

CHAPTER LXXII.

"HEREIN ARE THE GOOD ORDINANCES OF THE SEA, WHICH WISE MEN, WHO VOYAGED ROUND THE WORLD, GAVE TO OUR ANCESTORS, AND WHICH CONSTITUTE THE BOOKS OF THE SCIENCE OF GOOD CUSTOMS."

--The Consulate of the Sea.

The present usages of the American Navy are such that, though there is no government enactment to that effect, yet, in many respect, its Commanders seem virtually invested with the power to observe or violate, as seems to them fit, several of the Articles of War.

According to Article XV., "No person in the Navy shall quarrel with any other person in the Navy, nor use provoking or reproachful words, gestures, or menaces, on pain of such punishment as a court-martial shall adjudge."

"Provoking or reproachful words!" Officers of the Navy, answer me! Have you not, many of you, a thousand times violated this law, and addressed to men, whose tongues were tied by this very Article, language which no landsman would ever hearken to without flying at the throat of his insulter? I know that worse words than you ever used are to be heard addressed by a merchant-captain to his crew; but the merchant-captain does not live under this XVth Article of War.

Not to make an example of him, nor to gratify any personal feeling, but to furnish one certain illustration of what is here asserted, I honestly declare that Captain Claret, of the Neversink, repeatedly violated this law in his own proper person.

According to Article III., no officer, or other person in the Navy, shall be guilty of "oppression, fraud, profane swearing, drunkenness, or any other scandalous conduct."

Again let me ask you, officers of the Navy, whether many of you have not repeatedly, and in more than one particular, violated this law? And here, again, as a certain illustration, I must once more cite Captain Claret as an offender, especially in the matter of profane swearing. I must also cite four of the lieutenants, some eight of the midshipmen, and nearly all the seamen.

Additional Articles might be quoted that are habitually violated by the officers, while nearly all those exclusively referring to the sailors are unscrupulously enforced. Yet those Articles, by which the sailor is scourged at the gangway, are not one whit more laws than those other Articles, binding upon the officers, that have become obsolete from immemorial disuse; while still other Articles, to which the sailors alone are obnoxious, are observed or violated at the caprice of the Captain. Now, if it be not so much the severity as the certainty of punishment that deters from transgression, how fatal to all proper reverence for the enactments of Congress must be this disregard of its

statutes.

Still more. This violation of the law, on the part of the officers, in many cases involves oppression to the sailor. But throughout the whole naval code, which so hems in the mariner by law upon law, and which invests the Captain with so much judicial and administrative authority over him--in most cases entirely discretionary--not one solitary clause is to be found which in any way provides means for a seaman deeming himself aggrieved to obtain redress. Indeed, both the written and unwritten laws of the American Navy are as destitute of individual guarantees to the mass of seamen as the Statute Book of the despotic Empire of Russia.

Who put this great gulf between the American Captain and the American sailor? Or is the Captain a creature of like passions with ourselves? Or is he an infallible archangel, incapable of the shadow of error? Or has a sailor no mark of humanity, no attribute of manhood, that, bound hand and foot, he is cast into an American frigate shorn of all rights and defences, while the notorious lawlessness of the Commander has passed into a proverb, familiar to man-of-war's-men, the law was not made for the Captain! Indeed, he may almost be said to put off the citizen when he touches his quarter-deck; and, almost exempt from the law of the land himself, he comes down upon others with a judicial severity unknown on the national soil. With the Articles of War in one hand, and the cat-o'-nine-tails in the other, he stands an undignified parody upon Mohammed enforcing Moslemism with the sword and the Koran.

The concluding sections of the Articles of War treat of the naval courts-martial before which officers are tried for serious offences as well as the seamen. The oath administered to members of these courts--which sometimes sit upon matters of life and death--explicitly enjoins that the members shall not "at any time divulge the vote or opinion of any particular member of the court, unless required so to do before a court of justice in due course of law."

Here, then, is a Council of Ten and a Star Chamber indeed! Remember, also, that though the sailor is sometimes tried for his life before a tribunal like this, in no case do his fellow-sailors, his peers, form part of the court. Yet that a man should be tried by his peers is the fundamental principle of all civilised jurisprudence. And not only tried by his peers, but his peers must be unanimous to render a verdict; whereas, in a court-martial, the concurrence of a majority of conventional and social superiors is all that is requisite.

In the English Navy, it is said, they had a law which authorised the sailor to appeal, if he chose, from the decision of the Captain--even in a comparatively trivial case--to the higher tribunal of a court-martial. It was an English seaman who related this to me. When I said that such a law must be a fatal clog to the exercise of the penal power in the Captain, he, in substance, told me the following story.

A top-man guilty of drunkenness being sent to the gratings, and the

scourge about to be inflicted, he turned round and demanded a court-martial. The Captain smiled, and ordered him to be taken down and put into the "brig," There he was kept in irons some weeks, when, despairing of being liberated, he offered to compromise at two dozen lashes. "Sick of your bargain, then, are you?" said the Captain. "No, no! a court-martial you demanded, and a court-martial you shall have!" Being at last tried before the bar of quarter-deck officers, he was condemned to two hundred lashes. What for? for his having been drunk? No! for his having had the insolence to appeal from an authority, in maintaining which the men who tried and condemned him had so strong a sympathetic interest.

Whether this story be wholly true or not, or whether the particular law involved prevails, or ever did prevail, in the English Navy, the thing, nevertheless, illustrates the ideas that man-of-war's-men themselves have touching the tribunals in question.

What can be expected from a court whose deeds are done in the darkness of the recluse courts of the Spanish Inquisition? when that darkness is solemnised by an oath on the Bible? when an oligarchy of epaulets sits upon the bench, and a plebeian top-man, without a jury, stands judicially naked at the bar?

In view of these things, and especially in view of the fact that, in several cases, the degree of punishment inflicted upon a man-of-war's-man is absolutely left to the discretion of the court,

what shame should American legislators take to themselves, that with perfect truth we may apply to the entire body of the American man-of-war's-men that infallible principle of Sir Edward Coke: "It is one of the genuine marks of servitude to have the law either concealed or precarious." But still better may we subscribe to the saying of Sir Matthew Hale in his History of the Common Law, that "the Martial Law, being based upon no settled principles, is, in truth and reality, no law, but something indulged rather than allowed as a law."

I know it may be said that the whole nature of this naval code is purposely adapted to the war exigencies of the Navy. But waiving the grave question that might be raised concerning the moral, not judicial, lawfulness of this arbitrary code, even in time of war; be it asked, why it is in force during a time of peace? The United States has now existed as a nation upward of seventy years, and in all that time the alleged necessity for the operation of the naval code--in cases deemed capital--has only existed during a period of two or three years at most.

Some may urge that the severest operations of the code are tacitly made null in time of peace. But though with respect to several of the Articles this holds true, yet at any time any and all of them may be legally enforced. Nor have there been wanting recent instances, illustrating the spirit of this code, even in cases where the letter of the code was not altogether observed. The well-known case of a United States brig furnishes a memorable example, which at any moment may be repeated. Three men, in a time of peace, were then hung at the

yard-arm, merely because, in the Captain's judgment, it became necessary to hang them. To this day the question of their complete guilt is socially discussed.

How shall we characterise such a deed? Says Black-stone, "If any one that hath commission of martial authority doth, in time of peace, hang, or otherwise execute any man by colour of martial law, this is murder; for it is against Magna Charta."* [* Commentaries, b. i., c. xiii.]

Magna Charta! We moderns, who may be landsmen, may justly boast of civil immunities not possessed by our forefathers; but our remoter forefathers who happened to be mariners may straighten themselves even in their ashes to think that their lawgivers were wiser and more humane in their generation than our lawgivers in ours. Compare the sea-laws of our Navy with the Roman and Rhodian ocean ordinances; compare them with the "Consulate of the Sea;" compare them with the Laws of the Hanse Towns; compare them with the ancient Wisbury laws. In the last we find that they were ocean democrats in those days. "If he strikes, he ought to receive blow for blow." Thus speak out the Wisbury laws concerning a Gothland sea-captain.

In final reference to all that has been said in previous chapters touching the severity and unusualness of the laws of the American Navy, and the large authority vested in its commanding officers, be it here observed, that White-Jacket is not unaware of the fact, that the responsibility of an officer commanding at sea--whether in the merchant

service or the national marine--is unparalleled by that of any other relation in which man may stand to man. Nor is he unmindful that both wisdom and humanity dictate that, from the peculiarity of his position, a sea-officer in command should be clothed with a degree of authority and discretion inadmissible in any master ashore. But, at the same time, these principles--recognised by all writers on maritime law--have undoubtedly furnished warrant for clothing modern sea-commanders and naval courts-martial with powers which exceed the due limits of reason and necessity. Nor is this the only instance where right and salutary principles, in themselves almost self-evident and infallible, have been advanced in justification of things, which in themselves are just as self-evidently wrong and pernicious.

Be it here, once and for all, understood, that no sentimental and theoretic love for the common sailor; no romantic belief in that peculiar noble-heartedness and exaggerated generosity of disposition fictitiously imputed to him in novels; and no prevailing desire to gain the reputation of being his friend, have actuated me in anything I have said, in any part of this work, touching the gross oppression under which I know that the sailors suffers. Indifferent as to who may be the parties concerned, I but desire to see wrong things righted, and equal justice administered to all.

Nor, as has been elsewhere hinted, is the general ignorance or depravity of any race of men to be alleged as an apology for tyranny over them. On the contrary, it cannot admit of a reasonable doubt, in

any unbiased mind conversant with the interior life of a man-of-war, that most of the sailor iniquities practised therein are indirectly to be ascribed to the morally debasing effects of the unjust, despotic, and degrading laws under which the man-of-war's-man lives.