

V.

**Government Targeted Brief
On Receipt of Intelligence
as a Requirement of
Aiding the Enemy
Enclosure 2**

29 March 2013

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U. S. Army. Judge Advocate
General.

A^V DIGEST

OF

OPINIONS

OF THE

JUDGE ADVOCATES GENERAL OF THE ARMY,

WITH NOTES,

BY

COLONEL W. WINTHROP,

ASSISTANT JUDGE-ADVOCATE-GENERAL, UNITED STATES ARMY,
AUTHOR OF "MILITARY LAW AND PRECEDENTS."



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PREFACE.

This volume contains, with some omissions and revisions, the abstracts of opinions published in the last edition of the **DIGEST**, that of 1880, supplemented by selections from the opinions rendered by the Judge-Advocate-General, or Acting Judge-Advocate-General, of the Army, during the fourteen years succeeding. The present publication is the final one of a series of issues under the same Title, prepared by the author, of which the first appeared in 1865.

The citations of the "**DIGEST**" in the forthcoming new edition of the author's work on **MILITARY LAW AND PRECEDENTS**, refer to this publication.

WASHINGTON, D. C., *January 1, 1895.*

The numerals at the end of the separate paragraphs (or sentences) of the text refer to volumes and pages of the official Record Books of the Bureau, consisting of permanent folios of which the volumes are designated in roman and press books designated in arabic.

NOTICE.

While this work has been passing through the press there has been published General Order, No. 16, of March 25, 1895, amending G. O. 21 of 1891, "establishing limits of punishment for enlisted men of the Army." The amending order should be taken into consideration in connection especially with the within Titles of MAXIMUM PUNISHMENT, PREVIOUS CONVICTIONS, and SUMMARY COURT.

amenable to trial and punishment by court-martial under either Article.¹ II, 498; V, 291; XI, 215, 454.

2. During the late war, all inhabitants of insurrectionary States were *prima facie* enemies in the sense of this and the succeeding Article.² XIV, 266. A citizen of an insurgent State who entered the U. S. military service became of course no longer an enemy. So held of a Lieutenant of the 1st E. Tenn. Cavalry. XXIX, 206.

3. It is no less a *relieving* an enemy under this Article that the money, &c., furnished is *exchanged* for some commodity, as cotton, valuable to the other party. XII, 385; XIV, 266; XVI, 446.

4. The act of "relieving the enemy" contemplated by this Article is distinguished from that of trading with the enemy in violation of the laws of war; the former being restricted to certain particular forms of relief, while the latter includes every kind of commercial intercourse not expressly authorized by the government. XIV, 266. [See LAW OF WAR § 1.]

FORTY-SIXTH ARTICLE.

"Whosoever holds correspondence with, or gives intelligence to, the enemy, either directly or indirectly, shall suffer death, or such other punishment as a court-martial may direct."

¹Admitting this construction to be warranted so far as relates to acts committed on the theatre of war or within a district under martial law, it is to be noted that it is the effect of the leading adjudged cases to preclude the exercise of the military jurisdiction over this class of offences, when committed by civilians in places not under military government or martial law. See, especially, *Ex parte Milligan*, 4 Wallace, 121-123; *Jones v. Seward*, 40 Barb. 563; also other cases cited in note to COURT-MARTIAL, II § 7.

²See the opinion of the U. S. Supreme Court, (frequently since reiterated, in substance,) as given by Grier, J., in the "Prize Cases," 2 Black, 666, (1862;) and by Chase, C. J., in the cases of *Mrs. Alexander's Cotton*, and *The Venice*, 2 Wallace, 274, 418, (1864.) In the latter case the Chief Justice observes: "The rule which declares that war makes all the citizens or subjects of one belligerent enemies of the government and of all the citizens or subjects of the other, applies equally to civil and to international wars." That an insurrectionary State was no less "enemy's country," though in the military occupation of the United States, with a military governor appointed by the President—see opinion by Field J. in *Coleman v. Tennessee*, 7 Otto, 516-517.

1. *Held* that the offence of *holding correspondence* with the enemy was completed by writing and putting in progress a letter to an inhabitant of an insurrectionary State during the late war; it not being deemed essential to this offence that the letter should reach its destination.¹ IV, 368; V, 274, 287; X, 567.

2. It is essential, however, to the offence of *giving intelligence* to the enemy that material information should actually be communicated to him; the communication may be verbal, in writing, or by signals. XIV, 273.

FORTY-SEVENTH ARTICLE.

"Any officer or soldier who, having received pay, or having been duly enlisted in the service of the United States, deserts the same, shall, in time of war, suffer death, or such other punishment as a court-martial may direct; and in time of peace, any punishment, excepting death, which a court-martial may direct."

SEE DESERTION.

FORTY-EIGHTH ARTICLE.

"Every soldier who deserts the service of the United States shall be liable to serve for such period as shall, with the time he may have served previous to his desertion, amount to the full term of his enlistment; and such soldier shall be tried by a court-martial and punished, although the term of his enlistment may have elapsed previous to his being apprehended and tried."

The liability to make good to the United States the time lost by desertion, enjoined by the first clause of this Article, is independent of any *punishment* which may be imposed by a court-martial, on conviction of the offence: it need not, therefore, be adjudged or mentioned in terms in a *sentence*.² XLII, 130. [See § 8, *post*.] If the conviction is *disapproved*, the legal status of the accused is the same as if he had been acquitted, and the obligation of additional service is of course not incurred. XXVI, 568.

2. Where a deserter was sentenced to imprisonment for the "balance of his term;" *held* that he was not absolved from

¹ Compare Hensey's Case, 1 Burrow, 642; Stone's Case, 6 Term, 527; Samuel, 580.

² See G. O. 21, Dept. of the Lakes, 1873; do. 94, Dept. of the Missouri, 1867; G. C. M. O. 74, Dept. of the East, 1873. The old ruling *contra*, (see G. O. 26, 45, Hdqrs. of Army, 1843,) may be regarded as abandoned in our law and practice.