

ADJUTANT AND INSPECTOR GENERAL'S OFFICE,
Richmond, May 27, 1863.

GENERAL ORDERS, }
No. 68.

I. At a General Court Martial, convened at Knoxville, Tenn., February 20, 1863, by virtue of General Orders, No. 16, Head Quarters Department of East Tennessee, of December 15, 1862, and of which Col. J. J. Finley, 6th Regiment Florida Volunteers, was president, was tried:

Captain J. Q. ARNOLD, 12th Battalion Tennessee Cavalry, on the following Charge and Specification:

Charge, - - - Violation of the 9th Article of War.

Specification—In this, that the said John Q. Arnold did willfully, maliciously and feloniously, and with malice aforethought, kil and murder Major T. W. Adrien, his superior officer, by shooting him with a pistol loaded with powder and ball, which he then and there held in his hand, from which he the said T. W. Adrien did die. This at Kingston, Tenn., on or about the 16th day of November 1862.

To the above Charge and Specification the accused filed a special plea to the jurisdiction of the Court, which having been overruled by the Court, the plea of not guilty was entered.

II. *Finding and Sentence of the Court.*

The Court having maturely considered the case, do find the accused, Capt. J. Q. Arnold, 12th Battalion Tennessee Cavalry, as follows:

Of the Specification of the Charge, - - - Guilty.
Of the Charge, - - - Guilty.

And do therefore (two-thirds of the Court concurring) sentence him to be shot to death by musketry.

III. The proceedings, finding and sentence in the foregoing case having been submitted to the President, the following orders are by his direction made therein.

Murder can only be punished under the Articles of War, when incident to some other clearly defined offence. It does not of itself constitute a military crime; and the 33d Article of War provides, that when capital crimes are committed by persons in the military service, they shall

be turned over, on demand, to the civil authorities. The 9th article, under which Capt. Arnold was tried, requires that the officer against whom violence is offered, must be "in the execution of his office." Hence, to take the case out of the 33d article, which is general in its application, and refer it to the 9th, which is special, the murder or killing must be set forth in the specification in such terms as to show that the Court has jurisdiction; and this can only be done by alleging, in the words of the article, that the officer was "in the execution of his office." The omission cannot be supplied by evidence, even where no objection is made; for consent cannot confer jurisdiction. In the present case, however, objection was made to the jurisdiction of the Court over the particular crime alleged, and the point has thus been distinctly presented to the department. Nor does the evidence show Major Adrien to have been clearly "in the discharge of his office" at the time of the killing. On the contrary, it is stated that he was "walking across the street." To be in the execution of his office, the officer must be in the actual discharge of some duty. It is resistance to authority under such circumstances, that the 9th article forbids and punishes. Other offences—such as *disobedience*, *disrespect*, *mutiny*—are made punishable by other articles; and the 9th article seems designed to protect officers in the enforcement of discipline and against resistance while in the execution of that duty. The department can only deal with offences when they are properly presented through the established forms of the service.

The proceedings, finding and sentence in this case must be set aside, for the reasons stated; but it is supposed that any responsibility that the party has incurred to the civil authorities of Tennessee, is not affected by this proceeding.

By order.

S. COOPER,

Adjutant and Inspector General.