

WHITE HOUSE, *Washington, D. C., March 3, 1903.*

*To the Senate:*

I return herewith without approval Senate bill No. 1168, entitled "An act to authorize the appointment of Edward L. Bailey as captain of infantry, United States Army, and to place him on the retired list."

The beneficiary of this bill was undoubtedly a gallant officer in the volunteer forces during the civil war, and the sentiments of gratitude awakened by the consideration of his services as a volunteer officer have created a strong desire on my part to concur in the action of the Senate and the House expressed in the bill for his restoration to the Army.

An examination of Captain Bailey's military record while in the Regular Army, however, makes it plain that this natural desire can not be gratified by the officers who are charged with the administration of military justice consistently with their duty to enforce the law in such a way as to maintain discipline and a high standard of morals and honorable conduct among the officers of the Army.

While a volunteer officer Captain Bailey was twice tried by court-martial for disobedience of orders. Upon the first trial, in January, 1863, he was acquitted. Upon the second trial, in February, 1863, he was convicted and sentenced to forfeit two months' pay and emoluments and be reprimanded in General Orders.

On the 7th of March, 1867, he was appointed a second lieutenant of infantry, and he remained an officer of the Regular Army until the 15th of October, 1893. During that time he was five times tried by court-martial.

In September, 1871, he was tried and convicted of embezzlement and misappropriation of public moneys coming into his hands officially. The conviction was confirmed by the department commander who convened the court, but was disapproved by the President upon the ground that the money that was in his possession was lost by robbery, and his only wrongdoing was his failure to report the fact immediately.

In January, 1873, he was tried and convicted of neglect of duty in failing to attend at guard mounting when officer of the day, and at roll call on numerous occasions, not being prevented by sickness or other evident necessity, and was sentenced to be reprimanded.

In July, 1874, he was tried for neglect of duty, for conduct unbecoming an officer and a gentleman in borrowing money from enlisted men and failing to repay it, notwithstanding their repeated and per-

sistent efforts to secure payment, and for purchasing supplies from various persons for the officers' mess, of which he was caterer, collecting the money from his fellow-officers to pay for the supplies, and appropriating the money to his own use, leaving the debts for the supplies unpaid; and he was sentenced to be dismissed the service. This sentence was approved by the department commander, but was mitigated by the President to suspension from rank and command for six months.

In April, 1890, he was tried for obtaining money on worthless checks drawn on banking firm with whom he had no credit, and acquitted. The department commander reviewing the action of the court disapproved the acquittal.

In September, 1893, he was tried and convicted of conduct unbecoming an officer and a gentleman in borrowing money from a fellow-officer and not repaying it, although repeatedly promising to do so; in entering a private house, in uniform, without permission, in the absence of the owner, beckoning to the owner's wife with his hand; refusing to leave the house when requested so to do by her; and in going to a public saloon in Boise City, Idaho, and chasing a prostitute about the saloon, and going to a corner of the saloon, holding a conversation with her while in uniform of a commissioned officer.

It appears that pending his trial upon these charges, he being under arrest, he was authorized by his commanding officer to visit Boise City for four hours, exclusive of meal time, beginning at 11.30 a. m., for the purpose of attending to personal business; that in disregard of his arrest he went to Boise City in the night of April 15-16, and there visited a saloon and drank with citizens at the bar between 11.30 p. m. and 1 a. m., and also visited a house of prostitution and behaved in a boisterous and disorderly manner in company with the same prostitute whom he was charged with chasing about the saloon, being at the time in the uniform of a commissioned officer.

Upon these acts additional charges were made of conduct to the prejudice of good order and military discipline and conduct unbecoming an officer and a gentleman, and he was convicted upon these charges also. He was sentenced to be dismissed the service, and the sentence was approved and confirmed by the President.

The proceedings upon this last trial show that the sentence was not approved without a very careful review and examination both by General Schofield and by the President. Were I now empowered to review the proceedings again, I should be compelled to reach the same conclusion.

Captain Bailey has produced before the committees of the respective Houses a number of affidavits, some of which tend to impeach one of the principal witnesses for the prosecution, and in some of which other



witnesses to some degree modify the testimony given by them ten years before. Giving full effect, however, to these ex parte affidavits, the conviction still remains sustained by the evidence.

It is plain that, when the President disapproved the conviction of embezzlement in 1871, when the conviction of the neglect of duty in 1873 was punished only by a reprimand, and when the conviction "unbecoming an officer and a gentleman," involving the misappropriation of public moneys in 1874, was followed by the President's mitigation of the sentence of dismissal to suspension for six months, the captain had the full benefit of his record as a volunteer officer in the civil war.

I do not think that further clemency can be extended on this ground consistently with the due administration of the law. I should not regard it as a proper exercise of the appointing power vested in me by the Constitution to appoint as an officer in the Army a man with the record of Captain Bailey, and with the sentence standing against him of dismissal from the Army, based upon sufficient grounds, after a fair trial, and after approval by my predecessor in the performance of his official duty.

THEODORE ROOSEVELT.