

ings of a court martial. This is true; but if the argument is intended to go to the length of questioning the power in the courts of law, to issue such writs as that demanded, this may be best answered by the language of Sir Alexander Colburn, the Chief Justice of England in the case of Major Mansorgh, which was an applicant for a certiorari to bring up the proceedings of a court martial held on the applicant in India, in which he says:—"I quite agree that when the civil rights of a person in military service are affected by the judgment of military tribunal, in pronouncing which the tribunal has either cited without jurisdiction, or has exceeded its jurisdiction, this court ought to interfere to protect those civil rights. We have then this very high authority for the position that it would be the duty of the Civil Courts to interfere. If so in that case, one of a person in military service, what is the obligation of Civil Courts in the case of a person alleging himself not to be in military service and this last is the case put to me by the petitioner. As to the authority of the Superior Court it rests on a statute foundation, "excepting the Court of Queen's Bench (and this Court exercises no original jurisdiction in civil matters, no case originates in it) all Courts and Magistrates, and all other persons and bodies politic and corporate within Lower Canada, shall be subject to the superintending and reforming power, order and control of the Superior Court and of the Judges thereof." Courts martial are courts of limited and special jurisdiction, called into existence for a special purpose, dependant on the Mutiny Act for their authority, which authority extends no further than upon persons liable to military law. The law intends nothing in their favor, and those who may have to justify its judgments will be expected to set forth affirmatively and closely all facts to show that it was legally constituted and had jurisdiction. Whenever a *prima facie* case is made out that a Court Martial has assumed jurisdiction over a man not subject to military discipline, there can be found no authority that would justify the Civil Courts from refraining to exercise its controlling power by the issue of one of the prerogative writs as to the remedy by action of trespass. The rule of law is, where a Court has jurisdiction, it has a right to decide an question which occurs in the cause, and whether its decision be right or otherwise, its judgments, until reversed, are binding on all courts. But if it act without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void, and form no bar to remedy sought in opposition to them even prior to reversal. They constitute no justification; and all persons concerned in executing such judgments or sentences are considered in law as trespassers. Lord Mansfield in *Mostyn vs. Farnogas* says I remember early in my time being counsel in an action brought by a carpenter in the train of artillery against Governor Sabine, who was Governor of Gibraltar, and who barely confirmed the sentence of a court martial, by which the plaintiff had been tried and sentenced to be whipped. The Governor was very ably defended, but nobody even thought that the action would not lie; and it being proved at the trial, that the tradesmen who follow the train are not liable to martial law, the Court was of that opinion, and the jury accordingly found the defendant guilty of the trespass, as having had a share in the sentence, and gave £500 damages. The Supreme Court of the United States hold, that trespass lies against a collector of militia fines, who distrained for a fine imposed by a court martial

upon a person not liable to be enrolled; the court martial having no jurisdiction in such cases. The Court said it is a settled principle that the decision of such a tribunal in a case clearly without its jurisdiction, cannot protect the officer who acts under it, that the courts and officers are all trespassers—so that it may be assumed that the petitioner has this remedy,—but there can be no question that if the petitioner makes out a *prima facie* case of want of jurisdiction in the court that tried and convicted him, he has the right to seek a reversal of such proceedings by means of a writ of certiorari. Having a right to both remedies, I have no authority to refuse the one he asks.

I am not to be understood as expressing the opinion that there has been excess of jurisdiction in the court martial in question, that question will properly come up for decision by the court on the return of the certiorari, and I accordingly order one to issue.

Mr. Dunbar, Q. C., and Mr. Bradley, appeared for the petitioner, and Messrs. Alley and Chauveau, for Colonel Strange, and Holt, Irvine and Pemberton for the officers.

### Why Lincoln was Assassinated.

HOW JOHN WILKES BOOTH AVENGED THE EXECUTION OF HIS FRIEND.

Another of the characters of the war time was a wild, dashing, bee-brained young man named John Wilkes Booth. From his father he inherited a certain taint of frenzy under excitement that was cousin gorman to insanity. This Booth was a reckless, handsome fellow, whose delight was to dress well, feed upon female hearts, and in mimicry mouth the utterances of men of creative genius. His blood was hot and passions quick to kindle. In his loves and friendships he was erratic and peculiar. He did not try to study himself, and grew up wild and tumultuous.

Among the chosen friends of his boyhood was a dashing, chivalrous young man named John Y. Beal, whose home was in the beautiful Shenandoah Valley not far from Winchester, as we know from having been there. Damon and Pythias were not more attached to each other than were Booth and Beal. They rode, walked, dined, drank, and intrigued together. Beal was Southern in his sympathies, and was to a certain extent as much a martyr as was erratic John Brown, who was taken in a raid, hung in the jail-yard at Charlestown, Va., by order of Governor Wise, and whose scaffold as we write this, is now in our office. Beal planned raids on Northern cities, and at last was captured at or near Buffalo, tried for piracy on Northern lakes, and sentenced to be hung on Bedloe's Island in the harbor of New York. In prison, waiting his doom, we leave him for a time.

One afternoon, in the city of Washington, while Beal was under sentence of death, there alighted from a carriage two men, who walked into the room occupied by Washington McLean, of Cincinnati, who was at the time in Washington in the interest of his business. These men who called were Senator Hale, of New Hampshire, and John Wilkes Booth, with whom, through the Morgans, of Kentucky, McLean had become quite well acquainted.

Their errand was briefly told. Booth was anxious to save the life of Beal, his chum and confidential personal friend. He had interested Mr. Hale in his behalf, who, from his former identification of the political movement that had grown into the elevation of Lincoln to the Presidency, had come to ask of the Executive the favour of mercy for a

brave enemy, who had, in defence of his friends in the South, done no more than the people in the North applauded their scouts and adventurers for doing or attempting.

They importuned McLean to go with them to the President, as a Democrat—as a friend of Booth—as a man who had much influence with Mr. Lincoln, and to vouch with Mr. Hale for any promises Booth might make in return for this great favour to him. After a protracted interview McLean accompanied Hale and Booth in a carriage to the residence of John W. Forney was awakened from his sleep and told the object of his call. His sympathies were enlisted, as he was always ready to serve his friends.

It was an hour or more past midnight when Hale, Forney, McLean, and Booth were driven to the White House. The guard, at the request of Forney, admitted the carriage to the grounds, Mr. Lincoln was called from his sleep, and there, in the dead of night, he sat and listened to the prayers of Booth and endorsements of those who came with him to ask the favour of Executive clemency.

This interview lasted till four o'clock in the morning. It was one of tears, prayer, and petition. There were not a dry eye in the room as Booth knelt at the feet of Lincoln, clasped his knees with his hands, and begged him to spare the life of one man—a personal friend who, in serving the ones he loved, had come to the door of death.

Booth told all. He told how, long before, in a fit of passion to do some bold deed, he had joined in a conspiracy to abduct the President and to hold him as a hostage for the release of certain military prisoners who were Booth's friends, and who, it was thought, were to be shot. He told of the meetings they had held at the house of Mrs. Surratt, and that all of that plan had fallen to the ground long before.

He offered his services at any time and in any place or capacity, free of cost or fearless of consequences. The eminent gentlemen who were there with him joined in the request that the prayer of Booth be granted, and that Beal should be pardoned.

At last President Lincoln, with the tears streaming down his face, took Booth by the hands, bade him rise and stand like a man, and gave him his promise that Beal should be pardoned. He asked the party to depart that he might gain rest for the work of the morrow, and said that the official document they asked for should be forwarded at once to United States Marshal Robert Murray, in New York, and through him to the officers charged with the execution of Beal.

After breakfast Lincoln informed Seward, Secretary of State, what he had done or promised to do. Seward said it must not be; that public sentiment in the North demanded that Beal should be hung. He declared that to pardon Beal would discourage enlistments, lengthen the war, and insult the sentiment that called for blood. He chided Lincoln for making such promises without asking the advice of his Cabinet, or advising with himself (Seward) on State policy. As the argument grew contentious Seward declared that if the conduct of the war was to be trifled with by appeals for humanity he should go out of the Cabinet, and use his influence against the President, and should charge him with being in sympathy with the South. Lincoln yielded, and Beal was executed. The reaction to Lincoln's nervous system was such that for days he was fit from well.

The effect on Booth was terrible. He raved like a madman, and in his frenzy swore that Lincoln and Seward should both pay for the grief and agony he had been put to.