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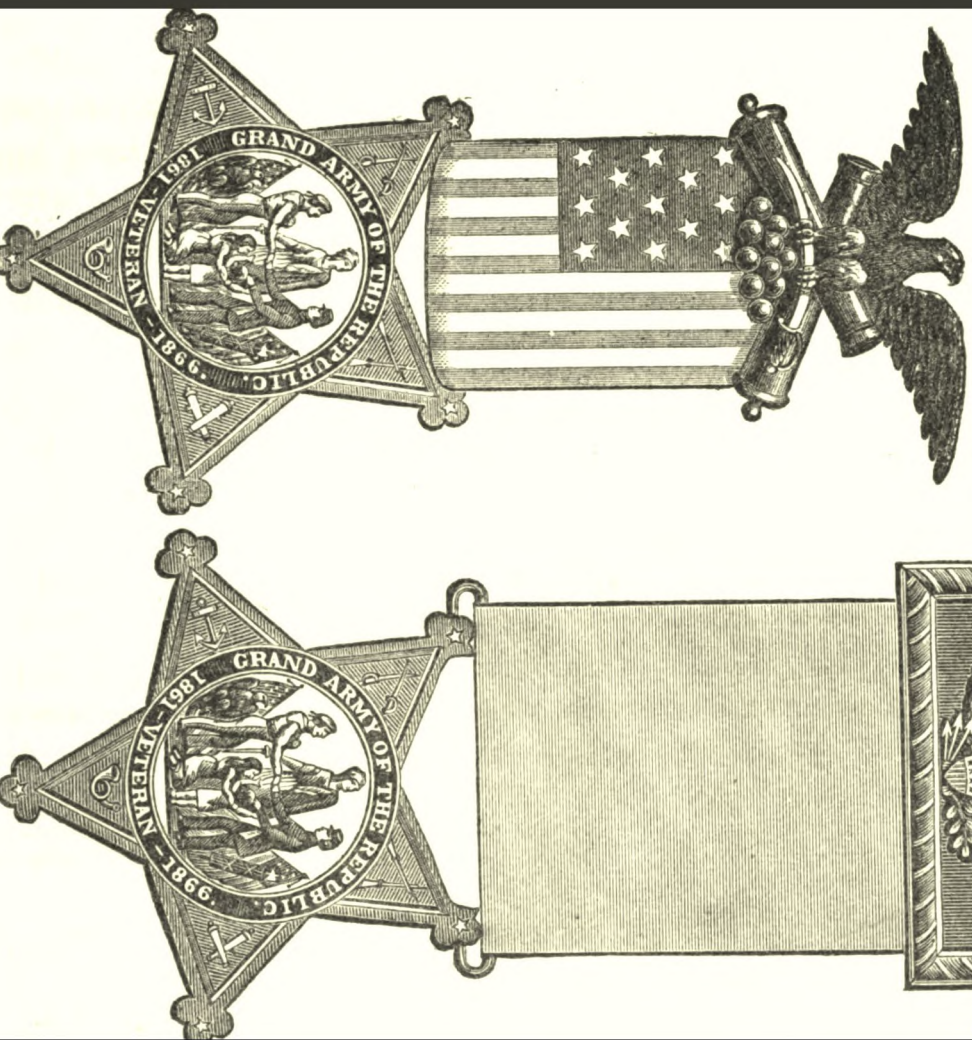
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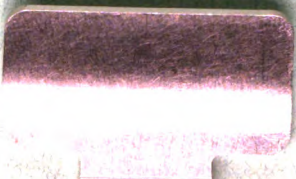
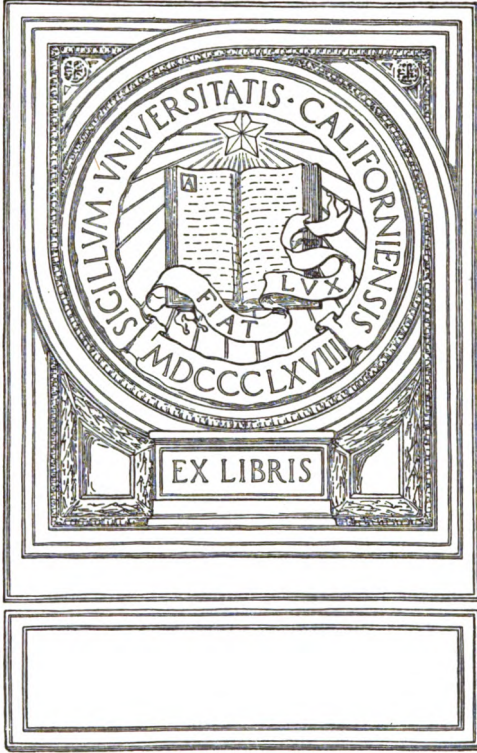
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*The Grand army blue-book
containing the rules and ...*

Grand Army of the Republic

GIFT OF
Frederick J. Ludwig



THE
GRAND ARMY
BLUE-BOOK

CONTAINING THE
RULES AND REGULATIONS
OF THE
GRAND ARMY OF THE REPUBLIC

AND
OFFICIAL DECISIONS AND OPINIONS THEREON,
WITH ADDITIONAL NOTES.

— BY —

ROBERT B. BEATH,

Post No. 5, Philadelphia,
Past Commander-in-Chief, G. A. R.

UNIV OF
CALIFORNIA

PHILADELPHIA,

1884.

GIFT

Frederick J. Ludwig

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PREFACE.

The Grand Army of the Republic was organized at Decatur, Illinois, April 6th, 1866, by Dr. B. F. Stephenson, of Springfield, who had served as Surgeon 14th Illinois Infantry, and at the close of the war, returned to his practice in Springfield, where, in February, 1866, he first suggested the idea of this organization, and made the draft of a Ritual.

After consulting a number of army friends, he deputed Captain John S. Phelps to supervise the printing of the Ritual, in the office of the *Tribune*, at Decatur, the proprietors of which, Messrs. Coltrin & Pryor, with their compositors, had been Union soldiers.

Through the efforts of these gentlemen, an organization was at once effected in Decatur, and Post No. 1, was formed as above stated.

This was followed by the formation of Post 2, at Springfield, and Posts were thereafter rapidly established throughout Illinois and in the States of Wisconsin, Indiana, Ohio, Iowa and Missouri.

A Department Convention was held at Springfield, on July 12th, 1866, and Comrade John M. Palmer was elected Department Commander.

The following resolution was adopted by the Encampment :

WHEREAS, We, the members of the Grand Army of the Republic, recognize in Major B. F. Stephenson, of Springfield, Illinois, the head and front of the organization ; be it therefore

Resolved, That for the energy, loyalty and perseverance manifested in organizing the Grand Army of the Republic, he is entitled to the gratitude of all loyal men, and that we, as soldiers, tender him our thanks, and pledge him our friendships at all times and under all circumstances.

Dr. Stephenson assumed charge of the organization of Posts in other States, and issued orders as Provisional Commander-in-Chief.

On October 31st, 1866, he issued a call for a National Convention of the G. A. R., which was held in Indianapolis, November 20th, with representatives present from Illinois, Missouri, Kansas, Wisconsin, New York, Pennsylvania, Ohio, Iowa, Kentucky, Indiana and the District of Columbia.

General John M. Palmer, of Illinois, presided, General Stephen A. Hurlbut, of Illinois, was elected Commander-in-Chief and Dr. Stephenson, Adjutant-General.

Note.—I am indebted to Comrade John S. Phelps, of Post 5, Chicago, for interesting details of the work of the organization of Posts in Illinois and the adjoining States, as published in the *Scout and Mail*, Philadelphia, December 6th and 13th, 1884.

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The Committee on "Work and Ritual," was composed of Comrades F. T. Ledergerber, Missouri; J. L. Wilson, Indiana; B. F. Stephenson, Illinois; Clayton MacMichael, Pennsylvania; Wm. Vandever, Iowa; H. K. Millward, Kentucky; Charles G. Mayers, Wisconsin; and J. L. Greene, Ohio.

The records of the Convention contain no particulars of the work done by this committee, and the writer has been unable to secure a copy of any Rules in use prior to this Encampment, for comparison with those printed immediately afterward.

The Rules and Regulations then issued, contained a Preamble and twenty-three Articles. These were headed: 1. Title. 2. Objects. 3. Organization. 4. Members, (Eligibility). 5. Elections of Members. 6. Impeachment of Members. 7. Death of Members. 8. Officers of Posts, Department and National Encampment. 9. Duties of Officers. 10. Meetings. 11. Secrecy. 12. Dues and Revenue. 13. Arrearages. 14. Reports. 15. Charters. 16. Election of Officers. 17. Departments. 18. National Encampment. 19. Bonds. 20. Transfers and Travelling Cards. 21. Provisional Government of Departments. 22. By-Laws. 23. Alterations and Amendments.

The Second Encampment, which met in the Council Chambers, Independence Hall, Philadelphia, January 15th, 1868, made but slight changes in the Rules and Regulations. General John A. Logan was elected Commander-in-Chief and N. P. Chipman, Adjutant-General.

The National Council of Administration which met in New York City, October 1st, 1868, to consider principally, the matter of adopting a design for a membership badge, recommended the appointment of a committee "to revise the Rules, Regulations and Ritual, to consider the subject of degrees, to recommend a uniform for the Grand Army of the Republic, and to report at the next meeting of the National Encampment."

In G. O. No. 18, dated Washington, D. C., November 14th, 1868, Commander-in-Chief Logan, appointed as such committee: Comrades James Shaw, Jr., Rhode Island; Louis Wagner, Pennsylvania; Rev. A. H. Quint, Massachusetts; O. M. Wilson, Indiana; T. W. Higginson, Rhode Island; Thomas L. Young, Ohio; and F. W. Sparling, Tennessee.

Officers and comrades generally were invited "to furnish such suggestions as may, in any manner, aid the committee in making our Ritual, Rules and Regulations worthy of our organization."

Comrade W. W. Douglas, Providence, R. I., was appointed secretary of the committee. The report of the committee was presented to the Encampment at Cincinnati, May 12th, 1869, and, with slight amendment, was then adopted.

At this time the Order was languishing. The general belief that it was a secret political society had a depressing effect upon recruiting. It was thought that the Ritual could be made more attractive, thereby increasing the interest in Post meetings and adding to the strength and influence of the organization. The Rules and Regulations, as arranged by this committee, were divided into Articles and Chapters as at present, with an article (V) in Chapter I, providing for three grades of membership: *First*.—Recruit. *Second*.—Soldier. *Third*.—Veteran.

Members of the First Grade were not eligible to office, nor privileged to speak or vote in the Post meetings. They could only be advanced to the Second Grade at the expiration of two months after muster as Recruit. Meetings of the Post were held in the Second Grade; but the positions of Commander, Vice Commanders, Adjutant, Quartermaster, Surgeon, Chaplain, Officer of the Day, and Officer of the Guard, could only be held by members of the Third Grade. Members of the Second Grade could not be present at meetings held for advancement to the Third Grade.

A member of the Second Grade was only eligible to advancement to the Third or Veteran Grade at the expiration of six months from his muster as soldier.

The Encampment adopted a series of Rules to "put in operation the system of Grades" which were published in G. O., No. 3, dated Washington, June 3d, 1869. These provided:—

First.—That the following should be eligible to the Third Grade upon their taking the several obligations:—

All present and past officers of the National Encampment and of the several Department Encampments; all present and past Commanders, Vice Commanders, Adjutants, Quartermasters, Surgeons, and Chaplains of Posts, together with all members of the Grand Army of the Republic, who shall have been members eight months; *provided*, that they shall be in good standing in their respective Posts and Departments, and free from all dues on the first day of July, 1869; and *provided*, they take the several obligations prior to the first day of September, 1869.

Second.—Provided, that comrades who have been members two months should constitute the second grade on taking the obligations, etc.

Third.—All recruits received on and after July 1st, 1869, should constitute the first grade.

The members of the National Encampment present were at that time obligated, and provision was made for the obligation of officers of Departments not present.

The system was in force two years, and during that time hundreds of Posts and thousands of members were lost to the Order because of their refusal to submit to the requirements of this reorganization. The system of Grades or Degrees was abolished by the Encampment at Boston, May 10, 1871, by striking from the Rules and Regulations all reference to grades. A new Ritual was adopted, which, in anticipation of such action, had been prepared by Comrade C. K. Fox, of Massachusetts.

No material changes have since been made in the Ritual except the addition of instructions for officers, made during Commander-in-Chief Wagner's administration, and the Badge presentation, which was written by Chaplain-in-Chief Lovering, based on one written by Comrades Geo. B. Squires and E. A. Perry, of Brooklyn, for Post No. 10 of that city.

Changes in the Rules and Regulations since the Encampment of 1879 (excepting as to Grades) have been made, mainly, to cover points referred to National Headquarters for decision.

In accordance with the action of the National Encampment, in 1875, Judge-Advocate-General Douglas prepared a Digest of Opinions, which was issued for the information of the Order, in 1876, and in May, 1877, he prepared for publication all the opinions of Judge-Advocates-General up to that date.

This was followed, in 1879, by the issue of the MANUAL.

The Encampment at Baltimore, in 1882, directed a compilation to be made of the opinions of Judge-Advocates-General up to that time, and this work was assigned to Judge-Advocate-General Carnahan, who reported to the Encampment at Denver: "I have performed this work in accordance with the order of the last National Encampment in so far as the preparation of a syllabus was ordered; but, believing that a syllabus alone would not meet the needs of the Grand Army, I collected all the decisions of my predecessors, that the comrades might not only have the outline, but the full text of the opinions and decisions which are now a part of the laws governing the Grand Army."

The committee to whom was referred the report of Judge-Advocate-General Carnahan reported: "that after a careful examination of said report and the digest of opinions accompanying the same, they cordially recommend that said digest of opinions be accepted and approved as the law of the Grand Army of the Republic upon the subjects therein treated. In the opinion of the committee, the compilation is one of learning, research and ability, bringing the common law of our organization in a palpable and comprehensible form before our Comrades, and gathering together and formulating rules for the determination of questions which may arise hereafter, which will be invaluable to the Order by reason of their simplicity, directness and accessibility."

It became necessary to reprint these Opinions during the year following, and Comrade Carnahan, though not then in office in the National Encampment, was requested by the Commander-in-Chief to take charge of the work, and make such changes as his experience suggested.

Accordingly, under his supervision all the Opinions in force were collated, numbered in the reprint, I, July 1st, 1871, to CXLV, April, 1883, with Decisions made by Commanders-in-Chief Wagner and Merrill, and numbered therein I to XIX. This numbering of Opinions and Decisions, with the Syllabus as prepared by Comrade Carnahan, is followed in this work.

The Opinions were as follows:

Comrade N. P. Chipman, Potomac, appointed Judge-Advocate-General, May, 1869. Opinions I-II.

Comrade W. W. Douglas, Rhode Island, appointed July, 1871. Opinions III-LXXIII.

Comrade Wm. Coggsell, Massachusetts, appointed May, 1877. Opinions LXXIV-CIII.

Comrade W. W. Baldwin, Ohio, appointed May, 1879. Opinions CIV-CXXIII.

Comrade George B. Squires, appointed June, 1880. Opinions CXXIV-CXXX.

Comrade James R. Carnahan, appointed July, 1882. Opinions CXXXI-CXLV.
Comrade Wm. Vandever, Iowa, appointed July, 1883.

Commander-in-Chief Wagner, issued Decisions numbered I to XIII, and Commander-in-Chief Merrill, numbers XIV to XIX, in the reprint referred to, which are used in the BLUE BOOK, with the initials L. W. and G. S. M.

Opinions given by Comrade Vandever, are embraced in the Decisions of Commander-in-Chief Beath, as reported to the Minneapolis Encampment, and are herein numbered I to VI, R. B. B.

Comrade D. R. Austin, Ohio, holds the position of Judge-Advocate-General at this time.

Credit is due Comrade Alexander R. Cutler, Post 21, Philadelphia, for the preparation of the Rules for the guidance of Courts-Martial, used in the MANUAL and in this work.

Annual sessions of the National Encampment have been held, and comrades elected Commander-in-Chief, as follows:

1. Indianapolis, November 20, 1866. S. A. Hurlbut, Illinois.
2. Philadelphia, January 15, 1868. John A. Logan, Illinois.
3. Cincinnati, May 12, 1869. “
4. Washington, May 11, 1870. “
5. Boston, May 10, 1871. A. E. Burnside, Rhode Island.
6. Cleveland, May 8, 1872. “
7. New Haven, May 14, 1873. Charles Devens, Jr., Massachusetts.
8. Harrisburg, May 13, 1874. “
9. Chicago, May 12, 1875. John F. Hartranft, Pennsylvania.
10. Philadelphia, June 30, 1876. “
11. Providence, June 26, 1877. John C. Robinson, New York.
12. Springfield, June 4, 1878. “
13. Albany, June 17, 1879. William Earnshaw, Ohio.
14. Dayton, June 8, 1880. Louis Wagner, Pennsylvania.
15. Indianapolis, June 15, 1881. George S. Merrill, Massachusetts.
16. Baltimore, June 21, 1882. Paul Van Dervoort, Nebraska.
17. Denver, July 25, 1883. Robert B. Beath, Pennsylvania.
18. Minneapolis, July 23, 1884. Jno. S. Kountz, Ohio.

The Nineteenth Annual Session will be held at Portland, Maine, June 24, 1885. R. B. B.

RULES AND REGULATIONS
OF THE
GRAND ARMY OF THE REPUBLIC.

PREAMBLE.

1.

We, the soldiers and sailors, and honorably discharged soldiers and sailors, of the Army, Navy and Marine Corps of the United States, who have consented to this Union, having aided in maintaining the honor, integrity and supremacy of the National Government during the late rebellion, do unite to establish a permanent association for the objects hereinafter set forth; and through our National Encampment do ordain and establish the following Rules and Regulations for the government of this association.

CHAPTER I.

ARTICLE I.

2.

TITLE.

This association shall be known as the GRAND ARMY OF THE REPUBLIC.

ARTICLE II.

3*.

OBJECTS.

The objects to be accomplished by this organization are as follows:

3. NOTE.—Prior to May, 1869, Article II contained four sections. Section 3 then read:—

“To establish and secure the rights of these defenders of their country by all moral, social and political means in our control.

“To inculcate upon the whole country a proper appreciation of their services and a recognition of their just claims.

“But this association does not design to make nominations for office or to use its influence as a secret organization for partisan purposes.”

Article XI, Chapter V, was substituted in lieu of the last paragraph, and Section 4 was made Section 3.

[Chapter I.—Article II.]

4. *Fraternity.*

1. To preserve and strengthen those kind and fraternal feelings which bind together the soldiers, sailors and marines who united to suppress the late rebellion, and to perpetuate the memory and history of the dead.

5*. *Charity.*

2. To assist such former comrades in arms as need help and protection, and to extend needful aid to the widows and orphans of those who have fallen.

6*. *Loyalty.*

3. To maintain true allegiance to the United States of America, based upon a paramount respect for, and fidelity to, its Constitution and laws, to discountenance whatever tends to weaken loyalty, *incites to insurrection, treason or rebellion*, or in any manner impairs the efficiency and permanency of our free institutions; and to encourage the spread of universal liberty, equal rights and justice to all men.

5, 6. OPINION CXL. OCTOBER 16, 1882.

Members of the Grand Army of the Republic and ex-Rebel soldiers can not be placed on the same footing.

Funds can not be used for the support of ex-Rebel soldiers.

Can the Grand Army of the Republic, or any Department or Post thereof, consistently with the principles of the Order, aid in establishing or maintaining a Veteran Home, to which Mexican war veterans, who served in the Rebel army or navy, can be admitted to equal rights with Union soldiers?

The Grand Army of the Republic was organized for soldiers, sailors and marines who united to suppress the late Rebellion. (Paragraph 1, Article II, Chapter I.)

To assist such *former Comrades* as need help and protection. (Paragraph 2, Article II, Chapter I.)

To discountenance whatever tends to weaken loyalty. (Paragraph 3, Article II, Chapter I.)

The Grand Army of the Republic offers a premium to disloyalty whenever it, as an Order, undertakes to provide for the maintenance of men who served in the Rebel army.

No person is eligible to membership who at any time bore arms against the United States. (Article IV, Chapter I.) If not eligible to membership, then the Grand Army of the Republic should not be taxed to aid or support them.

I know of no principle of the Grand Army of the Republic whereby Rebel soldiers can be placed on an equal footing with loyal soldiers in any charitable institution of the Order. On the contrary, all the teachings of the Grand Army of the Republic are that loyalty to the Government from 1861 to 1865, with service in the Union army, is to be our only guide in the charities of the Order.

If any Department, in its magnanimity, should wish to aid ex-Confederate soldiers, it must be done in the way of voluntary aid, and from funds outside of the general or special funds of the Order; in other words, by the voluntary contributions of individual members of the Grand Army of the Republic.

ARTICLE III.—CHAPTER I.

ORGANIZATION.

The several constituted bodies of this association shall consist of:

7*. Posts.

1. Precinct organizations to be known as (a) Post No., Department of....., Grand Army of the Republic; *Provided, however,* That no Post shall be named after any living person, and that not more than one Post in a Department shall adopt the same name, and that the name shall be approved by the Department Commander.

8. Departments.

2. State organizations to be known as Department of (name of State or Territory,) Grand Army of the Republic.

9. National Encampment.

3. A national organization to be known as the National Encampment of the Grand Army of the Republic.

For Formation of Posts, see Chapter II, Article I, Page 15.

For Formation of Departments, see Chapter III, Article I, Page 59.

7a. Prior to May, 1869, there was no provision in the Rules for naming Posts. In the revision of the Rules at Cincinnati this section was amended to read * * * "to which any Post may prefix the name of a *deceased* soldier or sailor who died in the service of our country during the rebellion, or of some other person eminent during the war for loyalty and efficiency: *Provided,* that not more than one Post in a Department adopt the same name. In May, 1870, the word "deceased" was inserted before "person," so that the sentence should read "or of some other deceased person." etc.

This section was again amended at the Albany Encampment, 1879, so that a Post could adopt any name or title under the restrictions above prescribed:— 1st. That no Post shall be named after a *living* person. 2d. That not more than one Post in a Department shall adopt the same name. 3d. That the name shall be approved by the Department Commander.

Under this rule we now have Posts named "Veteran," "Cavalry," "Naval," "Washington," "Lafayette," etc. R. B. B.

ARTICLE IV.—CHAPTER I.

10*. ELIGIBILITY TO MEMBERSHIP.

Soldiers and sailors of the United States Army, Navy or Marine Corps, who served *between April 12th, 1861, and April 9th, 1865, (a, b)* in the war for the suppression of the Rebellion, and those having been honorably discharged therefrom after such service, *(c-l) and of such State regiments as were called into active service and subject to the orders of United States general officers, between the dates mentioned, (m, n)* shall be eligible to membership in the Grand Army of the Republic. No person shall be eligible to membership who has at any time borne arms against the United States. *(o-q.) (General Notes r-z.)*

10. *Note.*—Article IV, Chapter I, read originally: (Ed. 1868.)

Soldiers and honorably-discharged soldiers of the United States volunteer or Regular Army or Marine Corps, or sailors and honorably discharged sailors of the United States Navy only shall be eligible to membership in the Grand Army of the Republic.

No soldier or sailor who has been convicted by court-martial of desertion or any other infamous crime shall be admitted.

The Cincinnati Encampment (1869) adopted the article now in force, except the words and dates in *italics*, which were inserted by the Albany Encampment, 1879.

The clause "No soldier or sailor who has been convicted by court-martial of desertion or any other infamous crime shall be admitted" was omitted in the revision at Cincinnati, and the clause "no person shall be eligible to membership who has at any time borne arms against the United States" was then added.

The only direct provision against the admission of those who were convicted of desertion or any other infamous crime (and were honorably discharged after serving out a sentence) is contained in the form of APPLICATION FOR MEMBERSHIP. See *10 d.* R. B. B.

See *Admission to Membership*, page 16, and notes.

Honorary Membership.—There can be no "honorary" membership in the Grand Army of the Republic.

See *Journal Nat. Encampment, 1884. Page 227.*—See *Note 10 y.*

10a. AS TO PERIOD OF SERVICE. *Notes 10 a, b.*

Prior to the amendment of 1879, soldiers or sailors who enlisted after the surrender of Lee were technically eligible to membership under Opinion LXXI, following, which was based upon judicial decisions. By the insertion of the dates between "April 12, 1861, and April 9, 1865," this Opinion is now invalid in its bearing upon eligibility to membership in the Grand Army of the Republic.

OPINION LXXI. DECEMBER 20, 1875.

One who enlisted in the United States Army June 29, 1865, is eligible to membership. [Now void. See note above.]

An applicant for membership in the Grand Army of the Republic, enlisted in the United States Army June 29, 1865, and was honorably discharged by reason of the expiration of his term of enlistment, June 29, 1868.

Is he eligible to membership?

The question depends upon whether the applicant served in the army of the United States during the late Rebellion.

I suppose that the exact locality of service in the army of the United States cannot be taken by any one as a criterion of service in the suppression of the Rebellion. Those parts of the army that were garrisoned in forts in the Northern States, out of reach of the enemy's guns, formed an essential part of our force, and as truly served as if they had been in front of the conflict; and this service continued until the last portion of Rebel territory was reclaimed. The question of the duration of the Rebellion is the only one requiring attention.

Upon this point we have the decisions of the Executive, Legislative and Judicial Departments of the Government. The President issued his proclamation April 19, 1861, recognizing the existence of rebellion in South Carolina, Georgia, Alabama, Florida, Mississippi, Louisiana and Texas. Congress and the Supreme Court of the United States have accepted this date as the commencement of the war. *The Protector*, 12 Wallace, 700; *United States v. Anderson*, 9 Wallace, 36. On the 2d of April, 1866, the President issued his proclamation, announcing that the Rebellion was terminated in the States of Virginia, North Carolina, South Carolina, Georgia, Florida, Mississippi, Tennessee, Alabama, Louisiana, Arkansas; and finally, on the 20th of August, 1866, his proclamation, declaring that the Rebellion was ended in Texas, and peace restored throughout all the United States.

Congress recognized the declarations as fixing the period of the Rebellion by many enactments, and the Supreme Court, in the cases above referred to, declare that the first official declaration we have on the part of the Executive that the Rebellion was wholly suppressed is in the President's proclamation of August 20, 1866, and hold that the war began and ended according to the declaration of the several proclamations referred to. These decisions have been followed in *Phillips v. Hatch*, 1 Dillon, Cr. Ct. Rep., 5, 71, and other cases which it is unnecessary to refer to. It is then settled that the late Rebellion began April 19, 1861, and finally ended August 20, 1866.

The applicant served in the army of the United States during that period, and was honorably discharged, and is eligible.

10b.

DECISION V. R. B. B.

Is an applicant who enlisted in September, 1865, eligible to membership in the G. A. R., under the ruling of the Supreme Court, that the War of the Rebellion did not close until August 20th, 1866?

No. The rules and regulations require an applicant to have served in the war for the suppression of the Rebellion between April 12, 1861, and April 9, 1865. Our rules were so amended to meet the decision of the Supreme Court referred to.

MISCELLANEOUS.

HONORABLE DISCHARGE REQUISITE. (See *Notes 10 c to l, inclusive.*)

10c. OPINION LXIX. OCTOBER 14, 1875.

Honorable discharge necessary.

Certain applicants for membership in the Grand Army were reported, upon their regimental returns in the army, as deserters, having been unavoidably detained on furlough longer than their allotted time, and the question is asked, Are these men eligible?

The same question arises in the case of T. J., who has been mustered into a Post of the Grand Army, but is afterwards discovered to be recorded in the State roll of volunteers as a deserter.

The question must be answered by ascertaining whether the candidates can present honorable discharges. If so, notwithstanding the fact of a technical violation of military law, they are eligible to be balloted for as candidates. The members of Posts, by their votes, will decide whether the offence committed in each case was of such a nature as to prove the applicant unworthy to be received among true soldiers. If they have not honorable discharges from the army they are not eligible to be voted for.

In the case of T. J. the same rule holds. If he presented an honorable discharge he is properly elected, and the Post cannot invalidate its action; if he did not have such a discharge he must be dropped, and the Post is deserving of severe censure for not requiring it before the ballot.

I would refer, also, to the case discussed in Opinion LIV, July 19, 1873. (*10 d.*)

10d. *Desertion and Re-enlistment.*

OPINION LIV. JULY 19, 1873.

One who deserts from his company or regiment and joins another, and from the latter organization receives an honorable discharge, is not eligible to membership.

A. B. enlisted in the Union Army during the rebellion. Because of the persecution of his commanding officer he deserted his company, came north, and again enlisted in the Union Army as A. C. He now makes application in his own name, A. B., for membership in our Order. Can we muster him? It is argued that he is admissible, as President Lincoln's proclamation pardoned all deserters, and men of the Post who served with A. B. justify his desertion, and vouch for his subsequent honorable service under the assumed name.

I may say, in the beginning, that, as I understand the law which I am called on to interpret, no oppression will justify a soldier's leaving the service he has sworn to perform and take a new enlistment, with probably a larger bounty, at his will. I apprehend that the cases are very few where, on application to the proper authorities, a man's wrongs would not be redressed, or he be allowed a transfer into the company of another commander. And by orders from the War Department it was made the privilege of any enlisted man to take a transfer to the navy, whether his commanding officer approved or not.

Our Rules and Regulations of 1868 expressly provided that "No soldier or sailor who has been convicted by court martial of desertion, or any other infamous crime, shall be admitted." When the revision of the Regulations was made in 1869, it was considered that many soldiers were convicted of technical desertion who never had any intention of actually leaving their colors, and it was not thought best in the General Regulations to go behind an honorable discharge, except where the soldier had been in the Rebel service, so this clause was omitted.

This action practically left the case of all such persons who should apply for membership to the decision of the ballot, and allowed them to be mustered if they could win the suffrages of the prescribed majority of the Post. It must be remembered that not all persons who are permitted to become candidates ought to be received. Every comrade in voting should express his opinion of the fitness of the applicant, and one who has been a deserter, though afterwards pardoned or never apprehended or tried, would usually be coldly received by men who performed faithfully the difficult and dangerous duties as well as the easier ones the service imposed.

The case of A. B.'s eligibility then must be decided by the answer to the question whether he can present an honorable discharge. If he can he may apply for admission. I do not go so far in answering this question as to say that the fact that his honorable service and discharge were under an assumed name would render him ineligible. But when a discharge is presented that bears *prima facie* marks of fraud, we are warranted in inquiring how he obtained it, and what was his motive in concealing his true name. If we find, as in this case, that the name was assumed to shield him from the punishment of a crime which, if known, would have prevented him from receiving the discharge, it would be a misuse of language to call a discharge so obtained an honorable one.

The proclamation of the President has nothing to do with the case. *A pardon does not annul the crime*; it only waives the punishment. I think that A. B. is not eligible.

10e. OPINION XXII. JANUARY 29, 1872.

1. *If a dishonorable sentence is revoked and an honorable discharge is granted, then the party thus discharged is eligible.*

2. *All persons eligible should not be elected to membership. Care should be exercised.*

Is a cashiered officer of the army, who afterwards has the disability of the sentence removed by General Order from the War Department, eligible to membership in the Grand Army of the Republic?

1. The answer to the question must turn upon the extent of the order removing the disability of the sentence. If the officer was granted an honorable discharge, he is eligible to membership, though previously he had been dishonorably discharged. So if a person once dishonorably discharged has the order cashiering him revoked, and he is reinstated in the army, he will then be eligible to membership.

2. It must be borne in mind, however, that we ought not to elect to membership all persons who are eligible to apply for it. The Post receiving an application should make proper inquiries in regard to the character of the applicant, and if there is anything in his past record or present character which they deem

[Chapter I.—Article IV.]

sufficient to make him an unsuitable companion for themselves, they should reject the application. The Regulations place this power in their hands, and it is expected that they will exercise it for the good of the Order, with impartiality, and without personal feeling.

The question in this case is generally stated, and I can, therefore, only answer in general terms. If the facts of the particular applicant for admission in the present case were detailed I might make my decision more specific.

10f. OPINION CXXXIII. AUGUST 12, 1882.

Minors discharged on writ of habeas corpus are eligible.

Two soldiers were duly mustered into the United States service, but, not being of the required age, were by their parents taken out on a writ of *habeas corpus*, after a short service. Are they eligible to membership? One is a charter member of the Post.

A strict construction of Article IV, Chapter I, Rules and Regulations, might exclude the parties from membership. But as they were duly *mustered into the service*, and were for a time *subject* to the orders of United States officers, that part of the requirements of said Section was complied with.

The next question to be answered is: Does the order of the Court in the *habeas corpus* proceedings take the place of a discharge? The fact that they afterwards rendered service in the army as soldiers, though not then mustered in, tends to show that they did not of their own motion seek to be released by process of the Courts. Adopting, therefore, a liberal, and, I think, a just, construction of the law, I say they are eligible, and should be admitted.

10g. OPINION CXXXII. JULY 31, 1882.

Muster-in to the service necessary.

Honorable discharge necessary.

A. E. L. served as a musician in Company I, One Hundred and First New York Volunteers, through Peninsular campaign and at second battle of Bull Run, but was never mustered, on account of his age—thirteen. Can he become a member of the Grand Army of the Republic?

Two things are requisite to membership in the Grand Army of the Republic:

First—He must be either a soldier or sailor of the United States army or navy or marine corps, or of a State regiment, etc.

Muster-in is imperative in order to be a soldier. A citizen is not subject to orders of any United States army officer.

Second—Every applicant for admission must have an honorable discharge from one or the other of these branches of the service.

Although the party herein named may have rendered the service claimed, yet he cannot be admitted to membership in the Grand Army of the Republic for the reason that he was never mustered into the service; not being mustered, was not subject to orders, as provided in Article IV, Chapter I, and not being mustered, of course never received an "honorable discharge."

10h. OPINION CXXXI. JULY 20, 1882.

Enlistment without muster into the service not sufficient.

Commission without muster not sufficient.

Quartermaster's clerk not eligible.

Being a scout without being mustered not sufficient.

Enlistment, muster and honorable discharge absolutely necessary.

B. C. enlisted in the 3d O. V. C., but before mustering under that enlistment was commissioned as recruiting lieutenant in the 9th O. V. C., and was engaged in that work for several months. Was unable to pass muster by reason of rupture. He then went into the quartermaster's department as a clerk; subsequently volunteered as a scout, and in these positions served until the close of the war. During this service he was twice captured by the Confederate forces. Is he eligible to membership in the Grand Army of the Republic?

B. C. is not eligible to membership in the G. A. R., for the following reasons: 1st. Article IV, Chapter I, Rules and Regulations, on eligibility to membership, says, "Soldiers and sailors of the U. S. Army, etc." This implies that the party must be regularly enlisted *and mustered into the service*. This party was never mustered in.

2d. Holding a commission is not sufficient without a muster into the service. Opinion XCIX, March 29, 1879. *10 x.*

3d. Being a Quartermaster's clerk does not render a party eligible to membership in the G. A. R. Opinion L, April 25, 1873. *10 w.*

4th. Being a scout does not entitle one to membership, unless the party was enlisted and mustered. Opinion XVII, Dec. 5, 1871. *10 r.*

In conclusion, nothing can take the place of enlistment and muster-in to render a person eligible to membership in the G. A. R., because there can be no "honorable discharge" without a previous muster-in.

10i. DECISION III. L. W.

Applicants for membership must be governed by qualifications in Article IV, Chapter I.

No power vested in any officer to set aside provisions of this Article.

On a question asking the Commander-in-Chief to give a special dispensation to muster an applicant who, being too young to enlist, had been employed in various duties with the army, decided that the applicant must be governed by the qualifications required in Article IV, Chapter I, Rules and Regulations, and that there was no power vested in any officer to set aside its provisions.

10k. DECISION XI. L. W.

Applicant must have the proper qualifications for membership.

The Department of California presented the question of eligibility of one who served on the "Coast Survey" during the war, as a part of the Atlantic Squadron.

Decided, that he must have the qualifications required by our Rules, and that his discharge papers would show the facts.

[Chapter I.—Article IV.]

10l. OPINION VI. SEPTEMBER 7, 1871.*Paymaster's clerk in the navy is eligible to membership.*

I am of the opinion that a paymaster's clerk in the navy is a sailor of the United States Navy in the intent of Section 1, Article IV, Chapter I, of the Rules and Regulations.

He is appointed by the paymaster, subject to the captain's approval, and is then sworn or mustered into the service, and receives a warrant which assigns him definite rank. If he leaves the ship without permission, he is a deserter, and is liable to punishment as such. He is borne on the ship's roll and is paid by the Government, and has a station and a command given him in time of action. I consider him as eligible to membership as an engineer or assistant in the navy, or as an hospital steward in the army. When his cruise is over he receives a discharge, so that he has been in the service, subject to regulations, liable to command men in action, and in every way entitled to be associated with those who served in other capacities during the war.

SERVICE IN STATE REGIMENTS. *Notes 10 m, n.***10m.** DECISION VI. L. W.*One who served with a State regiment, and mustered out on a "State discharge," eligible, if otherwise qualified.*

On the question presented by Post No. 1, New Orleans, as to eligibility of an applicant who served in the field during the Gettysburg campaign in a Pennsylvania regiment, but not mustered into the service of the United States, who was "in service under the order of United States general officers," and at the close of the emergency was mustered out on a State discharge. Answered, that he was eligible, if otherwise qualified.

10n. OPINION CXXVI. NOVEMBER 22, 1881.*If the person can be identified as the soldier certified to by the Adjutant-General.*

How can a soldier be identified as entitled to membership under Article IV, Chapter I, not having been mustered into the United States army, and having no discharge?

If the regiment to which he belonged was placed under the orders of United States general officers, a certificate from the Adjutant-General of the State to that effect, and a certificate that he served in that regiment, would be sufficient evidence for an examining committee; provided, of course, the applicant can be properly identified as the soldier certified to by the Adjutant-General.

SERVICE IN THE REBEL ARMY. (See *Notes 10 o-q.*)**10o.** OPINION IV. AUGUST 11, 1871.*1. Involuntary service in the Rebel army forms no exception.*

1. The case of an applicant for admission to the Grand Army who had been, in the early part of the war, forced into the Rebel service, comes directly within the letter and spirit of the second clause of Sec. 1, Art. IV, of Chap. I, of the Rules and Regulations: "And no person shall be eligible to membership who has at any time borne arms against the United States."

The fact that the service against the Union was involuntary, does not constitute this case an exception to a rule so clearly and unreservedly expressed. There

were no persons whom the framers of this rule could have contemplated but this very class who served in the Confederate army and afterwards in our own.

Clearly, therefore, the applicant in this case is ineligible.

There may be instances—and the present may be one of them—where this rule works harshly, but it is of far more importance that the loyalty of every member of our Order should be above reproach than that we should omit from our roll a few good men, who showed weakness, at least, if they escape the suspicion of disloyalty.

10p. OPINION CXIV. JANUARY 17, 1880.

Service in the Rebel army excludes.

A person who, in the early part of the war, was forced into the Rebel service, but escaped as soon as possible and subsequently served faithfully in the Union army, desires to become a member of the Grand Army of the Republic. Is he eligible?

Opinion IV of the Judge Advocate-General, rendered August 11, 1871, decides a parallel case in the negative. If he was forced into the Rebel service, and was actually kept there by force until his escape, it would seem to be a suitable case for the National Encampment to grant relief. 10 o.

10q. OPINION CXXXVI. SEPTEMBER 15, 1882.

Service in the Rebel army, from whatever cause, renders one ineligible to membership in the Grand Army of the Republic.

R. M. J. was impressed into the Rebel army in Tennessee in 1861. In the spring of 1862 he deserted, came to Indiana and immediately enlisted in the Eightieth Regiment Indiana Volunteers, and served until near the close of the war, when he was discharged on account of wounds received in battle and in line of duty. He claims that he had to enter the Rebel army or hang; that he was closely watched, but deserted at the first opportunity. He is a worthy citizen, and the comrades where he resides say as loyal a citizen as lives. Can anything be done for him in the way of admitting him to membership?

Article IV, Chapter I, page 4, Rules and Regulations, says, very emphatically, "No person," etc. No exception is made to the rule. This question has been before the National Encampment ever since 1872. The Judge Advocate-General, in August, 1871, decided that, although the service was involuntary, still it did not constitute the case an exception to the rule, and that the applicant was ineligible. This decision still remains unaltered. I think this the only safe rule, as laid down in Article IV, above referred to. It may seem harsh, in a case like this; but, if the door is once opened, there is too much opportunity given for unworthy persons to make statements of involuntary service, etc., which, at this late date, could not be controverted, even though untrue.

A proposition to modify this clause (Service in the Rebel Army) will come before the National Encampment in 1885, a committee having been appointed to consider and report on proposed amendments. See *Journal* 1884, page 197, etc. R. B. B.

GENERAL.—NOT ELIGIBLE. *Notes 10 r to y.*

No Post can legally admit to membership a person who is ineligible under the Rules and Regulations. See Opinion LXXII, March 22, 1876, 15 d.

[Chapter I.—Article IV.]

10r. OPINION XVII. DECEMBER 5, 1871.

Scouts in the Union army not necessarily eligible to membership.

Is a person who served as a scout in the Union army, during the entire war of the Rebellion, eligible for admission into the Grand Army of the Republic?

I do not understand that scouts were generally attached to the army for definite terms of enlistment, or that they were actually mustered into and out of service in such a way as to make them strictly a part of the army. Civilians were usually employed for special services, and then paid and discharged. Sometimes enlisted men were detailed or volunteered for such work. In the latter case, of course, no question could arise as to their eligibility to membership. But in case of civilians who were employed temporarily as scouts, or who were hired as detectives at home, I cannot see that our regulations admit them.

The matter is perhaps of sufficient importance to be laid before the National Encampment for their construction of the law. Until they take action, I would advise that such applications be not received.

10s. OPINION XXXI. APRIL 15, 1872.

A woman who served as daughter of a regiment does not come within the class of persons who are eligible to membership in the G. A. R.

Action of a Post in admitting such an one would be illegal and void.

The question is proposed whether a woman who served with the First Regiment, Rhode Island Detached Militia, as daughter of the regiment, and who received a discharge in ordinary form from the service as daughter of the regiment, and who was afterwards received as a member of the Post of the G. A. R., was lawfully mustered into our order?

I do not know of any position in the army, according to the Regulations, described as daughter of the regiment. Our Regulations prescribe as a condition for membership that the applicant shall have been a soldier or sailor in the army, navy or marine corps of the United States, etc. Whatever a daughter of the regiment may have been, I do not understand that she was a soldier in the United States army. She may have done good service in the suppression of the Rebellion, as nurse in hospitals and agent of the Sanitary Commission and Christian Commission, and many patriotic citizens at home did; but as she does not come in the classes of persons whom our regulations make eligible to membership, I think the action of the Post admitting her was illegal and void.

The discharge which was given her, I suppose, was a complimentary testimonial to her patriotism, rather than a certificate that she had been technically in the service.

10t. OPINION XLVII. APRIL 11, 1873.

Officers of revenue service not eligible.

Is an officer in the revenue service, who served during the war in that capacity, and part of the time on his vessel, in conjunction with vessels of the navy, in suppressing blockade running, eligible to membership in the Grand Army of the Republic?

The Regulations admit only those who served in the army, navy or marine corps during the war. I do not think that either of these classes can be construed to include the revenue service. The latter is a part of the Treasury Department, and its officers are merely the armed officers of customs. The regulations for the collection of revenue and the prevention of smuggling, etc., are enforced by them on the seas, exactly as they are by custom-house officers and United States marshals on shore. The fact that a revenue vessel is detailed for extraordinary duty during a time of urgent necessity does not alter the relation of its officers to the Government or attach them to the navy.

10u. OPINION XCVII. JANUARY 21, 1879.

Service in revenue marine does not render one eligible.

Can one who served during the late war in the United States revenue marine become a member of the Grand Army of the Republic?

Article IV, Chapter I, Rules and Regulations, confines membership to those honorably discharged, after serving during the late Rebellion, from the United States army, navy or marine corps, distinct and well-defined and well-understood branches of the service, and they do not, in my judgment, include the revenue marine, still another and distinct branch of the Government service. Therefore my answer would be in the negative.

10v. DECISION V. L. W.

One who served in revenue marine service not eligible.

On the question presented by the Department of Maryland as to eligibility of an applicant who had served in the revenue marine service as an enlisted man, and, under the orders of the Navy Department, in blockade service during the war, I decided that he was not eligible, referring to Opinion of Judge Advocate-General XLVII, April 11, 1873. 10 u.

10w. OPINION L. APRIL 25, 1873.

Clerk to an army Paymaster not eligible.

Opinion VI, rendered September 7, 1871, from this office, is not intended to apply to the case of a clerk of an army Paymaster. I do not think that such service renders a person eligible to membership in the Grand Army. None of the reasons assigned for Opinion VI apply to his case. He is universally considered a civilian. He wears no uniform; is not mustered into the service; has no command, and is never ordered into action; is liable to be discharged at any time, or can leave without becoming a deserter. He is in a similar position to that occupied by a clerk in the Quartermaster's department, the ordnance bureau, or any Government office. In a vessel of the navy every person on board must participate in an engagement, and consequently every one is assigned some post in action. A large number of persons connected with the army, more or less remotely, are required, by their duties in relation to property in their charge, to keep out of action. If the word "soldier," in Article IV, Section 1, Chapter I, of the Rules and Regulations, has any significance, it seems to me to exclude this class of persons. (See 10 l.)

[Chapter I.—Article IV.]

10x. OPINION XCIX. MARCH 29, 1879.

Contract surgeon not eligible.

An applicant for membership to the Grand Army of the Republic was a contract surgeon, afterwards commissioned by the President and confirmed by the Senate, but he never accepted commission, and never was mustered into service. Is he entitled to membership?

Clearly not, for he can not be said to have been honorably *discharged* from the United States army, navy or marine corps. See Article IV, Chapter I, Rules and Regulations.

10y. OPINION CIV. SEPTEMBER 25, 1879.

Woman not eligible. No honorary membership.

A woman who rendered important service to the Government as bearer of dispatches, and in procuring information within the Rebel lines, and who, in performing such service, suffered much and made great sacrifices, and who was arrested as a spy and barely escaped a public execution, desires to become an honorary member of a Post of the Grand Army of the Republic. Is she eligible?

No such membership is known to the Order. The National Encampment has never provided for honorary membership. None but soldiers and sailors who served during the Rebellion are eligible to membership.

10z. DECISION I. R. B. B.

Surgeon, Board of Enrollment not eligible.

Is the surgeon of a board of enrollment eligible to membership in the G. A. R.?

No. The position of surgeon of a board of enrollment was purely a civil one; the holder thereof was not mustered into the active military service of the United States.

CHAPTER II.

ARTICLE I.

POSTS—FORMATION.

11.* *Application for charter.*

SECTION 1. A Post may be formed by the authority of a Department Commander, or of the Commander-in-Chief (where no Department organization exists), on the application of not less than ten persons eligible to membership in the Grand Army of the Republic; and no Post shall be recognized by the members of the Grand Army of the Republic unless acting under a legal and unforfeited charter.

See Sec. 1, Article I, Chapter V, Page 83.

12. *Surrender of Charter.*

SEC. 2. No charter shall be surrendered by any Post so long as ten members thereof demand its continuance, nor unless a proposition to surrender the charter shall have been made at a stated meeting at least four weeks before the time of action, and due notice given to every member of the Post.

See Sec. 3, Article V, Chapter V, Page 83.

13. *Reorganization.*

SEC. 3. A Post disbanded, whether before or since the annual session of the National Encampment in 1869, may be reorganized with its original name and number, provided that these shall not have been appropriated. In such reorganization a new charter shall be issued, bearing the names of the new as well as the old members petitioning therefor.

14. *Rank of Posts.*

SEC. 4. The rank of Posts shall be determined by the date of the charter under which they are acting.

11. OPINION LXXVII. OCTOBER 24, 1877.

Commander-in-Chief cannot grant a "roving charter." Posts must be located.

Certain members of the Grand Army of the Republic, belonging to the regular army, request a charter for a Post, independent of any Department, the charter to operate and the Post to be located in any State where the regiment to which they belong may be stationed for the time being; or, in other words, that they may be granted a "roving charter;" and the question is asked, Has the Commander-in-Chief the right to grant such request?

Article III, Chapter I, Rules and Regulations Grand Army of the Republic, would seem clearly to prohibit the granting of such request, for it states distinctly that the several constituted bodies of the Grand Army of the Republic shall consist: 1. Of precinct organizations, to be known as *Posts of a Department*; 2. State organizations, to be known as *Departments*; and 3. A national organization, to be known as a *National Encampment*. The request contemplates a body differently constituted, and is clearly in violation of the rule.

CHAPTER II.—ARTICLE II.

ADMISSION TO MEMBERSHIP.

15.* Application.

SECTION 1. Every application for admission to membership shall be in writing, and shall give in detail, upon the blanks furnished by the National Headquarters, the applicant's age, birth-place, residence, occupation, date and rank when entering the service, and his rank at the time of his discharge (or if still in the service, his present rank), the date and cause of his discharge, the company and regiment or ship to which he belongs or belonged, the length of time he served; if wounded, when, in what engagement, in what manner and degree, and the fact of any previous application, and to what Post it was made. (*a-d*.)

See *Eligibility*, page 4.

15a. Application for membership must be made on the blank form furnished by National Headquarters.

This application requires, in addition to the facts above prescribed, the declaration that the applicant has not been convicted of desertion or any other infamous crime. The words, "by court martial," formerly in this sentence in the application, were stricken out by the National Encampment at Minneapolis, 1884, so that conviction of crime by *any* tribunal must be stated for the information of the Post. See *Notes 10 d, 10 e*.

R. B. B.

Failure to state all the facts required on the application may render an election and muster void.

OPINION CXXII. APRIL 10, 1880.

15b. *Applicant for membership should be admitted under his true name.*

An applicant for membership in the Grand Army of the Republic, who enlisted in the army, and was borne upon the rolls of his regiment under the name of Donovan, but who claims that his real name is O'Donnell, desires to be mustered under his true name.

Can he be admitted under any other name than the one by which he was borne upon the muster rolls of his regiment?

If otherwise eligible, he may become a member of the Grand Army of the Republic, and should be admitted under his true name.

Errors in the names of recruits were not unfrequent. Such errors should not be propagated but corrected.

The matter of identity is a question of fact to be determined by the Post, after careful investigation, and upon satisfactory testimony.

DECISION II. R. B. B.

15c. *Application under false name.*

A comrade joins the Grand Army under an *alias*, having no papers to show that he had enlisted or served under this name. What is his position in the G. A. R. ?

The application for membership must be in the real name of the applicant. An applicant who obtains admission to the G. A. R. under an assumed name practices a deception that may properly be made the subject of charges and specifications.

15d. OPINION LXXII. MARCH 22, 1876.

1. *Eligibility to Membership*—An applicant rejected by one Post, and who, before the expiration of the time fixed by the Regulations, applies for membership, and is there elected and mustered, is illegally elected and mustered, and should be dropped from the rolls.

2. *Two things are necessary to become a member of the Grand Army* :—*Eligibility to membership under the Regulations, and he must be duly elected.*

3. *Regulations*—*The National Encampment alone has power to alter or amend.*

4. *A member once admitted, though unfit, can not be stricken from the rolls except for some subsequent misconduct.*

5. *Acting within the Regulations, the muster of a recruit would conclude the Post on all questions left by the Regulations to the Post.*

F. C. F. applied for admission to Post 32, of Department of Massachusetts, and was rejected. He then applied to Post 82, and was accepted without the consent of Post 32. He did not state in his application to Post 82 that he had made a previous application. From Post 82 he was regularly transferred to Post 125, and the fact transpiring that he had been improperly admitted to Post 82, he was dropped as never having been a member of the G. A. R. The Department Commander sustained the action of Post 125, holding that the initiate fraud or error vitiated the subsequent proceedings.

From this decision F. C. F. appeals.

The provision of Chapter II, Art. II, Sec. 5, of the Rules and Regulations that a rejected candidate shall be forever after ineligible for admission to any other Post of the G. A. R., without the consent of a two-thirds vote of the Post rejecting him, is in terms absolute and unqualified.

Can a Post by its action or omission waive the application of the rule in a particular case? The appellant claims that Post 82 did so, because one of its members informed him that he need not comply with the Regulations. The principle of the organization of our Order is subordination of Posts to Departments, Departments to the National Encampment, and the whole Order to written regulations, which form our constitution. These regulations can only be altered, amended, suspended or repealed by the National Encampment, not by Posts, whose powers are limited by the Regulations themselves. Nor can any comrade, on behalf of the Post, lawfully do what the Post itself has not the right to do.

[Chapter II.—Article II.]

The applicant, therefore, was not lawfully proposed and elected. But the case involves the further question, how far the unlawful act is void.

Two things are necessary for the admission of a candidate to the Grand Army. He must be eligible to membership under the express provisions of the Regulations, and he must be elected by a duly authorized body. If not eligible, the Post has not the right to muster him, though they may unanimously vote to admit him. Certain general qualifications are stated in the Regulations; the peculiarities of character of the applicant are left to the investigation of the committee and the decision of the ballot. If an applicant who comes within the general requirements of the Regulations is elected by a Post, and it is afterwards discovered that he had been guilty of crime, or is of such a temper and disposition as to unfit him for the society of gentlemen, the action of the Post, as a general rule, must stand, because they have decided the matter which lay in their discretion.

Even in this case, if the Post acted on mistaken information, and it was discovered before muster, their action might, in some circumstances, be reversed. See Opinion LVII, October 29, 1873. (*188g*). In such a case the comrade, if once mustered, though unfit for membership, would remain a member, and could not be stricken from the roll except for some subsequent offence. In brief, I should hold that the muster of a recruit would conclude the Post upon all questions left by the Regulations to the Post to decide.

In the present case the Post have not acted injudiciously upon a question submitted to them, but they have taken jurisdiction where the Regulations give them none. Their action in this case was required to be concurrent with that of the Post which first rejected the candidate.

If they had the means of knowing the fact of the previous rejection, as it seems they should have had in their files of General Orders, or by insisting upon the proper filling of the blanks in the application, they were guilty of carelessness and disregard of their obligations of the Order. Yet they cannot bind the Order of which they form a part, or waive the rights of Post 32, to whose jurisdiction the candidate first voluntarily subjected himself.

The action of the Post, therefore, in admitting the appellant was void, and the National Encampment only can provide any remedy for the case. If it were an instance where the vital interests of the Order were at stake, it may be that a Commander-in-Chief, in the intervals between the sessions of the Encampment, might assume the power to act. But it is not apparent that any such pressing necessity exists, either arising from an equitable regard for the position of the appellant, or from the interests of the Grand Army involved.

1. The candidate was furnished with a blank form of application, containing a statement of the fact whether or not he had made previous application for membership, and had no right to rely upon the unofficial statement of his friend, that he might suppress the fact of his previous rejection. Common prudence would have led him to read the Regulations of a society which he intended to join, when those regulations were open to his free inspection. His familiarity with the rules of other secret societies, shown in his argument, must have taught him that his rejection by a local organization was a material fact which could not be without influence in the action on his second application, and that the printed form for such a statement could not be a dead letter. The dropping of his name from our rolls can throw no imputation upon his character beyond what is necessarily inferred from his own acts. He may make a new application to any Post, and, with the consent of Post 32, may be regularly elected and mustered.

2. Our organization differs in many respects from other secret societies. Our Regulations expressly recognize the termination of membership in the Order, either voluntarily, by honorable discharge, by neglect, or by sentence of Court

16. *Presented and referred.*

SEC. 2. The application shall be presented at a stated meeting, and be recommended by a member of the Post, who shall vouch for the applicant's eligibility, it shall then be referred to a committee of three, of which number the member recommending shall not be one, for investigation and report.

17*. *Report of Committee.*

SEC. 3. The committee shall make careful investigation of the facts set forth in the application; they shall see the applicant in person, and shall recommend his election or rejection, at a meeting subsequent to their appointment, by endorsement upon the application (*a, b*). *Provided, however,* that the Commander-in-Chief or a Department Commander may grant a dispensation in writing to a Post, to waive in any particular case the rule prohibiting an investigating committee from reporting upon an application, on the evening of their appointment (*c*).

Note 15 d continued.

Martial. There are, therefore, many men not now members of the Grand Army, who have been comrades, and who have filled high and important offices in the Order. The addition of one name to the list does not seem to be likely to affect the interests of the Order to such an extent as to warrant an arbitrary suspension of the Regulations.

It is suggested that the appellant has acted as a Post officer, and it is apprehended that if it is decided that he has never been lawfully a member, his official acts must be declared void.

I do not understand this to be the law. The only practicable rule to adopt in such cases is to consider the acts of a *de facto* officer, so far as they were lawful in themselves, as of the same force and effect as if performed by one holding the office *de jure*.

On the other hand, unless the illegal act of the Post in this case is held void, there is no possible mode of enforcing the Regulation. Either this Regulation and all others relating to the eligibility of candidates are void,—for there is no punishment provided for their violation,—or else an act done contrary to them is void *ab initio*, and when discovered must be so declared.

I think the appeal must be dismissed.

MODE OF REPORTING.

17a. OPINION XXXVII. JULY 1, 1872.

1. *Report of Investigating Committee on application must be presented in writing, and on the application.*

2. *Post cannot act on the verbal report of an investigating committee. If so acted on, action is illegal.*

3. *Where verbal report has been acted upon and applicant has been rejected, the ballot may be renewed before the time specified in the Rules and Regulations.*

Can a Post ballot on the application of a person for membership, when the

[Chapter II.—Article II.]

application is not presented by the Committee of Investigation at the meeting when said ballot is cast ?

The verbal report of a Committee on Investigation be accepted and acted on by a Post, and the candidate thereupon balloted for ?

If the above acts of a Post be illegal, can a candidate, who has been balloted for as above and rejected, be balloted for again before the time prescribed by the Rules and Regulations ?

The facts which give rise to the above questions are stated substantially as follows :

1. An application was received and properly referred. At a subsequent meeting the committee stated, verbally, that they had signed a favorable report upon the application, and had sent the papers by a comrade to the Post Commander, who was absent from the meeting. The Senior Vice-Commander, presiding, ruled that this statement was sufficient as a report, and put the question to a vote upon the applicant's admission. The applicant was rejected.

2. Chapter II, Article II, of the Rules and Regulations, prescribes very exactly the mode of proceeding upon an application for admission. Section 3 provides that the committee shall make their report at a meeting subsequent to their appointment, *by endorsement upon the application*; and Section 4 continues, *after the reading of the report*, etc. Clearly, therefore, the report must be in writing, and on the application, and must be presented in that form at the meeting. The committee need not be present to offer it. It may be previously forwarded to the Adjutant, and read by him or the Post Commander at the meeting; but, until it is in possession of the Post, in writing, it cannot be acted on. It may be said that the production of the application, with the report indorsed upon it, is only evidence that it has been made, and that the statement of that fact by the committee is just as good evidence of it, if it is not doubted or contradicted. This view would be pertinent if the application, after being filed with the report upon it, had been lost. It would, indeed, then be allowable to supply a new copy from memory. But a report required to be in writing is not a report of the committee for the purpose of action by the Post, until it is actually filed and in their possession at a meeting. Until then it is constructively in the hands of the committee, and is actually liable to be changed by them.

3. The first two questions, then, I answer in the negative, applying the limitation to the first, that the report may be sent in, as well as actually presented by the hands of the committee. It only remains to say, in answer to the third question, that the proceedings should be resumed at the point where the irregularity occurred—that is, the report, indorsed on the application, should be filed; and at any meeting of the Post, in the proper place in the order of business, the report should be read and a new ballot taken.

ON APPLICATION AND ELECTION AT SAME MEETING.

176. OPINION XI. SEPTEMBER 29, 1871.

1. *One not legally introduced into the Order not a member.*
2. *Council of Administration has no power to legalize an illegal act of a Post Commander.*

A Post voted upon an application for admission at the same meeting at which it was received. The applicant was declared elected, and was thereupon mustered into the Post. Some of the members of the Post appealed from its action to the decision of the Department Commander. The Judge Advocate ruled that the action of the Post was illegal and void. The Department Council of Administration decided, nevertheless, that the applicant should be retained as a comrade.

From this decision the appellants appeal to the Commander-in-Chief.

18*. Ballotting.

SEC. 4. After the reading of the report, the Commander shall give opportunity to any comrade having objections to the election of the applicant to state the same, after which a ballot with ball ballots shall be had. (*Notes a to e.*) If, on a count of the balls deposited, it appear that not more than twenty are cast, and two or more of them are black, the candidate shall be declared rejected; but if more than twenty are cast, then an additional black ball for every additional twenty shall be necessary to reject. If a less number of black balls than above provided be cast, the candidate shall be declared elected, and no reconsideration of a ballot shall be had after the Commander has announced the result thereof. But, should the result of the ballot be unfavorable, and the Commander suspect any mistake, he may, at his discretion, before declaring the vote, order a second ballot, the result of which shall be final. (*f, g.*)

Note 17 b continued.

1. I am of opinion that the appeal should be sustained, and the decision of the Council of Administration reversed. The opinion of Comrade Woodbury is correct, and his conclusion is not disputed, but the election and muster were illegal.

If a man was not legally introduced into the Order he is not a member. All the proceedings in his case, subsequent to the reference to the committee, are null and void. The Post Commander should be directed to cause the committee to make a new report. A new election should be held, and then, if the applicant is elected, he should be re-mustered. The reason of the rule requiring the interval between two meetings to elapse between an application and the vote on the question of admission, is to give notice to the members of the Post, that the facts may be ascertained which would prevent the election of improper persons. If the applicant in this case is a suitable person for election he will no doubt be elected again; if not, he should not be a member of the Order.

2. It will be readily seen, I think, that the condonation by the Council of Administration of the illegal act of the Post Commander, in putting the question of the applicant's admission at the same meeting at which the application was received, and adoption of the result of that act by considering the person a member, is arrogating to the Council the same power to avoid the Rules and Regulations which the Post Commander assumed.

The Post By-Laws should also be modified so as not to conflict with the Rules and Regulations.

17c. Dispensation.

NOTE.—This provision confines the authority to grant such a dispensation to a *particular case*. A dispensation permitting a Post or Posts to suspend this rule generally, or for a limited time, would be illegal. The Post must apply to Department Headquarters, stating the case, and receive a dispensation in writing, if the Department Commander deems it proper to grant it.—R. B. B.

BALLOT.

18a. NOTE.—In balloting for applicants for membership, the Officer of the Day will have charge of the ballot-box, which should be first presented to the Commander for his inspection and vote, to avoid the necessity of his leaving his position; after which the ballot-box will be placed on the altar or stand and comrades be directed by the Commander to step forward and vote.

[Chapter II.—Article II.]

After placing the ballot-box on the stand, the Officer of the Day will take position two paces to the right of the altar, facing the Post Commander.

Comrades are not required to salute when voting. When all have voted who desire to vote, the Commander will direct the ballot to be closed, and the Officer of the Day will present the ballot-box to the Commander for his announcement of the result.

The presentation of the ballot-box to the Senior and Junior Vice-Commanders, for their examination and declaration of the result, followed in some Posts, is without warrant of law.—R. B. B.

18b. OPINION LXXXIX. AUGUST 2, 1878.

Must be a ballot.

If an applicant for admission to Post membership is reported upon by the committee unfavorably, is it necessary to ballot on his election, or does the report of the committee settle the question of his admission?

Whatever the report of the committee, I am clearly of opinion that there should be a ballot. See Section 4, Article II, Chapter II, Rules and Regulations.

18c. OPINION C. MARCH 29, 1879.

Balloting—Cannot be for several candidates collectively.

Is it proper for a Post to ballot for several candidates collectively?

Certainly not. Supposing the Post wanted to black-ball one and elect the others, how could it be done on a collective ballot (if I may use that expression?)

18d. OPINION XV. NOVEMBER 6, 1871.

1. *Ballot—A personal matter—Should not be used in malice.*

2. *Opportunity for stating objections to a candidate should be given.*

Has a comrade the right to black-ball a worthy discharged soldier on purely personal grounds?

1. The mode of election by ballot gives to every comrade voting an unquestionable right and opportunity to express his opinion. The ballot should be conducted so that no comrade's vote should be known, and he cannot, from the nature of the case, be called in question for exercising his choice. No comrade ought to be influenced by personal dislike or malice, but should decide in every case upon his honest convictions. Yet, if he does not, he cannot be restrained of his privilege. He must answer to his own conscience.

2. The Regulations prescribe that before the vote is taken an opportunity shall be given to any comrade to state his objections to the candidate; and if this is complied with the friends of the candidate will ordinarily withdraw his application if it becomes probable that he will not be elected; or, if invalid objections are presented, after friendly discussion, they may be removed.

18e. OPINION CXXXVIII. SEPTEMBER 15, 1882.

Ballot must be taken after the investigating committee has reported.

Where the decision of the Post Commander is in violation of the Regulations, a vote of the Post to sustain him does not cure the error.

Application can not be withdrawn after investigating committee makes report, even by unanimous consent of the Post.

An application for membership is made in regular form, the investigating committee made its report to the Post, the ballot is about to be taken, when a comrade,

friend of the applicant, believing the applicant will not be elected, asks to withdraw the application; appellant objects to permission being granted for the reason that it was in violation of Section 4, Article II, Chapter II, Rules and Regulations. The Post Commander, over the objection, granted the withdrawal of the application, giving as a reason for so doing that "the applicant was unworthy to become a member of the Grand Army of the Republic, it having been ascertained that applicant had been a member of the Missouri militia in 1861." Appeal was taken from decision of Post Commander to the Post, based on Opinion XVI, August 2, 1878, Page 3, Manual 1881, Paragraph 20. Chair sustained by vote of 14 to 9 *contra*. Post Commander bases his decision on Opinion XV, page 27, Manual 1881.

Should the Post Commander have permitted the withdrawal of the application?

The Judge Advocate of the Department from which this case comes and to whom it was first referred by the Department Commander, says the case presents a purely parliamentary question, and says, "When the application was presented the Post was possessed of the subject-matter. When it was referred to a committee the committee was possessed of the subject-matter. The application could not be withdrawn without the consent of the Post. With that consent it could be withdrawn up to the time of taking the ballot. The Post Commander decided that it could be withdrawn. This was erroneous, but the appeal from the decision of the Post Commander to the body and the vote of the body to allow the withdrawal cured the error, unless there is shown to have been thereby violated a constitution or a law."

There is but one question to be decided in this appeal, *i. e.*, *must the ballot be taken* after the report of the investigating committee has been made to the Post?

Yes. Section 4, Article II, Chapter II, Rules and Regulations, says, after the reading of the report and opportunity is given for stating objections to the candidate, "ballot with ball ballots *shall* be had." The language is mandatory, emphatic, plain, and the action of the Commander violated this law, and the Post could not cure the violation by sustaining his decision.

The application could not have been withdrawn even by the unanimous consent of the Post, much less when an objection to its withdrawal was raised. It was purely a question of law, and not of parliamentary usage.

If the candidate was *unworthy*, as stated by the Post Commander, all the more necessity for taking the ballot and reporting it to National Headquarters, as provided in Section 6, Article II, Chapter II, for the protection of the Order.

SECOND BALLOT.

18f.

DECISION II. L. W.

Post Commander—Can not order second ballot until he has announced the result of the first.

Comrade Rowe, Commander Post 5, Albany, appealed from the decision of the Department Commander of New York, under the following facts:

A ballot had been had under which an applicant had been duly elected, but the Post Commander, without announcing the result, ordered a second ballot.

Discovering his error, the Commander sought to repair the wrong, but on the submission of the case to Department Headquarters, it was decided that the second ballot should be completed.

From this decision Comrade Rowe appealed, on the ground that the Post Commander could not reverse the action of the comrades at the ballot-box by which the applicant had been elected.

The appeal of Comrade Rowe was sustained, and the decision of the Department Commander reversed.

[Chapter II.—Article II.]

19.* *Rejection.*

SEC. 5. If an applicant be rejected, his admission fee shall be returned, and he shall not be eligible to admission to the Grand Army of the Republic until six months after such rejection. He shall not be eligible to membership in any other Post without the consent, by a two-thirds vote, of the Post rejecting him. A second, and all subsequent applications, shall be in the same form and subject to the same conditions as the first.

20. *Headquarters to be notified.*

SEC. 6. The name of a rejected applicant shall be forwarded to National Headquarters through the proper channel.

21. *Notice of election.*

SEC. 7. Each applicant, upon his election, shall be at once notified thereof in writing, and on presenting himself for membership shall be properly mustered.

Must be mustered within three months.

But, unless he present himself for muster within three months from the date of such notice, his election shall be void, and all moneys which may have been required by the Post to accompany the application shall be forfeited to the Post treasury.

WHEN BALLOT MAY BE SET ASIDE.

189. OPINION LVII. OCTOBER 29, 1873.

Report of investigating committee, ballot and muster.

Where the committee reports favorably without having seen the applicant, and the ballot has been taken, the ballot should be set aside by the Department Commander.

The applicant not being mustered, has no claims.

The committee on an application for admission to a Post reported favorably, and on ballot the applicant was elected. Immediately after, at the same meeting and before his muster, it was stated to the Post by a member not present at the time of balloting, that the candidate was an unfit person to become a member, and the committee then acknowledged that they had neglected their duty, and had not seen the candidate in person. Must the Post proceed to muster him, or what can they do in the premises?

The Post in electing the candidate acted on the faith that the investigating committee, as implied by their favorable report, had performed their duty. If they had known the truth, that they had not before them the information they had a right to possess before balloting, it is to be presumed that they would have postponed action. I think the Post ought not to be debarred from a true expression of their opinion and wishes by the negligence of the committee. In ordinary cases I should hold an election to be conclusive, but it appears to me that the circumstances of this case are so peculiar as to call for the interposition of the Department Commander. I think he should order the report and vote to be declared void, and the committee, or a new one, to investigate and report at a subsequent meeting, and thereupon a new ballot to be taken.

As the applicant has not been mustered, he can have no claims in the matter.

Dispensation.

The Commander-in-Chief, or a Department Commander, may, however, grant a dispensation in any particular case to a Post to muster a candidate, even though he has *not* presented himself for muster within three months after notice of election. (See *Note 17 c.*)

22. Muster fee.*

SEC. 8. A member-elect shall pay, before enlistment and muster, an admission fee of not less than one dollar. Upon muster-in he shall subscribe to a copy of these Regulations, and of the By-Laws of the Post, and receive from the Post a membership badge, the cost thereof being added to the muster fee. Comrades are forbidden to wear any other membership badge than that obtained through the proper channels from National Headquarters. (*a-c.*)

23. Muster by Commander-in-Chief or Department Commander.

SEC. 9. The Commander-in-Chief, or a Department Commander, may, at pleasure, receive and muster in an applicant for membership, or detail a comrade for that purpose, provided the person so received and mustered in resides outside the proper territorial limits of any Post.

24. Grades.*

SEC. 10. The applications for membership of persons who were comrades before the introduction of the grade system, but who never took the obligation of the third grade, shall be received and acted upon the same as if the applicant had never belonged to the Grand Army. (*a, b.*)

19. An applicant rejected must make a new application to the Post which rejected him, or obtain the consent of that Post if he desires to apply elsewhere. See opinion LXXII, page 17. *15 d.*

Opinion LIII, July 9, 1873, decided that a person twice rejected by the same Post was thereafter ineligible. This is rendered *void* by an amendment to this section, adding the words, "and all subsequent applications."

22a. OPINION II. JULY 3, 1871.

Regulations do not require admission fee to accompany application. When paid it becomes the property of the Post. Post has power to remit.

[This Opinion was given in the case of a soldier in the Regular army who, by removal to a distant station after election by a Post and before muster-in, could not present himself for muster within the three months prescribed.

The Judge Advocate General ruled that the Commander-in-Chief could not grant any relief in such a case.

Authority for such dispensation was created by amendment to the Rules, Enactment of 1872.

[Paragraphs 1 and 2 on this point are omitted as now *void*.]

The third query was as to the right of the Post to return the fee forwarded with the application.

[Chapter II.—Article II.]

The third question is not directly answered by the Regulations. The money forwarded is forfeited, and has become the property of the Post; but the forfeiture is not of the nature of a punishment for misdemeanor, the rule requiring the admission fee to accompany the application being rather intended to secure a pledge that the application is made in good faith. The Regulations do not require the admission fee to be forwarded with the application, but only that it shall be paid before enlistment and muster. It was forwarded in the present case in accordance with a By-Law of the Post. The money being now the property of the Post, and entirely under their control, the Post may appropriate from their funds an equal amount to the sum paid by the applicant, if they desire to relieve him from the pecuniary loss which he has unfortunately incurred. I am the more confident in this expression of opinion from the spirit of the provision of Section 3, Article IV, Chapter V, which specifically gives to any Post the power to remit the dues of members who are unable, by reason of sickness or misfortune, to pay them.

* NOTE.—The statement that the Rules and Regulations *do not require* the muster fee to accompany the application is technically correct; but a Post may so require by its By-Laws, under the authority of this section, "all moneys which may have been required by the Post to accompany the application shall be forfeited to the Post treasury." R. B. B.

22b. OPINION V. AUGUST 14, 1878.

1. Power of Post to fix amount of initiation.

1. It is within the power of any Post to fix the amount of the initiation fee to be paid by new members, provided that it shall not be less than one dollar (*vide* Chapter II, Article II, Section 8, Rules and Regulations). This initiation fee should be fixed by the Post By-Laws, and may be altered at the discretion of the Post, in the manner that such By-Laws may prescribe in the case of other amendments.

22c. OPINION LXXXVI. FEBRUARY 27, 1878.

Muster-in fee—Must be uniform. "Same Manner"—Meaning of.

* * * * *

Under Section 3, Article IV, Chapter II, Rules and Regulations, can a Post establish an initiation fee for one of its *honorably-discharged* comrades different from that established for recruits? What does the phrase "same manner" mean?

I am of opinion that a Post must have a regular and uniform initiation fee, and that it cannot establish different fees for different applicants, for this would be in violation of the simplest privileges of the fairness, impartiality and uniformity which is supposed to pervade all law. The meaning of the phrase "same manner," in the section referred to, is, in my judgment, that all forms, reports and proceedings (save those excepted by the rule, to wit, "Muster" and "Taking anew the obligation") must be observed as in the case of an original applicant.

24a. GRADES. See reference to Grades in Introduction.

OPINION LIII is here inserted for its reference to the system of Grades. That part of the Opinion omitted—that a person twice rejected was thereafter ineligible—is now invalid by amendment to the Rules. See *Note 19*.

OPINION LIII. JULY 9, 1873.

Person twice rejected by the same Post.

Does the last clause of Section 5, Article II, Chapter II, of the Rules and Regulations, forbid the reception of an application for membership from a person who has been twice rejected by the same Post under the old organization?

* * * * *

The question proceeds upon an erroneous assumption. It implies that there have been different organizations succeeding each other under the common name of the Grand Army of the Republic.

The Order, in fact, has been one continuous body, with the same objects, and with substantially the same plan of operations.

The only important changes in its system have been the introduction and abandonment of grades of membership, and it will be observed that this system was embodied in one Article of the Regulations, Article V, Chapter I, editions 1869-70, and was eliminated by striking out that Article and making brief verbal alterations in a few other Sections. By that Article certain members were given peculiar powers, and new recruits were placed for a time on probation. In May, 1871, by repeal of these provisions, all members were again placed upon the same footing. Always, however, they were comrades of the same Order, banded together for the support of the same principles. A person who applied for admission to a Post of the Grand Army in 1867, desired to join the same society which an applicant in 1873 wishes to enter. Any particular Post of the Grand Army is the same body, and holds substantially the same relation to the Order which it held from the beginning.

It is quite within the power of any voluntary association to say who shall be eligible to membership in its ranks, and to change its requirements at will; and a person who applies for admission must be governed by the law as he finds it at the time of his application. In this case the prohibition has the same effect as if it had been inserted in the Section which prescribes the classes of persons who may or who may not be admitted.

The clause in question first appears in the revision of the Regulations adopted at Cincinnati, May, 1869, at the same time that the system of grades was adopted. Previous to that time an applicant might present himself indefinitely at intervals of six months. At the same session the clause was adopted making ineligible those who at any time had borne arms against the United States. Until then a reconstructed Rebel, for anything in the Regulations, might have been proposed and admitted to membership; but, as it seems to me, both the clauses adopted at Cincinnati have the similar effect of preventing the reception of either class of applicants after that time.

24b. OPINION LXXIV. AUGUST 29, 1877.

Grade—One who was mustered as a recruit under the grade system must proceed as an original applicant.

C. A. P. was mustered as a recruit September 20, 1870, under the grade system, was never advanced to the higher grades, and never took the obligation of veteran after the grades were abolished, but was carried on the rolls of the Post until the Post surrendered its charter. He never paid any dues other than the fee for muster as a recruit (five dollars). He now wishes to join another Post. How can he legally be brought into the Order?

On the foregoing statement I am of the opinion that C. A. P. can only be brought legally into the Order by applying *de novo*—that is, by making an original application, and proceeding as if he were a new recruit. I find no previous Opinion, Rule or Regulation to aid me in this case; but upon general principles it would seem that any regard for the spirit or intent of the Rules and Regulations governing the Order would require much more from C. A. P. than he has yet performed. Nearly seven years ago, under the grade system, he was mustered as a recruit under that system. He never elected to proceed further. When that system was abolished he neglected to take the obligation of veteran; he never paid any dues, except the fee required for proceeding as far as he went; the fact that he was carried on the rolls of the Post all the while amounts to nothing; he should not have been; and now, that the Post has surrendered its charter, I am clearly of opinion that he should proceed as an original applicant.

ARTICLE III.—CHAPTER II.

ADMISSION OF COMRADES FROM OTHER POSTS.

25*. *By transfer.*

SECTION 1. A comrade having a valid transfer card may be re-admitted to the Post which granted the same by a two-thirds vote of the members present and voting at a regular meeting, or he may be admitted to another Post, after his name has been proposed, referred and reported upon as in case of an applicant for membership, and upon receiving a two-thirds vote of the members present and voting at a regular meeting, or he may be admitted a charter member of a new Post. (*Notes a-g.*)

SEC. 2. Each Post may establish such admission fees, to be paid by comrades joining by transfer as they may think proper, not exceeding the amount required from recruits.

See Section 2, Article IV, following, for issue of Transfer Cards.

25a. OPINION LXXVIII. NOVEMBER 26, 1877.

Vote on application on transfer card may be either by ballot, hand, or viva voce.

Transfer card—Holder may visit Post—May also become Charter member of new Post.

Should the vote required by Section 1, Article III, Chapter II, be *viva voce*, or by ballot?

I see no reason why it might not be either, or by hand; if by a ball ballot, then it would require more than a third to be black balls in order to reject.

Has a comrade, holding a transfer card, a right to visit a Post? Has he such right if not correct in the National or Department countersign?

In my opinion such Comrade has the same right to visit a Post as any other member of the Order. If he has not the countersign necessary for admission, of course he can only be admitted by the Officer of the Guard, or Day, acting under directions of the Post. I do not see why the whole matter does not rest in the discretion of the Post as to the admission of any Comrade into the meetings of the Post, except such as visit on official business upon authority from Department or National Headquarters.

Can a member holding a transfer card be a Charter-member of a new Post? Yes.

25b. OPINION CXXXVII. SEPTEMBER 15, 1882.

Admission on transfer. Must be by a regular application.

Transfer card should accompany the application.

A comrade from another Post, having a transfer card, being present at a meeting of this Post, wished to join this Post on his transfer card. The rules being

suspended, motion was made that ne be accepted. The motion was put by the Post Commander and carried by *viva voce* vote. The question was raised as to the legality of the admission of the comrade.

A comrade having a valid transfer card and applying for membership to a Post *other* than the one which granted the transfer card, must have his name "proposed," that is, must make a regular application, have it referred and reported on, as in case of any applicant for membership. Sec. 1, Art. III, Chap. II, page 7, Rules and Regulations.

The transfer card should accompany the application.

Election to membership on application on transfer card may be by ballot or *viva voce*. Par. 2, Opinion V, Nov. 26, 1877. I do not see any law for *viva voce* vote save the opinion referred to, but this having been approved by the National Encampment is law until changed by the National Encampment.

25c.

DECISION XVI. G. S. M.

Transfer card—Holder of, who, on application to be admitted to a Post is rejected, is not required to obtain the consent of the Post that rejected him in order to join another Post.

A comrade in good standing takes a transfer card from Post 63; he subsequently presents this, and asks admission to Post 23, but his application is rejected. His transfer card, without any indorsement thereon, is returned to him, and after the expiration of the year for which the transfer is granted, he applies for membership in Post 35. The Judge Advocate renders an opinion that the rejection of G. upon application upon transfer card necessitates the consent of Post 23 to his application for membership in any other Post, and that the provision giving an honorable discharge to comrades who, taking a transfer card and not joining any other Post within one year, does not apply to any one who applies to and is rejected by a Post on said transfer. This opinion was affirmed by the Department Commander, and from this decision Post 35 appealed.

G., not being admitted to any Post within a year from the date of his transfer card, was "honorably discharged from the Order" within the meaning of Section 2, Article IV, Chapter II, Rules and Regulations. Being so "considered," he is entitled to re-admission under the conditions set forth in Section 3, Article IV, Chapter II, and is subject to no others. His rejection by Post 23 involves not the question of admission to membership in the Grand Army, but the materially different question of admitting a member of the Order to membership in a particular Post. The case, therefore, does not fall under Section 5, Article II, Chapter II, Rules and Regulations, nor under Opinion LXXII of 1876. (*15 d.*) There seems to be nothing in the language of Section 2, Article IV, Chapter II, Rules and Regulations, or in the context, implying any discrimination between comrades who apply and are not admitted on transfer cards and those who do not so apply at all. The absence of any provision in the Rules and Regulations for reporting rejections on transfer cards is a fact which, though not conclusive, is confirmative of the view here taken.

The decision of the Department Commander was overruled and the appeal sustained.

25d.

OPINION LXXIX. DECEMBER 4, 1877.

Members of a Post cannot become charter members of a new Post without transfer cards or having been honorably discharged. National or Department Headquarters may order transfer cards.

A certain Post represents that in October, 1876, certain of its members, without

Chapter II.—Article III.]

notice, without any communication with it, left the Post, and without transfer cards or honorable discharges, joined another Post; upon hearing which latter fact it sent a communication to said members, of which no notice has been taken; and that in June, 1877, said members were suspended by it for non-payment of dues.

On the other hand, said members represent that, although they left the Post (being obliged to go with their regiment), yet when they learned of the intended departure of their regiment they applied for their transfer cards, but, by the advice of the then Adjutant and the present Commander of the Post, they postponed taking the cards until their actual departure or the arrival of certain expected members. That after said arrival said Adjutant reported there were no blanks; that they then telegraphed to Department Headquarters for blank cards, receiving a reply that some would be sent in a few days, and suggesting that the address of the departing comrades be taken, so that the cards could be forwarded. That on November 2d they had the positive assurance of the present Commander of the Post that the cards would be promptly filled, signed and forwarded; that they left on November 5th; that they were in good standing when they left (this is admitted by the Post); that on the 19th of November they wrote for their cards and received no reply; that early in December they wrote again for their cards and received no reply; that on January 9th, 1877, they changed their station to a place where there was a Post charter in the possession of a single comrade, who requested them to join with him; that they represented to him their situation, and at his request they wrote again in the latter part of January for their cards, but got no reply; that about the last of February they stated their case to the Department Commander (their removal was into another Department), who instructed this single comrade to reorganize the Post and to admit them as members; that the Post was reorganized (and it is understood they joined it). They express themselves ready to verify their statement by numerous affidavits, and the statement is corroborated by the Commander of the Department in which these members now reside. While the Commander of the Department to which the Post belongs corroborates the statement of the Post as to a communication being forwarded to these members, it does not appear, however, what this communication was.

Upon this statement I am asked, What is the effect of such a state of affairs?

It does not seem necessary, or even proper, that the Judge Advocate-General should decide who is responsible for such an unfortunate state of affairs, and, without passing upon that question, I am of opinion that these members ought not to have been admitted into the Post, which it appears they joined on or about last February. I cannot regard them other than as members of the old Post until, upon a transfer card, they have regularly joined a new Post, or have been discharged honorably from the old Post.

If their statement be taken, I see no difficulty in National or Department Headquarters directing the Post to furnish the transfer cards, as of the date when they left, which would settle the whole matter.

If the statement of the Post be taken, they can undoubtedly be court-martialed; at any rate, as the case stands at present, they are, in my judgment, members,

and members only of the old Post, unless, of course, they have been, meanwhile, dropped from the rolls, in which case their membership of the new Post would still be illegal.

25e. OPINION LXVII. SEPTEMBER 3, 1875.

After presentation of a transfer card and muster into a new post, the comrade is a member of the new Post.

REGULATIONS—*Require signing of the By-Laws.*

A transfer card was granted T., June 8th, which he presented at the organization of a new Post, June 9th, and he was mustered as one of the charter members. He neglected to sign the By-Laws of the new Post and to attend its meetings after the first one, and on July 27th the new Post voted to return his transfer card to his former Post, with a request to them to withdraw it.

After the presentation of his transfer card and his muster into the new Post as others were mustered, Comrade T. must be considered a member of the new Post. The Regulations imply that all members shall sign the By-Laws within a reasonable time, but no specific time is mentioned. He may, therefore, sign now and complete his membership. A transfer card is generally conclusive upon the Post which issues it, except in case of fraud.

25f. DECISION III. R. B. B.

Rejection on transfer card.

An applicant on transfer card was rejected.

- (a). Should his transfer card be returned ?
- (b). Should the fact of such rejection be endorsed thereon ?
- (c). Can he apply to another Post without the consent of the Post rejecting him ?
- (d). If not so admitted is he honorably discharged at the end of twelve months, notwithstanding the rejection ?
- (e). If not honorably discharged, what is his relation to the G. A. R. ?

The rule governing the rejection of applications for membership does not apply to applications on transfer. Therefore the card is to be returned to the applicant without endorsement. He can apply to any other Post or Posts without consent of the one rejecting him, but this fact is necessarily shown *on his application*. If not admitted to a Post within twelve months from date of transfer, the comrade stands honorably discharged from the Order, notwithstanding the fact of previous rejection.

25g. OPINION XCII. SEPTEMBER 10, 1878.

Charter members. Comrades must have transfer card or honorable discharge.

In order for a comrade to be admitted as a charter member of a new Post must he have an honorable discharge or a transfer card ?

Is Opinion XXXV, May 25, 1872, which was adopted by the National Encampment, in conflict with Section 1, Article III, Chapter II, Rules and Regulations ?

A member may be admitted as a charter member of a new Post upon a transfer card. (See Section 1, Article III, Chapter II, Rules and Regulations.) The Opinion referred to was rendered in 1872, and the Section referred to was adopted in 1874, so that part of the Opinion referred to, which would seem to indicate that a comrade must have an honorable discharge in order to be admitted as a charter member of a new Post, cannot now be regarded as operative.

ARTICLE IV.—CHAPTER II.

LEAVES OF ABSENCE, TRANSFERS AND DISCHARGES.

26.* *Leave of absence.*

SECTION 1. Any comrade applying therefor, in person or by letter, shall be granted a leave of absence by the Commander, attested by the Adjutant, for a specified time, not exceeding twelve months, commending him to the good offices of all comrades, provided he has faithfully discharged all duties enjoined upon him, and has paid in advance all dues for the time specified in the leave of absence. Any Post giving relief to a visiting comrade shall endorse the amount upon his leave of absence, and shall also notify thereof the Post of which he is a member.

27.* *Transfer card.*

SEC. 2. Any comrade against whom no charges exist, and who has paid all dues, shall receive, upon verbal or written application to the Commander, at a meeting of the Post, a transfer card attested by the Adjutant. Upon presentation of it to any Post within one year from date of its issue, he may be admitted in the manner prescribed in Article III of this Chapter. In the meantime he shall remain, for purposes of discipline only, under the jurisdiction of the Post granting the transfer card. If at the expiration of a year he has not been admitted to membership in any Post, the transfer card shall be void, and the holder be considered as honorably discharged from the Order. (*a-g.*)

26. Posts are required to use the forms for Leaves, etc., provided by National Headquarters.—*Resolution, Denver Encampment, 1884.*

27a. OPINION III. AUGUST 11, 1871.

A comrade may demand transfer—Post can place no restrictions thereon.

Request for transfer card may be by written application.

The facts will sufficiently appear in the opinion.

I am of the opinion that Section 2, Article IV, Chapter II, of the Rules and Regulations gives to any member in good standing, whose dues are paid, the right to demand a transfer paper, and that no Post can impose any restriction upon his right in the form of a fee or otherwise.

27b. OPINION XXVIII. MARCH 16, 1872.

Commander of Post may require application for a transfer paper to be reduced to writing.

Can the Commander of a Post require an application for a transfer paper to be made in writing?

It is a general rule of parliamentary law to require any motion to be presented in writing, at the suggestion of the presiding officer or of any member. The meetings of Posts are governed, in the absence of express regulations, by the general principles of deliberative bodies. I think, therefore, the Post Commander has discretionary power to require such an application as the question relates to, to be reduced to writing before entertaining it.

27c. OPINION XXIX. APRIL 2, 1872.

It is the duty of the Commander of a Post to grant a transfer or withdrawal card to a comrade in good standing when it is applied for at a meeting of the Post.

Has a Post Commander authority to transfer or discharge comrades without a vote of the Post upon the application?

The Regulations make it the imperative duty of the Commander to grant a comrade in good standing applying therefor at a meeting of the Post, a transfer or discharge. A vote of the Post instructing the Commander not to do so would be void.

The reason for requiring the application to be made at a Post meeting is not that a vote may be taken, but that the members may know of the application, and may state any legal objection to it.

27d. OPINION XXXIX. SEPTEMBER 2, 1872.

The holder of a transfer card not liable for dues after card is issued.

What is the condition of a comrade, who, having taken a transfer paper to join another Post, has delayed two years to present it, and now wishes to rejoin the Post from which he took the paper? Should he pay the dues which have been assessed for two years past?

The only provision of the Rules and Regulations on this subject are found in Articles III and IV of Chapter II. Article IV, Section 2, provides that until the reception of a comrade who has taken a transfer paper, by some other Post, "he shall remain, for all purposes of discipline only, under the jurisdiction of the Post granting the transfer paper;" and Article III, Section 1, that "a member of any Post having a transfer card, may be admitted to another Post, by a two-thirds vote by ballot, after having his name proposed and referred, as in case of an applicant for membership," the number of ballots required to elect constituting the only difference in the reception of such a candidate from the admission of a recruit.

*There is no provision requiring a transfer paper to be presented within a limited time, as perhaps there should be; and the neglect of the comrade, so long continued, is no violation of the Regulations.** The first paragraph quoted above seems to settle the question of dues. The payment of dues is not a part of discipline in the intent of that Section. The man's name must have been dropped from the rolls of the Post when his transfer paper was granted, and I think he stands in no other relation to it than the relation he occupies to any other Post which he might wish to join. I am of opinion that he should make application to be re-admitted under Section 1 of Article III, and that he should be proposed and voted for as there provided. His transfer papers should be forwarded with the application, and will be conclusive evidence of the facts it recites.

*The paragraph in italics is now void by action of the National Encampment, 1874, limiting the time during which a transfer card is valid to one year from date of issue. R. B. B.

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27e. OPINION CXXXV. AUGUST 12, 1882.

A comrade who holds a transfer card not yet expired may hold his seat as a member of the Department Council of Administration.

Comrade N. applied for and received transfer card from his Post some time during the second quarter of 1882. He was a member of Department Council of Administration, and attended the Department Encampment after the transfer was granted him. Comrade D. objected to comrade N. acting with the Council, on the ground that comrade N. having taken a transfer was a member of the G. A. R. at large, and therefore not a member of the Department.

The objection was overruled, and on this ruling comrade D. appeals.

The objection was not well taken, and the ruling of the Department Commander should be sustained. There is no such thing as a "member of the G. A. R. at large." Section 2, Article IV, Chapter II, Rules and Regulations, defines the transfer card and the standing of the comrade holding transfer card. He is subject to the Post issuing the transfer card, "for the purpose of discipline," the transfer card is valid for one year. During all that year he is a member of the G. A. R. He has the entire year in which to deposit that card. He could be tried for violation of the Rules and Regulations at any time within that time. Where? Within that Department and by the Post issuing card, and no place else. At the *end* of the year, and not till then, does he cease to be a member of that Department and of the Order, though not an active member of the Post from the date of card.

The comrade referred to herein was within the limit, and while not an active member of the Post, was to all intents and purposes a member of the G. A. R. of that Department, and entitled to his seat in the Department Encampment.

NOTE.—At the Minneapolis Encampment the following amendment was proposed to Sec. 2, Article IV, Chapter II.

"If a comrade holding office in the Grand Army of the Republic applies for and receives a transfer card, the office shall be declared vacant from the date of such card."

The Committee on Rules and Regulations reported adversely and the amendment was not adopted. R. B. B.

27f. OPINION LXXXIV. FEBRUARY 27, 1878.

Where transfer is asked for and discharge is granted instead, membership is not changed.

Discharge—Granted at the same meeting at which application is made is void.

A comrade in good standing applies to his Post at a stated meeting, intending to apply for a transfer card, and is at the same meeting granted an honorable discharge. What is his status?

His status is the same as if he never applied for a transfer, for the reason that the honorable discharge was granted in violation of Section 3, Article IV, Chapter II, Rules and Regulations, which require the discharge to be granted at some "subsequent meeting," so that this discharge, being null and void, and this being the only action attempted to be taken on the application, the matter stands as if no action had been taken.

See also Opinion LXI, Dec. 5, 1874, 28 e.

28.* *Honorable discharge.*

SEC. 3. Any comrade in good standing, on application to the Post Commander at a regular meeting, shall receive at some subsequent meeting an honorable discharge, signed by the Post Commander and attested by the Adjutant: *Provided*, That at the time of such application there are no pecuniary charges against him on account of the Post. A comrade thus discharged can be readmitted by filing a new application, to be regularly referred and reported on, and upon receiving a two-thirds vote of the members present and voting at a regular meeting, he shall be admitted without re-muster, on taking *anew* the obligation. (*a-e.*)

29.* *Transfers for members of disbanded Posts.*

SEC. 4. Members of disbanded Posts, who were in good standing at the time of such dissolution, shall receive from the Assistant Adjutant-General of the Department transfer cards, which shall have full force.

27g. *A By-Law fixing a fee for transfer card is void.—Opinion LXIII., 107 c, page 93.*

28a. OPINION XLV. FEBRUARY 26, 1873.

Discharge—The Post must grant discharge if the comrade is in good standing.

Does Section 3, Chapter II, Article IV, of the Rules and Regulations make it compulsory for a Post to grant a discharge?

Is it necessary that the discharge be granted at once, or can it be delayed to afford opportunity for drawing up charges against the applicant?

I think the intent of the Section is clear. A person who is "in good standing" is one who has committed no offence for which charges may be preferred. When the application is received the Section referred to requires that it shall be continued to a subsequent meeting, for no other purpose than to ascertain the standing of the applicant, and to give opportunity to comrades to prefer charges against him if he has committed any offence against the Order. The discharge may be delayed long enough to give time for the preparation of charges, but not vexatiously or without probable cause, or for an unreasonable time.

If, after reasonable delay, no charges are preferred, it is compulsory upon the Post to grant the discharge.

28b. OPINION LXXXVIII. MAY 16, 1873.

Discharge—A Post has nothing to do with granting an honorable discharge.

Application for discharge may be withdrawn.

A comrade in good standing applies to his Post Commander, at a regular meeting, for his discharge. Can such comrade, before his discharge is granted, withdraw his application without the consent of a majority of his Post at some subsequent meeting?

I am of opinion, under Section 3, Article IV, Chapter II, Rules and Regula-

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tions, a Post has nothing to do with the honorable discharge of a comrade. Under said Article it is a comrade's right, if he is in good standing, to make application, at a regular meeting, to the Post Commander, and at a subsequent meeting to have his discharge, which is the duty of the Post Commander to sign and the Adjutant to attest.

If I am correct, then it is unnecessary to pass upon the question of the comrade's right to withdraw his application in this case. It appears that no question has arisen between the applicant and the Post Commander, and that would seem to be a matter solely between themselves, with the right of either party to appeal to higher authority.

28c.

DECISION VI. R. B. B.

Discharge.

Has a comrade who is honorably discharged a right to visit a Post?

He has not.

28d.

OPINION LXII. JANUARY 20, 1875.

Discharge—A comrade can only leave a Post honorably by either a discharge or transfer paper.

A person once a member of a Post cannot absolve himself from his duties to that Post; non-attendance or non-payment of dues does not release him.

Cannot join a second Post until released from the first.

G. W. B. joined Post No. 3, Department of ———, April 7, 1871; was reported "reinstated from suspended," June 30, 1872; reported January 7, 1873, as eight months in arrears; no action taken till March 27, 1873, when, having received notice, neglecting to pay his dues, he was suspended. It appears that he never attended a meeting of the Post after his muster, and that he did not take the new obligation when grades were abolished. Having been informed, as he says, that his name was dropped from the rolls of Post No. 3, he applied, in the usual form, to join a new Post, No. 16, and was admitted therein September 25, 1874.

Post 16 having subsequently learned the fact of his former connection with Post 3, applied to that Post for information of his standing, and proposed the question of his status to the Department Commander. Upon reference of the case to him, the Department Judge Advocate submitted his opinion as follows:

"HEADQUARTERS DEPARTMENT OF ———, G. A. R.,
"NOVEMBER 6, 1874.

"Commander:

"I have the honor to submit the following opinion, in answer to the case as presented by Post No. 16, G. A. R.

"The facts as presented are as follows: G. W. B., in 1870 or 1871, was duly mustered into Post No. 3, did not attend any of its meetings, but the Post has never taken any official action in his case, and he has never been discharged therefrom. That afterwards, and while still a member of said Post, he was mustered into Post No. 16, and is now in the anomalous condition of being an apparent member of two Posts. By reference to Chapter I, and Article II, Sections 1 to 7, Articles III and IV, of Chapter II, it will be seen that when a person once becomes a member of our organization he does not cease to be one except he and his Post, acting together, shall, in a regular manner, absolve him

from the duties to that Post; that mere non-attendance or non-payment of dues do not relieve him from its jurisdiction over him. Now, Comrade B. is still a member of Post 3, and his muster into Post 16 is irregular and voidable.

“He, or Post 16, or both together, must apply to Post 3 for their consent to relinquish their jurisdiction over him, and with this the Commander will issue the necessary dispensation for Comrade B. to become a full affiliated member of Post 16.

“All of which is respectfully submitted,

“In F., C. and L.

“L. N. F.,
“*Judge Advocate.*”

Post 16 transmitted a copy of this opinion to Post 3, and requested a dispensation from Post 3, allowing the muster of B. in Post 16.

In reply, Post 3 voted to grant B. a transfer card on the payment of accrued dues for one year (\$4.00). Post 16 now appeals from the decision of the Department Commander approving the Opinion of the Judge Advocate, taking the ground that B., having been mustered into the Grand Army of the Republic before the present work was adopted, ceased to be a member January 1, 1872, because he did not take the new obligation before that time; that he was then as fully separated from the order as if he had never joined; that he was not considered a member by comrades of Post 3; and that these features of the case were not considered by the Judge-Advocate in his Opinion. They further remark that they cannot see the application of the references to the Regulations contained in the Opinion.

It is evident that the citation of the Regulations was incorrectly copied by some one, in the Opinion sent to the Post. The Regulations are plain enough, however, on the points decided by the Judge Advocate.

If B., when he applied for admission into Post 16, was in the condition simply of a comrade who had been dropped from the rolls of Post 3, he could only be reinstated in the Grand Army through Post 3.

See also Opinion XXXV., Judge Advocate-General, May 25, 1872, and Opinion XLII., December 19, 1872. Notes to Arrearages, Chapter V, Article IV, Section 4, Regulations.

This appears from the records to have been his position. But it is objected, that the adoption of the new work gave the comrade the choice either to come forward and take the new work, or by neglecting to do so for a certain time, to discharge himself from the Order and all his obligations to it. If such was the result of his neglect, he did place himself outside the Order and could not be affected by the action of the Post suspending him, or debarred from joining any Post which would vote him in.

The system of grades was adopted May, 1869, and abandoned May, 1871. A resolution was adopted by the National Encampment at the latter date, allowing all former members of the grades of recruit and soldier to take the new obligation at any meeting of their Posts at which they might present themselves; and continuing the membership of comrades of the third grade without requiring of them any new obligation. Proceedings of the National Encampment, 1871, page 46, General Order No. 3, Headquarters Grand Army of the Republic, New York, June 14, 1871.

In this resolution no time is limited within which the election must be exercised. The comrade might have appeared at any meeting of the Post before he was dropped for arrears, and have taken the new obligation. His neglect

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up to that time had not deprived him of his membership. He had made and could make no choice which would preclude him from coming in when he saw fit. He was, then, to all intents and purposes in the condition of a comrade who had not received a new countersign, but was entitled to have it communicated to him on application.

The Regulations then, as now, provided a method of leaving the Post if he desired—that is, by asking for a discharge or transfer paper. His option, then, was to take a new obligation and remain in the Post in full membership or to receive a discharge or transfer. He had never exercised this option, and was still liable to pay dues when he was dropped from the rolls. His admission to another Post was contrary to the Regulations and void. The recital in his application that he had not made previous application to join any Post was untrue; or, if that was omitted, the mustering officer neglected his plain duty.

The offer of Post 3 to grant him a transfer on payment of one year's dues only, is so favorable, that it seems strange he should hesitate to accept it.

28e. OPINION LXI. DECEMBER 5, 1874.

Withdrawal Card—Where a comrade applies for a withdrawal card, receives it and retains it without any expression to the Post that he desired, not a withdrawal card, but a transfer card, he cannot, after he has applied to the Post for admission again and has been rejected, claim it to be a mistake and demand a transfer card.

Department Commander has no authority to interfere—When.

H. M., a comrade in good standing, addressed a communication to the Post in these words :

JULY 3, 1874.

"To the Officers and Members of Post No. 13, G. A. R. :

"I respectfully ask for my withdrawal card from your Post. Inclosed please find one dollar for dues for the quarter ending June 30, and fifty cents to pay for my card. Hoping it will meet with your approval,

"I remain yours in F., C. and L.,

"H. M.

"P. S.—Forward the card to me as soon as possible.

"H. M."

The Commander of the Post understood this to be a request for a discharge, and on July 5th granted and forwarded such discharge. Some time afterwards H. M. applied to be readmitted to the Post and his application was voted upon and rejected. It appears from the report of the Inspector, who was directed to examine this case, that H. M. intended by his first application to make a request for a transfer card, but after receiving a discharge he was advised to regain his membership by a new application. After his rejection he applied to the Department Commander to order a reconsideration of the ballot against him, on the ground that such ballot was "wilfully, designedly conducted, so as to oust him from the Post," and was the action of J. F., a comrade of the Post, "on an old political bias, for political purposes." In the appeal certain charges against this comrade are recited, apparently to substantiate the statement on which the appeal is founded, and to show personal hostility on his part.

On the first day of October, 1874, the Department Commander, having received the report of the Department Inspector on the facts of the case, issued a special order "rescinding, annulling, abrogating and declaring void" all the acts and doings of the Post in respect to the case, and restoring the said M. to membership in the Post, and directing the Post, upon his application, to grant him a transfer card.

From this decision the Post appealed to National Headquarters :

First.—Because the appeal of M. was not forwarded through the proper channels.

Second.—Because the Post were justified in the construction they put upon the application of M., he having been an officer of the Post for nearly three years, and competent to understand the proper terms in which to apply for a transfer card if he desired one.

Third.—Because M. never informed the Post that they had mistaken the meaning of his application, or asked them to rectify the mistake, until after he had made a new application to be admitted and this application had been rejected.

Fourth.—Because M., in applying for readmission in the ordinary form, recognized the fact that he was no longer a member of the Order, and waived all right to have the former action of the Post reviewed.

Fifth.—Because a Department Commander has no power to annul a ballot, or to inquire into the motive of those who vote to reject an application.

Sixth.—Because the action of the Post can only be set aside on evidence that there was a conspiracy to defraud M., contrary to the Rules and Regulations, of which there is no evidence.

Seventh, Eighth, Ninth and Tenth.—Because various statements in the appeal, reflecting on the Post, are untrue.

Upon the full record of the case referred to me, I am of opinion that the appeal of the Post must be sustained.

I am reiterating the substance of a former opinion, and the ruling of a former Commander-in-Chief, in saying that when a comrade of the Grand Army of the Republic deposits a ballot upon the question of the reception of an applicant, he is only responsible to his own conscience for this exercise of his right of choice. From the very nature of the act he cannot be called in question for it.

But it does not follow that every ballot is therefore valid. The applicant may be ascertained to have been ineligible, or his application may not have been regularly before the Post for its action, and in such cases affirmative action would be invalid; or he may have been already a member of the Post, and in such case a rejection would be harmless. If the Department Commander were justified in annulling the discharge given to M., that act would necessarily avoid any subsequent proceedings of the Post on M.'s application to become a member. If he were already a member, his application and the ballot upon it would be alike idle.

The first objection of the Post can hardly affect this case, as, if the Post is sustained in holding to the validity of the discharge, M. was not a member of the Order, and might well address directly any of its officers. They might, however, draw from this circumstance an inference that M. understood himself to be outside the Grand Army.

The case rests, then, upon the decision of the question, whether the 2d, 3d and 4th points of the Post's appeal are well taken, and I have no hesitation in

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saying that I think they are conclusive. The first mistake arose on the part of the applicant. When he used language capable of two constructions, he gave the Post the right to act upon such of the two as they chose to place upon it, and it seems to me that they did take the more natural construction. A withdrawal, to be sure, might be absolute or only to join another Post; but, if designed to be limited, the limitation would naturally be expressed. A person who had been officially familiar with the business of the Post for a long time ought to have qualified an application for leave to sever his relations with the Post, unless he desired to leave the Order altogether.

But, when the discharge was received, if it had been immediately returned with a request to have a transfer card substituted, no doubt, on reasonable proof that a mistake had been committed, the Post would have corrected it, or perhaps, on application, the Department Commander might have compelled such correction.

It does not appear, and it is expressly denied by the Post, that any such request was made. The discharged comrade seems to have accepted the situation and applied again for admission to membership. I cannot look upon this act as anything else than an absolute waiver of any claim to be considered still a member, and of any right to challenge the previous action of the Post. Indeed, M. himself takes the same position in his communication to the Department Commander. He does not apply to have the transfer card substituted for a discharge, but asks "for a reconsideration of the final ballot." He desires to renew his attempt to join, in the same mode that proved unsuccessful before.

I think, then, that the action of the Post should be sustained, inasmuch as, if mistaken, the mistake was caused by the applicant, and was acquiesced in by him in such a manner as to now estop him from appealing from it. It is not material to consider the various allegations of misconduct made by M., and denied by the Council of Administration. There is no evidence to support them, and the defence is *prima facie* complete; a demurrer would have been the more proper answer.

29. OPINION XIX. JANUARY 2, 1872.

1. *Disbanded Posts, members of. Transfer cards for.*
2. *Assistant Adjutant-General to grant transfer cards.*

When a Post has voted to disband, and has surrendered its charter, do its officers still retain the authority to grant transfer cards to members wishing to join other Posts?

The question is decided by Chapter II, Article IV, Section 4, of the Rules and Regulations. When a Post has voted to disband and surrender its charter, all the papers and property of the Post are to be turned over to Department Headquarters. If any of the members desire to join other Posts, the record, of the Post, in the hands of the Assistant Adjutant-General, will show the standing of such members, and he will grant transfer papers to such as were in good standing and who desire it.

ARTICLE V.—CHAPTER II.

MEETINGS.

30*. *Stated meetings.*

SECTION 1. The stated meetings of each Post shall be held at least monthly.

Special meetings.

SEC. 2. Special meetings may be convened by order of the Post Commander.

Quorum.

SEC. 3. Eight members qualified to transact business shall constitute a quorum at any meeting of the Post.

30. OPINION XXXIV. APRIL 20, 1872.

1. *Post cannot hold executive sessions.*
2. *Post has no executive powers.*
3. *Post cannot exclude a Department officer.*
4. *Post may consult its own convenience in regard to admitting comrades visiting from other Posts.*

The question proposed, "Can a Post refuse to admit a Department officer to its rooms, on the ground that it is holding an executive session? Can a Post exclude comrades belonging to other Posts on the same grounds?"

1. Our Regulations do not recognize any such thing as an executive session. The term is a misnomer when applied to any meeting except a session of a legislative body, which possesses also certain executive powers, like the power which the United States Senate has of confirming or rejecting certain appointments of the President, or its power of ratifying treaties, etc.

2. A Post of the G. A. R. has no executive powers, and consequently cannot hold executive sessions.

3. There may frequently come before a Post business which it would not care to have discussed by or before comrades not members. In such a case, on the approach of a Department officer on duty, such business should be temporarily laid on the table and the officer admitted.

4. Comrades from other Posts could not, however, claim the same precedence, and the Post would be at liberty to consult its own convenience about admitting them, with due regard always to the principles of courtesy and fraternity.

ARTICLE VI.—CHAPTER II.

OFFICERS.

31*. *Post officers.*

SECTION 1. The officers of each Post shall be: A Post Commander, a Senior Vice Post Commander, a Junior Vice Post Commander, an Adjutant, a Quartermaster, a Surgeon, a Chaplain, an Officer of the Day, an Officer of the Guard, a Sergeant-Major, and a Quartermaster-Sergeant.

32*. *Eligibility to office.*

SEC. 2. All members of the Post, in good standing, shall be eligible to any office in the Post.

33*. *Trustees.*

SEC. 3. Posts may elect a Trustee or Trustees not exceeding three in number, to be Trustee or Trustees of the Post, and the same number to be Trustee or Trustees of the Relief Fund of the Post, who shall hold their offices until their successors are elected and qualified.

31. The Adjutant, Quartermaster-Sergeant and Sergeant-Major are appointed by the Post Commander. (Paragraph 2, Article VII, Chapter II.)

For references to *Past Post Commanders*, see *Notes 49 f-l*.

32. OPINION CVII. JANUARY 6, 1880.

A comrade elected to a Department office is not thereby removed from the jurisdiction of his Post.

Does the election of a comrade to a Department office remove him from the jurisdiction of the Commander of the Post of which he is a member?

When a Department officer *is on duty as a Department officer*, he is not subject to the orders of the Commander of the Post, but he is entitled to the rights and privileges of a member of his Post, if he sees fit to avail himself of them. He must pay his dues, and he may at the same time be an officer of the Post; and, when acting as a member or officer of the Post, he is under the jurisdiction of the Post Commander.

The Post Commander, by virtue of his office, is a member of the Department Encampment, and may himself be a Department officer. (See *113 g*.)

33. This Section was added at the Minneapolis Encampment, July, 1884. For duties of Trustees, see Sections 9-13, Article VIII, Chapter II. Page 58.

ARTICLE VII.—CHAPTER II.

ELECTION OF OFFICERS.

34*. *Election.*

SECTION 1. The Post officers (the Adjutant, Sergeant-Major and Quartermaster-Sergeant excepted) shall be elected at the first stated meeting in December, by ballot, unless a ballot be dispensed with by unanimous consent. (a) They shall be installed into their respective offices at the first stated meeting in January following, and such installation may be conducted publicly. (b)

Installation and appointment.

At the installation of officers, the Post Commander shall appoint the Adjutant, and upon the recommendation of the Adjutant and Quartermaster respectively, he shall also appoint the Sergeant-Major and the Quartermaster-Sergeant. They shall enter upon their duties at once; and all officers, whether elected or appointed, shall hold office until their successors are installed. (c-g)

34a. When, by unanimous consent, it is desired to dispense with a formal ballot, two forms may be followed:

1st. By resolution; that a ballot be dispensed with, and Comrade _____ be elected to the position of _____ by acclamation.

2d. That the Adjutant cast the ballot of the Post for Comrade _____ for the position of _____.

The latter form has been sometimes used in the National Encampment, but the first is more clearly in accord with the privilege granted of dispensing with a ballot.

Either resolution requires unanimous consent. Without that, a full ballot must be had. R. B. B.

34b. The privilege of having a public installation was inserted in the Rules at the Minneapolis Encampment; but, prior to that time, it had been customary to install officers publicly. No part of the Opening or Closing Services of the Ritual can be used on such occasions. Salutations should not be used in presence of those not members. R. B. B.

34c. OPINION XC. AUGUST 2, 1878.

Officer—Must be installed before he can act.

Can a Department officer be considered, and act as such, without being regularly installed?

In my opinion he can not. The old incumbent does not retire, and there is no vacancy until the officer is duly installed. See Section 2, Article V, Chapter III, Rules and Regulations. This applies equally to Post Officers.

[Chapter II.—Article VII.]

34d. OPINION XCVIII. JANUARY 21, 1879.*Installation of Post Officers in December void.*

If a Post Commander take upon himself to install in December the newly-elected officers of his Post, instead of January, as prescribed by the Rules and Regulations, would not the installation be void, and would not the old officers hold over until their successors were duly installed?

Yes.

34e. OPINION CII. MARCH 29, 1879.*Installation.—Senior Past Post Commander may install. Officer detailed to install has no authority until he reports for duty. Officer must be installed before he is qualified to act.*

A certain comrade is specially detailed to muster the officers of a Post at a certain time, at which time he fails to announce himself to the Sentry and to appear, though present in an adjoining room and informed that the Post is ready, and the Senior Past Post Commander musters in the officers of the Post, and I am asked as follows:

1. Were these officers regularly installed?

My answer is, yes; see paragraph 3d of 1st page of Installation Service.

2. Had the comrade so detailed any authority under the order, so far as the Post is concerned, until he had presented himself to the Post as Mustering Officer?

I think not.

3. Is any officer elected but not installed qualified to act?

No.

34f*. OPINION XXIII. FEBRUARY 3, 1872.*Post officers—Cannot forfeit office by absence—No penalty can be affixed against them except by court-martial.**By-Laws—Post may provide penalties.*

* * * * *

Can a Post provide by By-Law that an officer shall forfeit his office by absence from a certain number of meetings?

The General Regulations fix the term of officers of Posts, and provide, further, that all charges shall be tried by court-martial. It seems a fair inference that a Post cannot elect a Commander to hold office during good behavior, or on condition that he will attend meetings, or with any such conditional limitation.

I think they may, however, provide by By-Law that absence shall be punished by fine; but this penalty on a Post Commander would have to be recovered through a court-martial convened by the Department Commander. Continued neglect of duties of the office would furnish ground for prosecution without any By-Law.

*Note to 34f.—A proposition was made at the Minneapolis Encampment to amend Article VI, of this Chapter, by adding:

“Posts may, by a majority vote of members in good standing, declare vacant any office whose officer has been absent from such number of stated meetings of the Post, in any quarter, as the Post shall by By-Laws provide.”

The proposed amendment was not adopted. (See page 223, *Journal National Encampment, 1884.*)

Consequently, removal from an elective office must be by court-martial, as heretofore.

34g. OPINION LXXVI. OCTOBER 18, 1877.

Qualifications:—A Commander-elect is not disqualified from assuming the duties of his office by reason of any suspicions against his integrity as a Quartermaster.

When information is given the Department Commander charging that an election of Post Commander is illegal, then he, the Department Commander, may issue an order postponing the installation until investigation is had. And it makes no difference how the information was given to Department Commander.

A Quartermaster whose accounts were being investigated by a committee of his Post, was elected Commander of his Post, to fill a vacancy at a meeting to be called for that purpose, at which meeting and before proceeding to an election, an order is passed remitting the dues of all comrades in arrears, and by a vote of the Post “the second meeting following” is fixed as the time for installation, and at the meeting next following the election a vote is passed giving said committee until one week after installation to report. Certain members of the Post claim that the “election was irregular and fraudulent, and ought not to stand,” and asked that a committee to investigate said election be appointed, which paper was forwarded to Department Headquarters. Whereupon from said Headquarters an order was issued postponing the installation, and appointing such committee. The installation was postponed, and the Commander-elect protested against said order as illegal and void, on the ground that the “appeal (meaning the paper heretofore alluded to) was not in regular form,” and did not go “through the proper channels,” and asked that said order be revoked. The following questions were referred to the Judge Advocate-General for his opinion, to wit:

1. If the order referred to above should be rescinded?

2. If this Quartermaster is competent, in any event, to be installed as Commander, while yet his Quartermaster's accounts are unsettled, and before he has been formally released by the Post?

1. If by the first question is meant—Is the order a valid one? I am of opinion that the validity of the order of the Department Commander in this case is not affected by the manner in which said paper or appeal was forwarded to headquarters (and how it was forwarded don't appear), for the Department Commander had a right to order such investigation, if he believed it for the best interests of the Order, or his duty upon ascertaining the facts, no matter by what means obtained, or even upon suspicion of the facts, without any communication on paper whatever. This paper may have been irregularly forwarded; and if so,

Chapter II.—Article VII.]

35.* *Ballotting.*

SEC. 2. In case of a ballot for officers, a majority of all the votes cast shall be necessary to a choice. If there is no election on the first two ballots, the name of the comrade receiving the lowest number of votes shall be dropped, and so on in successive ballots, until an election is made. (*a, b*)

Note to 34g continued.

it should have been returned with such reprimand or directions for punishment as the Commander of the Department saw fit, if any. Or the Post might take proper steps to punish such infraction of the rules, if it was considered of sufficient importance, but it clearly does not invalidate the order of the Department Commander. There is no provision in the Rules and Regulations for the appointment of investigating committees by Department Commanders, but I am of opinion that such power may safely be inferred from the undefined general powers which such executive and administrative officers must necessarily have, and that this will not be disputed. If the question is meant to be construed literally, to wit: should the order be rescinded? Then I answer that the question is wholly one of policy or expediency, and is to be decided only by the authority from which it emanated.

2. I am of the opinion, further, that this Quartermaster or Commander elect is not disqualified from being installed by reason of any suspicions against his integrity as a Quartermaster, or by reason of the appointment or proceeding of any committee to investigate his conduct. Committees of investigation are always proper, and sometimes necessary, but no direct effect results from their appointment, investigation, or reports. It is the order from the proper authority, or the court-martial which follows, that produces the direct effect. The remedy for wrong-doing on the part of a comrade is simple and direct, *i. e.*, by a court-martial, on charges preferred, and when charges are preferred against an officer of a Post, the Department Commander may suspend the accused from office.

The case itself presents other interesting questions, but I have confined myself to the questions propounded, and it will be noticed that in answering the second question I purposely avoided the consideration of the effect of any action upon an unfavorable report from the committee of investigation into the election appointed by Department Headquarters.

35a.* OPINION LIX. JANUARY 22, 1874.

Voting—In counting the votes cast to determine whether or not a candidate has a majority, ignore all ballots cast for ineligible candidates.

At the annual election of Officer of the Day, there were three candidates nominated. Upon the first ballot there was no choice. A second ballot was ordered, and the Commander called the attention of the Post to the Regulations, Chapter II, Article VII, Section 2, requiring the person who had received the lowest number of votes to be dropped. (The "dropping" was then required after the first ballot.)

The ballots were collected and counted, and the vote stood: C., 37; H., 36; and 1 ballot for D, the candidate who had received the lowest number of votes on the first ballot.

The Commander ruled that the scattering vote (for D.) should be counted in the aggregate, and that therefore there was again no choice.

From this decision an appeal is taken.

The Commander then ordered a third ballot, and after all had voted who desired, declared the polls closed. The ballots were counted by the tellers, and announced to the Commander, as follows:

Whole number of votes cast, 74; necessary for a choice, 38. H. has 37, C. has 37. The Commander not having voted, then deposited a ballot for C., and declared him elected.†

From this action an appeal is taken by H.

The questions raised are points of parliamentary law, and do not involve the Regulations of the Grand Army. I am of the opinion that, according to the best usage in this country, the presiding officer's decision was erroneous in both cases; but, having reached that conclusion in regard to the first ruling, it is unnecessary to discuss the second.

In counting the number of votes cast to determine whether or not a candidate has a majority, the settled rule seems to be to ignore all ballots cast for ineligible candidates. Certainly this is the rule when the candidate is ineligible under the rules governing the assembly, and attention is called to the Regulations at the time the polls are opened. The contrary decision would put it in the power of the minority, who voted for the candidate who stood lowest, to postpone a choice indefinitely, and would defeat the object of the Regulation. The scattering ballot should not have been counted in the "whole number of votes cast," and consequently C. received a majority, and was elected.

In Cushing's Law and Practice of Legislative Assemblies, Chapter VI, Paragraph 180, page 67, the following language is used upon the point in question:

"In reference to elections in which an absolute majority is requisite for a choice, and in which, consequently, the whole number of votes received is first to be ascertained, votes given for ineligible persons must of course be excluded from the enumeration, for the reason that, as the whole balloting would be void, and all the votes were excluded if they were all for such candidates, it would be preposterous to enumerate such votes when they constituted a part only of any of the votes given in. If, in consequence of such exclusion, the result of the election would be different from what it would otherwise be, the whole proceeding must, perhaps, be held void or valid, according as the electors have actual or presumed knowledge of the ineligibility of the persons for whom the excluded votes are given."

The appeal from the first decision is, in my opinion, well taken, and the candidate-elect should be installed.

*The same question was raised at the Minneapolis Encampment. See pages 197-199 *Journal*.

Opinion LIX above quoted was cited, and the Senior Vice-Commander-in-Chief (in the Chair) ruled in substance that the Opinion did not cover the point now raised. A vote had been cast for E., and E. was eligible to office and the vote should be counted, but having received the lowest number of votes E. could not be voted for on the next ballot.

In this view of the case a single vote could be cast for some other comrade on successive ballots, and so long as D. was not the lowest he could not be dropped.

It appears to the writer, that this ruling is not in accord with the intent of the law as defined by the Judge Advocate-General: "the contrary decision would

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put it in the power of a minority who voted for the candidate who stood lowest, to postpone a choice indefinitely and would defeat the object of the Regulation," but so long as no appeal has been taken, this ruling must stand until other action is had thereon by the National Encampment.

R. B. B.

† This point seems not to have engaged the attention of the Judge Advocate-General. There is a tie vote. "The Commander not having voted then deposited a ballot for C. and declared him duly elected."

Neither the Commander or other member had a right to vote after the ballot had been closed. The Commander has no right or privilege on a vote by ballot by virtue of his position, but must vote when his name is called or in regular order.

In the United States Senate, the Vice-President, not being a member of the body cannot vote except in case of a tie, the right and privilege of then voting being accorded him by the Constitution.

In the House of Representatives, the Speaker on a call of the yeas and nays, is called last under the rules, but his vote is recorded without reference to its result. He votes as a member of the body.

When the balloting appears to be over, the Commander should ask: "Have all the comrades voted? and permit any entitled who had failed to do so to vote and then declare "the ballot is closed, the Tellers will proceed to count the ballot."

If the ballot is a tie, balloting must proceed anew until an election is had.

The details of the conduct of an election is left to the action of each Post, but any rules thereon ought to be incorporated in the By-Laws and so avoid discussion or dissension on questions arising when an election is in progress.

R. B. B.

35b. OPINION LVIII. JANUARY 1, 1874.

A By-Law requiring all members of a Post, when present, to vote on all questions unless excused, is valid.

Where a vote is taken, and the Post Commander's attention is called to the fact, and the By-Law is not enforced, the vote is invalid, and the election is void.

The question is referred to me whether the election of an officer by a Post which has in force a rule of order requiring that all members entitled to vote shall vote on all questions (unless excused by a vote of the Post to be taken without debate), is valid, when all the members present do not vote, though none were excused, and attention was called to that fact before the result of the ballot was declared?

The rule of order is not inconsistent with the General Regulations; indeed, it is an exact copy of one of the rules of order of the National Encampment. It is therefore binding upon the Post until it is repealed. If no notice had been called to the fact that some members did not vote, and the vote had been declared, it would have been a matter of inference that the rule had been complied with, but the point was taken at the very time when the rule of order was intended to apply.

The Post Commander should then have enforced the Rule. The Posts have by this rule of order limited themselves to a certain prescribed way of expressing their decisions, viz., by a full vote of all members present. The declaration of a vote by the presiding officer is a declaration in effect that the Post have expressed their will upon the question pending, as this rule prescribes they shall do. But it is admitted in this case that such was not the fact.

I think the vote was invalid, and the election is void. A new election should be held to fill the vacancy as soon as possible under the Regulations.

36.* Vacancies in office.

SEC. 3. Posts may fill any vacancy in their offices at any stated meeting, notice of such contemplated action having been given at a previous meeting. (a)

36a. OPINION XCV. JANUARY 29, 1879.

Post—Can accept the resignation of its Commander.

Department Commander.—May issue order to annul illegal proceedings of a Post.

Department Commander—Can overrule decisions of a Post Commander without an appeal having been taken.

The Commander of a Post resigns; his resignation is accepted by the Post and notice is given of an election to fill the vacancy at the next regular meeting of the Post, at which meeting the point is taken and sustained by the chair that a Post cannot accept the resignation of its Commander, but that it must be done by the Department Commander, and no election is held. At the meeting next following, the Senior Vice Commander of the Department is present, and reads an order from the Department Commander, directing him, to proceed to the Post at their meeting and to do what he thinks best in the premises, and declaring that the Post is the superior of its Commander. The Senior Vice Commander orders an election for a new Commander to proceed, which was held under the protest of the Post Commander who had resigned and a Commander is elected and installed at the meeting. The Post Commander who had resigned appeals from said order from Department Headquarters; protests against all the proceedings at the last mentioned meeting of the Post, and raises the following points:

1. Can an order be issued instructing the Senior Vice Commander of the Department to amend the proceedings of a Post in his Department, where every order has been obeyed by the Post Commander, except in extreme cases?
2. Is it legal for a Post Commander to decide points of order in a Post meeting as per Rules and Regulations of the Grand Army of the Republic; and can the Department Commander overrule the decisions of the Post Commander without an appeal having been taken in due form?
3. How can a Post Commander carry out his obligations if the comrades of his Post are his superiors?
4. Can an officer superior in rank designate his inferior officer to carry out an order?

The case covers sufficiently the points put for my decision, though it by no means covers all the matters and questions which might arise in the papers referred to. And I shall confine myself strictly to the points raised by the appellant, and my opinion is as follows:

1. That an order can be issued instructing the Senior Vice Commander, or any other comrade, to cause to be annulled or reverse the proceedings of a Post, *provided* the order comes from a superior authority, and the proceedings to be annulled or reversed are illegal; and the proceedings in this case as regards the ruling of the Post Commander upon the acceptance of the resignation as set forth in the appeal, in my judgment were illegal.

ARTICLE VIII.—CHAPTER II.

DUTIES OF POST OFFICERS.

37*. *Post Commander.*

SECTION I. It shall be the duty of the Post Commander to preside at all meetings of the Post, (a) to enforce a strict observance of the Rules and Regulations and By-Laws, and all orders from proper authority, to detail all officers and committees not otherwise provided for, (b-c) to approve all orders drawn upon the Quartermaster for appropriations of money made and passed at a stated meeting of the Post, to forward the returns required by Chapter V, Article II, (d) and to perform such other duties as his charge may require of him. (e-i)

36 a, continued.

2. That it is legal for a Post Commander to decide points of order in a Post meeting, and that a Department Commander can overrule the decisions of a Post without an appeal. (On the latter point see Opinion LXXXVI, October 18, 1877, under "First," page 45, 34 g.)

3. That an opinion upon the third point is not necessary to a solution of the case at hand, and is too general and indefinite for any satisfactory answer, though it may be said that there appears to be nothing inconsistent between the rights of comrades and the duties of Commanders.

4. That the Opinion expressed on the first point covers the fourth point raised. None of the points raised seem to present the real point at issue, which is: Can a Post accept the resignation of its Commander? In my opinion it can—the Post Commander receives his office at the hands of his Post comrades; to their hands he returns it. If he is inclined to give it up before the expiration of his term of office, the power to accept a resignation must reside somewhere, in the absence of any rule or regulation on the subject, and following the analogy in all similarly constituted bodies, it must reside in the body which confers the office to be resigned.

37a. OPINION LXXXVI. FEBRUARY 27, 1878.

Post Commander cannot turn over his command to a comrade not a member of the Post. Proceedings under such acting Commander void.

1. Has a Post Commander (except at a regular inspection or installation of its officers) the right to turn over his command to a comrade as Commander who is not a member of the Post; and, if not, would the proceedings under any such visiting comrade occupying the chair be valid?

* * * * *

1. For a Post Commander to turn the command of his Post over to a comrade, such as is put in the case, would be clearly in violation of Sections 1 and 2, Article VIII, Chapter II, Rules and Regulations, and the proceedings under such acting Commander would be null and void, and of no effect.

37b. OPINION CXXI. MARCH 16, 1880.

When Commander and Vice-Commanders are absent from meeting, the Post elects pro tempore.

When Vice-Commanders are absent, Commander may detail.

The Senior Vice-Commander is temporarily absent from a meeting of the Post, or is occupying the chair of the Post Commander during his temporary absence. How is the vacancy to be filled, the By-Laws of the Post being silent upon the matter?

Chapter II, Article VIII, Section II, Rules and Regulations, reads as follows:

“The Vice-Post Commanders shall perform such duties as are required of them by the Ritual, and in the absence of the Commander shall take his place in the order of their rank. If neither of them is present, the Post shall elect a Commander *pro tempore*.”

Section I, Article VIII, Chapter II, provides that “it shall be the duty of the Post Commander” * * * “to detail all officers and committees not otherwise provided for,” etc.

It is my opinion, if the Senior Vice-Commander is absent, it is within the discretion of the Post Commander to detail a comrade to act as Senior Vice-Commander for the time being; or to direct the Junior Vice-Commander, if present, to take the place of the Senior Vice-Commander, and detail a comrade to fill the vacancy thus occasioned. This interpretation, in case of temporary absence, would save all unnecessary trouble.

The Senior Vice-Commander, when acting as Post Commander, has the same power as the Commander to fill vacancies.

37c. OPINION XXXIII. APRIL 20, 1872.

Post must pursue the mode provided in the Regulations. Where Regulations are silent Post may provide by By-Law; and where the Post does not choose a mode the power is in the hands of the P. C.

The question is proposed: What is the meaning of the expression “not otherwise provided for,” in the clause of Chap. I, Art. VIII, Sec. 1, of the Regulations, which makes it the duty of the Post Commander to detail all officers and committees not otherwise provided for. Does it relate to officers and committees whose appointment is not provided for in the Regulations, or by the Post.

The expression, in my opinion, imposes a sort of residuary or alternative power and duty upon the Post Commander. If the Regulations prescribe the mode of selecting a certain officer, neither the Post nor the Commander can pursue a different mode of appointment. If the Regulations are silent, and the Post sees fit to provide by By-Law or by a vote in a particular case, it may do so; but in case of the selection of a committee, or the detail of an officer, when the Regulations are silent as to the method of selection, and the Post does not choose any method, the clause in question places the power and duty in the hands of the Post Commander.

[Chapter II.—Article VIII.]

37d. See RETURNS AND REPORTS, Paragraph 99. The Post Commander is responsible for the returns required from his Post.

37e. DECISION XII. L. W.

Post Commander can not, on his own option, order comrades to attend a funeral.

Can a Post Commander order the Post to attend the funeral of other than a comrade in good standing at his disease?

The power to issue an order for attendance at a funeral, as given in Paragraph 1 of Burial Services, must have been first conferred on the Post Commander by Post By-Laws or resolution of the Post.

The Post Commander can not, on his own option, direct comrades to leave their business to attend funerals of those who did not, during life, have interest enough in the Order to become members.

There may be cases where such attendance would be proper, but the Commander could learn the wishes of his comrades by calling a special meeting of the Post.

FROM THE MANUAL.

37f. *Miscellaneous.*

THE POST COMMANDER.

1. Is a member of the Department Encampment during his term; is expected to attend its meetings and advance generally the interests of the Order, and is responsible for the safe return of Department property in case of disbandment of Post. (*Installation Services.*)

2. Appoints on the night of installation the Adjutant, and, upon the recommendation of the Adjutant and Quartermaster, the Sergeant-Major and Quartermaster-Sergeant. Sec. 1, Art. VII, Ch. II.

3. Issues credentials to representatives, forwarding copy to the A. A. G. of the Department immediately after the election. Sec. 3, Art. II, Ch. III. Blanks for this purpose should be furnished by Department Headquarters.

4. Holds, as Trustee, the bond of the Quartermaster. Sec. 5, Art. VII, Ch. V.

5. May be suspended by Department Commander when charges are preferred against him. Op. XLVI, March 24, 1873.

Can only be tried by court-martial appointed by Department Commander. Sec. 3, Art. VI, Ch. V.

Cannot suspend comrade against whom charges are preferred before conviction. Op. LXVI, July 30, 1875.

Has no power to pardon comrades condemned by sentence of Post Court-Martial. Op. LXIV, March 16, 1875.

Must forward to Department Headquarters full proceedings of Post Court-Martial where the sentence is dishonorable discharge, but may confirm or disapprove sentences of lighter degree. Sec. 6, Art. VI, Ch. V.

[For the Opinions referred to in Par. 5, see Article on COURT-MARTIAL.]

6. A Post Commander who is also an officer of the Department cannot elect to vote as such Department officer and be considered absent as P. C., so that the S. V. C. or J. V. C. may represent the Post in his stead. See 49 d.

GENERAL INSTRUCTIONS.

37g. The Commander should be familiar with the Rules and Regulations and with common parliamentary law.

The Rules of Order of the National Encampment, with necessary alterations, will answer nearly all practical purposes of a Post.

The Ritual should be memorized thoroughly.

The officers and guard should be drilled in the muster-in services in the intervals of Post meetings until perfect, and each officer should be prepared to act for the next highest officer in his absence.

Errors in the instruction of a recruit should not be *publicly* corrected, unless absolutely necessary. Let any officer in fault be privately notified.

The Commander is responsible for the discipline of the Post when in session or on parade.

He will receive and respond to the proper salutations of members. If his attention be momentarily withdrawn, comrades must wait respectfully, and not call attention by rudely stamping the feet.

The General Orders, Journals, etc., received by the Post Commander from Headquarters are Post property. The General Orders and Circulars must be read to the Post on the meeting next after their receipt, and with the Journals of National and Department Encampments, will be then properly filed and kept accessible to members.

In accordance with military usage, the Post Commander will conduct correspondence with Department Headquarters. (See CORRESPONDENCE.)

37h. A box should be provided for the safe keeping of the Rituals and Cards. Copies of the Rules and Regulations, of the Manual and the Digest of Decisions should be *always at hand* for reference during Post meetings.

The newly elected Post Commander should on assuming the duties of the office, carefully examine the books of the Post and see that all required by the Rules and Regulations are in use and properly kept, and that a supply of Badges, Leaves of Absence, Transfers and Discharges, forms for Reports and blank requisitions are always on hand.

37i. The Commander *should*:

1. Be neat in person, dress in the proper uniform at Post and Department meetings, wearing only the badge of the office in which he is serving, and require observance of this rule from all other officers of the Post.

2. Be punctual in his place at the hour fixed for Post meetings and open the Post *on time*.

3. See that the Adjutant has the Minutes properly written up, and has a memorandum of unfinished business and a list of committees to call on in their order.

4. Give strict attention to business and keep eyes and ears open that no comrade may have cause to complain of inattention.

5. When required to give a decision, decide promptly but not hastily. If in doubt, consult the authorities or invite discussion.

6. Not allow a comrade who has "the floor" to be interrupted improperly. A comrade desiring to ask a question must first ask and receive permission of the Commander and the comrade speaking.

7. Above all things be impartial and courteous. Be polite in speech and insist on that from others.

8. Remember that failure in the performance of a duty will result injuriously to the Post.

9. Permit no light reason to interfere with attendance at Post meetings.

R. B. B.

[Chapter II.—Article VIII.]

38.* *Vice Post Commanders.*

SEC. 2. The Vice Post Commanders shall perform such duties as are required of them by the Ritual, and, in the absence of the Commander, shall take his place in the order of their rank. If neither of them are present, the Post shall elect a Commander *pro tempore*.

39.* *Adjutant.*

SEC. 3. The Adjutant shall keep in books properly prepared :

1. The Rules and Regulations of the Grand Army of the Republic and the By-Laws of the Post, to be signed by every comrade on his becoming a member.
2. A Descriptive Book, ruled to embrace every fact contained in the application as well as the date of acceptance and muster, and a column for general remarks.
3. A Journal of the proceedings of the Post, after the same shall have been corrected and approved.
4. An Order Book, in which shall be recorded all orders and circulars issued by the Post Commander.
5. A Letter Book.
6. An Indorsement and Memorandum Book.
7. A Black Book, in which shall be recorded the names of all rejected candidates ; also of all members of the Grand Army who have been dishonorably discharged.

He shall attest by his signature all actions of the Post, and draw all orders on the Quartermaster, to be approved by the Post Commander ; shall notify in writing newly-elected members, and shall, under the direction of the Post Commander, prepare all reports and returns required of him. He shall perform such other duties as appertain to his office, and shall transfer to his successor without delay, all books, papers, and other property.

38. In the absence of the Post Commander from the Department Encampment, the Senior or Junior Vice Post Commander may represent the Post. Par. 2d, Article II, Chapter III.

The Senior or Junior Vice Commander, when presiding in the absence of the Post Commander, has the same powers as the Commander. See *Note 37 b.*

39. (See RETURNS AND REPORTS.)

The Adjutant may be styled the *right hand* of the Commander. Much of the efficiency of the Post depends on the manner in which his duties are performed. He should be able to refer promptly to the records of preceding action of the Post, to communications and orders received.

40.* Quartermaster.

SEC. 4. The Quartermaster shall hold the funds, (a) securities, vouchers, and other property of the Post, and fill all requisitions drawn by the Adjutant and approved by the Post Commander; he shall collect all moneys due the Post, giving his receipt therefor; (b) he shall keep an account with each member, and notify all comrades in arrears; he shall render a monthly account in writing to the Post of its finances, which shall be referred to an auditing committee appointed by the Post. He shall make and deliver to the Post Commander all reports and returns required of Post Quartermasters by Ch. V, Art. II, and shall deliver to his successor in office, or to any one designated by the Post, all moneys, books, and other property of the Post in his possession, or under his control. He shall give security for the faithful discharge of his duties as provided in Ch. V, Art. VII.

Note 39 continued.*

The *Journal* should be ruled down the outer margin of each page, leaving one and one-half inches of space to index the headings of each item of business. (If this is done for each meeting, it will save a great deal of time when required to refer to any action of the Post.)

The Minutes should not be entered on the *Journal* until after they have been read to the Post for correction.

They should recite in detail the *action* of the Post.

The name of the proposer of any business should be always given.

The substance of remarks or discussions need not be noted unless specially required.

Lengthy communications or reports need not be entered in full unless so directed, but a brief synopsis of each should be given, and the papers numbered and filed for reference.

Important and lengthy resolutions should be committed to writing by the proposer.

Resolutions accompanying a report should be entered in full.

The General Orders are to be read in place and then filed, unless action thereon is called for. National and Department Orders should be preserved in *Binders* for handy reference and as Post property.

The Adjutant recommends the Sergeant-Major for appointment by the P. C. He details the guards under orders of the P. C., including Inside and Outside Sentinels.

MANUAL.

Read the instructions to Post Commanders.

40a. See Sections 9–13, page 57.

40b. DECISION X. L. W.

Post Quartermaster responsible for moneys collected by Quartermaster-Sergeant.

On an appeal from Post 35, Department of Massachusetts, I decided that the Department Commander was correct in ruling that the Post Quartermaster was responsible for moneys collected by the Quartermaster-Sergeant.

[Chapter II.—Article VIII.]

41.* Surgeon.

SEC. 5. The Surgeon shall discharge such duties in connection with his office as may be required of him.

42. Chaplain.

SEC. 6. The Chaplain shall officiate at the opening of the Post and at the funeral of comrades, when attended by the Post, and perform such other duties in connection with his office as the Post may require.

43.* Officer of the Day. Officer of the Guard.

SEC. 7. The Officer of the Day and the Officer of the Guard shall perform such duty as may be required by the Ritual or by the Post Commander.

44. Sergeant-Major. Quartermaster-Sergeant.

SEC. 8. The Sergeant-Major and Quartermaster-Sergeant shall assist the Adjutant and Quartermaster respectively, in their duties.

40c. (See RETURNS AND REPORTS.)

The Q. M. requires a Cash Book, Ledger, and Receipt Book.

On the *Cash Book* should be noted each payment as made, and the entries be read to the Post before adjournment to allow corrections.

The *Receipt Book* should also carry forward on the stubs the total receipts.

The *Requisitions* or Orders, duly receipted by the party to whose order they are drawn, are his vouchers for payment, and the total of these deducted from the receipts gives balance of cash on hand.

Some pages of the Cash Book should be ruled for a summary of Disbursements, giving No. of Requisition, date, for whom drawn, for what account, and amount, so as to be always ready for reference.

The Q. M. recommends the Quartermaster-Sergeant for appointment by the P. C.

The Q. M. S. should fill out the receipts as payments for dues are made by comrades and entered in the Cash Book, and after signature by Q. M. hand them to the comrades.

41. The SURGEON is not now required to make a report on Form F. Such returns are to be made as may be called for by the Medical Director. See RETURNS AND REPORTS.

But the Post Surgeon should see that the Form in reference to disabilities on the back of each APPLICATION is properly filled out.

It will be always of interest, and may be of great service in after years, to have such a record on file in the Post.

The visitation of sick comrades by the Post Surgeon must be governed by the circumstances of each case. Professional etiquette may prevent his visiting a comrade unless by special request of the attending physician.

He can, however, do a good work in assisting the Relief Committee in the visitation of poor and afflicted comrades.

MANUAL.

45.* Trustees.

SEC. 9. Trustees of the Post shall have the care, custody and management of such property of the Post as the Post by vote shall place in their possession, or under their control, subject to the direction of the Post as to its management and investment; and all leases or conveyances of lands or buildings, by or to the Post, shall be in the names of such Trustees, and their successors in office.

SEC. 10. Trustees of the Relief Fund, shall have the care, custody and management of the Relief Fund of the Post, subject to the direction of the Post, and all investments of the Relief Fund, shall be in the names of such Trustees, and their successors in office.

SEC. 11. Posts may make By-Laws regulating the manner in which Trustees of the Post or Relief Fund, shall perform their duties, and respecting the Reports of such Trustees.

SEC. 12. No change shall be made by the Trustees in any investment of Post or Relief Funds, or in the title to Post or Relief Fund property, or any money paid therefrom, without the concurrence in writing of all the Trustees.

SEC. 13. The Quartermaster of the Post, shall turn over to the Trustees, such property and funds of the Post as the Post by vote may direct.

43. OFFICER OF THE DAY.

The Officer of the Day will see that the equipments and paraphernalia of the Post are in proper place. He conducts the examination of visitors in the ante-room.

He will have charge of the ballot-box during the election of members, presenting the same to the P. C. for his announcement of the result.

After placing the ballot-box on the altar, the O. D. will take position two paces to the right of the altar and face the P. C.

He instructs the recruit in the unwritten work, which should be carefully memorized and be given clearly and plainly. (See INSTRUCTIONS IN RITUAL.)

44. The OFFICER OF THE GUARD has charge of the Guard and Sentinels. He directs the admission of members of the Post with the countersign. Visiting comrades and members without the countersign will be reported to the P. C. for his orders.

No one is to be admitted to the Post without the countersign, unless personally and positively vouched for by a member in the room.

No one should be admitted during the opening or muster-in services.

(See RITUAL.)

MANUAL.

45.* These Sections 9-13 were added at the Minneapolis Encampment, 1884.

See Section 3, Article VI, Chapter II. ELECTION.

See Section 1, Article VII, Chapter V. BONDS.

ARTICLE IX.—CHAPTER II.

46. Representatives.

Each Post shall, at the first stated meeting in December, annually elect, from its own members, representatives and an equal number of alternates to the Department Encampment, in the manner prescribed in Chap. III, Art. II.

(See Par. 3d, Article II, Chapter III, and notes Page 60.)

ARTICLE X.—CHAPTER II.

47.* By-Laws.

Posts may adopt By-Laws for their government, not inconsistent with these Rules and Regulations, or the By-Laws or Orders of the National or Department Encampments, and may provide for the alteration or amendment thereof.

47. OPINION CI. MARCH 29, 1879.

Posts—May adopt Rules of Order.

* * * * *

Do the Rules of Order for the National Encampment govern the action of different Post meetings, so far as they appear applicable?

To the second inquiry I answer, they do not; each Post can adopt Rules of Order of its own—not inconsistent with the Rules and Regulations.

See RULES OF ORDER.

CHAPTER III.

ARTICLE I.

DEPARTMENTS.—ORGANIZATION.

48. *Departments.*

SECTION 1. Not less than six Posts of the Grand Army of the Republic in any Provisional Department may be organized as a Department, by the Commander-in-Chief, upon their application, as provided in Chap. V, Art. X; *Provided*, That the Commander-in-Chief, when satisfied upon proper representation, that a State or Territory has not a sufficient number of soldiers and sailors to organize six Posts, may organize a Department with a less number of Posts.

(See Section 5, Article I, Chapter V, Page 85.)

How governed.

SEC. 2. Each Department shall be governed by a Department Encampment, subordinate to the National Encampment.

ARTICLE II.—CHAPTER III.

DEPARTMENT ENCAMPMENT.

49*. *Officers, etc.*

The Department Encampment shall consist of—

1st. The Department Commander, all Past Department Commanders (*a-d*) who have served for a full term of one year, or who, having been elected to fill a vacancy, shall have served to the end of the term; so long as they remain in good standing in their respective Posts, and the other officers mentioned in Art. IV, Sec. 2, of this chapter, (*e*) and all Past Post Commanders (*f-l*) who have served for a full term of one year, or who, having been elected to fill a vacancy, shall have served to the end of their term, so long as they remain in good standing in their respective Posts, in such Departments as have so decided by a two-thirds vote at an annual meeting.

Post Commanders.

2d. All the Post Commanders for the time being throughout its jurisdiction (in the absence of the Post Commander the Senior or Junior Vice-Commander may represent the Post). (*e*)

[Chapter III.—Article II.]

Representatives.

3d. Members selected by ballot by the several Posts, in such ratio as may be determined “by a two-third vote of the members present and voting at any previous Annual Encampment.” These elected members, and an equal number of alternates, shall be chosen at the time and in the mode of electing officers of Posts, at the first stated meeting in December, and shall serve during the year, commencing on the first day of January following. Any vacancies that may occur shall be filled in the same manner as provided in Chap. II, Art. VII, Sec. 3.(*m-q*)

Credentials. Posts in arrears.

They shall be furnished with credentials signed by the Post Commander and Post Adjutant, a copy of which shall be forwarded immediately after the election to the Assistant Adjutant-General of the Department. But all Posts in arrears for reports or dues shall be excluded, for the time being, from representation, either by Post Commander or otherwise, in the Department Encampment.

[See ARREARAGES, Chap. V, Art. IV.]

Basis.

4th. The number of representatives to which each Post is entitled shall be determined by the quarterly report last preceding the election. (*r-l.*)

PAST DEPARTMENT COMMANDERS.

49a*. OPINION LXX. DECEMBER 30, 1875.

National and Department Encampments—Members—Must be in good standing in their Posts.

The question is proposed whether a Past Department Commander, whose connection with the Grand Army of the Republic has been severed by the disorganization of the Department and Post to which he belonged, regains his privileges as such Past officer on again becoming a member of his Post in good standing.

The question is upon the construction of the provisions of Section 1, Article II, Chapter III, and Section 1, Article II, Chapter IV, Rules and Regulations.

I think the words “so long as they remain in good standing in their several Posts” apply to all Past Department Commanders who are not at the time under any disability to act as members of their Post, and that they may sit as members of the Department and National Encampments.

If such officer asks to be admitted to a seat the question is: Is he in good standing in his Post? If so, he should be admitted. (*See Note.*)

Note to Opinion LXX, 49 a.

The National Encampment has, since, decided that a comrade having held the position of Department Commander, whose connection with the Order has become severed by the disbandment of his Post, can only be reinstated in the honors of that position, by the National Encampment, upon application to be made under the Rules prescribed by the Denver Encampment. Page 128, *Journal* 1883, viz.:

“No applications shall be hereafter considered unless made in the following form:

1. A request from the Post of which the comrade sought to be restored is now a member, asking for such restoration.
2. A resolution of the Department approving such request.
3. Name of the comrade and of the Post into which he was originally mustered.
4. The date of such muster.
5. The date of election and installation as Department Commander.
6. The cause of leaving the G. A. R., whether:
 - A. By resignation.
 - B. By disbandment of Post or Department. Or,
 - C. By what other cause.
7. Date of the organization of the Post of which he is now a member.
8. Date of his muster into said Post.

We deem all of the above information needed to enable this Encampment to judge whether the comrade should be granted the high honor of a restoration to the rank forfeited by cessation of membership with us, and which should never be granted if such cessation was the voluntary act of the comrade.”

496*. OPINION XCIV. DECEMBER 5, 1878.

Past Department Commander — When he accepts a discharge loses his position as a Past Department Commander.

Can a Past Department Commander, when he has received an honorable discharge and then has been re-admitted to the Order, assume the honors and position due to a Past Department Commander without having served again as a Department Commander.

I think not, for the reason that Section 3, Article IV, Chapter II, Rules and Regulations, would seem to treat such a member when applying for re-admission, as a recruit, making only the exception that *he need not be mustered.** And it is a rule of law that where exceptions are expressly made, all other matters are expressly excluded save those especially excepted. There is nothing bearing directly upon the question in the Rules and Regulations, but the above-mentioned rule, together with the common interpretation of the word “discharge,” and a reasonable construction of the Section referred to, would lead to the view that a member once discharged and again admitted can not have a record anterior to the date of his last admission.

* But he must take *anew* the obligation. See Section 3, Article IV, Chapter II.—Page 35.
R. B. B.

[Chapter III.—Article II.]

49c*. OPINION LXXXVII. MARCH 26, 1878.

A Past Department Commander, though a member of a Post in another Department than that of which he was Commander, is a member of the National Encampment, but not a member of his present Department.

A comrade, formerly a Department Commander, becomes a member in good standing of a Post of a Department other than the one of which he was Commander, under Article II, Chapter III, and Section 1, Article II, Chapter IV, Rules and Regulations, is he a member of his present Department Encampment and of the National Encampment?

I am of opinion that the comrade is a member of the National Encampment, but not a member of the Department Encampment other than that of the Department of which he was Commander, and then only while a member in good standing of a Post of such Department. The language of Article II, Chapter III, is not explicit, but any other construction than the one above given would seem to be a forced construction, and not within a true meaning of the Article. While as to membership of the National Encampment the same difficulty does not arise, for in that case Section 1, Article II, Chapter IV, must mean from the nature of things: Any Past Commander of any Department.

* This opinion is not in harmony with the action of the National Encampment at Minneapolis, 1884. See *Journal*, pages 231, 232. A proposition was made to amend the Rules and Regulations, that Past officers, moving to Departments other than the one in which they acquired their rank, shall be entitled to all the privileges accorded such officers had they remained in the Department where the honors were conferred.

Upon which the Committee reported:

“The committee is of the opinion that Past officers should not be entitled to seats with power to act in Encampments of Departments other than the one in which they were elected, or in the National Encampment from Departments *other than the one in which they were elected*; and report adversely.”

The report was adopted.

49d. DECISION XIV. G. S. M.

Past Provisional Department Commander not entitled to a seat in the Department Encampment.

A comrade claimed a seat in the Department Encampment by reason of being a Past Provisional Department Commander. An adverse decision of the Department Commander was overruled by the Encampment, and the comrade given a seat. From this the Department Commander appealed.

There is no recognition by the Rules and Regulations, of “Past” provisional officers, and rightfully, they being created by appointment.

The appeal was sustained.

49e. OPINION CXXVII. DECEMBER 17, 1881.

A comrade holding official positions in Department and in Post, can only act in one position in the Encampment.

A comrade holding an appointment as Judge-Advocate of a Department is elected Commander of his Post. Can he be present at an Encampment of the

Department as Judge-Advocate, and yet be considered as absent as Post Commander, so that the Post can be represented by the Senior Vice-Commander or the Junior Vice-Commander?

The language of the amendment adopted at Indianapolis (see page 799, *Journal*) is plain, and its purpose well understood.

The comrade can elect to hold both positions, but upon the roll-call he can vote but once.

If he is present and voting as Judge-Advocate, he cannot be "considered" absent in order to add one vote by proxy. The Post could have taken care of its own representation by electing another comrade Commander, or the comrade elected could have resigned in time to fill the vacancy.

I am clearly of the opinion that the language of the amendment admits of a literal construction, and that no comrade can be represented by proxy who is present in the Encampment.

PAST POST COMMANDERS.

49f. Provision for the admission of Past Post Commanders to Department Encampments was made at the Providence Encampment, 1877.

49g. OPINION CXI. JANUARY 17, 1880.

Past Commanders, transferred from another Department, not entitled to a seat.

Is a comrade who has joined a Post of this Department by transfer, having previously served as Commander of a Post in another Department, entitled thereby to a seat and vote in this Department?

He is not.

49h. OPINION CXII. JANUARY 17, 1880.

Same as 49g.

Can a Post Commander of a Post in this Department, who has been transferred by this Post, and who is now a member in good standing of a Post in an adjoining Department, be admitted to a seat and vote in the Encampment of this Department?

He can not. This and the previous question (Opinion CXI) are settled by the Judge Advocate-General, Opinion LXXXVII, March 26, 1878 (49 c), which Opinion was approved by the National Encampment.

49i. OPINION XCIII. DECEMBER 4, 1878.

Past Post Commander—Does not lose his standing by joining another Post.

Does a Past Post Commander, by joining a Post other than the one in which he was a Commander, or by becoming a charter member in a new Post, though both the old and the new Posts may afterwards surrender their charters, lose his standing as a Past Post Commander?

I think not, for the reason that, having been elected and having served as a Post Commander, he has, by so doing, gained a right to certain honors and positions under the Rules and Regulations, of which he cannot be deprived except by a change in the Rules and Regulations, while he is a member in good standing of any Post.

[Chapter III.—Article II.]

49k.

DECISION IV. L. W.

Past Post Commander who has been "dropped" is not entitled to the honors of that position unless again elected Post Commander.

"Is a Past Post Commander who had, after service as such, been dropped from the rolls and then rejoined as a recruit, entitled to the honors of that position unless again elected as Post Commander?"

The comrade has no claim to any honors earned, or resulting from such honors, previous to the time when he was dropped. Having again become a member, he stands upon the footing of a new member.

49l.

OPINION CVI. DECEMBER 17, 1879.

Past Commanders, or officers who serve for the period of their election, entitled to the honors.

Are Past Officers who have served three months—the last three months of the year—entitled to Past honors, and to be Past Commanders?

Past Officers who were elected to fill a vacancy, and served to the end of the term, are entitled to all the honors of a full term. So long as they remain in good standing in their respective Posts, they are entitled to the honors of their grade, as Past Officers.

49m. REPRESENTATION.

This section allows each Department Encampment to fix the ratio of representation from Posts. Prior to the amendment, at the Baltimore Encampment, 1882, (*Journal*, page 887,) the ratio in all Departments was fixed as follows, and this will now apply where no other basis has been adopted:

"3d. Members selected by ballot by the several Posts, in the ratio of one for every fifty members in good standing; and of one additional member for a final fraction of more than half that number in Departments having three thousand members or more; but in those Departments having a membership of less than three thousand, the ratio shall be one representative for every twenty-five members in good standing, and one additional representative for a final fraction of more than half that number. But each Post, whatever its numbers, shall be entitled to choose at least one member."

R. B. B.

49n.

OPINION XVIII. DECEMBER 29, 1871.

Department Representatives—Terms of—Rights of—Certificates of.

The question appears sufficiently from the Opinion.

I am of opinion that the expression "the year following," in the Regulations, Chapter III, Article II, Section 3, taken in connection with the rule that the election of representatives shall take place at the last Post meeting "in each year," and the Regulations, Chapter II, Article VII, Section 1, that the Post election shall take place "at the last (now first) stated meeting in December," refers to the calendar year, beginning on the first day of January, and, consequently, that the term of office of representatives to the Department is from January 1 to January 1.

Note 49 n continued.

Members-elect of Department Encampments, therefore, are entitled to all the privileges and liable to all the duties of that office on the first day of January next after their election in December. The provision that a copy of their credentials shall be forwarded, immediately after their election, to the Assistant Adjutant-General, is designed to afford him the means of making up the roll of the Department Encampment previous to the annual meeting, and to facilitate the organization of the Department Encampment when it meets.

49o. OPINION LI. APRIL 28, 1873.

No member or delegate elected subsequent to the last stated meeting in the year eligible to a seat.

This opinion is now void. By amendment to this section vacancies in representation may be filled as provided in Chapter II, Article VII, Section 3.

49p*. OPINION CIX. JANUARY 12, 1880.

Can be no proxies.

Can members of the Department Encampment be represented in the sessions of that body by proxy? And if proxies are allowed, can a comrade, already a member of the Encampment, hold a proxy or proxies, and, in that capacity, cast his own and one or more proxy votes?

The Rules and Regulations provide that the Department Encampment shall consist of the officers named and referred to in Article II, Chapter III, and the number of members or alternates therein designated, selected by ballot of the several Posts. No other persons can act as members of a Department Encampment.

By Article VIII, Chapter III, "Each member, present at a meeting of the Department Encampment, shall be entitled to one vote;" and since provision is made for alternates, and vacancies may be filled in the manner provided in Chapter II, Article VII, Section 3, it is considered that only those members or their alternates, duly elected, who are present, have a right to a vote at a meeting of the Department Encampment.

The provision that no proxy or substitute can act for a Post Commander* may seem hostile to this view, but that may be intended to prevent a Vice-Commander or Commander *pro tempore* from representing a Post in Department Encampment.

* This paragraph is now invalid by amendment permitting a Vice-Commander to represent the Post in the absence of the Commander. R. B. B.

49q. OPINION CXIII. JANUARY 17, 1880.

No proxies.

Can a Post, where it is impracticable for its representatives to attend the Department Encampment, issue proxies?

It can not. This case was decided by Opinion CIX, January 12, 1880. (*49 p.*)

[Chapter III.—Article II.]

49r. OPINION LXXXIII. FEBRUARY 18, 1878.

Where a Post entitled to only two representatives sends more, the Encampment may exclude the extra representative.

Two Posts, with three representatives each claim representation in a Department Encampment against the ruling and under the protest of the Department Commander presiding, the Encampment excludes one representative from each of the Posts and the question is raised: Was such action legal on the part of the Encampment? The last return *preceding the convening* of the Encampment showing these Posts to be entitled to three representatives each, the question comes up on a request to declare proceedings of Encampment void.

It appearing upon all the facts, and after a hearing of all parties, that at the time of electing representatives, to wit: "the first stated meeting in December," the Posts in question had a membership which entitled them to have two representatives each. I am of the opinion that the action of the Encampment restricting these Posts to two representatives each was valid. * * *

49s. OPINION XCVI. JANUARY 20, 1879.

Post—Organized after third quarter entitled to representation in Department Encampment.

Is a Post, organized and in working order, after the third quarter of the year and before the annual meeting of the Department Encampment, entitled to representation in the Encampment?

Every Post is entitled to representation in the Department Encampment, if not in arrears. In the case put, the Post cannot be in arrears for reports, for none are due from it until the first quarter; and, if not in arrears for dues, and have elected representatives at the proper time, the representatives should be admitted.

49t. OPINION LXXXII. JANUARY 30, 1878.

No change in the membership subsequent to the time of the election can affect the number of representatives.

A Post at the "first stated meeting in December" elects the number of Department representatives to which it is then entitled by its then membership; the return for the quarter ending December 31st shows such a falling off in membership as not to entitle the Post to the number of representatives elected, if the December return controls. The Department Encampment meets in January. On what basis shall its roll be made up?

Article II, Chapter III, Rules and Regulations, prescribes the basis of representation in Posts in the Department Encampment.

Section 3, Article II, Chapter IV, prescribes the time when such representatives shall be elected, who hold office for the calendar year next ensuing such election. And the case put is: Will any change in membership, subsequent to the time of such election, affect the number of representatives or delegates already

Continued, page 67.

ARTICLE III.—CHAPTER III.

MEETINGS.

50. *Annual meeting.*

SECTION 1. There shall be an annual meeting of each Department Encampment between January first and May first of each year, and a semi-annual meeting, if so determined at the annual meeting of the Department, or by the Council of Administration.

Special meetings.

SEC. 2. Special meetings may be convened by order of the Commander, by and with the advice and consent of the Council of Administration, provided that no business except that specified in the order for such special meeting shall be transacted thereat; and no alterations affecting the general interests of the Department shall be made at a special meeting.

Note 49 t continued.*

electd? I think not; for the reason, among other things, that any other view would lead to instability, uncertainty, and fluctuations in the constitution of the Department Encampment, which is a body almost wholly elected in December to serve for a period of twelve months, like most of our State Legislatures. Supposing the other view to prevail, and there were several sessions of the Encampment held during the year, if at each session the basis of representation was determined by the then number of members of the Post, cases would not infrequently arise where a Post would be entitled to a different number of representatives at different sessions of the same Encampment. It might be a less number of representatives that had been elected; in which case, which representatives are to serve and which are to be dropped? Or it might be a larger number of delegates than had been elected; in which case where is the provision for the time and manner of electing the additional representatives? This would seem to be conclusive and such a construction would seem unreasonable. Therefore I am of opinion as above stated, to wit: that membership at the time of electing representatives should determine the number of representatives to which a Post is entitled. As this ruling might make it inconvenient to the officers of the Encampment to determine the exact membership at the time of the election (for I don't think any preceding return should govern), in my judgment the Rules and Regulations should be so amended as to provide that the return of Post membership next preceding the election of Encampment representatives should be the basis upon which to determine the representation.*

* Paragraph *Fourth* was added as recommended. The basis of representation, in the Department Encampment, is on the number of members in good standing reported September 30th.
R. B. B.

ARTICLE IV.—CHAPTER III.

DEPARTMENT OFFICERS.

51.* *Eligibility to Office.*

SECTION 1. All members of the Grand Army of the Republic in good standing shall be eligible to any office in their Department.
(a-c)

52. *Officers.*

SEC. 2. The officers of each Department shall be a Commander, a Senior Vice Commander, a Junior Vice Commander, an Assistant Adjutant-General, an Assistant Quartermaster-General, an Inspector, a Judge-Advocate, a Chief Mustering Officer, a Medical Director, a Chaplain and a Council of Administration, consisting of the above named officers and five members by election.

Election of Officers. Article V following.

51a. *Residence.*

Par. 1, Opinion XXIII, February 3, 1872, to the effect that no one residing outside the territorial limits of the Department was eligible to appointment, is now invalid by a later decision, as follows :

OPINION CXXVIII. DECEMBER 24, 1881.

One who resides outside the limits of his own Department is eligible.

Is a comrade who resides outside of the territorial limits of his own Department eligible to office ?

So long as he remains in good standing in his Department there can be no doubt of his eligibility to office. There is nothing in the Rules and Regulations requiring a comrade to reside within his Department.

51b. OPINION LXXXI. JANUARY 29, 1878.

Office—All members eligible.

A Department Encampment voted that Department Commander, Senior Vice Department Commander, and Junior Vice Department Commander, shall be ineligible to reelection to these offices until they shall have served at least one term out of office.

Is such vote valid ?

The Section referred to says in the plainest terms that "*All members of the Grand Army of the Republic shall be eligible to any office in their Department,*" and the vote referred to is, in my opinion, clearly in violation of this Section, and therefore is invalid, void, and of no effect.

ARTICLE V.—CHAPTER III.

ELECTION OF DEPARTMENT OFFICERS.

53*. *Officers elected.*

SECTION 1. These officers, except the Assistant Adjutant-General, the Assistant Quartermaster-General, the Inspector, the Judge-Advocate and the Chief Mustering Officer, shall be chosen at the stated meeting of the Department Encampment in January(*a*) of each year, by ballot, in the manner prescribed for the election by ballot of officers of Posts in Chap. II, Art. VII, of these Regulations.(*b*)

54.* *Installation.*

SEC. 2. The officers thus elected shall enter upon their respective duties immediately after the adjournment of the meeting at which they were chosen, and shall hold office until their successors are duly installed.(*a-d*)

55. *Vacancies.*

SEC. 3. All vacancies in elective offices may be filled by the Council of Administration.

51c. OPINION CVII. JANUARY 6, 1880.

Department Officer—May also be an officer of his own Post.

Does the election of a comrade to a Department office remove him from the jurisdiction of the Commander of the Post of which he is a member?

Can a Post Commander in a special order convening a Post Court Martial, appoint as a member of the Court a member of the Post who is Junior Vice-Commander of the Department?

When a Department officer is on duty as a Department officer, he is not subject to the orders of the Commander of the Post, but he is entitled to the rights and privileges of a member of his Post, if he sees fit to avail himself of them. He must pay his dues, and he may at the same time be an officer of the Post, and when acting as a member or officer of the Post, he is under the jurisdiction of the Post Commander.

The Post Commander, by virtue of his office, is a member of the Department Encampment, and may himself be a Department officer.

53a. The *annual* meeting provided in Article III.

R. B. B.

53b. See Par. 35, and Notes, page 46.

54a. OPINION IX. SEPTEMBER 15, 1871.

1. *Department officers hold their offices until their successors are installed.*

2. *Commander-in-Chief may take jurisdiction of a Department.*

If a Department organization neglects to hold annual Encampments for electing officers, can they hold their offices indefinitely?

[Chapter III.—Article V.]

Can the Commander-in-Chief order the Department Commander to call an Encampment, and name time and place, when the Department Commander has failed to do so?

I say, decidedly, yes to both questions—to the first, because the Regulations prescribe that the officers shall hold their positions until their successors are installed; to the second, because it is the duty of the Commander-in-Chief to issue all orders required to enforce the Rules and Regulations.

2. If a Department Commander fails to perform a duty prescribed by the Regulations, the Commander-in-Chief should order him to do it; and when the matter of calling a meeting is in his hands, by virtue of the neglect of the Department Commander, he may take jurisdiction of the whole matter, and may fix the time and place in his order to the Department Commander.

54b. OPINION XC. AUGUST 2, 1878.

Officer—Must be installed before he can act.

Can a Department officer be considered, and act as such, without being regularly installed?

In my opinion he cannot—the old incumbent does not retire and there is no vacancy until the officer is duly installed. See Sec. 2, Art. V, Chap. III, Rules and Regulations. (*See Notes 34 c-g, Pages 43-45.*)

54c DECISION XV. G. S. M.

Department Commander—Office of cannot be declared vacant by reason of absence from the Department; is entitled to the honors of the office, though absent from the Department.

1. Has the Department Encampment or Senior Vice Commander the right to declare vacant the office of Department Commander in consequence of his absence from the United States during the greater part of the year?

2. Is such Department Commander entitled to the honors of the position?

The first question was answered negatively; the second in the affirmative.

ARTICLE VI.—CHAPTER III.

56.* *Department Commander.*

SECTION 1. The Department Commander shall, immediately after entering upon his office, appoint an Assistant Adjutant-General, an Assistant Quartermaster-General, an Inspector, a Judge-Advocate, and a Chief Mustering Officer, and may remove these officers at his pleasure. He may appoint as many Assistant Inspectors, on the nomination of the Inspector of the Department, and as many Aides-de-Camp as he may deem necessary. He shall preside at all meetings of the Department Encampment and Council of Administration, shall forward the reports and dues to National Headquarters, and see that all orders received from thence are properly published and obeyed; shall issue suitable charters to all Posts organized in his Department, and perform such other duties as are incumbent on officers of like position.

57. *Vice-Department Commanders.*

SEC. 2. The Vice-Commanders shall assist the Commander, by counsel or otherwise, and in his absence or disability they shall fill his office according to seniority.

58*. *Assistant Adjutant-General.*

SEC. 3. The Assistant Adjutant-General shall keep correct records of the proceedings of the Department Encampment and of the Council of Administration; he shall conduct the correspondence and issue all orders under direction of the Commander; draw all requisitions upon the Assistant Quartermaster-General, make out all returns to National Headquarters and transmit the same, through the Department Commander, to the Adjutant-General, countersign all charters issued by the Commander, keep an Order Book, a Letter Book, an Indorsement and Memorandum Book, and files of all orders, reports and correspondence received and remaining in his office, and perform such other duties and keep such other records in connection with his office as may be required of him by the Commander or the Department Encampment. He shall receive as compensation for his services such sum as the Department Encampment may from time to time determine.

[Chapter III.—Article VI.]

59. *Assistant Quartermaster-General.*

SEC. 4. The Assistant Quartermaster-General shall hold the funds, securities, vouchers, and property of the Department, and fill all requisitions drawn by the Assistant Adjutant-General and approved by the Commander, and shall give good and sufficient security, to be approved by the Council of Administration, for the faithful discharge of his duties.

60. *Inspector.*

SEC. 5. The Inspector shall perform such duties as are prescribed in Chap. V, Art. V, and shall receive such compensation for his services as the Department Encampment shall from time to time determine.

61.* *Judge Advocate—Chief Mustering Officer.*

SEC. 6. The Judge-Advocate and the Chief Mustering Officer shall perform the duties properly belonging to their offices.

62.* *Medical Director.*

SEC. 7. The Medical Director shall require such returns from Post Surgeons as may be needed and called for by the Surgeon-General, and shall make returns to that officer.

63. *Chaplain.*

SEC. 8. The Chaplain shall perform such duties in connection with his office as the Commander or the Department Encampment may require of him.

64.* *Council of Administration.*

SEC. 9. The Council of Administration shall have charge of the working interests of the Department, shall audit the accounts of the various officers, shall keep a full and detailed record of its proceedings, and shall present the same for the consideration of the Department Encampment at each stated meeting thereof.

65. *Reports.*

SEC. 10. The various staff officers shall make to the Department Encampment, at each stated meeting, full and complete reports, in writing, of the operations of their departments, and when retiring from office shall deliver to their successors all moneys, books, and other property of the Department in their possession or under their control.

ARTICLE VII.—CHAPTER III.

66*. *Appeals.*

All members shall have the right of appeal, through the proper channels, from the acts of Posts or Post Commanders and Department Commanders or Encampments to the next highest authority, and to the Commander-in-Chief, whose decisions shall be final, unless reversed by the National Encampment; but all decisions appealed from shall have full force and effect until reversed by competent authority.

61. The Judge-Advocate is only to pass upon questions submitted to him by the Department Commander. See APPEALS.

62. The Medical Director now requires from Posts only such reports as may be called for by the Surgeon-General. See RETURNS AND REPORTS.

64. Council of Administration cannot legalize an illegal act. See 17 b, page 20.

The Council fills vacancies in elective offices of the Department. Sec. 3, Art. V, Chap. III.

The Council approves bond of the A. Q. M. G. Sec. 4, Art. VI, Chap. III.

65. See RETURNS AND REPORTS.

66. Opinion LVI. (Extract.) See 113 t.

“Appeals from acts of Post Commanders are given by Chapter III, Article VII, of the Rules and Regulations. Such appeals are, I think, intended for the protection of members who are aggrieved by the acts from which appeal is taken. The course of appeal is from the decision of the Post Commander to the Post, thence to the Department Commander, thence to the Department Encampment or Council of Administration, if either is in session, and afterwards, or if they are not in session, directly to the Commander-in-Chief, and from him to the National Encampment or Council of Administration.”

But at each stage, the question is to be decided by the officer receiving the same, and each decision will stand as the *law* until reversed by competent authority.

When an appeal is taken from the action of a Post Commander, it must be first submitted to the Post. An appeal may then be taken from the action of the Post to the Department Commander, to be forwarded by the Post Commander to the Assistant Adjutant-General, asking for the decision of the Department Commander.

Questions requiring official decisions are not to be referred directly to the Judge-Advocate or Judge-Advocate-General.

The reference of any question to the Judge-Advocate is a matter for the discretion of the Department Commander, the Judge-Advocate acting simply as the legal adviser of the Department Commander on questions so referred.

R. B. B.

ARTICLE VIII.—CHAPTER III.

67*. *Voting.*

Each member present at a meeting of the Department Encampment shall be entitled to one vote. The ayes and noes may be required by any three members representing different Posts.

ARTICLE IX.

68. *Representatives.*

Representatives to the National Encampment shall be chosen from comrades of the Department, as provided in Chapter IV, Article II, of these Regulations.

(Par. 74, Page 75.)

ARTICLE X.

69. *By-Laws.*

Department Encampments may adopt By-Laws for the government of the Department, not inconsistent with these Rules and Regulations or the By-Laws or orders of the National Encampment, and may provide for the alterations and amendment thereof.

67. When the ayes and noes are required each vote must be entered on the *Journal*.

Tellers should be appointed to record the votes as called from the roll, and at the conclusion of the roll-call the names of those voting *aye* should be read, then of those voting *no*, so that errors may be corrected before the result is announced.

R. B. B.

ARTICLE I.—CHAPTER IV.

NATIONAL ENCAMPMENT.

70. National Encampment.

The supreme power of this Association shall be lodged in the National Encampment.

ARTICLE II.—CHAPTER IV.

MEMBERSHIP.

71. Officers and Past Officers.

SECTION I. The National Encampment shall be composed :—

1st. Of the Commander-in-Chief, Past Commanders-in-Chief and Past Vice-Commanders-in-Chief, so long as they remain in good standing in their respective Posts, and the other officers named in Art. IV, Sec. 2, of this Chapter.

72. Department Officers.

2d. Of the Commanders, Vice-Commanders, and Assistant Adjutant-Generals of the several Departments, and the Commander and Assistant Adjutant-General of each Provisional Department for the time being (for whom no proxy or substitute can act).

73*. Past Department Commanders.

3d. Of Past Department Commanders who have served for a full term of one year, or who, having been elected to fill a vacancy, shall have served to the end of the term, so long as they remain in good standing in their several Posts ; and

74*. Representatives.

4th. Of one representative at large from each Department, and one representative for each one thousand members in good standing therein, and one additional representative for a final fraction of more than one-half of that number ; such representatives to be elected by the Department Encampment as provided in Chap. III, Art. IX. Any Department having less than one thousand members and more than five hundred, shall be entitled to one representative in addition to one representative at large. (a)

73. For references to Past Department Commanders, see *Notes*, 49 a-d, Page 60-62.

[Chapter IV.—Article II.]

Representatives elected.

SEC. 2. The representatives shall be elected at the time and in the mode of electing officers of Departments, and their number shall be ascertained and fixed by the last preceding return of members entitled to be counted in representation, as filed with the Adjutant-General. (b) Each Department shall also elect, in the same manner and at the same time, an equal number of alternates. Only these representatives or their alternates shall be admitted to seats. They shall be furnished with credentials, signed by the Commander and Assistant Adjutant-General, a copy of which shall be forwarded to the Adjutant-General immediately after their election.

75*. *Arrearages.*

SEC. 3. Whenever Posts are in arrears, their entire membership shall not be counted for representation in the National Encampment.

SEC. 4. Departments and Provisional Departments in arrears for reports or dues shall be excluded from all representation in the National Encampment until the same are forwarded. *Note 90 b.*

74a. OPINION XX. JANUARY 11, 1872.*Representatives—National Encampment—Department representation.*

If a Department has over 500 members and less than 1,000, how many representatives in the National Encampment is it entitled to?

The meaning of Chapter IV, Article II, Section 1, Paragraph 4, is, in my opinion, that 1,000 members in good standing shall constitute the unit of representation of a Department in the National Encampment, and that a final fraction of more than half of that unit—that is, more than 500 members—shall count as 1,000.

Every Department would, therefore, be entitled to the representative at large; and, if composed of between 501 and 1,500 members, to one representative in addition—counting for representation every 501 members to 1,500 members as 1,000, every 1,501 to 2,500, as 2,000, etc.

In the case stated the Department would be entitled to elect one representative at large and one additional representative for the 501 members.

As suggested by the comrade proposing the question, the paragraph is not altogether lucid, but I think a strict construction of the whole section will support my opinion.

74b. The Encampment at Cleveland, 1872, adopted a resolution that all reports of National officers, except that of the Commander-in-Chief, should be made up to December 31st. Representatives from Departments are to be elected on the basis of the returns for the quarter ending December 31st.

Vacancies in the list of representatives must be filled by election by the Department Council of Administration. (Sec. 3, Art. V.) Department Commanders have no power to appoint or substitute others.

R. B. B.

75. See RETURNS and REPORTS. Page 87.

ARTICLE III.—CHAPTER IV.

76.* *Meetings of National Encampment.*

SECTION 1. The stated meeting of the National Encampment shall be held annually, between the second Wednesday in May and the first Wednesday in September as may be fixed by the Commander-in-Chief, by consent of the Council of Administration, and at such place as shall have been determined at the previous stated meeting.

SEC. 2. Special meetings may be convened by order of the Commander-in-Chief, by and with the advice and consent of the National Council of Administration.

ARTICLE IV.—CHAPTER IV.

OFFICERS.

77. *Eligibility to Office.*

SECTION 1. All members in good standing shall be eligible to any national office in the Grand Army of the Republic.

76. The meetings of the National Encampment were originally required to be held on the second Wednesday in May. At the Encampment in Philadelphia, 1876, this Article was amended by allowing the time to be fixed between the second Wednesday of May and the first Wednesday of July, by the Commander-in-Chief and Council, and at the Baltimore Encampment, 1882, this was again changed by striking out July and inserting September.

The following resolutions were adopted at Minneapolis, relative to the meeting of 1885.

Resolved, That the city that shall be named by this Encampment as the place for holding the 19th Annual Session, in 1885, shall be selected with the express proviso that satisfactory and reasonable arrangements can be made with the different lines of transportation and hotels as to the rates to be charged the comrades and their families attending the Encampment.

Resolved, That the Council of Administration be, and they are hereby instructed and empowered to, at as early a day as practicable, ascertain definitely as to the charges to be made by the different lines of transportation to and from said city, and the hotel rates in said city.

Resolved, That if, in the opinion of the Council of Administration, the rates obtained from the railroads and other means of transportation and the hotel rates are not as favorable as can be obtained to and in some other city, then in that event the Council of Administration may select such other place for the holding of the Encampment as in the opinion of the Council of Administration will best meet the reasonable demands of comrades and members of their families attending the Encampment. That said change of place of holding said Encampment, if made, shall be made at least three months before the time to be fixed by the Commander-in-Chief for holding the same.

Resolved, That no parade shall be had on either of the days fixed for the Encampment.

[Chapter IV.—Article IV.]

78*. *National Officers.*

SEC. 2. The National officers of the Grand Army of the Republic shall be a Commander-in-Chief, a Senior Vice-Commander-in-Chief, a Junior Vice-Commander-in-Chief, an Adjutant-General, a Quartermaster-General, an Inspector-General, a Judge Advocate-General, a Surgeon-General, a Chaplain-in-Chief, and a Council of Administration, consisting of the above-named officers and one comrade from each Department, to be chosen by the National Encampment.

ARTICLE V.—CHAPTER IV.

ELECTION OF NATIONAL OFFICERS.

79*. *Election.*

SECTION 1. The National officers of the Grand Army of the Republic, except the Adjutant-General, the Quartermaster-General, the Inspector-General and the Judge Advocate-General shall be elected annually, by ballot, at the stated meeting of the National Encampment, in the manner prescribed for the election by ballot of officers of Posts in Chapter II, Article VII, Section 2.

80*. *Installation.*

SEC. 2. They shall enter upon the duties of their respective offices immediately after the adjournment of the meeting at which they were elected, and shall hold office until their successors are duly installed.

81*. *Vacancies.*

SEC. 3. Vacancies occurring during the year shall be filled by the Council of Administration.

78. The Commander-in-Chief is authorized to appoint an Assistant-Adjutant-General (Article VI following) but this officer is not entitled to a vote, as such, in the National Encampment. R. B. B.

79. See Note 34 a, Page 43; Note 35 a, Page 46.

80. See Note 34 c, Page 43.

81. OPINION XXV. FEBRUARY 3, 1872.

Vacancy in National Council of Administration—Commander-in-Chief has no power to fill.

Has the Commander-in-Chief power to fill a vacancy occurring in the National Council of Administration, in the interval between its sessions?

The Regulations, Chapter IV, Article V, Section 3, provide that vacancies in the national offices occurring during the year shall be filled by the National Council of Administration. I cannot imagine any necessity for filling a vacancy except when the Council are together, and then they can fill it themselves. The members of the Council have no duties except in their meetings. No doubt, in case of other officers who have duties to perform at all times, the Commander-in-Chief may detail a comrade to act until the Council of Administration meet. I think, therefore, in this case the Commander-in-Chief has no power.

ARTICLE VI.—CHAPTER IV.

DUTIES OF OFFICERS.

82. Commander-in-Chief.

SECTION 1. The Commander-in-Chief shall enforce the Rules and Regulations of the Grand Army of the Republic, and the orders of the National Encampment and the Council of Administration, and for this purpose he may issue such orders as may be necessary.

He shall preside in the National Encampment and Council of Administration, decide all questions of law or usage, subject to an appeal to the National Encampment; approve all requisitions properly drawn on the Quartermaster-General, and shall hold all securities given by National Officers, as trustee for the Grand Army of the Republic. He shall appoint immediately after entering upon his office, the Adjutant-General, the Quartermaster-General, the Inspector-General, the Judge Advocate-General, and Assistant Adjutant-General, as many Assistant Inspectors-General on the nomination of the Inspectors-General, and as many Aides-de-Camp as he may deem necessary. He shall appoint all other national officers and committees not otherwise provided for, and may remove these officers at his pleasure. He shall promulgate through the proper officers the national countersign, and may change the same at his discretion, and shall issue to all Departments, regularly organized, suitable charters, and appoint Provisional Commanders in States and Territories where there is no Department organization.

83. Vice-Commanders-in-Chief.

SEC. 2. The Vice-Commanders-in-Chief shall assist the Commander-in-Chief by counsel or otherwise, and in his absence or disability, they shall fill his office according to seniority.

84. Adjutant-General.

SEC. 3. The Adjutant-General shall keep correct records of the proceedings of the National Encampment and Council of Administration; he shall conduct its correspondence and issue the necessary orders, under the direction of the Commander-in-Chief. All returns received by him from Departments shall be turned over to the proper officers.

[Chapter IV.—Article VI.]

He shall prepare all books and blanks required for use of the Grand Army of the Republic, under the direction of the Commander-in-Chief. He shall draw requisitions on the Quartermaster-General, to be approved by the Commander-in-Chief; and shall perform such other duties, and keep such other books and records as the Commander-in-Chief or the National Encampment may require of him. He shall give security for the faithful discharge of his duties, to be approved by the Commander-in-Chief, and shall receive as compensation for his service such sum as the National Encampment may from time to time determine.

85. Quartermaster-General.

SEC. 4. The Quartermaster-General shall hold the funds, securities, and vouchers of the National Encampment, and fill all requisitions drawn upon him by the Adjutant-General and approved by the Commander-in-Chief. He shall distribute all books and blanks required for the use of the Grand Army of the Republic, and, under the direction of the Commander-in-Chief, charge a reasonable and uniform price for the same. He shall give good and sufficient security, in a sum to be approved by the Council of Administration, for the faithful discharge of his duties, and shall receive such compensation for his services as the National Encampment may from time to time determine.

86. Inspector-General.

SEC. 5. The Inspector-General shall perform such duties as are required of him by Chap. V, Art. V, and shall receive such compensation for his services as the National Encampment may from time to time determine.

87. Surgeon-General.

SEC. 6. The Surgeon-General shall perform the duties properly appertaining to that office.

88. Chaplain-in-Chief.

SEC. 7. The Chaplain-in-Chief shall perform such duties in connection with his office as the Commander-in-Chief for the National Encampment may require.

89. Judge Advocate-General.

SEC. 8. The Judge Advocate-General shall perform the duties belonging to that office.

90*, *National Council of Administration.*

SEC. 9. The National Council of Administration shall meet at such place as may be determined by the National Encampment at their stated meeting, and at such other times and places as the Commander-in-Chief may order, and ten members shall constitute a quorum. It shall audit the accounts of the various national officers, may propose plans of action, and shall represent in all matters, the National Encampment in the interval between its sessions. It shall keep full and detailed records of its proceedings, and present the same as its report at the stated meeting of the National Encampment, for the consideration of that body. (*a-b*)

91*, *Reports.*

SEC. 10. The several staff officers shall present to the National Encampment, at each annual session, full and detailed reports *in print*, of the operations of their respective departments, and when retiring from office shall deliver to their successors all moneys, books and other property of the Grand Army of the Republic in their possession, or under their control.

90a. The National Council of Administration, by resolution of the National Encampment, 1877, is directed to meet immediately after adjournment of Encampment, and may select a smaller number to act for the Council during the interim.

90b. OPINION XII. OCTOBER 1, 1871.

National Council of Administration—Rights of members whose Departments may be in arrears.

The questions proposed appear sufficiently in the opinion.

I think that all the members of the National Council of Administration may sit, whether the Departments they come from are in arrears or not.

First—Because the cause of exclusion, in terms, only applies to *representation* in the National Encampment, and penal statutes are always to be construed strictly.

Second—Because the Council of Administration are National Officers of the Grand Army of the Republic, elected by the National Encampment, not by Departments, and are not representatives of Departments except in a most general sense. I think the members of the Council should be no more dependent, for their right to sit there, on the status of their Departments, than the Commander-in-Chief would be or any other of the National Officers.

91. These reports are to be made for the year ending Dec. 31st. Resolution, National Encampment, 1870. It has however been customary to bring the report of the Quartermaster-General up to the time of meeting. See *Note 74 b*, Page 76. R. B. B.

ARTICLE VII.—CHAPTER IV.

92*. *Voting.*

Each member present at a meeting of the National Encampment shall be entitled to one vote. The ayes and noes may be required, and entered upon record, at the call of any three members representing different Departments.

ARTICLE VIII.—CHAPTER IV.

93. *Disbursements.*

Disbursements from the treasury of the National Encampment shall only be in behalf of the objects of the Grand Army of the Republic, or its incidental expenses, and shall be made either by direction of the National Encampment or Council of Administration. All requisitions for money must be drawn by the Adjutant-General and approved by the Commander-in-Chief.

92. Rule XXIV, Rule XXIX, RULES OF ORDER.

CHAPTER V.

GENERAL RULES.

ARTICLE I.

CHARTERS.

94*. *Post Charters.*

SECTION 1. All Post charters shall be signed by the Commander and countersigned by the Assistant Adjutant-General of the Department within which the applicants for such charter reside. The application for a charter shall be signed by at least ten persons eligible to membership in the Grand Army of the Republic, as provided in Chapter II, Article I, and shall be accompanied by a charter-fee of ten dollars.

See Chapter II, Article I, Page 15.

Mustering of Posts.

SEC. 2. On the receipt of such application, the Department Commander shall examine the qualifications of the applicants, and if satisfied of their eligibility, and that it is for the interest of the Grand Army of the Republic to form such Post, he shall, either in person or by some officer of the staff, proceed to admit the applicants into the Grand Army of the Republic, superintend the election of the Post officers for the remainder of the current year, and complete the organization of the Post. (*a, b.*)

See Section 1, Article I, Chapter II, Page 15.

94a. OPINION CXXX. MARCH 15, 1882.

Consent of an existing Post not necessary for the organization of a new Post.

Can a Post of the G. A. R. be established in a town or city where a Post already exists, without the petitioners first obtaining the consent of the Post already established?

The Rules and Regulations of the G. A. R. have vested in the Department Commander the power to grant charters to Posts, and there is no provision anywhere requiring the permission of existing Posts to be first gained.

It is not improper for a Department Commander to ascertain whether the good of the Order will be best conserved by rejecting an application for a charter, and he may apply to an existing Post for information; but the entire responsibility of his action must rest with him, and he may grant or reject an application without reference to any existing Post.

[Chapter V.—Article I.]

94b. OPINION CXVI. FEBRUARY 24, 1880.

Commander of the Post—Can not call in question the standing of a Charter-member.

Dropped members of disbanded Posts—Department Commander may organize such persons into new Posts, or approve their application to join other Posts.

Department Commander—May remove disabilities of dropped members of disbanded Posts.

Certain members of a disbanded Post, who had been suspended for non-payment of dues, and subsequently dropped by authority of the Department Commander, with other persons whose eligibility is not questioned, became Charter-members of a new Post, and July 14, 1879, were duly mustered, and A. B. was elected Post Commander.

At the annual meeting in December certain members of the defunct Post, dropped as aforesaid, were elected officers of the new Post. The said Post Commander, in general orders, declared the election of said officers irregular and void, on the ground that, by their default while members of the defunct Post, they were ineligible.

A Post is formed by authority of the Department Commander, on the application of not less than ten persons eligible to membership in the Grand Army of the Republic. (Chapter II, Article II, Section 1, Rules and Regulations.)

The acts of the Department Commander and the Mustering Officer, in admitting charter-members to membership in the Grand Army, are, to a certain extent, judicial. They are required to pass upon the eligibility of the applicants to membership.

By making these persons charter-members of a new Post, and organizing and mustering them, the Department officers have declared that they are eligible to membership in the Grand Army of the Republic; and their comrades, who were chartered and mustered by the same authority, can not impeach collaterally, and thus overrule the action of the Department Commander. Indeed, it would seem probable from the record furnished, that rejecting dropped members of the disbanded Post, less than ten persons eligible to membership made application to be formed into the new Post; and that the legal existence of the Post, and the standing in the Order of its Commander and all its members, rest upon the same tenure as the dropped members of the defunct Post.

A comrade, dropped from the rolls of his Post for non-payment of dues, can not become a charter-member of a Post without obtaining an honorable discharge from the Post of which he was previously a member. Neither can a Department Commander issue a charter to form a new Post to members of an *existing* Post who are in arrears for dues. (Opinion XXXV, May 25, 1872, *III d.*)

But in case of a disbanded Post, the Department becomes the successor of the Post when it is dissolved, and inherits its property and its records. If a member is in default he must settle with his Department instead of his Post, which has ceased to exist; and the Department Commander, in his discretion, may re-admit him to the Order. He may organize such persons into new Posts, or approve their application to join other Posts. (Opinion XLII, December 19, 1872, *III g.*) See Chap. V, Art. IV.

These persons are not in arrears to Post 24, or to any existing Post. It is a matter between them and the Department. The Department Commander becomes the administrator, so to speak, of a disbanded Post. He alone has the

95*. Surrender of Charters.

SEC. 3. Post charters may be surrendered voluntarily when less than ten members desire the continuance of the Post, as provided in Chapter II, Article I. In case of surrender or forfeiture of a charter, the property of the Department, including books of record and Post papers, shall be immediately turned over to the Assistant Quartermaster-General of the Department, and shall be subject to the disposition of the Department Encampment.

See Section 2, Article I, Chapter II, Page 15.

96. Suspension of Posts.

SEC. 4. Charters of Posts may be suspended or annulled by the Department Commander, with the advice and consent of the Council of Administration.

Note 94 b continued.

authority to give transfer cards and honorable discharges to its members. It is for him to say when they may be charter-members of new Posts, and he can remove their disabilities to enable them to join existing Posts.

We have seen that upon the dropped member of a disbanded Post making satisfactory settlement with the Department, it is within the discretion of the Department Commander to admit him as a charter-member of a new Post.

When he has been so chartered and mustered, the presumption is that all the necessary preliminary steps have been taken, and this presumption is so far conclusive that the Commander of the new Post can not read him out of the Order or ignore his claims as a member of the Post.

If the discretion of the Department Commander has been improperly exercised, or if the member made use of improper means to secure his restoration, or if the mustering officer failed in his duty, these violations of the Rules and Regulations must be inquired into in another manner.

As to other members of the disbanded Post, who were dropped for non-payment of dues, upon the Department Commander re-admitting them to the Order, and approving their application, they may be admitted to the new Post as provided in Section 1, Article III, Chapter II, Rules and Regulations.

95. OPINION XLIV. JANUARY 14, 1873.

Charter may be forfeited for neglect to hold monthly meetings—Post cannot surrender charter contingently.

A Post, having paid all dues and forwarded all returns, votes to disband for one year, and forwards a copy of the vote to Department Headquarters. What is the duty of the Department Commander in the premises?

He should inform the Post that the Rules and Regulations do not permit the surrender of a Post charter, contingently, or for a limited time; and, when a Post charter is surrendered, the provisions of Chapter II, Article I, Section 2, must be complied with to render such surrender valid. Should it appear doubtful, however, whether the Post ought to be continued, he may, if he thinks proper, call a meeting of the Department Council of Administration, and they may declare the charter of the Post forfeited for neglect to hold monthly meetings. The first course, I think, will be preferable, as the Post seems to desire to dissolve legally.

[Chapter V.—Article I.]

97. *Department Charters.*

SEC. 5. Charters of Departments shall be signed by the Commander-in-Chief, and countersigned by the Adjutant-General and shall be issued to each Department immediately upon the permanent organization thereof.

Each Department shall forward to the Adjutant-General therefor a charter-fee of twenty dollars.

98*. *Penalty for failure to make reports.*

SEC. 6. The National Encampment, at its annual session, or the Commander-in-Chief, with the consent of the Council of Administration, may at any time revoke the charter of a Department, which for three-quarters of a year has failed to forward its reports or dues, and may remand such a Department to a provisional condition.

98. See RETURNS AND REPORTS, Page 87.

ARTICLE II.—CHAPTER V.

RETURNS AND REPORTS.

99*. *By Post Commander.*

SECTION 1. Each Post Commander shall make quarterly returns to the Assistant Adjutant-General of the Department on the first days of January, April, July and October. He shall at the same time, forward the names of all members of his Post, in good standing, who have held the position of Commander-in-Chief, Senior Vice-Commander-in-Chief, Junior Vice-Commander-in-Chief of the National Encampment, or of Department Commander, and a list of the names of rejected applicants. The name of a person dishonorably discharged shall be forwarded at once.

99. The following resolution was adopted by the National Encampment at Indianapolis, 1881 :

“Resolved, That Department Commanders be recommended to publish in General Orders such Posts as fail to send in their reports within twenty days.”

The report of the Post Adjutant is styled Form A.

Of the Post Quartermaster, Form B.

Of the Assistant Adjutant-General, Form C.

Of the Assistant Quartermaster-General, Form D.

Blanks for these reports are furnished free by National Headquarters upon requisition from Department Headquarters.

The Assistant Adjutant-General should, before the expiration of the quarter, send the required blanks in duplicate to the Post Commander, with an addressed envelope in which the completed reports are to be returned to him.

If the Post Commander has not received these forms, he should make timely requisition for them.

The Post Adjutant must prepare, under the direction of the Post Commander, all reports and returns required of him. The Post Quartermaster shall make and deliver to the Post Commander all reports and returns required of him. (Sections 3 and 4, Article VIII, Chapter II, Pages 54, 55.)

These returns are to be forwarded *by the Post Commander to the Assistant Adjutant-General on the first days of January, April, July and October.*

The requirements of the Rules and Regulations are clear and explicit. The responsibility of forwarding the Reports upon the days stated is laid directly upon the Post Commander.

It is his place to *know* that the records of his Post are so kept that there shall be no delay in making and forwarding the reports. With timely attention there should be no difficulty in making up the reports on the day following the last meeting of the quarter. In many Posts it is the rule to make up the returns at the close of the last meeting in the quarter, and this, which is within the compass of each Post, will avoid the labor and annoyance that follow unnecessary delay. A Post Commander desirous of making a good record for his Post at Department Headquarters *will have his reports in the mail on the dates prescribed.*

[Chapter V.—Article II.]

100*. *By Assistant Adjutant-General.*

SEC. 2. The Assistant Adjutant-General of each Department shall, on receipt of returns, note thereon the date of reception, and turn over the Quartermaster's and Surgeon's returns to the Assistant Quartermaster-General and Medical Director respectively. He shall consolidate the quarterly returns of the Post Adjutants within twenty days after the beginning of each quarter, for the information of the Department Commander, and shall prepare a copy, on blanks of Form C, of such consolidated return, to be forwarded by the Department Commander to the Adjutant-General on or before the 20th day of each quarter. This report shall also contain a list of the names of all the Past officers of the National Encampment entitled to membership therein, reported as in good standing in the several Posts of his Department. He shall also make such supplemental reports as may be required by National Headquarters. (a, b.)

See DUES AND REVENUE, Pages 99-104.
See ARREARAGES, Page 95.

Note 99 continued.

He should be able to read to his Post at the first or second meeting in the quarter the acknowledgment from the A. A. G. of the prompt receipt of his reports.

Much of the delay and annoyance in making reports is caused by failure to keep duplicate copies, and where books are carelessly kept the result is shown in reports that do not agree. The Commander should compare the reports before forwarding them, and see that the "Number in good standing" on *Form A*, and the "Balance cash on hand" on *Form B* on the retained copies for the previous quarter are properly brought forward for the current report.

The "number remaining in good standing" on the *Recapitulation* of Form A is the number upon which dues are to be paid and reported on Form B. On the *Recapitulation* the number of those "gained" during quarter added to "number in good standing at last report" make the "Aggregate" from which will be deducted the "Losses during the Quarter," leaving "Number remaining in good standing."

In this simple addition and subtraction there *ought* to be no mistake, and yet errors therein are frequent, causing considerable correspondence and adding unnecessarily to the labors of Post and Department Officers.

Under the head of "Losses during the quarter," "dropped" members are not to be included; such were previously taken off the rolls under "Suspension." But the names of those "dropped" during the quarter will be given in the column "Losses during the quarter from all causes." If the Quartermaster would keep a small memorandum book, and enter the names of comrades suspended, with the date, and with a space to add the date of "dropped" or "reinstated," it would avoid much of the confusion apt to arise from depending on slips containing such notes. As a comrade is dropped or reinstated, a pencil should be drawn through the name, thus leaving only the names of those remaining suspended to be reported on the Return.

Note 99 continued.

It is the duty of the A. A. G. to notify Posts when the returns have not been received. (See *Note 109 b*, Opinion XLIX, Page 96.) This notification is not a matter *personal* to the Post Commander; it is an official communication, which it is the duty of the Commander to have read to the Post for its information. If the returns have been forwarded, and have miscarried, proper explanation can be made to the Post as an excuse for the apparent neglect of an important duty. See Opinion VIII, Paragraph 108, as to the duty of the Commander-in-Chief when a Department Commander neglects to forward his returns; and the same discipline is applicable to the delinquent Post Commander.

A change was made in Form B by the Encampment at Minneapolis, July, 1884, which more clearly shows the financial condition of a Post. R. B. B.

100a. OPINION XXI. JANUARY 15, 1872.*Supplemental reports to be made by Departments.*

The reports of a Department for the third quarter of 1871 exhibited many Posts in arrears and not reporting. If these Posts, or any of them, pay their dues and make reports to secure representation in the Department Encampment, ought not the Assistant Adjutant-General of a Department to send a supplemental report for that quarter, and the Assistant Quartermaster-General to pay dues therefor?

Would it be their duty to do so without special orders?

I am of opinion that on the reception of any report from a Post after the consolidated report has gone forward, which would vary the footings of the consolidated report, the Department Commander should send a supplemental report, showing the true number of members in his Department in good standing for the quarter to which such report relates.

No order to do so is necessary, but an order may be issued if it is neglected. Dues should be paid for the actual number when ascertained.

100b. OPINION LV. SEPTEMBER 29, 1873.*Supplemental reports to be made by Posts.*

A number of Posts have been in the habit of suspending a large number of comrades on the quarters ending March 31, June 30 and September 30, and reinstating them on the quarter ending December 31. Should not the respective Posts pay the *per capita* tax to the Department for each quarter the Comrade was in arrears at the time he was reinstated and placed in good standing?

If a comrade in arrears is reinstated and placed in good standing, is not that sufficient evidence that he has paid all arrears, the number shown in good standing upon the face of an Adjutant's roll, either by muster, transfer or reinstated, being the basis of representation?

On principles of general equity a Post should pay Department dues for any quarter on the number of members who pay Post dues for that quarter, whether the comrades pay their Post dues at the proper time or afterwards. If the payments to the Posts are made at any time after the quarterly report of the Post has gone forward, a supplemental report should be required, or the fact of the additional collections should appear in some subsequent report.

The Regulations allow a comrade's dues to be remitted in certain circumstances, and while they are so remitted the comrade is not counted in representation or in estimating the Department tax. It does not seem to me that the

[Chapter V.—Article II.]

101. By Adjutant-General.

SEC. 3. The Adjutant-General shall, on receipt of returns, note thereon the date of reception, and turn over to the Quartermaster-General and Surgeon-General the returns belonging to their respective offices. He shall consolidate the returns of the Assistant Adjutants-General, for the information of the Commander-in-Chief, and shall present a copy of such consolidated returns to the annual session of the National Encampment.

102. Post Quartermaster.

SEC. 4. The Quartermaster of each Post shall, through the Post Commander, make a quarterly return to the Assistant Quartermaster-General of the Department on the first days of January, April, July and October, on blanks of Form B.

103. By Assistant Quartermaster-General.

SEC. 5. These returns shall be consolidated by the Assistant Quartermaster-General within twenty days after the beginning of each quarter, and such consolidated return shall be forwarded by the Department Commander to the Adjutant-General, a copy thereof being retained for the information of the Department Commander, on blanks of Form D. He shall also make such supplemental reports as he may be required by National Headquarters. (See *Notes 100 a, b.*)

Note 100 b continued.

Regulations require such remitted dues to be paid before the comrade is reinstated, as upon that construction the remission would only be a postponement of the time of payment, and this would be a small favor to a needy comrade. I am rather of the opinion that the Regulations permit such a person to be restored to the list of comrades in good standing when he recommences to pay his dues regularly, so that if his dues are remitted for the second and third quarters of the year, and he pays for the fourth, he may be reported in good standing on the first of January succeeding. In some exceptional cases this may give a Post an advantage over others in its representation in the Department Encampment, but it would require a two-thirds vote of the Post in twenty-five cases, on the average, to gain one representative, and this result is hardly worthy of consideration.

It can only be inferred, therefore, that a comrade who is "reinstated" from "suspended" has begun to pay his dues regularly, not that he has paid all that were in arrears. Yet as he may have been reinstated on payment of arrearages, a report should be made by the Post at some convenient time in the year, say at the time the report for the fourth quarter is forwarded, distinguishing the different classes who have been reinstated during the year, and showing for how many quarters, while they were reported suspended, such comrades have paid back dues.

I think this might be shown by a proper addition to the regular report including the same information in regard to amounts received from comrades dropped, as well as suspended and restored.

104. *By Quartermaster-General.*

SEC. 6. The quarterly returns of Assistant Quartermasters-General shall be consolidated by the Quartermaster-General for the information of the Commander-in-Chief, and a copy thereof shall be presented by the Quartermaster-General to the National Encampment at its annual session.

ARTICLE III—CHAPTER V.

DUES AND REVENUE.

105. *Tax on Departments.*

SECTION 1. The National Encampment, at its annual session, shall assess a *per capita* tax on each Department, not exceeding twenty-five cents per annum on each and every member in good standing therein. Such tax shall be payable in four quarterly installments, and shall be forwarded by the Department Commander to the Quartermaster-General on or before the twentieth day of April, July, October and January. The amount of the quarterly tax due from each Department, shall be ascertained from the number of members in good standing therein, reported in the consolidated return made to the Adjutant-General on the twentieth day of the current quarter.

106*. *Tax on Posts.*

SEC. 2. Each Department Encampment, at its session in January, shall assess a *per capita* tax on each and every Post in its jurisdiction, not exceeding one dollar per annum on each member in good standing therein. This tax shall include the tax due the National Encampment from the Department, and shall be forwarded by the Post Commander to the Assistant Quartermaster-General, in quarterly installments, on the first days of January, April, July and October. The amount of the quarterly installment due from each Post shall be determined by the number of members in good standing therein, as reported in return of the Post Commander, made on the first day of the current quarter. (See *Note 99*, page 87.)

106.

DECISION VII. L. W.

Per Capita Tax—Post is liable for the quarter in which it was organized.

The Commander of the Department of the Potomac decided that a Post should pay the *per capita* tax due the Department for the quarter in which it was organized.

To this the Post took exceptions, claiming that the charge did not commence until the first of the ensuing quarter.

The decision of the Department Commander was sustained.

[Chapter V.—Article III.]

107*. *Tax on members.*

SEC. 3. Each Post, either by its By-Laws or by a vote at the last meeting in December, may assess a *per capita* tax upon its members payable in equal quarterly installments, on the first days of January, April, July and October. (*a-b.*)

See ARREARAGES, Page 95.

107a*. OPINION XCI. AUGUST 24, 1878.

Assessments for burial expenses illegal.

A Post By-Law states that upon the death of a comrade, and when he is buried at the expense of the Post, an assessment of one dollar shall be levied upon each member. Is such By-Law legal?

I am of opinion that, under Opinion LXIII, January 25, 1875 (*107 c*), (which governs), that this By-Law is illegal.

Note.—A proposition was made at the Albany Encampment, 1879 (page 641, *Journal*), to amend Sec. 3, Art. III, Chap. V, by adding, "and may also assess a funeral tax, to be collected on the death of a comrade when the expense of the funeral is borne by the Post."

The Committee on Rules reported: "This is to meet the decision of the Judge Advocate-General (Opinion XCI), declaring such assessment illegal. The Committee agree with him so far as charging up such assessments as *dues* and of suspending and dropping members for non-payment; yet each Post may make laws covering beneficial features to be entered into by the comrades. If they fail to pay, and become in arrears to such a fund, they are necessarily deprived of any benefits thereunder. We deem the amendment unnecessary."

The report of the committee was adopted.

107b. OPINION LX. APRIL 18, 1874.

Per Capita Tax—Must be assessed on all alike, and, once assessed, cannot be remitted except as provided in the Rules and Regulations.

At the organization of a Post, one of the comrades who had rendered efficient services to the Grand Army, was assured by the Post that he should be exempt from dues, and no dues have been demanded of him to the date of the communication, November 7, 1873. At a Post meeting held November 7, a comrade insists upon the enforcement of that provision of the Regulations relating to the assessment of a *per capita* tax, and that the remission to the comrade is illegal.

The Post urge that, inasmuch as the action of the Post was previous to the passage of the law, it was not intended to apply to the case, and would not affect the status of the comrade. The comrade is able to pay the taxes, but the Post wish to remit them as a compliment to him.

By examination of the Rules and Regulations, ed. 1868, adopted at the first National Convention, it will appear that the imposition of a tax upon each member of the Post was obligatory. Article XII, Section 1, reads as follows:

"The annual dues to a Post from each member shall not be less than one dollar."

Note 107 b continued.

The Department in which this Post is situated was organized February 20, 1868, a little more than a month after the Regulation was adopted, and the law did not then allow exemptions or remissions except for the same causes as at present. But if it had been otherwise, any action of the Post must have been subject to the liability of being repealed or overruled by a new enactment or change of the Regulations by the National Encampment, and would have become void from the time such new Regulation went into operation.

The next year (1869) the Regulations were thoroughly revised, and Section 3, of Chapter V, Article III, was then adopted, in the same words which are now in force.

This section gives to each Post the power to assess a *per capita* tax upon its members; and Section 3, of Article IV, of the same chapter, permits a Post to remit the dues of a comrade who is unable, from sickness or misfortune, to pay them. The latter section has also remained unaltered to the present time.

The right to assess a tax is only granted on condition that it shall be a *per capita* one—that is, that it shall be assessed upon each member; and it is plain that no remission of a tax once assessed can be made, except for the causes and in the manner prescribed in the section last above referred to.

If a Post may exempt one of its members from the payment of a tax at its will, it may so compliment two or more, or all but one, and so may throw upon one unfortunate comrade the whole expense of conducting it. So long as such a burden is unanimously submitted to no one complains, and practically there is no damage and no remedy; but as soon as one comrade, as in this case, calls for the enforcement of the law, it must be put in operation.

Inasmuch as the comrade has not refused to pay his tax, but the Post are in error in not demanding it, I would recommend that they begin the collection of the tax from the time when the error was discovered.

107c. OPINION LXIII. JANUARY 25, 1875.

Dues—Applies to nothing except the annual tax.

Assessments—Compulsory; limited to the levy of an annual tax.

Transfer card—A By-Law of a Post fixing fee for each transfer card is void.

Nineteen comrades of a Post having paid their dues in advance for the current quarter, asked for transfer cards at a regular meeting of the Post. The Post By-Laws adopted while these nineteen members were comrades of the Post, imposed a fee of one dollar to be paid for each transfer card. This fee was demanded, and finally paid, under protest. The comrades became charter-members of another Post, and that Post presented the case to the Judge-Advocate, who holds that the word "dues," in Chapter II, Article IV, Section 2, of the Rules and Regulations, includes the transfer fee, because the members of the Post, by adoption of the By-Law, had contracted to pay such fee, and made it "due" to the Post from themselves or others desiring transfers, and therefore the fee was legally collected. From this decision the Post appeals to National Headquarters.

It would, perhaps, be sufficient to say, in answer to the ruling of the Judge-Advocate, that the question has been settled by Opinion III, of August 11, 1871, approved by the then Commander-in-Chief, and subsequently by the National Encampment, May, 1872, and promulgated in their Proceedings, page 68; but as that opinion contained no discussion of the question, it may be well to consider the reasons which support it. The word "dues" in our Regulations occurs first in the first edition adopted at Philadelphia, January, 1868, as part of the title of Article XII, as follows:

[Chapter V.—Article III.]

Note 107 c continued.

" DUES AND REVENUE."

SECTION 1. The annual dues to a Post from each member shall not be less than one dollar.

SEC. 2 provides: The Department dues shall not be less than ten cents per annum upon each member upon the rolls of the Posts within the Department, etc.

SEC. 3. Departments, as soon as organized, may fix such high rates in Post and Department dues as their special necessities may require.

* * * * *

SEC. 5. The dues to the National Encampment shall be two cents per annum upon each member of the Order, etc.

In 1869 a thorough revision of the Rules and Regulations was adopted, and the subjects treated of were carefully classified.

Under the head of "Dues and Revenues," as the title of Article III, of Chapter V, we find the same language, which defines the term in every edition of the Regulations since that time.

The word "dues," therefore, in the universal usage of the Grand Army from the moment that it became a recognized National organization, has signified the regular annual taxes paid by comrades to their Post, by the Posts to the Department, and by the Departments to the National treasury of the Order.

It is never used in our Regulations in any other than in this restricted and technical sense. For instance, take the first Section of Article IV, of the same Chapter: "Any Department in arrears for reports or dues shall be deprived of all representation in the National Encampment until the same are forwarded." Can it be supposed that if a Department had forwarded its reports and the annual tax to National Headquarters, and had not paid a bill for blanks furnished, its representatives would thereby be excluded under this Section from their seats in the National Encampment? If such had been the intention, the language would have been: "Any Department indebted to the National Encampment, or whose reports have not been duly forwarded, shall," etc. In Article IV of Chapter II there is nothing to indicate that the word is used in any other sense. The first Section, in providing for granting leaves of absence, says, "Provided he * * * has paid in advance all dues *for the time specified in the furlough.*" How can the applicant pay dues *for a future time*, unless such "dues" are the ascertainable proportionate part of a sum fixed with regard to time? I can not think of anything to which this language can apply except the annual tax.

It is not likely that in the very next Section the framers of the Regulations should have used the word in any different sense, when it would have been so easy to specify a fee as a second condition to the granting of the paper. The Judge-Advocate is in error in supposing that all powers not specifically forbidden by the Regulations may be exercised by the Posts. The intention of our Regulations is to bring membership in the Grand Army within the reach of all honorably discharged soldiers who are not personally objectionable. The power therefore, of a Post to make compulsory assessments upon its members is limited by Section 3 to the levy of an annual tax. This may be made sufficient, in any Post, to meet all its expenses. If it is fixed at a figure which is beyond the ability of some of the comrades, the door must be left open to them to withdraw, without fee, to some cheaper Post.

The position that a comrade, by voting for a Post By-Law which is in violation of the Rules and Regulations, may make it obligatory upon him as a contract, is subversive of all ideas of the subordination of the various organizations of the Order. Such a By-Law is void *ab initio*. If it relates to the payment of money, the comrade may fulfil it if he chooses; but the Post is forbidden to enforce it, and money paid compulsorily, under its provisions, may be recovered.

ARTICLE IV.—CHAPTER V.

ARREARAGES.

108.* Departments.

SECTION I. Any Department in arrears for reports or dues shall be deprived of all representation in the National Encampment until the same are forwarded. (*a, b.*)

See REPORTS AND RETURNS, Page 87.

108a. A member of the National Council of Administration does not forfeit office because his Department is in arrears. See Opinion XII, *Note qo b*, page 81.

108b. OPINION VIII. SEPTEMBER 12, 1871.

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4. *Powers of Commander-in-Chief as to Department Officers.*

5. *On refusal or neglect of Department Officers to perform their duties they may be placed in arrest.*

6. *Commander-in-Chief may detail an Acting Commander.*

If the officers of a Department of the Grand Army of the Republic neglect their duty, omit to make returns and reports as required by the Rules and Regulations, and allow their Departments to become demoralized and practically defunct, has the Commander-in-Chief authority to annul the charter of the Department and remand it to a provisional condition? * * * * *

3. The policy of the National Encampment, as expressed in the Rules and Regulations, seems to have been to prevent any Department getting into a demoralized condition by the system of inspection by officers appointed by the Commander-in-Chief, and responsible, through the Inspector-General, to him alone. By this means, any delinquency on the part of Department Officers would be immediately reported, and if occasioned by mistake, would be corrected; or if arising from intentional insubordination or carelessness, would be the occasion for trial by Court-Martial. One such exercise of discipline would, in most cases, be sufficient to recall the Department to its duty. The advantage of having at Headquarters of each Department a representative of the Commander-in-Chief in the person of an Assistant Inspector-General, is obvious, from the fact that a personal interview with the Department Commander is a mode of communication much more easy and effective than by letter or order.

4. In regard to the present power of the Commander-in-Chief, it is clear that if the Commander of any Department refuses or neglects to forward his returns, or to obey lawful orders, he may be placed in arrest, *i. e.*, suspended from his office, on charges being preferred against him. Then his duties devolve on the Senior Vice Commander, and after a reasonable time, if his conduct is the same, he may be treated in the same way. The Junior Vice Commander then succeeds, and if he also proves negligent or disobedient, he must likewise be suspended. Then it would, I think, be the duty of the Commander-in-Chief to detail a comrade

[Chapter V.—Article IV.]

109.* Posts.

SEC. 2. Any Post in arrears for returns or dues shall be excluded from all representation in the Department Encampment until the same are forwarded. (*a, b.*)

Note 108 b continued.

as Acting Commander of the Department, with instructions to call immediately a meeting of the Department Council of Administration for the election of Department Officers for the remainder of the current year. Until the holding of such an election the Acting Commander would hold the office.

If all the Department Officers were removed or resigned, the Acting Commander could be appointed at once; but no act could be done affecting the charter of the Department, and a regular election of Department Officers must be held as soon as possible. All the remedies now given by the Regulations are personal, by the prosecution and removal, after trial, of the officers who neglect their duty.

109a. OPINION XIII. OCTOBER 12, 1871.

Private members of a Post are not responsible for neglect of the officers.

Department officer does not forfeit his office by reason of any misconduct of his Post.

Does a comrade holding a Department office forfeit such office when the Post of which he is a member neglects its duty, and becomes practically disorganized?

If Posts are unmindful of their duties their charters should be suspended or annulled by the Department Commander and Council of Administration, but it is altogether too harsh a doctrine to hold the private members of the Post responsible for the neglect of its officers. The remedy is either against the whole body, as above, or by Court Martial of the officers, the responsible parties. The status of the members of such Posts is recognized in Sec. 4 or Art. IV, Chap. II, Rules and Regulations, which provides that if the members themselves are in good standing, even when the Post is disbanded, they may take transfer cards and join other Posts.

I think, therefore, that while it would not be advisable to appoint to any office a member of such a Post, yet, after the comrade is appointed, he is not rendered ineligible to retain his office by his Post lapsing into an undisciplined condition. If it should be necessary to revoke the charter of the Post, the comrade holding office should be required to connect himself with another at once.

109b. OPINION XLIX. APRIL 23, 1873.

1. *Reports—It is the duty of Adjutant-General or Assistant Adjutant-General to notify Departments or Posts of the failure to receive reports.*

2. *If reports were forwarded, and they miscarried, sender should forward duplicate.*

3. *Where report has been sent but not received, representatives may be admitted.*

The Rules and Regulations provide that returns and reports shall be forwarded to the Assistant Adjutant-General, or the Adjutant-General, as the case may be; what is evidence before an Encampment that this is complied with? Is it sufficient evidence for representation, that they were mailed and addressed to the proper receiving officer, or must the said officer testify to their receipt; or, if he certifies they were not received, does the testimony of any subordinate officer, proper to make returns, that they were made out, signed, addressed and mailed to the proper person, entitle them to representatives; and is it a complete compliance with Articles of Rules and Regulations?

110.* *Members in arrears.*

SEC. 3. Any member of a Post who is six months in arrears in the payment of his dues shall be prohibited from voting, shall be ineligible to any office in the Grand Army of the Republic, and shall be reported "suspended" in the quarterly reports to Department Headquarters, until such dues are paid. (*a-b.*)

Suspension.

While so suspended the Post shall not be subject to the *per capita* tax on such member, and he shall not be counted in the representation of the Post in the Department Encampment, nor, of the Department in the National Encampment. *Provided, however,* That when a comrade is unable, by reason of sickness or misfortune, to pay his dues, they may be remitted by a two-thirds vote of the members present, and voting at a regular meeting of the Post, but by this remission of dues the Post shall not become liable for the payment of his *per capita* tax, nor shall he be counted in the representation to the Department or National Encampment.

Note 109 b continued.

It is difficult to lay down an exact rule for all cases. If a report should not be received at Headquarters, soon after it was due, it would be the duty of the Adjutant-General, or Assistant Adjutant-General, to notify the delinquent Department or Post that such a report had not been received; and a Post or Department Commander, who had made out and mailed a report, would have a right to suppose that it had been received, unless he should get such a notification. If a report miscarried, and the sender was notified, he should forward another copy.

At a meeting of an Encampment, the first evidence which would be presented to it, in regard to the reception of reports, would be the statement of the Adjutant-General, or Assistant Adjutant-General. This, if not contradicted, would be conclusive. But, if the statement should then be made that the report was actually sent and no notice had issued from Headquarters of its non-reception, I think that the Encampment would consider that the reporting officer had done all that was required of him, with the information he possessed, and the delegates would be admitted to the Encampment, it being understood, of course, that a new copy of the missing report should be forwarded as soon as possible. All our reports are made due, by Regulations, sufficiently long before the meetings of Encampments to give time to send for new copies, if they are not forwarded when due. And to entitle a Post or Department to representation, reports may be forwarded at the last moment before the Encampment meeting, even, or sent in by the hands of the delegates.

110a. A comrade suspended can be reinstated upon payment of his dues. His name should be reported in the next return as gained from suspended.

Each Post should have a committee on "Delinquent Members," to visit members in arrears and effect their reinstatement if possible.

R. B. B.

[Chapter V.—Article IV.]

111.* *Dropped from the rolls.*

SEC. 4. If a comrade shall be one year in arrears for dues he shall be dropped from the roll (*a*) and reinstated only by the Post which dropped him (*b-h*) by a two-thirds vote, by ballot (*i*) of all the members present, and voting, at a regular meeting, upon payment of a sum to be prescribed by a two-thirds vote of the members present, and voting, at a regular meeting; said sum not to be less than the amount charged as muster-in-fee. If elected, he shall be reobligated; provided, that he may be reobligated in any Post within whose jurisdiction he may reside, upon the written request of the Post reinstating him (*k-n*.)

SEC. 5. The provisions of Sections 3 and 4 of this article shall not apply to any comrade in the service of the United States, and on duty at a distance from the Post of which he is a member.

110b. OPINION XVI. NOVEMBER 26, 1871.

Post may exclude suspended members from its meetings.

Has a Post the power to exclude suspended members from its meetings?

The general Regulations prescribe that a suspended member is not eligible to office, and has no vote. Any regulation adopted by a Post on the subject, not inconsistent therewith, will be valid. Such By-Law may provide that suspended comrades be debarred the privilege of attending the meetings of the Post.

111a. DECISION VIII. L. W.

Dropped member—One twelve months in arrears is dropped by the Rules and Regulations.

Quartermaster or Quartermaster-Sergeant may make the entry.

When a comrade is dropped the Quartermaster must report it on quarterly returns.

An appeal was presented on the right of the Post Quartermaster to drop from the rolls any comrade twelve months in arrears, who had been duly notified, without the direct action of the Post thereon.

Decided that, when a comrade became twelve months in arrears, he was "dropped" by the action of the law governing that subject, and that the simple clerical duty of marking the name "dropped" could be performed by the Quartermaster or the Quartermaster-Sergeant.

When a comrade is marked "dropped," it becomes the duty of the Quartermaster to so report his name in the then quarterly return.

111b. OPINION XXXV. MAY 25, 1872.

1. *A comrade dropped for non-payment of dues cannot join a new Post as an initiate.*

2. *A comrade who has been dropped for non-payment of dues can only be reinstated by the Post which dropped him.*

3. *Can only pass from membership in one Post to another by transfer, or by honorable discharge.*

4. *Transfer card and honorable discharge—Difference.*

5. *Comrade in arrears can leave his Post only by honorable discharge or by being dropped.*

Can a comrade who has been dropped from the rolls of his Post, for non-payment of dues, join a new Post, as an initiate, without first obtaining an honorable discharge from the Post of which he was previously a member?

Should a charter be granted to a body of comrades who desire to form a new Post, when such comrades have been dropped from their old Posts for arrears of dues, and have not been regularly discharged therefrom?

Can a Department Commander issue a charter to form a new Post, to members of an existing Post, who are in arrears for their dues?

As is suggested by the comrade proposing the first two questions, the second is involved in the first; and I answer both in the negative. Chap. V, Art. XV, Sec. 4, decides the point. The word "reinstated" in that section must signify reinstated as a member of the Grand Army; and the section prescribes in effect, that such a person as it refers to can only rejoin the Order by being admitted through the Post which dropped him. The same answer must be given to the third question. Chap. II, Art. I, Sec. 1, prescribes that a new Post shall be formed of persons "eligible to membership in the Grand Army of the Republic," evidently contemplating persons not already members. There are only two classes of persons who fulfil this requirement, former comrades, honorably discharged, and persons possessing the qualifications mentioned in Chap. I, Art. IV, who have never been members of the Grand Army of the Republic.

A comrade can leave the Post to which he belongs only by transfer, to join an existing Post; by honorable discharge, which places him in the same relation to the Order which he occupied before he first entered it; by dishonorable discharge by Court-Martial, which obliges him to apply for readmission, through the Post of which he was a member, with the approval of the officer who approved his sentence; or by being dropped for non-payment of dues, when he can only be readmitted to the Order by vote of the Post which formerly bore his name on its roll. A comrade in good standing may obtain a transfer paper if he wishes to join an existing Post, or an honorable discharge if he is to become a charter member of a new Post.

A comrade who is in arrears can only leave his Post by dishonorable discharge or by being dropped from the rolls. In either case he is not eligible to join any other existing Post or form part of a new one.

111c. OPINION CVIII. JANUARY 6, 1880.

Dropped Member—Where his own Post is disbanded may be readmitted by Department Commander.

May become charter member of a new Post.

In what manner can a comrade dropped for non-payment of dues regain his standing in the Order, if the Post of which he was a member has disbanded? Can such a comrade become a charter member of a new Post?

[Chapter V.—Article IV.]

Note 111 c continued.

The applicant for readmission should pay into the Department treasury the amount he owed his own Post, and the Department Commander, in his discretion, may readmit him to the Order, and approve his application to join another Post, or he may become a charter member of a new Post. (See *94 b*, Page 84.)

111d. DECISION XVII. G. S. M.

Dropped member—Not eligible to membership in another Post.

Election and muster of dropped members into a Post other than the Post that dropped them, illegal and void.

Reinstatement subsequent to muster in another Post does not render valid the admission.

J. G. H. applied and was admitted as a new member in Post 3, of New Hampshire. It was subsequently discovered that at the time of such admission he was a "dropped" member of Post 42, of Massachusetts; the Commander of Post 3 ordered his name dropped from the rolls on the ground of illegal admission. He refused to go. Later he applied to Post 42, of Massachusetts, paid his arrearage, was reinstated, and obtained an honorable discharge. He then claimed a continuance of his former membership in Post 3, of New Hampshire. The Department Commander sustaining his position, Post 3 appealed.

The appeal was sustained. H. being a dropped member of Post 42, Department of Massachusetts, was not eligible for admission to Post 3, Department of New Hampshire, and his admission to said Post 3, being obtained by misrepresentation or concealment of facts on his part, is null and void. His subsequent reinstatement and honorable discharge by Post 42, does not render valid his previous admission to Post 3. On the contrary, it shows more distinctly the illegality of that admission, and is a tacit acknowledgment by H. of his false position.

111e. OPINION XLII. DECEMBER 19, 1872.

Comrades dropped for non-payment of dues, if the Post to which they belonged disbands, may be admitted to another Post on payment to the Department Commander of the amount of their indebtedness.

Certain comrades were dropped from the roll of their Post for non-payment of dues. They now desire to re-enter the Grand Army, but, meanwhile, the Post to which they formerly belonged has been disbanded. How can they be restored to membership in the Order?

So long as the Post was in existence from which these persons were dropped, as stated in Opinion XXXV, of May 25, 1872, from this office, they could only rejoin the Order by being voted into that Post, and paying the dues which were in arrears at the time they were dropped. Chapter V, Article IV, Section 4. This is now manifestly impossible, and the state of facts is one not contemplated in that opinion. Do the Regulations preclude these persons from ever rejoining the Order? I think a fair construction of the section will lead to the conclusion that it is intended to apply only when the Post still exists. If its prohibition is universal, then its object, which is generally to provide an equitable mode of restoring comrades who have been dropped, must fail in such cases as the present, through the dissolution of the means by which that restoration is to be effected. I think the section was designed to be operative only when it could operate, viz., so long as the means it provides are effective and attainable. It does not intend to cut off a person who has been dropped from rejoining the Order, but to facilitate

Note 111 e continued.

his restoration. If we can so construe this section that its main object and spirit shall be fulfilled in this contingency where the means it provides fail, we shall, I think, be observing it most faithfully, and shall be adhering most closely to its true intent. After the dissolution of a Post, where can this power of re-admitting comrades to the Order be most reasonably supposed to reside? I think in the Department which becomes the successor of a Post when it is dissolved, and which inherits its property and records. Let the applicants for readmission, then, fulfil the requirements which this section makes of them by paying into the Department treasury the amounts they owed their Post, and the Department Commander, in his discretion, may readmit them to the Order and organize them into a new Post, or approve their application to join other Posts.

By this procedure the candidates will have done all that the Regulations require of them, and the proper officer will have performed the duty of discrimination which belonged to the Post while it existed.

111f. OPINION CXV. JANUARY 31, 1880

Dropped members re-admitted.

Re-admission—If a member under the Grade system, it must be by application and muster.

If an honorable discharge, on application and taking anew the obligation.

Does a comrade, once initiated in the Grand Army of the Republic, require to be again put through the formula?

Has not a former Commander of a Department the right to be a member of any Post of the Department if he pays his dues, without further initiation?

Does a former Grand Commander* of the Grand Army of the Republic require an initiation into the new Order provided he pays his dues?

A comrade who has been Commander of a Post of the Grand Army of the Republic, and also Commander of a Department, but who has not been in the organization under the present Regulations, is now desirous of attaching himself to a Post of that Department. In view of the fact of his having passed through all the formalities of initiation, are there any other requirements essential for him except to be balloted for and to sign the new Rules and Regulations?

Neither of these questions contain the important information how and when the comrade ceased to be a member of the Order.

If a definite opinion is desired it would be well for a statement, containing all the essential facts in the case under consideration, to be forwarded to the Judge-Advocate of the Department.

If the connection of the comrade with the Grand Army of the Republic ceased before the introduction of the "grade system," or during its continuance, provided he never took the obligations of the third grade, his application must be received and acted upon the same as if the applicant had never belonged to the Grand Army. See Rules and Regulations, Chapter II, Article II, Section 10.

A comrade, honorably discharged, can be re-admitted by filing a new application, to be regularly referred and reported on, and upon receiving a two-thirds vote of the members present, and voting at a regular meeting, he shall be admitted without re-muster, on taking *anew* the obligation.

*Formerly title for Department Commander.

[Chapter V.—Article IV.]

Note 111 f continued.

Chapter II, Article IV, Section 3, Rules and Regulations, and by Section 4, members of disbanded Posts who were in good standing at the time of such dissolution shall receive from the Assistant Adjutant-General of the Department transfer cards which shall have full force.

It was decided by the Judge Advocate-General (Opinion XXXV, May 25, 1872,) that a comrade, dropped from the rolls of his Post for non-payment of dues could not join a new Post without first obtaining an honorable discharge from the Post of which he was previously a member. It was also decided (Opinion XLII, December 19, 1872,) that comrades dropped from the rolls of their Posts for non-payment of dues, and desiring to re-enter the Grand Army, but meanwhile the Post to which they formerly belonged having been disbanded, that they could be restored to membership, by paying into the Department treasury the amount they owed their Post and receiving the approval of the Department Commander, if their application was to join an existing Post or to be organized into new Posts. (*111 b*, page 98, *111 c*, page 100.)

If the cases in question do not come within the general rules above referred to it will be necessary to forward a more definite statement of the facts and circumstances of each case.

111g.* OPINION XXVI. FEBRUARY 24, 1872.

Reinstatement—Too late to reinstate a member after he has died. A member who has been dropped is no longer a member, and the Post has no power to remit his dues—Post funds cannot be used to reinstate a member.

Can a Post reinstate, without payment of dues, a comrade who had been dropped for arrearages, and who died after his name had been dropped?

The power given to Posts in Chapter V, Art. IV, Sec. 3, to remit the dues of a comrade six months in arrears, should be exercised, if at all, when the case is reported. It must be done by the Post of which he "is a member." It is too late after his connection with the Post is severed by death.

Sec. 4 confers an entirely different power,—that of restoring to membership a former comrade who had been dropped for non-payment of dues for a year. That the powers are dissimilar appears from the provision that the power to remit dues requires a two-thirds vote, while the power to reinstate a comrade rests with a majority.* When a comrade is dropped in accordance with Sec. 4, he ceases to be a member, and the Post of which he "was" a member has no longer any power to remit his dues. They must be paid either by himself or some other person, as a condition precedent to his readmission. I should consider the appropriation of Post funds to such a purpose an unconstitutional use of its money. The present case would be decided by the fact that no dead person could be admitted to a Post, either as a recruit or by being restored to membership.

Note.—The present requirement for a two-thirds vote for reinstatement was added to Section 4 at the Springfield Encampment, June, 1878. R. B. B.

111h. DECISION XVIII. G. S. M.

Dropped member—Admission of into another Post illegal—When.

Post cannot admit into membership any person declared by the Rules and Regulations to be ineligible.

P. H. C. was dropped from membership in Post 1 by order of Post Commander, upon evidence that at the time of his admission he was ineligible, being a dropped member of Post 7, and his admission to Post 1 null and void. C.

Note 111 h continued.

appealed on the ground that the Post Commander had no power in the premises, being himself in same condition as to membership with said C. The appeal was overruled by the Department Commander, from which decision C. appealed.

The decision of the Department Commander was sustained, and the appeal dismissed. Former decisions are to the effect that no action of a Post can admit to membership a person declared by the Rules and Regulations "ineligible." The allegation against the Post Commander does not become an element in deciding this case.

111i. OPINION CXLII. OCTOBER 16, 1882.

Ballot for reinstatement should be by ball ballot.

The Post Commander, after the committee had reported on the application of a candidate for reinstatement, ordered a *written ballot*. From this order an appeal was taken. Should the ballot have been by ball or written ballot?

There can be but one mode of balloting for candidates or applicants for admission or readmission to the Grand Army of the Republic. That is by *ball* ballots. See Chapter II, Article II, Section 4, Rules and Regulations. The entire subject is plainly worded in Articles II and III of this chapter (II) and in Section 4, Article IV of Chapter V. The voting there referred to applies to the election of a comrade to *readmission*, and the ballot referred to can only be interpreted by Chapter II, Article II, Sec. 4, a ball ballot.

111k. OPINION CXVIII. MARCH 16, 1880.

Dropped member living in another Department than his own, may be reinstated in the Department in which he lives.

A member of a Post in the Department of Massachusetts dropped for non-payment of dues, now living in the Department of Connecticut, desired to be reinstated, but is unable to go to his Post to be reobligated. How can he be reinstated?

"The Department Commander may, in certain cases, detail a staff officer to muster applicants, who cannot personally visit the Post for that purpose." See page 16 of the Manual, adopted at Albany, June 18, 1879.

By Opinion XLVIII, of the Judge Advocate-General, April 17, 1873: "Whatever right a Department Commander has in his own Department, the Commander-in-Chief has throughout the Order." (124 d.)

The member can remit all dues to his Post in Massachusetts, and if re-elected, the Commander-in-Chief, upon application by his Post Commander, forwarded through the proper channel, will detail a staff officer to reobligate the comrade, or direct the Commander of the Department of Connecticut to make the necessary detail.

111l. OPINION CXX. MARCH 16, 1880.

Post Commander—Must have special detail to reobligate a member of another Department.

Has a Post Commander the authority, without a special detail emanating from National Headquarters, to muster a comrade into a Post in another Department, or to reobligate him after having been dropped for non-payment of dues?

I do not find such authority in the Rules and Regulations or in any decisions approved by National Encampment.

ARTICLE V.—CHAPTER V.

INSPECTION.

112*. *Of Posts.*

SECTION 1. There shall be a thorough inspection of each Post every year, to be made by the Assistant Inspector, Department officer or other comrade assigned to such duty, the report of the same to be made to the Inspector of the Department immediately thereafter.

Such additional inspection shall be made as the Commander may deem necessary, on the recommendation of the Inspector, or when directed by the Inspector-General.

The Inspector shall consolidate the reports of his assistants for the information of the Commander, and shall furnish copies of such consolidated reports to the Inspector-General.

111m*. DECISION IX. L. W. 1880.

Countersign—Department Commander may communicate as a matter of courtesy.

On an application from the Department of Connecticut that the Commander-in-Chief detail a staff officer to reobligate a comrade "dropped from the rolls" in that Department, and then residing in a distant city, who desired to be restored, I answer that there was now no provision for the reobligation of dropped members,* but that the Department Commander where the comrade resided, could, as a matter of courtesy, communicate the countersign, on receiving such a request officially, to a comrade thus restored.

* The Rules were amended in 1881 to require "reobligation." Opinion CXVIII, 111 k, will now govern. R. B. B.

111n. OPINION LXXV. AUGUST 29, 1877.

Dropped members cannot be regarded as dishonorably discharged members.

Dishonorably discharged members are such as have been convicted and sentenced by Court-Martial.

Certain members were dropped from the rolls for non-payment of dues. Can such members be regarded as "dishonorably discharged?"

Section 3, Article IV, Chapter V, of the Rules and Regulations, 1877, is clear and explicit that any member in arrears in the payment of his dues is to be reported only as "suspended." And Section 4 of the same Article is equally clear and explicit, that any member in arrears for a year shall be "dropped from the rolls," and of course so reported.

In my judgment only those members convicted (and sentenced) under a Court-Martial of one of the five offences named in Section 1, Article VI, of said Chapter, can be regarded or reported as "dishonorably discharged;" therefore I am of opinion that comrades dropped from the rolls for non-payment of dues cannot be regarded or reported as "dishonorably discharged."

Of Departments.

SEC. 2. The Commander of each Department shall divide his Department into such number of Inspection Districts as he deems necessary, changing the same at his discretion.

He shall, on the nomination of the Inspector, appoint comrades as Assistant Inspectors, who shall be assigned to duty and act as such during the pleasure of the Commander.

Assistant Inspectors-General.

SEC. 3. Assistant Inspectors-General shall be appointed by the Commander-in-Chief, on the nomination of the Inspector-General. They shall make inspections of the various staff officers of the Departments whenever required, and shall report the result of the same immediately to the Inspector-General, and shall perform such other duties as may be required of them by the Commander-in-Chief or Inspector-General.

*Inspector-General.**

SEC. 4. The Inspector-General shall prescribe the form of blanks to be used for the inspection of Posts, and with the approval of the Commander-in-Chief may give such special instructions in reference to inspections as may be deemed necessary. He shall prepare an abstract of the reports received from Departments, for the information of the Commander-in-Chief, and present a report to the National Encampment.

Records subject to inspection.

SEC. 5. All books, papers, accounts, records and proceedings, pertaining to the Grand Army of the Republic, shall be subject to inspection at all times by the several inspecting officers in their respective districts.

* Reports to be made on Form H for Post inspections; Form E for the return of Department Inspector.

All Inspections are subject to such orders as to forms and reports as may be given by the Inspector-General under instructions of the Commander-in-Chief.

See Form for official reception of Inspecting (or other) Officers in SERVICE BOOK, 1883.

ARTICLE VI.—CHAPTER V.

113.*

DISCIPLINE.

(See Article VI in connection with Form for Courts-Martial. Page 121.)

ARTICLE VII.—CHAPTER V.

BONDS.

114.* *Post Quartermaster and Trustees.*

SECTION 1. Every Quartermaster shall give bonds in a sum to be named by the Post, with sufficient sureties, for the faithful discharge of his duties.

Trustees of Posts or Relief Funds may be required by the Post to give bonds in an amount to be fixed by the Post, for the faithful discharge of the duties of their office.

Assistant Quartermaster-General.

SEC. 2. Every Assistant Quartermaster-General shall give bonds in a sum to be named by the Council of Administration, with sufficient sureties, for the faithful discharge of his trust.

Quartermaster-General.

SEC. 3. The Quartermaster-General shall give bonds in the sum of five thousand dollars, with sufficient sureties, for the faithful discharge of his trust.

Adjutant-General.

SEC. 4. The Adjutant-General shall give bonds in the sum of one thousand dollars, with sufficient sureties, for the faithful discharge of his trust.

How held.

SEC. 5. The bonds of the above-named officers shall be approved and held by their respective commanding officers as trustees for their several commands.

114. A Quartermaster cannot be installed until he has executed and delivered to the Commander a bond for the faithful discharge of his duties.—*Installation Service.*

As the larger number of Posts are unincorporated, it is important to know what the law is in each State in relation to bonds given by officers of unincorporated associations. This question ought to be carefully inquired into by the Judge-Advocate in each Department, and a proper form be then printed and issued for the use of Posts.

R. B. B.

ARTICLE VIII.—CHAPTER V.

115.* TITLES OF ADDRESS.

In the meetings of the various bodies of the Grand Army of the Republic, members shall be addressed only as "Comrades," excepting when holding office, when they shall be addressed by the title of the office which they hold in the Grand Army of the Republic.

ARTICLE IX.—CHAPTER V.

UNIFORM—BADGES.

116.* *Uniform.*

SECTION 1. Departments may adopt a uniform for their own members. Where no uniform is prescribed by a Department, each Post may adopt one.

117.* *Membership Badge.*

SEC. 2. The membership badge of the Grand Army of the Republic shall be in form and material that adopted at the special meeting of the National Encampment, in New York, October 27th, 1869, (a) and no other shall be worn as the badge of the Grand Army except that prescribed for officers in Section 3, and for past officers in Section 4. (b, c.) (*Cut No. 1.*)

118. *Badge of Office.*

SEC. 3. The badge designating official position in the Grand Army of the Republic, adopted at the meeting of the National Encampment, held in New Haven, May 14th and 15th, 1873, may be worn by all National Department and Post officers in the Grand Army of the Republic when on duty or on occasion of ceremony, and no shoulder-straps or other badge shall be worn to designate official position in the Grand Army of the Republic. (*Cut No. 2.*)

115. The terms "Sir Commander," or "Comrade Commander," are sometimes used in Posts. The *correct* titles are those prescribed by the Rules and Regulations. R. B. B.

116. The proposition that a uniform be prescribed by the National Encampment will be acted on at the Encampment in 1885.

117a. "*Resolved*, That the design of the badge submitted by the National Council of Administration, be adopted, and that the badges shall be cast from bronze composed of cannon captured during the late rebellion."

Chapter V.—Article IX.]

119. *Badge of Past Officers.*

SEC. 4. Past officers may wear the strap of the official badge proper for the highest position they have held in the Grand Army, with a clasp upon the ribbon proper for such position, beneath the bronze eagle of the membership badge, to which the whole shall be pendant. (*Cut No. 3.*)

117b. OPINION CXXXIX. SEPTEMBER, 1882.

Badge—Is personal property, but should only be worn by actual members of the G. A. R.

Has an honorably discharged member of the G. A. R. the right to wear the badge of the Order at any time after his discharge?

The badge of the G. A. R. is strictly a *membership badge only*, and denotes that the party wearing it is an actual member, and properly should be worn only by active members of the Order. However, the badge is the personal property of the comrade, and if he be honorably discharged, or otherwise ceases to be an active member, and having a badge, wears it, I know of no way to prevent it.

117b. *Resolution of National Encampment, Page 147, Journal, 1884:—*

Resolved, That the giving of the Regulation Badge to persons unauthorized to wear it, is impolitic, productive of evil to the Order, and is emphatically condemned."

117c. The following was adopted by the Encampment at Minneapolis. (See Page 139, *Journal*, 1884):

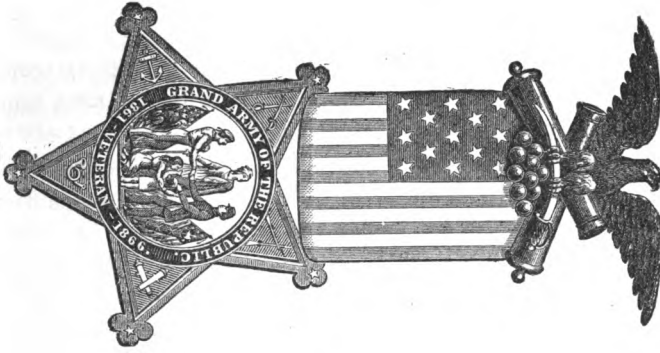
"Resolved, That the Council of Administration shall ask for designs for a small pin or button, that may be worn and acknowledged as a mark of membership, and when a design is offered that meets its approval, the same shall be promulgated in orders, and become a recognized badge under such regulations as may be deemed advisable by the Commander-in-Chief and Council of Administration."

In accordance therewith, the Council have adopted a design for a button as shown in *Cut No. 4.* To be worn in the upper button-hole on left lapel of coat.

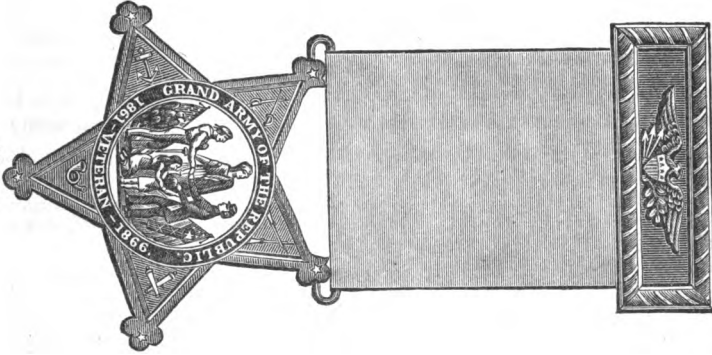
Resolution, Journal, 1884, Page 182:—

"Resolved, That the restrictions governing the sale of the regulation Grand Army badge shall apply to the sale of miniature badge suggested by the resolution of Comrade Hazzard, of Pennsylvania, and the same shall be copyrighted in the name of the Grand Army of the Republic."

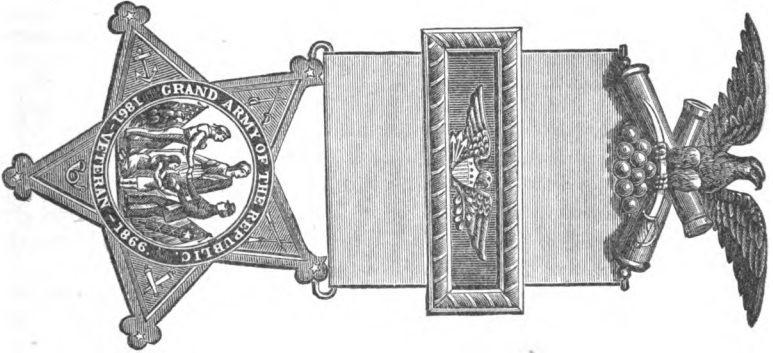
No. 1.



No. 2.



No. 3.



No. 4.



OFFICIAL BADGES.

The following description of the official badge is from the report of the committee, and as adopted by the National Encampment at New Haven, 1873, and G. O. subsequent :

“ That this official badge consist of a miniature strap and plain ribbon, to which shall be pendant the bronze star of the membership badge ; that this strap be one and one-half inches in length, one-half inch in width, enameled, with a border one-eighth of an inch in width, of gold or gilt, and on it be the insignia of official position in the Grand Army of the Republic, making use of the familiar star, eagle, leaf, and bar of the old service ; that the field in enamel be for the National and Department officers black ; for Post officers dark blue.

“ That the ribbon be one and one-half inches in length in the clear, and one and one-fourth inches in width ; and in color, for National officers, buff ; for Department officers, red (cherry), and for Post officers, light blue.

“ That this badge be worn conspicuously on the left breast of the coat.

117b. Membership badges are made under the immediate direction of National Headquarters, and are issued on requisitions to Departments and by Departments to Posts. (Figure 1.) Posts are required to present each recruit with a badge, the cost thereof being added to the muster-in fee. (Amendment to Sec. 8, Article II, Chapter II, at Minneapolis Encampment, 1884.) Comrades are forbidden to wear any other membership badge than that obtained through the proper channels from National Headquarters. (See Page 231, *Journal*, 1884.)

R. B. B.

118-119. *Official Badges.*

The proper size and form of badges are shown in the accompanying cuts, and description. An officer on duty should wear *only* the badge proper for such position (Figure 2). He is not entitled to wear the badge of any other office held by him than the one prescribed for the position in which he is serving.

Post officers may wear the strap and ribbon of the badge proper for the *highest position* held by them in the Grand Army, beneath the bronze eagle of the membership badge (Figure 3). The wearing of additional straps or ribbons for other offices in which they have served, is not in accordance with the Rules and Regulations, and has been forbidden in General Orders.

Post officers should see that in any printing where a *fac-simile* of the Badge is used, it shall be in exact accord with the form prescribed. Electrotypes of the membership badge, in three sizes, can be had from Department Headquarters.

Official badges are provided with a swivel to the star, so that the ribbon may be kept of proper width.

Officers or comrades desiring to replace the ribbon for badges should obtain the same from Headquarters, to insure uniformity in color.

R. B. B.

“That to distinguish the different Departments, a miniature shield in gold or gilt, with the Coat of Arms of the State, may be worn pendant to the strap.”

The insignia of rank upon the strap are as follows :

For Commander-in-Chief, four silver stars.

For Senior Vice Commander-in-Chief, three silver stars.

For Junior Vice Commander-in-Chief, Department Commanders, two silver stars.

For the official staff of the Commander-in-Chief, Surgeon-General, Provisional Department Commanders, Senior Vice Department Commanders, one silver star.

For Junior Vice Department Commanders, one gilt star.

For the official staff of the Department Commander, Medical Directors, Aides-de-Camp and Assistant Adjutant-General to the Commander-in-Chief, Post Commanders, silver eagle.

For Senior Vice Post Commanders, Assistant Inspectors-General, Aides-de-Camp to Department Commanders, silver leaf.

For Junior Vice Post Commanders, Assistant Inspectors, Post Surgeons, gilt leaf.

For members of Council of Administration, silver letter “C.”

For Chaplain-in-Chief, silver star and cross.

For Department Chaplains, large silver cross.

For Post Chaplains, small silver cross.

For Post Officers of the Day, two gilt bars.

For Post Adjutants and Quartermaster, one gilt bar.

For Officers of the Guard, vacant field.

For Past Officers, Section 4, above.

The following—not directly applicable to any Article of the Rules and Regulations—is here inserted for information.

117d. OPINION XXXVIII. JULY 19, 1872.

A comrade may use the initials “G. A. R.” on his business sign.

Has a comrade the right to use, in assisting in his own private business, the initials “G. A. R.?”

The facts which suggest the question are as follows:

A comrade engaged in business had the letters “G. A. R.” painted upon his business sign, and his comrades in the Post objected to this use of the initials of the Order.

ARTICLE X.—CHAPTER V.

120*.

PROVISIONAL DEPARTMENTS.

SECTION 1. In States or Territories where the Grand Army of the Republic is not established, the Commander-in-Chief may appoint, and cause to be mustered in, a Provisional Commander, who shall appoint, with the approval of the Commander-in-Chief, from comrades of the Grand Army of the Republic, a Senior and Junior Vice-Commander, an Assistant Adjutant-General, and an Assistant Quartermaster-General. He may appoint four Aides-de-Camp. The Provisional Commander, the Senior and Junior Vice-Commander, the Assistant Adjutant-General, the Assistant Quartermaster-General, and five comrades selected by the Provisional Commander shall constitute the Council of Administration. The officers thus appointed shall have, for the time being, all the powers and duties of permanent Department officers, and make returns in accordance with Article II of this Chapter.

SEC. 2. When six Posts are organized in any Provisional Department, the Commander-in-Chief shall order a meeting of a Department Encampment. When so assembled, it shall effect a permanent Department organization.

Note 120 continued.

This question can not be brought within the scope of our Regulations or discipline. It is merely one of good taste and propriety, which must be settled by the individual, and where the largest liberty must be permitted.

As a matter of right two of the objects of our Order are fraternity and charity, which include the assistance of comrades, and as the duty and privilege are reciprocal, which imply also the reception of aid and favor as much as the giving of them. If a comrade in good standing and a worthy member of the Order, he may claim from others relief and help when he needs them, and with that object may make known his membership in an intelligible manner. It is difficult to see why he may not invite the patronage of his comrades to a lawful business, when he does not ask charity, but gives an equivalent for the aid desired by publishing the fact of his connection with the Grand Army of the Republic, by painting the letters on his sign as well as by wearing the badge or presenting a traveling card or letters of introduction.

A manufacturer of cigars, for instance, may call a certain brand the "G. A. R.," and if, by so doing, he gets the patronage of his comrades, he will have accomplished a fair and ingenious business device, and will certainly have expressed a very complimentary opinion of the value of membership in the Order.

So the composer of a piece of music may dedicate it to the Grand Army, or to a Post, or may name it with reference to the Grand Army of the Republic ostensibly as a compliment, but really in order to promote the sale of it, and this would be a legitimate business transaction.

I can not separate, in principle, these supposed cases from the one under consideration. In all of them the connection of the person with the Grand Army of the Republic is used by him to promote his business interests; and if his business is honorable, he profits by his membership without injuring the Order, his comrades, or the public.

120a. OPINION XXIII. FEBRUARY 3, 1872.

1. *Provisional Department Commander must reside within the Department.*
See 51 a, Page 68.

120b. OPINION XIV. OCTOBER 19, 1871.

1. *Inspectors—Provisional Department Commander cannot appoint Department Inspectors.*

2. *Inspector-General may nominate Assistants.*

Can a Provisional Department Commander appoint a Department Inspector?

1. I think that Article X, of Chapter V, Rules and Regulations, limits the staff of a Provisional Commander to the officers there named. It seems to be contemplated that the duties of inspection should be performed by the Aides, four of whom would be able to attend to any number of Posts less than ten.

2. The Inspector-General may nominate as many Assistants as he thinks necessary, one for each Provisional Department, as well as for regularly constituted Departments, if he chooses.

120c. OPINION CXXIX. JANUARY 28, 1882.

Provisional Department Commander—Not entitled to a seat in Department Encampment.

Is a comrade entitled to a seat in Department Encampment by virtue of having been a Provisional Department Commander?

Section 1, Article X, Chapter V, Rules and Regulations, provides for the appointment of officers of Provisional Departments, and the last paragraph contains these words: "The officers thus appointed shall have, for the time being, all the duties and powers of permanent officers."

It is the evident intention of this paragraph that when the Provisional Department becomes merged in the Permanent Department, the powers and duties of all appointed officers shall cease; consequently the Provisional Commander cannot be recognized by the new Department Encampment, or permitted to enjoy the privileges of a Past Commander. It is also evident from the language of Paragraph 1, Art. II, Chap. III, that only Past Department Commanders who have been elected for a term, or to fill a vacancy, are entitled to membership in Department Encampment, and as the Rules and Regulations are very explicit in determining what shall constitute membership in such Encampments, and Past Provisional Commanders are not specially provided for, I can see no reason why they should be admitted.

I therefore answer the question in the negative.

120d. OPINION X. SEPTEMBER 15, 1871.

Provisional Department. Commander-in-Chief has no power to change a Permanent Department to a Provisional Department.

The Commander-in-Chief having power to order the permanent organization of a Department when it comprises ten Posts, can he not place it again in a Provisional condition when the number of Posts becomes less than ten?

I answer No. It must be expected that our organization, composed of men past their early youth, will gradually diminish in numbers until it is finally extinguished by the death of all who have joined it. This cause, it is evident, will reduce one Department after another to a less number of Posts than ten, and yet it would be desirable, I think, that the few survivors of our glorious army should

[Chapter V.—Article X.]

Note 120 d, continued.

keep up the regular organization to the last. At any rate, the emergency is one which sooner or later will arrive in every Department, and the subject of providing for it may be left for the future. Any decision of the question now, in view of the fact that it must come before the National Encampment by-and-by, would be premature. And certainly any decision with reference to one Department, without considering how it will apply in the future to all, would be injudicious.

I think also that the course of argument I pursued in Opinion VIII is not avoided by the different manner of putting the question. If the Commander-in-Chief cannot revoke a Department charter,* as I there argued, under any circumstances, it will be useless to consider whether any particular Department charter ought to be revoked.

* The Commander-in-Chief has been since given such authority when a Department fails to make reports, but this does not affect the ruling in the case submitted. (See Sec. 6, Art. I, Chap. V, Rules and Regulations.)

120e. OPINION XXVII. MARCH 1, 1872.

1. *A Provisional Department can be organized into a Permanent Department on the order of the Commander-in-Chief.*

2. *Where the Provisional Commander assumes to act and to organize the Permanent Department without order of the Commander-in-Chief, his acts are illegal and void.*

3. *The Commander-in-Chief may issue an order, however, and ratify the act of the Department Commander—He has discretionary power in such cases.*

The Commander of a Provisional Department having organized ten Posts therein, requested of the Commander-in-Chief information as to "the manner of procedure necessary to secure" for the Provisional Department "recognition as a Department."

1. In reply he was informed: "The permanent organization of a Department is by order of the Commander-in-Chief, calling a Department Encampment. * * * An order will at once be issued upon your naming the time and place for the assembly of the Department Encampment, and forwarding the charter-fee of \$20, required by the Regulations. This matter will receive prompt attention at National Headquarters in order that there may be no delay in the organization."

2. In reply to the next letter, saying, "Please hurry up charter," he was informed that "the order for Department Encampment can not be issued before a full and complete report is received from your Department." This condition was rendered necessary by the failure of the Provisional Commander to forward reports and dues for the quarter next preceding, which had meanwhile become due.

Nothing further was received until the receipt of a communication informing the Commander-in-Chief that the Department had been permanently organized, without orders from the Commander-in-Chief.

Was the action of the Provisional Commander in accordance with the Rules and Regulations? Is it valid? What is the power and duty of the Commander-in-Chief in the matter, according to the Rules and Regulations?

ARTICLE XI.—CHAPTER V.

121.

POLITICS.

No officer or comrade of the Grand Army of the Republic shall in any manner use this organization for partisan purposes, and no discussion of partisan questions shall be permitted at any of its meetings, nor shall any nomination for political office be made.

ARTICLE XII.—CHAPTER V.

122.

RELIEF FUND.

A Relief Fund for the assistance of needy soldiers, sailors and marines, and widows and orphans of deceased soldiers, sailors and marines shall be established by the several Posts, and any donations to this fund shall be held sacred for such purpose.

See Secs. 9-13, Art. VIII, Chap. II, Page 57.

Note 120 e continued.

3. The mode of organizing a Permanent Department is prescribed in the Regulations, Chapter V, Article X, Section 2. The order for organization must be issued by the Commander-in-Chief. The action of the Provisional Commander is, therefore, illegal and void.

The further question. "What is the power and duty of the Commander-in-Chief in the premises?" is not so easily answered. He has the power to declare the law, and to remove and Court-Martial the Provisional Commander who has violated it; but whether he should exercise that power in the present instance depends upon how such action will affect the interests of the Grand Army. If the act of the Department Commander was a perverse and arbitrary exercise of authority not delegated to him, he should be punished, and his action declared void; but if it appears that he took the letter from Headquarters as approving the idea of the organization, and innocently went beyond his power, the Commander-in-Chief may ratify the action now. Either course will be legal, and the character of the Provisional Department Commander would furnish a reason for deciding one way or the other. If the Commander-in-Chief issues an order ratifying the act of the Department Commander, as he has entire discretion in the premises so to do, that will put the Department on a legal foundation.

I can not presume to say what is best to be done in the premises. The power is clear. The expediency of using it is for the Commander-in-Chief to decide upon.

ARTICLE XIII.—CHAPTER V.

123*

SECURITY.

SECTION 1. The Ritual and unwritten forms of the Grand Army of the Republic, the names of persons causing the rejection of candidates for membership, or any information as to the causes or means of such rejection shall be kept secret; but any part of the proceedings of Post Encampments may be published if ordered by vote of Post, approved by the Department Encampment, Department Commander, or Commander-in-Chief, and any part of the proceedings of a Department Encampment may be published if ordered by the Encampment or Department Commander or Commander-in-Chief, and any part of the proceedings of the National Encampment may be published if ordered by the National Encampment or Commander-in-Chief.

SEC. 2. Any comrade convicted of divulging any of the private affairs of the Grand Army of the Republic, or of violating any of the provisions of this Article, shall be dishonorably discharged. (*a-d.*)

123a. OPINION XLI. DECEMBER 7, 1872.

Public entertainment cannot be opened or closed according to the Ritual.

Ritual to be kept secret.

Can a public entertainment given by a Post be opened and closed according to the Ritual?

Chapter V, Article XIII, Section 1, provides that the Ritual of the Grand Army shall be kept secret. The request to divulge a portion of the work cannot be granted without violating this law. (See *Note 34 b*, Page 43.)

123b. OPINION XLIII. JANUARY 7, 1873.

Obligation cannot be read to recruits before it is administered.

Can the obligation be read to recruits, consecutively, before being administered?

The resolution of the National Encampment, passed at the session of 1871, at Boston, adopting the present Ritual, prescribes that after the receipt thereof, it shall be strictly conformed to in all respects, in the ceremonies of opening, closing and muster-in. No officer of the Grand Army has power to limit or alter this enactment.

123c. OPINION CXXXIV. AUGUST 12, 1882.

Countersign may be communicated at another place than at a regular meeting of the Post.

Can the countersign be communicated at any place other than at a regular Post meeting, and if so, how?

In the Post, when in session, the Officer of the Day communicates the countersign by order of the Post Commander. The Post Commander, by virtue of his office, may, and should when occasion demands it, communicate the countersign to a comrade in good standing, either at a meeting of the Post or outside of the Post. Comrades are entitled to receive the countersign from the Post Commander whenever and wherever the occasion may demand their use of it. See Opinion CXXI. (123 d.)

123d. OPINION CXLI. OCTOBER 16, 1882.

Countersign—Commander may give the countersign to a comrade before the opening of the Post meeting. Post Commander must be the judge as to whether or not the occasion demands that it should be given.

Whether a Commander at a regular meeting of the Post and previous to the opening, has any right to withhold countersign from a comrade in good standing?

This query, in substance, was answered in a decision rendered August 12, 1882. The decision at that time made was on the following question: "Can the countersign be communicated at any place other than at a regular Post meeting, and if so, how? The decision was set forth in Opinion CXXXIV. (123 c.)

This query is not very greatly different from the one on which the foregoing decision was based. I have no alteration to make in the decision as then rendered, but will add that the Post Commander must be the judge as to whether or not the "occasion demands" that it should be given. For instance, if a comrade known to be in good standing is about to go on a journey before the regular meeting of his Post will take place, and make that fact known to his Post Commander, I think the comrade is entitled to receive, and should receive, the countersign from the Post Commander. I cite this as only one instance out of many that might be given. The good sense of the Post Commander, on a statement of the facts, ought to be able to determine whether the "occasion demands" that it should be given. You can not apply strict military rules to the Grand Army of the Republic. This is an organization for mutual aid and for the benefit of the comrades in the nature of other benevolent and charitable organizations, and if you apply the strict military rules that governed in the army you impair the objects of the Order.

124.*

ARTICLE XIV.—CHAPTER V.

MEMORIAL DAY.

The National Encampment hereby establishes a MEMORIAL DAY, to be observed by the members of the Grand Army of the Republic, on the thirtieth day of May, annually, in commemoration of the deeds of our fallen comrades. When such day occurs on Sunday, the succeeding day shall be observed, except where, by legal enactment, the preceding day is made a legal holiday, when such day shall be observed. (*a-d.*)

124a.

MEMORIAL DAY, NOT DECORATION DAY.

The following was adopted at the Encampment at Baltimore, 1882:

“That the Commander-in-Chief be requested to issue a General Order calling the attention of the officers and members of the Grand Army of the Republic, and of the people at large, to the fact that the proper designation of May 30th is MEMORIAL DAY, and to request that it may be always so called.”

124b.

MEMORIAL DAY was established by Commander-in-Chief John A. Logan, in the following General Order:

At the Encampment held in Washington, D. C., May 11, 1870, Article XIV, was incorporated in the Rules and Regulations:

HEADQUARTERS GRAND ARMY OF THE REPUBLIC, }
WASHINGTON, D. C., May 5, 1878.

General Orders, No. 11.

I. The 30th day of May, 1868, is designated for the purpose of strewing with flowers or otherwise decorating the graves of comrades who died in defence of their country during the late rebellion, and whose bodies now lie in almost every city, village and hamlet churchyard in the land. In this observance no form of ceremony is prescribed, but Posts and comrades will in their own way arrange such fitting services and testimonials of respect as circumstances may permit.

We are organized, comrades, as our Regulations tell us, for the purpose, among other things, “of preserving and strengthening those kind and fraternal feelings which have bound together the soldiers, sailors and marines who united to suppress the late rebellion.” What can aid more to assure this result than by cherishing tenderly the memory of our heroic dead, who made their breasts a barricade between our country and its foes? Their soldier lives were the reveille of freedom to a race in chains, and their deaths the tattoo of rebellious tyranny in arms. We should guard their graves with sacred vigilance. All that the consecrated wealth and taste of the nation can add to their adornment and security is but a fitting tribute to the memory of her slain defenders. Let no wanton foot tread rudely on such hallowed grounds. Let pleasant paths invite the coming and going of reverent visitors and fond mourners. Let no vandalism of avarice or neglect, no ravages of time testify to the present or to the coming generations that we have forgotten as a people the cost of a free and undivided republic.

If other eyes grow dull and other hands slack, and other hearts cold in the solemn trust, ours shall keep it well as long as the light and warmth of life remain to us.

Note 124 a continued.

Let us, then, at the time appointed gather around their sacred remains and garland the passionless mounds above them with the choicest flowers of spring-time; let us raise above them the dear old flag they saved from dishonor; let us in this solemn presence renew our pledges to aid and assist those whom they have left among us, a sacred charge upon a nation's gratitude—the soldier's and sailor's widow and orphan.

II. It is the purpose of the Commander-in-Chief to inaugurate this observance with the hope that it will be kept up from year to year, while a survivor of the war remains to honor the memory of his departed comrades. He earnestly desires the public press to call attention to this Order, and lend its friendly aid in bringing it to the notice of comrades in all parts of the country in time for simultaneous compliance therewith.

III. Department Commanders will use every effort to make this Order effective.
By command of JOHN A. LOGAN, *Commander-in-Chief.*

N. P. CHIPMAN,
Adjutant-General.

124c. The following Resolution was adopted by the National Encampment at Providence, 1877:

"Inasmuch as there have been some differences of opinion as to the intent and meaning of Memorial Day, this Encampment hereby calls attention to the language of Chapter V, Article XIV, of the Rules and Regulations, and, therefore, *Resolved*, That the Grand Army of the Republic seeks thus to preserve the memory of those only who fought in defence of the National Unity."

The following was adopted at the Encampment at Springfield, Mass., June, 1878:

"*Resolved*, That all Flags hoisted on Memorial Day, be at half-mast."

124d. OPINION XLVIII. APRIL 17, 1873.

1. *Memorial Day—Observance of Memorial Day is obligatory.*
2. *Private circumstances may excuse a comrade from the observance, but a Post that fails or refuses should be subjected to discipline.*
3. *Where a Post fails to observe the day it is not obligatory on a member of the Post.*
4. *The manner or form of the observance left to the Posts.*
5. *Neither the Commander-in-Chief nor the Department Commander have any authority to prescribe a plan for the observance of Memorial Day.*

Is it the duty of Posts or comrades to observe Memorial Day, without any other authorization or direction than that obtained in the Rules and Regulations, Chapter V, Article XIV?

Is it discretionary with Posts and comrades, whether they shall observe Memorial Day?

Would the failure of a Post to make arrangements for the observance of Memorial Day as a Post, relieve any member of that Post from the duty of its observance?

[Chapter V.—Article XIV.]

Note 124 b continued.

Do the Rules and Regulations leave the method of the observance of Memorial Day, and the arrangements therefor, to the discretion of Posts and comrades?

Has the Commander-in-Chief, or a Department Commander, authority to prescribe any plan of action by Posts in the arrangements for the observance of Memorial Day, or to interfere with the arrangement of any Post or comrade for its observance, either as a Post by itself, or in conjunction with other Posts, or as comrades individually?

1. I answer the first question in general terms in the affirmative. I consider that the Rules and Regulations enjoin upon every Post and comrade the duty of observing Memorial Day, and that this provision creates the duty, whether any orders are issued by Department or national authority or not.

2. The nature of the duty makes each comrade, necessarily, the judge of how he shall perform it. It is analogous to the obligation which he assumes to relieve the wants of a needy comrade, or his duty to attend the meetings of his Post. Each of these duties will be acknowledged by a comrade who feels his responsibility as a member of the Order. Yet, from the nature of the case, no Post can say what private circumstances are sufficient to excuse a member from giving charity in any particular instance, nor whether he properly waives the obligations to attend a meeting in favor of another duty which seems to him to claim the preference. In all these matters the Grand Army must leave the conduct of each comrade to his own sense of right.

In the case of a Post I think somewhat less discretion is allowable. Posts are organized, among other things, for just this purpose. The perpetuation of the memory of our fallen comrades, not only among ourselves, but in the grateful regard of the whole people, whose life they saved, by our annual processions to the resting-places of the heroic dead and the floral decorations of their urns, is one of the most prominent and beautiful objects of our Order, none the less important that it was not inaugurated till after the Grand Army had been some time in existence. I think, therefore, that a Post which should omit this ceremonial repeatedly, or for a frivolous cause, or which should deliberately pass resolutions of contempt for the observance of it—if such a thing can be imagined—would be amenable to discipline by higher authority as properly as if it should fail for a long period to hold meetings, or in its capacity as a Post should commit any other act of insubordination.

3. If the Post to which any comrade belongs were to fail to make arrangements for the observance of the day, I think it would not be obligatory upon such comrade to engage in any public ceremonies in its observance. Yet, if inclination prompts him to join with some other Post, or to assemble with other comrades, or alone to visit and decorate the graves of the fallen, such voluntary service will be a becoming expression of the sentiments which the Grand Army inculcates and fosters.

4. The Rules and Regulations prescribe the observance of the day by the members of the Order. The primary organization of the members is by Posts, and, consequently, in the absence of specific orders or regulations, the duty first devolves upon each Post. It is generally the case throughout the country that there is only one Post in each town or village, and, therefore, the day has been usually observed by each Post in its own way. In cities, where there are more Posts than one, and where there are, perhaps, different cemeteries to be visited, it has been the custom, and an entirely proper one, for several Posts to unite voluntarily in this service.

5. The ordinary duties of a Department Commander relate to his Department as a whole. On occasions when the whole Department is ordered out, or assembles

ARTICLE XV.—CHAPTER V.

125*. ALTERATIONS AND AMENDMENTS.

The Rules and Regulations, and the Ritual of the Grand Army of the Republic, shall only be altered or amended by the National Encampment, by a two-thirds vote of the members present at a regular annual meeting thereof. But any section herein may be suspended, for the time being, at any annual meeting of the National Encampment, by a unanimous vote.

Note 124 b continued.

for any duty, he takes command. When a Post is assembled by itself, or when several Posts unite voluntarily, for the purpose of a parade, a reception or a fair, or any such object, the Department Commander would hardly assume the direction of affairs. If one Post, or any number of Posts, were to assemble or combine for an illegal object, or one detrimental to the interests of the Order, the Department Commander would have the right, and it would be his duty, to interfere and stop such proceedings.

Clearly, whatever right a Department Commander has in his own Department, the Commander-in-Chief has throughout the Order, and if the Department Commander interferes in matters relating to a Post in his jurisdiction, the Commander-in-Chief may, in his discretion, approve or revoke the order of the Department Commander.

I may add, in application of the foregoing principles to the facts which suggested the questions submitted, that no Department Encampment or Department Commander has the power to order various Posts to send delegates to a committee which shall control their action as Posts upon any public occasion, because,

1st. Such action is in effect forming a new organization, unknown to our Rules and Regulations, and giving it a command which belongs to the senior officer present.

2d. Such action, where pecuniary expense is to be incurred under direction of such committee, is giving to an unauthorized body the power to levy a special tax upon the Posts concerned.

Of course, any number of Posts, conveniently located for the purpose, may voluntarily combine for any lawful object, and may act, through a committee of their own choice, as they see fit, in securing their object, and in collecting the means for defraying the expense incurred.

125. The following was adopted at the Albany Encampment, 1879:

Resolved, That hereafter no amendments to the Rules and Regulations, or the Ritual, shall be considered except by unanimous consent, unless the same shall be presented to the Adjutant-General, who shall cause them to be printed at the expense of the Department presenting them, and a copy thereof to be furnished to each member of the National Encampment at least thirty days before the annual meeting."

RULES FOR THE GUIDANCE OF COURTS-MARTIAL.
ARTICLE VI.—CHAPTER V.

113*

DISCIPLINE.

SECTION 1. Offences cognizable by the Grand Army of the Republic shall be :

1. Disloyalty to the United States of America or any other violation of the pledge given at the time of muster.
2. Disobedience of the Rules and Regulations or of lawful orders.
3. The commission of a scandalous offence against the laws of the land.
4. Conduct unbecoming a soldier and a gentleman in his relation to the Grand Army of the Republic.
5. Conduct prejudicial to good order and discipline.

SEC. 2. Penalties shall be either :

1. Dishonorable discharge from the Grand Army of the Republic.
2. Degradation from office.
3. Suspension from membership for a specified period.
4. Fine ; or,
5. Reprimand, at the discretion of the court, subject to the review of the proper officer.

SEC. 3. All accusations shall be made in the form of charges and specifications, and shall be tried by Courts-Martial. Courts-Martial may be ordered by Commanders of Posts* or of Departments, or by the Commander-in-Chief, for the trial of alleged offenders in their respective jurisdictions. Members of Department Encampments and officers of Department staffs shall only be tried by courts convened by order of the Department Commander or higher authority. Members of the National Encampment and officers of the National Staff shall only be tried by courts convened by order of the Commander-in-Chief.

SEC. 4. Courts-Martial shall be governed in their mode of proceeding and rules of evidence by the Revised United States Army Regulations and established military usage, and such orders as may be issued from Headquarters: *Provided, however,* That in the wilful absence of the accused, after due notice of the time and place of trial has been given to him or left at his usual place of abode, the Court may proceed in all respects as if he were present and had pleaded "Not guilty." (See *Section 9.*)

* Subject to the Rules on Page 137.

SEC. 5. All members of the Grand Army of the Republic, when summoned, shall attend as witnesses before any Court-Martial, and their testimony shall be taken on their honor as comrades. The evidence of persons not members shall be taken under oath when not inconsistent with the law of the place where the court is held. When such extra-judicial oaths are forbidden by law, evidence of witnesses not members of the Grand Army of the Republic may be received, in the discretion of the court, on their honor as men, and the fact that they have not been sworn shall be considered by the court in deciding upon their credibility.

SEC. 6. No sentence of a Court-Martial shall be carried into execution until after the whole proceedings shall have been laid before the officer ordering the same, or his successor in office, for his confirmation or disapproval and orders in the case; and no sentence of dishonorable discharge from the Grand Army of the Republic, except by Court-Martial convened by order of the Commander-in-Chief, shall be carried into execution until after the whole proceedings shall have been laid before the officer next superior to the one ordering the court for his confirmation or disapproval and orders thereon.

SEC. 7. Any comrade ordered for trial before a Post Court-Martial may request in writing to be tried by a general court, assigning his objections to a trial by the Post court. On receiving such request, the Post Commander shall forward the same to the Department Commander, with such endorsement as he shall see fit to make, together with the charges preferred. If the objections appear to be valid and well grounded, the Department Commander shall order a general Court-Martial for the trial of the case; but if, in his opinion, they should be insufficient, he shall return the request, with an endorsement to that effect, and the trial shall proceed as if no exception had been taken.

SEC. 8. When charges are preferred against any comrade holding office, the Department Commander or Commander-in-Chief, in their respective jurisdictions, may suspend the accused from office. During the suspension of a Post Commander or Department Commander, the office shall be filled by the Senior Vice-Commander.

SEC. 9. In case the accused is charged with an offence under Paragraph 3, Section 1 of this Article, the record of his conviction

[Court-Martial.]

by a court of competent jurisdiction shall be *prima facie* evidence of his guilt of the offence of which he is so charged.

In case of his imprisonment for any offence of which he has been convicted the court may proceed to trial the same as if the accused was wilfully absent †.

† This clause was added at the Minneapolis Encampment, 1884.

113a. OPINION I. JULY 1, 1871.

1. *Charges—All charges must be tried by Court-Martial.*
2. *Rules and Articles of War—A part of the laws of the land.*
3. *Exception—Member may be dropped for arrears.*

The question is proposed to me: "Can a member of the Grand Army of the Republic be dishonorably discharged therefrom without trial by Court-Martial, and if so, by what mode of proceeding?"

The facts which require an opinion constitute an extreme case. A comrade of this Order, being in the service of the United States, deserted from that service, was apprehended, and is now awaiting trial by general Court-Martial.

The Rules and Articles of War are, to persons in the military service of the United States, a part of the laws of the land, in the intent of Chapter V, Article VI, Section 1, Paragraph 3, of the Revised Rules and Regulations of the Grand Army of the Republic. Desertion from the United States Army is one of the gravest offences known to military law, and when committed by a member of the Grand Army of the Republic constitutes one of the offences recognized by the paragraph referred to.

The National Encampment, following the enlightened principles of modern criminal codes, has provided for the trial of all charges against members of the Order by Courts composed of their comrades before whom the accused may have opportunity to be heard, if they desire to appear and contest the accusations brought against them. See Rules and Regulations, Chapter V, Article VI, Sections 3 and 4.

The only exception to the regulation requiring trial and sentence of a Court-Martial to precede the expulsion of a member of the Order is found in the Amendment to Section 4, Article III, of the same Chapter, passed at the May Session of the National Encampment, A. D. 1871, providing that if a member be one year in arrears in the payment of dues he shall be dropped from the rolls, which is obviously not applicable in this case.

113b. OPINION LII. JANUARY 6, 1873.

Court-Martial.—1. Accused entitled to copy of charges and specifications—When?

2. *Proceedings shall be in accordance with U. S. Army Regulations.*
3. *Request for trial by Department Court must be made before the time fixed for the meeting of the Post Court.*
4. *Where the evidence is not furnished the record is incomplete, and a new trial may be ordered by Department Commander, or reviewing officer.*
5. *If a new trial is ordered Department Commander may order trial by Department Court.*

Note 113 b continued.

The following Opinion upon the record of a Court-Martial and various questions raised by the reviewing officer in relation thereto, is inserted here, as some of the principles discussed may find application in other cases :

HEADQUARTERS GRAND ARMY OF THE REPUBLIC.

JUDGE ADVOCATE-GENERAL'S OFFICE, January 6th, 1873.

1. The statement and correspondence submitted show that after receiving due notice of the time and place appointed for his trial, the accused wilfully neglected to present himself and plead to the charges and specifications. On the day after the time appointed by the Court he addressed a note to the Post Commander, by whose orders it had convened, requesting a copy of the charges and specifications. These were not furnished him, but he was subsequently notified of the time and place to which the Court had adjourned. At the second meeting he did not appear until a late hour, when the Court was deliberating upon their sentence, having already found him guilty. Instead of requesting to be allowed to plead, or to have further time given him for defence, he addressed the Court in an abusive manner, and was ordered, in consequence, to leave the room. The next day he addressed a communication to the Department Commander, requesting a trial by a general Court-Martial, and alleged that the proceedings against him were characterized by malice and unfairness.

2. The position taken by the Post Commander that the Rules and Regulations do not require that the accused should be furnished with a copy of the charges and specifications, is perhaps correct when he does not request it; but in this case the request was made, as appears from the correspondence, before any action had been taken by the Court beyond organizing and entering the plea of not guilty. The Regulations prescribe that the mode of proceeding of Courts-Martial shall be in accordance with United States Army Regulations and established military usage. Chapter V, Article VI, Section 4. This provision would require that the request of the accused should be granted; and if he had appeared at the adjournment of the Court, and there renewed his request, it would have been the duty of the Court to furnish the copy, and give him time to plead and prepare his defence. But it does not appear that he ever acknowledged the authority of the Court, or informed them that he desired to know the charges, or to appear and defend himself. So far as they were concerned, their conduct in the premises was regular and legal. They were simply to inquire whether he had received notice as required by the Regulations; and if they were satisfied that such was the case, they were to proceed as if he had been present and pleaded not guilty, which would imply that he knew what the charges were. It appears from the record that they did this.

3. The appeal to the Department Commander, and the request for trial by a Department Court-Martial, was not intended to be made after trial by a Post Court, so as to give the accused two trials. It should be made before the time fixed for the meeting of the Court, or, at the latest, at the time when the Court first meets before the opening of the case. If the defendant, by his wilful neglect, permitted the Court to take jurisdiction, he must be considered as waiving his right to object to it. Nor does this interpretation of the Regulations unjustly affect the accused; for any objection which he might make to the Court in respectful language, would be forwarded with the copy of the case for the review of the proper officer, and would influence his judgment of the sentence.

4. The record of the Court is then before the Department Commander for his examination and approval or disapproval, and orders in the case.

5. His first duty is to see that the proceedings appear to be regular, and then to decide if the findings are supported by the evidence. But in this record there is no report of the evidence. It is impossible, therefore, for the reviewing officer

[Court-Martial.]

Note 113 b continued.

to say whether the findings are warranted by the testimony or not, and he can not say whether the sentence ought to be executed or not. This is a radical defect in the record. If the evidence can be supplied from minutes taken at the time, the record may be amended by its insertion, and signed again and forwarded for the reviewing officer's examination; but if not, and it does not appear to me to be possible, then the sentence cannot be carried into effect, and a new trial must be ordered. It is for the Department Commander to say whether, if a new trial must be had, it will not be best, under the circumstances, to order a Department Court, composed of comrades who have not already formed an opinion upon the guilt or innocence of the accused, as the members of his Post must now have done.

113c. OPINION LXVI. JULY 30, 1875.

Post Commander—Has no power to suspend a member of a Post against whom charges have been preferred, before the decision of the case.

Court-Martial—Accused may or may not be present.

Department Commander or Commander-in-Chief may suspend an officer from discharge of his official duties, but not from his rights as a member.

The question is proposed, whether a Post Commander may suspend a member of the Post against whom charges have been preferred, before the decision of the case.

I agree with the Department Judge-Advocate that he has no such power by reason of charges preferred.

The question whether a Commander may not temporarily place in arrest a comrade who is disorderly on parade or in a Post meeting, is not the one under discussion, and this discrimination, if borne in mind, will assist in the decision of the point proposed. I think that the fear of the Department Commander that the Judge-Advocate's decision would be subversive of discipline, arose from his overlooking this fact.

The object of arrest in a criminal suit, or in the case of charges being preferred in military service, is to secure the attendance of the accused at the trial, and that he may be within the reach of the sentence. Obviously, the state of arrest is inconsistent with the performance of duty by a private soldier, or the exercise of authority by an officer.

In our code of discipline it makes no difference whether the accused is present at the trial or not. If he willfully absents himself after notice, the Court may hear testimony and determine the case in his absence. We have neither the power nor the motive to restrain him of his liberty, and the deprivation or suspension of his rights as a member, which would be the natural result of duress, cannot be inflicted except from such a necessity. The fact of arrest being absent, the incidents of arrest fail. As the Judge-Advocate suggests, to suspend a comrade from his privileges in the Post because charges are preferred against him, would be to anticipate the judgment of the Court, and to inflict punishment upon a man whom the law as yet presumes to be innocent.

The case of an officer is somewhat different. It might be, in certain cases, improper for the official duties of a Post to be performed by a person against whom charges were pending; he might even have the official custody of the proofs of his guilt; and so the Regulations give the Department Commander or Commander-in-Chief the power to suspend an officer who is accused of an offence against the Regulations from the exercise of his office. The framers of

Note 113c continued.

the Regulations thought it necessary to confer this power by positive enactment, and it is to be inferred that they did not consider that the preferring of charges would give the power by implication.

Even in the case of an officer, the accused is not suspended from his rights as a member of the Post, but only from his office.

The decision of the Post Commander should be overruled and the comrade restored from suspension.

113d. OPINION CXLIII. MARCH 14, 1883.

Court-Martial—Cannot try one who is absent and serving a sentence of imprisonment.

Absence by reason of confinement under civil jurisdiction cannot be considered WILFUL. (Now void. See Note.)

Can a member of the G. A. R., who has been convicted of a crime, sentenced to imprisonment, and, while serving his sentence, be dishonorably discharged, without sentence of a Court-Martial? If not, can he be tried by Court-Martial?

A dishonorable discharge comes by sentence of a Court-Martial. No Court-Martial can try any member of the G. A. R. who is absent and unable to appear before the Court by reason of confinement under sentence of any civil tribunal or Court. While the Rules and Regulations of the G. A. R. are silent on this question we must be governed by the civil and criminal law of the land, and under that even a civil cause in which the accused is interested could not be tried while he is in confinement under sentence, much less could a criminal charge be tried and determined. Charges may be preferred, but no trial can be had until he is in such position that he, when legally summoned to appear before the Court-Martial, may have the ability to attend if he so desires.*

*DECISION XIX, G. S. M., was to the same effect, ruling that:

“Absence by reason of confinement under civil jurisdiction cannot be considered wilful, and neither civil or military law permits the trial of a person so absent. The case seems to be one for which the Rules and Regulations should provide, but they do not.”

This ruling is now invalid. The National Encampment at Minneapolis amended Section 9, Article VI, Chapter V, by adding the words: “In case of his imprisonment for an offence of which he has been convicted, the Court may proceed to trial the same as if the accused was wilfully absent.” R. B. B.

113e. OPINION XXXVI. JUNE 5, 1872.

1. *Court-Martial—United States Army Regulations to govern.*

2. *The Judge-Advocate should be detailed with reference to his qualifications.*

Must a Post Court-Martial be composed of three members only, and must they be Post officers? If so, must the Junior officer act as Judge-Advocate?

1. Our Rules and Regulations are silent upon the points suggested by the first question. They must, therefore, be decided by military usage and United States Army Regulations. In regard to the constitution for the Court, it may be said that our universal practice has been to consider any comrade eligible to any office. Details for Courts-Martial may, therefore, be made from any comrade in the jurisdiction of the officer ordering the Court. There is no intimation in our Rules and Regulations that Post Courts-Martial shall correspond to regimental

[Court-Martial.]

Note 113 e continued.

Courts-Martial in the army, or shall be differently constituted from our Department or National Courts-Martial; and I think that the United States Regulations for the organization and government of general Courts-Martial apply to all Courts of the Grand Army alike.

2. It was usual in the service for the officer ordering the Court to exercise a wide discretion in deciding of how many members the exigencies of the service would permit the Court to consist. I think that in detailing our Courts the same discretion may be exercised. The Judge-Advocate should be detailed with reference to his qualifications for performing his duties without regard to his official position.

113f. OPINION LXVIII. OCTOBER 14, 1875.

Court-Martial—When the members of the Court are of different rank the senior officer will preside. (See Rules, Page 137.)

Department Commander may, when all are of the same rank, designate who shall preside.

A Department Commander ordered a general Court-Martial, composed wholly of Post Commanders, and named one of them President. Another member of the Court protests against the appointment of the President by the Department Commander, taking the ground that the senior officer detailed must preside, and asks, What determines rank in the Grand Army?

The Department Commander assumes that all the officers of the Court were of equal rank, and hence necessarily that a choice must be made by him.

If such were the fact, inasmuch as no army precedent could be adduced, and our Regulations do not provide for such a case, I should hold that he assumed a convenient and necessary power. The only other admissible alternative would seem to be to direct the members to draw lots for temporary seniority; but to direct the Court how to select their President would be exercising an authority very nearly the same as to select him at once, and would be substituting a cumbrous proceeding for a direct and certain action.

When a commanding officer exercises a discretionary power which falls upon him from the necessities of an unanticipated case, he can only be held to the exercise of his best judgment; and if he does not on the moment select the course which on mature reflection would seem most wise, yet, having acted in good faith, he will be sustained.

If, on the other hand, the members of a Court are of different rank, the army regulations must be our guide, and the senior officer will preside.

I do not know that we have any means of deciding questions of seniority between two Grand Army officers of the same official grade, unless we follow the analogy of the service, and decide in favor of the one who has been longest in office. But, between two Post Commanders, who are elected for the first time in the same December, and installed at the next stated meetings of their respective Posts, though one Post should hold its meetings earlier in the month than the other, I do not see that any distinction can be justly made.

Upon this point, as upon all similar ones which must be decided somewhat arbitrarily, I conceive that any rule established by the Commander-in-Chief would be acquiesced in as correct; and until some uniform rule is adopted, the decision of the Department Commander in his own jurisdiction must stand.

See Rules, Page 139.

113g. OPINION CXXIII. MAY 3, 1880.

Court-Martial—Official rank not a ground for challenge. Immaterial who prefers the charges.

Specifications—Form of; what they should contain.

A Court-Martial, composed in part of comrades who have never held the office of Post Commander, is convened by order of the Department Commander for the trial of a Post Commander for neglecting to forward a document purporting to be an appeal or request.

The document was presented to the Post Commander for his action while he was temporarily absent from Headquarters in another city, and the charges were preferred by a suspended member, and by him forwarded to Department Headquarters direct.

1. It is not good ground for challenge that a member of the court has not held as high an office as the accused.

“Details for Courts-Martial may be made from any comrades in the jurisdiction of the officer ordering the Court.”

2. If an offence has been committed, it is immaterial who signs the charges and specifications. The charges being adopted, and the Court convened by higher authority, the particular person forwarding them, or the channel by which they reach Department Headquarters, is of no importance.

3. To require the accused to transact official business while on a journey, the necessity must be shown and the exigency must be explained to him.

To make out a case, it devolves upon the prosecution to show that the time, place and manner of presenting the document, in view of the existing exigency, were proper and reasonable, and that the document was of such character that, under all the circumstances, it was the duty of accused, then and there, to receive and forward it.

4. To convict a comrade of disobedience of the Rules and Regulations, in failing or refusing to perform an official act, the specification should charge that he held the office, or otherwise state facts sufficient to show that it was his official duty to perform the act for the neglect of which he is sought to be convicted.

113h. OPINION CVII. JANUARY 6, 1880.

Court-Martial—Junior Vice Commander of Department may be appointed on.

Can a Post Commander in a special order convening a Post Court-Martial, appoint as a member of the Court a member of the Post who is Junior Vice Commander of the Department?

When a Department officer is on duty, as a Department officer, he is not subject to the orders of the Commander of the Post; but he is entitled to the rights and privileges of a member of his Post if he sees fit to avail himself of them. He must pay his dues, and he may at the same time be an officer of the Post, and when acting as a member or officer of the Post he is under the jurisdiction of the Post Commander.

The Post Commander in detailing a Court-Martial should exercise a sound discretion. He should not select those near of kin to the accused, or those known to entertain prejudice, and should not detail a comrade who would probably be the reviewing officer. The accused could challenge for cause any such member. But if the Junior Vice Commander of the Department, detailed by the Commander of his Post as a member of a Post Court-Martial, sits unchallenged as a member of the Court, the proceedings will not thereby be rendered invalid.

[Court-Martial.]

Note 113 h continued.

It may so happen that a comrade who has served as member of a Post Court-Martial may subsequently be elected Department Commander, and when the proceedings reach Department Headquarters, he may be in the position of reviewing officer, in which case, analogy would suggest that the proceedings be forwarded to the Commander-in-Chief, or the Senior Vice Commander act as reviewing officer in passing upon the case. But the contingency has not arisen and that question is not before me.

113i. OPINION LXV. JUNE 30, 1875.

Court-Martial—The Commander-in-Chief may refuse to order a Court to try certain charges and specifications.

“Conduct unbecoming an officer and gentleman”—Definition of.

The following opinion was given upon a case submitted to me by the Commander-in-Chief, in which questions arose in regard to his powers and duties upon the receipt of certain charges and specifications against a Department Commander and another Comrade, and a request had been made to him to order a Court-Martial for the trial of the same.

The charges are:

First.—Violation of the pledge of membership.

Second.—The commission of a scandalous offense against the laws of the land.

Third.—Conduct unbecoming a soldier and a gentleman in his relations to the Grand Army of the Republic.

Fourth.—Conduct prejudicial to good order and discipline.

The specifications under the several charges are identical, and consist in the statement that the accused, who are editors and proprietors of a newspaper, published therein certain slanderous words concerning the comrade who prefers the charges, who was also editor of another newspaper. One of the accused is a Department Commander, and the accuser is an Assistant Inspector-General. The words are not technically actionable at common law unless special damage has ensued, and such a question can be best decided in the civil courts.

They do not constitute such a libel as an indictment would lie for in a criminal court of any State with whose laws I am acquainted, and so cannot support the second charge.

As I understand the third charge, it must be interpreted with reference to the universal construction put upon the similar expression in the Army Regulations, “conduct unbecoming an officer and a gentleman,” by all authorities in military law. In that view not every ungentlemanly act is meant by this expression, but only those acts of a peculiarly mean and dishonorable kind, which no one could perform and still remain a gentleman. The high penalty affixed to the crime by Army Regulations—“C cashiering, without option by the Court to substitute a lesser punishment”—could only be intended to apply to the gravest derelictions, such as unfit a man for the society of gentlemen and make him an outcast from society, and necessarily excludes from this category mere impolite or ungentlemanly acts which may not proceed from a depraved character. If the accused has taken advantage of his position as a Department Commander to issue in orders to his Department the injurious language which he has published in the newspaper, it might support the charge as showing such malignity as would be inconsistent with a proper conception of his position and duties. I do not think the language, as used in an editorial, can be brought within the scope of the charge.

Note 113 i continued.

The fourth charge is quite as wide of the mark. Slander of an Assistant Inspector-General by a comrade not of his Department, cannot materially affect the order and military discipline of the G. A. R.

People do not believe everything in the newspapers, and the statements which make least impression on the public credence are probably those which contain commendations of themselves and abuse of their rivals. A newspaper fight is a contest in which no one is killed, and the wounded leave the field in good order.

The specifications might possibly be construed to support the first charge. The tone of the language is very far from that which a spirit of genuine fraternity would prompt.

Yet, newspaper editors, who are personally very good friends, do sometimes permit themselves to indulge in questionable language of each other when the claims of their respective organs are at issue. It is apparent that we are presented here with one portion of such a discussion. If each had not appropriated the name of our Order for the purpose of assisting his circulation, I think no one would consider the Grand Army in any way involved.

It seems to me to be a case where the Commander-in-Chief may exercise a sound discretion in refusing to order a Court to try these questions until one of the parties has shown a real and substantial injury, by obtaining judgment against the other in the civil courts.

If the damage is real, it will evidently be ascertained by a resort to the proper tribunals, whether a Court-Martial is assembled to try the case or not. If the charges are only preferred as a move in the contest, the interests of our Order seem to me to require that we do not lend its aid to any such object.

113k. OPINION CXXIV. MARCH 23, 1881.

Court-Martial—Commander-in-Chief may refuse to convene a Court-Martial.

Is the Commander-in-Chief compelled, by the Rules and Regulations, to convene a general Court-Martial whenever charges are preferred against any member or officer of the National Encampment, or can he exercise the discretion permitted to Posts under the rules prescribed in the *Manual*, page 31, relating to "petty cases" or charges "too trivial for a trial by Court-Martial?"

The right of the Commander-in-Chief to refuse to order a trial by Court-Martial is one already recognized by one of my predecessors, Judge Advocate-General Douglas, in Opinion LXV, 113 i.

It is a privilege accorded to the regular service, and is a right which has been exercised by previous incumbents of the high office on many occasions.

There is no paragraph in the Rules and Regulations which conflicts with this view of the case.

Were it otherwise, no comrade would be secure against trial by Court-Martial on some trivial charge, the expense of which trial would seriously deplete the treasury and accomplish no good.

The rules referred to on page 31 of *Manual* are evidently intended to give to Posts a power which did not therein exist, and have no bearing upon the authority of the Commander-in-Chief.

It is a rule of military law that subordinate officers, in forwarding charges and specifications, should examine the papers carefully before giving their endorsement to the end that only such charges should be considered as bearing unmistakable evidence that a serious offence against discipline or a grave crime has been committed.

This implies the right of a Department Commander to return charges which are "too trivial," or the trial of which would prove detrimental to the Order. And of course the same power in a higher degree must rest with the Commander-in-Chief.

I answer, then, that the Commander-in-Chief may use his own discretion as to whether a general Court-Martial shall be ordered or not.

[Court-Martial.]

113l. OPINION CXXV. AUGUST 29, 1881.

Court-Martial has no jurisdiction in matters that have no connection with the Grand Army of the Republic.

As members of a "Veteran Association," two comrades of the Grand Army of the Republic have become involved in a dispute over the rightful custody of certain property which belongs to the said association of veterans. In that dispute recourse has been had to the civil courts by process of attachment, and the property has now been recovered by the association.

As a result of the dispute, charges are preferred by one of the comrades against the other, charging, among other things, perjury. The comrade charged is a member of the National Encampment, and the charges are sent forward for trial by a general Court-Martial.

This quarrel, it seems to me, is one to be settled without appeal to the Grand Army of the Republic. It has no reference whatever to the Grand Army of the Republic, and if the crime of perjury has been committed, and a comrade has been injured thereby, the proper place to take the case is to a criminal court. If the charge can be sustained, then evidence of that conviction will be a sufficient ground for action by Court-Martial; until then, the Grand Army of the Republic has no right to interfere.

I recommend that the charges be dismissed

113m. OPINION CX. JANUARY 17, 1880.

Court-Martial—Commander-in-Chief convenes the Court for a member of the National Encampment. Same if the Department Commander is the accuser.

1. Has the accused, who is a member of the National Encampment, the right to be tried by a Court-Martial convened by order of the Commander-in-Chief, the offense with which he is charged having been committed in his capacity of a Department officer?

2. The charges having been preferred by the Department Commander, has the accused the right to be tried by a Court-Martial convened by order of the Commander-in-Chief?

1. I am inclined to accept the natural meaning of the language used in Chapter V, Article VI, Section 3, Rules and Regulations, which is as follows: "Members of the National Encampment and officers of the National staff, shall only be tried by courts convened by order of the Commander-in-Chief.

No exception is made in case the offense is committed against a Department or in his capacity of a Department officer. And there would seem to be reason for this construction, for he is accused of an offense against the Order, and a conviction must affect his standing as a member of the National Encampment.

2. If the Department Commander is the *accuser* or *prosecutor*, the court should be convened by the Commander-in-Chief.

It has been contended that an officer may sign the charges and specifications without being the accuser or prosecutor; but I am of the opinion that the person preferring the charges is *prima facie* the accuser, and that in this case the Court-Martial for the trial of Comrade T— upon the charges and specifications preferred by Comrade H—, Commander of the Department of N—, should be convened by order of the Commander-in-Chief.

113n. OPINION XLVI. MARCH 24, 1873.

A Post Commander who is a member of the Department Council of Administration, accused of an offence, must be tried by Court convened by Department Commander.

Is it proper to suspend a Post Commander, who is also a member of the Department Council of Administration, when accused by members of the Post of appropriating Post funds to his own use?

The Department Commander should direct charges to be preferred if he is satisfied that there is any foundation for the accusations; and should then suspend the accused until the finding of the Court. The charges in this case should be tried by a Court convened by order of the Department Commander.

113o. OPINION XXX. APRIL 15, 1872.

1. *Post has no right to order the publication of any sentence of a Court-Martial.*
 2. *No information as to the causes or means of the rejection of applications for membership shall be divulged.*

If a Post Court-Martial a comrade, can they reveal the sentence to the outside world, or can the injunction of secrecy be removed if the Post vote to do so, and the case be exposed to people generally?

1. It has not been our practice to divulge any of the proceedings of Posts, except the names of officers elected. And although there is no direct injunction of secrecy in regard to the sentence of Courts-Martial, the spirit of our Regulations is against such publication. It seems wrong that any punishment which we inflict should extend beyond our Order. I do not think we have any right to divulge to the world any information concerning a man's character which we have obtained by means of his membership in the Grand Army.

2. The Regulations do prescribe that no information as to the causes or means of the rejection of applications for membership shall be divulged, and I think the same reason would forbid the publication of any sentence of a Court-Martial.

I am of opinion, therefore, that the Post has no right to order such publication.

113p. OPINION XXXII. APRIL 15, 1872.

A Post may, at the request of a comrade, inquire into the character of that comrade, and read the evidence to the Post.

Is it proper for a Post by vote to collect, and have read in open Post, evidence involving the character and reputation of a comrade?

The facts upon which this question arises are as follows: A comrade having been indicted for larceny, and having pleaded guilty, was sentenced and committed to jail. He wrote to an officer of the Post of which he was a member, asking the aid of the Post to procure his pardon or relief. The Post, by vote, directed the Commander to collect information in the case. He wrote to the comrade imprisoned and the sheriff of the county, and the replies to these letters were, by vote of the Post, read in open meeting.

From this action of the Post the comrade who asks the question appeals.

I should have no hesitation in answering the general question in the negative. If any comrade knows anything in the conduct of any other which makes him an unfit associate of the members of the Post, he should prefer charges, and have his knowledge brought before a Court-Martial in the form of evidence.

But this case seems, as suggested by the Post Commander, an exceptional one. The comrade here invites the inquiry of his comrades into his conduct and

[Court-Martial.]

Note 113 p continued.

circumstances by asking their assistance. He writes to them, confessing his guilt. I think that any right he may have had to object to the publication in Post meeting of evidence tending to convict him of crime was waived by his communication to them asking their interference, and certainly by his second communication, directed to the Adjutant, and evidently intended by him to be shown to the Post. The objection that the same comrades who heard this confession might be detailed to sit on a Court-Martial for the trial of a comrade is not so valid as the same objection would be to their sitting on a jury in a common law court.

In the first place the record of the conviction of the comrade by the State court would supersede his written confessions as evidence before the Court-Martial, and he would probably plead guilty, as he did at first. And, secondly, if he desired it, the Department Commander, under our Regulations, would detail a Court-Martial from other Posts whose members were not acquainted with the facts.

In the present case, therefore, I think the action of the Post was right.

113q. OPINION LXIV. MARCH 16, 1875.

Post Commander—Has no power to pardon.

Reviewing officer may mitigate a sentence. His action final.

Has a Post Commander power to pardon a comrade condemned by sentence of Post Court-Martial to suspension for one year?

In the absence of any regulation permitting the remission of a penalty regularly ordered, I am of the opinion that no such power exists. I think that by military usage the reviewing officer has the power to mitigate a sentence when it is sent up for his approval, but not after he has once passed upon it. His action, then, becomes final, and he cannot afterwards reverse or modify it.

113r. OPINION LXXIII. MAY 10, 1876.

Court-Martial—If the sentence of Court-Martial is inadequate, in the opinion of the reviewing officer, he may send back for revision.

Appeal—If the reviewing officer has already passed upon the sentence, there is no remedy.

A Post tries a comrade by Court-Martial. His offence is a grave one and deserves the utmost punishment in the power of the Court to inflict. The comrade pleads guilty, and the sentence of the Court is merely nominal—entirely disproportioned to the offence. Can the Department Commander order the case to be reviewed by the Court? Is there any remedy?

If the sentence of a Court-Martial is inadequate, in the opinion of the reviewing officer, he may send back the proceedings for *revision* before the Court is dissolved, stating his reasons and views to the Court. If they still adhere to their sentence, he is powerless, except to disapprove the sentence or to order the execution of it.

This power is implied in words "orders in the case," occurring in our Rules and Regulations, Chapter V, Article VI, Section 6, where they are quoted from the Sixty-fifth Article of War; or, perhaps, it is a power directly flowing—to use the words of Mr. Benet—from the very constitution of Courts, as a consequence of the right of confirming and disapproving the sentence. At any rate, it has been fixed by custom, and is the established practice in the United States service.

The mode of procedure on revision is stated fully in Chapter XIII of Benet's Law and Practice of Courts-Martial, which will be accessible to and should be consulted by the Judge-Advocate of the Court. See page 146 *et seq.*, also De Hart's Military Law, page 204, *et seq.*, to the same effect.

If the reviewing officer has already passed upon the sentence there is no remedy.

1138. OPINION CV. DECEMBER 17, 1879.

Court-Martial—No appeal from the action of the reviewing officer.

A comrade, tried by Post Court-Martial, and sentenced to suspension for ten years, appeals to the Department Commander, who disapproves the finding of the Court-Martial, and reverses the sentence of suspension.

Has the Post or its officers, who are prosecuting the case, the right of appeal to the Commander-in-Chief?

There is no such right of appeal. A Court-Martial, where the Rules and Regulations are silent, is governed by military law and usages.

In this case the proper reviewing officer passed upon the sentence, and no appeal is granted to the prosecuting authority.

The Department Commander may submit any of the questions to National Headquarters, but this, with him, is entirely a matter of discretion.

113t. OPINION LVI. OCTOBER 29, 1873.

Court-Martial—Where the Department Commander as reviewing officer reverses the sentence of dishonorable discharge, there can be no appeal to National Headquarters.

The question is proposed whether a Post who have ordered a trial of a member by a Post Court-Martial, upon the conviction of the accused and the reversal of the sentence of dishonorable discharge by the Department Commander, the officer next superior to the officer ordering the Court, have a right to appeal to National Headquarters from the order of the reviewing officer?

Appeals from acts of Post Commanders are given by Chapter III, Article VII, of the Rules and Regulations. Such appeals are, I think, intended for the protection of members who are aggrieved by the acts from which appeal is taken, The course of appeal is from the decision of the Post Commander to the Post, thence to the Department Commander, thence to the Department Encampment or Council of Administration, if either is in session, and afterwards, or if they are not in session, directly to the Commander-in-Chief, and from him to the National Encampment or Council of Administration.

The right of appeal from the original acts of a Department Commander or Department Encampment is nowhere given in express terms in the Regulations, but has been invariably claimed and allowed as a consequence of the relative subordination existing between the various officers and organizations of the Order.

A right thus established and not defined by positive enactment, must be construed with reference to the proprieties of the case, the nature of the question, and the Regulations indirectly bearing upon it.

If the appeal claimed refers to a subject which is considered in the Regulations, what they say about its treatment will throw considerable light upon the question whether an appeal is proper.

The whole subject of discipline is treated in Article VI of Chapter V, and the provisions which apply to this case are contained in Sections 4 and 6 of that Article.

No general regulations for the government of Courts-Martial (which I consider to be the meaning of the words, "such orders as may be issued from Headquarters,") have ever been promulgated;* so a Court is to be governed by military

* See Rules now in force, Page 137.

[Court-Martial.]

Note 113t continued.

usage, and no intimation is given that the decision of the proper reviewing officer is subject to appeal, any further than military usage gives one. In this case the proper reviewing officer passed upon the sentence, and returned the papers with his orders therein.

Upon the principles of criminal law, civil and military, a decision in favor of the accused is generally conclusive, and no appeal is granted to the prosecuting authority. From humane considerations objections by a prisoner are allowed, and if found valid, even where his substantial guilt is established, he is discharged or a new trial is granted him. It would be introducing an anomaly into criminal practice to subject a prisoner to a second trial, even after he had been acquitted by the ruling, though presumably incorrect, upon the merits of the case, of the authority legally constituted to decide it.

If the reviewing officer had approved the sentence of the Court in this case, and the accused had appealed from the sentence, would not the Post have urged that in a case like the present, the Regulations had granted full power and authority to the Department Commander to approve and execute the findings of the Court?

No doubt, if the Department Commander was uncertain of the law, he might submit to National Headquarters such questions as occurred to him, and would be governed in his decision of the case by the answers he should receive, but this is in his discretion. He has not seen fit to do so, and has decided the questions which are raised and have never been decided by higher authority. I do not see that an appeal should be granted the prosecutor where one could not be claimed by the accused.

113u. OPINION CXLV. APRIL, 1883.

Court-Martial—No appeal from the decision of Department Commander when acting as the reviewing officer of the proceedings of a Court-Martial.

The President and Judge-Advocate of a Court-Martial appeal to the Commander-in-Chief from the decision of the Department Commander in reviewing the findings and sentence of the Court, and praying the Commander-in-Chief to "order the production, before him, of the original and entire record of said Court-Martial, for his examination on this appeal," with opportunity for said President and Judge-Advocate of the Court to submit a brief in support of their appeal

The "Grounds of Appeal," as stated, are six in number, and are as follows:

First.—That the charge, findings and sentence of the aforesaid Court-Martial therein assumed to be reviewed are not therein set forth as is required by military usage and custom, which, in the absence of specific rules to the contrary, are to be followed and observed in such cases by the Grand Army of the Republic.

Second.—That there is no provision in said order and paragraph dissolving said Court-Martial or relieving the members thereof from duty on the same, and the obligations incumbent on such duty.

Third.—That the said order and paragraph alleges matter which is not fact, and which serves to place the undersigned and the said Court-Martial in a false and obnoxious position.

Note 113 u continued.

Fourth.—That the design and intent of said order and paragraph is not in good faith to review the proceedings of said Court-Martial, and to define and correct the errors, if any, committed by said Court-Martial, but to conceal their findings and to hold the officers and members of said Court-Martial up to ridicule and contempt, and, further, to smother their proceedings and sentence without just reason or right.

Fifth.—That the alleged decision of disapproval, and the alleged grounds therefor, are erroneous both in law and in fact; while the actual findings and sentence of said Court-Martial were correct, both in law and in fact, and should have been approved.

Sixth.—The undersigned do further appeal from said order and paragraph upon the ground that they have been and are aggrieved thereby, both in their official capacity and as members of the Grand Army of the Republic, for which grievance they are entitled to redress at the hands of the Commander-in-Chief of the Grand Army of the Republic.

In my opinion, the first question that is presented in this case is, Can an appeal be taken from the decision of the Department Commander, rendered as the reviewing officer of the proceedings of a Court-Martial, it being his duty to review the proceedings? The duty of the Department Commander and the rights of the accused are very clearly defined in Section 6, Article VI, Chapter V, Rules and Regulations of the Grand Army.

It was the evident intent of the framers of the Rules and Regulations, and by the National Encampment, to place restriction upon the powers of a Court-Martial, and to give the accused an additional protection from unjust or unmerited censure or disgrace. And when this power was conferred on the reviewing officer, it was made an *unlimited* power to examine the proceedings, and was "for his *confirmation or disapproval* and orders thereon."

The action, then, of the reviewing officer must, necessarily, be final; no appeal is provided for either by the Rules and Regulations or by the United States Army Regulations. If he, the reviewing officer, approves, it gives life to the sentence of the Court, which, before his approval, had naught but form. Not so where the finding or sentence is disapproved. Such disapproval *entirely destroys* and *sets aside* the action of the Court-Martial. "A *disapproval* of the proceedings of a Court-Martial by the legal reviewing authority is not a mere expression of disapprobation, but a final determinate act putting an end to such proceedings in the particular case, and rendering them entirely nugatory and inoperative." (See Winthrop's Digest of Opinions of the Judge Advocate-General, Section 2, page 435.)

Says the same authority, page 436, "It is quite immaterial to the legal effect of a disapproval whether *any reasons* are given therefor, or whether the *reasons given are well founded in fact or sufficient in law.*"

This being the case, then the power to approve or disapprove rests fully and entirely in the reviewing officer, and his action is a finality, and there can be no appeal therefrom.

This settles all the questions raised in this appeal, and the Commander-in-Chief has no authority and can make no order that would be obligatory on the Department Commander. Whether the Department Commander acted in good faith in his decision is a matter of his own conscience and judgment, and cannot be inquired into in this proceeding.

[Court-Martial.]

113v. OPINION XXIV. FEBRUARY 3, 1872.*Re-admission of Dishonorably Discharged Members.**Dishonorably discharged members—Re-admitted on reformation and with the approval of officer who approved the sentence.*

Can a person who has been dishonorably discharged from the Grand Army of the Republic be re-admitted, on reformation, by the Post of which he was a member?

There is no provision in the Regulations on the subject of the re-admission of dishonorably discharged members. I should, therefore, hold the opinion that such a person, on reformation, might be admitted by the Post which discharged him, on a new application and elected as a recruit, such application being first approved by the officer who approved the sentence of the Court-Martial.

113w. DECISION I. L. W.*Dishonorably discharged members—Re-admission of.*

Two cases of comrades tried and convicted by Court-Martial and sentenced to be *dishonorably discharged*, were submitted, their Posts, by unanimous vote, asking that the sentences be revoked and the comrades reinstated, which recommendations were approved by the Department Commanders and forwarded to National Headquarters.

Not feeling satisfied that these cases came within the provisions of the resolution of National Encampment, page 724, *Journal*, 1880,* I declined to give the order asked for, but referred the Posts to the decision of the Judge Advocate-General, No. XXIV, dated February 3, 1872. (113 v.)

Resolution National Encampment, 1880:

*"The Commander-in-Chief may revise, remit, or reduce the sentences of Courts-Martial in meritorious cases, at any time, on application, approved by intermediate authorities."

RULES FOR COURTS-MARTIAL.

113, *continued.*

At the National Encampment at Albany, 1879, the Committee on *Rules, Regulations and Ritual* reported the following:—

“In regard to the cumbersome machinery for trial by Court-Martial, and its delay and hardship in petty cases, the Committee recommends that the Judge Advocate-General be instructed to prepare a simpler code, which shall be submitted to the Commander-in-Chief, and, when approved by him, shall go into immediate effect for the government of the Order.” *Journal*, 1879, Page 640, Par. 13.

The following Rules, were prepared and issued for the instruction and government of the Order, in accordance with the above resolution, being designed:

1st. To give Posts more control over charges preferred against their members. 2d. To avoid the necessity for a formal Court-Martial in petty cases. 3d. As a guide for conduct of Court-Martial.

“From and after promulgation hereof, no Post Court-Martial shall be convened, except when the same shall have been ordered by a majority vote of the Post of which the accused shall be a member, or of the Post under whose jurisdiction or control he shall be at the time, or by the Department Commander.

If a Post deem charges, duly presented, too trivial for trial by Court-Martial, yet requiring investigation, upon a motion duly made, and adopted by a majority vote of the Post, the Post Commander shall appoint a COURT OF INQUIRY, of three or five comrades in good standing, to whom the matter shall be referred, with authority to make such examination as may by them be deemed necessary, reporting in writing, at the earliest date, their findings and recommendations thereon for the action of the Post.

The findings and sentences of Post Courts-Martial shall be approved by a majority vote of said Post, subject to an appeal to the Department Commander. If the sentence of any Post Court-Martial shall be *dishonorable discharge* or *dismissal*, if approved by a majority vote of the Post, the proceedings, findings, and sentence shall be forwarded by the Post Commander to the Department Commander (through the Assistant Adjutant-General of the Department) for his approval. Such a sentence cannot be promulgated without his approval.

Post Courts-Martial shall be composed of not less than five (5) nor more than nine (9) members and a Judge-Advocate, all of whom shall be appointed by the Post Commander in a special order convening the Court. He shall name the comrade (who shall act as the President of the Court, and the other members of the Court shall rank before the Court according to their numbers or names in the said special order appointing the Court.”

[Court-Martial.]

Form of Order for Appointment of Court.

When a Post Court-Martial has been ordered by the Post, the following form of order shall be used by the Post Commander :

HEADQUARTERS POST, No.
DEPARTMENT OF....., G. A. R., 18.....
SPECIAL ORDERS NO.
A Post Court-Martial is hereby appointed to meet at.....
on the day of A. D. 18.....
or as soon thereafter as practicable, for the trial of Comrade.....

DETAIL FOR THE COURT.

- | | |
|------------------------------|------------------|
| 1. Comrade, President. | 2. Comrade |
| 3. " | 4. " |
| 5. " | 6. " |
| 7. " | 8. " |
| 9. " | |

Comrade.....to be Judge-Advocate.

By order of the Post,

.....
Post Commander.

.....
Adjutant.

Form of the Charge and Specification.

Charge and specification preferred against Comrade.....
.....of Post, No.....
Department of G. A. R.

CHARGE..... (Here insert the charge.)

Specification.—In this that the said Comrade.....
..... (Here specify what he did.).....

(Here insert other specifications, or other charges and specifications, to cover the case.)

All this at.....
on or about the..... day of 18.....

By order of..... Post, No.

.....
Post Commander.

Notice to the Accused.

The Judge-Advocate shall give the accused at least ten days' notice of the time and place at which the Court will sit for his trial, enclosing a copy of the charge and specification, and a list of the members of the Court. The notice shall be in the following form :

....., 18.....

COMRADE.....

You are hereby notified that a Post Court-Martial, by order of.....

.....Post, No., Department of
, G. A. R. (or of the Department Commander), will convene for your trial
 upon the charge and specification preferred against you at.....

 onat.....o'clock.....M.

I send you herewith a copy of the charge and specification, and a list of
 the members of the Court.

You will please attend.

Yours in F., C. and L.,

.....
 Judge-Advocate of the Court.

Proceedings of the Court.

The Court shall meet at the time and place appointed, and proceed as follows :

The Judge-Advocate shall call the roll of members of the Court, and if *five*
 are present the Court will be announced as open, and the accused admitted
 with his counsel. Should the accused not appear, the trial shall proceed in the
 same manner as if he were present. Should the Court be cleared for deliberation
 at any time, no person can be present except the Court and the Judge-
 Advocate.

The Judge-Advocate shall then rise and read aloud to the accused, if present,
 the order appointing the Court, and then ask the accused if he has any objection
 to any member of the Court named in the order, and record all objections
 in the proceedings. If no objections are presented, the trial will go on; but
 if objection is stated, the same shall be considered, after which the Court will
 be cleared, the challenged member of the Court retiring. After deliberation,
 the doors will be reopened, and the Judge-Advocate shall announce the decision
 of the Court. If the objection made by the accused is sustained by the Court,
 the challenged member cannot act in the case.

The President and other members of the Court present shall then rise, and
 the Judge-Advocate shall administer to them, together, the following

Obligation of the Court.

"You, and each of you, do solemnly and sincerely declare and affirm, on
 honor as Comrades of the G. A. R., that you will well and truly try and deter-
 mine, according to evidence, the matter now before you, that is to say, the charges
 and specifications preferred against Comrade....., of
 Post No....., G. A. R., and that you will duly administer justice according
 to the Rules and Regulations of the G. A. R., without partiality, favor,
 or affection; and, if any doubt shall arise not explained by said Rules and Regu-
 lations, according to your conscience, the best of your understanding, and the
 custom in like cases; and you, and each of you, do further declare and affirm
 that you will not divulge the sentence of the Court until it shall be published
 by the proper authority; neither will you disclose or discover the vote or
 opinion of any particular member of the Court-Martial, unless required to give
 evidence thereof in due course of law. So you, and each of you, do affirm."

The Judge-Advocate shall then rise and take the following obligation, which
 shall be administered to him by the President of the Court :

"You, Comrade, Judge-Advocate of the Court,
 do solemnly and sincerely declare and affirm, on your honor as a comrade of
 the G. A. R., that you will not disclose or discover the vote or opinion of any
 particular member of the Court-Martial, unless required to give evidence thereof,
 as a witness by a Court of Justice, in due course of law, nor divulge the sentence
 of the Court to any but the proper authority until it shall be duly disclosed by
 the same. So you do affirm."

[Court-Martial.]

The Judge-Advocate shall then arraign the accused, reading aloud to him the charge and specification, and at the close shall say :

“How say you, Comrade, Guilty or Not Guilty?”

Plea.

Whereupon the *plea* of the accused shall be taken and recorded to *each specification*, as well as to the *charge*.

The Judge-Advocate shall then call the first witness for the prosecution, and administer to him and every witness the following

Obligation of Witnesses.

“You, Comrade, do solemnly and sincerely declare and affirm, on your honor as a comrade of the G. A. R., that the evidence you shall give in the cause now in hearing, in the trial of Comrade, shall be the truth, the whole truth, and nothing but the truth, and this you do affirm.”

The Judge-Advocate shall then ask the witness :

“Do you consider this affirmation and obligation binding on your conscience?”

Evidence.

The evidence of the witness shall then be taken and written by the Judge-Advocate, in narrative form, as far as practicable. All questions shall be reduced to writing and handed to the Judge-Advocate, who shall read them to the witness, if they are proper questions and relevant to the case. Should any dispute arise as to the competency of evidence, or of any question propounded, the Court shall be cleared for deliberation, and, on re-opening, the decision shall be announced by the Judge-Advocate.

When all the witnesses for the prosecution have been examined, the accused shall enter upon his defence. If no counsel shall appear on behalf of the accused, the Judge-Advocate shall assist the accused, so far as he can, in presenting his defence and in shaping questions to his witnesses, but it shall also be the duty of the Judge-Advocate to cross-examine the witnesses for the defence. After the testimony on both sides has been closed, the Judge-Advocate may address the Court, if he thinks proper, in support of the prosecution, and the accused, or his counsel, may address the Court for the defence, the Judge-Advocate having the privilege of making the closing argument in the case. After which the Court shall be cleared for deliberation.

Finding of the Court.

The findings of the Court shall be by written vote upon *each specification and charge*. The votes shall be collected by the Judge-Advocate, and he shall announce the result to the Court when counted, which shall be done in their presence. The conviction or acquittal of the accused shall be determined by a *majority* of the votes of the members of the Court. The order in which the Court shall vote shall be as follows: The Court being ready to vote, the President so informs the Judge-Advocate, who then reads, in consecutive order, the specifications to the first charge, and then the first charge, and so on with the other charges and specifications, and the votes shall be taken, in succession, upon each specification and charge as it is read by the Judge-Advocate.

An equal division of the votes on any specification or charge shall result in a finding of *not guilty* as to that specification or charge.

Votes having been taken, and the findings recorded, upon each specification and charge, the finding thus declared is the decision of the Court, and the sentence should then be pronounced in strict accordance with the charges and specifications of which the accused has been found *guilty*, and should be without regard to individual sympathies or opinions. This is required by the obligation assumed by each member of the Court.

The voting on the grade of sentence to be imposed shall be conducted as follows: Taking that of the highest grade first, if a *majority* of the Court present shall vote for the highest grade of punishment, it shall be recorded as the sentence of the Court. All members of the Court present must vote for some proper sentence of the Court, and if that which any member votes for is not adopted by a majority vote of those present, some punishment must be voted till a majority agree as to one punishment.

Every Court-Martial shall keep a complete and accurate record of its proceedings, to be authenticated by the signatures of the President and Judge-Advocate of the Court, who shall also certify, in like manner, the sentence pronounced by the Court.

The following form will serve to enable the Courts-Martial to present a proper

Record of the Proceedings.

Proceedings of a Post Court-Martial, convened at
in the County of....., Department of
by virtue of the following special order:

(Here insert the order appointing the Court.)

HEADQUARTERS
..... 18.....

.....o'clock.....M.

The Court met pursuant to the above order. Present:

Comrade , President.
" Comrade
" "
" "
" "
and Comrade..... , Judge-Advocate.

The accused, Comrade , of Post No.....,
Department of....., G. A. R., was also present (*and his counsel....., if present.*)

The Judge-Advocate having read the order convening the Court, asked the accused, Comrade....., if he had any objection to any member named therein, to which he replied that he had no objection to any member named in the order convening the Court.

[In the event of objection, state the name of the member objected to as follows:

"The accused objected to Comrade , and stated his cause of challenge as follows: (*Here insert the statement of the accused.*) Comrade (the challenged member of the Court) stated that," etc.]

The Court was cleared, the challenged member retiring, and after due deliberation the doors were opened, the accused and challenged member present, and the decision of the Court was announced by the Judge-Advocate: "That the challenge is sustained as sufficient," or "That the challenge is not sustained, being insufficient."

[Court-Martial.]

The members of the Court then rose, and they, and each of them, in the presence of the accused, were duly affirmed and obligated by the Judge-Advocate, and the Judge-Advocate was thereupon duly affirmed, and obligated by the President of the Court, in the presence of the accused.

The accused, Comrade, of Post No., Department of, G. A. R., was arraigned on the following

Charges and specifications, which were read aloud by the Judge-Advocate. *(Here insert them.)*

.....
To which the accused pleaded as follows :

To the first specification of 1st charge
 " second " " "
 " *first charge*
 " first specification of 2d charge
 " second " " "
 " *second charge*

Comrade, of Post No., G. A. R., a witness on the part of the prosecution, was duly affirmed and obligated.

Question by Judge-Advocate *(Here insert question.)*

Answer *(Here insert answer.)*

(When the Judge-Advocate has finished his examination, the accused, or his counsel, may put questions, through the Judge-Advocate, which shall be recorded thus :)

Question for defence

Answer

(When the cross-examination is completed, the Court may put questions, through the Judge-Advocate, which shall be recorded thus :)

Question by the Court

Answer

(And so on with each witness for the prosecution.)

The prosecution here closed.

Comrade, of Post No., Department of, G. A. R., a witness on the part of the defence, was duly affirmed and obligated.

Question for defence

Answer

Question by Judge-Advocate

Answer

Question by the Court

Answer

(Should the Court adjourn pending the proceedings.)

The Court then adjourned to meet again at o'clock M., on, 18...

On reassembling, the record proceeds.

..... o'clock M., 18...

The Court met, pursuant to adjournment. Present: Comrade, President, Comrades *(here insert names of all members of Court present)*, and Comrade, Judge-Advocate.

The accused was also present *(with his counsel,)*

The proceedings of the last session of the Court of 18... were presented to the Court by the Judge-Advocate.

(Here record additional proceedings.)

The accused (or "the counsel for the accused") addressed the Court (or "read a statement") for the defence. (If in writing, it should be appended to the proceedings and marked.)

(Here add the statement of the Judge-Advocate, or "the Judge-Advocate submitted the case to the Court.")

Finding.

The Court was then cleared for deliberation, and having maturely considered the evidence adduced, find the accused, Comrade of Post, No., Department of, G. A. R., as follows:

Of the first specification of first charge, Guilty (or "Not Guilty," as the case may be.)

Of the second specification of first charge, Guilty (or "Not Guilty," as before).
Of the first charge,, Guilty (or "Not Guilty," as the case may be).

(And so on with each specification and charge.)

Sentence.

And the Court do therefore sentence him, Comrade of Post No., Department of, G. A. R., that he be *(Here insert the sentence of the Court.)*

(If a suspension, record it thus:)

..... "suspended from membership in the Grand Army of the Republic, and from all rights and privileges of the Order, for the period of *(Insert the time.)*

(If a dishonorable discharge, record it thus:)

..... "dishonorably discharged and dismissed from the Grand Army of the Republic."

(Signed)

.....
President of the Court.

.....
Judge-Advocate.

Endorsement.

(When the proceedings are forwarded to the Department Commander, endorse as follows:)

Proceedings, Findings, and Sentence of the Court-Martial in the trial of Comrade of Post No., Department of, G. A. R.

Approved. Respectfully forwarded to, Commander, Dept. of, G. A. R.

(Signed)

.....
Post Commander,
....., Post No., G. A. R.

To
Asst. Adjt.-Gen'l.

RULES OF ORDER

FOR THE NATIONAL ENCAMPMENT.

I. ORDER OF BUSINESS.

1. Opening of the National Encampment in due form.
2. Calling Roll of Officers.
3. Report of Committee on Credentials.
4. Calling Roll of Members.
5. Reports of Officers, beginning with that of the Commander-in-Chief.
6. Appointment of committees, to consist of five members each, as follows :
 - 1st. Committee on Credentials for the following year, the Adjutant-General to be chairman.
 - 2d. Committees on Reports of Officers.
 - 3d. Committee on Rules and Regulations and Ritual.
7. Reception and reference of communications from Department Encampments, to be called according to seniority.
8. Reception and reference of communications from individuals.
9. Reports of Committees.
10. Unfinished Business.
11. New Business.
12. Election and installation of officers.
13. At the second and each succeeding session the minutes of the preceding session shall be read immediately after the opening ceremonies. This shall also be done before the closing exercises of the last session.
14. This order of business may be suspended at any time for a definite purpose by a two-thirds vote of the National Encampment, to be taken without debate.

II. The Commander in-Chief shall state every question properly presented to the National Encampment, and before putting it to vote shall ask, "Is the Encampment ready for the question?" Should no member offer to speak, he shall rise to put the question, and after he has risen no further discussion shall be in order.

III. The Commander-in-Chief may speak to points of order in preference to other members, rising for that purpose; he shall announce all votes and decisions, and decide questions of order, subject to an appeal to the National Encampment by any two members, which appeal, if required, shall be in writing.

IV. When an appeal is taken from the decision of the presiding officer, said officer shall surrender the chair to the officer next in rank, who shall put the question thus: "Shall the decision of the chair stand as the judgment of the National Encampment?"

V. When the decision of any vote is doubted, the Commander-in-Chief shall direct the Adjutant-General to count the vote in the affirmative and negative, and report the result to him.

VI. When two or more members rise to speak at the same time, the Commander-in-Chief will decide which is entitled to the floor.

VII. A motion must be seconded and stated by the Commander-in-Chief before any action thereon is in order, and if required by any two members, shall be reduced to writing.

VIII. A motion may be withdrawn by the mover and seconder before a vote is had thereon, and if withdrawn, no record thereof shall be made on the minutes.

IX. The name of a member making a motion or offering any business shall be entered on the minutes.

X. A division of a question containing two or more distinct propositions may be demanded by any member.

XI. When a member wishes to speak, he shall rise and respectfully address the Commander-in-Chief, confining his remarks to the question before the National Encampment, and avoiding personalities and unbecoming language.

XII. No member shall be interrupted while speaking, except by a call to order or by a member to explain.

XIII. No member shall speak more than twice upon the same question, except for explanation when misrepresented, nor longer than ten minutes at any time, without a vote of the National Encampment, to be taken without debate.

XIV. No member shall in debate impeach the motives of a fellow-member, treat him with personal disrespect, or pass between him and the chair while he is speaking.

XV. Any conversation calculated to disturb a member while speaking, or to hinder the transaction of business, shall be deemed a violation of order, and, if persisted in, shall incur censure.

XVI. On questions of order there shall be no debate, unless the Commander-in-Chief shall invite it, or unless an appeal is taken.

XVII. When a member is called to order, he shall at once take his seat until his point of order is decided.

XVIII. When a member is called to order for words spoken in debate, the objectionable words shall, if required, be reduced to writing.

[Rules of Order.]

XIX. When a question is before the National Encampment, the only motions in order shall be:

- 1st. To adjourn.
- 2d. To lay on the table.
- 3d. The previous question.
- 4th. To postpone indefinitely.
- 5th. To postpone to a definite period.
- 6th. To postpone.
- 7th. To refer.
- 8th. To amend.

to take precedence in the order named, and the first three to be decided without debate.

XX. When the previous question is moved and seconded, it shall preclude all other motions and debate. It shall be put in this form: "Shall the main question be now put?" If decided in the affirmative, the vote shall be at once taken without debate, and in the same order as if the previous question had not been ordered.

XXI. A motion to adjourn shall always be in order, except

- 1st. While a member is speaking.
- 2d. While a vote is being taken.
- 3d. When to adjourn was the last preceding motion.

A motion to adjourn cannot be amended, but when to adjourn to a given time or place, it is open to amendment or debate.

XXII. The reading of any paper relating to the subject under consideration shall always be in order.

XXIII. When a blank is to be filled, the question shall be first taken upon the highest sum or number, or longest time, or in the order of nomination, if it is to be filled with the name of a person.

XXIV. The yeas and nays may be required and entered upon the minutes at the call of any three members representing different Departments, as provided in Chap. IV, Article VII, Rules and Regulations.

XXV. When a matter is postponed indefinitely, it shall not again be in order at the same session of the National Encampment.

• XXVI. But two amendments can be pending at the same time.

XXVII. A motion to reconsider,* shall be in order at any time during the same session of the National Encampment, but must be made by those voting with the majority, or those voting in the negative in the case of equal division. A motion to reconsider once made and negatived shall not be renewed at the same session.

XXVIII. All reports and resolutions must be submitted in writing, and when from a committee they must be signed by a majority of such committee.

See Opinion CI, Page 150.

XXIX. All members entitled to vote shall vote on all questions, unless excused by a vote of the National Encampment, to be taken without debate. (*See Note, 35 b.*)

XXX. When a majority report is followed by a report from the minority of a committee, the former, after being read shall lie upon the table until the latter is presented, after which, on motion, either may be considered.

XXXI. When a report has been read it shall be considered properly before the National Encampment without any motion to accept.

XXXII. When a report is submitted with a resolution attached, action shall be had on the resolution only, unless the report be considered improper or incomplete, when it may be recommitted. When no resolution accompanies the report, such report may be altered or amended.

XXXIII. No report or resolution properly before the National Encampment shall be withdrawn without its permission, to be given or refused without debate.

XXXIV. Questions not debatable :

1st. To adjourn, when to adjourn simply. †

2d. To lay on the table.

3d. For the previous question.

4th. To take up any particular item of business.

5th. Granting leave to speak.

6th. Granting leave to withdraw a report or resolution.

7th. To excuse from voting.

8th. Questions of order, where no appeal has been taken, or where the Commander-in-Chief has not invited discussion.

XXXV. These Rules of Order may be altered or amended at any regular session of the National Encampment, upon proposition in writing, and by a two-thirds vote of those present and voting.

† For Posts, see Opinions LXXXV and CIII following.

OPINION LXXXV. FEBRUARY 27, 1878.

Adjournment—Motion to adjourn is out of order.

Is a motion to adjourn ever in order in any Post of the Grand Army of the Republic?

At Post meetings, where the Ritual is observed, a strict compliance with the Ritual would render a motion to adjourn out of order, and therefore I am of opinion that such a motion at such meeting would not be in order.

[Rules of Order.]

OPINION CIII. MAY 6, 1879.

Motion—To “proceed to close” or to “adjourn” not in order.

1. Is a motion to “proceed to close” in order?
2. Should such a motion be governed by the usual parliamentary rules governing motions to adjourn?
3. Is a motion to adjourn in order?

The third question is already covered by Opinion LXXXV, February 27, 1878, which would seem, by inference, to cover the first question and to the same effect. Such is my opinion. This obviates the necessity of passing upon the second question.

OPINION CI. MARCH 29, 1879.

** See Rule 27.*

Records—Cannot be altered.

Posts—May adopt Rules of Order.

1. A Post adopts a motion: at the next meeting the records of the meeting at which the motion was adopted, are read for approval; when a motion is made to alter the record so that it shall appear as if the motion was never adopted. Is such a motion in order?

2. Do the Rules of Order for the National Encampment govern the action of different Post meetings, so far as they appear applicable?

To the first inquiry, I answer, that such a motion would not be in order; the record cannot be changed except to correct an error. To the second inquiry, I answer, they do not; each Post can adopt Rules of Order of its own, not inconsistent with the Rules and Regulations.

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ERRATA.

The following paragraph was omitted from its place on Page 17:—

15e. OPINION XXXVI. JUNE 5, 1872.

Residence.

3. Posts may admit properly-qualified applicants without regard to their residence. Unless such persons have made previous applications for membership, no other Post has any jurisdiction in the matter.

Page 52. In Paragraph 37*e* change "disease" to "decease."

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