

3-27-1813

## Division Orders: Eighth Division

Thomas Eastman

Eben Dutch

James Waugh

Williams Emmons

Jesse Jewett

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# DIVISION ORDERS.

EIGHTH DIVISION—Augusta, March 27, 1815.

AT a Division Courtmartial begun and held at Augusta on the 14th instant, constituted as follows, viz.

Lieutenant-Colonel-Commandant JAMES WAUGH, jun. 2. reg. 2. brig. *President.*

MEMBERS.

Major Nathan Stanley,	3. reg. inf. 2. brig.	Capt. Levi Barrett,	1. reg. inf. 2. brig.
John Heath,	3. reg. inf. 1. brig.	Lieut. Thos. B. Coolidge,	1. reg. inf. 1. brig.
Capt. Jonas Parlin,	bat. cav. 2. brig.	Oliver Richardson,	1. reg. inf. 2. brig.
Richard Smith,	1. reg. inf. 2. brig.	Oliver Sewall,	5. reg. inf. 1. brig.
John Trask,	5. reg. inf. 1. brig.	John Page,	1. reg. inf. 2. brig.
Jacob Davis,	1. reg. inf. 1. brig.	Samuel Webb,	1. reg. inf. 2. brig.

Major WILLIAMS EMMONS, Judge-Advocate.

Adjutant JESSE JEWETT, bat. cavalry, 1. brig. Marshal.

was tried Capt. THOMAS EASTMAN, commanding a company in the battalion of cavalry in the 1. brigade of the Division, upon the following specifications of charge, exhibited against him by Lieut. Winslow of the same battalion, viz.

1. For that the said Eastman at Boston, viz. at Winthrop, on the 26. day of November last, did make and exhibit to the Board of War within and for the State of Massachusetts, a certain false and fraudulent payroll of his said company, wherein and whereby he charged the said State with the wages, rations and clothing of one Thomas Eastman, jun. who said Eastman falsely and dishonorably represented to said Board of War, was servant to himself for and during the term of fifty-seven days, while he the said Eastman was on duty, by virtue of Division Orders of the 11. of September last; and the said Eastman did actually receive of the Paymaster to the Board of War, the sum of twenty-nine dollars and thirty-five cents in payment of the wages, rations and clothing of the said Thomas Eastman, jun. when the said Eastman did not employ the said Thomas as a servant.

2. For that said Eastman at Boston, viz. at Winthrop, on the 26. day of November last, did make and exhibit to said Board of War, a certain false and fraudulent payroll of his said company, wherein and whereby he charged the said State with the wages, rations and clothing of one Samuel Thwing, who said Eastman falsely and dishonorably represented to said Board of War, was a servant to Lieut. Thomas Norris of said company, for and during the term of thirty days, while the said Norris was on duty by virtue of Division Orders of the 11. of September last; and the said Eastman did actually receive of the Paymaster of said Board of War, the sum of fourteen dollars and fifty cents, in payment of the wages, rations and clothing of the said Thwing, when the said Eastman well knew that the said Thwing was not employed as a servant to said Norris.

3. For that the said Eastman, being authorized by his said company to receive of the Paymaster of said Board of War, the amount due from said State to said company for their services rendered in obedience to Division Orders of the 11. of September last, did at Boston, viz. at Winthrop, on the 28. day of November last, obtain and receive of Daniel Sargent, esquire, Paymaster as aforesaid, fifteen hundred dollars in bills of the Worcester bank, which were at the time current and in full value, for his said company, and which belonged to them as aforesaid, which said bills the said Eastman afterwards exchanged for specie without the authority and contrary to the interest of the said company, part of which specie the said Eastman fraudulently and dishonorably took and employed to purchase bills of certain Eastern banks (which bills at the time of the purchase in the vicinity of said banks and the residence of the members of said company, were uncurrent, and of a depreciated value) at a discount of nine and ten per cent; thereby depriving his said company of the full value and benefit of the money received of said Paymaster and belonging to said company as aforesaid.

4. For that said Eastman at Hallowell, on the 12. day of December last, did fraudulently and dishonorably pay to members of his said company, their portion of the money which the said Eastman received of the Paymaster of the said Board of War and belonging to them as aforesaid, in specie at a discount of one and a half per cent. or in the uncurrent and depreciated bills of certain Eastern banks; thereby defrauding numbers of his said company of a certain part of the amount of their demand against the said State for their services as aforesaid. All which is contrary to the laws of this Commonwealth, highly unbecoming an officer, oppressive to those under his command, and injurious to the interest of the militia.

Capt. Eastman appears, and to the first and second of these specifications of charge, voluntarily pleads not guilty; to the third he objects, that from the nature of it he is not

holden to answer, but the Court ruling that he is holden, he then pleads not guilty to the third and fourth specifications.

The Court, after a full hearing of the cause, have made up their opinion, that of each and every of the foregoing specifications of charge, the said Capt. Eastman is not guilty.

Upon a careful and attentive perusal of the whole proceedings, and particularly the evidence exhibited, as well in behalf of the accused officer as of the Commonwealth, the Major-General, while he is disposed to approve the opinion of the Court in relation to the third specification (there appearing no proof to support it) feels himself constrained by obligations of duty to disapprove their opinion as it respects the first, second and fourth specifications; because it evidently appears on the face of the proceedings, that this opinion respecting each of these, is against evidence, and as it respects the two first, is against both evidence and law.

In relation to the first and second specifications. Both these appear to be well established by the concurring testimony of several credible witnesses introduced in behalf of the Government. But the evidence adduced by the defendant in support of the opposite fact, that the servants therein mentioned, were *actually employed and kept in service*, is weak and uncertain in itself, and comes in one instance from the nominal servant himself, and in the other from the lieutenant to whom the other fictitious servant was assigned: And the peculiar and delicate circumstances in which these witnesses stood before the Court, required their testimony to be received with great caution and considerable deduction on the score of credibility. It never could be the intention of the law authorizing the allowance of waiters to officers in actual service, that it should be a mere *sinecure*. It was doubtless intended to relieve the officer from the incumbrance of those necessary menial services, the performance of which would not only be derogatory to his station, but prevent him from rendering the Government his whole personal service. The language of the law on this subject, is peremptory and emphatical, and too explicit to be misunderstood.—“An officer claiming allowance for a servant, must certify, that he *actually employed and kept in service* the waiter charged, and that he *did not, during the term so charged, keep or employ as a waiter or servant, any soldier* of the line of the army.”—With this law, and this proof of the breach of it, before them, it is difficult to conceive how the Court could acquit the defendant on these specifications.

With respect to the fourth specification. The certificate of the Paymaster of the Board of War is proof of the kind of money Capt. Eastman received for his company; that he did exchange this current money for specie at a discount, and for bills of certain Eastern banks, is proved by his own witnesses and acknowledged by himself; that the bills of the Eastern banks with which he made payment to his company were *uncurrent*, is too notorious to require proof, whatever might be the opinion of certain individuals to the contrary. And on this head it might be pertinent to remark, that the *opinion* of a witness in the colouring of facts, is always inadmissible in a Court of Justice, as well as entirely irrelevant in the present case. Whenever a Bank has refused to redeem its own bills, those bills are publicly dishonored, and the character and credit of such Bank is known by the true index of *public opinion*. And if it becomes necessary to establish this general character of a Bank by witnesses, the same rules, it is conceived, should be adopted as for establishing the general character of a man for truth and veracity.—The allegations in this specification therefore, appearing to be proved, it would seem to appear also, that the Court had no other alternative, than either to say the defendant was guilty, or to say that the alleged transactions did not constitute a military offence. But the latter, it is conceived, they have virtually admitted, by deciding unanimously on the defendant's first plea to the third specification (which is of the same nature of this) that *he was holden to answer thereto in a military Court*. And if this was in any degree a crime against the Government when committed, it is not easily seen, how any change of opinion or subsequent acknowledgment of individuals, could make it otherwise.

In fine. The defendant having given reasonable cause for the institution of this prosecution, might have spared the illiberal reflections indiscriminately cast upon the complainant and others in the course of his defence. It is very questionable whether such a mode of exculpation can be considered by the judicious of any party, as proof of innocence, or as giving any embellishment to the records of this trial.

The Courtmartial is dissolved. Capt. Eastman is discharged from arrest.

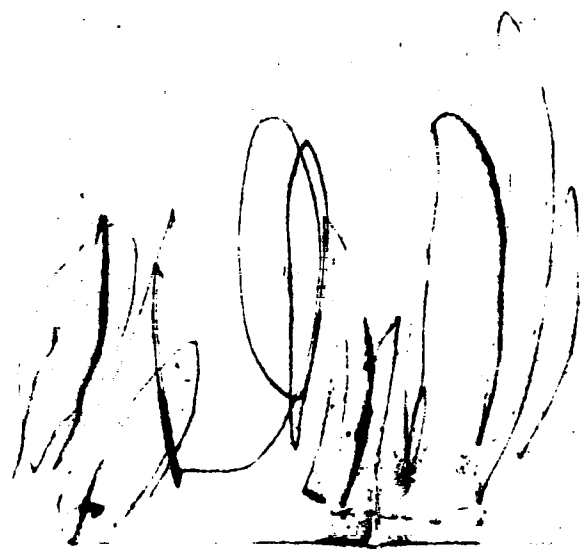
By order of Major-General SEWALL,

EBEN DUTCH, A. D. C.

and Orderly Officer.

*A true Copy.*  
Attest: S. Horrocks, B. M. I. B. S. D.

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