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Runkle Vs. United States

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Court : US Supreme Court

Decided On : May-27-1887

Appeal No. : 122 U.S. 543

Appellant : Runkle

Respondent : United States

Judgement :

Runkle v. United States - 122 U.S. 543 (1887)
U.S. Supreme Court Runkle v. United States, 122 U.S. 543 (1887)

Runkle v. United States

Argued April 22, 1887

Decided May 27, 1887

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APPEALS FROM THE COURT OF CLAIMS

SYLLABUS

Article 65 of the Articles of War in the Act of April 10, 1806, 2 Stat. 359, 367, "for the government of the armies of the United States," enacted that

"Neither shall any sentence of a general court-martial, in time of peace, extending to the loss of life or the dismission of a commissioned officer or which shall, either in tune of peace or war, respect a general officer, be carried into execution until after the whole proceedings shall have

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been transmitted to the Secretary of War to be laid before the President of the United States, for his confirmation or disapproval, and orders in the case."

HELD

(1) That the action required of the President by this article is judicial in its character, and in this respect differs from the administrative action considered in *Wilcox v. Jackson,* 13 Pet. 498; *United States v. Eliason,* 16 Pet. 291; *Confiscation Cases,* 20 Wall. 92; *United States v. Farden,* 99 U. S. 10 ; *Wolsey v. Chapman,* 101 U. S. 755 .

(2) That (without deciding what the precise form of an order of the President approving the proceedings and sentence of a court martial should be, or that his own signature should be affixed thereto) his approval must be authenticated in a way to show otherwise than argumentatively that it is the result of his own judgment, and not a mere departmental order which may or may not have attracted his attention, and that the fact that the order was his own must not be left to inference only.

(3) That until the President acted in the manner required by the article, a sentence by a court-martial of dismissal of a commissioned officer from service in time of peace was inoperative.

There being no sufficient evidence that the action of the court-martial which dismissed Major Runkle from the service was approved by the President, it follows

that he was never legally cashiered or dismissed from the army.

This record shows that on the 14th of September, 1882, Benjamin P. Runkle filed in the office of the Second Auditor of the Treasury Department a claim based on the decision of this Court in *United States v. Tyler,* 105 U. S. 244 , for longevity pay as an officer in the army of the United States, "retired from active service," and that on the 27th of June, 1883, the Secretary of the Treasury referred it to the Court of Claims, under 2 of the Act of March 3, 1883, c. 116, 22 Stat. 485, for an opinion upon the following questions:

"1st. Was the court-martial that tried Benjamin P. Runkle duly and regularly organized, and had it jurisdiction of the person of said Runkle, and of the charges upon which he was tried?"

"2d. Were the proceedings and findings of said court-martial regular, and the sentence duly approved in part by the President of the United States, as required by law?"

"3d. Was Benjamin P. Runkle legally cashiered and dismissed from the army of the United States in pursuance of said court-martial and subsequent proceedings? "

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"4th. Was the President of the United States authorized and empowered by executive order to restore said Runkle to the army, as it is claimed he was restored by the order of August 4, 1877?"

"5th. Is Benjamin P. Runkle now a retired army officer, with the rank of major, and, as such officer, entitled to longevity pay under what is known as the *Tyler* decision?"

Runkle thereupon filed his petition in the Court of Claims, in accordance with the rules of practice in that court applicable to such cases, and the United States put in a counterclaim for

"$23,585.62, moneys paid to the said claimant by the Paymaster General and his subordinates without authority of law, being the pay and allowances of a major in the army upon the retired list from the 4th day of August, 1877, to January 1, 1884, during which period the said claimant was not a major in the army nor in any way authorized to draw pay and allowances as aforesaid."

The facts as found by the Court of Claims are as follows:

I. April 22, 1861, the claimant was mustered in as a captain of Thirteenth Ohio Volunteer Infantry, and served as such till November 8, 1861, when he was mustered in as major. August 18, 1862, he was honorably mustered out.

August 19, 1862, he was mustered in as colonel of Forty-fifth Ohio Volunteer Infantry, and honorably mustered out July 21, 1864.

August 29, 1864, he accepted appointment as lieutenant colonel of Veteran Reserve Corps, and was honorably mustered out October 5, 1866.

October 6, 1866, he accepted appointment as major of 45th United States Infantry, became unassigned, March 15, 1869, and was placed on the retired list as major United States army, December 15, 1870.

II. At the time he was so placed on the retired list, he was on duty as a disbursing officer of the Bureau of Refugees, Freedmen, and Abandoned Lands for the State of Kentucky, and had been on that duty from April 11, 1867, and continued

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on it, without any new assignment to it, until he was arrested for trial before a court-martial, as hereinafter shown.

III. June 25, 1872, the following special order, No. 146, was issued by the War Department:

"1. By direction of the President, a general court-martial is hereby appointed to meet at Louisville, Kentucky, on the 5th day of July, 1872, or as soon thereafter as

practicable, for the trial of Second Lieutenant John L. Graham, Thirteenth Infantry, and such other prisoners as may be brought before it."

Before the court-martial convened and organized under this order, the said Runkle was arraigned and tried on the following charges:

"Charge I. Violation of the Act of Congress approved March 2, 1863, c. 67, 1."

"Charge II. Conduct unbecoming an officer and a gentleman."

The specifications presented under these charges were all based on acts alleged to have been done by the claimant while on duty as a disbursing officer of the bureau of refugees, freedmen, and abandoned lands. There were thirteen specifications under the first charge, and fourteen under the second. All the specifications averred acts done by him in the year 1871 except the 1st and 5th under Charge I and the 1st, 5th, and 14th under Charge II, all of which averred acts done in 1870, before he was placed on the retired list. Of the 1st and 5th specifications under Charge I and of the 14th under Charge II he was found guilty. He was also found guilty of ten other specifications under Charge I, and of five other specifications under Charge II, all of which averred acts done by him in 1871. He was also found guilty of both charges and was sentenced by the court to be cashiered, to pay the United States a fine of $7,500, and to be confined in such penitentiary as the President of the United States might direct for the period of four years, and, in the event of the nonpayment of the fine at the expiration of four years, that he should be kept in confinement in the penitentiary until the fine be paid, the total term of imprisonment, however, not to exceed eight years.

IV. The proceedings, findings, and sentence of said court-martial were transmitted to the Secretary of War, who wrote upon the record the following order:

"The proceedings in the foregoing case of Major Benjamin P. Runkle, retired, United States Army, are approved with the exception of the action of the court in rejecting as evidence a certain letter written by a witness for the prosecution and

offered to impeach his credibility, also in unduly restricting the cross-examination of the same witness in relation to the motives influencing his testimony. Inasmuch, however, as in the review of the case it was determined that the whole testimony of this witness could be excluded from consideration without impairing the force of the testimony for the prosecution, upon which the findings rest, the erroneous action of the court in this respect does not affect the validity of the sentence. The findings and sentence are approved. In view of the unanimous recommendation by the members of the court that accused shall receive executive clemency on account of his gallant services during the war and of his former good character, and in consideration of evidence, by affidavits presented to the War Department since his trial, showing that accused is now, and was at the time when his offense was committed, suffering under great infirmity in consequence of the wounds received in battle, and credible representations having been made that he would be utterly unable to pay the fine imposed, the President is pleased to remit all of the sentence except so much thereof as directs cashiering, which will be duly executed."

"WM. W. BELKNAP"

" *Secretary of War* "

The said Secretary also issued, January 16, 1873, a General Order of the War Department No. 7, series of 1873, announcing the sentence of the court-martial, and that "Major Benjamin P. Runkle, U.S. Army (retired), ceases to be an officer of the army from the date of this order."

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From the date of this order till after August 4, 1877, the claimant's name was not borne upon the army register.

V. August 4, 1877, R. B. Hayes, President of the United States, made the following order:

"EXECUTIVE MANSION"

"WASHINGTON, August 4, 1877"

" I n the Matter of the Application of Major Benjamin P."

" *Runkle, U.S. Army (retired)"*

"The record of official action heretofore taken in the premises shows the following facts, to-wit:"

"First. That on the 14th of October, 1872, Major Runkle was found guilty by court-martial upon the following charges, to-wit:"

"Charge 1. 'Violation of the Act of Congress approved March 2, 1863, c. 67, 1.'"

"Charge 2. 'Conduct unbecoming an officer and a gentleman.'"

"Second. That on the 16th of January, 1873, W. W. Belknap, then Secretary of War, approved the proceedings of said court, and thereupon caused General Order No. 7, series of 1873, to issue from the War Department, by which it was announced that Major Benjamin P. Runkle was cashiered from the military service of the United States."

"Third. That subsequent to the date of said General Order No. 7, to-wit, on the 16th day of January, 1873, Major Runkle presented to the President a petition setting forth that the proceedings of said court had not been approved by the President of the United States as required by law; that said conviction was unjust; that the record of said proceedings was not in form or substance sufficient in law to warrant the issuing of said order, and asking the revocation and annulment of the same."

"Fourth. That in pursuance of this petition, the record of the official action theretofore had in the premises was, by direction of the President, Ulysses S. Grant, referred to the Judge Advocate General of the United States army for review and report.

"

"Fifth. That thereupon the Judge Advocate General reviewed the case and made his report thereon, in which it is reported and determined, among other things, that in the proceedings had upon the trial of the case by said court, 'it is nowhere affirmatively established that he (Major Runkle) actually appropriated any money to his own use.'"

"It also appears in said report that the conviction of said Runkle upon charge one as aforesaid is sustained upon the opinion that sufficient proof of the crime of embezzlement on the part of the accused was disclosed by the evidence before the court. And with respect to charge two, no reference to the same is made in said report except to deny the sufficiency of the evidence in the case, for a conviction upon the fourteenth specification thereof, and it is to be observed that the thirteen remaining specifications under this charge are identical with the thirteen specifications under charge one. The Judge Advocate General further finds and determines in said report as follows, to-wit: 'For alleged failures to pay, or to pay in full,' on the part of the subagents, 'I am of the opinion that the accused cannot justly be held liable.'"

"Sixth. That no subsequent proceedings have been had with reference to said report, and that the said petition of said Runkle now awaits further and final action thereon."

"Whereupon, having caused the said record, together with said report, to be laid before me, and having carefully considered the same, I am of opinion that the said conviction is not sustained by the evidence in the case, and the same, together with the sentence of the court thereon, are hereby disapproved, and it is directed that said Order No. 7, so far as it relates to said Runkle, be revoked."

"R. B. HAYES"

At the time of the issue by President Hayes of this order, the number of officers on the retired list of the army was 300, and continued so until November 19, 1877. During that period, the claimant was carried on the army records as additional to

the number of retired officers allowed by law, until a vacancy occurred on said last-named date, since which date he has

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been borne on the retired list, and up to January 1, 1884, has drawn pay to the amount of $23,585.62. Of this sum $9,195.27 was paid to him August 15, 1877, for the period from January 16, 1873, the date of the order signed by Secretary Belknap, to the 4th of August, 1877, the date of the order of President Hayes.

VI. August 7, 1877, the claimant addressed a letter to the Paymaster General of the army asserting his legal right to pay as a retired major for the period of time between the dates of those two orders. This letter the Paymaster General referred to the Secretary of War with the following endorsement:

"Respectfully forwarded to the Hon. Secretary of War."

"It has been enjoined that questions of payment in such cases shall be submitted to the Secretary of War. See letter of July 7, 1863, from Col. J. A. Hardee, Asst. Adjt. General, to the Paymaster General, stating the orders of the War Department that"

" An officer restored to the service either by the revocation of the order of dismissal or discharge or by simple restoration is not entitled to pay for the period that he was out of service unless the same is expressly ordered by the War Department."

"The language of the Judge Advocate General on this point is to the same effect. See Judge Advocate's Digest of 1868, p. 266."

" Where an order of the War Department for the dismissal, discharge, or muster-out of an officer is subsequently revoked and he reinstated in his former rank and position, it is competent for the President, in his discretion, to allow him pay for the interval during which he was illegally separated from the service under the original order."

"The course of military administration has, however, developed no precise rule on this subject, each case of a claim for pay by such an officer having been, in practice, determined by the special circumstances surrounding it."

"BENJ. ALVORD"

" *Paym'r General U.S. Army* "

"P.M.G. Office, August 9, 1877 "

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The Secretary of War returned the letter to the Paymaster General, through the Adjutant General, and when it reached the Paymaster General, it had on it the following endorsements:

"Respectfully returned (through the Adjutant General) to the Paymaster General."

"By the order of the President of August 4, 1877, the approval of the proceedings and sentence in the case of Major B. P. Runkle, of date January 16, 1873, was revoked, the said proceedings and sentence were disapproved, and the order of dismissal was set aside."

"This order of the President must be accepted by this department as revoking said order of dismissal from its inception and as annulling all its consequences. As Major Runkle was at the time of his trial and sentence an officer of the retired list, the fact that he has not been on duty in the interim can make no difference, since a retired officer is not subject to duty."

"He will therefore be paid whenever funds are available for that purpose. This endorsement has been submitted to and is approved by the President."

"GEORGE W. MCCRARY"

" *Secretary of War* "

"War Dept., August 13, '77"

"Noted and respectfully forwarded"

"E. D. TOWNSEND"

" *Adjt. Gen'l* "

"August 14, '77"

Upon receiving back the said letter, with said endorsements, the Paymaster General made thereon this endorsement:

"Respectfully referred to Major Alexander Sharp, P.M., U.S.A., Present. Maj. Runkle was last paid to include January 15, 1873."

"CHAS. T. LARNED"

" *Acting Paym'r Gen'l U.S. Army* "

"C.T.L., P.M.G.O., August 15, 1877"

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It was in obedience to the order of the President, signified by the above endorsement of the Secretary of War, that the claimant was paid the aforesaid sum of $9,195.27.

Upon the foregoing facts the conclusions of law were as follows:

1. That the claimant is not entitled to recover longevity pay.

2. That the defendants are not entitled under their counterclaim to recover the pay received by the claimant as a retired major, which accrued after the 4th or August, 1877, amounting to $14,390.35.

3. That the defendants are entitled, under their counterclaim, to recover of the claimant $9,195.27, being the amount paid him for the time between January 16,

1873, and August 4, 1877. 19 Ct.Cl. 395.

From a judgment entered in accordance with these conclusions, both parties appealed.

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MR. CHIEF JUSTICE WAITE, after stating the case as above reported, delivered the opinion of the Court.

We will first consider the second of the questions referred to the Court of Claims, namely:

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"Were the proceedings and findings of said court-martial regular, and the sentence duly approved by the President of the United States, as required by law? "

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The 65th Article of War (2 Stat. 367, c. 20), in force at the time of these proceedings, was as follows:

"Any general officer commanding an army, or colonel commanding a separate department, may appoint general courts-martial whenever necessary. But 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 the officer commanding the troops for the time being; neither shall any sentence of a general court-martial, in the time of peace, extending to the loss of life, or the dismission of a commissioned officer, or which shall, either in time of peace or war, respect a general officer, be carried into execution until after the whole proceedings shall have been transmitted to the Secretary of War, to be laid before the President of the United States for his confirmation or disapproval and orders in the case. All other sentences may be confirmed and executed by the officer ordering the court to assemble, or the commanding officer, for the time being, as

the case may be."

Thus it appears that the sentence of a general court-martial in time of peace, to the effect that a commissioned officer be cashiered -- dismissed from service -- is inoperative until approved by the President. Before then, it is interlocutory and inchoate only. *Mills v. Martin,* 19 Johns. 7, 30; Simmons on Courts-Martial, 6th ed., c. XVII, p. 294.

A court-martial organized under the law of the United States is a court of special and limited jurisdiction. It is called into existence for a special purpose, and to perform a particular duty. When the object of its creation has been

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accomplished it is dissolved. 3 Greenl.Ev. 470; *Brooks v. Adams,* 11 Pick. 441, 442; *Mills v. Martin, supra; Duffield v. Smith,* 3 S. & R. 590, 599. Such, also, is the effect of the decision of this Court in *Wise v. Withers,* 3 Cranch 331, which, according to the interpretation given it by Chief Justice Marshall in *Ex Parte Watkins,* 3 Pet. 193, 28 U. S. 207 , ranked a court-martial as "one of those inferior courts of limited jurisdiction whose judgments may be questioned collaterally." To give effect to its sentences, it must appear affirmatively and unequivocally that the court was legally constituted, that it had jurisdiction, that all the statutory regulations governing its proceedings had been complied with, and that its sentence was conformable to law. *Dynes v. Hoover,* 20 How. 65, 61 U. S. 80 ; *Mills v. Martin,* 19 Johns. 33. There are no presumptions in its favor so far as these matters are concerned. As to them, the rule announced by Chief Justice Marshall in *Brown v. Keen,* 8 Pet. 112, 33 U. S. 115 , in respect to averments of jurisdiction in the courts of the United States, applies. His language is:

"The decisions of this Court require that averment of jurisdiction shall be positive; that the declaration shall state expressly the facts on which jurisdiction depends. It is not sufficient that jurisdiction may be inferred argumentatively from its averments."

All this is equally true of the proceedings of courts-martial. Their authority is statutory, and the statute under which they proceed must be followed throughout. The facts necessary to show their jurisdiction and that their sentences were conformable to law must be stated positively, and it is not enough that they may be inferred argumentatively.

As the sentence now under consideration involved the dismissal of Runkle from the army, it could not become operative until approved by the President after the whole proceedings of the court-martial had been laid before him. The important question is therefore whether that approval has been positively shown.

The Court of Claims has found as a fact in the case that the "proceedings, findings, and sentence of said court-martial were transmitted to the Secretary of War," but it has not

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found that they were laid before the President or acted on by him otherwise than may be inferred argumentatively from the orders of the Secretary of War and the subsequent action of President Grant and President Hayes. There can be no doubt that the President, in the exercise of his executive power under the Constitution, may act through the head of the appropriate executive department. The heads of departments are his authorized assistants in the performance of his executive duties, and their official acts, promulgated in the regular course of business, are presumptively his acts. That has been many times decided by this Court. *Wilcox v. Jackson,* 13 Pet. 498, 38 U. S. 513 ; *United States v. Eliason,* 16 Pet. 291, 41 U. S. 302 ; *Confiscation Cases,* 20 Wall. 92, 87 U. S. 109 ; *United States v. Farden,* 99 U. S. 10 , 99 U. S. 19 ; *Wolsey v. Chapman,* 101 U. S. 755 , 101 U. S. 769 .

Here, however, the action required of the President is judicial in its character, not administrative. As Commander in Chief of the army, he has been made by law the person whose duty it is to review the proceedings of courts-martial in cases of this kind. This implies that he is himself to consider the proceedings laid before him,

and decide personally whether they ought to be carried into effect. Such a power he cannot delegate. His personal judgment is required, as much so as it would have been in passing on the case if he had been one of the members of the court-martial itself. He may call others to his assistance in making his examinations and in informing himself as to what ought to be done, but his judgment, when pronounced, must be his own judgment, and not that of another. And this because he is the person, and the only person, to whom has been committed the important judicial power of finally determining, upon an examination of the whole proceedings of a court-martial, whether an officer holding a commission in the army of the United States shall be dismissed from service as a punishment for an offense with which he has been charged, and for which he has been tried. In this connection, the following remarks of Attorney General Bates in an opinion furnished President Lincoln under date of March 12, 1864, 11 Opinions Attorneys General 21, are appropriate:

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"Undoubtedly the President, in passing upon the sentence of a court-martial and giving to it the approval without which it cannot be executed, acts judicially. The whole proceeding, from its inception, is judicial. The trial, finding, and sentence are the solemn acts of a court organized and conducted under the authority of and according to the prescribed forms of law. It sits to pass upon the most sacred questions of human rights that are ever placed on trial in a court of justice -- rights which, in the very nature of things, can neither be exposed to danger nor subjected to the uncontrolled will of any man, but which must be adjudged according to law. And the act of the officer who reviews the proceedings of the court, whether he be the commander of the fleet or the President, and without whose approval the sentence cannot be executed, is as much a part of this judgment, according to law, as is the trial or the sentence. When the President, then, performs this duty of approving the sentence of a court-martial dismissing an officer, his act has all the solemnity and significance of the judgment of a court of law."

We go, then, to the record to see whether it shows positively and distinctly that the sentence dismissing Runkle from the service was approved by President Grant. It does appear affirmatively that it was disapproved by President Hayes, and, if not approved by President Grant, Runkle was never legally out of the service. It is true that if it had been approved, the subsequent disapproval would have been a nullity, and could not have the effect of restoring him to his place, but if not approved, he was never out, and the disapproval kept him in the same as if the court-martial had never been convened for his trial. In *Blake v. United States,* 103 U. S. 227 , followed in *United States v. Tyler,* 105 U. S. 244 , it was decided that the President had power to supersede or remove an officer of the army by the appointment, by and with the consent of the Senate, of his successor; but here there was nothing of that kind. Runkle was never removed otherwise than by the sentence of the court-martial and the order of the War Department purporting to give it effect.

Coming, then, to the order on which reliance is had to show

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the approval of President Grant, we find it capable of division into two separate parts -- one relating to the approval of the proceedings and sentence and the other to the executive clemency which was invoked and exercised. It is signed by the Secretary of War alone, and the personal action of the President in the matter is nowhere mentioned except in the remission of a part of the sentence. There is nothing which can have the effect of an affirmative statement that "the whole proceedings" had been laid before him for action, or that he personally approved the sentence. The facts found by the Court of Claims show that the proceedings, findings, and sentence of the court-martial "were transmitted to the Secretary of War, and that he wrote the order thereon," but there they stop. What he wrote is in the usual form of departmental orders, and, so far as it relates to the approval of the sentence, indicates on its face departmental action only.

What follows in the order does not, to say the least, clearly show the contrary. It relates to the executive clemency which was exercised, and then, for the first and

only time, it appears in express terms that the President acted personally in the matter. It is there said: "The President is pleased to remit all of the sentence except so much thereof as directs cashiering." If all the rest of the order was the result of the personal action of the President, why was it referred to here, and not elsewhere? Might it not fairly be argued from this that the rest was deemed departmental business, and that part alone personal which required the exercise of the personal power of the President, under the Constitution, of granting pardons? And besides, according to the order as it stands, this action of the President was had not on "the whole proceedings," but "in view of the unanimous recommendation of the members of the court," "the former good character" of the accused, and "in consideration of evidence by affidavits presented to the War Department since the trial," and "credible representations." If "the whole proceedings" had actually been laid before him, as required by the articles of war, it was easy to say so.

Then again at the end of the order are these words, "which

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[the sentence] will be duly executed." That which immediately preceded related to the remission of a part of the sentence, and the Secretary was careful to say that this was done by the President in person. The omission of any such language, or implication even, in the words which were added leaves the order open to the construction that the Secretary was acting all the time on the idea that the personal judgment of the President was required only in reference to that part of the proceeding which involved the exercise of the pardoning power, and that the rest belonged to the department.

Still further, it appears from the order of President Hayes that "the record of official action" showed that "on the 16th of January, 1873, W. W. Belknap, then Secretary of War, approved the proceedings of said court," and thereupon issued the order from the War Department announcing that Runkle was cashiered, and that after this order was issued, but on the same day, Runkle presented to President Grant a petition setting forth, among other things, "that the proceedings of said court had

not been approved by the President of the United States as required by law." This petition was not only received by President Grant, but it was by him referred to the Judge Advocate General for "review and report." Upon this reference the Judge Advocate General acted, and reported on the whole case. President Grant did nothing further in the premises, and the matter remained open when President Hayes came into office. He then took it up as unfinished business, and, acting as though the proceedings had never been approved, entered an order of disapproval.

Under these circumstances, we cannot say it positively and distinctly appears that the proceedings of the court-martial have ever in fact been approved or confirmed, in whole or in part, by the President of the United States, as the articles of war required, before the sentence could be carried into execution. Consequently, Major Runkle was never legally cashiered or dismissed from the army, and he is entitled to his longevity pay as well as that which he has already received for his regular pay, both before the order of Secretary Belknap was revoked and afterwards.

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Such being our view of the case, it is unnecessary to consider any of the other questions which were referred to the Court of Claims. Neither do we decide what the precise form of an order of the President approving the proceedings and sentence of a court-martial should be, nor that his own signature must be affixed thereto. But we are clearly of opinion that it will not be sufficient unless it is authenticated in a way to show otherwise than argumentatively that it is the result of the judgment of the President himself, and that it is not a mere departmental order which might or might not have attracted his personal attention. The fact that the order was his own should not be left to inference only.

The judgment of the Court of Claims is reversed, and the cause remanded for further proceedings in conformity with this opinion.

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