

Courts Martial Proceedings
Captain Joshua Barnes, Loyal American Regiment
March 11-15, 1779 (New York)

Duly transcribed by M. Christopher New, completed in the year of our Lord two-thousand and five

Captain Joshua Barnes of the Provincial Corps of Loyal Americans came Prisoner before the Court of the following Crimes:

- 1.- Cowardice.
- 2.- Plundering two or three Chests of Shirts, &c. at Fort Montgomery when under care of a Guard and making use of Lieut. Col. Emmerick's name as an order for that purpose; and the following witnesses were examined in support of the accusation, vizt.

Lieut. Col. Andreas Emerick of the Corps of Chasseurs being duly sworn, deposed that Captain Barnes was under his command with a Detachment from the Loyal Americans on the Expedition up the North River in October 1777; that upon the Troops forming about a Mile from Fort Montgomery where they first met with an opposition from the Enemy, he observed that Captain Barnes was not with his party; that two pieces of Cannon were taken from the Enemy at this time, and after this affair was over, Captain Barnes came up to his Party, and upon his (Colonel Emmerick's) asking him where he had been, he said that he had been sent back by Lieut. Col. Campbell of the 52nd Regt.; that the day after Fort Montgomery was stormed it was reported to him (Col. Emerick) that Captain Barnes had plundered several Chests of Shirts &c. he himself found his Negroes carry Chests of Linen &c. backwards & forwards when he went into the House where Captain Barnes was.

Q: (by the Court) Was Captain Barnes at the Storming of Fort Montgomery?

A: He remembered to have seen him and Spoke to him immediately after they entered the Fort.

Q: What Guard were the Chests of Shirts &c. under the care of?

A: He does not recollect that there was a Guard.

Q: Did he ever give Captain Barnes an order to take those Chests &c. from the Guard?

A: No.

Q: Did not Captain Vanderburgh complain to him the next morning that Capt. Barnes had behaved Cowardly and had plundered?

A: Yes he did.

Q: Did he not also desire that he (Col. Emerick) would put him in arrest?

A: Yes, but he (Col. Emerick) answered that he belonged to another Corps, & had a large family, and he would endeavour to get rid of him.

Q: (by desire of Captain Barnes) Did he see Captain Barnes take any thing out of the Chests?

A: Yes; as far as he can recollect he saw two or three Chests full of leather Breeches⁽¹⁾, Shirts &c. and he told Captain Barnes at the time that such behaviour meaning the Plundering, did not become an Officer.

Q: Did he not recollect sending Capt. Barnes out that night with a party to bring in some persons, who were concealed, and his bringing in Sixteen Prisoners?

A: He does not.

John Miller, late Lieut. in the Loyal American Reg: being duly sworn, deposed that as the Loyal American Regiment were marching up to the attack of Fort Montgomery, he (the witness) saw Captain Barnes and his party on their right, and he heard somebody of his party say to Capt. Barnes, "let us go on or the other will get ahead of us" & Captain Barnes answered, "let them go on; they are so fierce, I'll warrant they'll pay for it."

Q: (by the court) At what distance was Captain Barnes from the Fort at this time?

A: About a hundred & twenty or thirty yards.

Q: Had not the whole army advanced some distance, before Captain Barnes made the halt, at the time that he heard this?

A: He does not know, as he did not see Captain Barnes 'till they pass'd them.

Q: Was the place where Captain Barnes halted, exposed to the fire of the Enemy?

A: As nearly as he can recollect, he was not, being covered by a little swamp & some rocks.

Q: (by the desire of Capt. Barnes) Did he ever see Captain Barnes, in any action, where there was danger?

A: He was with him in the action at Ward's House, & he thought he behaved extremely well, and very like a Soldier tho' the fire was very hot.

Lieut. Charles Colborn, of the Loyal American Reg.t of Foot, being duly sworn, deposed that as they were marching up to the attack of Fort Montgomery, he saw Captain Barnes & his Party halted at about an hundred yards from the Fort, and he heard some one of that party say to Capt. Barnes, let us go on, for the troops are going on and will all get ahead of us, and Captain Barnes answered, let them go, & I'll be damned if they don't get enough of it; that he (the witness) heard several officers of the Loyal American Regt. speak of this affair: and in a Conversation he afterwards had with Captain Barnes, himself, Captain Barnes said that he understood that several of the officers had mentioned this circumstance; to this the Witness answered, he knew as much of the matter, as any of them, as he himself had heard it; that Capt. Barnes reply'd that he must certainly be mistaken for that he did not remember to have said so, but that finding from the flashes that there was a very heavy fire, he laid down and made his men do the same, that Lieut. McDonald of the New York Volunteers then going by, asked him what he did there, and he answered that he lay to save his men, and the consequence was that Lieut. McDonald lost a great many men & he (Capt. Barnes) very few, and yet was in the Fort very near as soon as the New York Volunteers.

¹ Note: There is mention in the narrative of a captured 5th New York Ensign, Abraham Leggett, of having Alsop and Hunt brand leather breeches stolen and worn the next day by a Loyalist officer, a "Captain J. Barns of Emmirick Core." -- Thanks to Steve Gilbert for this information.

He further deposed that the day after the Fort was taken, he saw several chests & bundles in the Barracks and he himself moved them from the Lower to the upper Room, that about two months after, in a conversation he had with Capt. Barnes in regard to Fort Montgomery, he (the witness) observed to him that he believed there had been a great deal of plunder got there & Captain Barnes answered that he believed there had been, that he then asked Capt. Barnes if he had a Hanger to dispose of and he reply'd that he had three, which he got at Fort Montgomery, and that he had also at the same time got, sixty pair of Leather Breeches, twenty seven ruffled shirts and three Beaver Hats, and that what he got altogether there, would be as good as five hundred pounds to him.

Q: (by desire of Capt. Barnes) Where was Captain Barnes at the time, he (the witness) mov'd the chests?

A: He was gone out with Col. Emerick, he (the witness) mounted Guard at 8 o'clock in the morning and mov'd the things about 4 or 5 o'clock in the afternoon, & Capt. Barnes was not then in the Fort.

Captain Richard Vanderburgh of Lieut. Col. Emerick's Corps of Chasseurs being duly sworn, deposed that he mounted the first guard, after the King's Troops had taken possession of Fort Montgomery; that in a Barrack room which he made use of as a Guard room he found several Chests, one of which he opened & saw among other things a pair of Breeches and a short sword which sword, according to the best of his remembrance, he has since seen Capt. Barnes wear; that about 10 o'clock at night Capt. Barnes came into the room and wanted to take the Chests away and upon his (the Witness) refusing to let him have them Capt. Barnes said it was Col. Emerick's order that they should be removed and in consequence of this, he permitted him to take them & he (Capt. Barnes) removed them into an upper apartment; when he examined the Chests in the morning they were then entirely empty.

Q: What other things were in the Chest?

A: There were Shirts, Shoes, Breeches and other wearing apparel.

Q: Did he examine the Chests previous to his being relieved off guard?

A: Yes, and he tax'd Capt. Barnes with having taken the things out of them, & he said that he supposed they had been taken out by a Serjeant but he had still reason to think that Capt. Barnes had taken them, as he and his Negro lay in the next room.

Q: Did he not report to Col. Emerick the next morning, Capt. Barnes having taken those things out of the chest?

A: Yes, he did.

Q: Could any body have gone into the Room, where the Chests were, without passing his Guard?

A: Not unless they broke through the partition, which was really the case.

Q: Was the partition that was broke through, the one that divided the room where the goods were, from that in which Captain Barnes lay?

A: He does not from his own knowledge know that Capt. Barnes lay in the next Room, but was told so by Capt. Bonapace.

Capt. Vanderburgh further deposed that he asked Captain Barnes the next morning, where he was at the time the Fort was taken, as he had not seen him, and he added that he thought he behaved very ill, and Captain Barnes answered, "Never mind, say nothing."

Q: How long did he see Capt. Barnes, after the Fort was taken?

A: About half an hour.

Q: Was Capt. Barnes detached from Col. Emerick's Corps at any time that day?

A: Not to his knowledge.

Q: (by desire of Capt. Barnes) Was not Col. Emerick's Corps divided into three parties that day?

A: The [space] were told off in Divisions, but the whole acted together.

Q: Did he not hear Capt. Barnes say that his pockets had been pick'd that night?

A: No, he did not.

Q: Did he not afterwards give Captain Barnes a pair of Knee buckles, which had been taken from him that night?

A: A Soldier had given a pair of Knee Buckles in charge to him, which he shew'd to Captain Barnes & Capt. Barnes claimed, upon which he gave them to Capt. Barnes and told the Soldier of his having done so.

Q: Does he recollect any shoes or stockings which had been taken out of these Chests, being delivered to the men the next day?

A: No he does not.

Q: Were there not other persons who took Saddles & Boots?

A: He believes that Capt. Althouse got a pair of Boots, but he does not know whether he bought them or not.

Lieut. Benjamin Hunt of Lieut. Col. Emmerick's Corps of Chasseurs, being duly sworn deposed that Captain (then Lieut.) Ulthouse, having been sent out with a part of 26 Men towards Tarry-Town in the Evening of the 2 of January, Capt. Barnes was detached the next Morning with from twenty to thirty Men, in order to Support him, and the Witness was one of the Party, that whilst Capt. Barnes's party halted at place called Tuikeyho⁽²⁾ they saw between twenty and thirty Men at about a Mile & a half distance, which they took to be Capt. Althouse's detachment, but as they were returning towards Kingsbridge, they discovered 200 Rebels about a Quarter of a Mile in their Front, that it was determined upon by Captain Barnes, with the advice of the Witness, that they should file off to their right, in order to avoid this Party; but in ascending the Hill, in order to [accomplish] this they fell in with another party of Rebels consisting of forty six who were laying concealed behind some Rocks & fired upon them at about fifteen yards distance; that upon receiving the Second Volley from the Rebels Capt. Barnes called out for Quarter, & they surrendered themselves Prisoners.

Q: Did any of Capt. Barnes's Party fire?

A: He (the witness) himself fired, as did one or two more after Capt. Barnes called for quarter.

Q: Did any of Capt. Barnes's party fire before he asked for Quarter?

A: There were three or four fired.

Q: Did any and how many of Capt. Barnes's party fall by the two Vollies of the Enemy?

A: Two fell, one was killed and another wounded.

Q: How long was it from the time of their receiving the first fire to Capt. Barnes's asking for

² This place name is underlined in the manuscript as if they weren't sure of the spelling. It appears to actually be Tuckahoe, NY, which seems a bit out of the way, if they were going from Kingsbridge to Tarrytown.

Quarter?

A: Not above half a minute, they loaded again as fast as they could.

Q: Does he imagine that the Party of 200 Rebels saw Capt. Barnes's Party?

A: He has reason to think that they did, as he saw an Officer wave his hat to them.

Q: Does he know whether the Party he fell in with belonged to the Party of 200, which they saw in their front?

A: The Captain that commanded them told him that they did & they were detached in order to lay in wait to intercept Capt. Barnes's party.

Q: In case they had beat the party they fell in with, does he think that they could have made good their Retreat to Kingsbridge, without falling in with the larger Party of Rebels?

A: He thinks that if they could have gained the Height on which the party they fell in with was that they might have brought in some of their men.

Q: How far were they then from our out posts?

A: About 7 miles.

Q: Does he imagine from appearances that Capt. Barnes made the best Defence he could?

A: With respect to himself, he thinks that he did, as he had got in among the Rebels, but as to his Men, some of them were in a Situation for fighting, which they did, till they were picked up by the Rebels, one by one.

Q: Was not he (the witness) and the rest of the Party much enraged at the Surrender?

A: They were enraged at the Surrender, because the march was not conducted as they thought it should be, for they were of opinion that they ought to have kept the Height.

Q: Did not some of the Men refused to lay down their arms when they were ordered by Capt. Barnes?

A: Not that he knows of.

Q: Did not Capt. Barnes have Corporal and two men on a height, where they were taken?

A: Yes.

Q: Did he ever know of, or hear the Men say that they thought Captain Barnes had shewn a want of Spirit?

A: Yes, he heard the Men, after being made prisoners, say they thought he did.

The Court adjourned 'till ½ past 10 O'Clock the next Morning.

Saturday, March the 13h, 1779

Alexander Collins, private soldier in Lieut. Col. Emmerick's Corps of Chasseurs, was duly sworn, & deposed that at the attack of Fort Montgomery, he (the Witness) belond'd to the Party, which was commanded by Lieut. Kennedy; that as they advancing to storm the Fort, he saw Capt. Barnes laying behind a rock, about an hundred yards from the Fort, & he (the Witness) called out to him, to come forward and head his party, saying at the same time that the King's Troops in the rear were firing upon those in the Front; but that Captain Barnes neither made him any answer, nor got up, that he (the witness) saw for when he advanced with his own party to the attack, he left Capt. Barnes still behind the rock.

Q: How soon afterwards did he see Capt. Barnes?

A: He did not see him till after they had formed, after having carried the Fort.

Q: Were there any Private Men laying behind the rock with Capt. Barnes?

A: There might perhaps be one, but he is not certain.

Q: Did he call to Capt. Barnes more than once?

A: Yes, he called to him twice, and he (the witness) and James McEvan another Soldier each fired a Shot between the times of calling to him.

Q: Were the Enemy firing upon them at this time?

A: They were.

Q: (be desire of Capt. Barnes) Did he enter the Fort with Lieut. Kennedy?

A: He entered it with the party which Lieut. Kennedy Commandant.

Q: Was it light enough to discover his own party?

A: Yes, he could distinguish his own Men.

Q: How far was he from Capt. Barnes when he saw him laying behind the Rock & called.

A: Not more than ten yards, and he is sure that Capt. Barnes was the person he saw and called to.

Q: Did he call to Capt. Barnes by name?

A: Yes, he did.

The Court adjourned till next Morning at $\frac{1}{2}$ past 10 o'Clock.

Lieut. Benjamin Hunt, of Lieut. Col. Emmerick's Corps of Chasseurs was again examined.

Q: (be desire of Capt. Barnes) Does he recollect Capt. Barnes sending the Serjeant Major forward, when they were coming down into the hollow way, and saw the party of Rebels?

A: The Serjeant Major was sent forward with two men, as they were passing the hollow, & he was the first, who discovered the party of Rebels in the Front.

Q: Did not the Serjeant Major say on his Return, by God, Capt. Barnes, it will be impossible to go thro' them, for there are above three hundred of them.

A: He does not recollect hearing him say so.

Q: Does he recollect the Men on being fired upon by the Rebels, leaving Captain Barnes and running into the woods?

A: Three or four Men inclined to their Right & took to the Wood.

Q: When these Men inclined to the Wood, did he look upon it that it was to avoid fighting?

Q: Yes he did.

A witness called upon on the part of the Prosecution not being able to attend the Court adjourn'd till Monday Morning at 11 o'Clock.

Monday March the 15h 1779.

Serjeant Daniel McLean, of Lieut. Col. Emmerick's Corps of Chasseurs, being duly sworn, deposed that he was with Capt. Barnes on the 3 of January last, the day on which Capt. Barnes and his party were taken prisoners; that the Party of the Enemy consisted of thirty Foot Soldiers & seven Dragoons; and that Capt. Barnes's Detachment consisted of only twenty two, one of which was killed and another wounded by the first fire from the Enemy. Being asked by the Court whether he

saw any part of Capt. Barnes's Conduct that day which appeared to proceed from Cowardice, — he answered that he did not.

Q: (by desire of Capt. Barnes) Does he recollect what number of the Enemy were to his left?

A: He thinks that there were above two hundred, about twenty of whom were Dragoons.

Q: Does he not remember Capt. Barnes encouraging his Men, & desiring them to push up the Hill, saying that if they could gain that they might probably get by them?

A: He did not hear it, as he was at a distance form him, but heard two of the Men say that Capt. Barnes had done so, and that he caught hold a Twig, to get up upon the Rock, but the Twig broke.

Q: Did he see any of Capt. Barnes's party leave him?

A: He was 300 yards form him, therefore could not see it.

The Prosecution being closed & the Prisoner put upon his defence, called upon.

Lieut. Joshua Gidney of the British Legion [in 1779] who being duly sworn deposed that he went as a Volunteer with Captain Barnes to the attack of Fort Montgomery; that Capt. Barnes was with his party, when the two pieces of cannon were taken from the Enemy, from the first of which they had been fired upon; that upon Lieut. Col. Campbell (as he the witness, found it to be) coming up and saying that the regular troops did not advance fast enough, and asking who would go back and bring them up, Captain Barnes answered that he would, and then turning to his party said, "you are now to put yourselves under the command of Capt. Gidney, till I return;" that while they were laying in the hollow way, waiting for orders to attack, Capt. Barnes again joined them; that when the orders was given for storming the Fort, he (the witness) & Capt. Barnes moved forward together and entered the fort much about the same time.

Q: (by the Court) After the order was given for Storming the Fort did he see Capt. Barnes stop at any time?

A: He cannot recollect that he did, he once fell down, as he (the witness) supposed to avoid the shot, & he heard him call to the men, "down," but he immediately got up again and advanced.

Q: Did he hear anybody say to Capt. Barnes, come forward and head your Men, for the rear are firing upon the Front, or words to that purpose?

A: He did not.

Q: Could any such thing have happened & he (the witness) not have heard it?

A: He does not think he was over twenty feet from him after the order was given for storming.

Q: Was Captain Barnes with his Party amongst the first who entered the Fort?

A: He thought that they had been the first, but upon entering the Fort, he found some of the regular [British] troops, just entering at the other side.

Q: (by desire of Captain Barnes) Did not he (the witness) point out to Captain Barnes some people who were laying betwixt the hill and the swamp, at about a hundred & fifty yards from the Fort and say to him, "look there?"

A: He remembers seeing two men laying on their faces on a little knowl at about two hundred yards from the Fort, and upon his (the witness) pointing them out to him, he went up [to] them and bid them to get up & join their regiments.

Q: How were these men dressed?

A: In white flannel jackets.

Q: How was Capt. Barnes dressed that day?

A: In either red or green.

Q: After the orders were given for storming, and they had passed the swamp, did he see any troops in front of Capt. Barnes party?

A: He does not remember that he did, some of the New York Volunteers got in amongst them.

Q: Were there not several shots fired after Captain Barnes had got into the Fort?

A: Yes.

Q: Did that fire come from the Enemy or from the King's Troops?

A: He looked upon it that they came from the Enemy.

Q: Did he lay in the same room with Captain Barnes on the night of the Surrender of Fort Montgomery & were there not some Soldiers also in the room?

A: He and Capt. Barnes lay in the same bed, and he saw a soldier asleep in the room & there was also a Negro there belonging to Capt. Barnes; but in the morning when he got up, the Soldier was gone.

Q: (by the Court) Did he see any Chests in the Room where they lay?

A: Yes, there were several open Chests, containing many different articles.

Q: Did Capt. Barnes and he (the witness) leave Fort Montgomery on the same day?

A: Yes.

Q: During the time that they were at the Fort, did he ever see Captain Barnes himself take any Shirts, Leather Breeches, Hangers or other articles out of a Chest or Chests, or order his Negro to do?

A: He saw him open a Chest and take from thence a Hanger & two or three shirts; this Chest stood in the room adjoining to that in which they lay & he saw him take a pair of plush Breeches out of the room in which they lay.

Q: (by desire of Capt. Barnes) Did not Captain Barnes discover some Rebels, who were concealed in a room in the Fort?

A: Yes.

Q: Did he not hear a Rebel officer tell Captain Barnes that there were side arms in a Chest which stood there?

A: Not that he remembers.

Q: Had Capt. Barnes any other cloathes with him, when he went into Fort Montgomery, except those on him?

A: He had not.

Q: When Captain Barnes took the Shirts &c. did he hear him assign any reason for so doing?

A: Yes, he said he had lost all his Baggage.

Q: Did not Lieut. Col. Emerick, on their march to the Fort, order the officers & men, to throw down their baggage?

A: Yes, & they accordingly did so.

Q: (by the Court) At the time that Capt. Barnes took the Shirts, Hanger & Breeches, did it appear to him that he did it for his immediate convenience, or with an intent to make a property of them, or dispose of them?

A: It is not in his power to say whether he intended to sell them, but he thought he was in want of them, as he put on a Shirt the next morning.

Q: Was not his (the witness) pocket as well as Capt. Barnes's picked that night?

A: He lost a pair of Gloves out of his pocket.

Q: At the time that Capt. Barnes and he came together from Fort Montgomery to New York, had Capt. Barnes any other Cloaths with him except those he wore?

A: Not to his knowledge, they did not come all the way together, but they left the Fort together.

Q: Did not Capt. Vanerburg take some pairs of Breeches?

A: He saw him with a pair on which he (Capt. Vanderburg) told him, he got there, and he said that he had given two pairs to the Soldiers.

James Travis, Quarter Master to Lieut. Colonel Emerick's Corps of Chasseurs, being duly sworn, was examined;

Q: Did he ever see Capt. Barnes in action & how did he behave?

A: He has been twice in action with him & at those times he behaved well in every respect.

John Brandon, late Captain in the Queen's American Rangers, being duly sworn was examined;

Q: Was ever he in action with Capt. Barnes, & how did he behave?

A: He saw him engaged in action at Ward's House and at Fort Independence, & he behaved like a good officer & a Soldier.

The Prisoner concluded his defence with saying that he had much to regret the absence of Lieut. Kennedy, who is now at Halifax, & he is confident, would have been an essential witness in his favor, with regard to his conduct & behaviour at Fort Montgomery; that he must now rest his defence on the Testimony of those, who had appeared, having nothing further to offer to the Court on his own part, except that he absolutely denied having had any of the Conversations with Lieut. Colbourn & Capt. Vanderburg, which they have asserted in the Course of the Evidence.

The Court having considered the Evidence for and against the prisoner Captain Joshua Barnes, together with what he had to offer in his Defence, is of opinion that he is Not Guilty of the Crimes laid to his Charge, and doth therefore Acquit him.

Clarke Lt. Col.
President

Confirmed
H. Clinton

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