

At common law - the plea of autrefois acquit
or autrefois convict. - The prisoner must
show that he has been regularly brought
to trial and acquitted of the offence in a
due course of law. - And I conceive it must
be the same in military offences. See Tytler. p. 359

or a defence against a proper and sufficient
indictment preferred against him for the
same offence. - And I conceive that the
discharge from the arrest cannot operate
as a pardon, unless so unequivocally
expressed in the discharge.

Another reason against such an operation
of the discharge, is the ordering of a Court
martial by Lord Howe, after he was
informed of the discharge.

If after such a reply, which must answer
every purpose of a protest, the Court ac-
quits of the two first charges - the grounds
of their decision will appear in the pro-
ceedings, and will be justified or not, as
they shall be thought warranted by law.

Ans: to 2.3. I conceive the two first articles will be
gone thro' before any question can arise
upon the third - but if otherwise, I
conceive that they ought to be proceeded
upon, even tho' the 3^d. Article should be
rejected. in the first instance as inadmissible.

17.8
Answer to 2.1. "In all matters touching the trial of crimes
by Courts martial wherever the military law is
silent, the rules of the common law of the
land must of necessity be resorted to". - And

Tytler. p. 359

ib. 356.

ib. 365.

The Judge Advocate before a Court martial
has the same duties to perform that the
Attorney General has in the ordinary Courts
of Law, in the prosecution of offences -
He must instruct himself in all the circum-
stances of the case, and by what evidence
the whole particulars are to be proved against
the Prisoner &c.
It must therefore depend in the first
instance upon the usage of military law. how
far a member can be objected to by a Prosecu-
tor. - The grounds upon which the Prisoner
may object are mentioned by Tytler as
being, suspicion of prejudice or malice &c.
ib. p. 226