative classification between the military and civil branch of the navy, ought not to be the contingent or accidental rate of promotion in either branch. Suppose it be determined this year that twenty-five years' service makes the midshipman a commander, and therefore surgeons must be that period in service before being classed with that grade, and a law be passed accordingly; and suppose further, it should be found next year, that ten years in service make the midshipman a commander, the surgeons would find, that this extraordinary change in the contingent rate of promotion in the line, had taken nothing from the quarter of century of service, required in the law of the preceding year, to bring them into the class of commanders. Classification of the two branches of the navy, on the length of service principle, is therefore evidently fallacious and unjust.

The assistant-surgeon is a commissioned officer; as such, is eligible to act as a member of a court-martial; he acts in the place of the surgeon; virtually he is the professional lieutenant* of the surgeon, very much in the same manner and degree as the naval lieutenant is the *place-keeping officer*, or temporary substitute of the commander. The assistant-surgeon, the moment he is commissioned, is fully qualified to exercise his profession; the naval lieutenant in the same manner is fully qualified, the moment he is commissioned, to discharge the duties of his profession; both have passed through the probation of pupilage and apprenticeship, and both

* The word means literally, *place-holding*.

require only increased experience, practice, to open to them the higher grades of their respective professions.

Their legal, moral and professional qualifications are at about the same point when first commissioned, or when they first obtain the official virtue of sheepskin.

A comparison of this kind is not contingent; does not depend on circumstances; its basis cannot be changed by the chances of war or epidemics.

The assistant surgeons should be classed with lieutenants for the reasons stated; besides, it is anomalous, incongruous to place commissions and warrants in the same class. Passed assistant surgeons, although they obtain an increased pay, receive no new commission; the nature of their duties is unchanged; they are still professionally subordinate, and therefore, on the basis contended for, they should continue in the same class.

If a grade of assistant pursers be created, and they be brought into service, after examination, as commissioned officers, there is no reason why they should not be also classed as lieutenants; they will serve in the smaller vessels and in them occupy the same quarters, and discharge the sams duties, as pursers of those vessels do now, or have done heretofore.

The surgeon and the purser of a ship are at the head, in command, of their respective departments; and in all that is purely and strictly professional, as a physician and as accountant, they are competent to command. They are only subordinate officially to the military commander of the vessel, or his official representative for the time being. Therefore, both surgeon and purser might be classed as commanders on the day of promotion. It may be well to remark, that time, period of service, does not change the power or authority of a commission. The authority of a commission does not change with time; the commander of ten years' standing is not more certainly a commander in official rights and power than he was on the day of promotion; his grade is the same, although he may be capable from experience of rendering more valuable service. The surgeon, twenty years after the date of his commission, is still a surgeon, and no more, so far as his authority and power are derived from his commission; he may, from experience, be more skilful as a physician, a better operator, and a more accomplished surgeon, but officially he is still a surgeon. Being classed as a commander, therefore, on the first day of his commission, cannot interfere with discipline, in a greater degree than to be so classed at the end of twelve or twenty years.

That every grade of the civil branch of the service should have its assigned place in the general arrangement, classification, or

assimilation, no right-thinking man of experience can long doubt. In the discussion of the general orders which give assimilated rank to medical officers and pursers, the principles which should be the basis of arrangement for all, will be brought out; and it is hoped, in the course of no very long time, that a relative position will be assigned not only to medical officers and pursers, but to chaplains, secretaries, clerks, marine officers, professors, engineers, naval constructors; in a word, all who are amenable to the laws and regulations of the naval service.

The not very judiciously managed opposition to the General Orders of the Executive, the unkind spirit manifested by some of both ways of thinking on the subject, it is feared, have not increased the popular esteem for the navy generally. But it is sincerely hoped that the whole matter may be accommodated, and all parties united, may be able to go forward to the representatives of the people, saying, we have agreed to ask for nothing we do not believe to be right, and not to submit knowingly to anything which will wrong any grade or individual in service. We have the pleasure to present the form of a law which will meet the general views of all, and ask that it be sanctioned by legislative action, in order that the question may be set at rest.

But one word to those who may not understand why officers of the civil branch of the navy have sought a defined position, an assimilated rank. A single illustration perhaps will be sufficient for this purpose.

The quarter-deck is the sacred, the honoured part of the ship before all others. On coming upon it, every officer salutes it by touching his cap. Then, the right, or starboard side is more honoured than the left or larboard side. The right side is the place of promenade of commissioned officers exclusively, while the left side is yielded to midshipmen and other warrant officers. Until very recently, the assistant surgeon was exposed to be reminded he was an intruder, if he paced on the right, instead of the left side of the deck. In frigates the quarter-deck is gained from below by two ladders; one is usually assigned to the use of commissioned officers and the other to that of warrant officers, and until recently, the assistant surgeon was liable to rebuke if he ascended by one ladder rather than the other. In one instance, charge of disobedience of orders was made against an assistant surgeon, and a passed midshipman, for ascending the ladder assigned to the use of commissioned officers; the charge against the assistant surgeon was withdrawn, but the passed midshipman was actually tried by a court-martial for the offence.

The right side of the ship being more respectable in the eyes of the nautical community than the left, the right gangway is regarded as the appropriate passage to and from the vessel for the commissioned or wardroom officers and captain. The left gang-

way is given to the midshipmen and other warrant officers. Until recently, the assistant surgeon was expected to use the left instead of the right gangway—in a word, the back or alley way, instead of the front door or main entrance. An assistant surgeon, who had been imperatively ordered by a lieutenant of the deck, not to leave the ship by the right or starboard gangway, felt the indignity so keenly, that he preferred to forego the pleasure of visiting a strange port, rather than leave the ship in that way. The order was sustained by the first lieutenant and captain; and after nearly a year's confinement on board of the ship, submitted to, rather than sacrifice his self-respect by obeying an order which he regarded as designed to disparage him, he reached the United States, and almost immediately afterwards resigned his commission, assigning this larboard or left side order, under which he had suffered, among the reasons why he could not again expose himself to such petty, needless, and unjust tyranny.

Such instances have been frequent; and it is such instances which have determined the officers of the civil branch of the navy, to obtain an assimilated rank, which defines their position, and protects them from such aggressions, and for no other purpose. This position they now contend for, against a combination of military officers of the navy, who, if rumour speak truth, have feed a lawyer to argue against the power of the Executive, to give its protection to the aggrieved medical officers and pursers, by the general orders which confers an assimilated rank.

But we beg to be understood as disclaiming the belief that the military officers of the navy, now active at the capital of the nation, represent the views of a majority of the service. Many of them are young, unthinking, and enthusiastic; but some are old enough to entertain more liberal views than they do, and should serve as examples to guide correctly, rather than mislead their juniors and inferiors as it is feared they are doing, to the general prejudice of the whole naval service.

R.

P. S.—A considerable number of officers in the navy, whose opinions are generally respectable, have asked to be excused from wearing epaulets, because, since lieutenants, medical officers, and pursers wear them, it is urged, "The merging of all the old distinctions of rank and command into one common sign, to be worn by *many orders* in the same corps, cannot fail eventually to destroy the *charm* of rank, and to render impotent authority once conferred and represented in all entitled to epaulets. Now, I say again, if doctors and pursers and lieutenants cannot command due respect without borrowed feathers, take them from the captains entirely; they can very well spare them." "An old captain"

should have added, *provided always* that doctors, pursers, and lieutenants be forced to wear them. The captains cannot spare their epaulets, if they be removed also from the uniform dress of lieutenants, pursers, and medical officers; because, if removed from all, the "old captain" would find the *charm* of rank destroyed, and authority impotent when exerted to force a commissioned officer over the larboard side for the purpose of disparagement. The medical officers and pursers have no love for tinsel, the common sign of rank; but finding nothing else than tinsel respected by those who exclusively wore it as the badge of authority, sometimes wantonly exercised to their disparagement, they were forced in self-defence to sacrifice something of self-respect, and assume the glittering baubles, which they will willingly lay aside whenever captains and commanders are excused from wearing them. They do not regard the wearing of epaulets as constituting the *charm* of assimilated rank, and therefore have no objection whatever to their being worn by captains, commanders, lieutenants, or any grade of commissioned officers. They contend simply, on a principle, for an assimilation, both in rank and uniform dress, with or without epaulets, or any other badge of *degree* or of *caste* in the naval community.

In the preceding pages no reference has been made to the British navy, not because the "Queen's Regulations" do not afford us abundant example in support of assimilation of rank, but because, as Americans, we prefer to settle principles and practice for ourselves, in the army and navy, as we have done already in our political institutions. We eschew altogether the blind and heedless imitation of the details, as we do the principles of the monarchical and aristocratic governments of Europe. Heretofore our references to practices under them have been merely for illustration, and not to advise or urge their imitation. Let us, if possible, be wise ourselves, and not strive to simply imitate the wisdom of others, without inquiring first whether their wisdom will apply to our condition in all respects. It may be wise in England to have a Lord High Admiral, and different grades of admirals; but it does not follow as a consequence that one or all of those grades of officers are necessary in the navy of the United States.

R.