

The Napoleon Series

The Bailen Enquiry: a Summary of the Capitulation

By [Susan Howard](#)

During the evening of July 19th Villoutreys reached Andujar and met Castanos who agreed to the truce. Villoutreys said that he had not discussed any further arrangements and we do not know what was said but before his arrival Castanos had written to the Junta, "I am not granting him any other [terms] than that of constituting himself prisoner of war, permitting the generals and officers to keep only their sword and portemanteau with linen for personal use, given the pillage that they have carried out in our towns, and giving them the assurance that they will be treated with the same consideration employed with regard to the fleet at Cadiz." Villoutreys then returned to the French camp: "I passed the army of General Pena, which was not yet in movement. The officer who accompanied me stopped at our advance posts and I went to General Dupont. I reached him on the 20th at 3 or 4 am." Dupont would be blamed for not getting the terms of the armistice in writing and not preventing the Spanish from moving their troops but he probably can be believed when he said that it was not usual to get written agreement for a battlefield truce. The Spanish did continue to move their troops during the negotiations but, with or without a written agreement, there was nothing Dupont could have done about it.

Early on the morning of the 20th Lapena, not seeing any further signs of negotiation, decided to force the pace and sent word that he was preparing to march against the French; it is not clear whether Castanos had authorised this. Dupont had persuaded Marescot to make use of his former acquaintance with the Spanish generals and he met Lapena before he had begun to move. Their accounts agree that Lapena refused to send Marescot to Castanos since he had no powers to treat and that he said that he would only delay his march for a short period to allow Marescot to return to Dupont and get a decision from him. Lapena wrote, "that I would not admit any proposal than that of surrendering at discretion and that I would suspend my march only in the event that the whole army surrendered on the same conditions as the French squadron at Cadiz. Struck by my precise words he asked to return to General Dupont, giving me his word to return within one hour. He seemed to agree to everything and I am waiting for him to send him to YE if his proposal conforms to to what YE gave me to understand; otherwise I will continue my operations." Marescot's initial version was, "he gave me, as an ultimatum, the following conditions: that there would be a capitulation, that the French troops would have the honours of war; that only the division Dupont would be made prisoner; that all the French troops indiscriminately would evacuate Andalusia, but by sea; that the embarkment would be made very promptly; that the security of the crossing would be guaranteed with the English whom General Lapena qualified as allies."

Marescot return to Dupont who hastily (there was no time to contact Vedel) called a council of war at which the generals and superior officers agreed that the army was in no condition to fight and that it was necessary to negotiate a capitulation. The Commission of enquiry would decree that the capitulation was unnecessary, that Dupont could have cut his way out with the few troops still able to fight and joined Vedel. The generals who were there at the time did not consider this a practical option and it is hard to argue with their opinion: given the enclosed nature of their position the chances of a break-out were low, even with Vedel's assistance, and the chances of getting back to Madrid not much better. It was to be argued that honour demanded that they should have made the attempt but,

against this Dupont could oppose the inevitable massacre of the remains of the division Barbou, and of their sick and the camp followers. Dupont considered that his first duty was to save his soldiers to fight again: it was a reasonable conclusion.

Dupont asked Marescot to lead the negotiations but he refused as being not part of the army. Dupont then called on Chabert who objected his lack of experience but who was persuaded by the others to accept. Marescot agreed to go with him to lend his support and Dupont added Villoutreys as an observer, ostensibly to see what information he could gather in the Spanish camp but possibly so that he could give a direct report to the Emperor, being of his household. Villoutreys himself suggested this in his curious statement of November 1809: "It was only due to my title of equerry to HM that he confided to me the dangerous mission with which I was charged, considering then only his own interests and that I was accustomed to the honour of speaking to HM."

It was to be a significant element of the charge against Dupont that he sent a negotiator without written instructions, and two others without any authority. No-one at the time seems to have remarked on this. In his interrogation of 9 February Dupont explained that written instructions were not necessary: "The treaty should have consisted of a single article: our retreat on Madrid. The negotiators had, besides, been witnesses of all that had passed at the council of war and they knew perfectly the position of the army. I recommended them to make as much as they could of the particular position of General Vedel, although at heart I knew well that this advantage was not real. Chabert said, "The general in chief gave me written powers to treat with the enemy chief. He gave verbal instructions to General Marescot and to me, among others to make all our efforts to obtain our return by Madrid." They were working against Lapena's deadline.

The negotiations were carried out at the post-house, between Bailen and Andujar. The starting positions were that the Spanish wanted all three divisions to surrender at discretion as prisoners of war, the French said that they would not surrender at discretion and demanded to be allowed to evacuate Andalusia and return to Madrid. At one point it seemed that they would be allowed to do this but then a letter from Savary which had been intercepted was brought to Castanos. The letter was shown only to Marescot and he said that, "It was signed by the duc de Rovigo and contained an order for General Dupont to retire to Madrid, expecting that Marshal Moncey would be returning there with the debris of his army and that Marshal Bessieres found himself in a difficult position." If this was the letter of the 17th then Marescot had exaggerated the contents but this seems unimportant since Villoutreys and Marescot both agreed about the effect the letter had on the Spanish negotiators: clearly Castanos could not allow the French troops to return to Madrid if that was where their commander-in-chief wanted them to go.

Since the French had been willing to include Vedel and Lefranc in the capitulation when it was a case of returning to Madrid it was impossible to exclude them subsequently but the French did insist that since these divisions had not been defeated they could not be expected to surrender and the agreement was made that they would not actually have to lay down their weapons but only to give them into Spanish custody during their march. An important, and rather surprising, feature is that no restriction was placed on any of the French troops as to where they might serve after their return to France.

While the talks were being carried on, Vedel, having learned of Dupont's situation, called a meeting of his generals to discuss what they should do. It was decided that they should send someone to Dupont to discuss the possibility of making a combined attack in the hope of breaking him out. Baste was sent to Dupont, who later denied that any specific

proposal was made but who was said to have returned a reply that his troops were in no condition to fight and that they had refused to take up a distribution of cartridges; this suggests that some proposal was made but Baste was never questioned. Dupont then sent Baste, with his own ADC Warengnien, to the place of the negotiations to find out what was happening. The timing of this is unclear but they arrived after Savary's letter had been read and when most of the articles had been agreed. Baste told Chabert that Dupont did not want the other two divisions included in the capitulation but when this was put to the Spanish they threatened to break off the negotiations and Chabert was obliged to concede the point; It was to be alleged by Vedel that Baste had been prevented from joining the negotiations but that was clearly untrue. Baste and Warengnien returned to Dupont and reported on the current state of the negotiations.

At some point during the day of the 20th Dupont wrote to Vedel to order him to return the prisoners and guns he had taken the day before, since they had been taken while the truce was in force. In interrogation Dupont represented this as a point of honour though it may equally have been necessary to prevent further disruption of the negotiations; Vedel objected that the Spanish were breaking the truce by moving their troops and delayed the return as long as he could. Also at some point in the day Dupont sent Vedel a message either to hold himself ready to retire should he not be included in the treaty or to retreat secretly anyway. "I was hoping" he explained later, "by favour of the division Vedel, to obtain free passage by Bailen for the division Barbou in order to gain La Mancha. I had General Vedel told secretly to hold himself ready to retire in the case of him not being included in the treaty and of my not being able to obtain the conditions I was demanding. I engaged him in, in all events, to put himself in position to gain some ground, wishing to reconcile good faith and foresight." No written version of this order was produced so its exact content cannot be decided. Vedel had set his troops in movement when Dupont sent him an order to halt them; Dupont said that this was because Vedel was acting in full sight of the enemy and should have waited for nightfall: Vedel accused him of vacillation. Vedel did move off at nightfall, after returning his prisoners and, moving rather faster than he had done on the 19th, he reached Ste Helene by the following morning, not without leaving a large number of stragglers.

The negotiations continued at the post-house: the Spanish negotiators were Castanos and the comte de Tilly, a member of the Junta of Seville, also present was Escalante, captain-general of Grenada, both the latter were more extreme in their politics than Castanos. Chabert was the only official French negotiator but he said afterwards that Marescot handled most of the negotiations while Marescot said he only made a few interventions and that Chabert and Villoutreys did it all. Marescot even claimed that he had left the negotiations and gone to take a nap. Villoutreys said that while he had been excluded for backing the French cause too strongly, he believed Marescot had taken a leading part. Castanos seems to have recognised Marescot as the senior since he showed the letter only to him.

Marescot did admit that he had taken an active part in the debate over article 15:

As in several places, and notably at the assault of Cordova, several soldiers in spite of the care of the officers gave themselves over to the excesses which are the inevitable result in towns taken by assault. The general officers and other officers will take the necessary measures to discover the sacred vessels which may have been taken and to return them if they exist.

In February 1809 he explained,

“Finally the Spanish commissioners addressed me regarding the insertion of an article relating to the restitution of the sacred vessels stolen from the churches. They alleged the extreme superstition of the Spanish people, their current exasperation; they said that they could not answer for any violence they might use to recover these religious objects. I admit that, knowing very well that they had in fact stolen sacred vessels in several places and wishing not to give the insurgents any pretext for mistreating the French soldiers, I advised that we should consent to a restitution (which would otherwise have been effected by force) but specifying that the search should be made by the French generals themselves.”

The French negotiations must have worked quite hard to get that clause down to such a politely phrased suggestion since the Spanish obviously felt quite strongly about it.

Napoleon and the Commission were to express great indignation about this dishonour to the French soldiers but, as Marescot recognised, French soldiers commonly did loot churches. On July 22nd 1808 Joseph had written to Napoleon “if your Majesty would write to General Caulaincourt that you are informed that in cold blood he arranged the pillage of the churches and houses in Cuenza, it might do much good. I know that the public sale in Madrid of the church plate has done much harm...” To which Napoleon replied on July 31st, “Caulaincourt did what was perfectly right at Cuenza. The city was pillaged: this is one of the rights of war since it was captured while the defenders were still in arms.” He did not bother to comment about the theft of church silver.

The other clause which was heavily criticised by the Prosecutor was article 11: *The general officers will each retain one carriage and wagon: the superior officers and staff, one vehicle only, without being submitted to any examination.* This was held to show a dishonourable interest in preserving their baggage but, as Dupont and Chabert pointed out, it was usual to ask for this in capitulations, the only unusual detail was the statement that they would not be searched. Titeux gives numerous examples: the relevant capitulations can be found in the research section of the Napoleon Series, under Government/Diplomatic documents. Most commonly, the phrase is simply, *The officers will preserve their swords, horses and luggage* without any attempt to specify the number of vehicles, or indeed, in a translation, whether vehicles are included.

The most interesting comparison is with the Convention of Cintra, by which Junot agreed to evacuate Portugal. The text for the suspension of arms, August 22nd 1808, just one month after Bailen, contains the clause

It is agreed provisionally that the French army shall not, in any case, be considered as prisoners of war; that all the individuals who compose it shall be transported to France with their arms and baggage, and the whole of their private property, from which nothing shall be exempted.

The definitive version of August 30th repeats the clause about the officers' baggage but also states:

The French army shall carry with it all its equipment, and all that is comprehended under the name of property of the army; that is to say, its military chest, and carriages attached to the Field Commissariat and Field Hospitals; or shall be allowed to dispose of such part of the same, on its account, as the Commander-in-Chief may judge it unnecessary to embark, In like manner, all individuals of the army shall be at liberty to

dispose of their private property of every description; with full security hereafter for the purchasers.

Both these clauses implicitly allowed the French to take their loot with them, or to sell it before they left. Napoleon made no comment.

Castanos had stated at the beginning that he would only allow the officers to take a portmanteau, because of their looting. Therefore the inclusion of the baggage represents a substantial concession and the details of the article probably represent the bargaining that went on since it specifically limits the number of vehicles allowed where most capitulations were not specific on this point. It should be remembered that Dupont had no direct influence on the details of the capitulation since the negotiations were carried on without consulting him until they were completed so his responsibility for this article was limited. He did include in the supplementary articles

Art 1 Two carts per battalion will be supplied to carry the trunks of the officers.

Article 12 seems to have passed unnoticed: *Excepted from the preceding article are the vehicles taken in Andalusia, of which the examination will be made by general Chabert.* This would suggest that the Spanish considered these waggons as possibly containing stolen property, however, if they were serious about this they would have insisted on examining the waggons themselves.

What puzzles me about these clauses, as about the whole negotiation, is how the French managed to negotiate better terms than Castanos had offered to begin with. Their only bargaining point was a threat to break off negotiations but that would have led to their total destruction. Villoutreys stated in February 1809, "they declared that if the divisions Vedel and Dufour were not included in the treaty it would be necessary to renounce any kind of convention and that the divisions of Lapena would then march against the division Barbou and, after completely destroying it, would join the divisions Reding and Coupigny to attack the divisions Vedel and Dufour. This threat was all the more supported by truth in that it would need only quarter of an hour for the enemy divisions to overcome the division Barbou and to operate their junction to begin new attacks." Dupont had made it clear that he would not surrender at discretion and he and his officers, at the least, would only have been taken after a fight. Vedel's troops would have fought but they would have been outnumbered and, since the Spanish continued to move troops during the truce they would also have been outflanked. The end would have been defeat and surrender; the Spanish would have suffered some losses in the process but not, one would have thought, enough to make them so compliant. The Spanish may have considered that a capitulation had more propaganda value than a victory. I would think that the negotiators deserved only praise for the terms they manage to extract, in such a weak position, rather than condemnation.

At the end of the day of the 20th Castanos proposed that they should move to Andujar to finish drawing up and signing the capitulation. It was late when they arrived and the work was deferred till the next day. Lapena forwarded a copy of the draft treaty to Dupont on the evening of the 20th.

Marescot stated that "On the 21st, it was learned that General Vedel had left his position and effected his retreat. At this news the Spanish commissioners made a great outcry at what they were calling a breach of trust, declaring the treaty null and saying that they were going to put the corps of General Dupont to the sword. The

French commissioners were rather embarrassed until it was learned that General Dupont had ordered General Vedel to return to his position and to submit to the capitulation” As Dupont explained, “At the first rumour of the departure of General Vedel, a furious reaction broke out in the enemy army; several officers of the line came to declare to me that the generals were no longer masters of the rebels and that they were meditating a sudden attack on the camp of the division Barbou. The Spanish were accusing the French of perfidy but the national loyalty had always been faithfully observed. It was according to this principle that I instructed General Vedel that he was included in the treaty which was, besides, advantageous for his division. We knew the fury of the rebels, they had slaughtered our sick, and it was inevitable that the greatest misfortunes would have occurred if the enemy had not received without delay the assurance of our fidelity in fulfilling our engagements.” It would be interesting to know whether the Spanish officers were genuinely trying to avoid a massacre or were just turning up the pressure on the French generals. It was Lapena who was reported to have said on the 20th that he would not answer for his troops. Martial Thomas heard on the 21st that, “the enemy generals, from what I was told on my return, and above all General Pena, had let it be known that they were no longer masters of the peasants who wanted to fall on our troops.”

Martial Thomas was sent to Vedel with a note from the chief of staff, Legendre, which simply informed Vedel that he was included in the capitulation and should halt where he was. “He (Legendre) told me to let General Vedel know that his movement of retreat was exposing the corps under the orders of General Dupont to be massacred by the enemy and that it was urgent that he stopped his march”. Somehow Vedel’s troops and officers heard that they were being asked to capitulate and came to Vedel urging him to ignore the order, since Dupont was not free to give orders, and to continue their retreat. He replied that he had already accepted the capitulation and that to refuse would expose the division Barbou to massacre. He also said that the divisions would be cut off in La Mancha and would not be able to get to Madrid. He had given his reply (addressed to Reding) to Cassagne who returned with Martial Thomas. On the road they met Privé and Baste who had been sent to find out why he had not returned: Dupont had not realised how far Vedel had gone. “They told me they were carrying most precise and urgent orders and that their hasty mission to General Vedel was firstly, that they were concerned for my return; secondly because the enemy had made a movement to close in on the corps of General Dupont and that it was feared that, at this moment, he was falling on our camp.” Privé and Baste continued to Ste Helene where they added their voices in favour of accepting the capitulation. The senior officers felt that they had to enforce obedience and the matter was settled.

While Dupont’s written orders were non-committal and Vedel might well have considered he could ignore them, he also sent verbal warnings of the dangers facing the division Barbou, which placed Vedel in a very difficult position. Vedel was also worried about the difficulties of the retreat, he told Villoutreys that he would not have been able to get 1,500 men back to Madrid. A stronger man might have chosen the bold move and may, or may not, have succeeded; the division Barbou may, or may not, have been massacred as a result; it is not too surprising that Vedel shirked the responsibility and fell back on the obligations of military obedience. He seems to have had some doubts, since on the 22nd he called his officers back and asked whether he should return to Bailen or make an attempt to get through the gorges but no-one, except Poinot, was now willing to try. Rumours had been going round the camp that they were cut off and even that Madrid had been evacuated and also, they

thought that the 24 hour delay implied they had accepted the capitulation. They voted to conform.

Over the inclusion of the divisions Vedel and Lefanc in the capitulation Dupont's case was at its weakest and it showed in the variations of the explanations he gave, as the Prosecutor was quick to point out. Originally he said that he wanted the divisions included because they had no hope of getting back to Madrid; at the enquiry he said that he had not wanted them included and that if Vedel thought he could retreat safely he should have refused to comply. In February 1809 he was asked, "It was then, to avoid the results of the movement of which you have just spoken against the division Barbou, that you halted the march of the division Vedel?" and he replied "The first motive was the obligation to be faithful to the treaty; that was an absolute and decisive reason. The interest of the division Barbou, and that of the division Vedel itself, were new imperious motives."

If the choice had been between the divisions Vedel and Lefranc making a successful return to Madrid and being made prisoner then Dupont would have been culpable if he had sacrificed them to save himself and the division Barbou. It was not so clearcut: there was good reason to believe that the two divisions would have had great difficulty getting back to Madrid, especially given the food shortages and the capitulation did not make them prisoners of war but only provided for them to evacuate Andalusia by sea. However, if they had retreated towards Madrid they might have been able to provide some delay to a Spanish advance in Andalusia and perhaps Madrid would not have been so hastily evacuated: looking at it that way, perhaps it was their duty to try the retreat, but Dupont and Vedel should not be held responsible for the panic reaction of Savary and Joseph. We do not know when Dupont learned of Savary's intercepted letter or what he was told of its contents since only Marescot saw the letter and Marescot did not return to the French camp.

On the evening of the 21st Chabert and Villoutreys brought the treaty to Dupont, who signed it and added the supplementary articles. On the 22nd the Spanish signed the treaty and on the 23rd the troops moved off into captivity. Dupont was not responsible for the Spanish breach of faith.

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