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the question of whether a man is a deserter, a spy, or any other offender for which courts-martial try and punish, it may lead to great embarrassment. The case in hand is that of a minor for whom the father sues out a writ of habeas corpus. I submitted the case to you on the 11th instant, and under date of 15th you say, "By the act of Congress approved February 13, 1862, all laws discharging minors are repealed; this man will therefore be returned to his regiment as a deserter."

The law of 1862 repeals the law of 1850, which requires the Secretary of War to discharge minors enlisted without guardian's consent. It is contended that it does not repeal prior laws requiring the consent.

I have the honor to be, your obedient servant,
A. S. DIVEN,
Actg. Asst. Prov. Mar. Gen., Western Dist. of N. Y.

[Indorsement.]

Mr. WHITING:

This question is becoming one of importance, and unless we get on the right ground and stick to it invariably we will become involved. Will you advise me in the matter? I must give Major Diven an answer within two days to meet the particular case in point.

J. B. FRY.

[Inclosure.]

ACTG. ASST. PROVOST-MARSHAL-GENERAL'S OFFICE,
Elmira, N. Y., June 18, 1863.

Hon. E. P. BROOKS,
Judge, &c.:

DEAR SIR: Pending the proceedings on a writ of habeas corpus in the case of Stillman Duane Clements, One hundred and fifty-fourth New York Volunteers, arrested as a deserter, I addressed you a hasty note. As the object of my thus addressing you might be misapprehended, I now write you more deliberately and with this purpose. In the execution of military orders, necessarily arbitrary, with all the prudence that can be exercised there is great danger of a collision between civil and military authorities. It is with an honest desire to avoid this in this locality that this communication is made; and I make it in writing instead of asking a personal conversation, because I desire to submit to those from whom I receive my orders my exact position, that they may correct me if I mistake their intent in orders to me. The provost-marshals are required to arrest deserters, spies, &c., and convey them to military stations where they may be tried by court-martial, or dealt with according to military usage.

If, when an arrest is made under these orders, a writ of habeas corpus is issued, I should direct the marshal to show to the court granting the writ the regularity of the arrest and the order under which he acted, and his authority, if questioned. But if it were claimed by the judge that he could try the regularity of the enlistment and the questions properly triable by a court-martial, and release the prisoner if he was not proved to be a deserter, then I should deem it my duty to advise the provost-marshals, or those acting under them, not to produce the prisoners before the judge issuing the writ, but to convey them to the military post as directed by

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the military orders, and should furnish them the necessary escort to enable them to do so. I may be mistaken in the understanding of my duty, and am glad the time to which the hearing in question is adjourned will give me opportunity to consult the authorities at Washington.

I have the honor to be, your obedient servant.

A. S. DIVEN,
Major, Acty. Asst. Provost-Marshal-General, Western N. Y.

NEW YORK, *June 18, 1863.*

Col. JAMES B. FRY,
Provost-Marshal-General:

The excitement incident to invasion of Pennsylvania has not in any way interfered with the progress of the enrollment. All is going on well and with all possible rapidity.

ROBT. NUGENT,
Col. 69th Regt. N. Y. V. and Acty. Asst. Prov. Mar. General.

COLUMBUS, OHIO, *June 18, 1863.*

A. LINCOLN,
President of the United States:

The opponents of the Administration will attempt to attribute my defeat to the advocacy of the leading measures of your Administration. Do not for a moment believe it. Personal considerations alone were the cause of my defeat. No man in Ohio will do more to secure the triumphant election of the ticket nominated than I will.

DAVID TOD,
Governor.

ADJUTANT-GENERAL'S OFFICE,
June 18, 1863.

His Excellency DAVID TOD,
Governor of Ohio, Columbus, Ohio:

SIR: I am instructed by the Secretary of War to inform you that you are hereby authorized to raise one regiment of infantry to be composed of colored men to be mustered into the service of the United States for three years or during the war. To these troops no bounties will be paid.

The organization of the regiment must conform strictly to the requirements of General Orders, No. 110, War Department, 1863, a copy of which is herewith.*

The prescribed number of commissioned officers will be appointed in accordance with the provisions of General Orders, No. 143, War Department, 1863, a copy of which is inclosed.† To facilitate the appointment of the officers, it is respectfully suggested that it would be well to forward to the War Department as early as practicable the names of such persons as you wish to have examined for appointment.

* See p. 175.

† See p. 215.