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MILITARY MISCELLANIES.

BY

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"It sufficeth not to the strength of the armes to have flesh, blood and bones, unless they have also sinewes, to stretch out and pull in for the defence of the body; so it sufficeth not in an army to have VICTUALS, for the maintenance of it; ARMOUR and WEAPONS for the defence of it; unless it have MONEY also, the SINEWES OF WARRE."

* * * * *

"Wherefore, seeing that money is such a real advantage in the warres, we may conclude, that whosoever prepareth for warre must first be provided of MONEY, the Sinewes thereof."—(Ward's "Animadversions of Warre." London, 1639.)

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PREFACE.

THERE is nothing new in this compilation. My purpose is to put some facts, opinions and comments into book-form for the convenience of sUCH military students as may find occasion to refer to them.

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“*BUT the fact is that here as elsewhere, poetry has reached the truth while science and common sense have missed it. It has distinguished, as in spite of all mercenary and feeble sophistry, men ever will distinguish, war from mere bloodshed. It has discerned the higher feelings which lie beneath its revolting features. Carnage is terrible. The conversion of producers into destroyers is a calamity. Death, and insults to women worse than death, and human features obliterated beneath the hoof of the war-horse, and reeking hospitals, and ruined commerce, and violated homes, and broken hearts—they are all awful. But there is something worse than death. Cowardice is worse. And the decay of enthusiasm and manliness is worse. And it is worse than death, aye, worse than a hundred thousand deaths, when a people has gravitated down into the creed that the ‘wealth of nations’ consists not in generous hearts—‘fire in each breast and freedom on each brow’—in national virtues and primitive simplicity, and heroic endurance, and preference of duty to life—not in men, but in silk and cotton, and something that they call ‘Capital.’ Peace is blessed. Peace arising out of charity But peace springing out of the calculations of selfishness is not blessed. If the price to be paid for peace is this, that wealth accumulate and men decay, better far that every street in every town of our once noble country should run blood.*”—Lecture of Rev. F. W. Robertson, February, 1852, before Mechanics’ Institution, Brighton, England.

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ARTICLE I.

Notes on Theoretical and Practical Military Matters.

I.—CONGRESS.

THE Constitution gives Congress power to provide for the common defence and general “welfare of the United States,” “to declare war,” “to raise and support armies,” “and to make rules for the government and regulation of the land and naval forces.”

The responsibility for the common defence resting on Congress, all the power essential to meet it is vested in Congress, which possesses supreme control of the land and naval forces. “There can be no limitation of that authority, which is to provide for the defence and protection of the community in any matter essential to its efficacy; that is, in any matter essential to the formation, direction and support of the national forces.” *

Congress, by virtue of its constitutional powers, may make laws governing appointments and promotions in the Army; and without trenching on the rights of the appointing power, may prescribe how original or other vacancies shall be filled. These appointments are “otherwise provided for” in the clauses of the Constitution which empower Congress to raise armies

* *Federalist*, No. XXIII. Hamilton.

and make rules for their government and regulation.*
[See appendix A.]

II.—THE PRESIDENT.

The Constitution provides that “the President shall be Commander-in-chief of the Army and Navy of the United States and of the militia of the several States when called into the actual service of the United States.”

“No Act of Congress, no act even of the President himself, can by constitutional possibility authorize or create any military officer not subordinate to the President.” (7 “Opinions,” 465.)

The President is the first General and the first Admiral of the United States, but he exercises his command in conformity to such rules for the government and regulation of the land and naval forces as Congress, the supreme authority, may prescribe.

As Chief Magistrate “he shall nominate and, by and with the advice and consent of the Senate,† shall

* For exercise of power over appointments by early Congresses see note †, page 7.

† Commissioned officers have not in all cases been confirmed by the Senate under the present Constitution. The President was empowered “alone to appoint” those of the “levies,” March 3, 1791, and he “alone” was authorized to officer the Cavalry provided for by the Act of 1792. In other instances he has been required only to submit the names of field and higher officers to the Senate. By the Act of July 6, 1812, the President was authorized alone to confer brevet rank on officers, while the Act of April 16, 1818, requires that “no brevet commission shall hereafter be conferred but by and with the advice and consent of the Senate.” Thus, as early as 1791, Congress appears to have acted on the understanding that it could except army appointments from the operation of the general constitutional provision concerning appointments; in other words, that army appointments belonged among those “otherwise provided for” by the Constitution itself.

appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other officers of the United States whose appointments are not herein otherwise provided for, and which * shall be established by law. But the Congress may by law vest the appointment of such inferior officers † as they think proper in the President alone, in the courts of law, or in the heads of departments.”

III.—OFFICE.

Office is a public station or employment established by law. ‡ In its broadest sense it implies public duties and powers and personal rights and privileges.

An officer is one who is invested with an office.

* The meaning of this evidently is *whose offices* “ shall be established by law.”

† A decision was rendered by the United States Supreme Court in the case of the United States against Douglas Smith. Douglas Smith was a clerk in the office of the Collector of Customs at New York, and in 1886 he was indicted under section 5,490 of the Revised Statutes for embezzlement of public moneys. The Court below was divided in opinion as to the sufficiency of the indictment, and certified to this court the following questions :

“ First—Is a clerk in the office of the Collector of Customs for the city of New York, appointed by the Collector with the approbation of the Secretary of the Treasury by virtue of section 2,634 of the Revised Statutes, a person charged by any act of Congress with the safe keeping of public moneys?

“ Second—Was the defendant appointed by the head of a department within the meaning of the constitutional provisions upon the subject of the appointing power? ”

This Court, in an opinion by Mr. Justice Field, answers both of these questions in the negative and holds that section 3,639 of the Revised Statutes concerning the safe keeping of public moneys does not apply to Collectors' clerks, and that such clerks are not appointed by the head of any department within the meaning of any constitutional provision.

‡ See Bouvier's Law Dict., p. 255; Wharton's Law Lexicon, p.

The Constitution requires that the President "shall commission all the officers of the United States."

Offices in the Army are grouped in grades.*

Names are given to the grades and offices in the different corps of the Army. For example, the name of a grade in one corps is Assistant Surgeon-General. That is also the name of the office constituting that grade. The law provides that the incumbent of that office shall have the rank of Colonel.

The names of grades in some other corps are Colonel, Lieutenant-Colonel, Major, † etc., and the names of offices in those grades are *Colonel of Cavalry*, *Lieutenant-Colonel of Artillery*, *Major of Infantry*, etc. In these cases rank is expressed in the term used by the law for defining the office. The result would be the same, if the law in the one case had called the grades by other names—Chief of Cavalry, Assistant Chief of

537; Blackstone's Commentaries; U. S. Supreme Court, 6 Wallace, 393 (42 New York Superior Court, 481); Webster and other lexicographers; *The Nation* of Aug. 10, 1882.

In a decision rendered March, 1884, concerning the case of an officer of the Army on the retired list, Judge Lawrence, First Comptroller of the Treasury, says: "An office cannot exist unless it be established or recognized by the Constitution or by Act of Congress." "A retired Army officer is an officer in the public service."

* See Grades.

† The following definitions are in Bailey's English Dictionary (1747):

Colonel. The Chief Commander of a regiment of horse or foot.

Lieutenant-Colonel (of Horse or Foot). An officer who is next in post to the Colonel, and commands in his absence.

Major of a Regiment is the next in office to a Lieut.-Colonel, etc.

Captain. A head officer of a Troop of Horse, or a Company of Foot, or of a Ship of War.

Lieutenant (of Horse or Foot) is next to the Captain, and commands in his absence.

Artillery, etc., for example—and then had provided that the incumbent of the office of Chief of Cavalry and of the office of Assistant Chief of Artillery should have, respectively, the rank of Colonel and Lieutenant-Colonel. In other words, the mere fact that rank in some cases is expressed in the designation of office does not make it differ from rank specifically provided for an incumbent of office. The same principle governs. Office in both cases is the source of authority in the corps; rank is a legal incident of office, a degree of dignity, which fixes an order of precedence to be observed in the exercise of authority beyond the corps.

IV.—COMMISSION.

“The commission,” said General Macomb, “is the instrument of authority.” It is an official document of two distinct parts. The first part is evidence or patent of office with rights and privileges. It fixes both the grade and rank of the officer. The language of the President is: “By and with the advice and consent of the Senate I do appoint him——(naming office, grade and corps) in the service of the United States to rank as such from the—— day of——.”

The second part confers the authority of the office and imposes its duties and obligations. It charges the appointee “carefully and diligently to discharge the duties of —— by doing and performing all manner of things thereunto belonging.” It directs “all officers and soldiers under his command to be obedient to his orders,” and requires him to “observe and follow such orders and directions as he may receive from the superior officers set over him.” Commissions do

not entitle their holders to authority beyond the body to which the holders belong.

V.—GRADES.

Grades are subdivisions in the military hierarchy, as the grade of General, the grade of Colonel, the grade of Surgeon, the grade of Paymaster, etc., etc. Though "grade" and "rank" are often used as synonymous terms, the former is more properly applicable to positions than to persons. The question, for example, What grade does he occupy? and the answer, the grade of Colonel, or Paymaster, etc., as the case may be, illustrate the proper use of the term. Its correct meaning appears in the 124th Article of War, which says "officers of the militia . . . shall take *rank* next after all officers of the *like grade* in said regular," etc.

The precedence of grades in a corps has long been established by the "custom of war," and is usually expressed in the order of their arrangement in the law creating the corps. General Scott said in an official letter in 1846: "There is not a syllable in any Act of Parliament or of Congress; not a syllable in the British Articles of War and General Regulations, or in our Articles of War (Act April 10, 1806), which says in terms that an officer of any grade whatever may command an officer of any other grade whatever. Every question between grades and dates of the same grade is settled both in Great Britain and the United States by the 'custom of war in like cases.'" When a new grade is created in an established corps, the Act creating it, to prevent confusion, should fix its position.

If that be not done, its position must be determined by the best evidence available, the rank attached for the incumbent being entitled to weight in deciding the question.

The grade which an officer is to occupy is designated in his commission.

Every grade may—many do—contain a number of offices. A corps may contain many offices and but few grades.

VI.—RANK.

Rank is a degree of dignity. In our Government it is created by law, and is based upon office. Congress may at any time change or abolish it, under the constitutional power to make rules for the government and regulation of the land and naval forces.

The term rank applies to persons, and implies a range of precedence or subordination among officers.

An officer's rank (as well as the grade he is to occupy and the office he is to hold) is designated in his commission.

As authority proceeds from office, and as rank in our country is conferred only on officers, it follows, as Washington said, that "Military rank and *eligibility* to command are ideas which cannot be separated." Nevertheless, if all rank were abolished, the authority of office would remain.

When a law in terms confers rank on an incumbent of office, as in case of the Act of June 16, 1880, which conferred on the "*Chief Signal Officer*" "the rank and pay of Brigadier-General," a new appointment is not necessary to entitle the officer who may hold the

office, when the Act is passed, to the rank conferred by the law.

VII.—TITLE.

Title is an appellation of dignity. The term is applicable to persons rather than to positions, dignity being a quality which attaches not to office itself, but to the incumbent by virtue of his occupation of office.

If the word name were used instead of title, when speaking of office, grade and rank, it might prevent some of the confusion which is created by such expressions as the *title* of his grade, the *title* of his office, the *title* of his rank.

VIII.—PROMOTION.

Promotion in the Army is advancement to an office in a higher grade.

Every promotion is an appointment to office and is made subject to rules established by Congress for the government and regulation of the Army.

The rank provided by law for incumbents of offices in the Army, as a rule corresponds in importance with the order of precedence of the offices. Hence promotion usually produces higher rank. But this is not always the case, as the same rank may be provided by law for the incumbents of different grades in a corps, one grade having precedence of the other. That was the case with the grades and offices of Paymaster-General and Assistant Paymasters-General from 1872 to 1876, all the incumbents having the rank of Colonel. Although the incumbents had the same rank their offices were not the same, and advancement from the grade of Assistant Paymaster-General, with the rank

of Colonel, to the grade of Paymaster-General, with the rank of Colonel, was promotion.

When the law creates a military corps and names the grades composing it in the order of their precedence, as established by the *custom of war*, and gives a relative position to such new grades as it may create, the arrangement in the law is the order of precedence of the grades for the exercise of authority within the corps, and for guidance in making promotions, let the rank provided for incumbents be what it may.

Promotion is governed by *law*. The present code of Army Regulations of 1881 says:

“All vacancies in established regiments and corps, to the *rank* of Colonel, shall be filled by promotion according to seniority, except in case of disability or other incompetency.”

A regiment or corps is not “established” in the meaning of the laws governing promotion until every office in it has been filled once, no matter whether the offices are all created at the same time or some at one and some at another time. Until filled once every office affords what is called an original vacancy, to which the rule of promotion by seniority does not apply, and which, unless otherwise provided by law, may be filled by selection.

IX.—TRANSFERS.

After a man has been duly appointed to an office in a regiment or corps of the Army, his transfer to another regiment or corps involves vacation of one office and installation in another. That is to say, it involves appointment to office. This, like any other appointment, the appointee has the right to accept or decline. It is

in deference to these facts that Army Regulations—made or adopted by Congress—forbid “the transfer of officers from one regiment or corps to another,” *except “on the mutual application of the parties desiring the change.”* This exceptional process, by which officers are enabled practically to couple withdrawal from one office with appointment to another, called transfer, is provided by the Regulations to accommodate the officers, as shown by the fact that it is dependent on “the mutual application of the parties desiring the change”; and their mutual application is evidently regarded as a precedent acceptance of the new office. No right exists to transfer an officer against his will from the regiment or corps in which he has been duly appointed to another, not even on the ground that it may promote the welfare of the Service. In fact an officer could not be considered as holding an office to which he might be transferred if he *declined* the office—that is, if he declined the transfer—nor could he be considered as vacating the office to which he had been duly appointed, for arbitrary transfer is not a legal process for ejecting an incumbent from office.*

X.—AUTHORITY.

Authority in the military service is derived from office. A commission to office, however, does not entitle the holder to authority beyond the corps to which he belongs. The authority of officers of the Army is extended beyond their corps *by law* and by custom of war. The rule established by law for precedence in the exercise of such extended authority is found in the

* This, however, is not intended to imply a limitation to the power of Congress in disbanding, reducing or reorganizing the Army.

122d Article of War, which says: "If upon marches, guards, or in quarters, different corps of the Army happen to join or do duty together, the *officer* highest in *rank* of the line of the Army, marine corps or militia by commission there on duty or in quarters, shall command the whole and give orders for what is needful to the Service, unless otherwise specially directed by the President, according to the nature of the case."

This law does not set up rank in lieu of office or in addition to office as a source of authority. It merely extends the authority of office and prescribes the order among office holders, in which, under certain circumstances, the authority of office shall be exercised; to wit, in the order of rank. To exercise authority in such cases, office holders must be in "*the line* of the army, marine corps, or militia by commission there on duty." The Articles of War (25 and 26) prior to 1806, out of which the 62d of that year and the 122d of the present day grew, did not mention rank. They required the "*eldest officer*," which meant senior or superior officer, to command. The object of the old articles on this point was, however, the same as of the new. It was to prescribe how the authority of office, which by the commission operates only within the corps, should be extended over different corps of the Army in certain contingencies not otherwise provided for; to wit, when they "*happen to join* or do duty together" "upon marches, guards, or in quarters."

XI.—BREVET.

Is the brevet the instrument of *office* in the Army at large, or is it merely the instrument of abstract *rank* conferred upon civilian or soldier?

“The word brevet in French signifies, when applied to offices in the army or navy, *Commission*. Brevet was taken by the English from the French with this meaning. As used in the United States Army, brevet was borrowed with our Articles of War from England, and in the British service it means a commission in the army at large.” (H. L. Scott’s Mil’y Dict.)

Brevets were introduced into the British service (1692) not to confer rank upon officers then in the army, but for the purpose of appointing civilians to offices in the army at large.

They appeared in our first Articles of War, which went into operation June 20, 1775, and, as in the case of the mother country, the first use made of them was to appoint civilians to office in the army at large.

There can be no dispute that in the British army the brevet is conclusive evidence of *office*. It is the only commission to general offices held in that army by officers above the corps grade of Colonel. If it did not commission them *to office* they would not be *officers* of the army. They not only hold *offices* by brevet, but, as Clode tells us, in his “Forces of the Crown,” and as Regulations show, they have “*promotion* by brevet . . . conferred strictly according to seniority.” We have no rank among civilians. Our Government does not confer rank independent of office.

With no other commission than the brevet, persons in our Service have in many cases exercised command, received and disbursed public funds, administered law as members of general courts-martial, and performed all other duties belonging to officers of the Army, and drawn the pay and allowances of the grades which

they held by brevet alone. If their brevets were not commissions *to office*, these persons were not officers of the Army. If brevets were evidence of office formerly, they are so at the present time, for the legal restrictions which have been imposed from time to time on brevets have not changed their nature. But the terms of the Statutes, and the many questions which have arisen affecting public and private interests, leave it still in dispute, whether the brevet is evidence of office in the Army at large or merely evidence of abstract rank independent of office, or attached by law to some office in a particular corps. The law now permits brevets to be given only to officers of the Army, and the *terms* of the Act of 1812 support the view that brevets are evidence of *rank*, not office. But rank and office have been so often confounded in the Statutes and elsewhere, that the mere use of the former term is not conclusive.

A brevet is indisputably "a *commission* in the Army at large." What does "commission" mean here? Is the person commissioned to rank or to office? Hardly to rank, for "rank is a degree of dignity." Like a vote of thanks or a medal, rank can be conferred by an act of Congress without the aid of the appointing power. In our service it is not a "station or employment," nor is it in itself a source of authority. It is dependent on office, and may be attached to or withdrawn from the incumbent of office or modified at pleasure by Congress. It does not appear to be rank that men are commissioned to by the brevet. On the contrary, the brevet is evidence of station and employment, and is a source of authority. It is not conferred or changed

by Congress. It is bestowed through the full exercise of the appointing power. During the Revolution Congress, while it possessed appointing power, used the brevet as a means of increasing without limit the number of commissioned officers in the military Service. There were but two brevets between the adoption of the Constitution and 1812. They were bestowed upon Harmar and de Poier, and were conferred through the operation of the regular *appointing power*—Washington, the President, nominated and the Senate confirmed.

An Act was approved June 6, 1812, authorizing the President to confer brevet rank, but, probably to prevent him from increasing the number of officers, as had been done during the Revolution, the law permitted him to confer brevets only upon "officers of the Army." On the 16th April, 1818, an Act was approved saying: "No *brevet commission* shall hereafter be conferred but by and with the advice and consent of the Senate." This Act, which is still in force, was preceded by a protracted discussion in Congress and full conference between committees of the Senate and House. It requires that brevets shall be conferred by the exercise of the full appointing power. The Constitution requires the President to "commission all the *officers* of the United States," and it does not require him to commission any one else. He commissions all persons on whom brevets are conferred; and furthermore, he requires them to subscribe and file with acceptance of the commission *the oath of office*, in addition to the oath the officer may have filed with the acceptance of his office in a particular corps. This

throughout is the process of appointment to office in the Army.

An "office is a public station or employment *established by law.*" The brevet clearly is evidence of public station or employment, but is that public station or employment established by law? The answer is, yes; the Acts of July 6, 1812, and April 16, 1818, authorizing and providing for conferring brevets, created the public stations or offices necessary for the fulfilment of the law. In opinion dated Dec. 11, 1822, Attorney-General Wirt said: "Laws on military subjects seldom fall within the sphere of a lawyer's practice or consideration, and he is consequently without that key of experience in the subject-matter which is so essential to their just construction. The *origin* and *nature* of brevet rank, for example, the cases in which it is conferred and the effects which it produces, are *purely questions of military experience*, with regard to which we have no written laws, and all suggestions in regard to that rank must be of necessity beyond the province of the mere jurist."

The character of the brevet was established in Great Britain, by the *custom of war*, long before we separated from the mother country. It was *an instrument of office* in the army at large. Without reservation, explanation or qualification, we adopted and used it as an instrument of office during the Revolution. In 1812 we re-established the brevet, by law, the sole legal condition imposed being that it should be given only to officers of the Army, and thus while the number of *offices* in the Army at large was increased indefinitely, the number of *officers* was not increased.

In support of the opinion that brevets are commissions to *office* and not merely certificates of rank, the following may be noted :

In 1855 it was proposed to reward General Scott with the brevet of Lieutenant-General for distinguished services in the Mexican War. If the brevet meant nothing but abstract rank it could have been conferred by Act of Congress. But it was not conferred in that way. On the contrary, the Act of February 15, 1855, first "*revived*" the grade* of Lieutenant-General in the Army, and General Scott was then duly appointed to it by brevet.

The U. S. Supreme Court (14 Wallace, 550), in deciding a claim for pay by a brevet officer, recognized the brevet as evidence of *office*, saying: "There is a difference of military position between an *officer* by brevet and an *officer* by regular commission."

Generals Macomb and Scott regarded the brevet as a commission in the Army at large.

Reverdy Johnson, discussing General Scott's brevet of Lieutenant-General, said, "It was not only as an honor, but as a compensation that the *office* was conferred upon him."

The Assistant Attorney-General, acting for the Government in the case of General H. J. Hunt, before the Court of Claims, says, speaking of brevets: "The military *offices* here mentioned, like all *other offices* of the Army of the United States, are *creatures of the laws of Congress*." "To discover the nature and attributes of these *offices*," etc.

* Attorney-General Wirt in 1812 gave the opinion that the brevet of Major in the Marine corps could not be conferred because there was no such grade as Major in that corps.

The *Army and Navy Journal* published, "as a contribution to the mooted question of brevet rank," a letter dated November 11, 1880, from Colonel John P. Nicholson, recorder-in-chief of the Military Order of the Loyal Legion of the United States, to the Secretary of War, and the Secretary's response transmitting answers by the Adjutant-General to six questions submitted by Col. Nicholson.

Colonel Nicholson's first two inquiries were whether brevets conferred during the Rebellion by Governors of States on commissioned officers and enlisted men "are recognized as conferring brevet rank in the United States Volunteers, and whether such appointees are recognized by the War Department as entitled to be designated as officers by brevet in the United States Volunteers." To these questions the Adjutant-General answered in the negative. The United States recognized only the commissions it conferred and those it adopted by "muster-in." No one was mustered into United States Service during the Rebellion under a brevet from a State.

But the United States conferred brevets on volunteers in its service during the Rebellion; and Colonel Nicholson's third inquiry is: "Are these appointees considered as still in the Volunteer Service of the United States and liable to active duty when called upon by the President, the duties and privileges of their respective offices being suspended in the meantime?" (See "Fry on Brevets," p. 10.) To this inquiry the Adjutant-General replied: "The Volunteer officers brevetted by the President during and after the war are

not considered as still in the Volunteer Service of the United States." The Adjutant-General added, "these brevets were based on the actual rank the officers held in the U. S. Volunteer Service. The recognized rule is that a brevet appointment falls and ceases to be effective with the commission on which it is based." While it is true that in order to be brevetted it is necessary to be a commissioned officer in the military service, there is nothing in law, regulations, or competent decisions requiring that a brevet be "based on the actual rank" held, nor that it shall fall and cease to be effective on account of vacation of the particular grade held when it is conferred. The Act of July 12, 1812, though not the origin of brevets is practically the foundation of the system in our Service. When it was passed there was not a brevet officer in our Army. The second War of Independence had begun, and as Attorney-General Wirt said, "The Act was passed *flagrante bello*, and was manifestly intended as a stimulus to enterprise in a struggle which it was foreseen would require all our strength." The terms of so much of that Act as is involved in this issue are, "the President is hereby authorized to confer brevet rank on such officers of the Army as shall distinguish themselves by gallant actions or meritorious conduct," etc. There is nothing in this Act nor has there ever been anything in law or regulations requiring brevets to be "based on the actual rank" held, and to fall and "cease to be effective" when that rank is vacated. All that the law requires on this point is that the person on whom a brevet is conferred shall be a commissioned officer of the military service

and shall have distinguished himself by gallant actions or meritorious conduct. No sequence is necessary between the "actual" or corps grade and the brevet, nor between the brevets themselves. When the circumstances permit the bestowal of brevets the appointing power has the same constitutional and legal rights to bestow one brevet as another.

The foregoing remarks apply to brevets conferred upon officers of Volunteers under the Act of March 3, 1863, which, embodying the principles of the act of 1812, authorized the President, with the advice of the Senate, "to confer brevet rank on such commissioned officers of Volunteers and other forces in the Service of the United States, as have been or may hereafter be distinguished by gallant actions or meritorious conduct." The theory that brevets under the Act of 1812, and the acts which grew out of it, are based on "actual rank," and fall with change of grade, is one of the most extraordinary delusions that ever had a firm grip on a government bureau. It first appeared in unsound arguments put forth long ago by Adjutant-General Roger Jones for the purpose of bolstering a claim he made to hold two offices, one in the Adjutant-General's Department and one in the Artillery, at the same time. More than once destroyed when fairly brought to the test, this theory nevertheless rises phoenix-like from its ashes, and is re-embraced by the Adjutant-General's Department, on the ground apparently that its own rulings form precedents, and that the adverse decisions by higher authority are merely exceptional cases. This remarkable fatuity is probably due to bureaucratic pride, and to misconception concerning Attorney-Gen-

eral Wirt's opinions. Adjutant-General Cooper, speaking of the rulings of his department on this subject, said "the principle of these decisions will be found in the opinion of the Attorney-General, Mr. Wirt, August, 1821." That opinion does not contain the principle attributed to it. The question before Mr. Wirt arose in the Marine Corps, in which there was at that time no grade of Major. A Captain of marines became entitled to a brevet. The question was whether he should be given the brevet of Major, whether he should have no brevet at all, or whether he should be brevetted Lieutenant-Colonel. The Attorney-General held that the brevet of Lieutenant-Colonel could be conferred, but that the brevet of Major, the grade of Major having no existence in the corps, could not be conferred. In endeavoring to emphasize his views on this point, the Attorney-General used language which has been employed, conscientiously no doubt, by the Adjutant-General's Department in antagonism to the purpose and meaning of the opinion. Mr. Wirt said, after this marine case had been forced upon him *ad nauseam*, "It seems to me a palpable solecism in military language to talk of the existence of a brevet rank after the lineal rank by commission (of which the brevet is merely the shadow) has been destroyed." The figure of speech in the Attorney-General's brackets has been taken literally, and with the rest of the sentence forms the foundation of the theory that brevets must be consecutive, each based on the grade next below, and that as soon as the particular lineal grade on which the first brevet is based, is vacated, the brevets must all fall, though the grade be not destroyed, but on

the contrary, both the grade and the officer remain part of the legal military establishment. There is no law, nor is there an opinion from an Attorney-General to sustain this theory. What Mr. Wirt decided was that an officer cannot be brevetted to a grade which "has been destroyed," which has no legal existence. This cannot be contested. Congress recognized the point when it was proposed to reward General Scott for services in the Mexican war. At that time no higher grade than the one held by Major-General Scott existed in our military establishment. Congress first "revived the grade of Lieutenant-General in the Army of the United States," and then the President and Senate conferred on Major-General Scott the brevet of Lieutenant-General.

Col. Nicholson's fourth inquiry was: "In cases where brevet commissions were granted by the President in the usual manner to enlisted men in the Volunteer Service (see "Fry on Brevets," p. 236), are such appointees recognized by the War Department as officers?" To this the Adjutant-General replied: "Brevet commissions were issued to enlisted men in the Volunteers through error only. There were but very few cases like that referred to in the case of Private Stowe. The person so brevetted, however, would probably be entitled to all the privileges which the law attaches to brevet rank thus conferred." The Adjutant-General says there were "but very few cases" like Private Stowe's. No case like it has ever appeared. It was a plain violation of law. Colonel Nicholson asked—no doubt to remove uncertainty in the Loyal Legion—whether such appointees "are

recognized by the War Department as officers." He is told that persons "so brevetted"—that is, privates brevetted in the usual manner, but in violation of the law which in conferring brevets restricts the President and Senate to commissioned officers—"would probably be entitled to all the privileges which the law attaches to brevet rank thus conferred." That is to say, persons brevetted in violation of law would probably be entitled to all the privileges which the law attaches to brevets conferred in violation of law. Col. Nicholson evidently tried to find out what in the opinion of the War Department those privileges are, but he failed.

The proposed appropriation of a hundred millions in a single year, for the disabled of the last war, and the favor shown in all spheres and pursuits, to those who were conspicuous in that contest, prove that our people appreciate important military services. Yet we have not been able to devise any satisfactory system of rewards in the Regular Army as a "stimulus to enterprise." Promotion by merit would not do. *Influence* is the curse of the service. It blocks the way to military punishments and is a standing menace to any system of rewards we could adopt. It is well for the Army that the law requires promotions to, and including, the grade of Colonel to be made by seniority. Whether it would not be best in time of peace to carry the law of seniority still higher, especially now that we have compulsory retirement for age, is a question worthy of careful consideration.

After more than a hundred years' experience we have found no substitute for the brevet, but have deprived

that reward of nearly all the value it once possessed. If we are to have any stimulus to enterprise, the question to consider is whether we ought to venture on something new, or whether we should try to perfect or improve the brevet system and rely upon it. The difficulties in devising a system that will not do more harm than good, and the risks in administering any system are so great as to render experiments in a new field dangerous. The brevet has the merit of being conferred by the President and Senate of the United States, and in its complimentary character it is akin to the "thanks of Congress." The truth is, though it be not openly confessed, that, abused, abridged, emasculated as the brevet has been, the Army loves it still. It has its faults, but the worst of them might be removed. The indiscriminate distribution of brevets after the War of the Rebellion no doubt contributed to producing legislation which not only restrains the appointing power in conferring this reward, but deprives the reward of advantages it formerly possessed. If the brevet is to be retained as a stimulus to enterprise—we have no other—the proper course would be to increase its value and at the same time restrict its bestowal to cases of clearly defined and well established gallant actions.

One step towards increasing the value of the brevet would be to let it carry a specified pay independent of all contingencies of command. That of itself ought to impose caution in its bestowal. With that provision, with the right to command as at present, when assigned by the President, and with suitable insignia on the regular uniform, the brevet would probably be the

best form of reward and stimulus to enterprise that can be devised for our Service.*

XII.—RETIREMENT.

Ordinary or partial retirement is not *vacation of office*. It is only withdrawal from “*active service* and command, and from *the line of promotion*.” This point, after able discussion, was decided by the Court of Claims in the case of General T. J. Wood, retired, *vs.* the United States. The Court said, “Congress cannot appoint him to a new and different office,” “but Congress may transfer him to the retired list, and may change his rank and pay at any time without coming in conflict with the Constitution.” “He *still retains, on the retired list, the office of Colonel of Cavalry*.” The Supreme Court in the case of the United States *vs.* Tyler (105 U. S., 244) decided that a retired Army officer is an officer in the military Service.

The law does not design to deprive the retired officer of office. On the contrary, it says, “He shall *continue* to be borne on the Army Register” as a retired *officer of the grade which he may occupy at the time of retirement*; and the Revised Statutes say: “The Army of the United States shall consist of *one General . . . the officers of the Army on the retired list . . . and the Professors and Corps of Cadets of the United States Military Academy*.” While the law provides for the retired officer’s withdrawal from active service and command, and *from the line of*

*The acts of July 12, 1862, and March 3, 1863, authorize the President to bestow “medals of honor on such officers, non-commissioned officers and privates as have most distinguished or may hereafter most distinguish themselves in action.”

promotion, it leaves him in possession of his office, his grade, rank and uniform and part of the pay of his active grade, and it specifies duties which, under the authority of his office, he may legally perform if assigned.

The law not only says that the officer when retired shall be withdrawn from the line of promotion, but it requires that the next officer shall be promoted. It is the purpose and effect of the law that the offices necessary in the various grades to accomplish the retirements required by the law shall exist (with the restrictions governing in retirement) as long as occupied in addition to the legal complement of offices for active service in the different corps. Although the law restricts the functions and incidents of his office, the partially retired officer belongs no less to his corps and no more to the Army at large after retirement than he did before.

XIII.—REDUCING PAY.

The Army officer's contract is for life. He gives up all other occupations and places his talents and time at the disposal of his employer. The Government exacts at will the fruits of his industry in peace, and the exposure of his life in war and pestilence; and totally independent of the officer's comfort or wishes, claims of him, at its discretion, services, involving not only great personal but heavy pecuniary sacrifices. The pay of the officer should rest upon the requirements of his life-long contract, and not upon the services—always designated by the Government—which he may be rendering at any particular moment. The Captain in his quarters in garrison, or on leave of ab-

sence among his friends, is *overpaid* no more, not a thousandth part so much, in fact, as he is *underpaid* when he is leading his company in the forefront of battle, or nursing his men in pestilential hospitals. His compensation is but an average—and a low one—on his permanent contract. While he must hold himself ever in readiness for exposure, and sacrifice even of life itself, he receives no increase for his more dangerous and valuable services. Should he not be spared a reduction for his less conspicuous though arduous labors?

The officer of the Army knows that the Government has a right to reduce his pay, but he asks, in consideration of the nature of his contract, and the character and magnitude of the services and sacrifices required of him, that this right be not enforced unless general economy makes it necessary to reduce all salaries. Then the Army officer, without making any special plea, will, as Generals Sherman, Hancock and others have said, bear cheerfully *the same percentage of reduction* that the nation may find it necessary to apply to all paid from its treasury.

In an article on the Army of the United States, published in the *North American Review*, May-June, 1878, the Honorable James A. Garfield, M. C., says:

“During the last Congress, the House refused to reduce the pay of its own officers, and thus expressed its judgment of the proper relation between service and compensation. Remembering how light are the duties of most of the officers of the House during the recess of Congress, and comparing the qualities and training required for their work (mostly clerical) with

the training and service required of regimental and field officers, the following table will be found instructive :

PRESENT PAY OF CERTAIN OFFICERS OF THE HOUSE.

Clerk of the House,	\$4,500
Sergeant-at-Arms,	4,000
Doorkeeper,	2,500
Nine Assistant Clerks, each,	2,500
Clerk of Document Room,	2,000
Distributing Clerk,	1,800
Messenger,	1,440
Upholsterer and Locksmith, each,	1,400

PROPOSED PAY OF ARMY OFFICERS.

Colonel,	\$3,500
Lieutenant-Colonel,	3,000
Major,	2,600
Captain (mounted),	1,800
Captain (not mounted),	1,600
First Lieutenant (mounted),	1,500
First Lieutenant (not mounted),	1,400
Second Lieutenant (not mounted),	1,300

“Should this bill become a law it would be better, so far as pay is concerned, to be a doorkeeper in the House of Representatives than a senior Captain of Infantry; better to be the locksmith of the House, than a Second Lieutenant of the line.”

The pay of the Army officer is barely sufficient for his proper support. To reduce it would tend to destroy the democratic character of the Service, by driving the poor officers to other pursuits, and leaving our military profession for the aristocracy of wealth alone. Whatever the size or formation of the Army may be, it should be *efficient*. In the interest of efficiency as well as of the integrity and honor of the Service, the officer should—unless overruling public

necessity intervenes—have security of place and pay so long as he is worthy.

The subject of pay is forcibly and quaintly presented in Ward's "Animadversions of Warre," 1639. The author says:

"It is likewise money and pay that keeps the army in good order, and makes it strictly to observe discipline, the preserver of all: Pay is the poore souldiers *aqua-vita*, which makes him comfortably undergoe the hardest command; but want of it is such an *aqua-fortis*, as eats through the iron doores of discipline, and causeth whole armies to rush into disorders."

XIV.—RENTING QUARTERS.

The inquiry concerning Army pay, which culminated in the Act of July 15, 1870, was the most exhaustive one on that subject that has ever figured in the history of our service. The purpose of the resulting legislation was, *first*, to dispense, *as far as possible*, with allowances, and have a fixed and definite sum of money as the officer's compensation; and, *second*, to provide that, with a few unimportant exceptions, officers of the same grade should receive exactly the same compensation, no matter what branch of the Service they might belong to, where they might be stationed, or what duty they might perform. Line and Staff, Artillery, Cavalry, and Infantry, were, in this respect, all placed on identically the same footing. Probably there are no Army officers in any service who have fewer allowances than ours receive under the present system; and there are no officials under our Government whose compensation is set forth more fully and plainly than that of our

Army officers. Under the Act of 1870, and the general Regulations of the Army, then and still in force, the Government, when not requiring its officers to be in the field, provides for them when on duty quarters appropriate to their respective grades. A large majority of the officers are posted habitually at points where the Government owns quarters suitable for them ; and the equality contemplated by the law is thus preserved among all of these. But there is a small minority who must, without any choice or discretion on their parts, be posted from time to time at places where the Government neither owns quarters, nor is disposed to purchase or erect them. To preserve the equality heretofore adverted to, the act of 1870 permits quarters to be hired for these officers, according to their grades. That is to say, the number of rooms authorized for an officer's grade may be hired for him, when the Government requires him to live where it has no rooms of its own to give him ; and in like manner, it supplies him, by purchase, with the fuel authorized and necessary for these rooms. It is not possible, under existing circumstances, by any other plan or process, to secure, throughout the Service, the equality of compensation which is fair and just, and which the Act of July 15, 1870, sought to, and in principle does, establish. In illustration it may be mentioned that the post of Fort Columbus, Governor's Island, is within the *City of New York*. The officers on duty there are supplied by the Government with ample and excellent quarters. There are, however, a number of other officers on duty in New York City for whom the Government has no quarters. Equality between these two classes can be

maintained only by the Government hiring for the latter the equivalent of what it actually lends to the former.

Neither the renting of quarters nor providing them in kind is restricted to any particular grade or class of officers. Every officer is liable at any time to find himself quartered under either branch of this just principle.

XV.—CHANGE OF STATION.

Changes of position in the military Service are frequent and sudden. To enlisted men they are not a great hardship. The Government supplies them with quarters, furniture, camp and garrison equipage, clothing, rations, and transportation for their effects. It is very different with the officer. All he gets for change of position is mileage, by the shortest mail route, and allowance for a few hundred pounds of baggage in case of regular change of station. All the expenses over mileage that an officer incurs, whether on his own account or that of moving his wife, children, servants and furniture, come out of his own pocket. Furthermore, it frequently happens that the change of an officer living in rented quarters, makes him a loser to the extent of the unexpired term of his lease. A case or two of *actual experience* may be mentioned in illustration of the magnitude of this hardship. A careful officer says: "I had ten thousand dollars in U. S. bonds, the amount of two bequests. My station has been so often changed, and at such expense, that, of the ten thousand, I have precisely four hundred left, which I have invested for my children." Since he wrote the foregoing, his station has been changed two or three times.

Another officer who was ordered from the Atlantic to the Pacific coast, shipped, around Cape Horn, as much of his furniture as was necessary for the comfort of his family. This, though the most economical course, was expensive. He was soon ordered back to the Atlantic coast. Before starting, being compelled to close up promptly, he disposed of all his furniture at a forced sale for the sum of \$65, and had to re-furnish when he reached his new station. These changes, frequent, necessary and sudden, are not confined to a limited period, but go on during the whole of the officer's life. To provide for them requires while the officer is stationary, economy that none can appreciate except those who are compelled to practise it. Change of station is a heavy and inevitable assessment on the officer's pay.

But there are other requirements. This is a free country in which the social status of most men is regulated by themselves. But by the law of the land, officers of the Army are required to live as gentlemen, and must, by the Articles of War, be dismissed from the Service for conduct unbecoming a gentleman. That they may in all respects be worthy of the nation, heavy expenses resulting from rules of life, public and private, which they cannot disregard, if they would, are forced upon them. In the matter of dress even, they are controlled. Their uniform and equipment, prescribed by the Government, is enormously expensive in the first instance, and must be frequently renewed, as poverty is not accepted as an excuse for shabbiness on duty. With the bare sufficiency of their pay and allowances to meet

the demands upon them, failure to pay a debt, large or small, is treated as an offence against the honor of the Service.

These are considerations which should be fully weighed in estimating the compensation of Army officers as an independent question, as well as in comparing it with the pay of officers in the civil service.

XVI.—FORAGE FOR OFFICERS' HORSES.

Experience in the organization of armies has resulted in a few general rules about which there is at this day no dispute. One principle, growing out of the fact that the horse is essential in the Service, is to make a general division of the forces into *mounted* and *not mounted*. The division is a necessary one, and our laws contemplate that the distinct purposes of the two parts shall be held in view notwithstanding occasional interruptions. Thus the excess of pay provided for a *mounted* officer over one *not mounted*, attaches permanently to the office, and is not disturbed by the fact that the mounted officer may be called upon to do, for a time, duty not mounted. Nothing which is calculated to promote the mounted officer's main object—*mounted duty*—can properly be neglected or withheld.

Experience has also shown that efficiency and economy are promoted by requiring the commissioned officer in the mounted service to provide his horse and equipments, while the Government supplies horses and equipments for the use of enlisted men.

The line between what the Government should furnish and what the officer himself should furnish to

ensure the efficiency which depends on fitness between the officer and his horse and equipments, has long been clearly and distinctly drawn in our Service. The latter produces the horse caparisoned, as he presents himself in uniform, and the former feeds and shoes the horse. The Government and the officer are under an equally binding obligation—the latter to keep and ride the horse, and the former to feed and shoe him. It is a serious defect in our Army that there are cases where officers on sedentary service, remaining for a long time undisturbed, omit the horsemanship which is an important element in their fitness and readiness for all of their duties. But these are exceptions, and even in them the officers do not *necessarily* and *invariably* remain stationary. As a rule in the matter of stations, duties and expenses in our Army, the only certainty is—uncertainty.

The term “field service” has been proposed as indicating the period during which an officer should have his horse and forage. No rule basing the allowance of forage on the contingency of field service could be made to work advantageously. Doubts and disputes damaging to the Service, with immense expense to the officer, and no saving to the Government, would certainly arise under it. Field and garrison duty in our Army are not confined to particular periods or places. Either may occur in the East or the West, and may continue for a longer or shorter time. Field service might be construed as beginning to-day, when the officer, under the proposed plan, would have to buy his horse, and, ending to-morrow, when, for the lack of feed, etc., he would have to sell him.

The present law on the subject seems to be ample and appropriate. It is that "*forage* may be furnished in kind to officers by the Quartermaster's Department, according to law and regulations." (Act of July 15, 1870.)

The forage authorized by this Act is not an emolument for officers, directly or constructively. It is for the purpose of keeping them at all times, ready to mount, well qualified for the Government Service. That purpose should not be abandoned. Horsemanship is deemed so important in the German Army that staff officers must be confirmed in it before promotion, and it might well form part of the examination which our officers should undergo before passing to higher grades. If, in our Service, it is in some cases neglected, correction may be applied by orders or regulations under the law as it now stands.

XVII.—AN ARMY MUTUAL SURVIVORSHIP ANNUITY SOCIETY.

It is plain that the Government cannot provide adequately for the support of all the widows and orphans of its public servants. The existing pension laws—as liberal doubtless as the Nation can afford—come far short of the actual necessities of the case. Hence we witness the humiliating spectacle of the widows of the higher and more distinguished, as well as the lower and more obscure officers, begging Congress to give them pensions *so increased*, by special enactment, as to reach the sum of perhaps fifty or seventy-five dollars a month. They act from necessity in asking, and Congress acts from necessity in refusing or restricting. Every day's experience furnishes new proof that the

safest if not the only way to provide adequately for the protection of the widows and orphans of officers of the Army, is by an organization for that purpose among the officers themselves. How to effect it is the question. *Life Insurance* is attended with the objection that at best it produces not a certain *income*, but only a specific sum of money, and this comes to the widow and orphan at the death of the protector and adviser, and consequently it is very likely to be lost or reduced by injudicious investment, or to be so trenched upon for current expenses that it becomes too small to produce an income for support. Furthermore, with all private corporations, whether for *Life insurance* or *annuity* purposes, the officer must pay a percentage large enough to cover his share of the heavy expenses, and perhaps contribute to profits, and still he feels that there is some risk of his not getting what he is paying for. When we consider the number of these companies open to him and the peculiar difficulties the officer is under in deciding which is good and which is not, it is plain to see that his fears on this score are well founded. Then, too, whatever company he selects, he is in the hands of strangers and knows that his widow will be so likewise in making her claims or collections after he is dead.

It is not the purpose of an annuity society to provide life insurance, nor to supersede or interfere with any Army life insurance scheme. Its sole object is to enable an officer, by small deductions from his pay, to secure, from the date of his death, an income for his wife, child, or other designated person, in case that person outlives him. The aggregate of the deductions from

the pay of the officer is the price agreed upon for a specified *guarantee*; that is, for a *guarantee* to the effect that in case the officer dies before his nominee, the latter shall receive a stipulated income for life. As long as the guarantee is held, the price of it, as agreed upon, must be paid, and that price must belong, solely and without reversionary claim of any sort, to the fund from which the annuities are to be paid. This renders it practicable to reduce the price of the guarantee to the minimum, and at the same time keep the fund adequate to the demands upon it.

Concerning the benefits to be received by the Government from this scheme, it may be said that the deductions made monthly from the pay of officers will continually go to increase the cash on hand in the Treasury, and in the great majority of cases long before any annuity matures; only so much being drawn out from time to time as may be found necessary to pay the annuities falling due. The Government will have the use of and interest on all the remaining balances, and its benefits therefrom will increase rapidly as time goes on. While this scheme does not propose any interference with the pension laws, it will tend to prevent the increase of the *regular* pension list, and remove the necessity for appropriations for *special* pensions. The extent of this advantage to the Government will of course depend on the success of the proposed plan. The advantages offered to those who may purchase annuities are:

1st.—Absolute certainty that the conditions under which they purchase annuities will be fully and exactly complied with.

2*d.*—That each member, without regard to rank, can secure for his nominee just as much monthly income, to commence at his death, as he chooses to pay for during his life.

3*d.*—That the *proportional* price he pays for this income is exactly fair as determined by the consideration of all the elements, which the science of insurance has shown to pertain to the subject, mathematically considered; and that the *actual* price is lower than is charged for the same thing by private annuity companies.

4*th.*—That this income is independent of risk and expense in collection, and will be paid *monthly* by the pay department of the Army; a method of payment which is not only safe and convenient but is the one most likely to be agreeable to the officer's widow or orphan.

5*th.*—That this Society will be open to officers on the same terms under all contingencies of service, whereas in time of war or other special danger, the increased charge for increased risk makes it next to impossible for officers of the Army to procure life insurance or survivorship annuities in private corporations.

XVIII.—DUTIES OF AN ADJUTANT-GENERAL.

Office in our Army renders the incumbent eligible to command, but as a rule command is assumed *by virtue of assignment to duty*.

The order making an original assignment should specify clearly what is embraced in the command; and commanders succeeding the first one, exercise authority to the same extent their predecessors did, unless otherwise ordered.

Although violations may be tolerated in practice, it is, nevertheless, the theory of our military system that the commanding officer is solely responsible for his entire command—staff as well as line—and his authority is as full and complete over the one as over the other.

In obedience to the full measure of responsibility placed directly upon him, a Commanding General in our Service performs the various duties of his office in person, as far as possible.

In time of peace, when the operations, although multifarious, are not of great magnitude, and when economy in public expenditures is dwelt upon as of special importance, commanding generals give their personal attention to many matters of detail which, in time of war, with large armies and grand operations, they must entrust mainly, if not entirely, to adjutants-general or chiefs of staff.

Our military laws provide no such office as Chief of Staff. It has appeared but twice in our *legal* organization, namely, in the Act of March 3, 1865, which was repealed and the office abolished by the Act of April 3, 1869, and in the Act of March 3, 1813, which has never been repealed in express terms, but which was virtually repealed by the Acts of 1815, and 1821, fixing the peace establishment. The necessities of the Service, however, produce the office in fact, although it does not exist in form, and legislative sanction is not required for the assignment of an officer to duty as Chief of Staff.

As a general rule the duties of this office fall upon the Adjutant-General of the command.

That officer, whether in peace or war, is *de facto*

Chief of Staff, unless some other officer is specially assigned to that duty. But the office is essentially different in our Service from what it is in foreign services. In the latter, the Chief of Staff, as such, has control over, and is accountable for the staff of the command, which creates a divided responsibility at the head of the Army, while with us an Adjutant-General (or Chief of Staff) is not a power in himself. He is, in fact, the organ, and acts only in the name of the General with whom he is serving, the latter alone being accountable for the staff as well as line. The *office* of Adjutant-General is absolutely indispensable in all large commands. Its duties, speaking broadly, are all of those duties of the Commanding General himself, which, under a judicious division of labor, he does not perform in person.

This division of labor is not made by the law, and is but vaguely indicated by regulations. In fact it cannot be governed by inflexible rules, but must vary from time to time; custom, the directions and wishes of the commander, and the necessities of the Service as they arise from day to day, alone can regulate it.

No General Order, and no important Special Order, should be promulgated by an Adjutant-General until it has been read and approved by the commander in whose name it is made.

Any order, written or verbal, not palpably illegal, that an Adjutant-General promulgates in the name of the General Commanding is binding on all within the sphere of the General's command.

Practically speaking, *so far as the command is concerned*, whatever the Commanding General may do

himself, the Adjutant-General of the command may do in his name, being responsible only to his commander. The latter in turn is responsible to his superiors for the Adjutant-General as well as for the rest of the command. It is, therefore, a matter of the greatest moment that Adjutants-General, who are the only officers in the Army invested with such large discretion, should be persons of good character and good habits, as well as men of judgment, learning, and experience.

The following extracts from the U. S. Army Regulations of 1821, compiled by General Scott, and approved by Congress, though not reproduced in the existing code, are nevertheless of interest :

“ 4. The duties of a Chief of Staff, including always his assistants, whatever may be the corps to which he is attached, fall under the heads *sedentary* and active.”

“ 5. Sedentary duties, or the business of the bureau, as publishing orders in writing, making up written instructions and the transmission of them; reception of reports and returns; disposing of them; forming tables, showing the state and position of the corps, or its several parts; regulating details of service; corresponding with the corps, detachments, or individual officers serving under the orders of the same commander; corresponding with the administrative or disbursing departments relative to the wants of the troops, and, finally, the methodical arrangement and care of the records and papers of his office.”

“ 6. *Active duties.* These consist principally in establishing camps; visiting guards and posts; mustering and inspecting troops; inspecting guards and detachments; forming parades and lines of battle; the

conduct or control of deserters and prisoners (from the enemy); making reconnoissances, and, in general, discharging such other exterior duties (exterior to the bureau) as may be specially assigned."

"7. This article regards more particularly the staff of an army in the field, but will equally apply, in many particulars, to the staff of a geographical military department, or to that of a post in time of peace or war."

The foregoing extracts, however, as well as the specification of duties for a Chief of Staff given by Jomini and other foreign military writers, are to us merely suggestions of the kind of service an Adjutant-General may have to perform, and are not to be regarded as setting forth the duties of his office.

An Adjutant-General should so arrange the public business as to enable the commander to give timely attention to official subjects in the order of their importance. With a view to this, it is proper that correspondence *concerning a command*, between its commander and any one not superior to him in the military service, as well as all official correspondence between a commander and those under his command, should be conducted by, and all official communications in the ascending line of this correspondence should be addressed to, the Adjutant-General of the command. This secures prompt dispatch of public business, and enables the Adjutant-General to obtain and submit with those communications which require the special direction of the commander, all the information necessary to a full understanding of the subjects presented. The Adjutant-General should also, if practicable, pro-

cure for transmittal with those communications which his Commanding General has not the power to decide upon, such information as will enable higher authority to dispose of the subjects presented without further reference; but no subject which a commander is competent to dispose of should be forwarded for the action of higher power, except by way of appeal. In communicating information based upon reports in detail from inferiors, the commander's own report should embody all that may be of interest to higher authority.

Orders and instructions must be perfectly understood in order to be promptly and fully executed. They should, therefore, be so plainly expressed as to be readily comprehended by the subordinate, who may know nothing of the matter in hand but what he learns from the orders or instructions received.

All orders, and all important decisions and opinions, which are general in their bearing, should, when promulgated from an Adjutant-General's office, appear in the form of "General" or "Special Orders," in regularly numbered series, and not as "Circulars." The latter form, if adopted at all, should be used only for conveying information which is unimportant, and fugitive in its nature.

Orders should be couched in brief and positive terms.

Instructions, if not given verbally, usually take the form of letters, and should be as elaborate and explanatory as the subject and occasion may require.

It is especially the duty of an Adjutant-General, before promulgating orders, carefully to consider what their effect will be upon or under existing orders and

regulations, and to ascertain that their execution is practicable, and that they are such as will accomplish the object with the greatest advantage to the Service, and *with the least fatigue and inconvenience to the troops.*

An Adjutant-General should have his arrangements made in advance for the distribution of orders with the least possible delay and with the greatest possible certainty. The interval between the time an order is given by a commander and received by a subordinate, is not always fully appreciated. The Adjutant-General should see that this interval is made as short as possible. To that end he should keep himself informed of the position of the different parts of the command, and the routes by which to reach them, and should see that orders and instructions are punctually delivered and executed, as well as promptly sent. During campaigns, important orders and instructions should, if possible, be conveyed by, and delivered to, commissioned officers.

There is no office in which subordination and true military character are more essential than in that of an Adjutant-General.

While he is not, like an Aid-de-camp, dependent on the commander for his office, he is fully in the commander's confidence. Entrusted with great power and discretion—under no other bonds than his personal and official integrity and loyalty, he is under peculiar obligations to his commander and to the Service for faithful and efficient performance of duty. He should furnish his Commanding General with information which will contribute to the formation of just and correct conclusions and opinions on all military matters con-

cerning the command. He is bound by honor as well as by duty to lay official business before the Commanding General in a full, fair and impartial light, and studiously to avoid those devices, in the so-called "art of putting things," which are calculated to produce wrong impressions and imperfect or partial rulings. While he should never assume the character of an advocate, he should—as the independence of his position enables him to do—on all proper occasions give his own views and advice, frankly and fearlessly, but not persistently, remembering that the business in hand, and the responsibility therefor, belong not to him but to the Commanding General.

XIX.—ARMY REGULATIONS.

In 1779 (March 29) the Continental Congress adopted certain "Regulations," to "be observed by all the troops of the United States." These had been prepared by Baron Steuben, and were published in the same year as "Regulations for the order and discipline of the troops of the United States." They were, for the greater part, a system of tactics and rules for the camp and on the march, but contained "Instructions," for the different regimental officers and enlisted men. Other editions of these "Regulations," were published in 1802, 1807, and 1809.

Many of the regulations in force at the beginning of the year 1810, which had been issued at different times since 1797, in the form of General and Executive Orders, are given in Duane's Military Dictionary.

On the increase of the Army in 1798, in contemplation of war with a foreign power, President Adams

issued manuscript regulations, supplementary to Baron Steuben's, containing many rules prescribing duties of the different grades of officers and enlisted men in service, and particularly as to the administration in a garrisoned post or barracks.

A number of regulations, in the form of General Orders, were also issued by the War Department on the increase of the Army in 1812. Some of these are to be found in the appendix to "Maltby on Courts-Martial."

In 1808 the Articles of War, the principal Existing Regulations and Laws of the United States relating to the Military Establishment in force on the 12th day of April, 1808, were published—apparently by authority—by Dinmore and Cooper, Washington, the "Regulations" covering but sixteen pages. In 1812 a volume, similar to that of 1808, was published by R. C. Weightman, Washington,—also apparently by authority. That part of it which is devoted to the "Rules and Regulations of the War Department" is contained in twenty-seven pages.

In 1813 the General Regulations affecting the Army of the United States, were for the first time collected and issued by the War Department in book form as a complete system.

By the Act of March 3 of that year, it was made the duty of the Secretary of War to prepare General Regulations "which Regulations, when approved by the President of the United States, shall be respected and obeyed, until altered and revoked by the same authority."

The Regulations thus issued were laid before Con-

gress at its next session, as required by the Act, and are reprinted in the "American State Papers on Military Affairs," Vol. I.

Editions of the Regulations were issued in November, 1814, and in 1815. The latter was published at Albany, by "Webster and Skinners," and was not an authorized edition.

By Act of April 24, 1816, the Regulations in force before the reduction of the Army,* were recognized as far as found applicable to the Service, and subject to alterations by the Secretary of War, with the approbation of the President.

This Act did not refer to any particular edition of General Regulations, but to all the general rules, etc., existing at the time of the reduction.

An edition of the Regulations was authoritatively issued in September of that year.

There was an edition published in January, 1820—by order of the Secretary of War, from the Adjutant and Inspector-General's Office—which was a reprint of that of 1816, with the War Department orders which had been issued in the meantime.

These Regulations of January, 1820, were wholly distinct from those issued the following year in the manner to be stated.

On the 22d December, 1819, the House of Representatives had resolved that "the Secretary of War be instructed to cause to be prepared and laid before this House, at the next session of Congress, a system of martial law, and a system of field service and police,

*The Act fixing the military peace establishment was approved March 3, 1815—the actual reduction took place in June.

for the government of the Army of the United States." On the 22d December, 1820, the Secretary of War (Calhoun) accordingly submitted a system of "martial law," prepared by Judge-Advocate Major Storrow (which was never adopted), and a system of field service and police, which had been prepared by General Scott, and submitted to the War Department in September, 1818.

December 26, 1820, the speaker laid them before the House. The document was in manuscript and was ordered to be printed, and a copy laid upon the desk of each member. (It is reprinted in the 3d vol. of the State Papers on Military Affairs.) When the book was printed several copies were sent to General Scott, who made certain corrections, and on the 20th February, 1821, returned a corrected copy (of which he retained a duplicate) to the War Department for the committee of the House. It was received by the chairman of the Committee on the 23d *February*, 1821.

February 27, 1821, the chairman of the Military Committee of the House, reported the Senate Bill, "to reduce and fix the military peace establishment," with certain amendments, among which was the addition of a section approving and adopting "the system of General Regulations for the Army, compiled by Major-General Scott." The bill, including this (the 14th) section became law *March* 2, 1821. Early in that month General Scott received directions to put the book to press for the use of the Army, and (having received a letter from the chairman of the Military Committee of the House, informing him that the corrected copy had been received, and section 14 added

to the Army Bill by way of amendment) he caused the book to be reprinted from his retained duplicate corrected copy.

The Regulations were then, July, 1821, issued by the War Department, *with the corrections* as "formally approved by Congress."

This gave rise to the question, was the corrected copy the one approved by Congress? In 1822 a committee of the House was appointed to investigate the circumstances attending its publication. General Alexander Smyth, the chairman of the Military Committee, stated that when he proposed section 14, of the Act of 1821, to the committee as an amendment, he had reference to the corrected Regulations which he had then received, that he did not recollect exhibiting them to the committee, but thought he had, and believed that when he reported the amendments to the House, he had the corrected copy and deposited it with the clerk with the intent that from that copy the system should be published. These recollections were not, however, sustained by the other members of the committee nor by the clerk of the House. None of them apparently had ever seen the corrected copy *before* the passage of the law, but the clerk of the House thought he had seen it *subsequently*, when General Smyth, made a return to him of various papers which had been before the committee, and he refused to receive it, not considering himself the proper repository. Search had been made in his office, but it could not be found.

The select Committee reported that it was an act of omission, and not of design, on the part of the chair-

man of the Military Committee in not submitting the corrected copy to the Committee.

The Committee reported, May 6, 1822, and Congress immediately passed an Act—which was approved May 7—repealing the 14th section of the Act of 1821.

Gaines was accused by Scott of being instrumental in raising the opposition to these regulations.

The Regulations which were published to the Army in July, 1821, by President Monroe, as approved by Congress, never, therefore, in that form, had such approval, whereas the Regulations which were laid before Congress in 1820, but were never published to the Army, had.

The next issue of Regulations was that of March 1, 1825,—revised by General Scott.

In 1835, new Regulations, revised by Major-General Macomb, were published. Some amendments were made to these in an order from the War Department, dated December 31, 1836, in which it was declared that the General Order prefixed to the Regulations of 1835, had never been promulgated or in force, and directing the page containing it to be cancelled, and the Order of December 31, 1836, to be inserted in its place.

Another edition of the Regulations was issued January 25, 1841, and "Revised Regulations," May 1, 1847.

The next editions published to the Army were those of January 1, 1857, August 10, 1861, and of 1863 (the latter being simply a republication of the Regulations of 1861, with an appendix "containing the changes and laws affecting Army Regulations and Articles of War, to June 25, 1863").

By an Act, approved July 28, 1866, Congress directed the Secretary of War "to have prepared, and to report to Congress at its next session, a code of Regulations for the government of the Army, and of the Militia in actual service, which shall embrace all necessary orders and forms of a general character, for the performance of all duties incumbent on officers and men in the military service, including rules for the government of Courts-Martial. The existing Regulations to remain in force until Congress shall have acted on said report."

No code of Regulations having been submitted, Congress, by Act of July 15, 1870, enacted as follows:

"The Secretary of War shall prepare a system of General Regulations for the administration of the affairs of the Army, which, when approved by Congress, shall be in force and obeyed until altered or revoked by the same authority, and said Regulations shall be reported to Congress at its next session; *Provided*, That said Regulations shall not be inconsistent with the laws of the United States."

A board, with Inspector-General Marcy at its head, was accordingly, in 1871, appointed to prepare such a system, and the Regulations proposed by it were submitted to the House, February 17, 1873, referred to the committee on Military Affairs, and ordered to be printed. There was not time for the 42d Congress to act on them.

The Military Committee of the 43d Congress having had them under consideration, came to the conclusion that regulations should be flexible, which would not be the case if adopted by Congress. The Committee,

therefore, recommended a bill which was passed, and approved, March 1, 1875, repealing the above quoted section of the Act of July 15, 1870, and authorizing the President "to make and publish Regulations for the government of the Army in accordance with existing laws,"—but the authority thus re-committed to the President, was not acted on.

In 1876, however, by a Joint Resolution of August 15, Congress "requested" the President "to postpone all action in connection with the publication of said Regulations until after the report" of the Commission on the reform and reorganization of the Army, created by Act of July 24, 1876, was "received and acted upon by Congress at its next session." Upon the "report" here indicated no final action was ever taken, and the said Commission was, after March 4, 1879, discontinued. Thereupon an Act was approved June 23 of that year, section 2 of which provided as follows:

"That the Secretary of War is authorized and directed to cause all the Regulations of the Army and general orders now in force to be codified and published to the Army, and to defray the expenses thereof out of the contingent fund of the Army."

The work of codification was confided to the Adjutant-General of the Army, and the Secretary of War, upon an opinion of the Judge-Advocate General, directed that it should include all orders published *since* the date of the Act authorizing the codification. It includes, therefore, General Orders, No. 20, of February 15, 1881. The codification, thus prepared, was approved by the Secretary of War (Alex. Ramsey) and published for the instruction and government of

the Army on February 17, 1881. It is known as the United States Army Regulations, 1881.

A Board of Officers, of which Brigadier-General Stephen V. Benét, Chief of Ordnance, was president, was (by par. 1, Special Orders, No. 298, Headquarters of the Army, A. G. O., December 28, 1886) appointed to meet at the War Department on the 3d day of January, 1887, "for the purpose of revising and condensing the Regulations of the Army and preparing a new edition of the same." This edition was officially approved and promulgated as follows:

WAR DEPARTMENT,
February 9, 1889.

The President of the United States directs that the following *Regulations for the Army* be published for the government of all concerned, and that they be strictly observed. Nothing contrary to the tenor of these Regulations will be enjoined in any part of the forces of the United States by any commander whatsoever.

WM. C. ENDICOTT,
Secretary of War.

It will be seen from the foregoing:

1.—That the Regulations of 1813, although required to be laid before Congress, were alterable and revokable by the President.

2.—That the Regulations existing at the time of the reduction of the Army in 1815, were recognized by the Act of April 24, 1816, subject to alterations by the Secretary of War, with the approbation of the President.

3.—That only so much of the Regulations of 1821,

as was contained in the original manuscript submitted to the House in 1820, and ordered to be printed, was approved and adopted by Congress.

4.—And that, therefore, with this exception, the Regulations of 1863, have been the only system of regulations adopted by Congress in such way as to make it appear unalterable by the President.

ARTICLE II.

The Command of the Army.*

George Washington was appointed General and Commander-in-Chief by Congress June 15, 1775, but (with the exception of the six months, commencing December 27, 1776, during which it endowed Washington with dictatorial powers) Congress commanded the Army—directly a part of the time, and through the Board of, and Secretary at War, the remainder.

General Washington resigned his commission as General and Commander-in-Chief on the 23d of December, 1783; Major-General Henry Knox, then on duty at West Point, became the senior officer of the small force remaining in service, but he was not placed in command. On the 2d of June, 1784, Congress directed all the troops in service to be mustered out, except 25 privates to guard the stores at Fort Pitt and 55 to guard the stores at West Point, with a proportionate number of officers—no officer, however, above the rank of Captain. Under this resolution Major-General Knox was disbanded, and the Captain (John Doughty) in command of the small artillery force at West Point retained in service became the senior officer of the Army, and Congress allowed him the pay and emoluments of a Major of Artillery by Resolution of November 11, 1784. The peace establishment, fixed by Resolution of June 3, 1784, pro-

* *Field Glass*, for May, 1879.

vided for 700 men, to be formed into one regiment of eight companies of infantry and two of artillery, "for securing and protecting the northwestern frontiers of the United States," etc. Josiah Harmar, of Pennsylvania, was appointed Lieutenant-Colonel Commandant of these troops, and thus became the senior officer in service. But that he did not command the Army is evident from the fact that the resolution which provided the troops, authorized the Secretary at War to direct "their *destination* and *operations*, subject to the order of Congress." On the 27th of January, 1785, Congress passed an ordinance for "ascertaining the powers and duties of the Secretary at War." This ordinance, amongst other things, declared it to be the duty of the Secretary at War "to direct the *arrangement, destination* and *operation* of such troops as are, or may be, in service, subject to the orders of Congress." This was reiterated in Resolution of April 12, 1785, further defining the peace establishment. On the 31st of July, 1787, Congress conferred upon Lieut.-Col. Josiah Harmar a brevet commission of Brigadier-General, and allowed him the emoluments, but not the pay, of said commission, to continue, however, only during *his command on the frontier*. Matters remained thus until the adoption of the Constitution in 1789. Section II., Article 2, of that instrument says "the President shall be Commander-in-Chief of the Army and Navy of the United States, and of the Militia of the several States when called into the actual Service of the United States." The Continental Congress had exercised control of the Army. Several members of that Congress assisted in

framing the Constitution. They created the Supreme Civil Magistrate, who was to be "Commander-in-Chief," and transferred to him, the *President*, and not to the senior officer within the Army, the power to *command* the Army which Congress had exercised. But they provided in the Constitution for a division of power, by giving to *the President the command*, and by reserving to Congress the right to make appropriations for the support of the Army and rules for its government and regulation. On the 7th of August, 1789, Congress created the Department of War, and on the 29th of September, 1789, it passed an Act to recognize and adapt to the Constitution the military establishment previously created. President Washington on the 29th of September, 1789, nominated, among others, Lieut.-Col. Josiah Harmar, Brigadier-General by brevet, and he was confirmed and commissioned, and was retained under the Constitution in the position he had held prior to its adoption. He continued as the senior officer of the Army, but exercised no command except of the troops on active service with him on the northwestern frontier. On the 4th of March, 1791, Governor Arthur St. Clair of the Northwestern Territory was, under the Act of March 3, 1791, appointed Major-General, superseding Harmar as senior officer and as commander on the frontier, but with no larger powers as Commander-in-Chief than Harmar had possessed. On the 5th of March, 1792, St. Clair resigned and Anthony Wayne (formerly Brigadier-General, Continental Army) was on the same day appointed Major-General and placed as "General-in-Chief" over *the army on the frontier*.

He died December 15, 1796, and was succeeded same day by one of his Brigadier-Generals—James Wilkinson—who continued until July 3, 1798. At this time war with France was anticipated. Washington had served two terms as President, and had retired to private life, being succeeded in the Presidency by John Adams.

The Act of May 28, 1798, authorizing a "provisional" Army, empowered the President, whenever he should deem it expedient, to appoint, by and with the advice and consent of the Senate, a "Commander of the Army who being commissioned as Lieutenant-General, might be authorized to command the armies of the United States." The Act provided that the "Commander of the Army," as well as others appointed under it, might be discharged whenever the President thought the public safety would justify it. Washington was nominated by the President on the 2d and confirmed by the Senate on the 3d July, 1798, "to be Lieutenant-General and *Commander-in-Chief* of all the armies raised or to be raised in the United States." Our Republic was at that time in its infancy and was threatened with a war of invasion by a powerful and aggressive enemy. The independence which had been won by the sword, but which was hardly yet fully in possession of the civil powers, was in such danger that the sword seemed indispensable to preserve it. Under these circumstances, the "Father of his Country" was called from his retirement to see that the freedom he had fought for was not toppled over before it had become really enthroned. It is not strange that under these circumstances Washington was endowed with the

large powers as Commander-in-Chief (though of questionable constitutionality) which he had exercised during the Revolution. But even under the pressure of these trying times, and in the presence of the "Father of his Country," the President (Mr. Adams) was watchful of the constitutional duties and prerogatives of his high office.

On the 3d March, 1799, an Act was passed "That a Commander of the Army of the United States shall be appointed and commissioned by the style of 'General of the Armies of the United States,' and the present office and title of Lieutenant-General shall thereafter be abolished." The purpose was to confer the new office and title on Washington. But in the view of Mr. Adams, while the title of *Lieutenant-General* had relation to the higher office of the President as the *General* in fact, and did not fully ignore the Chief Magistrate as the constitutional and actual head of the Army, the title and office of *General* of the "Armies of the United States" "touched," if it did not "encroach upon, the constitutional functions of the President." The office of "General," created by the Act of March 3, 1798, was not filled, and Washington died in office as *Lieutenant-General*. Then Hamilton became the senior officer of the Army, and as Inspector-General had some general supervision, but there is nothing to show that he was put in command of the Army. Indeed, there is evidence to show that he was never endowed with the command, but that the Secretary of War directly exercised it; for on the 18th of December, 1799, Secretary of War McHenry wrote to Hamilton, saying: "I intend that

the *recruiting service* shall be wholly confided to you," and on the 5th of January, 1800, Hamilton wrote to Mr. King, saying: "Who is to be Commander-in-Chief? not the next in command. It will probably be deferred." Hamilton and the other officers appointed for the "Provisional Army," raised during the trouble between the United States and France, were disbanded on the 15th of June, 1800. James Wilkinson, Brigadier-General of the regular Army, thus again became the senior officer, and continued as such until January 27, 1812. On the 27th of January, 1812, war with Great Britain having broken out, Henry Dearborn, who had been a Colonel in the Revolutionary Army, and Secretary of War from 1801 to 1809, was appointed Major-General. Dearborn, as representing the President, exercised command while he was Secretary of War, but did not assume it now that he became the senior General. In 1808 he reported, in relation to a proposed increase of the Army, "In the event of war it will, I presume, be considered necessary to arrange our military force into separate departments, and to have a commander to each department, and of course to have no such officer as Commander-in-Chief."

In 1809, he, as Secretary of War, reported that "the business of the Department had increased beyond the capacity of what any one man could perform," and the increase of the Army in 1812 made it necessary to provide relief. Delegation of the duties of command was not resorted to—probable not thought of. The first remedy suggested was the creation of two Assistant-Secretaries of War; but for this plan, that of estab-

lishing additional regular military bureaux was substituted and, accordingly, the Quartermaster-General's Department, the Purchasing Department and the Ordnance Department were authorized by law. The Adjutant-General's, Inspector-General's, Medical and Pay Departments had already been established. The Secretary of War himself, in the autumn of 1813, by direction of President Madison, took the field and in person directed the operations of the Army on the Northern frontier. Dearborn was disbanded June 15, 1815, under the Act of March 3 of that year fixing the military peace establishment. That Act provided for two Major-Generals, and under it Jacob Brown and Andrew Jackson were retained. Brown thus became the senior General Officer of the Army on the 15th of June, 1815; but the President assigned him to the command of the Division of the North, and Jackson to the Division of the South, and exercised direct command himself through his Secretary of War. This condition of affairs continued until the reorganization under the Act of March 2, 1821. That Act provided for one Major-General only. The President divided the United States into two departments,—Eastern and Western,—assigned Brigadier-General Scott to the former, and Brigadier-General Gaines to the latter, and directed Major-General Brown *to establish his Head-quarters in the District of Columbia*. This left Brown virtually without a command, and simply as adviser of the Secretary of War and President. His duties as senior General seem to have been specifically defined to him by the War Department—though there is no record of them—for in his General Order of June 1, 1821, he

said: "On assuming the new duties *prescribed* to him by the Department of War, the Major-General considers," etc. That it was not intended he should command the Army is evident from the fact that no orders or instructions to that effect were made known to the Army, nor did he make any such claim. Brown died on the 24th of February, 1828, and was succeeded by Alexander Macomb, who was appointed "Major-General." The following order was issued from the Adjutant-General's office, by direction of the President, on the 28th of May, 1828: "He [Macomb] is directed to assume the command of the Army, and to *take the station* which was occupied by Major-General Brown at the time of his decease, at the seat of Government."

Macomb assumed command on the 29th of May, 1828, in the following terms: "Major-General Alexander Macomb, by virtue of his appointment and the orders of the President of the United States, assumes command of the Army." At the time of Macomb's appointment Scott was a *Brigadier-General*, and a Major-General by *brevet* dating July 25, 1814. He had expected to succeed Brown, and had for a long time urged upon the Government that he was entitled to rank as Major-General from the date of his *brevet* as such. If this had been so he would have been senior to Macomb, even after the latter had been appointed *vice* Brown to the only Major-Generalcy in the Army. The President's order assigning Macomb to the command of the Army was probable designed to override Scott's pretensions, and not to make a change in the principle and practice under which the President himself actually commanded through the Secretary of

War. Scott, however, as is well known, contested Macomb's right to command him.

Macomb died June 25, 1841, and was succeeded by Scott. The President on the 5th of July, 1841, issued a similar order to that issued when Macomb was appointed Major-General, and Scott issued his order July 5, 1841, assuming command. Thus this form of announcing the senior General came into practice. Scott (as shown by many facts, especially his failure to provide any authority or command for a General-in-Chief in the Regulations of 1821 and 1825, prepared by him, and by his correspondence with Secretaries of War Marcy and Davis) was fully aware of the President's constitutional obligation to command the Army. He said, "The Acts of Congress in force do not create the office of Commander-in-Chief," or "Commander of the Army. The existing laws do not even require that the senior General be called to Washington to *act* as Commander of the Army under the President." On the 15th of February, 1855, a joint resolution was passed reviving the grade of *Lieutenant-General*, in order that it might be conferred upon Scott, *by brevet*, as an acknowledgment of his services in the Mexican War. There was nothing in the resolution *entitling* the incumbent to the command of the Army as there was in the case of General Washington. General Scott, in his new grade of Brevet Lieutenant-General, continued in office until November 1, 1861, when, the Rebellion being fully under way, he retired, and was succeeded by Major-General George B. McClellan, then the senior officer in the Army. On the 1st of June, 1862, McClellan, still the senior, and after having for seven

months exercised all the authority over the entire army that a General-in-Chief can possess, was reduced to the command of the Department of Virginia, and took the field at the head of the Army of the Potomac; Major-General Henry W. Halleck, junior to McClellan, as well as to Fremont, Dix, Banks, Butler, and Hunter, being called to Washington by the President and assigned to duty as General-in-Chief of the Army of the United States. General Halleck's own opinions and views as to his powers under this assignment are referred to hereafter.

On the 29th of February, 1864, an Act was passed directing "that the grade of Lieutenant-General be, and the same is hereby revived in the Army of the United States; and the President is hereby authorized, whenever he shall deem it expedient, to appoint, by and with the advice and consent of the Senate, *a Lieutenant-General, to be selected from among those officers in the military service of the United States, not below the grade of Major-General, most distinguished for courage, skill and ability, who, being commissioned as a Lieutenant-General, may be authorized under the direction and during the pleasure of the President, to command the Armies of the United States.* Under this Act, Major-General U. S. Grant was commissioned Lieutenant-General March 2, 1864. But it was not until the 12th of March, 1864, when Halleck at his own request was relieved from duty as General-in-Chief, that Grant was assigned to command the Armies of the United States. On the same day Halleck was assigned to duty in Washington as Chief of Staff of the Army; and he continued until the close of the

war to perform, under that title, the same duties that he had theretofore performed under the designation of "General-in-Chief."

On the 25th of July, 1866, an Act was passed reviving the grade of "General." Under it Lieutenant-General Grant was appointed "General" July 25, 1866. The grade was revived in special recognition of Grant's eminent services; but that it gave him no additional powers is evident from the terms of the Act, which are identical in that particular with those of the Act reviving the grade of Lieutenant-General. On the 2d of March, 1867, an Act was passed that "the General of the Army shall not be removed, suspended, or relieved from command, or assigned to duty elsewhere than at said head-quarters (Washington), except at his own request, without the previous approval of the Senate." This Act further required that "all orders and instructions relating to military operations issued by the President or Secretary of War shall be issued through the General of the Army, and in case of his inability, through the next in rank; and any orders or instructions relating to military operations issued contrary to the requirements of this section shall be null and void." Penalties were prescribed for any violation of these requirements.

It is historical that the President at this time was in great disfavor, and was not long afterwards tried by a High Court of Impeachment; and, although the impeachment failed, he was practically deposed as Commander-in-Chief by the Act just referred to, which he had signed only under compulsion and protest. In messages to Congress he called attention to, and pro-

tested against, this Act as depriving the President of his constitutional rights. As it is not probable that any one will ever cite this legislation in support of the right of the President to delegate his powers as Commander-in-Chief, or the right of Congress constitutionally to deprive him of them, it need not be discussed in this connection. It was repealed by the Act of July 15, 1870, which abolished the offices of General and Lieutenant-General as soon as vacated by the officers then holding them.

On the 4th of March, 1869, Grant became President of the United States, and Lieutenant-General W. T. Sherman was, on that date, appointed General. On the 5th of March, 1869, the President directed General Sherman to assume command of the Army, which he did by an order dated March 8, 1869; but by an order dated March 26, 1869, the President practically resumed command himself, and has exercised it ever since.

On the 15th of July, 1870, an Act was passed directing that "the offices of General and Lieutenant-General of the Army shall continue until a vacancy shall occur in the same, and no longer; and when such vacancy shall occur in either of said offices, immediately thereupon all laws and parts of laws creating said office shall become inoperative, and shall, by virtue of this Act, from thenceforward be held to be repealed." The revival of the grades of Brevet Lieutenant-General in 1865, and of Lieutenant-General and General in 1864 and 1866, was *not intended to make a change in the regular military system of the United States, but was designed to afford rewards for the distinguished services of particular individuals.* The intention is

the same in all, but is most clearly set forth in the case of General Scott, the Joint Resolution reading :

“That the grade of Lieutenant-General be, and the same is hereby, revived in the Army of the United States, in order that when, in the opinion of the President and Senate, it shall be deemed proper to acknowledge eminent services of a Major-General of the Army in the late war with Mexico, in the mode already provided for in subordinate grades the grade of Lieutenant-General may be specially conferred by brevet, and by brevet only, to take rank from the date of such service or services. *Provided*, however, that, when the said grade of Lieutenant-General by brevet shall have once been filled, and have become vacant, this Joint Resolution shall thereafter expire and be of no effect.”

It cannot be disputed that, if it is the meaning and intention of the Constitution that the President shall actually command the Army, the intention must be carried out. To ascertain the intention, “the safest rule of interpretation will be found to be to look into the nature and object of the particular powers, duties, and rights, with all the lights and aids of contemporary history, and to give to the words of each just such operation and force consistent with their legitimate meaning as may fairly secure and attain the ends proposed.” (XVI. Pet. 610-616. Wheat. 418)

“The *intention* of the instrument must prevail; this intention must be collected from its words; and its words are to be understood in that sense in which they are generally used by those for whom the instrument is made.” (XII. Wheaton, 332. Ch. J. Marshall.)

“The first and fundamental rule in relation to the interpretation of all instruments applies to the Constitution; that is, to construe them according to the sense of the terms and the intention of the parties. . . . This, for the reason that the Constitution, which was founded by the people for themselves and their posterity, and for objects of the most momentous nature; for the perpetual Union; for the establishment of justice; for the general welfare, and for the perpetuation of the blessings of liberty, requires that every interpretation of its powers should have a constant reference to these objects. . . . Where technical words are used, the technical meaning is to be applied to them, unless it is repelled by the context.” (Potter’s “Dwarris on Statutes,” chap. xix., pp. 655, 662, 676, 677,—quoting Story).

Admitting that the foregoing authorities establish the fact that the intention when ascertained *must* be carried out, it is necessary to look into the question as to what *was intended* by that part of the Constitution which says the President “SHALL BE Commander-in-Chief of the Army,” etc. This intention “must be collected from its words; and its words are to be understood in that sense in which they are generally used by those for whom the instrument is made.” When the Constitution was prepared we had just emerged from an eight years’ war for freedom. The people were familiar with military operations, duties and titles. Washington was the leader in the long struggle by virtue of the commission of General and *Commander-in-Chief of the Army* of the United Colonies conferred upon him by the delegates—all of

them being named. These delegates undoubtedly meant by the term "Commander-in-Chief," that the person holding that office should actually command, and so Washington understood their wishes. There is no reasonable doubt that the words "Commander-in-Chief," as introduced *into the Constitution*, under which Washington became the first President, were meant in the same sense as that in which they had been understood in his commission as "General." By the term Commander-in-Chief, the "Fathers" meant that the President must be the General of the Army and the Admiral of the Navy, and no navy officer makes any claim to the command of the Navy. The design was to confer upon the President the power, and impose upon him the obligation, to command; and it was not intended, in making him Commander-in-Chief, to endow him with nominal functions or with power which he might, in his discretion, delegate to some one else. He, however, became Commander, as the civil chief magistrate, instead of as the senior General, and his title was changed. Instead of being "*General* and Commander-in-Chief," he became "President and Commander-in-Chief," and though not triable by court-martial, as a soldier, he was made amenable to a special tribunal of a similar nature, namely the High Court of Impeachment. That there should be no semblance even of military domination, not only was the actual command lodged irrevocably and unalterably with the elective civil chief magistrate, but the Constitution provided that "no appropriation of money" for the support of armies "shall be for a longer term than two years." Never in the

formation of a free government were there wiser provisions. They could not have been set forth in plainer or more positive terms. The President cannot divest himself of the duties of Commander-in-Chief (O'Brien's "Military Law," p. 30), nor can Congress take them from him; but, on the other hand, Congress only can raise and support the forces over which this command is to be exercised. The military is thus raised, commanded, and supported under the immediate control of two of the civil powers, and is helpless in the hands of either against the other. Kent, in his "Commentaries," says: "It was difficult to constitute the office [of President] in such a manner as to render it equally safe and useful, by combining in the structure of its powers a due proportion of energy and responsibility. The first is necessary to maintain a firm administration of the law; the second is equally requisite to preserve inviolate the liberties of the people. The authors of the Constitution appear to have surveyed the two objects with profound discernment, and to have organized the executive department with consummate skill." That the intention was that the President should actually command seems to be clear from the foregoing point of view. But it may be inferred also from the facts concerning the State Constitutions adopted prior to and soon after the formation of the Union. It is fair to assume that the principles in military affairs by which the various State Executives were governed, were of the same nature as those introduced into the National Constitution, and that where the term "Commander-in-Chief" was used by the delegates who

framed the Constitution of the Union, it was intended to convey substantially the same meaning that it did when used in the State constitutions. In this connection we find the following :

New Hampshire.—Constitution formed in 1784, amended in 1792. . . . “The President of this State for the time being shall be Commander-in-Chief of the Army and Navy, and all the military forces of this State by sea and by land . . . and lead and conduct them . . . and, in fine, the Governor is hereby entrusted with all other powers incident to the office of Captain-General and Commander-in-Chief and Admiral.”

Massachusetts.—Constitution agreed upon 1779–1780. “The Governor of the Commonwealth for the time being shall be Commander-in-Chief of the Army and Navy, and of all the military forces of the State by sea and land . . . and lead and conduct them, and *with* them to encounter, repel, resist, expel, and pursue by force of arms, as well by sea as by land, within or without the limits of this Commonwealth; . . . and that the Governor be entrusted with all these and other powers, incident to the offices of Captain-General and Commander-in-Chief and Admiral.”

Connecticut.—Under the Royal Charter of 1662, as adopted by the people in 1776 and modified from time to time till 1818, when the present Constitution was adopted, “the Governor was Captain-General of the Militia and the Deputy-Governor was Lieutenant-General. Under the present Constitution, the Gov-

ernor is Captain-General of the Militia of the State, except when called into the Service of the United States.”

New York.—Constitution established by the Convention, 1777. “That the Governor shall continue in office three years, and shall, by virtue of his office, be General and Commander-in-Chief of all the Militia, and Admiral of the Navy of this State.”

New Jersey.—Constitution, 1776. . . . “That the Governor, or, in his absence, the Vice-President of the Council, shall have the Supreme Executive Power, be Chancellor of the Colony, and act as Captain-General and Commander-in-Chief of all the Militia and other military force in this Colony.”

Pennsylvania.—Constitution of 1776. “The President shall be Commander-in-Chief of the forces of the State, but shall not command in person, except advised thereto by the Council, and then only so long as they shall approve thereof.” Constitution 1790. . . . “He shall be Commander-in-Chief of the Army and Navy of this Commonwealth, and of the Militia, except when they shall be called into actual Service of the United States.” . . .

Delaware.—Constitution of 1776. “The President, with the advice and consent of the Privy Council, may embody the Militia and act as Captain-General and Commander-in-Chief of them and [of] the other military forces of this State, under the laws of the same.”

Maryland.—Constitution of 1776. . . . “That the Governor, by and with the advice and consent of

Council, may embody the Militia, and, when embodied, shall *alone* have the direction of all the regular land and sea forces under the laws of this State; but he shall not command in person unless advised thereto by the Council, and then only so long as they shall approve thereof." . . .

Virginia.—Constitution of 1776. "The Governor may embody the Militia with the advice of the Privy Council, and when embodied, shall *alone* have the direction of the Militia, under the laws of the country."

North Carolina.—Constitution of 1776. . . .
"The Governor, for the time being, shall be Captain-General and Commander-in-Chief of the Militia; and in the recess of the General Assembly shall have power, by and with the advice of the Council of State, to embody the Militia for the public safety." . . .

South Carolina.—Constitution of 1790. . . .
"The Governor shall be Commander-in-Chief of the Army and Navy of this State, and of the Militia, except when they shall be called into the actual Service of the United States." In the Constitution of 1778 the Governor is uniformly styled "Governor and Commander-in-Chief."

Vermont.—Constitution of 1786. "The Governor shall be Captain-General and Commander-in-Chief of the forces of this State; but shall not command in person except advised thereto by the Council, and then only so long as they shall approve thereof; and the Lieutenant-Governor shall, by virtue of his office, be Lieutenant-General of all the forces of the State."

In relation to the reservation in the constitutions of

Pennsylvania, Maryland, and Vermont, that the Governor shall not command personally in the field without the concurrence of the legislature, it may be stated that in Hamilton's first draft of the Constitution of the United States it was expressly set forth that the President shall not take the actual command, in the field, of our Army without the consent of the Senate and Assembly, but this was not agreed to. The presumption seems to have been that, unless restrained by express limitation, the Commander-in-Chief might *feel bound* to take the field to the prejudice of his other duties. But, as stated, this, in the President's case, was finally left to his discretion. So far were the framers of the Constitution from intending that the President should be able to delegate his powers as Commander, that some of them doubted whether they had succeeded in exempting him from the necessity of exercising *immediate personal* command.

In the light of the foregoing circumstances it is not strange that Hamilton in the *Federalist* spoke of the President as "the first General and Admiral," and in his later writings of the Governors as the first Generals in their several States. It, therefore, seems plain that using the words "Commander-in-Chief" in the sense in which they were understood by the framers of the Constitution, as well as by those to whom the instrument applied, that it was the *intention* that the President should be the actual Commander. That intention would not be carried out if the President divested himself of his power and responsibility as Commander by delegating them to a "chosen General."

One of Grotius' maxims of interpretation is that per-

mission includes "a liberty, but a command carries along with it *necessity of acting.*"

Attorney-General Wirt said: "It could never have been the intention of the Constitution in assigning this *general* power to the President to take care that the laws be executed, that he should in person execute them himself;" but, he adds, if the laws "require a particular officer by name to perform a duty, *not only is that OFFICER bound to perform it, but NO OTHER officer can perform it without a violation of the law.*"

Under these authorities, and others which might be cited, a public officer to whom a duty is specifically and distinctly assigned by the Constitution, or by the law, cannot be said to perform that duty if he *delegates* the performance of it to some one else. Nor could such delegation of military command be admissible under a construction giving a technical meaning to the term "Commander-in-Chief." No officer of the Army from the highest General down to the lowest subaltern can *delegate* his authority. Orders have force only because of the authority whence they emanate. The channel through which they flow serves as proof of their source.

A commanding officer may—usually must—exercise authority through subordinate commanders, and may give his orders and express his will through chosen officers but that is not *delegating* his command, which means endowing another with the general power, and entrusting its execution to his discretion. The term "Commander-in-Chief" is never used in the military service to express any right to delegate command on the one hand, or to acquire it by delegation on the other. On

the contrary, its meaning indicates the exercise, not the abandonment, of command. Again, there is another light in which the subject may be viewed. The man who is elected President by the people is, *by the Constitution*, appointed to the office of "Commander-in-Chief of the Army and Navy of the United States, and of the Militia of the several States when called into the Service of the United States," and in terms no more specific the Vice-President is by the same instrument appointed President of the Senate. These are the only two appointments made by the Constitution. The obligation actually to perform the duties of his office seems to rest alike on each of the incumbents; one has no more right to delegate the powers of his specific office than the other. Recognizing the fact that the Vice-President might be absent from his place as President of the Senate, the Constitution, instead of permitting him to *delegate* his powers, provides in distinct terms how his duties shall be performed; but it does not admit that the President can by any possibility do otherwise than continue in the actual performance of the duties of his specific office as Commander-in-Chief. There is significance in still another view of the terms used. While there are several things which the Constitution says the President "shall *do*," Commander-in-Chief is the only thing which it says he "shall *be*." To divest himself, by general delegation, of the actual duties of this office would seem to be a graver departure from the purpose of the Constitution than it would be to *delegate* one of his specific constitutional duties, the appointing power for example. In fact, the construction which would give

him the right to delegate the duties of his office as Commander-in-Chief, would carry with it the right to delegate any or *all* of his constitutional duties, thus violating the intention as stated by Jefferson, where he says, "the theory of our Government is, that what belongs to the executive power is to be exercised by the uncontrolled will of the President." (Jefferson's Works, vol. v., p. 569.)

In the way of illustration, it may be said that if the Constitution had provided for a second Vice-President, and had made it his only duty to be Commander-in-Chief, using the identical terms which now confer that office on the President, there is hardly a doubt that he would have been in fact, as well as in name, the actual Commander. The obligation of actual command resting on the President is quite as strong as it would have been on a Vice-President in the case assumed, and it is not in the least impaired by the fact that the Constitution assigns other duties to the President besides those of Commander-in-Chief.

It cannot be denied, however, that the right of the President to delegate his powers, to some extent at least, as Commander-in-Chief, has been affirmed by some good authorities. Attorney-General Butler said (April 6, 1835): "The President need not assume personal command of the militia. He may place them under the command of any officer to whom, in his absence, *he may delegate his constitutional powers*. It may be indispensable that officers of the Army be required to serve in the militia; as, for example, when vacant offices are not immediately filled by the State, or when the militia officers are absent or disabled. It

must be remembered, however, that this power must be exercised in accordance with the reserved rights of the States to officer their quotas." (II. "Opinions," 711.)

But in relation to this opinion, it must be borne in mind that when militia troops were called for by the President in 1812, some of the States—refusing to furnish them—took the ground that the President *must* command the militia *in person*, or *through* militia officers. The point was submitted by the Governor of Massachusetts to the Supreme Court of that State. Justices Parsons, Sewall, and Parker of the Court decided that "Congress may provide laws for the government of the militia when in actual service; but to extend this power to the placing them under the command of an officer not of the militia" (Gen'l Dearborn was referred to), "*except the President*, would render nugatory the provision that the militia are to have officers appointed by the States;" and the Court went on to say that it could not determine who should command "*in the absence of the President*." No overruling decision has been rendered on this point. And the fact may be recalled that President Washington, in 1794, took the field in actual command of the militia of Pennsylvania, New Jersey, and Virginia, and when he relinquished immediate command he turned it over to the Governor of the last named State.

In his "War Powers of the President," Whiting says: "It is necessary to the proper conduct of war that *many*, if not *most*, of the powers of the President as Commander should be delegated to his Secretaries and Generals, and that many of their powers should

be exercised by officers under them; and although it not seldom happens that subalterns abuse the power of arrest and detention, yet the inconvenience resulting from this fact is one of the inevitable misfortunes of war."

It will be observed that no right of *general* delegation of power is here asserted. It is claimed that "many if not most" of the powers of the President as Commander may be delegated; and this is urged in the face of admitted abuses of the delegation; nor was this alleged to be a *constitutional* power of the President. It was claimed only as one of his *war powers under the Constitution* and the delegation of authority under discussion by Mr. Whiting was, more especially, that to make arrests during a time when it was feared treason was lurking in all quarters. Furthermore, his work was prepared with a view to giving to the President the largest latitude that construction would admit of, so as to enable the Executive to deal in the most summary manner with the difficult questions then new, arising out of a great civil war.

The delegation of specific duties to subordinate officers from time to time, as contemplated by Butler and Whiting, while the general duties of Commander-in-Chief are reserved, is one thing. The assignment of a subordinate as the "Commanding General" or "General-in-Chief"—being equivalent to an assignment as the *Commander-in-Chief*—is another and a very different thing. The first is a special delegation of power *within* the Army, manifesting instead of derogating the supreme command *over* it. While the latter, the general delegation of the full measure of

the President's powers, involves an abdication of these powers.

The claim in favor of *delegation* of the President's powers as Commander is very clearly stated by Major-General Schofield. He says: "The Secretary of War is the immediate head of the military establishment—the impersonation of the authority of the constitutional Commander-in-Chief. The President is not only above, but beyond the Army, rarely in contact with it, and never heard from except through the Secretary of War. The latter is regarded by all as the real head—the *Chief*." But he goes on to say: "The President" (meaning, of course, the Secretary of War also) "*does not command in person*; he *delegates* his military command to a *General Officer* who has been educated, appointed, commissioned, and assigned by him for that purpose. The President's military staff thus becomes the staff of his representative—the Commanding General of the Army;" and he adds, "the orders of his chosen General-in-Chief *are as much his own orders as if he gave them in person.*" (*Army and Navy Journal* of January 4, 1879—letter to Gen'l W. T. Sherman, December 25, 1878.) If this complete delegation of military power could be made, it might give rise to the very danger which it was evidently the purpose of the Constitution to guard against, viz.: the domination of the civil by the military power. A military chieftain, endowed either by law or delegation with the President's power as Commander-in-Chief, with the President's military staff converted into *his* staff, and with his orders acknowledged to be "as much the President's orders as if he gave them himself," would

seem to be the functionary whose existence the Constitution most pointedly intended to prevent.

But, besides the peril to the nation, there would be danger to the *Army*, if the President could delegate his powers as Commander-in-Chief. The right to delegate these powers over the *Army*, and the right to assign an officer to duty *within* the *Army* according to his own commission, have no connection. They are entirely distinct from each other. If the President had the right to delegate his powers as Commander-in-Chief, he could not, in the exercise of it, be limited to a "chosen *General*" any more than to a chosen Captain, civilian, or any one else. It will appear without argument, that in this view of the subject the power to delegate might be very injurious to the *Army* itself.

The aspect of the question of putting a chosen General in actual command of the *Army* depends very much on the direction from which it is viewed. *Looking from the strictly military point of view*, it seems clear that a chosen General, educated, and appointed and assigned to the duty, should command; and the same conclusion would follow by reasoning from analogy, as we see that subordinate officers throughout the Service actually command according to their respective grades and assignments—Colonels commanding regiments; Brigadier-Generals, brigades and departments; and Major-Generals, divisions; the analogy being that the senior General in the *Army* should command the whole. There is, as already intimated, an essential distinction between command *within* the *Army*, and command *over* it. The analogy holds only for the former. The latter is the failing point in the system.

Having reached it, the subject must be looked at from the constitutional point of view, which, involving as it does the question of civil liberty, is by far the most important one. George Ticknor Curtis says, in his work on the "Origin, Formation, and Adoption of the Constitution," "The reason on which it was rested by the grand committee, and on which the plan of a Council of State was rejected, was that the President of the United States, unlike the executive in mixed governments of the monarchical form, was to be personally responsible for his official conduct, and that the Constitution should do nothing to diminish that *responsibility, even in appearance*. If it had not been intended to make the President liable to impeachment, a Cabinet might have been useful, and would certainly have been necessary if there was to be any responsibility anywhere for executive acts. But a large majority of the States preferred to interpose no shield between the President and a public accusation. He might derive any assistance from the great officers of the executive departments which Congress might see fit to establish, that he could obtain from their opinions or advice; *but the powers which the Constitution was to confer on him must be exercised by himself, and every official act must be performed as his own.*"

Our political policy requires that the control of the Army shall be *actually* and *without qualification or limitation* subject to the civil power—legislative and executive. Anything short of this would violate the fundamental ideas of Anglican civil liberty, wrought out by centuries of English history, and finally adapted to our system, and which were intended to be perpet-

uated by our Constitution. All the sacrifice of military unity and efficiency, *if there be any*, which these principles require, was no doubt duly estimated by the framers of the Constitution, and is fully compensated by the greater security to our Republican institutions and to the freedom of the people. But it is a self-evident fact that it would be difficult, if not impracticable, for the President to *attend in person to all* the duties of the Army, and the question arises, Has a proper and sufficient remedy been provided to meet this difficulty? That question is settled by the Acts of Congress creating the great Departments and their Bureaux, and by several decisions and opinions concerning them. It is enough to quote one decision of the U. S. Supreme Court, perhaps the most comprehensive of all the rulings on the subject. It is as follows :

The Secretary of War "is the regular constitutional organ of the President for the administration of the military establishment of the nation; and rules and orders publicly promulgated through him must be received as the acts of the Executive, and as such be binding upon all within the sphere of his legal and constitutional authority."

This decision embraces more than is disclosed by a mere cursory examination. It in fact settles the whole question as to the command of the Army. The President is the Constitutional Commander-in-Chief. The decision shows :

First.—That he *must administer* the military establishment; that is to say, he *must* direct the execution and application of the laws on the subject.

Second.—For this purpose the *Secretary of War*, and *no one else*, is his regular constitutional organ.

Third.—That administering the military establishment involves not only the execution and application of laws, but the promulgation of “rules and orders.”

Fourth.—That all such “rules and orders”—that is to say, the acts of the President as expressed by rules and orders for the military establishment, *when publicly promulgated through the Secretary of War—must* be received as the act of the Executive and must be binding. The effect of an attempt to promulgate them through some one else—the Secretary of the Treasury for example—may at present be left for conjecture.

The *President* must actually administer the military establishment, and the decision shows that there is *one*, and it shows but one, constitutional way in which he may be relieved of the labor of continuous personal command; that is, by having that command exercised by the *Secretary of War*; not by virtue of delegated power, nor in fact by any power of his own, but because his rules and orders, and his only, *must be received as the acts of the President*.

Remembering that the rules and orders in question are *all* which are required for the execution and application of the laws to the military Service (that is for administering the military establishment), the conclusion is unavoidable that the person who *must* make them, *must* command the Army; and thus the decision of the Supreme Court confirms the practice which, though once or twice a little disturbed, has been in actual operation since the foundation of the Government, or, to quote Secretary of War Davis, “the ex-

clusive control of the military establishment has never been surrendered to the senior General of the Army, as the unvarying practice of the War Department exhibits." The reason for this is well stated by Attorney-General Bates, in language as follows :

"The President is a department of the Government, and, although the only department which consists of a single man, he is charged with a greater range and variety of powers and duties than any other department. He is a *civil magistrate* and a *military chief*; and in this regard we see a striking proof of the generality of the sentiment prevailing in this country at the time of the formation of our Government, to the effect that the *military* ought to be held in strict subordination to the *civil* power. For the Constitution, while it grants to Congress the unrestricted power to declare war, to raise and support armies, and to provide and maintain a navy, at the same time guards carefully against the abuse of that power by withholding from Congress, and from the Army itself, the authority to appoint the Chief Commander of a force so potent for good or for evil to the State. The Constitution provides that the President shall be Commander-in-Chief of the Army and Navy of the United States, and of the Militia of the several States when called into the actual Service of the United States. And why is this? Surely not because the President is supposed to be, or commonly is, in fact, a military man, a man skilled in the art of war, and qualified to marshal a host in the field of battle. No! it is quite a different reason: it is that whatever skilful soldier may lead our armies to victory against a foreign foe, or may

quell a domestic insurrection; however high he may raise his professional renown, and whatever martial glory he may win, still he is subject to the orders of the *civil magistrate*, and he and his army are always subordinate to the civil power."

And Attorney-General Cushing says: "No Act of Congress, no act even of the President himself, can, by constitutional possibility, authorize or create any military officer not subordinate to the President."

The President is the Commander of the Army. The Secretary of War is his constitutional organ; and to assert that two persons command the same force at the same time involves a contradiction amounting to absurdity. There can be but one Commander. All others must be commanded. Saying that a chosen General commands the whole Army *under the Secretary of War* is admitting—what is the fact—that he *does not* command it. The late Major-General Halleck, who was an educated soldier, an accomplished scholar, and a profound lawyer, fully comprehended this. While "General-in-Chief" he wrote as follows:—"The great difficulty in the office of 'General-in-Chief' is that it is not understood by the country. The responsibility and odium thrown upon it do not belong to it. *I am simply a military adviser of the Secretary of War and the President, and must obey and carry out what they decide upon, whether I concur in their decisions or not. . . . It is my duty to strengthen the hands of the President as Commander-in-Chief, not to weaken them by factious opposition.* I have, therefore, cordially co-operated with him in any plan decided upon, although I have never hesitated to

differ in opinion. I must leave it to history to vindicate or condemn my own opinions or plans. They will be found at some future time on record." (Letter from H. W. Halleck, Headquarters Army, Washington, February 16, 1864, to Major-General W. T. Sherman.)

But the wishes of the Secretary of War, as well as his rights, must be taken into account. Under the Constitution and the decisions of the Supreme Court, he *possesses the power*, and whoever he may be, he prefers exercising it in fact, to assigning it to some one else. He is necessarily a man of distinction and ability, usually a public leader of prominence, able and active, with more or less ambition, member of a constitutional cabinet in which every one of his colleagues, including the Secretary of the Navy, *actually* and directly commands and conducts the business of his department. How can it be expected that this one cabinet officer would, if he could, abdicate his office, and assign his duties to one of his subordinates and become a mere figure-head in the Government!

The conclusions are:

1st. The President is required by the Constitution actually to command the Army, and Congress has no right to divest him of that duty, in whole or part.

2d. He cannot *delegate* the command if he would, and he probably would not if he could.

THE COMMAND OF THE ARMY.—CONTINUED.*

For many years the subject of the Command of the Army has been a theme of discussion in the Army, and

* From *Field Glass* for July, 1879. By Brevet-Colonel William M. Wherry, Captain 6th Infantry.

by "would-be reformers" out of the Army. Of late the discussion has been brought into special prominence by the advocates of the pernicious doctrine that the Army can be maintained as an effective and reliable executive instrument without a military head, to which all its parts shall be subordinate, but must be governed and controlled by a hydra headed body, composed of the chiefs of bureaus of the War Department, each one of whom is striving to secure predominance and power in his department at the expense of all other branches of the Service—a system which, while claiming the independence of the staff departments from all military control, threatens not to stop until the line, including Generals of Command, is subordinate to the staff bureaus. Hence, the subject is at this time one of unusual interest to the Army and to all those who desire to see our military establishment, necessarily a small one, maintained on correct principles and kept up to the highest state of efficiency.

By the Constitution, Article II., Section 2, "The President shall be Commander-in-Chief of the Army and Navy of the United States, and of the Militia of the several States when called into the actual Service of the United States." The vast majority of the functions of the President, as Chief Executive, whether civil or military, must be performed by his subordinates, acting under his general directions and according to regulations approved by him. It is utterly impossible for him to perform them in person. To whom may he delegate such authority? To such officers as Congress has authorized for that purpose.

The Constitution leaves this matter entirely to Congress. It does not even provide in terms for the heads of the great Executive departments of the Government. It simply recognizes the fact that such high functionaries must be provided by Congress, in the clause of the section above cited, which only authorizes the President to call for their opinions in writing. In accordance therewith, Congress created the Department of War, and "a principal officer therein, to be called the Secretary for the Department of War." The Act of Congress creating the Department of War and a Secretary thereof, in express terms, confines his authority to the performance of such "duties as shall from time to time be enjoined on or intrusted to him by the President of the United States, agreeable to the Constitution," and the same is to be said of every officer in the military establishment, from the General to the lowest lance-corporal. Each and every one of them acts upon those below him in grade or rank by authority of the President. No law prescribes, except in a few particulars, the functions of any officer, but each is to do "as shall from time to time be enjoined on, or intrusted to him by the President of the United States, agreeable to the Constitution," and the laws.

The Constitution does not make the Secretary of War, for example, "the regular constitutional organ of the President for the administration of the military establishment of the nation." The Constitution says nothing of the kind, nor anything on that subject. It does not even name the Secretary of War, nor refer to him in any way, except in the general terms referred to above, viz.: "he (the President) may require the

opinion in writing of the principal officer in each of the Executive departments, upon any subject relating to the duties of their respective offices." Hence, the Secretary of War is "the regular constitutional organ of the President," etc., simply because Congress has authorized his appointment to discharge such duties respecting military affairs and in such manner as the President may direct. He is, as the Supreme Court has decided, "a civil officer, and all his duties are civil duties." He is not a military officer, and cannot take the field in command of troops, as the President may do. Hence, he cannot possibly perform in person all the functions of the Commander-in-Chief, nor can all those functions be performed by the President through him. The Secretary is only the Chief of the *civil administration* of the War Department, and the *medium of communication* of the President with the Army. It is for this last reason only that the acts of the Secretary must be assumed, as said by the Supreme Court, to be the acts of the President.

The *military* functions of the President must be performed either in person or through *military officers*. It is beyond dispute, he cannot perform them in person. He *may delegate* those military functions to such officers as the laws may designate for that purpose, and to no others.

And all such officers must perform their duties as the President may direct, within the limits of the law. They all represent the Commander-in-Chief, to do within their respective spheres such things and in such manner as he has ordered in his regulations, in his tactics, or in his "orders," published from time to time.

The President cannot in person perform all his *civil* functions, he must delegate them to subordinate officers. For the same reasons he cannot personally perform all his *military* functions, nor can he delegate them to the Secretary of War. And in addition to the cogent and insuperable reasons why, from the limitation of human power, the President cannot himself perform all his civil functions, comes in the weighty one in reference to military functions, of their peculiar character. The President is a civil officer and so, too, the Secretary of War. All military duties are in the highest sense *technical*. They require for their efficient performance men specially educated for them. The President needs the services of a Chief-General as much as he does of a Chief-Engineer, or a Chief-Quartermaster, or a Chief-Surgeon.

The entire Army needs a *military* commander quite as much as, and more than, does a division, brigade, or regiment. The case of the Navy is by no means a parallel one. The different squadrons of the Navy act in different parts of the world, and have no connection with each other. Each Admiral is the Commander-in-Chief of an entirely separate squadron or fleet. But the operations of all the armies of the United States must, in general, be in military harmony with each other. Hence, they must be under one *military* head.

The recognition of this simple military principle has been so strongly forced upon the country through the disasters resulting from ignoring it, that it seems amazing that any military men can have failed to learn the lesson.

Both this necessity and the exact constitutional principle governing action under it have been recognized by Congress in sundry acts, and were emphasized in the Act to revive the grade of Lieutenant-General, who "may be authorized, under the direction and during the pleasure of the President, to command the Armies of the United States," when General Grant was assigned to that command. It is well known that General Grant declined to accept the commission unless his command should include the staff of the Army as well as the line, and that he did command both,—that is, the entire Army.

In the words "under the direction of the President," the constitutional prerogative of the "Commander-in-Chief" is fully preserved. The constitutionality of that law cannot for a moment be questioned. The President's right to assign the Lieutenant-General, or not to assign him, or to limit his command in his discretion, was fully reserved. And so long as the President continued to exercise the "direction" contemplated by the law, it cannot be said that he "abdicated" his functions as Commander-in-Chief.

It is a great mistake to suppose the functions of a General-in-Chief, even with the highest authority ever given to that officer in this country, are identical with those of the "Commander-in-Chief." So long as the General acts "under the direction" and "during the pleasure" of another, he falls very far short of the chief command. He can do nothing, except as he may be directed or permitted by his superior. Even the manner in which he is to do the things directed or per-

mitted is largely controlled by the "regulations" established by the Commander-in-Chief.

The military theory is perfectly simple and plain. A "General-in-Chief" is a military expert, versed in all branches of the science of war, appointed by the President, under authority of the law, to do, in accordance with the rules taught by the science of war, with which he is familiar, those things which the "Commander-in-Chief" may direct or authorize to be done, but which he himself does not know how to do, or which his other duties do not leave him the time to do in person.

It is a mere abuse of terms to call a General-in-Chief, so assigned, "Commander-in-Chief" in the sense of the Constitution. This is doubtless one of the cases where confusion arises from the use of the same word in different senses, owing to the poverty of language. But certainly no thoughtful person ought to make the mistake of supposing a General assigned to command the *Army, under the direction of the President*, to be thereby substituted for the President as "Commander-in-Chief in derogation of his constitutional prerogative." Such an error could only result from the most thoughtless construction of words, the mere misinterpretation of a name.

The General-in-Chief no more displaces the President than does the Secretary of War. They both act under the President's direction and control, and in strict subordination to his supreme authority as Chief-Executive and Commander-in-Chief of the Army.

Yet we hear it asserted that the President cannot delegate his powers as Commander-in-Chief to any-

body. He must, under the Constitution, exercise those powers *in person*. But this being a physical and moral impossibility, the Supreme Court has come to the relief of the overburdened President by deciding that the orders of the Secretary of War must be received as those of the President. Thus we are to be satisfied with the fiction that the President actually commands *in person*, when we all know he *does not*, and generally cannot for want of military knowledge, and that because his orders come through another civilian who does not and actually cannot command! But if the President attempts to make known his will to the Army through a General who knows how to express that will in military form and direct all the details of its execution, we are told: "No; that will not do; that would be a violation of the Constitution; that would be to abdicate his authority as Commander-in-Chief!" He may give his military orders to one who cannot execute them, and that is all right; but if he give his orders to one who can execute them, that is all wrong! He must, of course, have a General of some education and experience in command of each division and brigade, but the command of "all the armies" is such a simple non-military business, it is so easy to direct the operations of a million of men formed into half-a-dozen or more armies, with all their staff included, any able-bodied civilian can do that! That does not require any military education. The Constitution can not possibly have intended to give the President power to make a soldier do that business for him. He can do that himself. Or, if he prefers, he can select some other civilian, make him Secretary of War, and let

him do it! For we are told "there is *one*, and but one, constitutional way in which he may be relieved of the labor of continuous personal command; that is by having that command exercised by the Secretary of War; *not by virtue of delegated power, nor in fact by any power of his own; but because his rules and orders, and his only, must be received as the acts of the President.*" Not because the Secretary has any constitutional authority; nor because the President can give him any; but because the Supreme Court has decided that the Secretary's acts must be received as those of the President!

The *law* is precisely the reverse of this. The President *cannot* delegate his military command to the Secretary of War. There is not a word in the Constitution, nor in any Act of Congress to give him any such authority. The President must exercise his powers in person, or else through such officers as may be appointed for *that purpose*, and under *authority of law*. Congress has authorized the appointment of certain general officers, for the exercise, under the President's direction, of appropriate military commands. He may assign them, or not, as he pleases—he may do in that regard what the law has authorized, and no more; but the law cannot compel him to do what would be in derogation of his constitutional power, viz.: to make such assignments contrary to his judgment. He must retain the *substance* of supreme command by retaining *control* of all his subordinates and requiring them to act according to his directions. So long as he does this there is no limit in the Constitution to the organization of the Army and the distribution of commands

which Congress may authorize and the President adopt.

It is simply absurd to say that Congress can not authorize the President to assign a General to command "all the armies," or the entire Army, under his direction. That would be to deny to the President and Congress the power to do the very thing which all military authors agree is the first great essential to success in war; that is, to select a competent General to direct all the military forces to be employed.

Is it possible the Constitution requires the President to actually do himself in person, although he may know he is not competent to do it, this most momentous of all executive duties?

While Congress may expend millions to educate subordinate officers, they are positively prohibited by the Constitution from employing an educated soldier as General-in-Chief, unless the people elect him President! In other words, the people are driven to the necessity of either electing a military chieftain to the Presidency, or else of trusting the command of the Army to a civilian! Can any thing be more monstrous? What a set of imbeciles the "Fathers" must have been!

But they never dreamed of such a thing. Nor did they practise it. In the struggle for independence they saw the folly of such a theory, and subsequently they provided against it, and even conferred the responsibility upon Washington in 1798.

Every military writer in all time has seen the necessity for and urged the importance of due subordination in all branches of an army to a supreme head,

and all officers of experience in our Service can recall disasters and confusion resulting from the clashing and distracting exercise of independent authority by the chiefs of staff bureaus in Washington.

Perhaps the clearest exposition of the subject, and its bearing upon the present, is contained in Major-General Schofield's letter of October 13, 1876, to the Secretary of War, on the subject of "Army Reorganization," from which the following extracts are taken:

"The President of the United States, the constitutional Commander-in-Chief of the Army and Navy, is generally a civilian. As compared with the chief executive officers of most other nations, he is pre-eminently a *civil* magistrate. It is as such civil head of the nation, and not as a military chieftain, that he is given the supreme command of the Army. His Secretary of War is also a civilian, Congress having even gone so far as to prohibit the appointment of an army officer to that station. Thus the perfect subordination of the military to the civil power is secured, military command and administration are made to conform strictly to the civil interpretation of the laws and to the civil policy of the Government.

"But the President is not practically, and in general can not possibly be, because his other duties prevent, the actual '(military)' Commander-in-Chief of the Army."

He must delegate his military functions to some subordinate, acting under his general directions. Now the simple question is, shall this subordinate be a General or a civilian? In a country where the monarch is an educated soldier and his War Minister one

of his trusted lieutenants, such a question does not exist. In ours it can not be ignored, but must be fairly met. In such other country the War Minister may well be, under the sovereign, the actual commander of the army. In ours the plainest military principles forbid. The President's *military* representative must be a "General-in-Chief," not a civilian Secretary of War.

"The Secretary of War is the President's representative, as civil executive, for one department of the Government, to direct and control military affairs and conduct army administration in the President's stead; but not to command the Army, except in the general sense in which the President himself commands it. The Secretary for his department, stands in the President's place, and does in detail what the President does in gross: directs and controls, not commands.

"It is true, as has been said, that no officer has any right to command by virtue of his commission alone. He can only command such forces as the President may assign to him. The President's power in this regard can not properly be limited by law.

"He may do or leave undone a thousand things which he ought not. The question is not what he has the power to do, but what he ought to do. His plain duty as dictated by the simplest military principles, is to assign *some* General to the command as 'General-in-Chief.' If he has not the necessary confidence in the senior officer, he may relieve him from duty and assign the next in rank, and so on until he finds one whom he thinks qualified for the command. He has no right to leave the Army to the command of a civilian, a person to whose appointment for any such

command *the Senate has not consented, nor the law provided.* The other alternative of leaving the Army practically without any Commander-in-Chief, as has been done, is no better. The several division or department commanders and the chiefs of the several staff corps, departments, and bureaux, then conduct their affairs in their own several ways, with just enough interference from the Secretary of War to destroy what little adhesion to common military principles might otherwise have existed.

“Unity in the command of an army is the one condition indispensable. Other things imperfect may be tolerated, but divided authority is inevitably disastrous. Of this truth our own recent history gives but too abundant proof, and the history of other countries may be searched in vain for contradictory evidence. It is capable of demonstration to the satisfaction of any average military mind, that our late war might have been brought to a successful conclusion in two years instead of four, and at half the cost in men and money, *if any one soldier* of fair ability had been given the absolute control of military operations and of the necessary military resources of the country.

“It was only after three years of imperfect successes, failures, and disasters, that a practical recognition of this essential principle of unity was forced upon the Government. Another time we may not be given three years in which to learn the fundamental principles of the Art of War and another year to profit by the lesson.

“A vicious system, long followed in Peace, cannot be suddenly changed upon the commencement of War.

Habit, prejudice, and ignorance will either sustain the old or make the new system inefficient, until disaster, irretrievable, as in the case of France, or enormously expensive, as in our own, awakens the government to its delusion.

“No military system is worthy the name unless it conforms in Peace in all its essential features to the requirements of War. The Army must have, in Peace as well as in War, a *military* head, or ‘General-in-Chief,’ who shall have, not only in name, but in fact, the actual command of the Army, and not of a part only, but of *the entire Army*.”

“Whatever may be true on other points, unity of command under one *military* head is the first great and indispensable necessity.”

“Any portion of the Army may be detached from purely military duties, in the discretion of the President or of Congress, and employed on civil works, under the immediate direction of the heads of the executive departments to which they belong. Or army officers may, in addition to their ordinary military duties, be entrusted with others of a civil nature, in respect to which they will be free from military control. In like manner, strict subordination to their military commander in all matters which appertain to the command, is entirely compatible with *direct* responsibility to their administrative chiefs and the Secretary of War, in matters of administration and accountability.”

* * * * *

“The military theory is that of *dual* responsibility of the staff; similar to that of ministerial responsibility.”

“As the minister is responsible to the Chief Executive for faithful execution of his orders, and at the same time to the people or to the legislature for strict obedience to the laws, and wise and honest counsel to his chief, so the staff officer is responsible to his commander for the faithful execution of his orders, and to the War Department for strict conformity to the laws and regulations.

“No man is so learned, wise, and dispassionate as not to need information, counsel, and restraint under some circumstances. Military commanders are not less liable than other men to such imperfection. No commander can be familiar with all the details of the laws and regulations for his government, or with the state of the appropriations for each of the numerous details embraced in the several branches of the Service. No one can know the necessities of the numerous details of a large command, except as reported to him by his subordinates. No one whose sole absorbing aim is, and must be, the accomplishment of his military ends, should be left the sole responsible judge of the lawfulness of the means he may think most appropriate to those ends. The necessities of war make the Army commander the sole judge *in the last resort*. But wise governments surround him with a body of intelligent, reliable, and responsible staff officers, whose duty it is to assist him, to advise him, and to guard him against any unwitting disregard of the law.”

* * * * *

“If this principle be correct, it necessarily follows that the staff officers must have direct communication

with their administrative chiefs, and through them with the War Department, in respect to all matters involving such responsibility and their accountability to the Treasury. They must not be required nor permitted to depend in such matters solely upon their commanders.”

* * * * *

It may be said, in conclusion, that the real issue in this country is not whether the Army shall be commanded by the President in person, or through a General-in-Chief, but whether or not it shall be commanded by the Chiefs of Bureaus. Practically, the functions of the General-in-Chief, as advocated by those who argue in favor of such an assignment, are coincident with those of the Chief of Staff, or *Chef d'Etat-Major* of European armies. He is the senior in control to furnish the plans and elaborate the details of campaigns and the military administration incident thereto—and to do so effectually, he must have control of all the parts—that is, of the entire Army, staff, as well as line.

Owing to the poverty of language, as mentioned heretofore, confusion arises in the employment of terms, and we are inclined to regard the chief of staff, as spoken of in the Prussian army, for instance, as the head of the staff corps only—when in reality he is the principal officer in command under their sovereign—the military head of the organized force, and, as such, ranks as chief of the generals or marshals who command.

THE COMMAND OF THE ARMY.—CONTINUED.*

An article by Colonel Wherry, Aid-de-Camp to General Schofield, appeared in your last issue on "The Command of the Army," the subject which I treated in the *Field Glass* of May last. The author of that article looks only from the military standpoint, and argues the question as to *what ought to be*. I took a general view and tried to ascertain *what is*, and *why it is*. Hence, though writing under the same title, we are not discussing the same subject. But as it is quite evident that Colonel Wherry designs his article to pass as a refutation of some of the views in mine, I beg, in consideration of the importance of the topic, the favor of your columns for a brief rejoinder.

Colonel Wherry contends for a distinction between the terms "General-in-Chief" and "Commander-in-Chief," and says that this is "one of the cases where confusion arises from the use of the same word in different senses, owing to the poverty of language." The military designation of the President is evidence of the marvellous perspicuity which characterizes the Constitution. He is called "Commander-in-Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States," which means, and which is equivalent to saying, that he is practically the Chief General of the Army, and the Chief Admiral of the Navy. But the subject rises above a mere discussion of terms. While admitting that the President is Commander-in-Chief, Colonel Wherry, in the first part of his article, insists that he may "delegate" his "mili-

* To the Editor of the *Field Glass*. By General James B. Fry.

tary functions." There need be no refinement of terms or misunderstanding here. The usual meaning of the word "delegate" is to endow another with general power and entrust its execution to his discretion. General Schofield forestalls all doubt as to the words having any other meaning in connection with this subject, when, in speaking of the President, he says, "he delegates *his* military command to a general officer, who has been educated, appointed, commissioned, and assigned by him for that purpose. The President's military staff thus becomes the staff of his military representative"—"*the orders of his chosen General-in-Chief* are as much his own orders as if he gave them in person." This is *delegation* of authority pure and simple. It does not in the least resemble the *assignment to duty* of a subordinate by his military superior. It clearly means that the military duties and responsibilities imposed on the President by the Constitution, and the military staff created by law to aid him in the performance of them, shall be transferred to a chosen General. *His* orders—orders conceived, not by the President, but by the General, resolved upon in *his* discretion, promulgated as *his will*—are as much the President's orders as if he gave them himself. With this issue plainly joined, we should not suffer from the "poverty of language." But in the latter part of his article, Colonel Wherry treats "delegation of authority" and "assignment to duty" as synonymous expressions. He says "it is the President's plain duty, as dictated by the simplest military principles, to assign *some* General to the command as General-in-Chief." "No officer," he says, "has any right to command by

virtue of his commission alone." "He can only command such forces as the President may assign to him. The President's power in this regard cannot properly be limited by law. The question is not *what he has the power to do*, but *what he ought to do*." It will strike "the average military mind," to which Colonel Wherry appeals, that, for practical purposes, it would be well to settle what the President has the power to do, before deciding what he ought to do. But the real question is not, what ought he to do? nor is it simply, what has he the power to do? It is, what, by the Constitution, *is he obliged to do?* Must he actually command the Army, or may he *delegate* the command to a "chosen General"?—using the word "delegate" as General Schofield and Colonel Wherry use it. There is no question as to the President's power to *assign* all of his subordinates in the Army to duty according to their respective commissions. What disposition must he make of himself? The language of the Constitution is, the President "shall be Commander-in-Chief of the Army and Navy of the United States," etc. I claim to have shown in my article in the *Field Glass* of May, 1879, that the Constitution *means* that the President must be the actual commander, that he cannot "delegate" the command to any one, that the framers of the Constitution meant to do just what they did, and, in adopting the clause referred to, they understood its bearing upon the military Service in particular as well as upon the Government in general, and that, as shown by experience, it is practicable for the President to exercise the command in a way, provided by law, which the Supreme Court has pro-

nounced constitutional. These points are not really contested in Colonel Wherry's article, but he tells us that the President *ought* to delegate his military functions to *some* General. His reasons for this are, briefly, as gleaned from his article, that the staff departments are ambitious of predominance and power, that unity in military command is essential, that military education is of great value, that the President may be ignorant of the military duty which the Constitution imposes on him, and he adds, in the way of illustration, that the War of Rebellion might have been ended in two years instead of four, "if any one soldier of fair military ability had been given the absolute control of military operations, and the necessary *military resources of the country*." (Let us ask, in parenthesis, how it could be possible, under our system, to give any soldier the *absolute power* here mentioned? What would "the Fathers" have thought of such a suggestion?) The inapplicability of these arguments to the question of the President's power to delegate his military functions need not be pointed out in detail. In using them, Colonel Wherry no doubt had in mind their bearing on what he calls "the military theory." He says: "the military theory is perfectly simple and plain. A General-in-Chief is a military expert, versed in all branches of the science of war, appointed by the President, under authority of the law, to do, in accordance with the rules taught by the science of war with which he is familiar, those things which the Commander-in-Chief may direct or authorize to be done, but which he himself does not know how to do, or which his other duties do not

leave him time to do in person." Any one may advance and advocate a theory. In relation to this one it is only necessary to say, at present, that it does not embrace the question at issue, to wit, the "*delegation*" of the President's "military functions," nor does it appear to be sound in the light of a definition of the term "General-in-Chief." The presumption that the President is ignorant of his duties as Commander-in-Chief is put forth in this "theory" as also in another part of Colonel Wherry's article, where, quoting from General Schofield, he says of one* "President," as compared with the chief "executive officers of most other nations he is pre-eminently a *civil* magistrate." What chief executive can show better title to being pre-eminently a *military* magistrate? If direct appointment by the Constitution of his country to the supreme command of all of its land and naval forces can make a head magistrate a "military chief," certainly ours is one, and he has been so defined by an Attorney-General. Without depreciating the advantages of military education and talents, it may be said that no presumption that the President is ignorant of his duties can invalidate the force of his high commission, nor can his chieftainship be impaired by the opinion his subordinates may have of his military ability or attainments. It is gratifying to find that, notwithstanding Colonel Wherry argues that the President should "delegate" his "military functions" to some General who should "command," he arrives at the conclusion that the chosen General can, after all, be nothing more than the President's Chief-of-

* Misprint. Should be *our*. See p. 133.

Staff, which is admitting that the *President* must command. He says, "practically the functions of the General-in-Chief, as advocated by those who argue in favor of such an assignment, are coincident with those of the Chief-of-Staff, or '*Chef d'Etat-Major*' of European armies." That is the conclusion at which Halleck arrived when he was so-called General-in-Chief.

In my article of May last I said: "To assert that two persons command the same force at the same time, involves a contradiction amounting to absurdity. There can be but one commander: all others must be commanded. Saying that a chosen General commands the whole Army *under the Secretary of War* is admitting, what is the fact, that he does not command it. The late Major-General Halleck, who was an educated soldier, an accomplished scholar, and a profound lawyer, fully comprehended this. While General-in-Chief he wrote as follows: 'The great difficulty in the office of General-in-Chief is, that it is not understood by the country. The responsibility and odium thrown upon it do not belong to it. I *am* simply a military adviser of the Secretary of War and the President, and must obey and carry out what they decide upon, whether I concur in their decisions or not. . . . It is my duty to strengthen the hands of the President as Commander-in-Chief, not to weaken them by factious opposition. I have, therefore, cordially co-operated with him in any plan decided upon, although I have never hesitated to differ in opinion. I must leave it to history to vindicate my opinions or plans. They will be found at some future time on record.' (Letter from H. W. Halleck, Headquarters of the Army,

Washington, Feb. 16, 1864, to Major-General W. T. Sherman.)”

In conclusion, if, as the Constitution says, the President *is* Commander-in-Chief; if, as I claim to have shown, he cannot, as such, delegate his authority and responsibility; if he has a legal staff through whom to exercise the command of the Army, as is admitted by General Schofield's statement, that “the President's staff” thus becomes the staff of his chosen General, and if, as experience has shown it to be, it is practicable for him to exercise the command in the only way that the *Supreme Court has pronounced* constitutional, how can he be expected to delegate the actual command of the Army to a chosen General? and who are the “would-be” reformers of whom Colonel Wherry speaks? Are they the men who advocate an enforcement of the existing system, or those who urge a departure from it?*

THE COMMAND OF THE ARMY.—CONTINUED.†

When I wrote my article on “The Command of the Army,” which appeared in your number for July, I purposely omitted General Fry's or any other person's name, to avoid personal controversy and the asperity which usually belongs to such personal mention.

In your number for August appears a letter from General Fry, Assistant Adjutant-General, which demands an answer from me, and I desire to reply on the broad ground upon which only such an important subject should be discussed.

* This letter was dated Saratoga, July 7, 1879.

† From *Field Glass* for September, 1879. By Brevet-Colonel William M. Wherry, Captain 6th Infantry.

General Fry's answer has the great merit of reducing the subject of contention within very narrow limits, and of clearly stating the only question upon which there can be any difference of opinion so far as it is a constitutional or legal question.

The position assumed by General Fry, in his article in your May number, is restated by him in the August number, in the following emphatic language: "To assert that two persons command the same force at the same time involves a contradiction amounting to absurdity. There can be but one commander: all others must be commanded. Saying that a chosen General commands the whole Army under the Secretary of War is admitting what is the fact, that he does not command it." Is it meant that to command and be commanded at the same time is an impossibility, "a contradiction amounting to an absurdity"? Of course not. That is the condition in which all commanders, save the President, from highest to lowest, find themselves *at all times*. Each commands a certain force, which force, with its immediate commander, is also commanded by a superior, and so on up to the Commander-in-Chief, the President. The relations between superior and subordinate are essentially the same throughout.

The law and regulations and the custom of Service define to some extent the proper scope of functions to be performed by each of the several grades of commanders. But there yet remains a wide range within which any commander may, in his discretion, exercise control of the details of military operations or leave those details to his subordinates. The range within

which such discretion may be exercised is, of course, greatest with the Commander-in-Chief. Who will undertake to say exactly what functions of the chief command he *must* exercise and what he *may* trust to his subordinates? It hardly need be stated that the President *may*, in his discretion, control all the details of military affairs so far as it is physically possible for him to do so. But *must* he do this? Must he in fact exercise *any* of the functions of generalship? May he not, on the contrary, limit himself to simply determining the *use* that shall be made of the Army, under the law, that is, the object for which it shall be employed, and leave to his General-in-Chief the entire conduct of the campaign?

Again, because it has been decided by the Supreme Court that rules and orders publicly promulgated *through* him (the Secretary of War), must be received as the acts of the Executive, does it follow that the President cannot send his orders to the Army through any other channel? Are all laws held to be unconstitutional until the Supreme Court approves them? Is the law authorizing the assignment of the General of the Army to command all the armies unconstitutional? And did not General Grant so command? And was not the President at the same time, in fact as well as in name, Commander-in-Chief? Could not General Grant command the Army, and the President, by commanding him, also command the Army at the same time? What is meant by the proposition, "There can be but one commander: all others must be commanded"? It must mean that there cannot be at the same time two *independent* commanders, for which it is

believed no one has ever contended. But certainly there may be, at the same time, any number of commanders, each dependent upon and subordinate to the next superior, and each acting under such orders and instructions as he may receive from higher authority, but exercising *supreme command within the sphere of duties left to his discretion.*

Thus, to take an extreme case for illustration, there may be a post garrisoned by a single company, but with a post commander, superior to the Captain of the company. In that case, the post commander would exercise command over that one company as much or as little as he sees fit, within the limits of the law and regulations. Just so the Commander-in-Chief may assign the General to command the entire Army, and yet himself exercise the command so far as he sees fit under his constitutional and legal obligation.

So also, if Congress sees fit, all the staff departments may be united under one head, or Chief-of-Staff. Certainly no one will contend that there may not be one instead of several Chiefs-of-Staff, and that the President or Secretary of War may not command the staff through that one, instead of as now, through the several heads of bureaus. And why, so far as any constitutional question is involved, may not this Chief-of-Staff and the General-in-Chief be one and the same person?

Is there anything in the letter or spirit of the Constitution which makes it necessary for the President and Secretary of War to give their orders directly to ten or twelve heads of departments, and to three, four, or any other number of military commanders? May

this not all be done *through one chief* instead of through several, if Congress so desires? Would the President be any the less Commander-in-Chief because he exercised his functions, as such, through one subordinate than through many? The error into which General Fry has fallen seems to proceed entirely from the fallacy that a man cannot command and be commanded at the same time,—a fallacy which is exposed by the universal fact to the contrary.

It is believed that the constitutional question involved in this subject is purely imaginary, and that there is nothing in the letter or spirit of the Constitution to prevent the organization, command, and administration of the United States Army in accordance with the strict military principles which have been deduced from the experience of the military nations of Europe. Army officers are at liberty to discuss this subject upon the broad basis of principle, that is, of "the military theory," and to consider how this military principle or theory may be best applied to our country and Government, and this not for the present, but for all time, not under some *one* President,* as General Fry supposes, but under *the President* at any time, who, as everybody knows, is chosen as a statesman, and not as a military chieftain. When General Schofield wrote on this subject the then Presi-

*The text of General Fry's letter of July 7, as published in the *Field Glass* for August, contains the following: "In another part of Colonel Wherry's article, where quoting from General Schofield, he says of *one* 'President' as compared with the chief 'executive officers of most other nations, he is pre-eminently a civil magistrate.'" But in the copy in a number of the *Field Glass* sent to me by General Fry since the above was written, he has corrected in ink the "one" to read "our," hence the above remarks and this note.

dent was our most eminent soldier, yet General Fry quotes as if he understood General Schofield to refer to that "one President."

So far as General Fry's claim that the President of the United States "is pre-eminently a *military* magistrate" is concerned, it may not be inapplicable to quote the following from a speech made by the Hon. Mr. Edmunds, of Vermont, in the United States Senate, May 9, 1879: "The President of the United States, by the Constitution, commands it (the Army), not because he is a military tyrant, or has any *military* or divine right to command it, but because he, the chief *civil* magistrate of the Union, and not the military magistrate of the Union, is selected by the Constitution to command it.

"The Army is not intrusted to the command of a military officer. It is intrusted to him (the President) by your Constitution, and beyond your rightful power to take away; I say 'rightful power,' I do not know what will happen. It is intrusted, beyond your rightful power to take away, to him as a *civil* officer to command it. It is not, therefore, when it is exerted *under* his authority the power of the sword *per se*, but it is the power of the civil law."

This indicates what is the President's constitutional duty in reference to the Army, namely, to control and direct the *uses* to which it may be put, and not to command it in a military sense. It is for that reason, the subordination of the military to the civil, that the command (that is, the use and direction of it, not the military control or generalship of its various parts) is given to the civil magistrate.

It must be admitted Senator Edmunds is a constitutional lawyer, and acquainted with what "the framers of the Constitution meant to do." And his language is very nearly identical with that of General Schofield, in his letter quoted in my article, which General Fry regards as presumptuous.

General Fry begs the whole question when he admits the President's command of the Army is or has been exercised by the Secretary of War. If by a Secretary of War, why not by a General? If he cannot delegate his authority to a General appointed in accordance with law, by and with the advice and consent of the Senate, how can he permit the Secretary, who is "a civil officer, and whose duties are civil duties," and "who cannot take the field," who "is not a part of the Army," to exercise his military functions as Commander-in-Chief? General Fry claimed, in his first paper, that "there is one constitutional way in which he (the President) may be relieved of the labor of continuous personal command, *that is, by having that command exercised by the Secretary of War*; not by virtue of delegated power, nor, in fact by any power of his own, but because his rules and orders, and his only, must be received as the acts of the President," because the Supreme Court had decided that the President's "rules and orders, publicly promulgated through him (the Secretary of War) must be received as the acts of the Executive."

And in his letter, in your August number, he so refers again to that decision, and claims that experience shows "it is practicable for the President to exercise the command in a way (namely, by the Secretary of War)

that the Supreme Court has pronounced constitutional." Now, that decision was not based upon a question of command at all, and was not intended to apply to military functions.

The decision of the Supreme Court (15 Peters, 291), in which the Secretary of War is pronounced "the regular constitutional organ of the President for the *administration* of the military establishment of the nation," and which is so often quoted and relied upon as manifesting the right of the Secretary of War to execute the military functions of command of the President, because of the subsequent language of the decision, "and rules and orders publicly promulgated *through* him, must be received as the acts of the Executive, and as such be binding upon all within the sphere of his legal and constitutional authority," was given upon a case purely administrative and ministerial, a case of settlement of money accountability and claim for compensation for disbursements. And the decision was upon the right or power of the President, either in his own name or acting "*through*" his secretary, to "modify, or repeal, or create anew" an existing regulation, and denied the right of a subordinate officer to insist upon a prior regulation as governing when the order for its repeal or modification "was adopted by the proper authority"—that is, the President—"and by the same authority promulgated to every officer *through* the regular official organ."

Now, beside the fact that the decision relates to administrative duties, and not military command, it is noticeable that the language used by the Supreme Court throughout treats of the acts as being those of

the President, and only *promulgated* "through" his constitutional *organ*, not the acts of a delegate, deputy, or *alter ego*.

In a preceding decision (13 Peters, 513) the same court had, in reference to another purely administrative act of the Secretary's, used the following language: "Now, although the immediate agent in requiring this reservation was the Secretary of War, yet we feel justified in *presuming* that it was done by the approbation and direction of the President. The President speaks and acts through the heads of the several departments in relation to subjects which appertain to their respective duties. Both military posts and Indian affairs, including agencies, belong to the War Department. Hence we consider the act of the War Department in requiring the reservation to be made, as being in legal contemplation the act of the President, and, consequently, that the reservation thus made was, in legal effect, a reservation made *by order of the President*, within the terms of the Act of Congress." Now, the Supreme Court having decided that "he (the Secretary of War) is a civil officer, and all his duties are civil duties," how would it have been had the act of the Secretary been a military instead of a civil administrative act? The whole decision hinges upon the fact that the act was one appertaining to the duties of the department, among which is not the military command of the armies of the United States.

It is believed far safer for the President to "delegate" his military command to a General-in-Chief than *to have it exercised by the Secretary of War not by any constitutional authority, "nor by delegated power, nor in*

fact by any power of his own," but relying upon a decision of the Supreme Court which *does not relate to such functions*. And it certainly would be more in accordance with the teachings of the best military authorities.

That the President has the power to delegate such authority, and to assign the General-in-Chief cannot be denied, for it is clearly and distinctly set forth in sundry acts of Congress, and most recently in the act reviving the grade of General of the Army of the United States, which reads as follows :

"That the grade of 'General of the Army of the United States' be and the same is hereby revived; and that the President is hereby authorized, whenever he shall deem it expedient, to appoint, by and with the advice and consent of the Senate, a General of the Army of the United States, to be selected from among those officers in the military Service of the United States most distinguished for courage, skill, and ability, who being commissioned as General, may be authorized, under the direction and during the pleasure of the President, *to command the armies of the United States.*" (Sec. 1, July 25, 1866, Chap. 232.)

So there is no question as to the power of the President in the case, but there *seems* to be one as to what he ought to do. And since the constitutionality of that Act of Congress has never been questioned, officers of the Army have a right to accept *it* in the discussion of this subject rather than a decision of the Supreme Court, which does not apply to the question.

General Fry takes issue with me upon the use of the word "delegate" or delegation, and claims that "it

does not in the least resemble the assignment to duty of a subordinate by his military superior." The issue as made by him is accepted, and his difficulty in this will be found to be as fictitious and fallacious as the trouble he has in reference to commanding and being commanded at the same time.

The powers conferred upon the President as Commander-in-Chief of the Army embrace every possible detail of command respecting the duties of every individual in the Army. He may exercise direct authority in any and every one of this vast number of details, or he may, as he does in his discretion, confide the vast majority of these to his subordinates, both commanders and staff officers. He does this habitually in his assignments of officers to command, and in his regulations and orders prescribing what such commanders may and what they shall do. It is not worth the while to contend over the meaning of a word, but if this is not a delegation of the authority of the Commander-in-Chief, then what is it?

The President reserves to himself the right at any time to alter his regulations, change his commanders, or interfere directly in any detail of command; in other words, to resume at any moment the power delegated to his subordinates, or to control the manner of their exercise. It is thus, in addition to what uses authorized by law shall be made of the Army, that the President continually discharges the duty imposed upon him as Commander-in-Chief. The vast majority of these duties are actually performed by his subordinates, whether they may be called "delegates" or not. And if the President may confer these powers upon

twenty different officers, may he not confer them, or a certain portion of them, upon one, the power so conferred upon one to be exercised over the entire Army, instead of over only a part of it? If not, how large or how small are the parts of the Army over which the President may assign commanders?

Again: where do the several commanders derive the authority which they habitually exercise? None of that authority is conferred by the Constitution, and very little (such as that relating to courts-martial, etc.) by act of Congress. It is a portion of the President's authority as Commander-in-Chief which he confers upon his subordinates, but which he may still resume and exercise in person at any moment if he sees fit to do so. Is not this a delegation of authority? Wherein consists the supposed difference between an assignment to command under certain regulations and instructions and a delegation of military authority? Unquestionably, then, the President may assign one officer to command all the armies and all parts of the armies of the United States under his direction and during his pleasure, but he must assign an officer of the Army appointed and commissioned according to law, or he may assign any number of such officers so appointed and commissioned to command parts of the Army; but he cannot assign such duties to the Secretary of War, and in such assignments he delegates to the officers so assigned his functions, or so much of them as may be necessary to carry out his will.

The duties of officers, such as relate to courts-martial and certain duties of some of the staff departments, defined by special acts of Congress, are to be per-

formed by authority of law ; all other duties are performed by authority delegated by the President. And there is nothing in the law preventing the President from requiring those specific duties confided by law to special officers from being performed under the supervision of a General-in-Chief, whom the law has authorized him to assign, so long as he does not take the performance of such duties from the officers designated in the laws.*

THE COMMAND OF THE ARMY.—CONTINUED.†

Colonel Wherry desires more information than your columns or my circumstances will justify me in giving him in this letter. In his last communication on "The Command of the Army," he asks some twenty-five questions! I find no new arguments to answer. I thank him for his quotation from Senator Edmunds, which clearly sustains my conclusion that the *President must* command the Army. In my first article, I said the "actual command" was "lodged irrevocably and unalterably with the *elective civil* magistrate," and that is substantially the ground taken by Senator Edmunds, as Colonel Wherry quotes him. But the fact that the highest civil functions and also the highest military functions are lodged in the President does not impair his supremacy in *both*. To deny the President *his real* military power with a view to leaving that power to be exercised, through délegation or otherwise, by "a chosen General," would destroy the force of Senator Edmunds' argument as well as defeat the purpose of

* Dated, West Point, N. Y., August 4, 1879.

† General Fry in *Field Glass* ; dated, Governor's Island, September 9, 1879.

the Constitution. The fact that the President is endowed with supreme military power for the very reason that he is chief *civil* magistrate does not weaken the point here made.

Colonel Wherry is catching at straws. Because I asserted the broad proposition that two persons cannot command the same force at the same time, saying, "there can be but one commander: all others must be commanded," he attributes to me the "fallacy"—foolery, it might be called—of holding that "a man cannot command and be commanded at the same time"; and then he demolishes that "fallacy"; telling us that "there may be a post garrisoned by a single company, but with a post commander superior to the Captain of the company," who "would exercise command over that one company as much or as little as he saw fit," etc. I despair of enabling Colonel Wherry to grasp my meaning; and it would not be allowing fair play to the discernment of your readers if I commented for their benefit on such points as the one I have just quoted, or upon the Colonel's view that the *general principle* plainly enunciated by the Supreme Court—that *rules and orders* publicly promulgated through the Secretary of War must be received as the acts of the President, and as such be binding upon all within the sphere of his legal and constitutional authority—must be restricted to so-called administrative and ministerial matters, because the decision embracing the principle was given upon a case of money accountability. That nothing more on the main question is necessary from me is very clear. There is an old story to the effect that during the Flood a certain

man made many fruitless attempts to get into the Ark, and, when finally repulsed, he waded away with the water up to his chin, remarking, "It makes no difference, there ain't going to be much of a shower, no how." Fortunately he was so constituted that he could take a cheerful view of a difficult situation. Colonel Wherry seems able to take a like comforting view of the weighty subject under discussion. After having for several months wrestled unsuccessfully with a trouble which, like the waters in the Deluge, grew deeper and deeper, he at last turns away, remarking, "it is believed that the constitutional question involved in this subject is purely imaginary." Under this assumption he abandons it, and proceeds to discuss numerous other points, leaving the important matter to the fate of Ginx' baby. I repeat that the points I maintain are the broad ones distinctly stated in my first article, namely, that the President is required by the Constitution to *command* the Army (not nominally, nor yet with "fuss and feathers," but *actually*); that Congress has no right to divest him of that duty, and that he cannot *delegate* the command to "a chosen General," or any one else, but that the Secretary of War is his "regular constitutional organ for the administration of the MILITARY *establishment* of the nation," and may be used in that capacity to any extent the President deems best. The points which I especially contest are embraced in General Schofield's assertion that "The President does not command in person; he delegates his military command to a General officer who has been educated, appointed, commissioned and assigned by him for that purpose. The President's military

staff thus becomes the staff of his representative—the Commanding General of the Army; . . . the orders of his chosen General-in-Chief are as much his own orders as if he gave them in person.” I will not be a party to smothering these points in details and side issues, nor to clouding them with sophistries; nor will I be drawn away from them through the allurements of European systems, or native modern military theories. As matters now stand, I am quite willing to submit the case without further argument.

Colonel Wherry again presents the proposition of having the “General-in-Chief” made “Chief-of-Staff” of the Army. I have not discussed that proposition directly. But so far as my argument on the President’s constitutional obligation to command the Army bears upon the question of the appointment or assignment of a Chief-of-Staff, it supports the view that the “General-in-Chief” can be *nothing more* than Chief-of-Staff. Certainly a Chief-of-Staff can be authorized by law. Possibly the President can make one by assignment without further legislation. I know of nothing impairing his power to do so, unless it be the fact that the office of Chief-of-Staff to the Lieutenant-General, created by the Act of March 3, 1865, transferred to the General by the Act of July 25, 1866, and filled until March 12, 1869, was formally abolished by the Act of April 3, 1869. But to convert the “General-in-Chief” into Chief-of-Staff would not be much more than a change of name. Whether it would grease the wheels or not is a question; it would not materially alter the machine. The feature in our military system, which Colonel Wherry and many other good officers are

trying in fact to remove, is not due to the organization or behavior of the Army, line *or staff*, nor to military grades or titles. It arises from the existence of the Secretary of War. Their scheme involves the necessity of "wiping out" the Secretary. His office—authorized in general terms by the Constitution—has been formally created by law. Various acts of Congress have imposed upon him specific duties in the military Service. Decisions of the Supreme Court, and the inherent and imperative demands resulting from the relations between the Secretary of War and the President, have, for all purposes affecting the Army, fastened these two functionaries so closely and firmly together, that no officer of the Army can, with any practical advantage to himself or the Service, be wedged in between them. It was not accomplished when Grant, as General, was backed by all the law on the point now in force, and was covered with military glory. No one acquainted with the war times need be reminded of the *actual command* of the Army exercised by President Lincoln through his Secretary of War, Mr. Stanton, during the Rebellion. Nor, when Grant had stepped from the head of the army-list into the White House did he permit his successor as General, to come between him and his Secretary of War. To abolish the Secretary of War would unquestionably be very difficult, but the task of establishing between him and the President a General *with independent and conclusive powers* for any military purpose, either administrative or executive, is more than difficult—it is *hopeless*.

Colonel Wherry's letter contains a few things which

it is proper for me to notice in the way of correction and "cleaning up," although they are immaterial to the question under consideration. He says, if I understand him, that a letter from General Schofield, which he quoted, is regarded by me as "presumptuous." So far as I know, the assertion is wholly groundless. I regard and have treated General Schofield as one of the highest military authorities.

Again, in my letter which appeared in the *Field Glass* of August, I am, *through a misprint*, made to say "one" President—making the expression special, instead of "our" President—making it general. I had no opportunity to correct the proof, and did not see the letter in print until the paper, regularly issued, reached me in Montreal about the 4th of August. Then I detected and corrected the error.* To the reader who examines carefully enough to become a reviewer, the context, it seems to me, ought to have disclosed the fact that the printer was at fault. But I did not leave Colonel Wherry to make the discovery. I sent to him by letter-mail a corrected copy as early as the 5th of August. Notwithstanding all of this, he, in the September number of your paper, makes the erroneous reading the basis of sharp comment as if it had been correct, and then adds a foot-note confessing that he received from me a correction of the misprint. His excuse for retaining his comments seems to be that his article *was written* before he received notice of the error. *He revised the printer's proof of his article*, and that, too, *after* he received the correction. There was

* The error here mentioned was a misprint, and there is conclusive evidence that General Fry corrected it as stated.—[Ed. *Field Glass*.

unnecessary labor, due perhaps to an author's excusable love of offspring, in retaining and trying to explain sharp comments founded upon error, instead of preventing their appearance by simply striking them out.

Finally, Colonel Wherry says that when he wrote his article on "The Command of the Army," which appeared in your number for July, he purposely omitted "General Fry's *or any other person's name*, to avoid personal controversy, and the asperity which usually belongs to such personal mention." I do not perceive the necessity for this statement, but finding it, I may remind the Colonel that, in the article to which he refers, he quoted from two officers—General Schofield and myself—and that he cited General Schofield *by name*. I hope no "personal controversy" will arise between them on this account. Colonel Wherry's omission applied to me. I appreciate his motives as he explains them, but it is a new notion that, *in making quotations*, a writer may, to avoid personal controversy, neglect to credit the author from whom he quotes—especially if, as in this instance, he quotes from the published writings of two persons, one of whose names is given. Colonel Wherry overestimates my sensitiveness. In quoting me he can mention my name with entire safety. As he has introduced the subject, I may suggest that, as a rule, *in making quotations*, personal controversy is more likely to be avoided by giving authorities than by omitting them.

With respect and kind feelings for those who differ from me—especially for General Schofield and Colonel

Wherry—I quit this subject, leaving the Colonel a lady's privilege—the last word.

THE COMMAND OF THE ARMY.—CONTINUED.*

General Fry, in his last article (of September 9, in your October number), graciously gives me the last word. I am not disposed to comment on the tone of his article, much less to retort in kind.

It is sufficient that he now states the case so as to leave no ground for discussion. Certainly, it cannot be contended that the President may lawfully be deprived of the actual command of the Army; or that the office of the Secretary of War may be, or ought to be, abolished (“wiped out”); or a General-in-Chief interposed between the President and the Secretary of War. If this is the proposition with which General Fry started, it is difficult to imagine why he thought it necessary to prove it.

A very different proposition, viz.: that a Commanding General, General-in-Chief, or Chief of Staff under *both* the President and the Secretary of War, and subject to their direction, might be placed over the *entire* Army, *line* and *staff*, has been maintained on the one hand and denied on the other. But, it now seems, General Fry takes no part in this contention. Hence, I cheerfully end the discussion, with assurances of respect and kind feelings for General Fry, and regrets that I failed to see at the start that his labored argument was designed only to prove the simple and self-evident propositions with which he closes the discussion.

* Colonel Wherry (West Point, N. Y., October 2), in *Field Glass* for November, 1879.

THE COMMAND OF THE ARMY.—CONTINUED.*

Your letter of the 2d inst. reached me some days ago. You adhere positively, yet kindly I am sure, to your assertion that the "fact of history is diametrically the reverse" of a certain statement in my pamphlet on the command of the Army. But you tell me to "strike out the word diametrically" *if I wish*. In my understanding of language, the reverse of a fact is the same as *diametrically* the reverse of it. I do not avail myself of your concession for the reason that it does not change the meaning of your remark nor reduce the force of your contradiction. The statement in my pamphlet is, "the fact may be recalled that President Washington in 1794 took the field in actual command of the militia of Pennsylvania, New Jersey and Virginia; and when he relinquished immediate command, he turned it over to the Governor of the last-named State." In your letter of October 26, you say of this, 1st, "It is *pivotal* to the question" discussed in my pamphlet, and, 2d, that it is "a serious error of history—that it is diametrically the reverse" of the "fact of history." I do not regard the incident as "pivotal" or very important to the question. It was mentioned, as shown by the terms used, merely as an example which had arisen by chance under a rule which, I thought, firmly established by the argument of the pamphlet. As I look at it, the force of the argument would not be impaired much, if at all, by striking out the occurrence. But unimportant as the statement appears to me in its connection in the

* Letter from General Fry (New York, November 23, 1882), to General H. C. Wayne, published in *Journal Military Service Institution*.

pamphlet, your flat and elaborate contradiction, demands my reasons for making it. You say, "now the fact of history is diametrically the reverse of this statement. President Washington did not command in person the militia above mentioned on the occasion referred to, nor any other militia, nor any other troops at any time during the two terms of his presidency;" and you add in relation to the militia force called into the Service of the United States to suppress the whiskey insurrection, "Governor Lee of Virginia was appointed to the command of this force." In both of your letters (October 26 and November 2) you insist that the reader shall "interpret technical language according to its meaning and application as determined by our Constitution, military law and Army Regulations"; and add that "to inspect troops in no manner implies command of them in person or actively." You speak as if the Constitution, military laws and Army Regulations laid down or "determined" an exact method for interpreting technical language. If that were so we should not be engaged in discussion. But there is no accepted glossary to the instrument you name. In the case we have in hand you say Washington did not command "in person." To be exact in technical terms, I may remind you that my pamphlet does not say he commanded *in person*. It says he took the field in "actual command," and speaks of his "immediate command." We may be differing a little about the technical meaning of "actual," "immediate" and personal command, but I think by explanation we may understand each other. As to the facts of history in the case in point, I ob-

serve that you cite no authority but Sparks. You admit that President Washington went in person to the army but you hold that his only purpose was "to inspect." In relation to his exercise of command you say, "Sparks settles that question by telling us that Washington had the intention at one time of taking personal command of the militia if necessary, but that he did not do so, but after inspecting them returned to Philadelphia to be present at the meeting of Congress." Here, on November 2, you accept Sparks as settling the question, but in your letter of October 26, being at that time unwilling to admit that Washington ever had even the intention of taking command, you discredit this same authority by saying, "but Mr. Sparks gives no authority in confirmation of his intention, and as it is well known, a mere statement of intention unsupported by corroborative testimony has no positive weight." I may remark here that for the purpose of the argument in my pamphlet, Washington's intention to take command is quite sufficient even if he did not carry out the intention. Mr. Sparks could have been discredited to more advantage on some of his other statements concerning the whiskey insurrection, than upon what he says of Washington's intention to take command. For example, he says that the "Secretary of War" accompanied the President to the place of rendezvous and that the "Secretary of War went on with the army to Pittsburg." These are mistakes. The Secretary of War, Knox, did not accompany the President, did not go to the places of rendezvous at all, nor did he go on with the army to Pittsburg. Sparks' failure to state in the text of his

Life of Washington that the Secretary of the Treasury, Hamilton, accompanied the President to the rendezvous and went on with the army is a grave omission, especially in view of the active part taken by Hamilton in the *military* as well as in the civil business of the expedition.

To return to the main point. You, adopting Sparks, say, as I understand you, Washington went merely "to inspect" troops which were already organized and under the command of Governor Lee of Virginia. I think you are wrong. Washington himself says in his message to Congress, November 20: "I ordered the militia to march, after once more admonishing the insurgents." "If the state of things had afforded reasons for the continuance of my presence with the army it would not have been withheld." "But every appearance assuring such an issue as will redound to the reputation and strength of the United States, I have judged it most proper to resume my duties at the seat of Government, leaving the chief command with the Governor of Virginia."

On the 8th of October (1794), Washington wrote from Carlisle to General Daniel Morgan saying, "imperious circumstances alone can justify my absence from the seat of Government while Congress is in session, but if these, from the disposition of the people in the refractory counties, and the state of the information I expect to receive at the advanced posts, should appear to exist, the *less* must *yield to the greater duties* of my office, and *I shall cross the mountains with the troops*; if not, I shall place the combined force under the orders of Governor Lee of Virginia and repair to the seat of Government."

On the 9th of October, being still at Carlisle, he wrote to Knox, Secretary of War, at Philadelphia, "it would have given me pleasure to have you with with me," but "it is now too late as we shall be in the act of crossing the mountains, or I shall be on my return to Philadelphia, according to circumstances and the information I *shall receive at the head of the line*, before you could arrive." "To-morrow, if I can get the troops in motion at this place, I shall set out for Williamsport, thence to Bedford, where about the 18th or 20th, my ultimate measures will be determined on."

On the 16th of October, he wrote from Cumberland, to Randolph, Secretary of State, "I do not expect to be here more than two days, thence to Bedford, whence, as soon as matters are arranged and a plan settled, I shall shape my course for Philadelphia, *but not* because the impertinence of Mr. Bache or his correspondent has undertaken to *pronounce that I cannot constitutionally command the Army while Congress is in session.*"

On the 20th of October, Washington having arrived at Bedford, decided on the "ultimate measures" mentioned in his letter of the 8th to Morgan. He *directed Hamilton* to address a formal and lengthy letter of instructions to Governor Lee which opens by saying: "I have it in special instruction from the President of the United States now at this place, to convey to you on his behalf the following instructions for the general direction of your conduct in the command of the militia army with which you are charged." It is in this letter that the rank of the Governors is an-

nounced ; Hamilton saying, "it has been settled that the Governor of Pennsylvania will be second, the Governor of New Jersey third in command." On the same day, October 26, Washington addressed a letter to Governor Lee in which he says, "could my further presence with them" (the troops) "have been necessary or compatible with my civil duties, at a period when an approaching session of Congress particularly calls me to return to the seat of Government, it would not have been withheld. In leaving them, I have less to regret as I know I commit them to able and faithful direction."

The foregoing extracts afford conclusive proof, as it seems to me, that when President Washington, in September, 1794, left the seat of Government for Carlisle, Williamsport and Bedford, it was not merely "to inspect" a militia force which was, as you claim, at that time organized and commanded by Governor Lee of Virginia. If a doubt could remain on this point it probably would be removed by what Washington himself says of his purpose. In the message sent to Congress after his return he says he "visited the places of general rendezvous to obtain more exact information, and to *direct* a plan for ulterior movements." What was embraced in directing a plan? *What in fact did he do?* I have said in substance that he went in his capacity of Commander-in-Chief of the militia he had called into the Service of the United States, and that he exercised the actual command of that militia until he turned it over to Governor Lee of Virginia. In support of this I cite the foregoing extracts and will add a few comments. If he was not exercising

command there would be no meaning in the indignation with which he spurns Mr. Bache's assertion that he could not constitutionally command the Army while Congress was in session, and in his giving reasons for his return to the seat of Government, which were—not that he was not commanding—but, that matters were arranged and a plan *directed* so that it was unnecessary for him to remain with the army. In fact, Mr. Bache's question about Washington's right to command could hardly have arisen if the right had not been exercised.

In his message to Congress, Nov. 20, Washington says, "*I ordered* the militia to march," "*I put in motion* 15,000 men;" and he distinctly states that it was "*as Commander-in-Chief of* the militia when called into the Service of the United States," that he proceeded to join the troops. The Constitution *appoints* the President Commander-in-Chief of the Army and Navy of the United States and of the militia when called into the Service of the United States. He is always on duty in that capacity. No assignment or formal announcement is necessary to the exercise by him of any command he may deem proper.

As soon as he arrived at Carlisle, he went directly and actively to work to improve the discipline of the troops there. They were disorderly, and it was feared they would burn the town. "To what heights these heats might have gone if the President had not arrived so seasonably it is impossible to tell." "Though there were officers possessed of virtue and experience before he arrived, yet their authority was not sufficient to preserve order," etc. "After a short conversation he

informed us he was just going out about some business relating to the army, and that *after breakfast* he was going to see a division of the army march, but would converse with us at 10 o'clock that morning." Thus he was attending in person to army business both before and after breakfast. "He assured us that *he* would provide by dispersing the disorderly corps among better troops, or otherwise, that they should be kept in strict subordination." "Having rode out a few miles to see some relations, the President was *gone out to the army* before we returned." "General Smith, who commanded the Maryland brigade, complied strictly with *the President's orders* in discharging such of the men as were disorderly." "*The President* was happily successful in reducing the licentious part of the army to subordination," * etc., etc. This certainly indicates the exercise of "actual" and "immediate" command. The President confirms it by his letter of October 9, already cited, in which he says, "If *I* can get the troops in motion at this place, I shall set out for Williamsport, thence to Bedford." That he was at this time actually executing the duties of his military office is further shown by his letter of October 8 to Morgan, his letter of October 20 to Lee, and his message of November 20 to Congress. In the first he says, "if imperious circumstances require it, the less must yield to the greater duties of my office, and I shall march across the mountains with the troops." In the second he distinctly contrasts the military duties he was then performing with the "civil duties" he proposed to *resume* by returning to the seat of Gov-

* Findley's History of the Whiskey Insurrection.

ernment. In the third, after giving reasons for his return from the army, he says: "I have judged it most proper to *resume* my duties at the seat of Government, *leaving* the chief command with the Governor of Virginia." Clearly from this, he had for a time laid aside his civil duties at the seat of Government, for the purpose of attending in person to military duties at the seat of war. And furthermore it appears plain enough from this that the Governor of Virginia did not have the chief command of the militia army until the President *left* it to him by quitting the field. It is true that Washington is reported to have said at Carlisle that he did not "command the army *in person*, but had appointed Governor Lee Commander-in-Chief." The date on which he appointed Lee to command in person, or left him in chief command, is not material in this discussion. It would seem however that he had not appointed Lee as late as October 8, for he said in his letter of that date to Morgan, if not required to cross the mountains, "*I shall*"—(that is at some future time)—"place the combined force under the orders of Governor Lee of Virginia." It seems clear that up to that date the President was exercising the command himself.

The Governors bore the same relation to their respective forces that the President bore to the whole force. He and they exercised command on exactly the same principles. For the purpose of actual military command he fixed their relative military rank as already shown. In our discussion, the historical fact of the President's part in the whiskey insurrection is important only as bearing on the *principle* of command

which controls alike the President and the Governors. Admitting, that at some date not known, the President appointed Lee to command *in person*, it would still be true that up to the date of his departure, the President actually exercised the chief command himself. In his letter of October 20 to Lee he says of the troops: "In leaving them I have less to regret as I know *I commit* them to able and faithful direction." You will observe the force of the present tense of the verb commit. It seems to me that it was then and there that the immediate command was relinquished by the President and turned over to the Governor of Virginia, just as stated in my pamphlet, and that you are in error in characterizing my statement as "diametrically the reverse of the fact of history."

Allow me also to say, in all kindness, that the "brief history" of the whiskey insurrection, given in your letter of October 26, is defective in making no allusion to the documents I have cited; for without considering them, Washington's part, especially in the military operations, cannot be fully understood.

A few words as to a general proposition in your letter and I shall close.

You say "it is not to be supposed that the Chief Magistrate of the nation shall be qualified to command *in person*, an army in the field, or direct the manœuvres of a naval squadron. Nor is it to be supposed that he could abstract himself from his other duties, civil and military, to command *in person* on land or sea, were he competent to do so. Either supposition is an impossibility, and therefore both are inadmissible."

On the basis of these assumptions, after we have had more than a hundred years of experience, you would transplant from the British military system to ours, certain features and titles which the founders of our Government understood and rejected. That Washington did not entertain the views you express concerning the military functions of the President, is proved by the foregoing extracts.

It seems to me there is no more unstable foundation for a military system than the assumption that the actual head of it is incompetent, and if competent would necessarily be unable to perform his duties; and so I judge the framers of our Constitution thought, for it is recorded, that "objections were made to that part of this article by which the President is appointed Commander-in-Chief of the Army and Navy of the United States, and of the militia of the several States; and it was wished to be so far restrained that he should not command in person, but *this could not be obtained.*"*

Looking from my point of view, the only *supposition* admissible is, that the President is qualified for all the duties imposed upon him by the Constitution. The *fact* is the Constitution and laws afford him ample facilities for the efficient performance of them.

* Luther Martin's Letter to Maryland House of Representatives. Elliott's Debate on Federal Constitution.

ARTICLE III.

Justice in the Army.*

Justice is absolutely essential to discipline in our Army. Inasmuch as the military is a more arbitrary and despotic system than the civil, so is even-handed justice the more necessary in it. Mercy (which is one form of favoritism) should not be confounded with kindness. It implies wrong known both to the offender and the judge. Justice and mercy are totally incompatible. There can be no such compound as justice seasoned with mercy. The least particle of the latter destroys the former. In the Army, if not elsewhere, it is justice, not mercy, that "is twice blessed"; it "blesses him that gives, and him that receives"; and as justice conveys double blessings, so does mercy bring double evils. The records of our Army sustain the assertion that remissions and mitigations of deserved penalties smooth the way to repetitions of offences and lead offenders deeper and deeper into trouble.

But the more common form of favoritism in Army management does not come under the head of mercy. Many Army scandals if not attributable to, have been promoted by, the purer form of this evil. It is a truism that some men cannot stand prosperity. In the Army where regularity and strict routine are the rule, sudden elevation is dangerous, especially when

* *Army and Navy Journal*, September 22, 1883.

it does not come from established merit. Take for example the case of —— . A cadet, he was promoted in 1871 to the grade of 2d Lieutenant. After less than two years' service in that grade he resigned ; and without distinction in the Army or out of it he was in 1876 appointed paymaster with the rank, pay, and emoluments of *Major*, while his classmates who had served faithfully during the time he was out of the Army, were still Lieutenants. He could not stand the sudden and unearned elevation. To him the pay and emoluments of Major seemed so large compared with those of his former and proper grade, 2d Lieutenant, that he probably thought they would sustain any indulgence, even a big game of draw-poker. When his pay failed he resorted to the public purse to meet the demands of habits he never would have formed if he had remained a Lieutenant until he grew gradually to higher grades. This is no apology for his crimes. It is merely one of the causes of them.

Colonel ——'s case is also in point. He, a young Major of cavalry, received by a mere stroke of the pen the rank, pay and emoluments of Colonel, was transferred from the active service and wholesome influence of his regiment to Washington City, where he had little or nothing to do. He, too, became dizzy and was not able to resist the temptations of his new and exalted sphere.

Colonel —— furnishes another example of *influence*, or favoritism. He had shown ability and gallantry as a soldier, and had military recommendations for promotion to the grade of Major in the Adjutant-General's Department. But the contest between him

and other officers for that position was decided in his favor by political influence. The lesson he learned from concentrating and applying that influence to secure his promotion, he subsequently turned to such account that the military powers of the War Department were not able even to change his station. He would not leave Washington, the source of favors. There, as he is said to have expressed it in a gambler's figure of speech, he had a seat near the dealer, and that was an advantage in the game which he was not going to surrender. Nor did he surrender it. He held Washington as his station from the time he entered the Adjutant-General's Department by promotion until he left it by voluntary retirement; and that was still his residence when he appeared in the scandals which bear his name.

The cure for these ills is not in the hands of the Army. But united action on the part of officers may promote remedial measures. There is nothing in which the Army is more deeply concerned than in the laws and regulations governing appointments and promotions and their enforcement. While appointments to so-called *original vacancies* are by unrestrained selection, the law provides that selections for appointment to the lowest grades in several of the staff departments shall be made from *the Army*. The *rule* of promotion is that seniority shall govern, but there are exceptions to the rule, and under these *selection* has precedence. There is a growing tendency to restrict the operation of the rule and increase the exceptions. This works badly for the Army. Certainly it is objectionable in a military system to have medi-

ocriety, especially as it grows old, sit with all the weight of the law on active and aspiring energy and ability. Promotion based on merit might be of advantage to the Army, provided relative merit could be accurately determined and promotion made to conform rigidly and impartially to it. But that is impossible in our Service, though in times of great and immediate danger appointments and promotions may to a limited extent be made safely by selection. With us, speaking broadly, there is no such thing as promotion by merit. All promotion that is not by *seniority* is now, and will continue to be, by *favoritism*. The Army's views upon these systems, if clearly expressed, would no doubt have some weight. It is not easy to secure the attention to this subject which it deserves. Comparatively few of our people are willing to concern themselves during the long years of peace with preparations for war. Only part of those who admit the necessity for activity in that direction are able to live up to their convictions. The belief that if war should come, we shall be able through the intelligence, patriotism and pluck of the people to provide for it after it gets in sight, is widespread and sincere. While the Army is respected for its character and the services it has rendered, people impressed by the fact that it is not necessary to our present welfare, do not realize that its preservation in the highest state of proficiency and efficiency is necessary as an assurance of safety in the future.

On the easy and agreeable assumption that we shall have no more wars, Army offices come to be regarded as well paid positions, in which there is nothing of

importance to do, and which one man can fill as well as another. Viewed in this way it is quite natural that Army offices in time of peace should be used to the fullest extent of the law, to reward services, political or personal, rendered by a candidate or his backers.

The only protection against this evil seems to be in positive laws requiring promotion (in time of peace at least), to be by seniority, even to the very top. Some points concerning corps and arms of service would have to be considered, but they would give rise to no practical difficulty. Our liberal and comprehensive system of retirement would prevent serious injury to the Service from the occupation of high places by worn-out or broken-down men. It would be better for the Army to have majorities in the Pay Department filled by promoting the senior Captains in the line, and vacancies in the captaincies of the Quartermaster's Department and Subsistence Department filled by promoting the senior first Lieutenants of the line, than to have them filled as at present by so-called selection.

ARTICLE IV.

Law in the Army.*

Division and Department commanders have frequently—in fact generally, of late—retained authority when beyond the limits of their commands. This has occurred when absence was, and also when it was not, on duty, and somewhat regardless of the distance the commander might go or the length of time he might stay. There is no doubt that such proceedings have led, and may continue to lead, to serious embarrassment, and it is clearly in the interest of the public service that General Gibbon files a temperate and respectful objection to them. But he appears to go too far in charging that they are a direct violation of the 122d Article of War. That Article says:

“ART. 122. If, upon marches, guards, or in quarters, different corps of the Army happen to join or do duty together, the officer highest in rank of the line of the Army, marine corps, or militia, by commission, there on duty or in quarters, shall command the whole, and give orders for what is needful to the Service, unless otherwise specially directed by the President, according to the nature of the case.”

General Gibbon maintains that this Article prescribes the rule of succession in command, not only in all the organizations of the Army as created by law, but also in the sub-divisions of the country made by

*See article in the 4th number of the *Journal*.

the President for the welfare of the Service, and for his convenience as Commander-in-Chief; and he takes the extreme ground that absence instantaneously disqualifies the regularly assigned commander, and that, "the *moment* he absents himself, *the law* steps in, and says" (Art. 122) "that the next in rank '*is the commander.*'" This broad claim does not appear to be sustained by the Article quoted. It cannot fairly be said that the troops posted and habitually encompassed within the limits of a geographical department "*happen* to join or do duty together" in the meaning of this Article; nor can the temporary absence of the designated Department commander give rise to the contingency or happening which it is clearly the purpose of the Article to provide for. In fact there is no statute law requiring the transfer or relinquishment of command on account of the temporary absence of a Division or Department commander. The attempt to correct what threatened to be an abuse is weakened by presenting the dangerous practice as a violation of any particular Article of War. The Judge Advocate General has reached substantially the same conclusion that General Gibbon arrives at on the main question, but he does so by a process of reasoning, not by alleging a direct violation of law. He says "the place—it is submitted—of the action taken is material to the question of a proper exercise of an attribute of command." But the views of the Judge Advocate General on this subject have been examined by the Attorney-General of the United States and overruled. The opinion—with which General Gibbon was probably not acquainted when he wrote—is as follows:

DEPARTMENT OF JUSTICE,

Washington, August 28, 1880.

THE SECRETARY OF WAR.

SIR: Yours of the 24th instant, asking whether a Department commander, assigned by the President to command, can exercise the functions of his office to appoint general courts-martial, and act upon the record of proceedings of the same *when he is outside the territorial limits of his command*, has been duly considered, in connection with *Orders No. 26, Washington, May 18, 1878*, in the case of General Kautz, and *Orders No. 9, Vancouver Barracks, Washington Territory, May 14, 1880*, transmitted by you in the same connection; and herewith I submit a reply.

The division and subdivision of the territory of the United States into military divisions and departments is a matter of discretion for the President, and scarcely anything, and that indirect and for the present purpose unimportant, is to be found upon the subject in the statutes. *Orders* making such geographical divisions, and assigning officers to their commands, are also very brief, and throw no special light upon the present question.

In the absence of special orders or legislation to that effect, I am of opinion that personal presence within the territorial limits of his Department is not essential to the validity of commands given by a Department commander to be executed within such limits—such, for instance, as the appointment of a court-martial.

—The question which you put, is *general*, as regards the absence in question, so that my answer is necessarily general also. Whether there may be exceptions

to it growing out of special circumstances attending *absence*, can be best determined when those circumstances arise. But I see no reason why mere absence should have the effect of invalidating such commands.

The distribution of military command into geographical departments, is, as I suppose, mainly for the purpose of preventing collision and confusion, and so of securing individual responsibility in the *execution* of commands by officers otherwise of like authority. Practically, such collision is to be apprehended rather in *execution* than in *exercise*. It seems, therefore, that the place of the action taken is material to the question of the proper *execution* of command rather than to that of its proper *exercise*. In the analogous cases of civil authority, the incident of geographical limits for its execution has not, in the absence of special features, been considered to require, *ex. gr.*, *judicial* orders to be issued by a judge only whilst within such limits. In order to render this necessary, something *else* must concur to indicate the will of the constituting authority. The ground of this opinion is that there is present here nothing *else* to indicate the will of the President or other proper superior authority, that the functions of commanding officers should be so limited. In the meantime, the arguments in its favor are such as are for consideration only by the power having legislative or *quasi* legislative control of the question (*i. e.*, by statute or by order).

Very respectfully, your obedient servant,

S. F. PHILIPS, *Solicitor-General*.

Approved.

CHAS. DEVENS, *Attorney-General*.

This leaves nothing more to be said at present on the law of the subject. As the legal authority of a Department commander is not necessarily impaired by his temporary absence, of course he may exercise that authority through his Adjutant-General as usual; and General Gibbon's argument that by doing so the law is violated and a junior (the Adjutant-General) is put in command of a senior, falls. But this does not fully dispose of the practical questions involved. The Attorney-General admits that there may be exceptions "growing out of special circumstances attending absence." It is in relation to these that lines should be drawn. It would not do to have an officer in a department or division *assume* that he was next in rank, and then *assume* command every time he heard the regularly assigned commander was across the boundary. That would be replacing one bad practice by another involving more mischievous consequences. Nor can it be admitted that the *responsibility* devolves on the next in rank merely because the commander on whom the President has placed that responsibility steps over the line. Such a shifting of authority and responsibility would be a wrong not only to the Service but to the officer next in rank. That officer could not fairly be held accountable for military operations far beyond his observation and about which he might have no information, and for administrative affairs which he would, in most cases, be without the facilities for managing. This becomes the more apparent when we consider the vast areas covered by our geographical departments, and recall the fact that the troops in some of them frequently

occupy regions and operate on lines which have no regular communication with one another. It is no doubt partly to meet this condition of things that the President *assigns* commanders of Departments, puts their headquarters at suitable points, and gives them the necessary staff for the performance of their duties.

On the other hand when it is known from absence or any other cause that orders purporting to be those of the commander do not, and cannot, emanate from him, his troops should not be expected to obey them. This brings us to the auxiliary argument in General Gibbon's article. It is in relation to the validity of orders promulgated by a staff officer in the name of his commander. He discusses at length a case growing out of contested orders in the Department of the Columbia, the commander being absent with the sanction of the General of the Army, who said to him: "Let the Assistant Adjutant-General run affairs as usual, referring to General McDowell's action such matters as are requisite." The question here is as stated above, the one of long standing, as to the force of orders promulgated by an Adjutant-General in the name of his commander. This question may arise when the commander is within, as well as when he is beyond, the limit of his Department. There never has been, and probably never will be, an act of Congress settling it.

General Gibbon maintains, when a Department commander who is beyond the limits of his command, issues orders through his Adjutant-General, that the Adjutant-General is thereby, and in violation of law, put in command of his seniors in rank.

That way of putting the point appears to cloud the main issue. No one in the Army advocates or attempts putting a junior in command of his senior. If the orders were, or purported to be those of the junior, there would be no difficulty. They would be disregarded, and the junior, if not treated more seriously, would be laughed at. The trouble in the matter under consideration arises from the very fact that the orders purport to be, and with rare exceptions, are in fact, those of a common superior—the regularly assigned commander. The Duke of Wellington said: “Every staff officer must be considered as acting under the direct orders and superintendence of the superior officer for whose assistance he is employed, and who must be considered responsible for his acts. To consider the relative situation of general officer and staff in any other light would tend to alter the nature of the service, and in fact to give the command of the troops to the subaltern staff officer instead of to the general officer. If Lieutenant —— has conducted himself improperly, Major-General —— is responsible, and Colonel —— has no more right to notice the deficiencies of Lieutenant —— in the performance of his duty toward Major-General —— than the Major-General has to interfere in a matter of detail between the respective officers and the barrack-master. . . .”

The principle thus announced by the Iron Duke in 1827 has, by the custom of Service acquired among us the force of law; and the rule is that any order, written or verbal, not palpably illegal, that the Adjutant-General of a command promulgates in the name

of the General commanding is binding on all within the sphere of the General's authority, the Adjutant-General being responsible only to his commander, and the commander being in turn responsible to his superior for the Adjutant-General as well as for the rest of the command.

It is the evil of orders issued by Department commanders when they are absent that doubts arise as to whether they are in fact the orders of the commander. He who disobeys them does so at his peril. He *may* turn out to be right, but he incurs a heavy burthen of proof, especially in these times when railroads and telegraphs enable such rapid and full communication between the absent commander and his staff at headquarters. To prevent all doubt and embarrassment whenever the absence of a Division or Department commander is to be such as to disqualify him for command, he should be formally relieved and a successor assigned. Recent orders making temporary assignments in the absence of regular Department commanders indicate a return to this course. It must, as a rule, rest with superior authority to decide when the occasion has arisen for such changes in command of divisions and departments. Too much latitude in either direction indicates—not violation of law—but faults of administration. While the management of Army affairs must be strictly legal, it should at the same time be practical. Much of our military legislation is loosely drawn and every year brings more skill in the art of construction. Army statutes have become martyrs to it. They are now liable to almost as many interpretations as they con-

tain words. The unwritten law alone escapes. The practices of a well governed military establishment, when hardened into "customs of Service" make the soundest and plainest laws for the internal affairs of an army. They are the experience of years speaking to the soldier in the vernacular. We have such customs and we cannot be construed out of them. The more they are respected and cherished the better.

ARTICLE V.

Obedience in the Army and Navy.

A communication in one of the Washington papers says that "very intelligent gentlemen" advance the doctrine that the duty of a soldier is "blind obedience to every order of his superior officer, lawful or unlawful." "If," says the writer, "such opinions as these are held by gentlemen of intelligence *not* in the Army or Naval Service, what can be expected from the officer or the private soldier, the best part of whose life has been passed in strict obedience to rigorous military discipline?" We protest against the assumption that less knowledge on this point is to be expected from officers and men in the Army and Navy, than from very intelligent gentlemen not in them. Prompted by duty as well as by interest, those in the public service have made themselves quite well acquainted with this important subject.

The Article of War which enjoins obedience by subordinates to all *lawful* commands of superiors is familiar to the Army. The difficulty is in the application of it. An illustration of this is given in the columns of the very issue which contains the communication we are considering. A commanding officer ordered a Lieutenant of his command not to visit the sutler's store. The Lieutenant, after careful consideration of the subject, positively declined to regard the order as legal, and on that ground disobeyed it. He

was tried, found guilty, sentenced to forfeit fifty dollars of his pay per month for four months, and to be severely reprimanded in General Orders. The finding and sentence were approved by the reviewing authority. The Lieutenant was acquainted with the Article of War; but failed in the application of it to his own case. It is in disposing of the questions which arise under the law, that the man in the Service encounters difficulty.

What is meant by *lawful* commands?

Is the person commanded to judge *in all cases* of the lawfulness of the commands?

If not, in what cases, or class of cases, is the commander the judge of the lawfulness?

In these last-mentioned cases, if there be such, would the law military protect the subordinate in disobeying an unlawful command?

When is it right to *obey* unlawful commands?

Whether to him who gives an unlawful command, to him who executes it, to the two jointly, or in what degree to each, responsibility should attach, are questions of deep concern to the public service and to the community.

These are some of the questions with which the military service has to deal, not theoretically alone, but practically. The soldier is not enabled to solve them by being told simply, that he, like the private citizen, is bound to obey the laws of the land. Without undertaking to discuss these questions *seriatim*, we present some remarks and authorities bearing upon them.

Responsibility must attach to somebody for viola-

tion of law. There is a formidable array of authorities in support of the view that the *illegal* command of a superior is not in the eye of the common law a justification for the unlawful act of a subordinate. But the rulings are generally coupled with explanations and reservations which greatly restrict their operation in practice. Then, again, there are arguments and authorities directly in support of the opposite view. Whether a command is lawful often depends on circumstances with which the superior is acquainted but of which the subordinate is ignorant. The limits of authority are not determined by written law. Whatever is necessary for the maintenance of military discipline falls within the scope of military authority. "The soldier forfeits that portion of his civil rights which would interfere with the discipline of the army," says Burke. "He is bound," says Clode, "to obey and to give his personal service to the Crown under the punishments imposed upon him for disobedience by the Mutiny Act and Articles of War. No other obligation must be put in competition with this; neither parental authority, nor religious scruples, nor personal safety, nor pecuniary advantages from other service. All the duties of his life are, according to the theory of military obedience, absorbed in that one duty of obeying the commands of the officers set over him." By a principle inherent in the system, the subordinate position held by the person to whom a command is addressed, forbids the presumption that *he* may decide whether or not the thing commanded is necessary for the maintenance of discipline. The person who gives the command is recognized as the

one who has the means of deciding as to its necessity, and to him attaches the responsibility of deciding correctly. Whatever the right to give an order may be, the right to disobey cannot be founded on the fact that the thing commanded is not a usual or recognized subject of a military order; for circumstances in the knowledge of him who gives the command may bring within the sphere of military authority that to which it would not ordinarily extend. While members of the military and naval service are bound by a solemn *oath to obey all* lawful orders of their superiors, they are not sworn to disobey unlawful ones. Disobedience of unlawful orders is left entirely to the discretion of the actor in each particular case, subject to approval or punishment as may be subsequently adjudged. In all cases where there is the least doubt as to the lawfulness of orders, the moral obligation of the oath calls for obedience. Obedience to *unlawful* orders is often not only justifiable, but highly meritorious. This is shown by the readiness and unanimity with which indemnity laws are passed for the protection of those concerned, and by the public approval and favor sometimes shown to the most conspicuous actors in disobedience. The Act of March 7, 1867, and the fame acquired by General Dix for his order to shoot on the spot any man who attempted to haul down the American flag, are cases in point.

It is in consideration of the moral obligations of his oath, and of the requirements of that discipline without which the military service would not only fail in the purpose for which it is maintained, but would become a vexation to the community, a danger to the

Government, and a menace to freedom, that the best authorities have expressed themselves so pointedly in support of rigid obedience. As for example :

“So general is the rule, that the orders of a superior shall be imperative on the military inferior, that it will admit not of exception, unless in the instance when the orders, or more accurately speaking, the things commanded to be done, are directly repugnant or contrary to law. In the case, only, when the orders would afford no legal excuse in a court of law for the act committed under them, can the inferior question or hesitate to obey the commands he receives from his superior ; such as if he were directed, in a moment of delirium by his officer, to fire on a peaceful and unoffending bystander, or, if such a thing could be supposable, to plunder the property, or to commit, or assist in committing some personal injury on a fellow subject. *It is only then in orders, which, if executed, would effect some palpable outrage against moral or religious obligations, which all laws profess to regard, and which cannot be superseded by the partial regulations of a particular society, that soldiers can hope for indemnity, in resistance of the commands of a superior.* And, even then, when the alternative is between two offences, and the choice must be determined by the adoption of the less, instead of the greater ; of the disobedience of command, or of the commission of some outrageous civil or military crime ; the responsibility will always be upon the inferior, and in this case a dreadful responsibility, to show, that the commands, which he would otherwise be bounden to obey, *are manifestly and palpably illegal ;* else he may involve

himself in the guilt, and certainly in the penalty of a positive crime, under the supposition or pretence of avoiding an imaginary one.

“ . . . Prompt, ready, unhesitating obedience, in soldiers, to those who are set over them, is so necessary to the safety of the military state, and to the success of every military achievement, that it would be pernicious to have it understood, that military disobedience, in any instance, may go unquestioned. . . .

“Except in the solitary instance, when the illegality of an order is glaringly apparent on the face of it, a military subordinate is compelled to a complete and un-deviating obedience to the very letter of the command received.

“ . . . Hence it is scarcely possible to imagine a case, where a subordinate officer would be at liberty to depart from the positive command of his superior.” (Samuel’s “Law Military.”)

“ . . . And the true and practical intent and meaning of this appears to be that so long as the orders of a superior are not *obviously* and *decidedly* in opposition to the well-known and established customs of the Army, or to the laws of the land; *or, if in opposition to such laws, do not tend to an irreparable result*; so long must the orders of a superior meet prompt, immediate, and unhesitating obedience. It surely cannot accord with justice to render a soldier responsible, even in courts of civil judicature, for an illegal act resulting from the execution of an order, not in itself so glaringly opposed to all law, as for its illegality to be apparent without reflection or consideration: hesitation in a soldier is, in certain circumstances, a crime; and

hesitation is inseparable from reflection and consideration; *reflection and consideration, therefore, when tending to question the order of a superior, must, in some sense, be considered as a military offence.*" ("Simmons on Courts-martial.")

"Obedience to command is the chief military virtue, in relation to which all others are secondary and subordinate; and disobedience is reckoned among the principal military crimes, and is justly liable to the most exemplary punishment. So general is the rule, that the orders of a *superior* shall be imperative on the military *inferior*, that it will not admit of exception, unless when the orders, or the thing commanded to be done, are *directly* contrary to *law*. An inferior officer may at times be reluctant to execute an order which he may *think* to be illegal, afraid alike of the responsibility of refusing and the risk he may run by obeying, should any damage be done to property, etc. But, in such a case, the officer giving the order will be answerable for the legal penalties." (Hough's "Precedents on Military Law.")

"'It would,' said the late Sir Robert Peel, 'be utterly impossible to maintain discipline if soldiers were allowed to be political partisans, correspondents to newspapers, or members of political clubs. Then indeed a standing army would be in truth a curse—then they (the House of Commons) might bid farewell to liberty.' He denied the truth of the doctrine that 'a soldier continued to enjoy *all* the rights of a citizen.' It was clear that 'he must forfeit that portion of his civil rights which would interfere with the discipline of the army.'

“One thing, however, is clear, and the language in which the rule has been laid down by the Supreme Court of the realm, when applied to the combatant branches of the army, is terribly emphatic. ‘A subordinate officer must not,’ even to save the lives of others or his own life (how much less the public treasure), ‘judge of the danger, *propriety, expediency, or consequences* of the order *he receives—he must obey—nothing can excuse him but a physical impossibility.*’ And the same learned judges (Mansfield and Loughborough) went on to declare, ‘that the first, second and third *part of a soldier* is obedience.’ The doctrine of this case has never been disputed in the common law courts, and it is the essence of the military system.

“The distinctive feature of our military allegiance is that of implicit obedience. ‘We have not,’ to quote the words of Mr. Burke, already used, ‘distracted our army by dividing principles of obedience; we have put them under one single authority.’ In acting, therefore, against the civil community under military orders, what intervening sanction between the Sovereign and the military officer does the law require, to make the order as between the officer and the civil community a lawful order, and one to be implicitly obeyed by him? The answer to this question is suggested by the words of a great soldier. ‘Soldiers,’ wrote the late General Sir Charles Napier, ‘must obey the King, and the King acts by the advice of his ministers. If in his name they order the soldiers to do wrong, let the minister’s head pay the forfeit; with that, the soldiers have nothing to do beyond taking

care, when guarding the scaffold, that no man impedes the executioner in the functions of his calling.' Unquestionably, therefore, the authority of a responsible minister is needed to give constitutional validity to orders for the action of the military in matters affecting the civil community. When the command of the Sovereign is communicated to the military officer through the channel of his responsible minister, the remedy, when sought by legal proceedings, civil or criminal, must (it is submitted), be rather against the minister giving than against the officer honestly obeying the command." (Clode's "Forces of the Crown.")

"Military obedience is the result of reflection, not of blindness; and is invariably found to be most perfect among the most civilized nations. . . . It is wrong to give trifling orders, but right to obey *all* orders." (Sir Charles Napier.)

"If an individual ratifies an act done on his behalf, the nature of the act remains unchanged; it is still a mere trespass, and the party injured has his option to sue either. If the Crown ratifies an act, the character of the act becomes altered, for the ratification does not give the party injured the double option of bringing his action against the agent who committed the trespass, or the principal who ratified it; but a remedy against the Crown only (such as it is), and actually exempts from all liability the person who commits the trespass." (Buron *v.* Denman, 2 Exch. R., 166, Parke, B.)

The Lord Chancellor, in 1853, said in the House of Lords:

"It was the duty, in case of a riot, for every one of

her Majesty's subjects to exert himself singly, or in combination, to stop that riot especially with the least possible violence. That applied equally to soldiers as to all other persons placed in a position that enabled them to stop a riot. What effect had that upon the position of soldiers? It imposed it upon them, *or rather upon those who commanded them*, as an imperative duty, that they should interfere on such an occasion. . . . It was impossible to define the limit when the orders of a commanding officer were or were not fit to be obeyed. *It was the duty of the soldier to obey his officer* and to do that with the least possible cost of life or limb."

The Earl of Darlington said that "every man who was a military man was bound to obey the orders given him, let those orders be what they might. ('No! No!') He begged pardon; he spoke as a military man, and he would still say it was his duty to obey the orders of his superior officer. It was perfectly true a man might receive an order which his superior officer was not justified in giving, *but it was the man's duty to obey that order in the first instance, and afterwards to obtain redress.*"

The Earl of Strafford said:

"A standing army and military law has, my Lords, been always inconsistent with the liberties of the people. The officers and soldiers under such a regulation, are always obliged to give the most implicit obedience to the commands of their superior officers; they must observe and execute the orders they receive without any reserve or hesitation; they must not inquire whether their orders be according to the law; if they do they

are guilty of mutiny, and may be immediately shot for any such disobedience."

Mr. Napier, Attorney-General of Ireland, at the time of riot, said (in the Six-mile Bridge case): "Though the soldiers, in point of military discipline, *were bound to obey the order of their officer*, that mere order of itself would not furnish a justification of the act of the soldiers in a court of law." Sir John Elley said in the same debate: "Did the House wish the army to become a deliberative body? If they did, where was their boasted discipline? The duty of the British soldier was to obey the order of his commanding officer, and not to argue the propriety of his command."

"While subordinate officers and soldiers are pausing to consider whether they ought to obey, or are scrupulously weighing the evidences of the facts upon which the Commander-in-Chief exercises the right to demand their services, the hostile enterprise may be accomplished without the means of resistance. If a superior officer has a right to contest the orders of the President upon his own doubts as to the exigency having arisen, it must be equally the right of every inferior officer and soldier; and any act done by any person in furtherance of such order would subject him to responsibility in a civil suit in which his defence must finally rest upon his ability to re-establish the facts by competent proofs. Such a course would be subversive of all discipline, and expose the best disposed officers to the chances of ruinous litigation." (Martin v. Mott, 12 Wheaton, 19. U. S. Supreme Court.)

"'It is a general and sound principle,' said Spencer,

J. (in *Vanderheyden v. Young*, 11 Johnson R., 150), 'that whenever the law vests any person with the power to do an act, and constitutes him a judge of the evidence on which the act may be done, and, at the same time, contemplates that the act is to be carried into effect, through the instrumentality of agents, the person thus clothed with power is invested with discretion, and is, *quoad hoc*, a judge. His mandates to his legal agents, on his declaring the event to have happened, will be a protection to those agents; and it is not their duty or business to investigate the facts thus referred to their superior, and to rejudge his determination. In a military point of view, the contrary doctrine would be subversive of all discipline, and as it regards the safety and security of the United States, and its citizens, the consequences would be deplorable and fatal.'

"Except in a plain case of excess of authority, when at first blush it is apparent and palpable to the commonest understanding that the order is illegal, I cannot but think that the law should excuse the military subordinate, when acting in obedience to the orders of his commander. Otherwise he is placed in the dangerous dilemma of being liable in damages to third parties for obedience to an order, or to the loss of his commission and disgrace, for disobedience thereto. . . . 'The first duty of a soldier is obedience,' and without this there can be neither discipline nor efficiency in the Army. If every subordinate officer and soldier were at liberty to question the legality of the orders of the commander, and obey them or not as they may consider them valid or invalid, the camp

would be turned into a debating school, where the precious moment for action would be wasted in wordy conflicts between the advocates of conflicting opinions. . . . Nor is it necessary to the ends of justice that the subordinate or soldier should be responsible for obedience to the illegal order of a superior. In any case, the party injured can have but one satisfaction, and that may and should be obtained from the really responsible party—the officer who gave the illegal order. I am aware that in civil life the rule is well settled otherwise, and that a person committing an illegal act cannot justify his conduct upon the ground of a command from another. But the circumstances of the two cases are entirely different. In the latter case the party giving the command and the one obeying it are equal in the eye of the law. The latter does not act upon compulsion; he is a free agent, and at liberty to exercise his judgment in the premises. Personal responsibility should be commensurate with freedom of action to do or refrain from doing. For acts done under what is deemed compulsion or duress, the law holds no one liable. In contemplation of law, the wife is under the power and authority of the husband. Therefore, for even criminal acts, when done in the presence of the latter, she is not held responsible. The law presumes that she acted under coercion of her husband, and excuses her. If the law excuses the wife on the presumption of coercion, for what reason should it refuse a like protection to the subordinate and soldier when acting in obedience to the command of his lawful superior?" (*McCall v. McDowell*, 1 Abbott, 212. Deady, J.)

The Constitution of the United States vests the President with certain executive functions, in the exercise of which he has absolute and unlimited discretion. Amongst the most important of these functions are those of Commander-in-Chief. They must necessarily be exercised through the medium of subordinates to whom the same discretion extends, but their acts are, in such cases, his acts; their discretion, his discretion. (Pomeroy's "Constitutional Law," p. 422.) When the President acts within the sphere of his constitutional powers as Commander-in-Chief, in the exercise of that absolute discretion which belongs to him, he acts in a *quasi* judicial capacity, and the subordinate cannot assume the power of disobeying his mandates on the ground of their illegality. The responsibility rests with him, and may be tested by impeachment.

As to this question of responsibility, it may, in brief, be said that the vindication of public justice and private rights does not make it necessary that both the person giving the order and the one obeying it should be held responsible. They would, except in the case of a flagrant violation of law, be satisfied if the responsibility be fixed with either the one or the other. Now, although as a general rule, a command cannot be pleaded as a defence for an illegal act, it is believed that a military command does not ordinarily come within the rule, because it is not reconcilable with the law of the land, which—as a protection to the people as much as for any other reason—makes implicit and unhesitating obedience the duty of the soldier. But it is reconcilable with this law, as well as a sufficient safeguard to the community and reason-

able in itself, that the one who commands rather than the involuntary agent, should be responsible.

“If one person makes use of another, who is a mere instrument, to do any act, the thing done is the act, not of him who is merely the instrument, but of the person who uses him as such instrument.” (*Ilott v. Wikes*, 3 Barn. and Ald., 315.) “The justification of the soldier in obeying it (the order) would be, first, under the rule of the common law, that an inferior, in an ordinary criminal case, must be held justified in obeying the directions—not obviously improper or contrary to law—of a superior officer, that is, if the inferior acted honestly upon what he might not unreasonably deem to be the effect of the orders of his superior; and, secondly, under the Mutiny Act and Articles of War.” (Clode’s “Military Forces,” Vol. II., p. 151. See also cases there cited.)

The writer, whose communication furnishes the text of this article, closes his argument in favor of disobedience of unlawful commands by referring to “the New Orleans usurpation, and the Charleston enormity,” and then warns “gentlemen of the Army and Navy” to keep their “hands off the national legislature.” It is generally conceded that the Army has behaved in the South with remarkable prudence and wisdom. Orders have in no case been disobeyed. The responsibility rests with those who gave orders, not those who executed them. If these orders have violated specific laws, or public justice, there are direct, available modes of proceeding against the responsible parties; and we do not doubt that these parties are quite willing and ready to accept and

answer the responsibility. Except in its more important bearing upon the discipline of the Service, the question of obedience or disobedience is a personal one affecting the individual citizen or soldier, and not the nation at large. If ever the liberties of this people are so far jeopardized as to rest upon disobedience of unlawful commands issued by superiors to their subordinates in our little Army, they will be already lost, whether the commands be obeyed or disobeyed.

ARTICLE VI.

Justice for the Army.*

The Army, persevering in the trial and conviction of its guilty members, is at last receiving that support which is necessary to its purification. The Secretary of War is earnestly co-operating in the detection and prosecution of offenders, and the President is approving the findings of courts-martial and executing their sentences without partiality, favor, or affection. The Military Committee of the Senate is said to be opposed to legislative reinstatement of dismissed officers, and the public press of the country is aroused. It cannot be denied that recent exposures make us appear badly, but it will be remembered that more is heard of delinquents in the military than in other professions, for the reason that they are publicly tried by the profession itself, and are chargeable with many offences common to all walks of life but punishable only among soldiers. In other words, while soldiers live under the general code, they are in addition under an exacting special code. All their wrong-doings are exposed. All the sins of the people's military service are open to the people's scrutiny. In judging the Army the public is not likely to forget that many unworthy men were put into the regular service through political influence at the close of the war, and many such have been appointed since through the same influence. The

**Army and Navy Journal*, August 25, 1883.

Army is not responsible for the appointment of bad men, but it is accountable if it does not proceed against them as soon after appointment as their conduct calls for it. That has been done at all times consistently and conscientiously.

The Army would be culpable if it showed any disposition to keep unworthy officers in its ranks or to protect them from exposure and punishment. But not being responsible for their appointment, and doing all in its power to expose and expel them, it ought to be credited with its open and vigorous efforts to purify itself. It is not chargeable with demoralization for containing bad material which it did not select and which it is doing all in its power to get rid of. The Army's efforts for its own purification have been seriously interfered with. The interposition of higher authority in favor of offenders has been so frequent since the war, especially from 1876 to 1880, as to be a great injury to the Service. Many of the evils which have been exposed recently are fairly chargeable to executive and legislative reversal of Army action. The New York *Herald*, of Jan. 21, 1881, contained important facts on this point. It gave a list of cases in which sentences of courts-martial were mitigated or set aside and gross offences condoned by President Hayes. It said that "Mr. Hayes might justly be called the promoter of intemperance in the Army and the friend and defender of wrong-doers." "Up to the present time," said the *Herald*, "out of sixty convictions for gross offences, most of them involving extreme cases of drunkenness on duty, only nineteen have been confirmed by him, while forty-one have by

his personal order been so mitigated as to retain the offending officers in the Army." The *Herald* then recited the sixty cases, giving the names of the officers, their offences and sentences.

The offences condoned included drunkenness on duty; misuse, and misapplication of public property; selling pay accounts on several occasions for the same month to different individuals; violation of a solemn pledge; conduct unbecoming an officer and a gentleman, with specifications too gross, vulgar and profane for republication; extreme cruelty to enlisted men and gross and most indecent blackguardism and profanity towards them and fellow-officers; assaulting a fellow-officer who had but one arm, striking him a severe blow in the face and calling him a liar; gross cruelty to sick enlisted men, causing the death of one and imperilling the lives of several; riding in uniform in a carriage with a private soldier and two notorious prostitutes, and drinking with them, and carousing until handcuffed and taken to jail. Of the last case, the *Herald* says the offender "had been appointed from civil life the year before and his restoration was due solely to political influence." How could the Army purify itself when the Executive pronounced such men fit to be kept in it! When the strong current of military justice is dammed by the authorities *set over the Army*, stagnant pools are formed which breed scandal, fraud, disobedience, dissipation and disgrace, sometimes even among those educated for the Service. The Army itself *damns* its culprits, but never dams the steady stream of military law.

ARTICLE VII.

The Honor of the Army.

The New York *Sun* in its issue of April 24, 1881, gives a list of "Army officers charged, tried, convicted and dismissed by court-martial since 1867." The *Sun* parades this list as "a very bad record for the boasted honor of Army officers," and adds, "There is no other profession or branch of business in which such a large proportion of its followers have been found unfaithful and unworthy." This assertion is unjust to the military profession. There would be some foundation for it if the unworthy officers composing the list had been kept in the Army. But that is not the case. It is a list of men who have been ejected. To settle the account fairly the President and Senate may be charged with putting these men into office and the Army credited with thrusting them out of it. The list shows the vigor and persistence of the military service in purifying itself since the close of the rebellion. Accepting the *Sun's* list as correct, the following table gives actual numbers and percentages for each year:

<i>No. of Commissioned Officers in Service.</i>	<i>No. Dismissed by Court-Martial.</i>	<i>Percentage.</i>
In 1868.....2,988	26	.87
In 1869.....2,988	28	.93
In 1870.....2,277	22	.87
In 1871.....2,287	12	.52
In 1872.....2,264	12	.52
In 1873.....2,263	12	.52

<i>No. of Commissioned Officers in Service.</i>	<i>No. Dismissed by Court-Martial.</i>	<i>Percentage.</i>
In 1874..... 2,253	10	.44
In 1875.....2,204	15	.68
In 1876.....2,168	6	.27
In 1877.....2,151	14	.65
In 1878.....2,157	6	.27
In 1879.....2,153	5	.23
In 1880.....2,155	7	.32
In 1881.....2,155	3	.13

When the legal, medical and other professions shall have proceeded as vigorously and openly in purging themselves as the Army has, and when merchants, bankers, brokers and even newspapers have done the same, we shall be better able to judge whether it is true of the Army "that there is no profession or branch of business in which such a large proportion of its members and followers" are in fact unfaithful and unworthy. The military service is governed by stringent laws and rules not applicable to other professions and branches of business. It is a merit peculiar to that service that the "unfaithful and unworthy" are not only "found," but are legally and publicly tried and condemned by the profession itself and are promptly and adequately punished in all cases, except those in which the Executive clemency is interposed. A list of dismissals affords a bad record for the honor of the officers included in the list, but as proof that the Army finds and casts out the unworthy members the record is certainly a good one for the "boasted honor" of the Army itself.— *World*, May 16, 1881.

ARTICLE VIII.

A Military Court of Appeals.

Colonel Lieber, Judge Advocate, is one of the best authorities on military law. He holds that military obedience "can only be enforced by prompt punishment; that the recognition of this has led to a departure from the ordinary forms of trial, and to the building up of a new system for the very purpose of having one sufficiently summary in its nature; that in carrying out this object, a common law, military, has grown up of necessity, to a large extent, at variance with the common law, civil," etc.; that "military law is founded upon the idea of a departure from the civil law and should not become a sacrifice to principles of civil jurisprudence at variance with its object"; that "the fundamental principle of a code of military punishments is the enforcement of *prompt obedience* by *prompt punishment*," and he adds: "Because we have made progress in the amelioration of punishment, we must not, however, jump to the conclusion that this includes delay in its execution." . . . "The admission of new features favoring delay is inconsistent with the object," etc.

These propositions admit of some explanation or qualification. They do not justify the conclusion that the efficacy of military punishment depends on its promptness *alone*. The claim in favor of promptness is, of course, based on the assumption that the finding

is correct. The proceedings of courts-martial should be sound as well as summary. Inasmuch as the military is a more arbitrary and despotic system than the civil, so is uniform and even-handed justice the more necessary in it.

The claim in favor of prompt punishment is a claim for prompt proceedings and true findings. The amelioration of punishment is due to progress in enlightenment. Promptness in military punishment is a feature designed to increase the exemplary effect by adding to the terror of the infliction. But in the Army as well as out of it, government through terror is gradually yielding to the control of a higher sense of justice. Promptness must now submit to all the delay which legally constituted authority finds necessary to the ascertainment of truth according to the highest lights of the time. It is not so important that the punishment be prompt as that it be *inevitable*. That, nowadays cannot be, until guilt is clearly established. The practical question, therefore, is: What shall be the procedure to attain this end? Colonel Lieber says: "Military law, like other sciences, is progressive. It is not a stagnant pool. But it has, by virtue of its nature, been to a large extent progressive within its own sphere independently of others."

The science of Military Law is progressive, and so is the science of Civil Law in a greater degree and in a larger field. If progress in the science of civil law has brought to light principles or modes of procedure which are essential to the ascertainment of truth, they could not be "at variance with the objects of the Military Code," and they ought to be applied to it. Any

lack of promptness in punishment which might result, would be outweighed by the increased chance of *certainty* of just punishment.

It is probably in deference to a deeply-seated conviction that all available means of ascertaining truth are not invariably resorted to by courts-martial—that their findings and sentences are so often interfered with by the legislative and executive branches of our Government. The President and Congress are the only sources of appeal in such cases. They often receive evidence which satisfies them that the findings of courts-martial are not just. The fact that the proceedings were summary and the punishment prompt, is usually a point in favor of the complainant, and thus, promptness—on the presumption that it has interfered with justice—tends to defeat the good effect which it is designed to secure. The *certainty* of punishment is overthrown by doubts which might be forestalled by less promptness. Cases are reopened which were supposed to be closed, and are retried by tribunals without legal power and without judicial modes of procedure. This is probably more injurious to the Service than less promptness and unquestionable judicial proceedings would be.

During the past eighteen months, bills or resolutions have been introduced in the U. S. Senate or House for the restoration of about thirty-six officers of the Army who have been dismissed by sentences of courts-martial. There are now on the rolls of the Army eight officers who were dismissed by sentences of courts-martial, and after remaining out of service for some time, were re-instated by special Acts of

Congress, and eight similarly dismissed who were reinstated or reappointed by the President. These facts suggest the inquiries: Is not the progress of military law kept rather too closely "within its own sphere" for our Republic, by continuing to regard our ordinary courts-martial as courts of final jurisdiction in cases of sentences to death, or dismissal of officers? Could we introduce to advantage a Supreme Court-martial with final jurisdiction in such cases, by appeal from lower tribunals of military justice?

Congress can "raise and support armies," and "make rules for the government of the land and naval forces."

Courts-martial are what Congress chooses to make them under this provision of the Constitution. At present they are regarded as courts of final jurisdiction, but they are not so in fact. Appeals from them are entertained, as already stated, both by the executive and legislative branches and by both are their findings set aside. Not only this, but after courts-martial have been dissolved, new tribunals (as in the Hammond and Fitz-John Porter cases) have been constituted, for the purpose of rehearing questions long before settled by defunct courts. In the light of these facts the question is repeated, would it be wise and practicable for the law-making power to create a Military Court of Appeal and *final* jurisdiction in the cases which the Articles of War now require shall go before the President for confirmation?

One of the earliest codes of war, if not the first formal code, was that published to his army by Gus-

tavus Adolphus in 1620, and printed in English in 1639 in Ward's "Animadversions of Warre." Among its articles creating courts-martial, is one establishing a military court of appeal. It is in the following terms :

"151. All questions in like manner happening betwixt officers and their souldiers, if they suspect our lower court to be partiall any way, then may they appeale unto our highest court who shall decide the matter."

As this article was abandoned long before our day, it of course could not be offered as a strong argument in support of introducing now a similar practice to the one it prescribed. But it is the purpose of this paper merely to present a subject for consideration—not to advocate it. The old article is therefore quoted for what it is worth, with the remark that the abandonment of a liberal measure in the armies of Europe is not sufficient proof that it would not suit our Service if given a fair trial.

To render the change under consideration effective, it would be necessary to transfer by law to the Supreme Court-martial the power to confirm sentences which the Articles of War now confer on the President.

"For the general safety," Macaulay says: "A summary jurisdiction of terrible extent must in camp be entrusted to rude tribunals, composed of men of the sword." In view of this, the Articles of War contain severe and specific penalties for the grave offences of soldiers. For some, death, and for others, dismissal is the penalty *fixed by the law*. The discretion of

courts-martial in those cases is limited to the question "Guilty or not guilty?" Dealing with the one matter of dismissal (which it is the aim of this article to treat), we find that it is *required by the law*, in case of any officer who takes a bribe, who knowingly makes a false muster or a false return, who is found drunk on guard, party, or other duty, who is guilty of conduct unbecoming an officer and a gentleman, and so on with several other offences. Stringent provisions in the Articles of War, and rigid enforcement of them are necessary to prevent insubordination which would not only destroy the usefulness of the Army, but might in critical times, endanger the public freedom.

The purpose of the law to preserve the discipline and purity of the Service is shown not only by the provisions which require that unworthy officers be thrust out, but is clearly exhibited in the 3d Article, which makes it a dismissable offence for any officer to bring unworthy men into the ranks by enlisting intoxicated persons, deserters from the military or naval service, or any person who has been "convicted of any infamous criminal offence." It is doing quite as much violence to the *policy* of the law to retain or reappoint an officer guilty of being drunk on duty, as it is to enlist an intoxicated man as a private soldier.

A good deal of complaint is made of the power exercised by the President in remitting or mitigating sentences of dismissal which go before him for confirmation as required by the 106th Article of War, which says: "In time of peace, no sentence of a court-martial, directing the dismissal of an officer, shall be carried into execution until it shall have been confirmed by

the President." All the power to mitigate which the Commander-in-Chief has, *as such*, is conferred and regulated by Congress. It is more restricted in the Articles governing the Army, than in those governing the Navy, and is distinct from the constitutional pardoning power of the President. In illustration of this, a case of dismissal from the Navy may be mentioned in which the Attorney-General of the United States said: "It is not necessary to go into consideration of the nature or extent of the pardoning power conferred upon the President by the Constitution, because the whole question in this case may be regarded as fully disposed of *by the Act of Congress* approved on the 23d day of April, 1800, entitled 'An Act for the better government of the Navy of the United States.' By the 42d Article it is provided that 'the President of the United States, or when the trial takes place out of the United States, the commander of the fleet or squadron, shall possess full power to pardon any offence committed against these Articles after conviction, or mitigate the punishment decreed by a court-martial.' The sentence in the present case, of dismissal from the service, was punishment decreed by the court-martial; and the *power of the President* to mitigate this punishment was as full and ample as *Congress*, by any act of legislation in the most unrestricted terms, *can confer*." (op: V., p. 43.)

The court-martial record, in case of dismissal in the Army, goes before the President *in his capacity* of *Commander-in-Chief*, and, under the 106th Article of War, he acts on it in that capacity, though the act is a judicial one: "The powers and duties of the President as

Commander-in-Chief of the Army and Navy [says Tiffany in his work on "Government and Constitutional Law"] are separate and distinct from his powers and duties as the simple executive head of the nation. Neither of those functions of the presidential office derives any strength from the other."

In all *ordinary* cases military commanders who have power to approve and execute sentences, have power to remit or mitigate them, but dismissal forms an exception. Here the 112th Article of War steps in and says: "Every officer who is authorized to order a general court-martial, shall have power to pardon or mitigate any punishment adjudged by it, *except the punishment of death or dismissal of an officer.*"

This gives rise to a question whether strict construction of the 106th Article, in connection with the 112th just quoted, does not require the Commander-in-Chief, as such, merely to *confirm or not confirm in those cases where the law*—limiting the power of the court to say guilty, or not guilty—has specifically fixed dismissal as the penalty, and where the purpose of the penalty is so important and so clearly set forth. If he confirms the sentence it would seem that his power over the case as Commander-in-Chief ends, and the offender stands dismissed by the law. But just here, in practice, another authority comes in. It is the pardoning power of the *Chief Executive*; and notwithstanding the fact that the powers and duties of the President as Commander-in-Chief and as Chief Executive are separate and distinct, they become mixed in the cases under consideration, and we find such records as the following in relation to an officer sentenced to

dismissal for drunkenness on duty and conduct unbecoming an officer and a gentleman: "The President" (as Commander-in-Chief) "approves the proceedings, findings and sentence, but is pleased" (no doubt as Chief Executive with the pardoning power) "to commute the sentence to suspension for one year from rank and command and from pay, except \$50 per month." It will be remembered that if a sentence of dismissal from the Army is confirmed by the Commander-in-Chief, the law intends to dismiss the accused, and it denies to the Commander-in-Chief, *as such* (112th Article), the power to mitigate. The President is required by the Constitution to "take care that the laws be faithfully executed." The *law* says that in such a case as the one just quoted the offender *shall be* dismissed. But the Constitution gives the Chief Executive the power to pardon, which includes partial pardon, or mitigation.

Tiffany says: "The propriety of pardoning a criminal after he has been convicted of a crime against the public has been seriously questioned by learned and able men." ("Tiffany on Government and Constitutional Law," page 332.) "The legislative authority which creates an offence or crime and announces its penalty can repeal or modify the law at pleasure; can excuse the delinquent upon such conditions as it sees fit to impose. But this authority has its foundation in *prerogative*, not in *executive* power. It can be exercised by the *Sovereign*, not by the *mere Executive*." (*Ibid.*) "If the operation of the law is to be suspended, it is the province of the law-making authority to suspend it, not of him who is entrusted with the

exercise of mere executive powers, with the authority attendant to reprieve or pardon those who are condemned and put into his hands to receive the penalty." (*Ibid.*)

But, on the other hand, the U. S. Supreme Court has decided in relation to the pardoning power, that, "This power of the President is not subject to legislative control. Congress can neither limit the effect of his pardon, nor exclude from its exercise any class of offenders. The benign prerogative of mercy reposed in him cannot be fettered by any legislative restrictions." (*Ex-parte Garland v. Wallace*, R. 333, 380.)

And Pomeroy says: "Is any legislative action needed to aid the President, or can any legislative action restrain him in the exercise of his function? Plainly not. Pardoning is clearly a kind of executing, not of making laws. As far as authority is conferred upon the Chief Magistrate, it can neither be extended nor limited by Congress. A statute passed to give construction to the Constitution, and to confine its operation to particular classes of pardons, would be a palpable usurpation of the judicial functions. Thus an Act of Congress which should take away the President's power to grant constitutional pardons, or to grant pardons before trial, would be absolutely void." ("Pomeroy on Constitutional Law," page 465.)

It is manifest that the President finds it impracticable in the cases we are considering to exercise both constitutional functions—take care that the law requiring dismissal is faithfully executed, and afterwards, if he is so inclined, apply pardon to so much

of the punishment as pardon may be able to reach. In this view of the position in which the President is placed, we are brought back to the question: Would it be well for the law to transfer the confirming power to a Supreme Court-martial, and leave the President to exercise, in these cases, merely the *constitutional pardoning power*? In the present system in which power to confirm is given to the President by law, and power to pardon by the Constitution, his duty as Commander-in-Chief, and his duty as Chief Executive are not only commingled, but too much prominence and facility seem to accrue to the pardoning branch. Every case of dismissal going before the President as Commander-in-Chief for confirmation is by that very fact—as part of the trial under the law—thrust upon his attention as a question of pardon under the Constitution. In this respect the offender against the military law has a better chance to escape punishment than the offender against the civil law, notwithstanding it is admitted that the just punishment of the former should be more prompt, severe and certain than of the latter.

It is true that the power of Congress and the President's pardoning power would exist with a Military Court of Appeal, just as they do without it, but the temptation and the opportunity to exercise these powers would be materially reduced. Moreover, the rights of the accused must be fully weighed. The sentences of dismissal awarded by courts-martial are sometimes wrong. While the President's pardoning power, or an Act of Congress, may prevent some of the consequences of the wrong, neither the President

nor Congress can proceed judicially in ascertaining the truth, nor can they rectify the wrong. That could only be done fully, on ascertainment of truth through a judicial tribunal, created and empowered for such cases. Do we need one?

The sentence of dismissal (with which we are dealing, as the matter of practical importance) is blasting in its consequences. It involves loss of profession, loss of pay, and loss of reputation. The same "rude tribunal" which has had final jurisdiction of it for centuries, has it still. Yet, as we are told, and admit, "Military law is not a stagnant pool. Within its own sphere it is progressive." Will that progress justify the establishment of a Military Court of Appeal as a remedy for the evils which have been indicated? Would the remedy be worse than the disease? Military punishment should be *prompt*, but it must be *just*. Taking things as they are in our Service would delay in final action in cases of dismissal be increased or reduced, by having a Court of Appeal, with all the finality of jurisdiction that law could confer upon it? Neither the legislative nor the executive branch of the Government is disposed to violate its trust in the action of which we hear so much complaint concerning dismissals. They merely grope for justice, which such a tribunal as that under consideration might make so clear as to prevent their interference, or at least so probable as to give them good grounds for declining to interfere.*

* Now as to the court-martial question alluded to by Senator Harrison in referring to the appeals to him. It must be remembered that a court-martial must consist of thirteen members and its findings be approved by the President. I am quite willing to see a court of appeals

on courts-martial established. It would settle a great many vexed questions and give a legitimate channel for subsequent operations instead of those who make the laws being told the findings are all wrong by some fellow working up his own case on *ex-parte* statements.—*Gen. Sherman's remarks to graduating class at West Point, June 12, 1882 (New York Herald)*.

The Times of to-day, in an editorial headed "Gen. Swaim's Case," points out with clearness and force the "juggling of words" by the court-martial when it substituted "wrong" for "fraud." "This," you say, "is quibbling unworthy of a judicial body, most of all a court-martial." That is quite true, but it should be borne in mind that courts-martial do not belong to the judicial system, and are not in fact judicial bodies. They are founded on the constitutional power of Congress to "raise and support armies," and "make rules for their government and regulation," and are created as provided by the Articles of War, not by laws concerning the judiciary. They are not designed to violate the principles of justice, but to secure the most rigid and summary enforcement of them. They are, however, merely instruments which the law authorizes military commanders to use as their auxiliaries in establishing and maintaining discipline, good order, etc., in the land and naval forces. From the nature of these tribunals and the fact that they are composed of officers taken in turn or by chance, without regard to their qualifications for such service, it is not strange that the judicial mind of the country is sometimes amazed and horrified at their judgments in important cases. Extraordinary as their judgments are in some instances, it has been held by high authorities that the findings of courts-martial are final. The sounder view, it seems to me, is that they are final only in the sense that there is no appointed tribunal to which it is expressly provided an appeal can be taken. Neither Congress nor either branch of it can properly assume to be a court of appeal and revise to acquit or revise to convict a man tried by court-martial; but there is nothing in the Constitution, nor in the decisions of the courts, nor in the terms or policy of the laws which forbids the Government to correct a manifest and flagrant wrong involved in the sentence of a court-martial. If, for example, the court-martial should, through a mistake of identity, sentence the wrong man to be shot, his execution would not be imperative because the judgments of courts martial are technically final. Permit me, further, to file an exception to a statement by the President in his remarks upon the Swaim case. Regarding the vacancy in the Army which Swaim's displacement from his present office would create, the President says: "The constitutional power of the Executive in filling vacancies cannot be restricted to indi-

viduals." No one has ever contested the right of Congress to regulate promotions in the Army by virtue of its constitutional power to "make rules for the government and regulation of the land and naval forces." It is a fact settled by the courts, by the executive and legislative departments, and by custom that a promotion in the Army is an "appointment." Regulating promotion by law is nothing less than restricting the President to individuals in filling vacancies in the Army. It is a right Congress always has exercised and always ought to exercise.

JAMES B. FRY, United States Army.

NEW YORK, Feb. 25, 1885.

—N. Y. *Times*, Feb. 27, 1885.

ARTICLE IX.

An Elastic Regular Army.*

The subject of reorganizing the Army has been under consideration for years and is yet pending in Congress. The discussion has brought forth a variety of opinions on minor points, but it is admitted on all hands that our companies now contain so few enlisted men as to make it impossible for them to perform efficiently their current duties, and keep pace with the progress of the military profession. This defect is aggravated by the fact that the companies are scattered among many stations; but even if the number of posts should be reduced it would not be removed. The *companies* are too small to work upon effectively for purposes of military instruction. The only remedy is to increase the number of enlisted men in each company. But instead of being willing to increase the strength of the Army, Congress has evinced a disposition to reduce it, and has emphatically refused to carry the aggregate beyond the twenty-five thousand men at present authorized.

The problem, therefore, of augmenting the strength of the companies admits of but little manipulation.

As the number of men for the entire Army cannot be increased, the number of companies must be reduced. When this reduction in the number of companies is made, and the strength of each is increased

* *The Field Glass*, September, 1879.

in a corresponding ratio, it makes no *material* difference in the instruction of the troops, or the performance of their duties, either in peace or war, whether the companies are thrown into regiments of ten companies or into battalions of four companies.

When the War of the Rebellion broke out in 1861, the infantry in our regular army consisted of ten regiments of ten companies each. The exigency of public affairs necessitated an increase of this force, and, at the instance, mainly, of Major-General McDowell, the increase was made by creating nine new regiments of infantry, each regiment consisting of not less than two nor more than three battalions, each battalion consisting of eight companies, thus introducing the form of organization proposed at present by the advocates of an elastic system.

These nine regiments remained in service with the above-described organization until 1866. That is to say, we had during the entire civil war ten regiments of infantry, of ten companies each, under the present regimental plan of organization, and nine under the battalion organization now proposed for re-adoption.

As these battalions continued from the beginning to the close of the war, there is good reason to suppose that their particular form of organization was fairly tested. It probably received no special favors, but was simply tried upon its merits. The result was that when the Army was reorganized in 1866, the battalion plan was abandoned without a protest or murmur, and the entire infantry force was remodelled on the former, and present, *regimental* non-elastic basis.

The subject, however, of battalion organization has recently been brought again into notice.

There has certainly been nothing in our own experience since its abandonment in 1866 to afford proofs of the wisdom of returning to it now. The fact that it is in use in foreign services has been brought into prominence by officers who have recently travelled abroad, but that was well known to us when we adopted the battalion organization in 1861, and assuredly was not forgotten when we discontinued it in 1866. The present effort to return to it is not made upon the ground that it will affect in any important way the present duties of the troops, but results from the assumption that it will make the *regular army so elastic as to fit it for expansion to meet the demands of war, and for contraction to accommodate itself to the requirements of peace.*

It is, therefore, proper to consider the subject in the light of that anticipation. First, let us see what is proposed by the so-called "Burnside Bill," which is the product of a Joint Commission of the two Houses, and which may be regarded as the plan of those officers who advocate an elastic regular army.

We now have twenty-five regiments of infantry, each regiment having ten companies; ten regiments of cavalry, each with twelve companies; and five regiments of artillery, each with twelve companies; making in all two hundred and fifty companies of infantry, one hundred and twenty of cavalry, and sixty of artillery.

The "reorganization" proposes that there shall be eighteen regiments of infantry, each regiment to have

four battalions of four companies each ; eight regiments of cavalry, each to have four battalions of four troops each ; and five regiments of artillery, each to have four battalions of four companies each. The *third* battalion of each regiment to have its officers, but no enlisted men, and the fourth battalion to have neither officers nor men. In other words, the "reorganization" provides for one hundred and forty-four companies of infantry, sixty-four of cavalry, and forty of artillery, fully officered and manned ; seventy-two of infantry, thirty-two of cavalry, and twenty of artillery, with officers, but no men, and a like number of companies as these last, with neither officers nor men. While the third battalion is a legal skeleton, the fourth is merely the shadow of a skeleton. It cannot have any substance without a law permitting it. In other words, Congress is asked to pass a bill authorizing some future Congress to make a law for increasing the Army, and prescribing how the increase shall be made. Such legislation would seem rather unnecessary, and would probably be fruitless. The proposed bill would, in the infantry, entail an increase in the present establishment, of officers for two companies to each regiment, and in the cavalry and artillery it would retain at the public cost a *surplus* of officers for four companies to each regiment ; thus making surplus one hundred and eight officers of infantry, ninety-six of cavalry, and eighty of artillery, to be maintained at large cost to await emergencies. Judging from experience, the probabilities are that a law creating a surplus which might not be needed for the regular duties of their offices, would speedily be fol-

lowed by another abolishing it entirely, even though the supernumeraries might be performing special duties by detail.

What are the ultimate purposes for which it may be assumed that these additional battalions in the elastic army are to be called out and applied ?

First. There are the ever-present hostilities with the Indian tribes on the frontiers. The elastic system can scarcely be necessary in this connection, as the best authorities agree that danger from Indians is rapidly decreasing from year to year. The frontiersmen, under the protection of the Army, are spreading over the whole Indian country, east and west of the Rocky Mountains, and as they become firmly settled and united, the necessity for affording them military protection will continue to diminish. There would seem to be no use therefore in creating an expansive army system for this purpose.

Second. Is it for the suppression of internal disorders and riots ? It is generally admitted to be the duty of the States, not the General Government, to suppress internal disturbances ; but, granting for the moment that the regular army should be organized so as to admit of expansion for this purpose, it needs no argument to show that elasticity would be of no use here. Riots and disorders usually arise suddenly, and as suddenly collapse. A little reflection, even if we had not had experience, would demonstrate the impracticability, almost impossibility, of expanding the Army by enlisting, organizing, arming and equipping companies after a riot is started, or even foreseen, in time to be of any use in quelling it. The memorable

labor riots of the summer of 1877 burst forth unexpectedly, and rose in a few days to a terrible magnitude, but were on the decrease long before new troops for the regular army could by any possibility have been raised to suppress them.

Third. The only other purpose is a foreign war. This, presumably, is the main object of the proposed elastic system. But will the expansion to the utmost limit allowed by the proposed plan be of any practical service in this connection? To fill the third battalion of each regiment (which is to be ready with its officers, but no men) would only make an addition of 25 per cent. to the present force of 25,000 men, and a further increase, if a law should be enacted authorizing it, by filling the fourth, or paper battalion, would simply double the present force, and give us an army of fifty thousand men.

At the close of the War of the Rebellion we had a million of men in arms, and even with the large forces in the field at all times, it was found impossible to end the war speedily. We have no reason to suppose that a war entered into by us with a foreign power would not be of the same magnitude as other contests of modern times.

The principle in war that in order to achieve speedy and satisfactory results, large bodies of troops must be massed, and placed quickly in the field of action, was never of more practical value than at present. The elastic scheme proposed, giving us only fifty thousand men of all arms, would fall far short of meeting this requirement.

Its insufficiency is only too apparent when consid-

ered in connection with the chances of a foreign war.

But, after all, and here is the essential point, there is no way of securing enlisted men for the proposed elastic army when a necessity for expansion arises. Without attempting to convince by argument, a little reflection will show that in order to insure certainty in filling the ranks of a large regular army, it would be necessary to resort to compulsory service, or in other words, the draft. But that measure, obnoxious as a final resort, would be actually impossible as a primary or preliminary one. The first effort to enforce upon the citizen military service in the regular army would arouse a public sentiment that would compel a call for the national forces, as contemplated in our plan of government, and as has heretofore been done. In fact, there is no other way by which we could carry on a great war, and our experience from 1861 to 1865 sufficiently developed the fact that the plan of calling out the national forces, and using the regular army, mainly for organizing, supplying and instructing them, and generally for leavening the whole lump, is the best for our purpose.

The system of an elastic regular army is applicable to a nation in which every male is *born* into the military service, and can only absent himself from the duties pertaining thereto, even to attend to the ordinary pursuits of life, when, and for as long a time as the sovereign pleases. Such a system is wholly unsuited to our Government, and to our people in their present condition.

So far as the United States are concerned, the ad-

vantages of an elastic regular army, such as has been proposed for ours, are purely theoretical. The difficulty of *expanding*, so as to grapple with sudden emergencies, would, as suggested in the foregoing remarks, be very great; but the difficulty in that direction would be no greater than in the opposite one of *reduction*, after an increase had once been made. Congress has, especially since the close of the Rebellion, had much experience on this point, and should be fully able to estimate the magnitude of the effort necessary to effect a reduction of the Army. Justice to those who render great services in time of war, coupled with the various personal questions which arise, makes this a grave matter. There is no more difficult and painful task than to dispose of the crop of heroes left by war.

The Government has the power to reduce the Army at pleasure without any regard to the wishes, feelings, or positions of those vitally interested, but it will be conceded that sudden and frequent expansions, followed by similar reductions, of a regular army, would be very injurious to, if not entirely destructive of, its military spirit. Slow promotion in a standing army, though discouraging, is bearable, but occasional setbacks with uncertainty of tenure are fatal.

ARTICLE X.

Admission to the Military Academy.*

In Peace prepare for War is a maxim as old as war itself. It is expressed in the Fable of the Boar quietly whetting his tusks, with no enemy in sight. Ward, in his "Animadversions of Warre," as early as 1639 heads a chapter, "It is good in time of peace to provide for warre"; and, having established that proposition, he follows with a chapter entitled "Of the things necessarily to be provided; and *first*, of 'victuals.'" Evidently he believed, as has since been said, an army moves upon its belly.

We attach peculiar importance to the maxim, because the Father of his Country transmitted it to us. But to provide "victuals" beforehand was not the preparation Washington had in mind. He deemed military education a duty of peace; and in 1793 recommended the creation of means "for the study of those branches of the art" (of war) "which can scarcely ever be attained by practice alone." The Military Academy grew out of the necessity which he experienced during the long struggle for freedom; and for many years past that Institution has been supplying with remarkable success the demands for high military education which from time to time have been made upon it. There is no national institution of any description that has fulfilled its purpose better, or is

* *Journal of Military Service Institution*, 1883.

more creditable to its various managers than the U. S. Military Academy.

It is with due deference to this fact that it is proposed to discuss the examination for admission to it as now conducted by the authorities. There are but two statutes on the subject of the qualifications of candidates. Section 3, Act of April 29, 1812, says: "Each cadet previously to his appointment by the President of the United States shall be well versed in reading, writing and arithmetic." This was the whole law upon the subject until 1866. The Academy itself, long prior to 1866, had been finding fault with the quality of the material admitted under the statute of 1812. It desired that the standard for admission should be raised, without, however, raising the standard of graduation. In other words, it was desired that the candidate should have more education to get in, but that the graduate might go out with about the same amount as formerly. It was not the purpose of the Academy, however, to escape its duty of giving a thorough education, or even to lessen its own labor. The aim, no doubt, was to secure pupils who, on account of their advanced preparation, would be more likely to master the military course and turn out the most accomplished graduates.

In 1866 it was enacted (by joint resolution of June 16, Section 2) that "in addition to the requirements necessary for admission, as provided by Section 3 of the Act making further provision for the Corps of Engineers, approved April 29, 1812, candidates shall be required to have a knowledge of the elements of English grammar, of descriptive geography, particu-

larly of our own country, and of the history of the United States."

This Act admits of great latitude in construction. It requires "*a knowledge of the elements of English grammar,*" etc., etc. What is "a knowledge," and what are "the elements," are questions left for decision of the Academy. This law certainly raised the standard of admission. It did so, however, only by exacting a knowledge of the elements of English grammar, geography, and history of the United States, in *addition to previous requirements*. The Act of 1812, which requires merely that the candidate shall be "well versed in reading, writing, and arithmetic," has not been changed. No higher standard in those subjects is authorized. But the standard in them has been raised. The law simply requires that the candidate shall be *well versed* in reading, writing, and arithmetic. The Academic Regulations—construing and enlarging the law—say he "must be able to perform with *facility and accuracy* the various operations of the four ground rules of arithmetic, of reduction, of simple and compound proportion, and of vulgar and decimal fractions," etc. The Regulations increase the severity of the law. The Academic Board increases the severity of the Regulations. "Well versed in *arithmetic,*" as used in the law, and as construed by the Academy in early times, means skill in the handling of known quantities—knowledge of the rules of arithmetic, doing sums in figures—not proficiency in solving problems, involving unknown quantities, and perhaps calling for the use of letters and signs. In short, the candidate, by the law, must be

well versed in *arithmetic*, not algebra. The following ten (10) questions in arithmetic (?) put to candidates in June, 1882, are submitted as evidence of the severity of the Academic Board :

Time allowed three and a half hours.

1. How many times will £641 14s. 11 $\frac{3}{4}$ d. contain £2 15s. 6 $\frac{1}{4}$ d. ?
2. Find the smallest number greater than 3 which, divided by 54, 69 and 132, will give in each case a remainder of 2 $\frac{3}{10}$. 57
x
3. On October 12, 1881, A was 33 years, 6 months, 16 days old, and B was 42 years, 3 months, 2 days. On what day of the month and year was B exactly five times as old as A, and why did he not remain so ?
4. A does $\frac{7}{10}$ of a piece of work in 14 days ; he then calls in B and they finish the work in 2 days. In how many days would B have done the work alone?
5. Multiply 4.32 by .00012.
6. Explain the reason for placing the decimal point in example 5. (The rule for doing so is not the reason.)
7. If 35 men do a piece of work in 24 days, in how many days will 2 $\frac{1}{7}$ of that number do a piece of work 7 $\frac{1}{2}$ times as great, providing the second set of men work twice as fast as the first, but only work one-third as long in a day ?
8. Separate 772 $\frac{2}{3}$ into three numbers, which shall be in the same proportion as 2 $\frac{1}{2}$, $\frac{7}{10}$ and $\frac{3}{5}$?
9. How many fifteenths are there in 1.03 ?
10. At a game of ball A wins 9 games out of 15 when playing with B, and 16 out of 25 when playing

against C. How many games out of 118 could C win playing against B?

The questions submitted to candidates in September, 1882, were of the same kind. Three of them are as follows :

“A cistern can be filled by a pipe in 18 minutes, and by another in one-third of an hour, and can be emptied by a tap in two-thirds of an hour; how much of the tank will be filled in 10 minutes, all being open?”

* * * * *

“A wheel, five feet in diameter, makes 2,500 turns and goes 6 miles. The circumference is 3.1416 times the diameter, how much did the wheel lose by turning around?”

* * * * *

“The stage leaves Rousley at 12.30 P.M., and travels 15 miles in two hours. How far can a boy travel in a stage so that travelling $3\frac{1}{2}$ miles an hour he may reach Rousley at 2.45 P.M.?”

So much for arithmetic.

The law says the candidate shall be “*well versed* in reading and writing.” The Regulations say he “must be able to read and write the English language *correctly*” (which is more than all college graduates can do), and shall have a knowledge of English grammar. To enforce this regulation the Academic Board divides grammar into three parts named and valued as follows :

1st, Definition,	- - - -	value 15
2d, Parsing,	- - - -	“ 45
3d, Correcting errors in English,	- - - -	“ 40
		<hr/>
Total,	- - - -	100

The candidate who fails to get 60 of the total is generally rejected.

“A knowledge of the elements” is an elastic term, as already stated, and it rests *primarily* with the Academic Board to determine its scope, but statistics hereinafter given, taken with the foregoing facts, indicate that the time has come for higher authority to interpret the law and revise the Regulations on the subject of admission.*

No classification of candidates by their knowledge when entering is authorized or necessary. They are arranged alphabetically for beginning their academic course, and their subsequent classification is wholly according to merit as ascertained by examination in the courses taught at the Academy. The conclusion from the foregoing premises is that the present system of examination does not conform to the law, or at least to a proper interpretation of it.

It is maintained, in addition to this, that the system is not calculated to secure the best results. It is not now and never has been the purpose of the Military Academy merely to produce the Second Lieutenants required by the regular army. As Mr. McHenry, Secretary of War, said, in 1800: “It is not enough that the troops it may be deemed proper to maintain be rendered as perfect as possible in form, organization and discipline; the dignity, the character to be supported, and the safety of the country further require that it should have *military instruction capable*

* Woolwich only requires of candidates “a competent knowledge of the first four rules of arithmetic, the rule of three, the declination of the nouns, and conjugation of verbs by the Latin grammar.” (Clode’s “Forces of the Crown,” pp. 459, 460.)

of perpetuating the art of war. Military science ought to be cultivated with peculiar care, so that a sufficient stock may always exist ready to be imparted and diffused to any extent, and a competent number of persons be prepared and qualified to act as engineers,” etc.

Washington, in 1796, urging that there should be a school to keep the nation “supplied with an adequate stock of military knowledge,” said, “The art of war is extensive and complicated; it demands much previous study; the possession of it in its most *improved* and *perfect state* is always of great moment to the security of a nation.”

President Monroe said, in 1822, “The Military Academy forms the basis *in regard to science* on which the military establishment rests.”

The various laws concerning the creation, organization and re-organizations of the Military Academy sustain the assertion that the main purpose of the Institution is the one set forth in the foregoing extracts. The Academy, besides furnishing Lieutenants for the current duties of the regular army, should keep the nation supplied with persons thoroughly educated and acquainted with the “art of war” “in its *most approved and perfect state,*” among whom men may always be found qualified for high command, and for the duties of the artillery, the engineers and the staff.

With a view to securing better material for this purpose, the standard of admission has been raised, and the Academic Board about 1870 established a new method of examining candidates. Formerly the candidate was examined orally and at the black-board.

in the presence of the whole faculty. Sometimes he was under the disadvantage of embarrassment, but the experience, patience and skill of the professors overcame that, and disclosed not only how much of the subject upon which he was examined the candidate understood, but led to a pretty close estimate of the character and calibre of his mind. An examination conducted in this way was thorough, considerate, liberal, and resulted in well-founded convictions and comparatively correct conclusions. The objection to it was that it exposed the Board to the charge of being influenced by feeling one way or the other, and of not having an exact record of the examinations with which to defend its action. It was largely, if not wholly, a defensive measure, not in the interest of the candidate, that the Academic Board abandoned that system. Under the present system the candidates are (for examination) known to the Board only by numbers. Questions in the various subjects, written out beforehand, are submitted to the candidates, who, under the eye of an assistant-professor, but without aid or consultation, work for a limited time to produce the answers in writing. The merit in these answers is indicated by numbers fixed arbitrarily by the Board.

If the number received in a subject does not come up to the level prescribed, the Board rejects without learning any more about the person concerned than these written questions and answers convey—without, in fact, knowing who the person is. This has the effect of putting “cramming” at a premium, instead of a discount, for entry to the Institution in which

cramming is most roundly condemned and most positively interdicted. This examination is free from partiality and prejudice, and affords a record made by the candidate himself with which the Board can defend its action, and, in case of complaint, confuse and confound the candidate and his friends. Nevertheless it is harsh and unwise, and is at variance with the mode of proceeding at all subsequent examinations. While (if the questions be proper) it might be made to fulfil the requirements of the law, it is not the way to secure that material to which the course of instruction at the Military Academy can be applied with the best results. It gives no consideration to lack of years or lack of opportunities for schooling. It calls for as much book knowledge from the Western farmer boy of 17 as from the man of 22 from Boston, the seat of learning. No account is taken of the fact that the training of the former may have been such as to give high development to traits essential in the genuine soldier—industry, energy, fidelity, obedience, courage, perseverance, and self-reliance. The tendency of the high standard of admission and the present mode of examination is to discriminate against the poorer Congressional Districts and Territories, in the enjoyment equally with the rich, of the right of representation at the national Military Academy. From 1838 to 1876—the only period for which statistics on this point are at hand—the Academic Board rejected *one-third* of the candidates from Arkansas, nearly *one-half* of those from Colorado, nearly *one-third* from Kansas, nearly *two-thirds* from Nevada, *one-half* from West Virginia, and *five-sixths* from Idaho; while for the

same period it rejected but little more than *one-twelfth* from the District of Columbia, about *one-seventh* from Connecticut, *one-tenth* from Maine, less than *one-fourteenth* from Massachusetts, *one-thirteenth* from Rhode Island, less than *one-twentieth* from Vermont, and less than *one-twenty-third* from New Jersey. The Military Academy, in a way and degree peculiar to itself, develops the reasoning powers and gives scope and grasp to the mind in dealing with the various problems of life as they are encountered from day to day. This is the merit of the *West Point system*. Hence the more of the aggregate knowledge required for graduation which a pupil acquires *through that system* the better mental training he will have.

The youth of true manliness, with mind enough to master the studies, is a better subject for receiving the West Point course in its full force, if he has just enough education to enter, than he would be with a greater amount of modern cramming.* In other words, early cramming is opposed to the distinctive purpose of the West Point system, which is high development of reasoning power and thorough understanding of principles.

Of the class which entered in 1839 (Grant's) the Academic Board rejected but 2 out of 78. From 1840 to 1849 the rejections by the Academic Board ranged from zero to $15\frac{1}{2}$ per cent., the annual average

* In a recent lecture for candidates for admission to the India Civil Service, published since this article was prepared, Prof. Max Muller says: "That process of cramming and crowding which has of late been brought to the highest pitch of perfection, instead of exciting an appetite for work, is apt to produce an indifference, if not a kind of intellectual nausea, that may last for life."

being 7 per cent. The class which entered in 1849 had no rejections. It graduated McPherson No. 1, Sill No. 3, Schofield No. 7, Tyler No. 22, Sheridan No. 34, and Hood No. 44.

During the next decade beginning with 1850 the rejections averaged $12\frac{1}{2}$ per cent., the lowest, 3 per cent., being in the class which entered in 1850. The class that entered in 1850 graduated G. W. C. Lee No. 1, Abbot No. 2, Ruger No. 3, Howard No. 4, Pegram No. 10, J. E. B. Stuart No. 13, Stephen D. Lee No. 17, Greble No. 21, S. H. Weed No. 27, and B. F. Davis No. 32. The greatest number of rejections in the decade was in the class which entered in 1859. That class graduated Meigs No. 1, Michie No. 2, and Twining No. 3.

The average percentage of rejections in the next decade beginning with 1860 was 18, the smallest 8, in 1863, and the largest 30, in 1868.

In the next seven years, from 1870 to 1876, the average percentage rose to 37, reaching the enormous figure 52 in the year 1870.

Prior to 1866 the law did not permit the examination of candidates in grammar, geography or history. From 1840 to 1849, 52 persons were rejected; of these 21 failed in reading, 24 in writing, 21 in spelling, and 52 in arithmetic. Many of these, as indicated by the figures, failed in more than one subject. From 1850 to 1859, 118 persons were rejected; 30 failures in reading, 80 in writing, 85 in spelling, and 58 in arithmetic.

In the following decade grammar, geography and history became subjects for examination, and 170 re-

jections occurred ; 46 in reading, 98 in writing, 91 in spelling, and 94 in arithmetic ; and although only three classes were examined under the law adding the new subjects above mentioned, there were 50 failures in grammar, 35 in geography, and 41 in history.

During the seven years from 1870 to 1876 there were 401 rejections ; 35 in reading, 165 in writing, 165 in spelling, 161 in arithmetic, 257 in grammar, 204 in geography, and 171 in history.

There is something startling, if not alarming, in the rapid increase in rejections, and in the magnitude of the final figures. The average yearly percentage of rejections has gone up from 7 in 1840 to 52 in 1870 ; and the actual number of persons turned away has risen from 70 for the *ten* years from 1840 to 1849, to 401 for the *seven* years from 1870 to 1876.

Two causes only could operate to produce this remarkable result—first, the higher standard of admission, including the introduction of new subjects and the manner of conducting the examination ; and, second, inferiority in the candidates as compared with their predecessors. As the means of so-called education have increased greatly during the period under consideration, it would seem that the later candidates should be better prepared than the earlier ones were. If that were so the enormous increase in rejections would be due wholly to the operation of the law and the action of the Academy. But there is good reason to think that in later years candidates have not been as well qualified as formerly. This may be attributed to the fact that instruction in the ordinary branches is not as thorough under the popular school system of

the present day as it was under the private school system of earlier times. It is a law of nature that cost is the measure of value. The public school system, it is true, costs enough—over eighty millions of dollars a year—but that system is based on the assumption that people are entitled to schooling whether they pay or not. Some get it without cost, direct or indirect. This tends to depreciate the quality of the article as well as the estimate placed upon the gratuity by its beneficiaries. When parents were directly responsible and settled at so much a quarter for having their boys taught the three R's, they took more pains to see they were getting what they paid for than they do now, when the State determines what education is, assumes the responsibility, decides as to the *quid pro quo*, and pays the bills. The compulsory feature of the public school system bears directly on the view here presented. When schooling was a commodity which could not be obtained except by direct payment of hard-earned cash, it was mainly sought for in cases of minds inclined and fitted to receive it. Hence in those days intellect and schooling were more frequently found together than they are now, when all intellects are bound by law to take schooling. The proportion of intellectual among the educated boys was greater, and the boy who had average information was then more apt than now to possess the necessary intellect for West Point.

General Schofield said in 1880, while Superintendent of the Military Academy, "I have understood it as the general opinion of the older officers here that the candidates exhibit less thoroughness of elementary in-

struction than they did in earlier times." The late Professor Church reported as follows to the Board of Visitors in 1876: "From my experience in the examination of candidates for admission to the Military Academy, I am satisfied that there is somewhere a serious defect in the system of instruction or in its application, in the schools of our country, for education in the elementary branches; particularly in arithmetic, reading, and spelling. I think our candidates are not as thoroughly prepared as they were twenty years ago."

In 1880 Professor Kendrick said, "I frequently conversed with Mr. Church upon the subject; we were in full agreement thereon. Judging from what we see here, the common branches—reading, spelling, grammar, arithmetic, geography—are not so thoroughly taught in the schools of the country as they were twenty-five years ago. The young men who come to us are not taught to observe and to reason so well as they were forty years ago. The schools of a large part of New England form no exception to this remark."

In support of the foregoing views, it should be borne in mind that in former times the candidates were a year younger than now, the limits then being 16 and 21, whereas they are now 17 and 22, thus giving a year longer for preparation.

But, after allowing full weight to the falling off in preparation, the fact remains that the Academy exacts a higher degree of mere acquirements than formerly, and that doing so tends to the admission of "crammed" candidates and the rejection of good raw material, and

is not likely to further the purpose of the Institution.

During the decade from 1840 to 1850, 869 cadets were admitted, and 427 graduated, 49.1 per cent. From 1850 to 1860, 807 were admitted, and 383 graduated, 47.4 per cent. From 1860 to 1870, 778 were admitted, and 494 graduated. This period embraced the Civil War, and the percentage of graduates arose to 63.4, but in the next decade, 1870 to 1880, the percentage fell to 53.4, there being 948 admissions and 507 graduations.

Adopting 1866 as the date of the high standard of admission, the records disclose the facts that for ten years just preceding that time—that is, from 1857 to 1866—the Academic Board rejected only 17.3 per cent. of the candidates for admission, whereas for the ten years following the introduction of the high standard, 1867 to 1876, the average of rejections was 34.4. That is to say, the percentage under the new standard for the period named is double what it is under the old. If this enormous increase is based on sound principles it ought to show a corresponding increase in the percentage of graduates. But we find that for the period from 1867 to 1876 the rejections increased a *hundred per cent.* over the preceding decade, while of those admitted there has been an increase of *less than 6 per cent.* in the graduations. To this it may be added that the percentage of graduates in the class of 1882 is less than in any class for 25 years preceding the time the standard was raised. It appears from this that raising the standard of admission has not materially increased the quantity of graduates. It

cannot, as yet at least, be claimed that it has improved the quality of them.

All who graduated prior to 1866 were admitted under the old, or low standard. They have been tried by time in peace and war. The civil as well as the military walks of life attest their excellence. It remains to be seen how the graduates who entered or may enter under the higher standard of admission will compare with them.

It is noteworthy that the average number of cadets at the Academy is not materially greater than it was years ago, notwithstanding the fact that in consequence of increase of population, the number authorized by law has gone up from 250 in 1850 to 253 in 1860, to 263 in 1870, and to 312 in 1880. There were only about 185 cadets at the Academy from January to June, 1882, and twelve per cent. of these had been found deficient and turned back for a year to go over the course a second time. Of the original 102 persons who entered in 1878 only 26 graduated June, 1882.

The Academy is a popular Institution designed to confer its advantages with as near approach to equality as practicable throughout the country. The law says that "each Congressional and Territorial District and the District of Columbia shall be entitled to have one cadet at said Academy," and that "the individual selected shall be an actual resident of the Congressional District of the State, or Territory, or District of Columbia," from which the appointment purports to be made. In executing this law, the President deems it his duty to appoint the candidate recommended to him by the Congressional Representative of the Dis-

trict. This system was established in full light of the fact that inequality existed and would continue in the educational opportunities of the residents of the various Congressional Districts and Territories. It calls for a construction of the law which will favor a low rather than a high standard of admission in order to give the fairest chance possible for representation to districts in which the opportunities for preparatory education are comparatively limited. It is a well known fact that, once in, boys with but little education prior to admission sometimes make the best progress in the four years' course at the Academy, and become distinguished men. The law foresaw inequality among cadets, not only when admitted, but when graduated, and provided that, "after going through all the classes," the cadet "shall be considered as among the candidates for a commission in any corps *according to the duties he may be competent to perform.*"

The foregoing remarks are designed to show that the examination required by law for admission is not conducted as it ought to be. But beyond this, considering all the facts on the subject, especially the way appointments to the Academy are made (one from each Congressional District on the recommendation of the Member of Congress), it is quite possible that it would be better to dispense by law with a mental examination for admission, and let every physically qualified appointee enter upon the course and remain until found deficient *in a subject taught by the Academy.* This would require the Institution to bestow six months or so of its labor on a much larger number than it does now. But none of the instruction

would be lost. Much or little, it would in cases of discharge be taken back to be "imparted and diffused" in the Congressional District entitled to it.

It would simplify matters at the Academy if every appointee were capable of graduating. But that is hardly possible. A preparatory year as a part of the course of the Institution, in addition to the four years' term, as at present established, might increase the percentage of graduates, and would afford appointees a fair chance of admission to the regular course.

In providing a military education for a limited number of its sons, the Government certainly ought to see that its bounty is wisely bestowed. Could not that be done sufficiently well by care in appointment, rather than by *rejecting the appointee before he has had a trial in the course taught by the Academy?* In any event, the Academy will not fail to do its part in providing a *good education*, in the broadest acceptance of the term, for all appointees confided to it.

ADMISSION TO THE MILITARY ACADEMY.—CONTINUED.

Remarks at a General Meeting of the Military Service Institution of the United States:

GENERAL JAMES B. FRY—*Mr. Chairman and Gentlemen*: I wish to express my gratification at the able and interesting paper just read by Professor Andrews. I have no doubt he will in due time receive from this meeting a hearty vote of thanks. I am personally indebted to him for the kind terms in which he has alluded to me. I wish to say that I disclaim any intention in this discussion of criticising the general methods of the Academy. My comments here have

been in respect to the manner of getting material, not as to the use made by the Academy of the material confided to it. On this point my opinions do not result from any action of the Academy in particular cases, nor have they been hastily formed. A paper read by Professor Michie before this Institution December 10, 1879, and the discussion following it, are printed in our Journal (Vol. I., No. 2). My remarks on that occasion are given in the Journal as follows: "There is one point frequently discussed touched upon in the professor's paper to-night, to which I will ask a moment's attention. It is the question of raising the standard of admission to the Military Academy. It seems to me that raising the standard would not be quite consistent with the large claims we make in favor of the West Point *system* of education. We insist, and I think with good reason, that the great merit of the Military Academy in its intellectual relations is the *mental training* it affords; that in a way and in a degree peculiar to itself it develops the reasoning powers, gives the scope and grasp to the mind which enables it to deal promptly and vigorously with the various problems of life as they may be encountered from day to day; and we attach a very subordinate importance to the mere acquisition from the text-books or lectures of ascertained facts or accepted theories. We claim, further, that the extended and rigid course of mathematics prescribed for the Academy, and the peculiar manner in which that course is taught, are the principal means through which the desired mental training is secured. These things being so, it seems to me that the best material the Academy can have to work upon

is that which can be admitted under a standard about like the present one,* which, though low, gives as a general thing reasonable assurance of sufficient mental capacity on the part of the candidate to receive the West Point system and assimilate it in the easiest and most effective way. Of course the more the cadet can receive of this system the better. I assume it is admitted that, speaking generally, the candidates who present themselves have acquired what knowledge they possess under a system entirely different from that of the Military Academy; that they have learned by rule and rote, or, in other words, that their education is to a great extent a course of cramming, which I am inclined to think the common school system of the day is encouraging. If this is true, as I assume it to be, raising the standard of admission at West Point would be calling for more cramming. The candidates would have to increase the amount of their acquirements, but of course could not be expected to change the system under which education such as theirs is given throughout the country. The additional cramming would not, it seems to me, facilitate the mental development aimed at by the West Point system, and might possibly have the effect of retarding it."

In the paper which I read on November 18, 1882, to which the professor has just replied, I elaborated the foregoing views, and gave some statistics and other evidence in support of them.

In connection with the subject of getting material

* When this remark was made I had the old standard in mind, and did not know how much the standard had been raised in the last few years.

for the Academy, I alluded in general terms to the purpose of the Institution. The professor has treated that point pretty thoroughly, and I think, in relation to it, there is a fair and square issue between us. I understand him to hold that the intention of the law is that the Military Academy shall have *the best* material in the land. I do not look upon that as the Intention of the laws creating and providing for the institution, nor as desirable. Other professions and occupations should be considered. The church, the law, medicine, etc., etc., have a claim equal at least to that of the Army for *the best*. It is difficult to agree upon the original or present purpose of the Military Academy. I understand it to be the intention of the law, however, to distribute the appointments to it over the whole country. In that I see there is a direct difference of opinion between the professor and myself. As he stated in his introductory remarks that he had the co-operation of his associate professors in the preparation of his paper, I suppose we may regard what he has said as the West Point view. I accept it as such, and admit that the side is well put. I understand the professor to mean that it would be a wise proceeding for the Government if it found the best material each year from New England, say, to accept the whole batch of cadets from that section. I dissent from this. I regard the Academy as national, and think it should work on material from every district in the United States; and I am sure there is no district that cannot furnish somebody who can comply with the requirements of the laws if they are properly administered. The professor has dwelt up-

on the fact that Boards of Visitors have favored a high standard of admission. In fact, I may say that these reports are the authorities he relies upon. This is an argument of apparent importance; but I must say that it seems to me the reports of Boards of Visitors on this point are not entitled to the consideration which we might suppose from the composition of the Boards. If, instead of Boards of Visitors as at present constituted, there was a Board of Supervision, a Supervisory Board of Education, composed of the same members from year to year, made responsible jointly with the Academic Board for the rules of admission and the course of instruction, I should have great respect for its report. But quite the reverse of that is the case. From an experience of five years as an instructor and as adjutant and secretary of the Academic Board at West Point, and from pretty close observation since, I am led to think that Boards of Visitors adopt many of the opinions of the Academy, and on many points their reports are in reality West Point speaking by another voice. I do not mean to assert that Boards of Visitors give themselves away, but they are, perhaps unavoidably, influenced, if not largely governed, in many things by the West Point opinion, which is not only a very plausible, but a very persistent one upon all matters affecting the Academy. The result is that the Board of Visitors—a temporary body—instead of advising the Academy in educational matters for which the Academy is responsible, is in reality advised by the Academy. I cannot recall all the points in my paper upon which Professor Andrews has commented. I shall notice all I remember. He

criticised my statement that the regulations increase the severity of the law, and the Academic Board increases the severity of the regulations in the matter of the requirements for admission.

I do not think he has proved me in error on that point. The law says the appointee shall be "well versed" in arithmetic, etc. The regulations say he shall perform with "facility and accuracy," etc. I make a distinction between the meaning of these terms, and regard the latter as exacting more than the former. In my opinion, it is in the power of the Board to proceed more rigidly under this regulation requiring "facility and accuracy" than is contemplated by the law, which merely requires the appointee to be "*well versed*," etc. As to the other point, that the Board exceeds the regulations, I submit the questions asked last June. If they are so simple, as the professor says, that inability to solve them will produce smiles on some faces and blushes on others, then my assertion that the Board has enlarged upon the regulations is not sustained. That I leave to others for decision, remarking only that in a letter which I shall soon read, Colonel Lazelle, late Commandant of Cadets, says: "I think that the tendency and the actual present practice is to exact everything possible within the Board's construction of the statute. I remember on one occasion calling attention to the fact that one of the printed problems was a subject in alligation which I regarded as beyond elementary proportion, and therefore beyond even the requirements of the Military Academy regulations for admission of candidates." Before he began his address the professor dis-

tributed in this assembly printed copies of the questions asked in June last, *with the solution in each case given with the problem.* If the problems are so simple that men ought to blush at being unable to solve them, why was it necessary for the Academy to prepare and print solutions of them for such a meeting as this? I say with frankness and sincerity that the solutions confirm me in the opinion that these problems, taken as a whole, are not a proper test in arithmetic for admission to the Military Academy. If, says the professor, these problems are so difficult, how is it that so many of the candidates of 1882 were admitted upon them? That question, I confess, puzzles me almost as much as the problems did before they were made easier by being shown how to do them. The only answer which occurs to me is that the candidates of that year may have been unusually well *coached*. Possibly a larger proportion had been prepared at the special schools of Colonels Symonds and Huse. Colonels Symonds and Huse are both graduates, and former instructors at the Academy. I have nothing to say against their institutions. On the contrary, I believe they are good schools, and the higher the West Point standard of admission the better for them; and with the present high standard, the sooner an appointee to the Military Academy gets into one of them the better for him, provided he can stand the expense. But I invite attention to the probability that their special character, if not their existence, is due to the modern standard of admission at West Point, and if special preparation is necessary for admission, as indicated by these schools, I suggest the

question whether or not the Government should establish and regulate the schools for it. Upon the subject of the present requirements and the necessity for special preparation to meet them, Colonel Huse has issued a circular* which is quite significant. It is as follows :

TO YOUNG MEN INTENDING TO ENTER WEST POINT.

In the ten years, 1847-1856, the number of candidates appointed to West Point was 962. Of this number 132 (13½ per cent.) failed to enter.

In the next ten years 1,082 were appointed, and 288 (26 per cent.) failed to enter.

In the next ten years, 1867-1876, the latest date for which I have the official report of appointments and failures, 1,560 were appointed, and 697 (44½ per cent.) failed to enter.

It thus appears that while thirty years ago nearly seven-eighths of the appointees to West Point became cadets, of late years nearly one-half have failed to enter.

The failures are not, as might be supposed, confined to young men who have had no advantages. High School graduates, bearing diplomas that might be expected to carry them in without examination, and undergraduates of even the most prominent colleges have been rejected.

It is plain, then, that candidates should not take it for granted that they have nothing to do after securing their appointment; *nearly all require more or less preparation, and some cannot do with less than a year of persistent study.*

* I have italicized some sentences in this circular to call attention to their bearing on points I have alluded to.

The figures given above show how much more difficult it is to enter now than it was thirty years ago, and old graduates should be careful in giving information to their young friends as to the character of the examination. It is probable that candidates have failed from judging themselves by the standard of friends who entered West Point when the requirements were lower than they are now.

Success cannot be secured by any system of cramming, or by the use of "influence" at Washington.

The examination papers are recast from year to year with great care, so that coaching on examples and questions similar to what appear in old examination papers is quite useless; and favoritism is securely guarded against by the anonymous system, candidates being known only by number. *Nothing but a good knowledge of first principles avails a candidate at a West Point examination.*

At my school, the Highland Falls Academy, special attention is paid to preparing West Point candidates.

I am a graduate of West Point, and served as an instructor there seven years. It may be thought, therefore, that a weak candidate can come to me a few weeks before examination and by some special process of mine be got into West Point. This is an error. I have been of service to candidates that have come to me only a short time before their examination, and some of these young men have owed their success to my efforts; but I am not willing to do mere cramming work, and in fact it is difficult to cram a deficient candidate so as to deceive the examiners.

Most young men can spend at least a year profit-

ably in preparing for West Point, and in order that the failures may be as few as possible the War Department recommends members of Congress to nominate candidates one year in advance of the vacancies they are to fill.

Many young men fail in *Spelling*. Few persons have any idea of the labor and patience required on the part of both instructor and pupil to make a correct speller of a young man of seventeen who cannot spell.

I have never had a candidate fail in this respect that has spent a year with me, though I have had some whose case seemed hopeless when they came.

In Arithmetic mere figuring is of little value. The candidate must show an acquaintance with fundamental principles and an ability to *think*, to satisfy the Board.

The following questions have been asked within a year or two :

“If the same number be added to both terms of an improper fraction will the value of the fraction be increased or diminished, and why?”

“What is the reason for placing the decimal point in example 5—multiply 4.32 by .00012? The rule for doing so is not the reason.”

No candidate can answer such questions from mere coaching. Questions like them may not be asked again for years, but equally searching ones will be, and problems requiring careful thought are given every year.

In Grammar no mere routine parsing is received. At the examination this year some candidates hardly

knew what to write when they read the direction on the Grammar Paper not to give gender, number or person. The grammatical construction of certain underlined words was all that was required, and this was just what many could not give.

For *most young men that come to me, a year is not too long to spend in preparatory work, and some require more time.* Those that do not require much preparation for the examination are put at French, Geometry and Algebra, subjects which a candidate may, if he has a good instructor, study to advantage before entering. To some careful previous training in these subjects is very important, for the fourth class examinations prove fatal to many that enter without any previous knowledge of them.

I employ, as far as practicable, West Point methods of instruction, and keep myself informed as to all changes, however slight, in the system of examination; and my pupils, being so near West Point, have opportunities of learning for themselves from cadet acquaintances what will be required of them after entering. I may claim, therefore, to offer all the advantages likely to be found in any preparatory school.

My pupils have been remarkably successful during the four years I have been preparing candidates, not only a larger number, but a larger per cent. of *my candidates* having entered West Point than from any other school during that time.

My charge for tuition, board, fuel and lights, and washing, except of starched clothing, which is done at reasonable rates by laundresses in the neighborhood, is \$500 for the school year, and at the same

rate for longer periods than four months. For shorter periods \$65 per month, and anything more than half a month will be charged as a month.

Pupils will furnish their own books, napkins, towels, blankets and sheets (single beds).

Candidates are, of course, subject to the ordinary rules of the school, circular of which is herewith enclosed.

CALEB HUSE, Principal,
Highland Falls Academy.

HIGHLAND FALLS, N. Y., September, 1882.

The professor alluded with but little respect, I think, to the earlier examinations for admission. He said they were oral, brief, and that the wonder is that anybody failed to pass; that the Board could not, or did not, get at the knowledge of a candidate, etc. But he has not disputed, and I think cannot dispute, that the graduates under that system of admission have proved good officers and able men—as good and able as the higher standard of admission has produced. The professor's remark was rather disparaging to the Academic Boards of earlier times. My conviction as to the earlier examinations is very strong. It is that the Board, say from 1840 to 1860, was competent and thorough. It was composed most of the time of Mahan, Bartlett, Church, Bailey or Kendrick, Weir, Agnel and others I need not name, with Robert E. Lee and Richard Delafield as Superintendents. I think it was fully competent to weigh the information it obtained, and that it took time enough to obtain the necessary amount of information to judge of the candidate's fit-

ness. I say this after nearly five years' experience as Secretary of that Board. I therefore reiterate my opinion for what it is worth, that the Board did by that test get a good knowledge of what the candidate knew, and formed a pretty correct opinion as to what he was likely to accomplish if admitted.

Now, as to the mode of admission. The professor has set forth the arguments in favor of the anonymous written examination at present in vogue for candidates. If this system has great merit for admitting candidates, I do not see why it is not used for subsequent examinations of progress in studies. The system for admission has been changed by introducing the anonymous paper examination without applying that system to subsequent examinations. I will only add on this point what was written to me by a United States Senator. I do not give his language. He said that to expect to find what the candidate knows by these slips of paper is as unreasonable as to expect a jury to get at the truth of a subject by having written statements from witnesses. I will here explain that the old system of admission for which I contend was not literally oral; much of it was written. The candidate, however, was not withdrawn from and unknown to the faculty, as at present. On the contrary, he was before it, wrote upon the blackboard in its presence, and in addition was questioned by the professors as thoroughly as they thought best. By that system the fate of a candidate rests on what he knows. By the present anonymous paper system his fate may be settled by what he does not know. The former, properly enough, was called examination for admission. A

more appropriate name for the latter would be examination for rejection.

The professor also referred to my remarks respecting cramming. I said: "The youth of true manliness, with mind enough to master the studies, is a better subject for receiving the West Point course in its full force, if he has just enough education to enter, than he would be with a greater amount of modern cramming. In other words early cramming is opposed to the distinctive purpose of the West Point system, which is high development of the reasoning powers and thorough understanding of principles." The professor draws from this the conclusion that I regard learning as a disadvantage; that I argue in favor of ignorance. I did not intend to be so understood. I, however, make a distinction, which he does not seem to regard, between mere learning and real education. If my meaning is not plain enough in the terms of the foregoing quotation, a foot-note, which was read and printed as part of my article, shows it unmistakably. The foot-note is: "In a recent lecture for candidates for admission to the India Civil Service published since this article was prepared, Professor Max Muller says: 'That process of cramming and crowding which has of late been brought to the highest pitch of perfection, instead of exciting an appetite for work, is apt to produce an indifference, if not a kind of intellectual nausea that may last for life.'" After having written with that very thought in mind I was pleased to come across the foregoing statement by Professor Muller, which sustains my view that an overdose of modern cramming may be an injury to an appointee to West Point.

That was my meaning. I think it is clearly enough expressed, and I adhere to the statement.

The professor advocates, as I understand him, the system of competitive examination. Without going into a general discussion of this subject, I must express my unfriendliness to it as a system. But if, as a principle, it ought to be applied to candidates for admission, then, as a principle, I think it should be applied also in the selection of the professors who teach them. But I do not believe in the system at all.

Such statistics as Professor Andrews presents cover only short periods. On the other hand, I took the whole range back to 1840. I do not understand that he has answered or impaired the force of the statistical facts in my paper. He does not dispute my statement that "the average yearly percentage of rejections has gone up from 7 in 1840 to 52 in 1870; and the actual number of persons turned away has risen from 70 for the *ten* years from 1840 to 1849, to 401 for the *seven* years from 1870 to 1876." Nor does he controvert my conclusion drawn from the enormous increase in rejections under the high standard of admission: to wit, that if the high standard theory is sound, it ought to show a *corresponding increase* in the percentage of graduates. But, as I showed, instead of that, we find for the period from 1867, when the high standard began, to 1876, the rejections increased a *hundred per cent.* over the preceding decade (old, or low standard of admission), while of those admitted there was an increase of less than *six per cent.* in the graduations. The professor makes no explanation of this.

In relation to my statistics showing the large pro-

portion of rejections from Arkansas, Colorado, Kansas, Nevada, West Virginia and Idaho, he names *some* Western Territories which he says I forgot to mention. But he does not show that the omission impaired the soundness of my conclusion. The statistics I gave were to support my assertion that "the tendency of the high standard of admission and the present mode of examination is to discriminate against the poorer *Congressional Districts* and *Territories* in the enjoyment equally with the rich of the right of representation at the national Military Academy." The professor denies the correctness of this statement, and adds that *some* of the poorest candidates come from the richest districts, and *some* of the best from the poorer ones. These may be facts, but they do not disprove the tendency I asserted to discrimination in a high standard of admission and the present mode of examination.

The professor's remark that the poor man's son has no more right than the son of the rich man to a place for which he is not qualified is quite true, but it seems irrelevant. No question has been raised as to rich men's sons and poor men's sons, nor as to the occupation by either of places for which they are not qualified. The questions are, What qualifications should be required? and how should they be ascertained?

The professor concedes that in getting rid of what he calls "ignoramus" young men of ability and character may be rejected. But he destroys the value of this concession by asking, if the young man has ability and character, how is it he has not obtained a common school education? All that is required, he

says, may be learned in a common school, and there is no part of the country where a common school education cannot be obtained. I do not undertake to answer his question, nor do I admit the correctness of his assertions, but the logic of what he says is that ability and character imply preparation; hence all young men *of ability and character* are prepared to enter the Military Academy under the present standard; and if the Academic Board finds candidates not prepared, it follows conversely they have not ability and character. Preparation, therefore, according to Professor Andrews' argument, is the test of and measure for ability and character. This is a strong claim for "culture." The professor asks, If a man is a dunce why should he be sent to the Academy? If he *is* a dunce, he should not be sent there, but I do not admit that lack of preparation to pass the examination, at present required, proves a man a dunce. The professor appears to think it does. If that is so, it disposes of an important part of our subject.

I understood the professor to say that the examination in grammar is very slight. I was under the impression that it is rather severe. From 1870 to 1876 there were 401 rejections—35 in reading, 165 in writing, 165 in spelling, 161 in arithmetic, 204 in geography, 171 in history, and 257 *in grammar*. That must mean something. Colonel Huse, in his circular of September, 1882, already cited, warns candidates that "in grammar no mere routine parsing is received."

In my paper I said, "In former times the candidates were a year younger than now, the limits then being

16 and 21, whereas now they are 17 and 22, thus giving a year longer for preparation."

I now suggest that these limits are too broad. Under them boys and men, to the disadvantage of the former, become candidates for the same class. This after admission proves a disadvantage to the Institution in discipline and general administration, as the same rules and regulations are applied to all, boys and men alike. I am inclined to think that the ages for admission ought to be from 17 to 18, or at most from 17 to 19.

Now, Mr. Chairman, I desire to present another point. In my article of November 18th, I stated that the present system of examination for admission does not conform strictly to the law, and I suggested that it might be well if Congress would pass a law dispensing entirely with a mental examination for *admission*, letting every physically qualified appointee enter upon the course and remain until graduated or *found deficient in a subject taught* by the Academy. The professor, I believe, looks upon that as a premium on ignorance. I do not see it in that light. In fact I now go a little farther than I did at first. I am inclined to think that the *existing* law is sufficient to dispense with an examination for admission by the Academic Board. I doubt whether the law, if strictly construed, would justify the present so-called examination for admission. It is the Act of 1812; the subsequent Acts do not bear upon this point. Its terms are: "Each cadet *previously to his appointment by the President* of the United States shall be well versed in reading, writing, and arithmetic." The meaning, it seems to me, is that

it shall be ascertained that the boy is well versed in reading, writing and arithmetic *before the President appoints him*—not before he is admitted but before he is appointed. If this is so, he should not be examined for *admission*, but for *appointment*. As the President deems it his duty in executing this law to accept the recommendation of the Congressional Representative of the District, it seems to me to rest with the Congressman, who recommends, and the President, who appoints, to ascertain *before appointment* whether the boy has the qualifications required by the law.

GENERAL VOGDES—A cadet, as I understand, does not receive his warrant until the January examination.

GENERAL FRY—It is true that after passing examination in January the cadet receives a *warrant*, about which the law says nothing, but he receives in the first instance what is called a conditional *appointment*. That is the very appointment which, in my opinion, this law refers to. That is the appointment upon which he reports at the Academy, and upon which he is mustered, paid, court-martialed, etc., and it is to that appointment, as it seems to me, that the law refers when it says previously to his appointment by the President the boy must be well versed in arithmetic, etc. When *that* appointment is made, it appears to me all questions of qualifications in reading, writing and arithmetic are closed. The examination in January is not to ascertain whether the law prescribing qualifications for appointment has been observed. On the contrary, it is conducted exclusively upon those things taught by the Academy between July and January.

Mr. Chairman, of course opinions as well as statistics are of value in the consideration of the matter we have in hand. I desire, therefore, to present extracts from a few of the many letters I have received from graduates of the Military Academy. Here is one from an officer of prominence formerly connected with the Academy, and still feeling a deep interest in it.

“SAN FRANCISCO, December 4, 1882.

“MY DEAR GENERAL:

“I write to say that I am very much pleased to see that you have brought the system of examination practised on beginners at the Military Academy under discussion. I trust that you will bring out clearly the features of this system and its bearings upon the Service before you dismiss it from attention. It is an innovation which I have watched with some surprise as practised in examinations of teachers. In this application it ignores the real qualifications which it ought to be the object of the examination to bring out. It breeds a frequent scandal by the early acquaintance which some get with the proposed questions in advance of others. This is, however, a minor objection.

“I think you have attributed a distinction to the system by admitting that its standard is high, which is not deserved. I am not able to see that there is any standard in the system by which to measure what you desire to ascertain in regard to the mental quality or educational acquirements.

“Some of the questions cited by you as given to the last class may properly be called puzzles, or enigmas,

when given to boys not trained in this kind of thing. They belong to the same place in mathematics that sleight of hand bears in the mechanical world. They seem to me to bear only a remote relation to the qualities and acquirements we have a right to look for in the boys who aspire to a military career.

“It would not surprise me to learn that those who give the best promise in the mathematical tournament fail of substantial progress in the subsequent course of study. An analogy may be found in the physical failure in after life of the prodigies of muscular development in the gymnasium or boat-pulling contests.

“The argument for the system appears to be that it permits no partiality to be shown by the Academic Boards. I am loth to think that the charge against the Board thus implied can be well founded. If, unfortunately, it is well founded, the case would seem to require a remedy of a different character. The system appears to me to introduce a discrimination in favor of those trained by a special, if not a bad method, to the injury of individuals, and, what is worse, to the injury of the Service. While open to this objection it applies no test of real value. I can well understand that the very best minds in the class, with fair preparation, too, are quite likely to appear among the worst in such a contest, and that the ordinary person may appear to the best advantage. A three hours' contest to a boy not trained to attack quirks and puzzles may show him in a light of apparent ignorance which he does not deserve, and, conversely, trained mediocrity may appear too well. This makes little difference unless the good boy is found

deficient, otherwise, if the subsequent instruction is what it was, he will soon establish his position. It would seem necessary, to make the system fair, that a boy failing on enigmas should, before being pronounced deficient, be subjected to such a discreet examination as Professor Church was wont to give us, and have the opportunity to show that his failure was due not to want of reasonable knowledge, but to other circumstances. This personal element of the candidate—his personal appearance, the intelligence exhibited, his embarrassment or confidence—ought not, it appears to me, to be eliminated in an examination. They are essential quite as much as a little knowledge, more or less, which at best is small.

“I am inclined to think favorably of your proposition to admit every one not grossly and obviously incompetent, and try all by the test of the course. Some instances of development, after the boys had taken in the air of the place, struck me with force during my connection with the Academy. One case was that of a boy, who did not begin to open until he entered the course of mechanics. He started near foot in a class of six sections, and before the year was out he was in the first section, and was graduated about twelfth. It was a wonderful development. He was killed in the war. I think he would have continued to expand. This case proves little beyond the fact, and cannot be taken as a guide, yet it goes to illustrate the necessity of some elasticity or power of adjustment in the system which is applied on entrance. A rigid set of questions that not one-half the officers of the Army to-day could solve in three hours is plain-

ly not the one to govern in the admission of a lot of comparatively untrained men, whom you are going to train in some other way, I hope, than in the system indicated by the questions.

“The obvious tendency is to cramming, the one thing which the traditions of the Academy have hitherto consigned to ignominy.

“It has been the pride of the Academy to range men, at least in the most important studies, by what they really knew, while appearance of knowledge, which was not really present, has always provoked scorn and derision. This system is a revolution. It establishes premiums for knowledge of curiosities, and appears to me to lack conspicuously the only merit that I knew to be claimed for it—namely, impartiality.

“I hope you will take this letter as an indication of my sympathy in this business, which appears to me to have considerable importance.

“Yours truly,

“G. H. MENDELL.

“P. S.—In examination for places as teachers in public schools it may well be that it is necessary to have a system of competition by which the examiners shall be guided in assigning a position to one of ten applicants. There is no reason at West Point for competition at the first examination, which does not pretend to arrange in order of merit, the object of this examination being merely to determine a fair probability that the candidate will make good progress in the course to follow, and not to determine whether one is a better scholar than another. This consideration, together with the past history of the Academy,

seems to me to show that the innovation is not necessary, and that it is not an improvement on old methods."

I may mention that Colonel Mendell is interested in public school education. He was Assistant Professor of Philosophy at West Point from January 3, 1859, to June 18, 1863.

On Colonel Mendell's letter is written, "I concur in the above. Charles S. Stewart"—Colonel Stewart, of the Engineers. I have also a great many others here, but will only take time to refer to a few of them. Colonel Henry M. Lazelle, lately Commandant of Cadets, says:

"COMMONWEALTH HOTEL,
"BOSTON, MASS., October 14, 1882.

"DEAR GENERAL FRY:

* * * * *

"I am glad that at last this subject and its correlative have attracted attention in the Army outside of West Point; and I am equally glad that they are to have a hearing within Army circles, and I hope, their remedy there.

* * * * *

"I think that the tendency and the actual present practice is to exact everything possible *within* the Board's construction of the statute.

"I remember on one occasion calling attention to the fact that one of the printed problems was a subject in alligation, which I regarded as beyond elementary proportion, and therefore beyond even the requirements of the Military Academy regulations for admission of candidates.

* * * * *

“It is true that there can be no partiality, that the examination is wholly impersonal; but it is unquestionably exacting to the smallest details; while the previous opportunities or disadvantages, the peculiarities or the future possibilities of the student applicant, are never known, under the present system, to the Academic Board, and in no way interest its members. In my judgment the questions in some subjects, especially in history and geography, are so numerous, and of so wide a scope, that only a rapid writer, perfectly familiar with the answers required, could present a perfect paper within the allotted time; and it is needless to say that such a being does not often present himself.

“I think that the Academic Board attaches great weight to the idea that it spares to the candidate the mortification of a future failure; and to the Academy much expense by the summary rejection (without inquiry) of those unable to secure the percentage required. While this may be true to a certain extent, there is at the same time, on the other hand, afforded the applicant a full opportunity to avail himself of his cramming (as you have stated), without cross-questioning, or the sifting out of the reasons of things—the whys and wherefores—in the present silent written examinations; and there is further completely ignored the fact that the minds of youth of equal aptitude and ultimate possibilities have developed unequally, because of unequal training in a given direction, some having had, perhaps, only very meagre preparatory advantages. And yet every graduate knows that many of these raw specimens, barely able to enter,

climb during the four years to very near the top of their class. Such an institution of the people, and for the people, should be fairly within their reach without an expensive preparatory course. Such, evidently, was the intention of the founders of the Military Academy. And it is plain that antagonisms will be generated sooner or later, in the public mind towards an institution whose benefits are not to be obtained except by a costly preliminary process; and which even then rejects on an average more than one-third of all applicants at their first trial.

* * * * * *

“It is within the knowledge of all, that during the past twelve or fifteen years the steady tendency at West Point has been toward increasing the course of studies in extent and difficulty. And it is no reflection upon any one that this is so, since it is an inevitable result of the rapid multiplication of the methods and of the truths of science. Each professor there has been ambitious to keep pace with progress elsewhere; has been jealous of the time given to subjects in departments other than his own; and anxious perhaps to swell the dimensions of his own department of instruction. It is easy to see that the natural result of this would be to declare deficient, without much toleration or charity. An additional language — Spanish — is now taught, and I think that I am safe in saying that in every other department of study there the course has been increased, while the period—four years—is the same as formerly.

“The consequences of all the united causes are, few

successful candidates for admission, and very small graduating classes.

* * * * *

“The mental strain of the present course and its exactions are, it seems to me, from beginning to end, too much. It leaves the cadet exhausted, and on graduating, he throws his professional studies aside to be resumed only when compelled to do so. But a relatively small proportion of the large number presenting themselves each June at West Point can stand it for four years. Hence the Corps of Cadets will continue to be small, and the number of graduates in the Service disproportionate to the number of non-graduates so long as existing conditions continue.

“The Military Academy was certainly created for the Army, and not the reverse; and the public sooner or later, out of patience and sympathy with it, as now producing, will demand that it supply the needs of the Army. When it is considered that no purely military instruction is given, except in tactics, until the last year, and that cadets are very seldom found deficient in that year, that the deficiencies are chiefly in pure or applied mathematics and the languages, it does seem that less pressure might and should be exerted in these last named studies. As cadets doing fairly well therein would easily master the fourth year's course, the Army would have many more graduates, who, perhaps, if not fitted for the higher duties of their profession, would be eminently qualified for those of the line; and it certainly would be a great gainer in intelligence and in professional qualifications. And certainly, as you have said, the law establishing the course

of studies at the Academy and providing for its graduates contemplated this gradation in Academic proficiency with the view of increasing the number of graduates.

"I beg, General, that you will pardon any indiscretions of language or hasty thoughts that may appear herein.

* * * * *

"With the highest esteem, I remain most sincerely,

"Your obedient servant,

"H. M. LAZELLE."

Colonel C. S. Stewart, Engineer Corps, writes as follows :

"SAN FRANCISCO, CAL., December 2, 1882.

"MY DEAR FRIEND :

"Let me thank you for your good words as given in the *Army and Navy Journal* of last week, which call attention to the illegal tests required of candidates for admission by the Academic Board at the Military Academy. The arithmetical jugglery and legerdemain may, however, be theoretically ordered by the Secretary of War, but, if so, he, it seems to me, goes far beyond the intent and meaning of the statutes. I trust he may be induced to make the Board go back to a simple examination, which would give some chance to many a fellow now turned off to hold on, and, with the training at the Academy, make as good an officer as any now obtained.

"It is only within a very few years that I have had any knowledge of this, as it seems to me, outrageous system of examination for admission at West Point. . . .

"C. SEAFORTH STEWART."

Colonel Stewart graduated head of the class in which McClellan was second, and has a son who passed the examination for admission and is now a cadet at the Academy.

General W. W. Burns, of the Subsistence Department, authorizes me to use the following letter addressed by him to the *Army and Navy Register*:

“THE ACADEMY A SCHOOL FOR DISCIPLINE.

“SIR: Your correspondent (unknown quantity) seems to be anxious to popularize West Point so that the people will look upon the *élèves* with more favor. He would lengthen the term a year, grant leaves to visit and keep up current relations with the times and people, raise the standard of admission, and would remodel the course so as to take in knowledge of modern warfare, etc. In a word, would place it more on a footing with other colleges. He says he is a young man, and therefore advises the doing away with old methods to square with young and vigorous ideas suitable to steam, electricity, breech-loaders, armor defences, etc. These are taking suggestions, and strike the popular heart. ‘Progress’ is the tocsin of the times. *Festina lente*. Principles are not young; discoveries may be. The Medes and the Persians—Homer’s Greeks—based military education upon order and discipline. Order, heaven’s first law; discipline, the rule of wisdom. Discipline of the mind and body. Mathematics discipline the mind, calisthenics the body; both require order and healthful restraint. Military education forms a matrix for knowledge which comes after, as the sprout from the rich soil. Whatever seed

be planted finds quick root and flourishes. A democracy fosters military education as a necessary evil, for its method is autocratic. It can never be popularized. It ought not to be in our body politic, but should be treated as gunpowder, kept secluded and safe, respected for its use, guarded against abuse. The cadet should be taken as a young colt from the field, without false training or loose handling, vigorous from his native stock (the people), ambitious to improve his condition, eager to win the goal, his eye upon his country's eagle and flag waving above him. Reading, writing, arithmetic, his country's history and geography imbibed from his common school, mathematics and drill will soon test his natural abilities. Then let the chaff be blown away and the sound seed ground in the mill of discipline, both of mind and body, healthily, as was done at West Point. Then he should be reserved for his country's use, not his own or that of popular friends. Knowledge of current war, history, morals and manners should follow at such schools as Fort Monroe and Leavenworth, in corps or regiments. He is dedicated, set apart for the people, who are sovereign, as a servant of the public. His life a school, theoretical, practical, progressive, for emergencies. High schools are destroying the youth of our times, turning out loose professionals, or degenerating industrial classes into an overstock of clerks, poorly paid, would-be gentlemen. Loose habits and smattering science to be unlearned would take half of the West Point term; the character could never be reformed. It is brain, nerve and muscle that West Point requires, not knowledge in a diversified curriculum. Bacon

recommends few books, well digested, not for knowledge, but for the mind discipline. Doubtless the young professors now at West Point understand this.

“REPUBLIC.”

General L. C. Hunt writes me as follows :

“ANN ARBOR, MICHIGAN, March 15, 1883.

“DEAR FRY :

* * * * *

“West Point always has been, as it is now, intensely conservative. There is so much that is really admirable at the Institution, under any regime, and so much that is fascinating in its surroundings and belongings, that each generation of men stationed there will regard as heretical any change or criticism or any reversion to the methods of the past which we know to have worked better.

“For my part I am satisfied that the methods since the war have not been up to the old mark—too much crowding, exaction, cramming specially—not enough of broad general outlook.

“L. C. HUNT.”

General Webb, President of the College of the City of New York, writes :

“MY DEAR GENERAL :

“In answer to your request that I should furnish you with a copy of the remarks that I was induced to make after hearing you read your most interesting paper upon the admission of new cadets to the U. S. Military Academy, I regret to state that I have been unable until this late day to put them in writing. I hope you will accept this letter, therefore, as simply the result of an effort to recall sentiments forced from

me by hearing your arguments in favor of a change in the examination of candidates for our Alma Mater.

“If one who has had six years’ experience as an instructor at West Point and fourteen years’ experience as president of a college, extending over a period during which he has conducted the examination of over 12,000 candidates for admission from the New York public schools, can be of any service in securing a settled conviction in the mind of our average Congressman as to his duties in regard to this matter of selecting candidates for West Point, and securing a proper representation of his State and district in the Military Academy, I will gladly do my part in this letter.

“We all know the working of the law, and we know that each candidate represents a Congressional District, but there are two points to which I would call special attention, and one is already covered by your paper.

“The first is as you stated. The duty devolved upon those appointed to conduct the affairs of the Academy is to secure, as far as may lie in their power, under suitable regulations, adopted to protect the Academy from suffering any diminution in a proper standard in a knowledge of belle lettres, arts and military science on the part of its graduates, while at the same time they shall secure, as far as possible, a representation from all parts of our country.

“We therefore feel at once that this question of examinations for admission, and the question of the duties of members of Congress in regard to making appointments, will both give rise to as many discussions

and as many methods of discussing them as you may find men willing to write. You will therefore find from me in this paper only what I recall as having said in the presence of the Military Service Institution on these two subjects.

“The Military Academy, as a national school, has always stood on about the same footing in regard to the ordinary boys’ school as most of our leading colleges have been supposed to stand. The gravest error that has been committed has been that which fostered the idea that the Military Academy should seek her recruits from among college graduates. To print a number of questions, said to be of about sufficient testing qualities in the various subjects, and to hold them up as models for those who are preparing themselves to enter West Point, is proper, and conducive to produce among the boys’ schools of our country a fine appreciation of what a good common school education ought to be in this country. This is all that the law contemplated ; indeed, all that the law allows. And so much for entrance examinations. The common sense of the Academic Board at West Point must govern this whole matter until it may be made necessary for Congressmen to encroach upon the privileges and rights of that body, when the privileges and rights of their constituents are interfered with by them. And now as to the duties of these Congressmen.

“If the district a citizen is called upon to represent in Congress be in a condition such as to prevent the member from selecting a suitable candidate for West Point, it is the duty of the Congressman to refrain from making such selection until through his influence

he may raise the standard of education in that district. If the district be one capable of furnishing a suitable candidate, fully equal to pass the moderate examination which should be required for entrance to West Point, he must under the law select one fitted by nature, and by habits, and by associations to become the comrade of officers of the Army, and all the certificates of boards and committees and politicians are worthless in the eyes of the law when the question of the responsibility of the Congressman is brought up.

“The brightest brain in any district never has been and never will be the best fitted for the duties of an Army officer. No member of Congress has the right to send to West Point a coarse, bright fellow, simply because he passes a Board of Examiners, called together possibly to free him from the responsibility which the law put upon him. If he wants to do his duty through a board let him announce that the board is to pick out the man best fitted physically, morally, intellectually, and in habits and disposition to receive so important an appointment from the Government; if the Congressman himself knows nothing about his candidate's habits and calling, the people in the vicinity will. Some Congressmen have pursued this course conscientiously, but I fear many have not. Therefore it should be understood that there is nothing whatsoever which under the law can free a Congressman from these responsibilities. And when a common fellow is dismissed from West Point the name of the man who selected one notoriously unfit should be published. If these rules were adopted you would not find many self-mutilators or liars.

“If these be the duties of Congressmen, how careful must the Academic Board be not to place the standard for admission beyond the reach of the young man who would be deemed in his district best fitted for college.

“And now, agreeing with you in the spirit of your paper and expressing as I have, possibly in too strong a manner, the feelings that have arisen when I have heard West Point discussed during the past eight years, I turn to another question which will, I hope, call for earnest consideration from the Academic Board.

“Nothing can be more important to the young candidate than the old-fashioned oral examination made in a public way by kind-hearted, intelligent professors, who seek solely the good of the Academy, and are above dwelling in a pedantic manner upon technicalities which do not affect the general capacity and knowledge of the young man. You may answer that we conduct our examinations in this college through written matter. Yes, but I have a thousand young men to examine in seven subjects, and it is not in my power to require the oral examination, whose loss I deplore. The best of heart and the best of headwork is lost to me. The examination of the eight hundred students for advancement is required by law to be oral whenever possible.

“I think I have been sufficiently explicit, but I sincerely regret that, writing at the last moment and under pressure, I am prevented from sending you a better digested document. I have expressed, however, the results of a long experience. If cadets could be

chosen by such able men as Mr. Hewitt, West Point would not suffer. But if some of the other members do not profit by his example in spirit and in deed, the Academic Board at West Point will continue to be antagonistic to the best interests of many members of Congress.

“Therefore I say, finally, let us all know that you do not require a young man to know too much to enter West Point. Then let the members of Congress read the law in a proper spirit and correspond to its provisions.

“I remain truly yours,

“ALEX. S. WEBB.

“NEW YORK, June 1, 1883.”

I now repeat that I am under obligations to Professor Andrews for the kind terms in which he has mentioned me, and, as an officer of this Institution, I thank him for reading his paper. I have no doubt that the Army will receive it with interest, and that the proper authorities will in due time pass impartially and wisely on the subject under discussion.

Mr. Chairman, I move a vote of thanks to Professor Andrews.

JUDGE ADVOCATE GARDNER—I move, Mr. President, as an amendment to the resolution, the addition of these words, viz.: “and that a copy be requested for the archives of this Institution.”

The amendment was accepted by General Fry.

ARTICLE XI.

The Militia.*

There are many indications of a deep-seated purpose to have the country derive permanent advantage from the military lessons of the War of the Rebellion while the principal actors in the great struggle are spared to us as teachers. The able paper to which we have just listened adds to the proofs that there is a widespread feeling in favor of doing something more than has yet been done to promote the military interests of the country. It is in response to that feeling that this Institution exists. The question is, upon what should the friends of progress concentrate their efforts? I feel that I shall be in a small minority when, dissenting from the paper of the illustrious General of the Army, I answer, *not upon the Militia*.

General Sherman (as I understand him) says all parties agree that it is the settled policy of our Government to maintain the smallest kind of a Regular Army as a school of instruction; that in case of war the armies which Congress is empowered to raise and support must be supplemented by the militia; that the militia is the physical force on which the Chief Magistrate of the nation must mainly depend; that it is our duty as soldiers and citizens to aid as far as we may to mould the militia into a form in which it may

* Remarks by General Fry upon a paper on "The Militia," read by General Sherman before the Military Service Institution.

be made valuable when called into active service ; and he advocates a bill, now before Congress, for reorganizing and making an appropriation for the militia. With due deference to the high source from which these views emanate, I venture to express dissent from some of them. I do not underestimate the value of military organization and instruction among the people, for it is to the people the Government must go in one way or another for its defence and support. But the trouble, as I see it, is that the General Government can accomplish no appreciable good under its power to provide for organizing and disciplining the militia. Militiamen are not "troops," or "soldiers"; they are armed civilians, the arms-bearing citizens of the various States. They constitute a *State* force of which the Governor is commander-in-chief. The character of this force is not changed by the fact that it may for a limited time, and for specified purposes, be placed on detached service under the President of the United States. The Constitution clearly separates and distinguishes the militia from the "armies" of the United States. It says: Congress shall have power, 1st, to provide and maintain a navy ; 2d, to raise and support armies ; and 3d, to provide for calling forth the militia. If General Sherman is correctly reported, he said in a letter to Governor Long of Massachusetts, in 1880, he was "more than willing that the organized militia and volunteers of the country shall be considered as a part of the Army of the United States." I am unable to perceive how the militia can be considered a part of the Army, or how any one of the three species of force which the General Government is authorized by the

Constitution to use, can be considered part of either of the other two.

The power given to Congress by the Constitution to provide for organizing and disciplining the militia, is in fact a nullity, because the militia is composed of the arms-bearing citizens of the States, and the Constitution reserves to the States the right to appoint the officers and train the militia, and the Governor of the State is the militia's commander-in-chief. It is not practicable for the General Government to control the militia, even so far as to establish uniformity throughout the different States. If uniformity were attempted in earnest, the General Government would be compelled to set up a standard and then seek conformity to it by force of law. It will no doubt be admitted without argument that forcible process is not practicable if it were constitutional ; so that the question is narrowed to the simple inquiry, should the General Government set up a standard of proficiency for the militia of all the States and make itself responsible for securing conformity to that standard by persuasion—by offering inducements or rewards? Such a course suggests several grave questions. Congress has the right to appropriate money for *arming* the militia, but its right to appropriate prize-money to induce militia-men to improve in the profession of arms may well be questioned. If the General Government fixed a standard, and sought conformity to it in any way, even through temptation to share in appropriations, it would necessarily incur responsibility which might lead to annoyances and even serious complications. It may fairly be held that the military purposes for

which Congress should appropriate money (except as specifically provided for in the matter of arming the militia) must be found under its constitutional power to raise and support armies, which is wholly separate and distinct from its power to call forth the militia and from its nominal power to provide for organizing and disciplining the militia.

The only purposes for which the General Government can call forth the militia are, first, "to execute the laws of the Union"; second, "to suppress insurrections, etc."; and third, "*to repel invasion.*" Although offensive warfare as a necessary part of repelling invasion might be carried on to a limited extent by militia, the General Government has no constitutional power to call forth the militia *for the purpose* of invasion, or for any other purpose than one of the three named.

In view of the foregoing facts, and others which I have not time to mention, I see no reason to believe that the military interests of the country can be improved materially by any effort of the General Government to do more under its power to provide for organizing and disciplining the militia than it has heretofore done. All of importance that can be done toward organizing, disciplining, and instructing the militia, must, it seems to me, be done by the States.

It is well to bear in mind that although the militia has been severely let alone by the General Government, the subject of its improvement has been under discussion ever since the Government was founded. On the 21st of January, 1790, President Washington submitted to Congress an elaborate report from his

Secretary of War, General Knox, upon a well-organized militia, and a plan for securing it. General Knox said: "An energetic militia is to be regarded as the *capital security* of a free republic, and not a standing army forming a distinct class of the community;" but he admitted the impracticability of "disciplining at once the mass of the people," and added: "All discussions on the subject of a powerful militia will result in one or the other of the following principles: *First*, either efficient institutions must be established for the military education of the youth, and that the knowledge acquired therein shall be diffused throughout the community by the means of rotation; or, *secondly*, that the militia must be formed of substitutes, after the manner of the militia of Great Britain." In 1792 the existing militia law was passed.

In 1803 a committee reported to the House that "after full investigation" they were of opinion that the law of May 8, 1792, "embraceth all the objects of a militia institution delegated to Congress"; and they added: "the principles of that law lay the foundations of a militia system on the broad basis prescribed by the Constitution, and are well calculated to insure a complete national defence *if carried into effect by the State governments* agreeably to the power reserved to the States respectively by the Constitution; and therefore ought not to be altered"; and the committee recommended that the President "be requested to write to the Executive of each State," urging the importance of vigorous exertions by the State governments.

In 1806, a committee reported at length to the

House, and closed by saying, "that it is inexpedient to adopt measures for the classification or new organization of the militia."

In 1809 another committee reported to the House, "that having carefully examined the subject referred to them, they are of opinion that it would not be proper, at this time, to make any alteration in the militia system of the United States."

In 1810 a committee reported to the Senate: "If the States are anxious for an effective militia, to them belongs the power, and to them belong the means of rendering the militia our bulwark in war and our safeguard in peace; and as the committee are willing to hope that the States will not be unmindful of the great duty of providing for the national safety by a well-ordered and effective militia, and as the committee are unwilling to declare any powers to Congress not expressly given by the Constitution, nor necessarily incident to the powers delegated, they submit the following resolution, viz.: *Resolved*, That the committee be discharged from further consideration of this subject."

The House also considered the subject in 1810, so far as to collect information upon it. It was in response to an inquiry from Mr. Tallmadge, of the House, at that session, that General Huntington, of Connecticut, who was an officer in the Revolution, a Brigadier-General in the Provisional Army of 1798-99, and twice a member of Congress, said: "I have never seen any system proposed in which I have confidence; nor do I believe any system *commensurate to the object* will ever be adopted by the Government, or, if adopted,

be submitted to by the sovereign people. . . . Let the Government proceed to regulate the militia to the utmost length their masters, the sovereign people, will bear; it will be just so far as to make them food for powder in the day of battle; and death, or what is worse, loss of honor, must be expected by every officer of spirit connected with them."

In 1816 the Secretary of War communicated to the House a plan for organizing and disciplining the militia.

In 1817 Mr. Harrison reported to the House upon the two points: "*First*, Is it desirable that the whole male population of the United States, of the proper age, should be trained to the use of arms, so as to supersede under any circumstances the necessity of a standing army?" "*Second*, Is it practicable?" Upon these inquiries an able and elaborate report was made. The conclusions were that "the liberties of America must be preserved as they were won, by the arms, the discipline, and the valor of her freeborn sons"; that "nothing can be more dangerous in such a government than to have a knowledge of the military art confined to a part of the people, for sooner or later that part will govern"; that "there can scarcely be a restraint more vexatious and disgusting to a grown man than the initiatory lessons of the military art"; that "to this cause is to be attributed the little progress that has been made in training the militia of the United States"; and that there is "no prospect that any change of system could, with regard to the present militia, produce the result at which we aim." Hence the committee concluded that to establish a

sound military system we must begin on the youth of the country; and that we ought "to devise a system of military instruction which shall be engrafted on and form part of the ordinary education of our youth, extended without exception to every individual of the proper age—not in distant schools established for the purpose, but that it should form a branch of education in every school within the United States."

In 1819 Mr. Harrison made to the House another full report upon the subject.

In 1822 the Committee on Ways and Means reported to the House: "It is not expedient at this time to increase the annual appropriation for arming the militia."

In 1826 the Secretary of War, James Barbour, made an earnest effort in relation to the militia. He addressed a circular-letter to Governors of States and other prominent persons for their views. He adopted it as an unquestionable political maxim, that "a well-organized and well-disciplined militia is the natural defence of a free people"; and added: "I am anxious to see a system adopted by the National Legislature which will realize the hopes of us all in reference to this great arm of national defence." The many and elaborate replies he received presented various phases of the subject. No better authority responded than Timothy Pickering, who served with the Massachusetts militia in 1775, was a member of the Continental Board of War, Quartermaster-General in 1780, Postmaster-General in 1791, Secretary of War, January, 1795; Secretary of State, December, 1795; United States Senator in 1803, and member of the United

States House of Representatives in 1813. He said: "The opinion that a well-organized and well-disciplined militia is the natural defence of a free people is entitled to the character given to it by the Secretary, that of a maxim, but surely the experience of the people of the United States will not authorize the conclusion; because a well-disciplined militia comprehending the active mass of able-bodied men never had, and, I do not hesitate to say, never will have, an existence in our country." "If," added Pickering, "the worse than useless project of training the whole body of the militia be abandoned, some encouragement would be requisite to induce men to join select *volunteers*."

General E. P. Gaines also took hold of the subject in 1826, and made a long report upon it; and in 1829 it was again fully reported upon in the House. A bill was offered, and some new points made in its support. It was boldly asserted that "the object of an organization of the militia of the United States should be to *make every individual* thereof liable to enrolment,—a *citizen-soldier*, and to give to the whole the *character and efficiency of an army*." "To accomplish this great object," it was asserted, "liberal disbursements must be made from the Treasury of the United States"; and the Government was openly charged with "a disastrous and withering parsimony" toward the militia; and then, somewhat as now, the surplus in the United States Treasury was urged as a reason for a government appropriation for the militia. The committee said: "Already have propositions, novel and experimental in their character, to dispose of an antici-

pated burdensome surplus in the Treasury of the United States, been presented to Congress for consideration. If such anticipations are well founded, the claim of the militia of the United States to a liberal share of such surplus is irresistible," and the committee offered a bill. But notwithstanding all these efforts, including the last one mentioned, to deplete a plethoric treasury, the General Government could not be led into legislating for the militia of the States further than making the usual appropriation for arms.

States also, and their militia officers, petitioned Congress from time to time without effect. It is not necessary to refer specially to the efforts of later times. It seems to be a crystallized conviction, and I think a sound one, that it is neither constitutional nor practicable for the General Government to make a reliable military force of the militia; and that the General Government ought not to make appropriations directly for militia purposes, otherwise than providing arms.

The second article of Amendments to the Constitution says: "A well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed." The right secured to our people by this article is a precious one; and eminent jurists, statesmen, and soldiers have reaffirmed the assumption or maxim upon which it is predicated, to wit: that a well-regulated militia is necessary to the security of a free State; but, as Pickering said in 1810, there is nothing in our experience to confirm it. No one will maintain that we have ever had a well-regulated militia, or any thing approaching it, and we are farther from it to-day than

we ever were. Yet we have had both foreign and domestic wars and we are still free.

In a letter to Congress Washington said: "If called upon to declare upon oath whether the militia have been most serviceable or hurtful on the whole, I should subscribe to the latter"; and Pickering said it had "never done any good to the country except in the single affair of Bunker Hill."

The bad behavior of the militia in the War of 1812—including its refusal to cross the Canada frontier—is a matter of history.

The conclusion is, that instead of depending upon a well-regulated militia, our liberties depend, primarily, upon the character, spirit, and intelligence of our people, and secondarily, upon a wise exercise of the constitutional power of Congress to raise and support armies.

In the letter from Washington already cited he says: "The jealousy of a standing army and the evils to be apprehended from one are remote, and, in my judgment, situated and circumstanced as we are, not at all to be dreaded."

But, Mr. President, the real proposition before us is not to improve and enforce the so-called "well-regulated militia" system of the Constitution, but to abandon it.

As I have shown, I do not expect the General Government to derive much benefit from that system, but I dissent from the grounds upon which it is proposed to abandon it. The proposition is that the General Government shall appropriate money directly for the aid or encouragement of certain volunteer military

organizations, of which the so-called National Guard of the State of New York is a good, if not the best, example. This force is in fact a State army, though as it marches under the militia flag I do not assert that it is in violation of the Constitution, which says: "No State shall, without the consent of Congress . . . keep troops or ships of war in time of peace." Certainly the National Guard of New York is an excellent military force. I look with respect and admiration upon the devotion of its members to the unselfish and noble task of preparing themselves for affording military protection to the very fellow-citizens who are their competitors in civil life, and who profit by the time these National Guardsmen take from their regular pursuits, and for the general welfare devote to improvement in the profession of arms. I repeat, I respect and admire the purposes and zeal of these citizen-soldiers. But we are considering the public question, whether upon the facts in the case, the General Government ought to appropriate money for their assistance, under its constitutional power to provide for organizing and disciplining the militia. I think not. Certainly not, if a well-regulated militia such as our forefathers meant, and our Constitution and laws contemplate, is necessary to our security; for this National Guard is a *substitute* for the militia—an evasion of the militia laws, or rather the State's apology for not enforcing the militia laws upon *all* able-bodied male citizens between eighteen and forty-five years of age. If the General Government should recognize and aid this special State force it would to the extent of that recognition and aid oppose the enforcement of

the militia system, and substitute for it a system of standing armies, for the States; and it would be building up these State standing armies under cover of the very militia system which their existence would destroy. The militia is in service by law; it is a compulsory force. These National Guardsmen enlist voluntarily, but they receive all there is in the militia laws of the United States, and of the State, to further their military purposes. They are enlisted, organized, uniformed, equipped, drilled, instructed, and disciplined as soldiers. "Nothing," said Mr. Harrison, in his report to the U. S. House of Representatives in 1816, "can be more dangerous in such a government than to have a knowledge of the military art confined to a part of the people; for sooner or later that part will govern." I do not share Mr. Harrison's apprehensions, but this National Guard is the "part of the people" to which all or nearly all knowledge of the military art under control of the various States is confined; and to this restriction of military knowledge it is proposed the General Government shall give direct aid and encouragement by an appropriation of money. It is not to be supposed that the liberties of the people of this country will ever be in jeopardy from either the Army of the United States, or from these armies of the respective States; but it may be asserted with safety that the danger is no more remote from one of these forces than from the other; and of the two, the General Government had better devote its money to the development and support of the former. Without dwelling longer upon this point, I may say it seems to me there are weighty objections to the General Gov-

ernment appropriating money directly for these special State forces, as well as to appropriations for the militia of the laws. It is beyond dispute that such State armies as the National Guard of New York are valuable military bodies, whose services may be needed at any moment. Promoting their military efficiency, however, is a matter that rests with the States who create and control these substitutes for the militia, not with the General Government. As U. S. Senator Smith reported in 1810: "If the States are anxious for an effective militia, to them belongs the power, and to them belong the means of rendering the militia truly our bulwark in war and our safeguard in peace."

But notwithstanding the duty of the States, it cannot be denied that our military defence rests largely and directly upon the General Government; and if that Government is not to create, maintain, or encourage "the militia," or its substitute the National Guard, by direct appropriations, through what channels shall it proceed to meet the responsibility it is under? The answer seems to be, through its constitutional powers to provide and maintain a navy, and to raise and support armies, and make rules for their government and regulation. This includes the power to enlist and to draft the men, appoint the officers, and to organize, discipline, educate, feed, clothe, equip, transport, and pay the forces. The right of the General Government to promote military education through the exercise of its power to raise and support armies, is limited only by the will of the people as expressed through Congress. That, no doubt, was the view taken by the committee which reported to the U. S. House of Rep-

representatives in 1817, that we ought "to devise a system of military instruction which shall be engrafted on and form part of the ordinary education of our youth," and under which officers of the Army are now detailed for service at a number of the schools and colleges of the country. I have no doubt that more can be done in that way for the military interests of the country, than can be accomplished by any effort of the General Government to force or coax grown men to submit to militia training.

In addition to these schools for youth, much can be accomplished through the military schools established and maintained under the power to raise and support armies. The Military Academy at West Point, the Engineer School at Willet's Point, the Artillery School at Fort Monroe, the Infantry School at Fort Leavenworth, the Cavalry School which the Lieutenant-General Commanding the Army proposes for Fort Riley, and this Military Service Institution (composed of twelve hundred officers and ex-officers of the Regular Army) laboring to preserve the true military spirit and to disseminate military information, can all be developed and enlarged to any extent that Congress may deem necessary in providing military instruction for the security of the country. Furthermore, military geographical departments, and military stations, especially the permanent posts occupied by the artillery near our seaboard cities, can—under the power to raise and support armies—be made practical fields and schools for all the volunteer forces that care to gather together in and around them for military exercise and instruction. In all these cases the General

Government would have full control and responsibility. And finally, as the essential basis of its military system, the General Government should—as it has always shown itself willing to do—support a standing army large enough to give full development to the various arms of Service, to keep pace with the progress of the military profession throughout the world, especially in matters pertaining to the staff, and the manufacture of and improvements in weapons and projectiles of war.

I venture the assertion that no thinking citizen of the republic, when he recalls the behavior of our Regular Army since the formation of the Government, and particularly at the close of the Rebellion and during the period of reconstruction, really feels afraid that the liberties of the people will ever be endangered by it. If we ever lose our freedom it will be from the corruption of the people, from loss of manliness, from adopting the creed that “the wealth of nations consists, not in national virtues and primitive simplicity, but in silk and cotton and something they call capital”; and not from the Regular Army. The truth is, the opposition to our Regular Army is in reality based on economy, or parsimony if you please. No one who studies the subject can fail to see, that just in the proportion that a body politic becomes devoted to peaceable pursuits, is the necessity developed for setting apart a portion of the community for special military training and service.

In case of war, I regard it as inevitable that, instead of depending upon the militia, the General Government, under its power to raise and support armies, will call

volunteers into its own service, and if necessary, enroll and draft the "national forces" as it did by the so-called Enrolment Act of March 3, 1863. In New York that Act was held to be unconstitutional upon the ground that it attempted to create a national militia; but, on the other hand, in Pennsylvania it was held to be constitutional; and it is now recognized as a constitutional exercise of the power to raise and support armies. If the national forces are called for directly by the General Government they are quite sure to come; whereas, calls for State militia may be refused as they were in 1812 and in 1861. Upon the latter occasion some Governors not only refused but defied the National Executive; upon the former, the Governors of Massachusetts, Connecticut, and Rhode Island refused to furnish the militia called for by the President under the Act of April 10, 1812, and the Governor of the first named State took the broad ground that "the commanders-in-chief of the militia of the several States have a right to determine whether any of the exigencies contemplated by the Constitution of the United States exist, so as to require them to place the militia, or any part of it, in the service of the United States, at the request of the President, to be commanded by him, pursuant to acts of Congress." In this view, the Governor was sustained by his council, and by Justices Parsons, Sewell, and Parker of the Supreme Court of the State. These Justices said: "As this power is not delegated to the United States by the Federal Constitution, nor prohibited by it to the States, it is reserved to the States respectively; and from the nature of the power, it must be exercised

by those with whom respectively is entrusted the chief command of the militia." This doctrine was disputed by Secretary of War James Monroe, in 1815; and in the case of *Martin v. Mott*, the U. S. Supreme Court squarely overruled it, saying: "We are all of opinion that the authority to decide whether the exigency has arisen belongs exclusively to the President; and that his decision is conclusive upon all other persons." But notwithstanding the clearness and soundness of the Supreme Court's decision upon the principle, the *power* to decide whether the militia *as such* shall be called out and put under the President, rests *practically* with the Governors. If they, dissenting from the President's views as to the exigency, refuse his call, there is no process provided by which he can secure the services of *the militia* with any certainty, even though he appeal directly to militia officers subordinate to the Governor. Hence the necessity under the power to raise and support armies for accepting United States volunteers, and for enrolling and drafting the "national forces."

I am not unmindful of the fact that the elements which make up the "national forces" are essentially the same as those which constitute the militia of the States; and that whether these elements are to respond to our necessities as national forces, or State militia, it is equally to the interest of the country that they receive beforehand all the military instruction practicable. The point I desire to make here is that, taking all things into consideration, the least dispute as to constitutional power and public expediency will arise, and the best results will be attained, if the General

Government directs its efforts to secure that instruction through its ample power to raise and support armies, and not through its nominal power to provide for organizing and disciplining the militia of the States, leaving the States to work upon their citizens as militia.

PART II.

ARTICLE I.

Abraham Lincoln.*

Although I do not remember to have seen Lincoln until the day of his first inauguration as President, I knew him through my father. Pioneers from Kentucky to Illinois, they were friends from an early period. Lincoln was a private in the volunteer forces commanded by my father in the Black Hawk War of 1831-32. He was always a man of note among his associates, in the Indian campaign as well as in subsequent political campaigns, especially in the contest with Douglas for the United States Senate. My father was an ardent personal and political friend of Douglas, and in his circle it was looked upon as presumptuous and ridiculous for Abe Lincoln to compete with the "Little Giant" for the Senate of the United States.

The contest proved that the so-called rail-splitter was the real giant, and led to his selection for the head of the new party at Chicago in the summer of 1860, and to his election to the Presidency in the following autumn. Lincoln and his Illinois competitor,

* "Reminiscences of Abraham Lincoln," Edited by Allan Thorndike Rice.

Stephen A. Douglas, formed a striking contrast. Douglas was low in stature, rotund in figure, with a short neck, a big bullet-head, and a chubby face. His lips were forced into the fixed smile characteristic of the popular and well-satisfied public man of a period when political success depended largely upon what a man said, how he said it, and how he appeared in personal intercourse with the people; and not, as now, much upon what newspapers say of him and for him.

Lincoln was tall and thin; his long bones were united by large joints, and he had a long neck and an angular face and head. Many likenesses represent his face well enough, but none that I have ever seen do justice to the awkwardness and ungainliness of his figure. His feet, hanging loosely to his ankles, were prominent objects; but his hands were more conspicuous even than his feet—due perhaps to the fact that ceremony at times compelled him to clothe them in white kid gloves, which always fitted loosely. Both in the height of conversation and in the depth of reflection his hand now and then ran over or supported his head, giving his hair habitually a disordered aspect. I never saw him when he appeared to me otherwise than a great man, and a very ugly one. His expression in repose was sad and dull; but his ever-recurring humor, at short intervals, flashed forth with the brilliancy of an electric light. I observed but two well-defined expressions in his countenance; one, that of a pure, thoughtful, honest man, absorbed by a sense of duty and responsibility: the other, that of a humorist so full of fun that he could not keep it

all in. His power of analysis was wonderful. He strengthened every case he stated, and no anecdote or joke ever lost force or effect from his telling. He invariably carried the listener with him to the very climax, and when that was reached in relating a humorous story, he laughed all over. His large mouth assumed an unexpected and comical shape, the skin on his nose gathered into wrinkles, and his small eyes, though partly closed, emitted infectious rays of fun. It was not only the aptness of his stories, but his way of telling them, and his own unfeigned enjoyment, that gave them zest, even among the gravest men and upon the most serious occasions.

Nevertheless, Lincoln—a good listener—was not a good conversationalist. When he talked, he told a story or argued a case. But it should be remembered that during the entire four years of his Presidency, from the spring of 1861 until his death in April, 1865, civil war prevailed. It bore heaviest upon him, and his mind was bent daily, hourly even, upon the weighty matters of his high office; so that, as he might have expressed it, he was either lifting with all his might at the butt-end of the log, or sitting upon it whittling, for rest and recreation.

Lincoln was as nearly master of himself as it is possible for a man clothed with great authority and engaged in the affairs of public life to become. He had no bad habits, and if he was not wholly free from the passions of human nature, it is quite certain that passion but rarely, if ever, governed his action. If he deviated from the straight course of justice, it was usually from indulgence for the minor faults or weak-

nesses of his fellow-men. I observed but one craving that he could not overcome: that was for a second term of the Presidency. He was fully conscious of the grip this desire had upon him, and once said in the way of apology for it:

“No man knows what *that gnawing* is till he has had it.”

During the spring of 1861 I was in charge of the appointment branch of the Adjutant-General's Department. Upon one occasion, when I was at the White House in the course of duty, the President, after disposing of the matter in hand, said:

“You are in charge of the Appointment Office. I have here a bushel-basketful of applications for offices in the Army. I have tried to examine them all, but they have increased so rapidly that I have got behind and may have neglected some. I will send them all to your office. Overhaul them, lay those that require further action before the Secretary of War, and file the others.”

The bushel-basketful came, and the papers were overhauled. They were dotted with notes, comments, and queries by the President. One slip of paper—which I handed back to the President with the remark that I supposed he would not care to have it placed upon the official files—bore a memorandum in his own handwriting as follows:

“On this day Mrs. —— called upon me. She is the wife of Major —— of the Regular Army. She wants her husband made a Brigadier-General. She is a saucy little woman, and I think she will torment me till I have to do it.—A. L.”

It was not long before that little woman's husband was appointed a Brigadier-General.

At a later date I heard a conversation between Lincoln and Stanton in relation to the selection of Brigadier-Generals. The many applications and recommendations were examined and discussed. Lincoln finally said :

“Well, Mr. Secretary, I concur in pretty much all you say. The only point I make is, that there has got to be something done that will be unquestionably in the interest of the Dutch, and to that end I want Schimmelfennig appointed.”

The Secretary replied :

“Mr. President, perhaps this Schimmel-what's-his-name is not as highly recommended as some other German officer.”

“No matter about that,” said Lincoln, “his name will make up for any difference there may be, and I'll take the risk of his coming out all right.”

Then, with a laugh, he repeated, dwelling upon each syllable of the name, and accenting the last one, “Schim-mel-fen-nig must be appointed.”

There is no purpose here to question General Schimmelfennig's merits. The only object is to show that Lincoln had reasons, in addition to Schimmelfennig's recommendations, for appointing him Brigadier-General.

After I became Provost-Marshal-General of the United States—March, 1863—the duty of enrolling and drafting the national forces required me to see a great deal of the President.

Once when I went into his office at the White

House, I found a private soldier making a complaint to him. It was a summer afternoon. Lincoln looked tired and careworn; but he was listening as patiently as he could to the grievances of the obscure member of the military force known as "Scott's nine hundred," then stationed in Washington. When I approached Lincoln's desk I heard him say:

"Well, my man, that may all be so, but you must go to your officers about it."

The man, however, presuming upon Lincoln's good-nature, and determined to make the most of his opportunity, persisted in re-telling his troubles and pleading for the President's interference. After listening to the same story two or three times as he gazed wearily through the south window of his office upon the broad Potomac in the distance, Lincoln turned upon the man, and said in a peremptory tone that ended the interview.

"Now, my man, go away, *go away!* I cannot meddle in your case. I could as easily bail out the Potomac River with a teaspoon as attend to all the details of the Army."

The following is a good example of Lincoln's clearness and force in stating a case. It relates to the vexed question that prevailed in 1864-65 concerning the quota of troops to be furnished by the States. The Legislature of Rhode Island sent a committee to Washington to confer with the President upon the subject of the number of men required from that State. The committee said in its report:

"The President at this point interrupted the committee to say that complaints from several States had

already been made to the same effect, and in one instance the subject had been earnestly pressed to his attention, and that he had personally taken the pains to examine for himself the formula which the Provost-Marshal-General had adopted for the calculation and distribution of the quotas for the different States, and had arrived at the conclusion that it was impossible for any candid mind to doubt or question its entire fairness. In order that your committee might be fully possessed of his opinion upon this subject, the President read the following paper, the original of which had been forwarded to his Excellency the Governor of the State of Vermont :

“ ‘ EXECUTIVE MANSION, }
WASHINGTON, *February*, 8, 1865. }

“ ‘ Complaint is made to me by Vermont that the assignment of her quota for the draft on the impending call is intrinsically unjust, and also in bad faith of the Government’s promise to fairly allow credits for men previously furnished.

“ ‘ To illustrate, a supposed case is stated as follows : Vermont and New Hampshire must between them furnish six thousand (6,000) men on the pending call ; and being equals, one must furnish as many as the other in the long-run. But the Government finds that on former calls Vermont furnished a surplus of five hundred (500), and New Hampshire a surplus of fifteen hundred (1,500). These two surpluses make 2,000, and added to the six thousand (6,000) make eight thousand (8,000) to be furnished by the two States ; or four thousand each, less fair credits. Then subtracting Vermont’s surplus of five hundred (500) from

her four thousand (4,000), leaves three thousand five hundred (3,500) as her quota on the pending call; and likewise subtracting New Hampshire's surplus of fifteen hundred (1,500) from her four thousand (4,000), leaves two thousand five hundred (2,500) as her quota on the pending call. These three thousand five hundred (3,500) and two thousand five hundred (2,500) make precisely the six thousand (6,000) which the supposed case requires from the two States; and it is just equal for Vermont to furnish one thousand (1,000) more *now* than New Hampshire, *because* New Hampshire has heretofore furnished (1,000) more than Vermont, which equalizes the burden of the two in the long run; and this proceeding, so far from being bad faith to Vermont, is indispensable to keeping good faith with New Hampshire. By no other process can the six thousand (6,000) men be obtained from the two States, and at the same time deal justly and keep faith with both; and we do but confuse ourselves in questioning the operation by which the right result is reached.

“The supposed case is perfect as an illustration.

“The pending call is not for three hundred thousand (300,000) men, subject to fair credits, but is for three hundred thousand (300,000) remaining after all fair credits have been deducted; and it is impossible to concede what Vermont asks without coming out short of the three hundred thousand (300,000) men, or making other localities pay for the partiality shown her. This upon the case stated. If there be different reasons for making an allowance to Vermont, let them be presented and considered.

(Signed)

“A. LINCOLN.”

This statement of the case by Lincoln was a conclusive answer to both Vermont and Rhode Island.

A story has long been current that Lincoln sent an applicant for office with a note to the Secretary of War, directing that a letter of appointment be prepared for the man to the office he sought; that the applicant returned to the President and announced that Stanton refused to obey the order; that the President looked disappointed, but merely expressed his regret at the result, and remarked that he had not much influence with the administration. The anecdote has generally been interpreted as meaning that Lincoln could not control Stanton. The inference is erroneous. Lincoln, so far as I could discover, was in every respect the actual head of the administration, and whenever he chose to do so he controlled Stanton as well as all the other Cabinet ministers.

I will cite one instance in relation to Stanton.

After compulsory military service was resorted to, States and districts tried to fill their quotas, and save their own citizens from being drafted into the Army, by voting bounties to buy men wherever they could be found. The agent appointed by a county in one of the Middle States, and supplied with bounty money, learned that some Confederate prisoners of war at Chicago were about to be released and enlisted in our army for service against the Indians in the Northwest. The thrifty thought occurred to the agent to pay these prisoners a bounty for what they were going to do without any pay at all, and in return for this payment have them credited as soldiers furnished by his county. Being an acquaintance of Lincoln, the agent obtained

from him an order to have the men credited as desired. But the Secretary of War refused to have the credits allowed. Indignant and disappointed, the agent returned to the President, who reiterated the order, but without effect. Then Lincoln went in person to Stanton's office, and I was called there by the latter to state the facts in the case.

I reported to the two high officials, as I had previously done to the Secretary alone, that these men already belonged to the United States, being prisoners of war; that they could not be used against the Confederates; that they had no relation whatever to the county to which it was proposed they should be credited; that all that was necessary toward enlisting them in our army for Indian service was the Government's release of them as prisoners of war; that to give them bounty and credit them to a county which owed some of its own men for service against the Confederates would waste money and deprive the army operating against a powerful enemy of that number of men, etc.

Stanton said :

"Now, Mr. President, those are the facts, and you must see that your order cannot be executed."

Lincoln sat upon a sofa with his legs crossed, and did not say a word until the Secretary's last remark. Then he said in a somewhat positive tone: "Mr. Secretary, I reckon you'll have to execute the order."

Stanton replied with asperity:

"Mr. President, I cannot do it. The order is an improper one, and I cannot execute it."

Lincoln fixed his eye upon Stanton, and in a firm

voice, and with an accent that clearly showed his determination, he said :

“Mr. Secretary, it will have to be done.”

Stanton then realized that he was overmatched. He had made a square issue with the President and been defeated, notwithstanding the fact that he was in the right. Upon an intimation from him I withdrew and did not witness his surrender. A few minutes after I reached my office I received instructions from the Secretary to carry out the President's order. Stanton never mentioned the subject to me afterward, nor did I ever ascertain the special, and no doubt sufficient, reasons which the President had for his action in the case.

The vexatious duties of the General Government concerning the draft made demands upon Lincoln's ability not only in deciding important questions, but in avoiding decisions when it was not best to risk a rupture with State officials by rendering them. Upon one occasion the Governor of a State came to my office bristling with complaints in relation to the number of troops required from his State, the details for drafting the men, and the plan of compulsory service in general. I found it impossible to satisfy his demands, and accompanied him to the Secretary of War's office, whence, after a stormy interview with Stanton, he went alone to press his ultimatum upon the highest authority. After I had waited anxiously for some hours, expecting important orders or decisions from the President, or at least a summons to the White House for explanation, the Governor returned, and said with a pleasant smile that he was

going home by the next train, and merely dropped in *en route* to say good-by. Neither the business he came upon nor his interview with the President was alluded to.

As soon as I could see Lincoln, I said :

“Mr. President, I am very anxious to learn how you disposed of Governor —. He went to your office from the War Department in a towering rage. I suppose you found it necessary to make large concessions to him, as he returned from you entirely satisfied.”

“Oh, no,” he replied, “I did not concede anything. You know how that Illinois farmer managed the big log that lay in the middle of his field! To the inquiries of his neighbors one Sunday, he announced that he had got rid of the big log. ‘Got rid of it!’ said they; ‘how did you do it? It was too big to haul out, too knotty to split, and too wet and soggy to burn; what did you do?’ ‘Well, now, boys,’ replied the farmer, ‘if you won’t divulge the secret, I’ll tell you how I got rid of it—*I ploughed around it.*’ Now,” said Lincoln, “don’t tell anybody, but that’s the way I got rid of Governor —. *I ploughed around him*, but it took me three mortal hours to do it, and I was afraid every minute he’d see what I was at.”

Lincoln was a good judge of men, and quickly learned the peculiar traits of character in those he had to deal with.

I recall an anecdote by which he pointed out a marked trait in one of our Northern Governors. This Governor was earnest, able and untiring in keeping up the war spirit in his State, and in raising and equipping troops; but he always wanted his own

way, and illy brooked the restraints imposed by the necessity of conforming to a general system. Though devoted to the cause, he was at times overbearing and exacting in his intercourse with the General Government. Upon one occasion he complained and protested more bitterly than usual, and warned those in authority that the execution of their orders in his State would be beset by difficulties and dangers. The tone of his dispatches gave rise to an apprehension that he might not co-operate fully in the enterprise in hand. The Secretary of War, therefore, laid the dispatches before the President for advice or instructions. They did not disturb Lincoln in the least. In fact, they rather amused him. After reading all the papers, he said in a cheerful and reassuring tone :

“Never mind, never mind ; those dispatches don't mean anything. Just go right ahead. The Governor is like a boy I saw once at a launching. When everything was ready they picked out a boy and sent him under the ship to knock away the trigger and let her go. At the critical moment everything depended on the boy. He had to do the job well by a direct, vigorous blow, and then lie flat and keep still while the ship slid over him. The boy did everything right, but he yelled as if he was being murdered from the time he got under the keel until he got out. I thought the hide was all scraped off his back ; but he wasn't hurt at all. The master of the yard told me that this boy was always chosen for that job, that he did his work well, that he never had been hurt, but that he always squealed in that way. That's just the way with Governor ——. Make up your minds that

he is not hurt, and that he is doing the work right, and pay no attention to his squealing. He only wants to make you understand how hard his task is, and that he is on hand performing it."

Time proved that the President's estimate of the Governor was correct.

Lincoln watched the operations of the armies in the field with the deepest interest, the keenest insight, and the widest comprehension. The congratulatory order which General Meade published to his troops after the battle of Gettysburg was telegraphed to the War Department. During those days and nights of anxiety, Lincoln clung to the War Office, and devoured every scrap of news as it came over the telegraph wires. He hoped for and expected substantial fruits from our dearly bought victory at Gettysburg. I saw him read General Meade's congratulatory order. When he came to the sentence about "driving the invaders from our soil," an expression of disappointment settled upon his face, his hands dropped upon his knees, and in tones of anguish he exclaimed, "*Drive the invaders from our soil! My God! Is that all?*"

I was designated by the Secretary of War as a sort of special escort to accompany the President from Washington to Gettysburg upon the occasion of the first anniversary of the battle at that place. At the appointed time I went to the White House, where I found the President's carriage at the door to take him to the station; but he was not ready. When he appeared it was rather late, and I remarked that he had no time to lose in going to the train. "Well," said he, "I feel about that as the convict in one of our Illinois

towns felt when he was going to the gallows. As he passed along the road in custody of the sheriff, the people, eager to see the execution, kept crowding and pushing past him. At last he called out: 'Boys, you needn't be in such a hurry to get ahead, *there won't be any fun till I get there.*' "

It has been said, I believe, that Lincoln wrote in the car *en route* to Gettysburg the celebrated speech which he delivered upon that historic battle-ground. I am quite sure that is an error. I have no recollection of seeing him writing or even reading his speech during the journey. In fact, there was hardly any opportunity for him to read or write.

In April, 1865, I was sent with the government excursion from Washington to Charleston to take part in the ceremony of raising over Fort Sumter the flag that had been lowered there in April, 1861. When I reported to Stanton upon my return, he gave me a detailed account of the awful tragedy which had been enacted in the national capital during our absence. He said that he had never felt so sensible of his deep affection for Lincoln as he did during their final interview. At last they could see the end of bloody, fratricidal war. Peace was dawning upon their beloved country. "Well done, good and faithful servants!" was upon the lips of the nation. As they exchanged congratulations, Lincoln, from his greater height, dropped his long arm upon Stanton's shoulders, and a hearty embrace terminated their rejoicings over the close of the mighty struggle. Stanton went home happy. That night Lincoln was assassinated, and a black pall covered the land.

ARTICLE II.

An Acquaintance with Grant.*

One afternoon in June, 1843, while I was at West Point, a candidate for admission to the Military Academy, I wandered into the riding hall, where the members of the graduating class were going through their final mounted exercises before Major Richard Delafield, the distinguished engineer, then superintendent, the Academic Board, and a large assemblage of spectators. When the regular services were completed, the class, still mounted, was formed in line through the centre of the hall, the riding-master placed the leaping-bar higher than a man's head, and called out "*Cadet Grant!*" A clean-faced, slender, blue-eyed young fellow, weighing about 120 pounds, dashed from the ranks on a powerfully built chestnut-sorrel horse, and galloped down the opposite side of the hall. As he turned at the farther end and came into the straight stretch across which the bar was placed, the horse increased his pace, and, measuring his strides for the great leap before him, bounded into the air and cleared the bar, carrying his rider as if man and beast had been welded together. The spectators were breathless! "*Very well done, sir!*" growled "old Hershberger," the riding-master, and the class was dismissed and disappeared; but "*Cadet Grant*" remained a living image in my memory.

* *North American Review*, December, 1885.

A few months before graduation, one of Grant's classmates, James A. Hardie, said to his friend and instructor, "Well, sir, if a great emergency arises in this country during our lifetime, Sam. Grant will be the man to meet it."* If I had heard Hardie's prediction I doubt not I should have believed in it, for I thought the young man who could perform the feat of horsemanship I had witnessed, and wore a sword, could do anything.

I was in General Grant's room in New York City on the 25th of May, 1885. Forty years had elapsed since Hardie's prediction was made, and it had been amply fulfilled. But, alas! the hand of death was upon the hero of it. Though brave and cheerful, he was almost voiceless. Before him were sheets of his forthcoming book, and a few artist's proofs of a steel engraving of himself made from a daguerreotype taken soon after his graduation. He wrote my name and his own upon one of the engravings and handed it to me. I said, "General, this looks as you did the first time I ever saw you. It was when you made the great jump in the riding exercises of your graduation." "Yes," he whispered, "I remember that very well. York was a wonderful horse. I could feel him gathering under me for the effort as he approached the bar. Have you heard anything lately of Hershberger?" I replied, "No, I never heard of him after he left West Point years ago." "Oh," said the General, "I have

* In the summer of 1845, only two years after Grant's graduation, his class-mate and room-mate, George Deshon, now a Catholic priest in New York City, said at West Point, in presence of Professor Kendrick and Mr. Stebbins of Springfield, Mass., that Grant would some day prove to the Academic Board that he was the strongest man in his class.

heard of him since the war. He was in Carlisle, old and poor, and I sent him a check for fifty dollars." This early friendship had lived for forty years, and the old master was enabled to say near the close of his pupil's career, as he had said at the beginning of it, "Very well done, sir!"

During the period of Grant's official authority, I saw but little of him. I was not one of the so-called "Grant men" of the Army. It was not until we were near neighbors in New York City, in 1881-85, that I became well acquainted with him. At that time he was out of office, and the third term movement to restore him to the Presidency had failed. My acquaintance began with the cadet. It matured with the General, and was not disturbed by partiality or interest. Grant was always free from arrogance of office, but in the little I had seen of him, prior to 1881, I had not been able to get through the crust of his natural reserve or diffidence, and I was behind those who knew him well, in my estimate of his character and ability. By constant and free personal relations with him for the last three or four years of his life, and a fuller study of his career, I caught up and perceived the soundness of the exalted public judgment of this remarkable man.

It may be said, without detracting from his merits, that perhaps a knowledge of his many good and great deeds has tended to make it somewhat the fashion, since Grant's death, to try and lift him above all the imperfections of men. The sounder view is that he was not free from human frailties, but was great in spite of them. He was what military men call "un-

soldierly" in feeling, bearing, and appearance; yet he was a great General, and the most essential trait of soldiership, obedience, was next to a religion with him. He knew the value of discipline in an army, but he had neither taste nor aptitude for establishing or enforcing it, and instinctively relied more upon *the man* than upon *the soldier*. He loved and cherished his army associations above all others, but did not like the profession of arms. In an interview with him last winter, I alluded to his lack of fondness for purely military affairs, whereupon he selected a sheet from the proofs which lay before him, and as evidence of his taste, pointed to a statement therein, to the effect that soon after he entered the Army, 1843, he reviewed his West Point studies, in order to prepare himself for a professorship in some institution of learning and leave the military service.

In disposition, Grant was patient, kind, and considerate. In manner, he was natural, quiet, and unassuming, somewhat diffident, but not bashful or awkward. He had no readiness in showing off his acquirements; on the contrary, his acquirements did not appear until forced to the front, and then they showed him off without his knowing it. He was well educated, but it is probably true that the first impression he made upon strangers was that he was a plain man without elements of greatness. A closer acquaintance however, hardly ever failed to create firm belief in his extraordinary reserve power. While truth, courage, tenacity, and self-reliance were his ruling traits, he had but little pride of opinion. He did not hesitate in choosing the best course, no matter who proposed it;

and in military affairs he would execute a plan prescribed by higher authority with as much vigor and fidelity as if it had been his own. He did not trouble himself about the past or the future, but concentrated all his faculties upon the matter he was at the moment called upon by his duty to deal with.

Neither responsibility, nor turmoil, nor danger, nor pleasure, nor pain, impaired the force of his resolution, or interrupted the steady flow of his intellect. The war is full of illustrations of his bravery and determination of character, and of his self-reliance and self-possession under trying circumstances. History does not record a more heroic personal effort than the one he made in writing a book, when he was in agony and on the verge of the grave, to rescue his family from the misfortunes that had befallen them.

Grant possessed some humor, and occasionally told a story, but rarely indulged in figures of speech, and did not exaggerate or emphasize even for the purpose of illustration. If he had any imagination it was kept under by his habit of literal truth. He made no use of expletives and but little of adjectives. He would not have indulged in profane language even if he had possessed no religious scruples on the subject. Though he was not without temper and resentment, he was so patient and matter-of-fact, that he never felt inclined to *damn* things, as men, when sorely tried, sometimes do.

In congenial company he conversed with pleasure and fluency, but he felt no obligation to talk for the mere purpose of entertaining the persons in his presence. He spoke only because he had something to

tell. Having no regard for forms of expression, he never, in writing or speaking, turned sentences for effect, nor could he dissemble or use words to mislead. If he did not wish to express his thoughts he was silent, and left people to draw their own inferences.

He had unlimited faith in those whom he once took to his heart. His friendship was accompanied by the fullest confidence, and, when his choice was not wisely made, it served to facilitate and to shield evil practices, which it is the duty of that high sentiment to restrain; and thus Grant's friendship sometimes injured him who gave and him who received it. It was a principle with him never to abandon a comrade "under fire"; and a friend in disgrace, as well as a friend in trouble, could depend upon him until Grant himself found him guilty. I called upon Grant on Sunday evening, May 4, 1883, the day that he borrowed the hundred and fifty thousand dollars from Vanderbilt. He was very cheerful, and said to me, "I expect to have a game of cards on Tuesday night, and would be glad to have you come." As I was taking my leave he repeated the invitation, but thinking the meeting might depend upon further arrangements, as sometimes happened, I thanked him, and said I would hold myself subject to his call. "No," he replied, "don't wait for further notice. Ward is certainly coming, and the party is made." On Tuesday morning about 11 o'clock I met Grant by chance in a car going down-town. He was upon crutches on account of the accident he had met with some time before. He talked about persons and events of the war, without restraint, and was so much interested in conversation that he failed to get

out at the right station. As he left the car he said, "I shall expect you to-night." By a singular coincidence we fell into the same car going up-town about 3 P.M., and I again seated myself by his side. After a few minutes of gloomy silence on his part, he said, "We will not have the meeting I fixed for to-night; I have bad news." I replied, "Why, General, I hope it is nothing serious." "Yes," he continued, "the Marine Bank has failed or is about to fail. It owes our firm a large amount, and I suppose we are ruined. When I went down-town this morning I thought I was worth a great deal of money, now I don't know that I have a dollar; and probably my sons, too, have lost everything." I had heard nothing of the financial crash which had occurred during the day. I said, "General, do you suspect Ward?" He replied, "You know I expected him at my house to-night. If he had come to the office any time to-day and assured me all was right, I should have believed him and gone home contented. But I waited until nearly 3 o'clock, and he did not appear. I do not know what to think." He was not willing even then to accuse the knave in whom he had confided, and prior to that time, notwithstanding warnings which would have aroused a dishonest man, had no suspicion that villainy had been practised. After he became aware of the truth, three or four days passed before the enormity of the disaster made its full impression upon him, but he never recovered from the shock of the deception and wrong practised upon him by one of the basest creatures of the age.

Grant's self-reliance and integrity were so deeply

seated and highly developed that it was difficult for him to make the wishes and opinions of others the basis of his own action in public affairs. Hence, though long a controlling factor in politics, he never was a politician. Destitute of the simplest arts of deception, silence was his recourse when urged to action he did not approve. Hence he was called silent, and sometimes even stolid.

Prior to 1867 Grant was nothing but a soldier. He regarded his election to the chief magistracy of the nation as a promotion, and did not at first realize that while the scope of his authority had been enlarged its nature had been changed, and that he could not govern the country as he had governed the Army. He soon discovered that his forces, now political instead of military, could not be concentrated upon the line of operations he had laid down; and he promptly changed base to the party that elected him, and then advanced upon the new line with as much confidence and fidelity as if it had been his first choice. That movement consolidated his military prestige, his personal power, and the political strength of the Republican Party into a public force, of which—contrary to the fated powerlessness of ex-Presidents generally—he was the real head to the day of his death, and which has never been surpassed, if it has been equalled, in this country. When the change of base just mentioned became known, many of Grant's old friends thought he had surrendered to the politicians, but he had not; nor was his new course inconsistent with his self-reliance and stern sense of duty. He had become sensible of the fact that to enforce

“no policy against the will of the people,” a part of public affairs had to be conducted according to the principles and dogmas of the dominant party; and as far as he could clearly identify that part he let those whom he regarded as party leaders have it to themselves. But in all other matters—in fact, upon special occasions in these—he relied upon himself and acted up to his own sense of duty, and demanded “unconditional surrender” from all who opposed him. He not only crushed Charles Sumner, who ventured into revolt, but probably would have succeeded in preventing his return to the United States Senate, if that distinguished leader had not died before the time came for his re-election.

Grant wrote with remarkable facility. His war papers are not only his own composition, but many of them are in his own handwriting. His article in the *North American Review* of November, 1882, is an example of the rapidity with which he could write what he had to say, as well as of the clearness and force with which he expressed his meaning. It was commenced on the 24th of October, and was in the editor's hands on the 25th. He said of it at the time:

“It does not appear to me worthy of a place in a magazine of the standing of the *North American Review*. It was dictated from notes prepared hastily. The subject, however, has become so familiar to me, that I think I have committed no error in the statement of facts.”

Grant showed but little interest in abstruse subjects, and rarely took part in the discussion of them. His conversation was always marked by simplicity, and

freedom from vanity, vainglory and mock-modesty. His excellent memory was a store-house upon which he drew for the interesting reminiscences which formed the staple of his conversation.

He was wise, but having no gifts as a debater, he could not shine in council. It was his nature or his habit, as heretofore stated, to concentrate his mind upon subjects which required his own action, or for which he was responsible.

The prominence of these affairs, the precedence of the practical and personal over the theoretical and general, sometimes misled the public judgment as to his real power and ability. Like many great men, he required the pressure of necessity to bring out his strength. He could not dwell upon theories, or appear to advantage in hypothetical cases, and even in practical matters his mental processes were carried on beneath the surface. Until he was ready to act he gave no sign by word or expression of his own train of thought or the impression made upon him by others, though they might make him change his mind and induce action different from what he had intended. He generally adhered to his first convictions, but never halted long between two opinions. When he changed, he went over without qualification or regard for consequences, and was not disturbed by lingering doubts or regrets.

The Fitz-John Porter case served to exhibit one of Grant's best traits—devotion to his own deliberate sense of duty, despite the temptations of interest, ease, and expediency. "Consistency is a jewel," but so is truth, and to Grant the latter was more precious than the former. Porter's claim that he had been wronged

by the court-martial which convicted him in 1863, and that new evidence to prove it would be presented if a hearing could be granted, was laid before Grant as early as 1867, but the appeal was refused or neglected. As long as Grant was General-in-Chief of the Army and President of the United States, with power to act effectively in redressing the alleged wrong, he accepted the verdict of the court-martial without understanding the record of that tribunal and the new evidence which Porter offered to produce. But in September, 1881, when he had become a private citizen and a resident of New York City, Porter asked an interview. To this Grant replied in writing, September 27, 1881:

“I will hear what you have to say, and will endeavor to listen without prejudice; and if convinced that I was wrong in former opinions, entertained and possibly expressed, I would be willing to correct them.”

The result was that Grant agreed to study the whole case, including the record of the court-martial, and state his conclusions. The investigation, which was prolonged till December 19, convinced him that a great wrong had been done, and he became deeply distressed that he had not mastered the subject while he was in power. Then, regardless of the inconsistent attitude in which his change of mind placed him, and the antagonisms it created, he devoted all of his ability and influence to procure for Porter the justice he thought due him. In a letter dated November 3, 1883, which was given to the public, he said to Porter:

“I did believe that General Pope was so odious to some of the officers in the East, that a cordial support was not given him by them. . . . I supposed you

had shared in this feeling. . . . Until 1881, when I re-examined for myself, my belief was that on the 29th of August, 1862, a great battle was fought between General Pope commanding the Union forces, and General Jackson commanding the Confederate forces; and that you with a corps of twelve or more thousand men stood in a position across the right flank of Jackson, and where you could easily get into his rear; that you received an order to do so about 5 or 5.30 o'clock, which you refused to obey because of clouds of dust in your front, which you contended indicated an enemy in superior force to you; that you allowed Pope to get beaten while you stood idly looking on without raising an arm to help him. With this understanding, and without a doubt as to the correctness of it, I condemned you."

Then he proceeded to give the results of his own examination of the case, expressed his regret that he had not made the investigation while he was in office, and added:

"As long as I have a voice it shall be raised in your support, without any reference to its effect upon me or others."

On the 30th of December, 1881, he replied as follows to a letter from Senator Logan:

"MY DEAR GENERAL:

"I have your letter of yesterday. It is true that I have re-examined the proceedings of the court-martial and court of inquiry in Fitz-John Porter's case, and believe sincerely that I have done him an injustice, and have so written to the President. When I gave General Porter the letter, I requested him to send you

a copy. If he has not done so he will, or I will. That letter will explain all I would otherwise write you on this subject. I reluctantly came to the conclusion I did, but was convinced beyond all preconceived notions, and felt it due to an accused man to say so. Very truly yours,

“U. S. GRANT.”

In a letter to Porter, dated February 4, 1882, he said :

“My whole object now is to benefit you; and to this end I am willing to do anything that is truthful.”

Grant was slow to take offence, was not malicious, and did not hastily resent wrongs; but animosity sometimes found its way to his heart, and when rooted there it was as hardy as his friendship, though it did not assert itself in action unless specially invited by circumstances. His course towards his old associates of the Regular Army, while he was in power, affords many illustrations of his friendship, and possibly a few of the other kind. One of the bulletins which he issued during his last sickness announced that he desired the good-will of all; and he closed a letter from Mt. McGregor, dated June 22, 1885, with the words :

“I am not willing to do any one an injustice, and if convinced that I have done one, I am always willing to make the fullest admission.”

That was not only the truth, but was no doubt the whole truth; and was quite as far as he was disposed to go. He had to be “convinced” that he had done injustice before he was willing to advance towards reconciliations. Some of his opinions of men were founded in error or misunderstanding, and some of his

feelings possibly in prejudice ; but as he believed they were right, it was not in the power of approaching death to make him surrender them. Mr. G. W. Childs has said :

“General Grant always felt that he was badly treated by Halleck. . . . During my long friendship with him, I never heard him more than two or three times speak unkindly of Halleck.”

Grant was unjustly accused after the capture of Donelson, and was dissatisfied with the treatment he received ; but his animosity towards Halleck, born at Donelson, got its growth afterwards. The lapse of time and the whirl of events probably disqualified him for fixing the exact course of it, and confused him as to the time when it took substantial form.

During a conversation with Grant about his Shiloh article, after it had appeared in print, one of the persons present asked me whether it was true, as reported, that Buell was going to answer General Grant. I replied :

“I do not understand that he is going to answer General Grant, but he will write an article giving an account of the battle.”

I then said to Grant :

“General, you and Buell will never agree about the battle of Shiloh, but in a recent letter to me, Buell spoke most kindly of you, saying, among other things, that when you and he were young together in the Army you had, as he expressed it, ‘attractive, even endearing qualities.’”

I waited for response, but in vain. Grant remained silent. I construed his action upon this and a sub-

sequent occasion to mean that the remarks commendatory of Buell's character and ability, made in the Shiloh article, conveyed all he chose to express upon that subject as it then stood.

The bulk of Grant's admiration and friendship was no doubt bestowed upon Sherman, McPherson, and Sheridan. The day before he started from Nashville to Washington, in March, 1864, to receive his commission as Lieutenant-General, Grant wrote a letter to Sherman expressing a full sense of his obligations to subordinates, and saying :

"I want to express my thanks to you and McPherson as the men to whom, above all others, I feel indebted for whatever I have had of success. . . . I feel all the gratitude this letter would express, giving it the most flattering construction. The word you I use in the plural, intending it for McPherson also."

Grant had antipathies as well as attachments. His relations to his generals would form a striking chapter of history; and an interesting part of it would be the story of the estrangement between him and Hancock.

In his account of the battle of Shiloh, published in the *Century Magazine*, Grant said :

"The enemy had hardly started in retreat from his last position, when, looking back toward the river, I saw a division of troops coming up in beautiful order as if going on parade or review. The commander was at the head of the column, and the staff seemed to be bestowed about as they would have been had they been going on parade. When the head of the column came near where I was standing, it was halted, and the commanding officer, General A. McD. McCook,

rode up to where I was, and appealed to me not to send his division any farther, saying that they were worn out with marching and fighting. . . . It was not, however, the rank and file or the junior officers who asked to be excused, but the division commander."

This was a remarkable error, and did great injustice to McCook. Grant, soon after the publication of the foregoing statement, and subsequently in the *Century Magazine*, admitted the injustice of it, but said nothing as to how he happened to make the mistake. Not long after the article appeared, I mentioned the error, and told the General I thought he had fallen into it by merging two occasions into one through a lapse of memory—that McCook's division did march in column and in dress parade order, from the river to the line of battle, and it made a fine spectacle, but it was quite early in the morning of the second day's fight. That, no doubt, was the spectacle which impressed itself upon the General's memory. But at that time the enemy had not "started in retreat from his last position." Indeed, the only question, then, was whether we could beat him, not whether we would pursue him. McCook's division, after marching up in column in dress parade order, formed line, attacked, and was actively engaged the rest of the day, and it was not until evening, when the enemy had been defeated, that the question of pursuit arose. "Then," I said to Grant, "you probably saw McCook a second time, and the conversation which you mention in the article took place." He admitted the probability that the explanation was correct.

When the second session of the last Congress began, a bill for the retirement of Grant as General of the Army had passed the Senate, and was before the House; the Fitz-John Porter bill had been vetoed, and Grant, though a wreck financially and physically, had written to Porter, July 4:

“You can scarcely conceive the pain it caused me to read the veto of your bill by the President yesterday. I was not prepared for it. This message is the merest sophistry. It is, no doubt, a great disappointment to you and your family, but I believe it will result ultimately in doing you full justice. You were dismissed unjustly, and you are entitled to restoration. Be of good cheer, and pray that justice may yet be done you and yours.”

This letter, of course, was not known to the President, but in the condition of affairs just set forth, President Arthur, in his last annual message, said:

“I recommend that in recognition of the eminent services of Ulysses S. Grant, late General of the armies of the United States, and twice President of this nation, the Congress confer upon him a suitable pension.”

This formal recommendation of a pension implied that the President did not favor a bill to place Grant on the retired list of the Army. Grant, in a letter to Senator Mitchell, dated December 5, 1884, requested that the pension bill be withdrawn, and said he would not accept a pension if the bill should pass and be approved. This ended the pension movement.

The well-deserved boon of retirement came at last, and with a unanimity and public approval that made it welcome, and the dying hero received it gratefully.

The time has not come for final judgment of Grant. He had great abilities and great opportunities. Chance is undoubtedly an important factor in the race of glory, and perhaps it favored Grant in the War of Rebellion. General Sherman goes so far as to have said since Grant's death, that, "had C. F. Smith lived, Grant would have disappeared to history after Donelson"; but that is conjecture. Grant was one of the "singular few" who possessed qualities which probably would have gained for him a high place in history, no matter who had lived to compete with him in our great War.

No man was known by reputation, and personally, to so many men of his time as Grant. The nations of the earth read of him, saw him, and judged him. After the fame of his great deeds had spread over the world, he travelled through both hemispheres, and received the willing and unstinted homage of men high and low in various climes and countries. The record of what he has said and what he has done must place him high in the roll of the world's great men. Posterity will see to that. We who knew him face to face may bear witness to what he *was in himself*. We need not inquire to what extent he imbibed and assimilated the wisdom, the knowledge, or the morality of worthy parents, of early teachers, of friends and staff officers, such as McPherson, and Rawlins, and Wilson, and Bowers. Undoubtedly with him, as with other men, the surrounding influences of his life had much to do with making him what he was. He endured disappointment, humiliation, and poverty; he was tempted by military success and glory, and encountered the rivalries, the jealousies, the intrigues of

ambitious and aspiring generals ; he floated for years upon the high tide of popular favor and good fortune, and then fell through the evil of others, and was wrongfully and cruelly dashed against the rocks of financial discredit and ruin ; and finally, while tried by prolonged and excruciating physical torture, he made an effort, unsurpassed in its heroism, to restore the fortunes of his family by the work of his own brain and hand. What did the duties, the obligations, the temptations, the sorrows, the struggles of life, make of this man ? One of the truest, strongest, bravest human entities that the world has ever produced.

ARTICLE III.

Grant and Matthew Arnold.

“An Estimate.”*

Mr. Arnold introduced General Grant to the people of England in the January and February issues of *Murray's Magazine*, and his articles have since been published in book form by Cupples, Upham & Co., of Boston, and entitled “An Estimate.”

As Grant had visited England and received the most cordial welcome from all classes, there is no conceivable reason for Mr. Arnold's *post-mortem* introduction of him, unless it be that Grant never lectured in Great Britain.

It is not necessary to introduce Mr. Arnold to the people of the United States. We know him by his distinction in the fields of learning, and besides that he has lectured to us. Indeed, if we may judge by his “Estimate” of Grant, he is not likely to lose any opportunity to lecture us. Perhaps we need it—certainly we can bear it. But we must be permitted a little hero-worship, though our idol be a man of the sword, not of the pen.

Having been General-in-Chief during a great war, and twice President of the United States, Grant's career is open to the closest scrutiny and the most rigid public judgment; and having published a book,

* *North American Review*, April, 1887.

he is amenable to the strictest rules of fair criticism. We should have no right to be sensitive concerning Mr. Arnold's "Estimate," if it did not do injustice. Mr. Arnold has presented a weak and incorrect abstract of our hero's literary, as well as of his military work. It is not the purpose of this article, however, to assume the task of setting that right. The world will judge for itself of General Grant's "Memoirs" and of his public services. Beyond commenting upon a few general points, the only purpose of this article is to make some comparison between the literary work of the distinguished but matter-of-fact American soldier and the learned British critic.

Mr. Arnold says that "in the rage for comparison-making the Americans beat the world." That shall not deter us from comparing the English of the American soldier and the British scholar.

It must be remembered that General Grant never posed as a scholar, and that he wrote his "Memoirs" in the throes of death, with no time to choose words.

Mr. Arnold says of Grant's "Memoirs:" "I found a language all astray in its use of *will* and *shall*, *should* and *would*—an English without charm and without high-breeding." This expression implies the assumption on Mr. Arnold's part that he is master of pure English. Does his article sustain that pretension? High lights in literature express their meaning accurately. When Mr. Arnold says that Grant's English is without "high-breeding," he does not mean that Grant himself is without "high-breeding." He uses the term high-breeding in relation to language, not on the sly in relation to the man. We understand

high-breeding in men, in cattle, in dogs, etc., but Mr. Arnold will have to tell us what high-breeding in language is.

Grant says of his tiresome life at the Military Academy: "The last two years wore away more rapidly than the first two." Mr. Arnold, putting this into high-bred English, says: "His last two years *went quicker* than his first two." Grant says, "I had grown six inches in stature"; Arnold says, "with a stature that had *run up* too fast for his strength." Speaking of a large public meeting, Grant says, "In the evening the court-house was packed." Arnold says, "In the evening the court-house was *crammed*." Grant says, "My opinion was, and still is, that immediately after the fall of Fort Donelson the way was opened to the National forces all over the Southwest without much resistance. If one General who would have taken the responsibility had been in command of all the troops west of the Alleghanies, he could have marched to Chattanooga, Corinth, Memphis, and Vicksburg with the troops we then had, and, as volunteering was going on rapidly over the North, there would soon have been force enough at all these centres to operate offensively against any body of the enemy that might be found near them." This clear statement, when put into Mr. Arnold's high-bred English for the British public, comes out as follows: "He thought both then and ever after, that by the fall of Fort Donelson the way was opened to the forces of the North all over the Southwest without much resistance, that a vigorous commander, disposing of all the troops west of the Alleghanies, might have at once marched to Chatta-

nooga, Corinth, Memphis, and Vicksburg, and broken down *every* resistance."

Grant says: "On the 22d of August, 1848, I was married to Miss Julia Dent, the lady of whom I have spoken. In April following I was ordered to Detroit, Michigan, where two years were spent with but few important incidents. . . . In the spring of 1851 the garrison at Detroit was transferred to Sackett's Harbor, and in the following spring the entire Fourth Infantry was ordered to the Pacific Coast. It was decided that Mrs. Grant should visit my parents at first for a few months, and then remain with her own family at their St. Louis home until an opportunity offered of sending for her." Mr. Arnold converts this plain, smooth narrative into the following high-bred or *hybrid* English: "When the evacuation of Mexico was completed, Grant married, in August, 1848, Miss Julia Dent, to whom he had been engaged more than four years. For two years the young couple lived at Detroit, Michigan, where Grant was now stationed; he was then ordered to the Pacific Coast. It was settled that Mrs. Grant should, during his absence, live with her own family at St. Louis." If there is any "charm" in the construction of the foregoing statement by Mr. Arnold, or in his use of the words *now*, *then*, and *settled*, it is well concealed.

Grant says: "The enemy occupied Grand Gulf, Haines' Bluff, and Jackson with a force of nearly sixty thousand men. Jackson is fifty miles east of Vicksburg, and is connected with it by a railroad. My first problem was to capture Grand Gulf to use as a base."

Mr. Arnold's version of this is as follows: "The

enemy had at Grand Gulf, at Haines' Bluff, north of Vicksburg, and at Jackson, the capital of the State of Mississippi, in which all these places are, about sixty thousand men."

Of his efforts to earn a living after he resigned from the Army in 1854 Grant says: "My wife had a farm near St. Louis, to which we went, but I had no means to stock it. A house had to be built also. I worked very hard, never losing a day because of bad weather, and accomplished the object in a moderate way. If nothing else could be done, I would load a cord of wood on a wagon and take it to the city for sale. I managed to keep along very well until 1858, when I was attacked by fever and ague. In 1858 I sold out my stock, crops, and farming utensils at auction, and gave up farming."

The English with "charm," into which Mr. Arnold throws this frank and pathetic part of General Grant's story, is as follows: "First he tried farming on a farm belonging to his wife near St. Louis; but he could not make it answer, though he worked hard. He had insufficient capital and more than sufficient fever and ague." Aside from the flippancy with which Mr. Arnold treats Grant's poverty and sickness, the last sentence just quoted entitles him to the credit for a fair share of the "smartness" which he attributes to Yankees.

The foregoing are examples of the English of the man of the sword and the man of the pen. In no instance does Mr. Arnold's change in General Grant's English improve it.

But Mr. Arnold's failure to improve General Grant's

English, in translating it for the British public, is not the only particular in which his article is defective. In some instances he fails to express the General's meaning. For example, speaking of the preliminary operations of the Mexican War, Grant says the occupation of certain territory was apparently, "to force Mexico to initiate war." "We were sent to provoke a fight, but it was essential that Mexico should commence it." Surely that is plain enough. But Mr. Arnold renders it as follows; "Ostensibly the American troops were sent to prevent filibustering into Texas; really they were sent as a menace to Mexico, in case she appeared to contemplate war." Again, Grant says of his appointment to the Military Academy, Mr. Harmer, the member of the House of Representatives, "cheerfully appointed me." Mr. Arnold, observing, perhaps by a careless reading, that a Senator from Ohio was addressed upon the subject of the appointment, says: "The United States Senator for Ohio procured for young Grant, when he was seventeen years old, a nomination to West Point." The error in this instance is not serious, but as Mr. Arnold must know that every State of our Union has two Senators, his use of the definite article *the* in the sentence, "the United States Senator for Ohio," suggests that misuse of the definite article is not set down in his linguistic category as an offence. In fact, with some Englishmen the importance of scrupulous care in the use of *will* and *shall*, *would* and *should*, seems to overshadow many other things in letters. Nor is Mr. Arnold more particular with his pronouns than with his articles. In speaking of Meade and Grant, he says:

“Both Meade and Grant behaved very well. Meade suggested to Grant that he might wish to have immediately under him Sherman, who had been serving with Grant in the West. *He begged him* not to hesitate if *he* thought it good for the Service. Grant assured *him* that *he* had no thought of moving *him*, and in *his* “Memoirs,” after relating what had passed, *he* adds,” etc.

It is not worth while to multiply illustrations, but it may be noted that Mr. Arnold’s vocabulary is large. He has more words than he needs, and he appears to throw in the surplus to get rid of it. Possibly, however, the mystery of English with “charm” and “high-breeding” may lie hidden in the distribution of this surplus. Here are some examples: “The afternoon of *that same* day;” “he says with *perfect* truth;” “*high* genius;” “the United States Senator for Ohio procured for *young* Grant when he was *17 years old*;” “*from this time* he was *always* the same strong man,” etc.; “*almost exactly* the same strength as at the beginning of the campaign;” “if the South could succeed in prolonging an indecisive struggle year after year *still*, the North *might probably* grow tired of the contest;” “in the field there was some sharp fighting *for a day or two still*;” “but the Mexican war came *on* and kept him in the Army;” “Grant declined because he was to go *off* that evening to visit his children.” Perhaps *on* and *off*, as they stand in the last two sentences, are not so bad as they would be if they changed places, but they are unnecessary, unless it be that they give “charm” and “high-breeding” to the English.

Without making more comparisons between the English of General Grant and Mr. Arnold, the following may be taken from Mr. Arnold's article as fair examples of his English with charm and high-breeding. Comparing Grant before he went to West Point with English school-boys, Mr. Arnold calls the latter "*our young gentlemen*"; and speaking of the way Grant was reared, he says: "*The bringing up of Abraham Lincoln was also, I suppose, in this wise.*" Two more examples must suffice. Mr. Arnold says: "After Grant had, after a hard and bloody struggle of two days, won the battle of Shiloh, in which a ball cut in two the scabbard of his sword, and more than 10,000 men were killed and wounded on the side of the North, General Halleck, who did not love Grant, arrived on the scene of action and assumed the command." "And, therefore, crossing the James River he invested, after failing to carry it by assault, Petersburg, the enemy's stronghold south of Richmond. . . . Finally, Grant, resuming operations in March, 1865, *possessed himself* of the outer works of Petersburg. . . . Then Grant proceeded to *possess himself* of the railroad by which Lee's army and Richmond *itself*, now drew their supplies."

Under cover of a statement made by Grant, Mr. Arnold assumes the defence of the sympathy for the South shown by England during the Rebellion. Grant says: "It was evident to my mind that the election of a Republican President in 1856 meant the secession of all the slave States and rebellion. Under these circumstances I preferred the success of a candidate whose election would prevent or postpone secession,

to seeing the country plunged into a war, the end of which no man could foretell."

Upon this Mr. Arnold remarks: "I am not concerned to discuss Grant's reasons for his vote, but I wish to remark how completely his reflections dispose of the reproaches addressed so often by Americans to England for not sympathizing with the North attacking slavery in a war with the South upholding it. From what he says, it is evident how very far the North was, when the war began, from attacking slavery."

Did Mr. Arnold have to learn from Grant's book—"from what he says"—that the North was very far from attacking slavery when the War began? History abounds in proof of that. Our Congress, after war broke out, passed a resolution saying that "the War was not waged for the purpose of overthrowing or interfering with the rights or established institutions of the States, but to defend and maintain the permanency of the Constitution and to preserve the Union with all the dignity and equal rights of the several States unimpaired"; and about the same time the Confederate Commissioners, Yancey, Mann, and Rust, said, in a letter to Earl Russell: "It was from no fear that the slaves would be liberated that secession took place. The very party in power has proposed to guarantee slavery forever in the States, if the South would but remain in the Union." That Mr. Arnold should discover these historical facts by drawing an inference from General Grant's book is as surprising as his discovery of General Grant in 1886; but his conclusion from the discovery is more surpris-

ing still. From the fact that Grant in 1856 held the opinion that the election of a Democratic President would prevent or postpone a civil war in his country, and voted accordingly, Mr. Arnold draws the conclusion that Americans were unjust, or at least inconsistent, in reproaching "England for not sympathizing with the North attacking slavery, in a war with the South upholding it." The meaning is that as the North was not attacking slavery at the beginning it had no claim to English sympathy. This is a weak defence. According to the morals of England, slavery was a monstrous evil; and in this judgment a large part of our Northern people heartily concurred. But slavery, having been found by us as it was left here by England, was imbedded in our Constitution; and our Government from the beginning had been part slave and part free, with the free part located in the North, growing in moral strength as well as in proportional numbers. The necessity for subjection of the slave-owners' will to the will of the Union after political control had passed to the North in 1860, the unwillingness of the North to have slavery extended, and a violent resentment by Southerners of abolitionism in the abstract, caused the Southern States to secede from the Union, and proceed to set up a government of which Mr. A. H. Stephens, its Vice-President, said in a public speech, March 21, 1861: "Its foundations are laid, its corner-stone rests upon the great truth that the negro is not equal to the white man; that slavery subordination to the superior race is his natural and normal condition. This, our new government, is the first in the history of the world

based upon this great physiological and moral truth." Mr. Arnold tells us that "admiration and favor are not compellable; we admire and favor only an object which delights us, helps us, elevates us, does us good." The government described by Mr. Stephens, based upon slavery, is the one which Mr. Arnold admits many Englishmen, for whom he now offers a poor excuse, admired and favored, as against the Government of the Union, founded upon the principle of human freedom, and composed largely of men devoted to the general enforcement of that principle. It is true that the Union, choosing between evils and trusting to the appearance of some peaceful process for eliminating slavery, was willing, at first, to let the evil alone where it existed, rather than enter upon a bloody civil war, the end of which, as Grant says, no man could foretell. But this dilemma of the North affords no excuse to Englishmen, who were not in the dilemma, for taking sides with the South; nor does Grant's action in 1856 "dispose of the reproaches addressed so often by Americans to England for not sympathizing with the North" in the civil war of 1861-65. If English lack of sympathy for the North had been, as Mr. Arnold intimates, because the North did not attack slavery at the beginning, then surely, as soon as the Government did attack it, early in 1863, they would have been with the North heartily. But the abolition of slavery did not divert English sympathies from the South to the North.

Mr. Arnold himself probably has some love for Americans in general, for he uses the lash freely, and we are told that whom the Lord loveth He chasteneth.

Grant, Mr. Arnold tells us, "is boastful, as Americans are apt to be, for his nation"; "The Americans are too self-laudatory;" "Grant was boastful only in circumstances where nothing but high genius or high training, I suppose, can save an American from being boastful;" "The United States would be more attractive to us if they were more backward in proclaiming themselves the greatest nation on earth;" "The Americans in the rage for comparison-making beat the world; whatever excellence is mentioned America must, if possible, be brought in to balance or surpass it. That fine and delicate naturalist, Mr. Burroughs, mentions trout, and instantly he adds, British trout, by the way, are not so beautiful as our own."

Mr. Arnold shows a keen perception of the fitness of things by 'closing these extravaganzas with a *fish story*.

It is to the chance by which "some documents published by General Badeau in the American newspapers first attracted his (my) attention to Grant" that the British people are indebted for Mr. Arnold's discovery of the American soldier, and it must be admitted that the treatment of General Grant in Mr. Arnold's so-called *Estimate*, though patronizing, is quite commendatory. Indeed, having caught from America "the rage for comparison-making," he compares Grant to the Iron Duke, saying: "But he certainly had a good deal of the character and qualities which we so justly respect in the Duke of Wellington." . . . "Surely, in all this he resembles the Duke of Wellington." Englishmen are not boastful. They merely set up one of their own heroes as the standard of human

greatness, and measure other men by that standard. So, too, Mr. Arnold does honor to Grant's "Memoirs." Notwithstanding they are in language "all astray in its use of *will* and *shall*, . . . an English without charm and without high-breeding," Mr. Arnold comforts us by saying, "surely the Duke of Wellington would have read these 'Memoirs' with pleasure."

But having lifted us above the American level by admitting that Grant "had a *good deal* of the qualities" of the Duke of Wellington, and that the Duke "would have read these 'Memoirs' with pleasure," Mr. Arnold drops us back by saying, "Cardinal Mazarin used to ask concerning a man, before employing him, *est-il heureux?* Grant was *heureux*;" and there he leaves us. How deeply are we indebted to him?

MARK TWAIN DEFENDS GEN. GRANT'S ENGLISH—ATTACKING MATTHEW ARNOLD.—The Army and Navy Club of Connecticut held their annual reunion to-night to commemorate the anniversary of Gen. Grant's birthday. The chief address on the memory of Gen. Grant was delivered by the Rev. Dr. M. B. Riddle, formerly a chaplain in the Service. Toastmaster V. B. Chamberlain introduced Mr. S. L. Clemens (Mark Twain), who spoke as follows:

MARK TWAIN'S SPEECH.

I will detain you with only just a few words—just a few thousand words; and then give place to a better man—if he has been created. Lately a great and honored author, Matthew Arnold has been finding fault with Gen. Grant's English. That would be fair enough, may be, if the examples of imperfect English averaged more instances to the page in Gen. Grant's book than they do in Mr. Arnold's criticism upon the book—but they don't. (Laughter and applause.) It would be fair enough, may be, if such instances were commoner in Gen. Grant's book than they are in the works of the average standard author—but they aren't. In truth, Gen. Grant's derelictions in the matter of grammar and construction are not more frequent than are such derelictions in the works of a majority of the professional authors of our time and all previous times—authors as exclusively and painstakingly trained to the literary trade as was Gen. Grant to the trade of war. (Applause.)

MR. ARNOLD'S GRAMMAR.

This is not a random statement; it is a fact, and easily demonstrable. I have at home a book called "Modern English Literature, its Blemishes and Defects," by Henry H. Breen, F.S.A., a countryman of Mr. Arnold. In it I find examples of bad grammar and slovenly English from the pens of Sydney Smith, Sheridan, Hallam, Whateley, Carlyle, both Disraelis, Allison, Junius, Blair, Macaulay, Shakespeare, Milton, Gibbon, Southey, Bulwer, Cobbett, Dr. Samuel Johnson, Trench, Lamb, Landor, Smollett, Walpole, Walker (of the dictionary), Christopher North, Kirke White, Mrs. Sigourney, Benjamin Franklin, Walter Scott and Mr. Lindley Murray, who made the grammar.

In Mr. Arnold's paper on Gen. Grant's book we find a couple of grammatical crimes and more than several examples of very crude and slovenly English—enough of them to easily entitle him to a lofty place in that illustrious list of delinquents just named. The following passage, all by itself, ought to elect him: "Meade suggested to Grant that he might wish to have immediately under him Sherman, who had been serving with Grant in the West. He begged him not to hesitate if he thought it for the good of the Service. Grant assured him that he had no thought of moving him, and in his 'Memoirs,' after relating what had passed, he adds," &c. To read that passage a couple of times would make a man dizzy, to read it four times would make him drunk. (Great laughter.) Gen. Grant's grammar is as good as anybody's; but if this were not so, Mr. Breen would brush that inconsequential fact aside and hunt his great book for far higher game. Mr. Breen makes this discriminating remark: "To suppose that because a man is a poet or a historian, he must be correct in his grammar, is to suppose that an architect must be a joiner, or a physician a compounder of medicines." Mr. Breen's point is well taken. If you should climb the mighty Matterhorn to look out over the kingdoms of the earth, it might be a pleasant incident to find strawberries up there; but, Great Scott, you don't climb the Matterhorn for strawberries! (Continued applause.)

GRANT'S IMMORTAL SENTENCES.

There is that about the sun which makes us forget his spots; and when we think of Gen. Grant our pulses quicken and his grammar vanishes. We only remember that this is the simple soldier who, all untaught of the silken phrase-makers, linked words together with an art surpassing the art of the schools, and put into them a something which will still bring to American ears, as long as America shall last, the roll of his vanished drums and the tread of his marching hosts. (Applause.) What do we care for grammar when we think of the man that put together that thunderous phrase, "Unconditional and imme-

diate surrender!" And those others: "I propose to move immediately upon your works!" "I propose to fight it out on this line if it takes all summer!" (Applause.) Mr. Arnold would doubtless claim that that last sentence is not strictly grammatical, and yet nevertheless it did certainly wake up this nation as a hundred million tons of A1, fourth proof, hard-boiled, hide-bound grammar from another mouth couldn't have done. And finally we have that gentler phrase, that one which shows you another true side of the man; shows that in his soldier heart there was room for other than gory war mottoes, and in his tongue the gift to fitly phrase them: "Let us have peace." (Prolonged applause and cheers.)—*Hartford, Conn., April 27.*

ARTICLE IV.

Halleck and Grant—Misunderstandings.*

Grant opened his Shiloh article in the *Century Magazine* (February, 1885) with the statement that he had been unjustly treated by Halleck after the capture of Fort Donelson; and his "Personal Memoirs" contain the same charge, and, in addition, are laden with adverse criticism of Halleck. The leading article in the *North American Review* for December, 1885, by Colonel F. D. Grant, is entitled "Halleck's Injustice to Grant"; and for weeks after its appearance large posters were displayed from the news-stands in New York City, bearing, in conspicuous type, the words "*Grant Vindicated from Halleck's Slanders*; by Colonel F. D. Grant."

It is proper to state that Colonel Grant disclaims responsibility for the heading of his article, and while he presents official documents which suggest, but do not prove injustice, he merely disseminates, without comment, his father's sentiments concerning Halleck; and though he speaks of having taken the documents from his father's files, they are to be found in their proper places in the "Records of the Rebellion."

Grant and Halleck are dead. Though not equally successful, they were equally earnest and patriotic, and both deserved well of their country. Halleck's lot

* *Magazine of American History*, Dec., 1886, p. 561.

was disappointment and premature death.* Fair-play demands that all questions of justice between him and Grant be treated according to their merits, apart from the comparative military ability, eminence, and popularity of the two great men.

Without going into tedious details, it may be assumed that the charge of injustice has one main and four subordinate specifications. The first is, that after the capture of Fort Donelson, February 16, 1862, Halleck sought to promote C. F. Smith to a major-generalcy over Grant, and thus give Smith the honors of the victory.

This is the one specification of real substance to prove Halleck's injustice to Grant. *Halleck is not guilty of it.* All three of the authorities just cited,† General and Colonel Grant and General Badeau, have failed to present one essential telegram upon the subject. They set forth the fact that on the 19th of February, 1862, Halleck telegraphed McClellan: "Brigadier-General Charles F. Smith, by his coolness and bravery at Fort Donelson, when the battle was against us, turned the tide and carried the enemy's works. Make him a Major-General. You can't get a better one. Honor him for this victory and the whole country will applaud;" and leave it to be understood that by this telegram Smith was recommended instead of Grant, and to the neglect and prejudice of Grant. The truth is that Halleck by telegraph recommended

* Halleck died January 9, 1872, aged 57.

† "Personal Memoirs," vol. i., p. 328; *North American Review*, December, 1885, p. 522; Badeau's *Military History of General Grant*, vol. i., p. 54.

Grant for a major-generalcy on the 17th of February, two days before he recommended Smith. This dispatch (vol. vii., p. 628, "Records of the Rebellion,") is plainly of record. It reads: "Make Buell, *Grant* and Pope Major-Generals of volunteers, and give me command in the West. I ask this in return for Forts Henry and Donelson." Grant's name was promptly sent to the Senate, and the fact was announced in the newspapers of the 18th. It is not necessary to quote more than one. The New York daily *Tribune* of February 18, 1862, announced Grant's nomination with the heading, "Honor to the brave!" and its Washington correspondent on the same day wrote: "The Senate in executive session to-day unanimously confirmed Grant as Major-General." Halleck recommended Grant by telegraph on the 17th; the President's nomination of Grant was announced in the morning papers of the 18th. Halleck would naturally be watching for the announcement, and it is safe and fair to say he knew of the nomination on the 18th—certainly by the morning of the 19th, the day on which he recommended Smith. But be that as it may, he recommended Grant, and Grant was nominated and confirmed before Smith was recommended; which is conclusive as to what Halleck sought to do.

Badeau, ignoring Halleck's prior recommendation of Grant, and assuming that Halleck designed to honor Smith at Grant's expense, says, vol. i., p. 54: "Neither did the Government agree with Halleck that Smith should receive the honors of this victory. The Secretary of War at once recommended Grant for a Major-General of volunteers, and the President nominated

him the same day." This version of the transaction given in Badeau's book, published in 1867, is misleading, and is unjust to Halleck. Though the foregoing statement is not specified by Grant as one of the "facts" relating to Donelson which Grant says in his "Memoirs," p. 328, "General Badeau unearthed," it is probable that he accepted it as a fact, and died in the belief that Halleck tried to give Smith the honor and reward for Donelson. As the minor or incidental matters of this supposed grievance have been presented formally, they must be considered.

The first of them is that, failing to get Smith promoted to rank Grant, Halleck, nevertheless, gave Smith command of an expedition up the Tennessee early in March, 1862, and left Grant at Fort Henry, as Grant states it, "virtually in arrest and without a command." *

On the 15th of February, 1862, Halleck gave Grant command of the "District of West Tennessee," "limits undefined." He sent a telegram on the 1st of March, directing Grant to move his column up the Tennessee River to destroy railroad bridges. Halleck did not designate the commanders for the sub-columns into which the expedition was to be divided for the work to be done. He merely said: "General C. F. Smith, or some very discreet officer, should be selected for such commands;" and "that competent officers should be left to command the garrisons of Fort Henry and Donelson in your absence." He intended Grant to go with the expedition. But soon after Halleck made

* "Personal Memoirs," vol. i., pp. 327-8; *Century Magazine*, February, 1885, p. 594.

the order for the movement, he heard—as he reported to McClellan on the 3d of March—that Grant had left his command and gone to Nashville without authority, that great disorders in the army had occurred during Grant's absence; and coupling these accounts with his failure to get reports and returns from Grant, and with a rumor that reached him on the 4th—published as one of the telegrams in Colonel Grant's article—that Grant had "resumed his former bad habits," Halleck on the 4th telegraphed Grant, "You will place Major-General C. F. Smith in command of expedition, and remain yourself at Fort Henry." In speaking of this affair in the winter of 1885, Grant said that Halleck left him at Fort Henry "in arrest." I remarked that I thought he was in error about the arrest, but he adhered to his assertion. His Shiloh article for the *Century Magazine* had then been written, but not published. When it appeared, it contained the statement that he was "virtually in arrest." That statement is repeated in the "Personal Memoirs," and is strengthened by the addition that he was "without a command."

The facts upon this point are, that McClellan, in a dispatch of March 3d, authorized Halleck to arrest Grant, but Halleck answered on the 4th that he did not "deem it advisable." There was no order of arrest, no report or return indicating arrest; and no restriction of Grant's authority. The telegram directing him to remain at Fort Henry was the only order in the case. Grant's authority over the entire District of West Tennessee, including the expeditionary force under C. F. Smith, was uninterrupted and unlimited. No

one has ever pretended to show any order or instruction to the contrary. The "Records" abound in proofs that Grant was continuously on duty and in full command of his district and troops. On the 5th of March he issued formal orders for Smith to take command of the expedition, and gave him instructions for conducting it, saying, "I will remain at Fort Henry and throw forward all the troops that can be provided with transportation." On the 6th he reported to Halleck, "All transports here will be loaded and off to-day, if the gunboats arrive to convoy them. One gunboat has gone to Savannah. The transports here will not take all the troops in readiness to move. Your instructions contemplated my commanding expedition in person. Dispatch yesterday changed it." On the same day he reported to Halleck: "Union City is said to be garrisoned by rebels. I will keep a lookout to prevent a surprise from that direction while the garrison is weak here." On the 7th he wrote to General S. A. Hurlburt, commanding fourth division: "Embark your forces on the transports now awaiting you as rapidly as possible." . . . Signed "U. S. Grant, *Major-General, Commanding.*" On the same day and over the same signature he issued an equally peremptory order to "Colonel R. I. Oglesby, commanding U. S. forces, *Fort Donelson, Tenn.*" On the 9th, he telegraphed Halleck, "I will do all in my power to advance the expedition now started . . . I renew my application *to be relieved from further duty,*" showing that he was on duty. On the 9th he made to Halleck a statement of the forces in the district: those composing the expedition, 25,206; those at Fort Henry awaiting transporta-

tion, 5,740; those at Clarksville, 1,173; those at Fort Donelson, 2,328. On the 10th he telegraphed Halleck, "Third Iowa Infantry just arrived. Effective strength, 676; ordered to join General Smith. Advance of expedition started last evening;" and also on the 10th to Halleck, "To-morrow is the day when all persons of proper age are to be enrolled in this State in the rebel army. Troops are now in Paris to enforce the orders of Governor Harris. I am concentrating the small force under my command on the west bank of the river, to defeat their object as far as lays in my power." On the 11th, he wrote as follows: "General C. F. Smith, commanding expedition to Upper Tennessee. Send back steamers as rapidly as possible to enable us to forward troops . . . U. S. Grant, *Major-General, Commanding*;" and on the same day, 11th, he telegraphed Halleck, "I shall run down to Paducah to-night." These dispatches and others of like import, showing Grant to have been constantly on duty, are in "Records of Rebellion," vol. x., part ii., pp. 3 to 29. They prove that he was not in arrest of any sort, that he was not without a command, and that he was exercising command loyally and efficiently over his entire district, including the forces under immediate control of C. F. Smith.

It is true that Grant's detention on duty at Fort Henry grew out of Halleck's disapprobation. The detention itself, however, would not have been a grievance if it had not been based upon special causes. Halleck had required Sherman, who was Grant's superior officer, to remain a few miles in the rear and push forward men and munitions to enable Grant to capture

Forts Henry and Donelson, but Sherman did not complain that he was virtually in arrest or without a command. The order for Grant to remain at Fort Henry was, in fact, of no practical disadvantage to him. It was made on the 4th of March. On the 9th, only five days afterward, and before anything of importance had been done up the Tennessee, Halleck terminated the effect of the order by telegraphing to Grant to be ready to take the advance (vol. x., part ii., p. 27, "Records of Rebellion.")

This notification was given on the very day that the advance of the expedition, as reported by Grant, started from Fort Henry; so that, practically, Grant was not left behind at all. The notification was repeated on the 11th, and again on the 13th, Halleck saying upon the latter date, "I wish you, *as soon as your new army is in the field*, to assume the *immediate* command and lead it on to new victories." By directing Grant to assume *immediate* command, Halleck recognized that Grant had been continuously exercising *general* command. Under this authority, and fixing his own time for starting to the front, Grant proceeded up the Tennessee and reached Savannah on the 17th of March. Not having been relieved from command by arrest or otherwise, he issued no order assuming command on reaching Savannah, but continued in the exercise of the authority conferred by his assignment of February 15th, to command of the District of West Tennessee. As already stated, Grant's detention at Fort Henry, while his new army was getting ready for the field, was not in itself a grievance. But the next specification of Halleck's injustice to Grant rests upon the

causes which led to the detention. Grant specifies as follows: "Halleck reported to Washington that he had repeatedly ordered me to give the strength of my force, but could get nothing out of me; that I had gone to Nashville beyond the limits of my command without his authority, and that my army was more demoralized by victory than the army at Bull Run had been by defeat." ("Personal Memoirs," vol. i., p. 327.)

Halleck did not say that Grant's army was *more* demoralized—in fact, he did not say that it was demoralized at all. He said, "it *seems* to be *as much* demoralized by the victory of Fort Donelson as was that of the Potomac by the defeat of Bull Run." It is true that Halleck called upon Grant for reports and returns; and that he reported the failure to get them to McClellan, who, as well as Halleck, wanted the information. Some of Halleck's calls did not reach Grant, and some of Grant's reports did not reach Halleck. In a telegram to Halleck of March 24, Grant says: "I have just learned to-day that your dispatches to me after the taking of Fort Donelson, reached Fort Henry—some of them at least—but were never sent to me. What has become of the operator then at Fort Henry? I don't know." There was no explanation that covered the case of "Returns," for Grant did not make them. In telegram, March 9, he said to Halleck: "You had a better chance of knowing my strength whilst surrounding Fort Donelson than I had. Troops were reporting daily by your orders," etc.

As the General-in-Chief was calling upon Halleck for information concerning Grant's force, there is no ground for serious complaint because Halleck reported

his inability to get it from Grant. No one disputes that Grant went to Nashville without Halleck's authority. On the 25th of February he notified Cullum, Halleck's Chief-of-Staff, then at Cairo, that he would "go to Nashville immediately after the arrival of the next mail, should there be no orders to prevent it." It is not known when the next mail arrived; but Grant went to Nashville by boat, arriving there on the 27th of February. Hearing that he was in the city, Buell went to Grant's steamer to see him, and had an informal conversation with him. During the day Grant wrote a note of no special importance to Buell, and left in the evening. He claimed, and Halleck after investigation admitted, that the trip was made from a "desire to subserve the public interests"; and there is no purpose here to question the propriety of it, but it cannot be said, fairly, that it was unjust for Halleck to mention this trip to McClellan in explanation of failure to get reports and returns from Grant. In his "Memoirs" (vol. i., p. 326), Grant contradicts Halleck's assertion that Nashville was beyond the limit of Grant's command, saying, "that place was not beyond the limits of my command, which it had been expressly declared in orders were not defined." The limits of Grant's district were not defined, but Nashville was beyond the limits which Halleck had a right to go, and beyond the limits he could empower Grant to go. Furthermore, Nashville was in Buell's command and in his possession, and Buell, by the President's order, was independent of both Halleck and Grant. The exigencies of the occasion as Grant saw them no doubt, required him to go to Nashville just as he did; but

there was nothing in the fact of the limits of his district being undefined which brought Nashville, then belonging to the territory of, and actually occupied by an independent army, within the limits of Grant's district.

. If Halleck did Grant any injustice in the causes which led to the latter's detention at Fort Henry, it was in saying that "Grant's army seems to be as much demoralized by the victory of Fort Donelson, as was that of the Potomac by the defeat of Bull Run." That, evidently, was not intended as a specific allegation. It was an ejaculatory expression of Halleck's displeasure at the irregularities of which he complained. The ground for it was that he could get "no reports, no returns," that Grant had "gone to Nashville without authority," and that serious disorders in his army had occurred during his absence. Halleck received, and on the 6th of March transmitted to Grant, a copy of a letter addressed to Judge David Davis, then President of the Western Investigation Commission. The writer's name was not given, but Judge Davis vouched for him as "a man of integrity and perfectly reliable." The letter (vol. x., part ii., p. 13, "Rec. of Reb."), charged various frauds and irregularities among officers and men after the capture of Fort Donelson. Grant had tried to correct the irregularities and did not deny them; in fact, his orders go to prove them ("Rec. Reb." vol. vii., pp. 599, 633, 650), and his letter to Halleck of March 18th, with characteristic frankness, distinctly admits some of them. He says: "I have found that there was much truth in the report that captured stores were carried

off from Fort Henry, improperly;" and on the same day he issued a general order, saying: "A better state of discipline than has heretofore been maintained with much of this command is demanded, and will be enforced." ("Rec. Reb.," vol. x., part ii., p. 47.) On the 25th of March he said in a telegram to Halleck, upon this subject: "I most fully appreciate your justness, General, in the part you have taken" (p. 63); and on the 24th of March he said, referring to another species of disorder in his army, to which Halleck had called his attention: "I acknowledge the justness of your rebuke in this respect, although I thought all proper measures had been taken to prevent such abuses, and will see that no such violation occurs in future;" adding, in the same dispatch, "the conduct of the Twenty-first Missouri, on the way up here, has been reported to me as infamous." These evidences of a bad condition of affairs in Grant's forces after Donelson are reproduced, not as a reflection upon Grant, but in justice to Halleck, as the explanation of his displeasure. There had not been time and opportunity for Grant to organize and discipline the raw levies hurriedly sent to him for that early campaign. But in the interest of the discipline which Halleck knew must be established as soon as possible, for the sake of what remained to be done, it was none the less his duty to rebuke disorders even in Grant's victorious forces. The War Department, in a letter of March 10, to Halleck, directed him to make a formal report of what he had mentioned by telegraph, concerning Grant's absence at Nashville, and his failure to make returns, etc. Halleck investigated the

subject, and as early as March 15, made a full report to Washington, saying, among other things: "General Grant has made the proper explanations. As he acted from a praiseworthy, although mistaken zeal for the public service in going to Nashville and leaving his command, I respectfully recommend that no further notice be taken of it. There never has been any want of military subordination on the part of General Grant, and his failure to make returns of his forces has been explained as resulting partly from the failure of Colonels of regiments to report to him on their arrival, and partly from an interruption of telegraphic communication. All of these irregularities have been remedied." ("Rec. Reb.", vol. v., p. 683.) Before this report was made, Halleck had ordered Grant up the Tennessee. He promptly sent Grant a copy of the communication from which the foregoing extract is taken, and also a copy of the communication to which it is an answer. In a letter dated March 24, acknowledging these copies, Grant said: "I most fully appreciate your justness, General, in the part you have taken." Halleck, no doubt, felt that he had been generous. In that way the affair was closed. But after the war the case was re-opened by Badeau, in his "Military History of General Grant," and more recently by both General and Colonel Grant.

Re-opening this case has given rise to what is treated in this article as Grant's third subordinate specification of Halleck's injustice. The complaint, as stated by Grant in his "Personal Memoirs," is, that Halleck forwarded "a copy of a detailed dispatch from himself to Washington, entirely exonerating me ;

but he did not inform me that it was his own reports that had created all the trouble. I never knew the truth until General Badeau unearthed the facts in his researches for his history of my campaigns."

The complaint here is not based upon the contents of the dispatch, which Grant assumes "created all the trouble," but upon Halleck's omission to send Grant a copy of that dispatch; or, "its concealment from me when pretending to explain the action of his superiors," as Grant puts it. ("Personal Memoirs," vol. i., p. 328.) It is by no means certain that Halleck's dispatch "created *all* the trouble"; but aside from that, the trouble having been ended, neither duty nor expediency required Halleck to re-open it. The wound was healed by the report of March 15, and Halleck knew that Grant's usefulness would probably be increased by keeping it healed. He is not chargeable with "concealment," because he did not tell Grant in 1862 all that passed then between Halleck and McClellan. That was not required either by army regulations or custom of Service. If that charge were just it would lie against Grant as well as Halleck. After Grant gained confidence and power, he sent dispatches to Washington, speaking unfavorably of other Generals; but he is not chargeable with wrongful concealment because he did not tell the subordinate what he had said to the superior. He did simply what he thought duty required. A brief explanation of the dispatch which Grant says was concealed from him and unearthed by Badeau, is, however, necessary. It was from Halleck to McClellan, March 3, and reads as follows: "I have had no com-

munication with General Grant for more than a week. He left his command without my authority and went to Nashville. His army seems to be as much demoralized by the victory of Fort Donelson as was that of the Potomac by the defeat of Bull Run. It is hard to censure a successful General immediately after a victory, but I think he richly deserves it. I can get no returns, no reports, no information of any kind from him. Satisfied with his victory, he sits down and enjoys it, without any regard to the future. I am worn out and tired with this neglect and inefficiency. C. F. Smith is almost the only officer equal to the emergency." Badeau says in his "History" (vol. i., p. 65), this telegram "was not left on file in the War Department, but was obtained by me after long research and repeated efforts."

But in an official report to the Secretary of War, from the War Records office, it is stated that "Halleck's telegram of March 3, 1862, to McClellan, was found in package No. 96, United States Military Telegraph Records, filed *in War Department*. The reply of McClellan bearing the approval of the Secretary of War was found in volume of 'Telegrams sent by Major-General McClellan and staff, March 1 to 10, and September 1 to 16, 1862, *ib.*, vol. 3.' That 'volume *was in War Department files*. A copy of McClellan's reply was also found in package No. 96, referred to above.'" From this it seems that Halleck's telegram was on file in the War Department. The statement in Badeau's "History," published in 1867, that this telegram was not left on file in the War Department, but was obtained by Badeau after long re-

search and repeated efforts—was, in fact, “unearthed,” as Grant expresses it in his “Memoirs,” implied that somebody had concealed it, and probably made upon Grant’s mind and fastened there an impression unjust to Halleck. The injustice to Grant involved in this telegram of March 3, had been corrected by Halleck’s full report of March 15, a copy of which had been sent to Grant. The foregoing quotation from the report of the War Records office, shows that no wrong was done to Grant through the concealment of the dispatch; shows, in fact, that there was no concealment. Here the details in refutation of Halleck’s so-called injustice to Grant after the battle of Fort Donelson may be closed. But there are some general considerations which bear upon the subject. The campaign of Fort Donelson was made in February, 1862. Halleck was high in authority, being one of the three Major-Generals of the Regular Army. Grant, one of Halleck’s many subordinates, was but a Brigadier-General of volunteers. The operations on the Tennessee and Cumberland, the operations on the Mississippi and the campaign in Missouri and Arkansas, under Curtis, were all directed by Halleck. Grant was merely the lieutenant in command of one of Halleck’s columns. Halleck’s reputation as well as Grant’s was at stake, and he was necessarily anxious and exacting. As shown further on, Grant understood this, and as late as 1879 announced that he bore Halleck no ill-will on account of the action then taken. In February, 1862, the War was young, and high officers had to be taken on trust. Grant did not possess, nor had he then earned the confidence of the

Government. If Grant's ability and trustworthiness had had then the foundation of his later career, Halleck's anxiety and fault-finding would have been indefensible. But as matters stood at the time, his watchfulness of Grant, even his doubts and misgivings, were the natural outgrowth of attending facts and circumstances. Indeed, it is remarkable that Halleck should have been so little influenced by personal preference. Sherman and Halleck at that time were devoted friends, and Sherman as well as Grant was one of Halleck's subordinates. Yet Halleck gave Grant, the junior, command of the column on the Tennessee and Cumberland, because he was first identified with the service in that quarter, and held Sherman, the senior, a few miles down the river, while Grant reaped the glory and reward of capturing Forts Henry and Donelson. Sherman made no complaint of injustice. On the contrary, as Badeau says, he wrote Grant February 13: "I will do everything in my power to hurry forward your re-enforcements and supplies; and if I could be of service myself, would gladly come without making any question of rank with you or General Smith."

The last subordinate specification of injustice is, as Grant states it, that a few days after the battle of Shiloh, "General Halleck moved his headquarters to Pittsburg Landing, and assumed command of the troops in the field. Although next to him in rank, and nominally in command of my old district and army, I was ignored as much as if I had been at the most distant point of territory within my jurisdiction." ("Personal Memoirs," vol. i., p. 370; *Century Magazine*, February, 1885, p. 594.)

This may show bad judgment on Halleck's part, but the facts do not prove injustice. After the battle of Shiloh, Halleck formed his army into the left wing under Pope; the center, under Buell; the right wing under George H. Thomas, and the reserve under McClernand. Grant, still in command of the Army of the Tennessee and the district of West Tennessee, was in addition assigned as second in command, a position without defined duties or specific authority. Nominally, the new arrangement was an honor to Grant—practically, it restricted his powers. The Donelson shadow that had been partly cleared away, had reappeared after Shiloh and hung heavily over Grant. It did not vanish until he captured Vicksburg in July, 1863.

The opinion which Halleck held of Grant's army *a week after the battle of Shiloh* is shown by the following, dated,

“PITTSBURG LANDING, *April 14, 1862.*”

“To Major-General U. S. Grant, commanding District and Army in the field. Immediate and active measures must be taken to put your command in condition to resist another attack. Fractions of batteries will be united temporarily under competent officers, supplied with ammunition, and placed in position for service. Divisions and brigades should, where necessary, be reorganized and put in position, and all stragglers restored to their companies and regiments. Your army is not now in condition to resist an attack. It must be made so without delay. Staff officers must be sent to obtain returns from division commanders, and assist in supplying all deficiencies.

“H. W. HALLECK, Major-General.”

At that time there was a deep and widespread sentiment adverse to Grant. On the 23d of April the Secretary of War telegraphed Halleck: "The President desires to know . . . whether any neglect or misconduct of General Grant or any other officer contributed to the sad casualties that befell our forces on Sunday." This telegram was not due to anything Halleck had reported about Shiloh. He replied: "The sad casualties of Sunday 6th were due in part to the bad conduct of officers who were utterly unfit for their places, and in part to the numbers and bravery of the enemy. I prefer to express no opinion in regard to the misconduct of individuals till I receive the reports of commanders of divisions."

That there was more complaint of Grant than appears in detail in the "Records," is indicated by Halleck's letter of May 12, 1862, in which he says to Grant: "You certainly will not suspect me of any intention to injure your feelings or reputation, or to do you injustice. . . . For the last three months I have done everything in my power to ward off the attacks which were made upon you."

Fortunately for the country and for Grant, he had the inherent strength to bear his burden, and to remove adverse feeling by his great deeds. Much of the dissatisfaction with Grant after Shiloh arose from the reported surprise of his army on the 6th. Halleck, in that matter, took his lieutenant's part, and boldly denied the surprise, saying in a telegram of May 2, to Stanton: "The newspaper accounts that our divisions were surprised are utterly false;" adding in his formal report of June 15, 1862, "the impression which at one

time seemed to have been received by the Department that our forces were surprised on the morning of the 6th, is entirely erroneous." Time seems to have proved the futility of all denials of surprise, but Halleck's denial was none the less a friendly and a timely service to Grant.

The official records, informal evidence, and Grant's "Personal Memoirs," vol. i., show that bad feeling did not exist between Grant and Halleck at the close of the war. Grant probably felt during the contest that Halleck, though he had sometimes found fault, had been friendly and just to him. On the 11th of August, 1863, more than a year after what he presents in his "Memoirs" as the Shiloh injustice, Grant said to Halleck in a letter written with his own hand, "I feel under many obligations to you, General, for the interest you have ever taken in my welfare, and that of the army I have the honor to command. I will do the best I can to satisfy you that your confidence has not been misplaced."

In a letter to a distinguished General written on the 16th of February, 1864, Halleck said: "You have probably seen the attempt in the newspapers to create difficulties and jealousies between me and Grant. This is all for political effect. There is not the slightest ground for any such assertions. There cannot, and will not, be any differences between us. If he is made Lieutenant-General, as I presume he will be, I shall most cordially welcome him to the command, glad to be relieved from so thankless and disagreeable a position. I took it against my will, and shall be most happy to leave it as soon as another is designated to fill it."

In a letter dated July 16, 1864, to the same officer, Halleck said, speaking of Grant, who had then been put over Halleck's head: "While the General himself is free from petty jealousies, he has men about him who would gladly make difficulties between us. I know that they have tried it several times, but I do not think they will succeed."

Immediately after Lee's surrender Grant went to Washington, and Halleck from Washington to Richmond for duty. On the 17th of May, 1865, Secretary Stanton telegraphed to Halleck: "General Grant is here with his wife. It is not safe for him to be at the hotel, and he is reluctant to go into a private family. He would go into your house for a while if agreeable to you. Will you write him to do so while your family are absent?" Halleck at once telegraphed Grant, "There are two servants and most of the furniture and bedding in the house I occupied in Georgetown. I suggest that while your wife is with you, you move right in and make yourself comfortable. My family will not again occupy it, and I do not require the furniture here, at least for the present. During the hot weather you can make yourself much more comfortable there than in Washington." Grant promptly accepted this friendly offer, telegraphing Halleck, "Your very kind dispatch, placing your house at Mrs. Grant's disposal during her stay, is received. I have not seen Mrs. Grant, but I know that she will be delighted to get out of the hotel for the few weeks she remains here." Halleck's house was occupied by General and Mrs. Grant. This offer and acceptance of hospitality was supplemented by

the following expressions of friendliness and courtesy. Telegram from Grant to Halleck, May 26: "I understand that Mrs. Halleck is expected in Washington. If you will let me know when to expect her, I will be glad to meet her at the wharf with a carriage, and have Mrs. Grant entertain her during her stay in this city." Halleck to Grant, May 27: "Mrs. Halleck will not visit Washington till she goes north for the summer. The house will therefore remain entirely at your disposal."

The foregoing communications show that Grant entertained feelings of friendship and respect for Halleck at the close of the War. And there are favorable expressions from him of a much later date. John Russell Young, in his book "Around the World with General Grant" (1879), quotes Grant thus: "In the early part of the War Halleck did very good service for which he has never received sufficient credit—I mean in his civic administration. Some of his orders were in anticipation, I think, of those of Butler, which gave him so much fame in New Orleans" (p. 465, vol. ii.), . . . "he was in addition a very able military man. Halleck had intellect and great acquirements outside of his military education. He was at the head of the California bar when the War broke out, and his appointment to the Major-Generality was a gratification to all who knew the old Army. When I was made Lieutenant-General, General Halleck became Chief-of-Staff of the Army. He was very useful, and was loyal and industrious; sincerely anxious for the success of the country, and without any feeling of soreness at being superseded. In this

respect Halleck was a contrast to other officers of equal ability, who felt that unless they had the command they craved they were not needed. Halleck's immense knowledge of military science was of great use in the War Office to those of us in the field" (p. 216, vol. ii.). . . . "After Donelson I was in disgrace, and practically without a command, because of some misunderstanding on the part of Halleck. *It all came right in time.* I never bore Halleck ill-will for it. He was in command, and it was his duty to command as he pleased" (p. 452, vol. ii.). Grant's unkind feeling toward Halleck appears to have been engendered quite recently, and was due probably to misunderstanding of the facts arising from Grant's inability to search the "Records" thoroughly for himself.

NEW YORK CITY, December 15, 1885.

ARTICLE V.

Nicolay's "Outbreak of Rebellion."*

Colonel Nicolay has made an important contribution to history and has done the readers of the present day a service of incalculable value. Adhering closely to the facts established by official records, and under the restraint of presenting occurrences in chronological order, he invests his account of the outbreak of rebellion with the charm of a romance. His style is excellent, though at times he drops below the sublime, as, for example, in stating that Ellsworth's Zouaves were received at the Academy of Music, in New York City, by "as *fashionable* an audience as ever packed the walls or *split their kid gloves* to encore the most famous prima-donna." Occasionally, too, an adjective appears which may improve the turn of a sentence but impairs its accuracy, as when speaking of the affair at Blackburn's Ford, June 18, 1861, the author says that "Tyler withdrew his *reluctant* officers and men from the fight." There was no reluctance to speak of in that engagement. Officers and men were anxious to get into it, and more anxious to get out of it. Many of them did not wait to be withdrawn. Colonel Nicolay generally views his subject from the extreme standpoint of the Republican Party. He places the responsibility not on the Southern people,

* "The Outbreak of Rebellion," by Colonel John G. Nicolay. Chas. Scribner's Sons, N. Y.

but on their leaders, and regards the Rebellion as the fruit of a deliberate cunning conspiracy of cliques and cabals. He does not admit that the South had any cause of complaint, or that there was anything in the terms of the Constitution or the history of its adoption on which to found the so-called "State rights"; and to support his condemnation of this doctrine he pronounces State rights and State supremacy synonymous terms and uses the latter term. The merit of Colonel Nicolay's work lies chiefly in the chapters which deal with the political events and commotions that preceded the outbreak of actual hostilities. There is nothing in American biography surpassing his pen-pictures of Buchanan and Lincoln. They are mere outline sketches, but the likenesses are nearly perfect. His personal devotion to the Martyr President perhaps carries him a little too far when he claims that Lincoln's "countenance" when "illuminated" in the utterance of a strong or "stirring thought" was "positively handsome," but that is merely a matter of opinion or taste, and if he errs at all it is on the right side, the side of love.

He takes the 5th day of October, 1860, as the initial point of the "American Rebellion" because on that day Governor Gist of South Carolina commenced a correspondence with the Governors of the Cotton States concerning secession. That, however, does not fix an initial point. Governor Gist's action was but a continuation of treasonable proceedings which had been going on in South Carolina for many years. The first overt act was the adoption of an Ordinance of Secession by the South Carolina Convention, Decem-

ber 20, 1860. That is the true initial point of the Rebellion, and it is the one adopted by the compiler of the "Records of the Rebellion," Colonel R. N. Scott, U. S. A. It is well merely *for convenience of reference* to note that after the War the Federal courts decided that "the proclamation of the 19th of April, 1861, was the first formal recognition of the existence of civil war by the National authority," and that "the suppression of the Rebellion is to be deemed to have taken place on the 20th of August, 1866."

Colonel Nicolay brings his narrative down to McClellan's appointment as General-in-Chief in 1861, giving a history of the early operations in West Virginia, Patterson's Harper's Ferry Campaign, and McDowell's Campaign of Manassas or Bull Run. His account of these operations is interesting and in the main accurate, but is not marked by the skill and vigor that characterize the treatment of the earlier events of the outbreak. He recites too many elementary principles. It might have been of use to the raw levies brought forward at the time he writes about, to announce that "war combines art with science"; that "the superior work of the veteran comes through long years of practice"; that "the value of a veteran consists as much of his habitual expertness in the routine of camp and march, as of coolness and confidence under fire"; and that an army develops "the greatest usefulness from action and thoroughness of organization," but it is hardly worth while for Colonel Nicolay at this date to give such precepts so much prominence in a narrative of this sort. His meaning in some of these precepts is not clear; as, for example, when he says, "of

all machines an army develops perhaps, the greatest inefficiency from mere friction," and he is rather too hard on the public in saying, "occasionally an idea finds a tenacious and almost ineradicable lodgment in the public mind, without a shadow of reason or truth to justify it. *Because* the fanatic John Brown selected Harper's Ferry as the scene of his wild exploit, the public mind jumped to the conclusion that the spot was a natural stronghold, a Gibraltar, a Thermopylæ. Now the single mountain line called the Blue Ridge crossing the Potomac River at Harper's Ferry, is as far from being a mountain stronghold as a straight line of picket-fence across a brook is from being a block house. John Brown was as unsound in war as in politics. But it would seem that even in highly civilized nations there lingers a remnant of the savage superstition that insanity is inspiration; for strong minds caught at the suggestion that he had recognized in Harper's Ferry a negro Thermopylæ."

Colonel Nicolay discusses Patterson's Campaign about Harper's Ferry at considerable length. He shows that Patterson was, in due time, informed by General Scott that McDowell would make an advance from Washington "against Beauregard at Manassas, and that Johnston must be defeated or detained in the Shenandoah Valley in order that their two armies might not unite and defeat McDowell," and that Patterson "found nothing but reasons for fear and justification for inaction and retreat," and that with ample means and full instruction he utterly failed either to defeat Johnston or detain him. Patterson, the author adds, "had neither the skill nor courage to direct the

blow." What then? Having fixed this lamentable failure upon Patterson, Colonel Nicolay undertakes to transfer the blame from him to his Assistant Adjutant-General! He says: "In justice to him (Patterson), however, it should always be remembered that his personal instinct was right, and that he was led into his fatal error mainly by the influence of his Chief-of-Staff, Fitz John Porter." What weight suppressed "personal instinct" is entitled to in extenuating military failures, it is hard to say, but certainly nothing much worse can be said of a commanding general than that he was led into a fatal error through the "influence" of his staff officer. It is no apology for failure that the commander adopts bad advice. He has the power and the glory. It is not fair play to try to shift the responsibility from him to his powerless adviser. That merely hurts the one without helping the other. It is remarkable that the most extended citation of proof in the whole volume is made in support of the unimportant point that Patterson was led into error by the influence of Fitz John Porter; and it is still more remarkable that the testimony quoted instead of proving the statement clearly refutes it. The author says Patterson's "Senior Aide-de-Camp, in his testimony before the Committee on the Conduct of the War relates the circumstances under which he took his final decision: 'At one time' (says this Aide-de-Camp) 'General Patterson had given an order to move from Bunker Hill to Winchester. He was very unwilling to leave Johnston even at Winchester without attacking him, and on the afternoon before we left Bunker Hill he decided to attack him notwithstanding his force.'

“ ‘Question. Behind his intrenchments?’

“ ‘Answer. Yes, sir; it went so far that his order was written by his Assistant Adjutant-General, Colonel Porter. It was very much against the wishes of Colonel Porter, and he asked General Patterson if he would send for Colonel Abercrombie and Colonel Thomas, and consult them on the movements. General Patterson replied: “No, sir; for I know they will attempt to dissuade me from it, and I have made up my mind to fight Johnston under all circumstances.” That was the day before we left Bunker Hill. Then Colonel Porter asked to have Colonel Abercrombie and Colonel Thomas sent for and consulted as to the best manner to carry out his wishes. He consented and they came, and after half an hour they dissuaded him from it.’ ”

This is one of the many *ex-parte* statements made before the Committee on the Conduct of the War; but as Colonel Nicolay adopts it, it is not proposed here to discredit it. It shows as clearly as language can, that, so far from being led into error by Porter, Patterson squarely repelled that officer's *influence*, and in spite of it made up his mind “*to fight Johnston under all circumstances.*” He, however, accepted Porter's suggestion to consult Colonels Abercrombie and Thomas, as to the best manner of conducting the fight he had resolved upon and in that consultation “they”—Abercrombie and Thomas—led him into the fatal error of not fighting at all. Who, it may be asked, were Abercrombie and Thomas that Patterson should have been so fatally led by them after having resisted Porter's “*influence*”? The former was an old and esteemed

officer of the Regular Army of high rank, and was Patterson's life-long friend and *son-in-law*. The Thomas mentioned was George H. Thomas, whose life was spent in the Regular Army. He too was an officer of high rank and known ability at that time. His career as a Major-General in the Rebellion was brilliant and successful. It is not strange that Patterson, with the character that Colonel Nicolay gives him, failed to fight if these two men advised against it; but it is amazing that Colonel Nicolay should go so far out of his way in a fruitless and unnecessary attempt to fasten on Porter the responsibility for the effects of advice, which by the testimony adduced belongs to Abercrombie and Thomas. But strange to say Colonel Nicolay does not produce all the testimony. The report of the Committee on the Conduct of the War from which he quotes to prove that it was Porter's influence which prevented Patterson from fighting, contains the testimony of Colonel Craig Biddle, one of Patterson's aides, showing that a council of general officers unanimously opposed the advance. It is as follows: "The discussion at Martinsburg was as to whether or not General Patterson should go on to Winchester. General Patterson was very full of that himself. He was determined to go to Winchester, but the opinions of *all the regular officers* who were with him were *against it*. . . . *The opinions of all the men in whom I had any confidence were against it.* . . . He (Patterson) decided upon going ahead *against the remonstrances of General Porter* who advised against it. He (Porter) told me he considered he had done his duty, and said no more. The movement was delayed *in consequence* .

of General Stone's command not being able to move right away. It was then evident that there was so much opposition to it that the General was induced to call a council of *the general officers* in his command at which I was present. *They were unanimously opposed to the advance.*"

Why in the face of all these facts Colonel Nicolay should assert that Patterson "was led into his fatal error mainly by the influence of his Chief-of-Staff, Fitz John Porter," must be left to conjecture.

If we look up instead of down for the cause of the failure of the campaign of 1861 we shall probably find that General Scott is not entirely free from responsibility. As General-in-Chief of the Army, it was in his power, if not restrained by the President, to unite the armies of McDowell and Patterson or keep them apart. He chose the latter course, giving McDowell no better assurance than that if Johnston joined Beauregard he should have "*Patterson on his heels.*" It would perhaps have been better to put Patterson on Johnston's toes by sending him in due time to the Manassas field of operations via Leesburg.

When weighing military services a historian should hold the scales with a firm grasp. In Patterson's campaign there appears to be a little unsteadiness in our author's hand, but that, in its relations to the general subject, is a mere blemish on a meritorious work; and the Scribners have a right to feel proud of the introductory volume of their commendable enterprise.

ARTICLE VI.

The First Battle of Bull Run.*

Speaking broadly, the South had political control of the Government until 1860. The election of Lincoln to the Presidency in that year showed that Southern domination within the Union had probably come to an end and that the anti-slavery spirit of the North was growing. But it was from no fear that the slaves would be liberated that secession took place. President Lincoln, to avoid war, was at the beginning willing that slavery should be continued in the States where it existed. Congress, even after the Battle of Bull Run, almost unanimously resolved with the most conciliatory feeling, that the War was "not waged in any spirit of oppression, nor from any purpose of conquest or subjugation, nor for the purpose of overthrowing or interfering with the rights or established institutions of the States, but to defend and maintain the permanency of the Constitution and to preserve the Union with all the dignity and equal rights of the several States unimpaired."

The necessity for subjection of the slave-masters' will to the will of the Union after political control had passed to the North; the unwillingness of the North to have slavery extended and a violent resentment in the South of abolitionism in the abstract, was the

* Published in part in the "Battles and Leaders of the Civil War." Century Company. N. Y.

cause of the attempt of Southern States to withdraw from the Union. The Confederate Commissioners, Yancey, Munn and Rust, in their letter to Earl Russell said: "It was from no fear that the slaves would be liberated that secession took place. The very party in power has proposed to guarantee slavery forever in the States if the South would but remain in the Union."

Secession, which had long been ripening in South Carolina, was actually inaugurated there in October prior to the election, and was formally declared December 20, 1860. Through the activity of political leaders, but much against the will of many of the people, it spread rapidly among other States and the South was soon in rebellion.

As President Buchanan's administration was drawing to a close he was forced by the action of the South to decide whether the power of the General Government should be used to coerce, into submission, States that had attempted to secede from the Union. His opinion was that the contingency was not provided for, that while a State had no right to secede, the Constitution gave no authority to coerce, and that he had no right to do anything except hold the property and enforce the laws of the United States.

Before President Buchanan went out of office, a spirit not only of secession but of war and aggression was rampant in the South, and the capital of the nation seemed to be in danger of seizure by the reckless and daring spirits of the fostering rebellion. For its protection and in order to consult about holding Southern forts and arsenals, General Scott was in December called to Washington, from which he had

been absent since the inauguration of Pierce, who had defeated him for the Presidency. Jefferson Davis, Pierce's Secretary of War, and General Scott had quarrelled and the genius of acrimony controlled the correspondence which took place between them.* Notwithstanding the fact that on account of his age and infirmities he was soon overwhelmed by the rush of events, General Scott's laurels had not withered at the outbreak of the War, and he brought to the emergency, ability, experience and prestige. A high light in the whole military world, he towered above the rest of our Army, at that time, professionally as he did physically. As the effect of his immense stature was increased by contrast with a short Aide-de-Camp, purposely chosen as it was suspected, so was his exalted character marked by one or two conspicuous but not very harmful foibles. With much learning, great

* The last letter of that correspondence is as follows:

"WAR DEPARTMENT,

"WASHINGTON, May 27, 1856.

"SIR:—I have received your letter of the 21st instant. The delay for which you make a hypocritical apology has strengthened you to resume the labor of vituperation; but having early in this correspondence stamped you with falsehood, and whenever you presented a tangible point convicted you by conclusive proof, I have ceased to regard your abuse; and as you present nothing in this letter which requires remark, I am gratified to be relieved from the necessity of further exposing your malignity and depravity. Very respectfully, your obedient servant,

"JEFFERSON DAVIS, Secretary of War.

"Brevet Lieut.-General Winfield Scott, U.S. Army, New York City."

To mark the difference between precept and example, it may be noted that upon the heels of the foregoing abusive letter to General Scott, Davis, as Secretary of War, issued in 1857, a new code of Army Regulations, the first Article of which says: "Superiors of every grade are forbid to injure those under them, by tyrannical or capricious conduct or by abusive language."

military ability, a strict sense of justice, and a kind heart, he was vain and somewhat petulant. He loved the Union and hated Jefferson Davis.

By authority of the President, General Scott assembled a small force of regulars in the capital and for the first time in the history of the country, the electoral count was made and a President was inaugurated under the protection of soldiery. But before the inauguration of Lincoln, March 4, the secession movement had spread through the "cotton-belt" and delegates from the secession States had met as a congress at Montgomery, Alabama, February 4. On the 8th, they had organized the "Provisional Government of the Confederate States of America," and on the 9th had elected Jefferson Davis President and Alexander H. Stephens Vice-President. On the 11th of March the Confederate Congress adopted a constitution containing a clause saying, "The institution of Negro slavery as it now exists in the Confederate States shall be recognized and protected."

In his Inaugural Address, February 18, Jefferson Davis expressed it as the judgment and will of the Southern people that a reunion with the North was "neither practicable nor desirable." Stephens in his speech, March 21, 1861, said of the new Southern government, "Its foundations are laid, its corner-stone rests upon the great truth that the Negro is not equal to the white man, that slavery subordination to the superior race is his natural and normal condition. This our new government is the first in the history of the world based upon this great physiological and moral truth."

In his Inaugural Address, Lincoln avowed that he had no purpose to interfere, directly or indirectly, with slavery in the States where it existed, but he pronounced ordinances of secession legally void; asserted that the Union was perpetual; that it would defend itself and hold its property and offices and collect its duties and imports.

That is the issue that was joined at the time. The South, believing in the doctrine of State rights, maintained that a State had the right to withdraw from the Union, and the Southern States proceeded to withdraw from the Government of the United States and set up a government of their own, based upon slavery. The Government of the United States, without then passing upon the principle of slavery and without any purpose of interfering with it where it existed, denied the right of secession and asserted the perpetuity of the Union and the right and duty of the General Government to enforce the laws of the United States over the whole country.

Actual hostilities were not long delayed. Major Anderson, commanding a small Union force in Fort Moultrie, a weak post in Charleston harbor, finding himself threatened by the gathering and angry troops of South Carolina, while commissioners of that State were in Washington to treat for the surrender of the forts, escaped the danger of capture by transferring his command to Fort Sumter on the night of December 26, 1860.

Governor Pickens, of South Carolina, promptly seized Fort Moultrie, Castle Pinckney, the Arsenal, Custom House and Post Office in Charleston, raised

the Palmetto flag over them and began the construction of batteries to bombard Fort Sumter. On the 9th of January he fired upon and drove away the steamship "Star of the West," sent by the Government with recruits and supplies for Major Anderson. The siege of Fort Sumter was assumed by the Confederate government on the 1st of March, with General Beauregard in command. Learning on the 8th of April that a naval expedition was about to approach with succor for the garrison, Beauregard on the 12th opened fire upon the fort, which surrendered on the 13th, and its Union flag was lowered to be raised only on the fourth anniversary thereafter. For many months the Government had borne insults and wrongs with amazing patience. Diplomacy and forbearance were at an end.

The morning that the news of the firing upon Sumter reached Washington, President Lincoln issued a proclamation dated April 15, convening Congress and calling forth 75,000 three months' militia to suppress combinations against the Government, to cause the laws to be executed and to maintain the honor, the integrity and existence of the Union and the perpetuity of popular government.

The war spirit was aroused to the highest pitch in the North as well as in the South. The people in arms prepared to flock to their respective standards, those of the South to establish a new government based upon slavery; those of the North *to preserve the Union as it was*. Upon the issue of abolishing slavery as it then existed, indeed upon any other issue than the one plainly and forcibly announced by President Lincoln,

the General Government would have failed to raise an army for the suppression of the rebellion.

The Federal situation was alarming. Sumter fell on the 13th of April; Virginia seceded on the 17th. She seized Harper's Ferry on the 18th and the Norfolk Navy Yard on the 20th. On the 19th a mob in Baltimore assaulted the 6th Massachusetts Volunteers as it passed through to Washington, and soon the bridges were burned and railroad communication was cut off between Washington and the North. The national capital, a slave-holding city, lying between the slave-holding States of Virginia and Maryland, was in peril. But General Scott was there with two light batteries, the Marine Corps and a few foot companies of the Regular Army. On the 9th of April, President Lincoln called upon the District of Columbia for militia, but the response increased for the moment the alarm of the situation. Some of the men refused to be mustered into service, being disloyal, and others exacted the condition that they should not be required to serve beyond the limits of the District. Thirty-eight companies were, however, finally obtained, thirty-five of them with the condition just mentioned, and being placed under the command of their Inspector-General, that able and indefatigable soldier, General Charles P. Stone, contributed to avert the shame that threatened the nation in the loss of its capital before the Northern people could reach it. After April 12, both sides began to prepare in earnest for the gigantic struggle, which lasted until four years of bloody war had worn out the South.

The North had a regular army composed on January

1st, 1862, of 1,098 officers, and 15,304 enlisted men. Of this force, some four or five hundred men were in Washington. The remainder were scattered from the British boundary to the Gulf of Mexico, and from the Atlantic to the Pacific Ocean. After January 1st, the Army in addition to ordinary casualties, was reduced by the surrender of a considerable part of its own officers to the Confederates, and by the resignation and desertion of 313 commissioned officers, who joined the South. No addition was made to the government forces prior to April, 1861. The Southerners, daring, fiery, full of confidence in their own prowess and of contempt for the courage and manhood of the North, having through their leaders resolved upon secession as soon as they were voted down by the election of Lincoln,—before that even in South Carolina,—had taken up arms and spent the winter of their favoring clime in military exercises. The Northerners, on the other hand, deprecating war and hoping that patience and forbearance would prevent it, made no preparation for the hostilities that were forced upon them.

Lincoln, who was at the head of the Union, had had no experience as a party leader or executive officer and was without knowledge of military affairs or acquaintance with military men. Davis, at the head of the Confederacy, was an experienced and acknowledged Southern leader; was a graduate of the Military Academy; had commanded a regiment in the Mexican War; had been Secretary of War under President Pierce, and was chairman of the military committee in the United States Senate at the time he left Congress to take part with the South. He was not only well

versed in everything relating to war, but was thoroughly informed concerning the character and capacity of prominent and promising officers of the Army. There was nothing experimental in his choice of his high military commanders. Those appointed at the beginning retained command with but few exceptions, until they lost their lives or the War closed.

The Southern States, all claiming to be independent republics after secession, with all their governmental machinery including militia and volunteer organizations in complete working order, transferred themselves as States from the Union to the Confederacy in cheerful obedience to the command of State rights and slavery. The organization of a general government from such elements, with war as its immediate purpose, was a simple matter. Davis had only to accept and arrange according to his ample information and well-matured judgment, the abundant and ambitious material at hand in the way that he thought would best secure the purposes of the Rebellion. Lincoln had to adapt the machinery of a conservative old government, some of it unsuitable, some unsound, to sudden demands for which it was not designed.

Officers from all departments of the Federal civil service and from all the corps of the Regular Army, most of them full of vigor, with the same education and experience as those who remained, went South and awaited assignment to the duties for which Davis might regard them as best qualified. All Confederate offices were vacant and the Confederate President had large if not absolute power in filling them. On the other hand, the civil offices under Lincoln were occu-

ped or controlled by party and in the small Regular Army of the Union the law required that vacancies as they occurred should as a rule be filled by seniority. There was no retired list for the disabled, and the Army was weighed down by longevity; by venerated traditions; by prerogatives of service rendered in former wars; by the firmly tied red tape of military bureauism and by the deep-seated and well-founded fear of the auditors and comptrollers of the Treasury. Nothing but time and experience—possibly nothing but disaster—could remove from the path of the Union President difficulties from which the Confederate President was, by the situation, quite free. So, too, Davis was free from the disloyalty which surrounded Lincoln at that period and which was injurious not only through its reality but through the apprehension and suspicion that lingered after it had ceased in fact.

The talents of Simon Cameron, his first Secretary of War, were political, not military. He was a kind, gentle, placid man, gifted with powers to persuade, not to command. Shrewd and skilled in the management of business and personal matters, he had no knowledge of military affairs, and could not give the President much assistance in assembling and organizing for war the earnest and impatient, but unmilitary people of the North.

In the beginning of the War, therefore, the military advantage was on the side of the Confederates, notwithstanding the greater resources of the North, which produced their effect only as the contest was prolonged.

After the firing of the first gun upon Sumter, the two sides were equally active in marshalling their

forces on a line along the border States from the Atlantic coast of Virginia in the east to Kansas in the west. Many of the earlier collisions along this line were due rather to special causes or local feeling than to general military considerations. The prompt advance of the Union forces under McClellan to West Virginia was to protect that new-born free State. Patterson's movement to Hagerstown and thence to Harper's Ferry was to prevent Maryland from joining or aiding the Rebellion, to re-open the Baltimore and Ohio railroad, and prevent invasion from the Shenandoah Valley. The Southerners having left the Union and set up the Confederacy upon the principle of State rights, in violation of that principle invaded the State of Kentucky in opposition to her apparent purpose of armed neutrality. That made Kentucky a field of early hostilities and helped to anchor her to the Union. Missouri was rescued from secession through the energy of General F. P. Blair and her other Union men, and by the indomitable will of Captain Lyon of the Regular Army, whose great work was accomplished under many disadvantages. In illustration of the difficulty with which the new condition of affairs penetrated the case-hardened bureauism of long peace, it may be mentioned that the venerable Adjutant-General of the Army, when a crisis was at hand in Missouri, came from a consultation with the President and Secretary Cameron, and with a sorry expression of countenance and an ominous shake of the head exclaimed, "It's bad, very bad; we're giving that young man Lyon a great deal too much power in Missouri."

Early in the contest another young Union officer came to the front. Major Irvin McDowell was appointed Brigadier-General May 14. He was forty-three years of age, of unexceptionable habits and great physical powers. His education, begun in France, was continued at the United States Military Academy, from which he was graduated in 1838. Always a close student, he was well informed outside as well as inside his profession. Distinguished in the Mexican war, intensely Union in his sentiments, full of energy and patriotism, outspoken in his opinions, highly esteemed by General Scott, on whose staff he had served, he at once secured the confidence of the President and the Secretary of War, under whose observation he was serving in Washington. Without political antecedents or acquaintances, he was chosen for advancement on account of his record, his ability, and his vigor.

Northern forces had hastened to Washington upon the call of President Lincoln,* but prior to May 24 they had been held rigidly on the north side of the Potomac. On the night of May 23-24, the Confederate pickets being then in sight of the Capitol, three columns were thrown across the river by General J. K. F. Mansfield, then commanding the Department of Washington, and a line from Alexandria below to

*The aspect of affairs was so threatening after President Lincoln's call of April 15 for 75,000 three-months' militia, and General Scott was so averse to undertaking any active operations with such short-term troops, that, as early as May 3, and without waiting for the meeting of Congress, the President entered upon the creation of an additional volunteer army to be composed of 42,034 three-years' men, together with an increase of 22,714 regulars and 18,000 seamen.

chain-bridge above Washington was intrenched under guidance of able engineers. On the 27th Brigadier-General Irvin McDowell was placed in command south of the Potomac.

By the 1st of June the Southern government had been transferred from Montgomery to Richmond, and the capitals of the Union and of the Confederacy stood defiantly confronting each other. General Scott was in chief command of the Union forces, with McDowell south of the Potomac, confronted by his old classmate, Beauregard, hot from the capture of Fort Sumter.

General Patterson, of Pennsylvania, a veteran of the War of 1812 and the War with Mexico, was in command near Harper's Ferry, opposed by General Joseph E. Johnston. The Confederate President, Davis, then in Richmond, with General R. E. Lee as military adviser, exercised in person general military control of the Southern forces. The enemy to be engaged by McDowell occupied what was called the "Alexandria line," with headquarters at Manassas, the junction of the Orange and Alexandria with the Manassas Gap railroad. The stream known as Bull Run, some three miles in front of Manassas, was the line of defense. On Beauregard's right, thirty miles away, at the mouth of Aquia Creek, there was a Confederate brigade of 3,000 men and 6 guns under General Holmes. The approach to Richmond from the Lower Chesapeake, threatened by General B. F. Butler, was guarded by Confederates under Generals Huger and Magruder. On Beauregard's left, sixty miles distant, in the Lower Shenandoah Valley and

separated from him by the Blue Ridge Mountains, was the Confederate army of the Shenandoah under command of General Johnston. Beauregard's authority did not extend over the forces of Johnston, Huger, Magruder, or Holmes, but Holmes was with him before the battle of Bull Run, and so was Johnston, who, as will appear more fully hereafter, joined at a decisive moment.

Early in June Patterson was pushing his column against Harper's Ferry, and on the 3d of that month McDowell was called upon by General Scott to submit "an estimate of the number and composition of a column to be pushed toward Manassas Junction and perhaps the Gap, say in 4 or 5 days, to favor Patterson's attack upon Harper's Ferry." McDowell had then been in command at Arlington less than a week, his raw regiments south of the Potomac were not yet brigaded, and this was the first intimation he had of offensive operations. He reported, June 4th, that 12,000 infantry, 2 batteries, 6 or 8 companies of cavalry, and a reserve of 5,000 ready to move from Alexandria would be required. Johnston, however, gave up Harper's Ferry to Patterson, and the diversion by McDowell was not ordered. But the public demand for an advance became imperative—stimulated perhaps by the successful dash of fifty men of the 2d United States Cavalry, under Lieutenant C. H. Tompkins, through the enemy's outposts at Fairfax Court House on the night of June 1st, and by the unfortunate result of the movement of a regiment under General Schenck toward Vienna, June 9, as well as by a disaster to some of General Butler's troops on the 10th

at Big Bethel, near Fort Monroe. On the 24th of June, in compliance with verbal instructions from General Scott, McDowell submitted a "plan of operations and the composition of the force required to carry it into effect." He estimated the Confederate force at Manassas Junction and its dependencies at 25,000 men, assumed that his movements could not be kept secret and that the enemy would call up additional forces from all quarters, and added: "If General J. E. Johnston's force is kept engaged by Major-General Patterson, and Major-General Butler occupies the force now in his vicinity, I think they will not be able to bring up more than 10,000 men, so we may calculate upon having to do with about 35,000 men." And as it turned out, that was about the number he "had to do with." For the advance, McDowell asked "a force of 30,000 of all arms, with a reserve of 10,000." He knew that Beauregard had batteries in position at several places in front of Bull Run and defensive works behind the Run and at Manassas Junction. The stream being fordable at many places, McDowell proposed in his plan of operations to turn the enemy's position and force him out of it by seizing or threatening his communications. Nevertheless, he said in his report:

"Believing the chances are greatly in favor of the enemy's accepting battle between this and the Junction and that the consequences of that battle will be of the greatest importance to the country, as establishing the prestige in this contest, on the one side or the other,—the more so as the two sections will be fairly represented by regiments from almost every State,—I

think it of great consequence that, as for the most part our regiments are exceedingly raw and the best of them, with few exceptions, not over steady in line, they be organized into as many small fixed brigades as the number of regular Colonels may admit, . . . so that the men may have as fair a chance as the nature of things and the comparative inexperience of most will allow."

This remarkably sound report was approved, and McDowell was directed to carry his plan into effect July 8. But the government machinery worked slowly and there was jealousy in the way, so that the troops to bring his army up to the strength agreed upon did not reach him until the 16th.

Beauregard's Army of the Potomac at Manassas consisted of the brigades of Holmes, Bonham, Ewell, D. R. Jones, Longstreet, Cocke and Early, and of 3 regiments of infantry, 1 regiment and 3 battalions of cavalry, and 6 batteries of artillery, containing in all 27 guns, making an aggregate available force on the field of Bull Run of about 23,000 men.* Johnston's army from the Shenandoah consisted of the brigades

* Beauregard himself has said that on the 18th of July he had "along the line of Bull Run about 17,000 men; that on the 19th General Holmes joined him with about 3,000 men"; and that he "received from Richmond between the 18th and 21st about 2,000 more"; and that Johnston brought about 8,000 more, the advance arriving "on the morning of the 20th and the remainder about noon of the 21st," making his whole force, as he states it, "nearly 30,000 men of all arms." The figures are probably under the mark, as Hampton's Legion, McRea's Regiment, a North Carolina "regiment and two battalions of Mississippi and Alabama" joined between the 17th and 21st. Beauregard's force may fairly be placed at 32,000; and the opposing armies, both in the aggregate and in the parts engaged, were nearer equal in that than in any other battle in Virginia.

of Jackson, Bee, Bartow, and Kirby Smith, 2 regiments of infantry not brigaded, 1 regiment of cavalry (12 companies), and 5 batteries (20 guns), making an aggregate at Bull Run of 8,340.

McDowell's army consisted of 5 divisions, Tyler's First Division, containing 4 brigades (Keyes's, Schenck's, W. T. Sherman's, and Richardson's); Hunter's Second Division, containing 2 brigades (Andrew Porter's and Burnside's); Heintzelman's Third Division, containing 3 Brigades (Franklin's, Willcox's, and Howard's); Runyon's Fourth Division (9 regiments not brigaded); and Miles's Fifth Division, containing 2 brigades (Blenker's and Davies's),—10 batteries of artillery, besides two guns attached to infantry regiments, 49 guns in all, and 7 companies of regular cavalry. Of the foregoing forces, 9 of the batteries and 8 companies of infantry were regulars, and 1 small battalion was marines. The aggregate force was about 35,000 men. Runyon's Fourth Division was 6 or 7 miles in the rear guarding the road to Alexandria, and, though counted in the aggregate, was not embraced in McDowell's order for battle.*

There was an ill-suppressed feeling of sympathy with the Confederacy in the Southern element of Washington society; but the halls of Congress resounded with the eloquence of Union speakers. Martial music filled the air, and war was the topic wherever men met. By day and night the tramp of soldiers was heard, and staff-officers and orderlies galloped

* The average length of service of McDowell's men prior to the battle was about sixty days. "The longest in service were the three-months' men, and of these he had fourteen regiments.

through the streets between the headquarters of Generals Scott and McDowell. Northern enthusiasm was unbounded. "On to Richmond" was the war-cry. Public sentiment was irresistible, and in response to it the army advanced. It was a glorious spectacle. The various regiments were brilliantly uniformed according to the æsthetic taste of peace, and the silken banners they flung to the breeze were unsoiled and untorn. The bitter realities of war were nearer than we knew.

McDowell marched on the afternoon of July 16, the men carrying three days' rations in their haversacks; provision wagons were to follow from Alexandria the next day. On the morning of the 18th his forces were concentrated at Centreville, a point about 20 miles west of the Potomac and 6 or 7 miles east of Manassas Junction. Beauregard's outposts fell back without resistance. Bull Run, flowing south-easterly, is about half-way between Centreville and Manassas Junction, and, owing to its abrupt banks, the timber with which it was fringed, and some artificial defenses at the fords, was a formidable obstacle. The stream was fordable, but all the crossings for eight miles, from Union Mills on the south to the Stone Bridge on the north, were defended by Beauregard's forces. The Warrenton Turnpike, passing through Centreville, leads nearly due west, crossing Bull Run at the Stone Bridge. The direct road from Centreville to Manassas crosses Bull Run at Mitchell's Ford, half a mile or so above another crossing known as Blackburn's Ford. Union Mills was covered by Ewell's brigade, supported after the 18th by Holmes's brigade; McLean's Ford, next to the north, was cov-

ered by D. R. Jones's brigade; Blackburn's Ford was defended by Longstreet's brigade, supported by Early's brigade; Mitchell's Ford was held by Bonham's brigade, with an outpost of two guns and an infantry support east of Bull Run; the stream between Mitchell's Ford and the Stone Bridge was covered by Coker's brigade; the Stone Bridge on the Confederate left was held by Evans with 1 regiment and Wheat's special battalion of infantry, 1 battery of 4 guns, and 2 companies of cavalry.*

McDowell was compelled to wait at Centreville until his provision wagons arrived and he could issue rations. His orders having carried his leading division under Tyler no farther than Centreville, he wrote that officer at 8.15 A.M. on the 18th, "Observe well the roads to Bull Run and to Warrenton. Do not bring on an engagement, but keep up the impression that we are moving on Manassas." McDowell then went to the extreme left of his line to examine the country with reference to a sudden movement of the army to turn the enemy's right flank. —The recon-

* The state of General Beauregard's mind at the time is indicated by the following telegram on the 17th of July from him to Jefferson Davis: "The enemy has assaulted my outposts in heavy force. I have fallen back on the line of Bull Run and will make a stand at Mitchell's Ford. If his force is overwhelming, I shall retire to Rappahannock railroad bridge, saving my command for defence there and future operations. Please inform Johnston of this *via* Staunton, and also Holmes. Send forward any re-enforcements at the earliest possible instant and by every possible means." The alarm in this dispatch and the apprehension it shows of McDowell's "overwhelming" strength are not in harmony with the more recent assurance of the Confederate commander, that through sources in Washington treasonable to the Union, and in other ways, he "was almost as well informed of the strength of the hostile army in my [his] front as its commander."

noissance showed him that the country was unfavorable to the movement, and he abandoned it. While he was gone to the left, Tyler, presumably to "keep up the impression that we were moving on Manassas," went forward from Centreville with a squadron of cavalry and two companies of infantry for the purpose of making a reconnoissance of Mitchell's and Blackburn's fords along the direct road to Manassas. The force of the enemy at these fords has just been given. Reaching the crest of the ridge overlooking the valley of Bull Run and a mile or so from the stream, the enemy was seen on the opposite bank, and Tyler brought up Benjamin's artillery, 2 20-pounder rifled guns, Ayres's field battery of 6 guns, and Richardson's brigade of infantry. The 20-pounders opened from the ridge and a few shots were exchanged with the enemy's batteries. Desiring more information than the long-range cannonade afforded, Tyler ordered Richardson's brigade and a section of Ayres's battery, supported by a squadron of cavalry, to move from the ridge across the open bottom of Bull Run and take position near the stream and have skirmishers "scour the thick woods" which skirted it. Two regiments of infantry, 2 pieces of artillery, and a squadron of cavalry moved down the slope into the woods and opened fire, driving Bonham's outpost to the cover of intrenchments across the stream. The brigades of Bonham and Longstreet, the latter being re-enforced for the occasion by Early's brigade, responded at short range to the fire of the Federal reconnoitering force and drove it back in disorder. Tyler reported that having satisfied himself "that the enemy was in force,"

and ascertained "the position of his batteries," he withdrew. This unauthorized reconnoissance, called by the Federals the affair at Blackburn's Ford, was regarded at the time by the Confederates as a serious attack, and was dignified by the name of the "battle of Bull Run," the engagement of the 21st being called by them the battle of Manassas. The Confederates, feeling that they had repulsed a heavy and real attack, were encouraged by the result. The Federal troops, on the other hand, were greatly depressed. The regiment which suffered most was completely demoralized, and McDowell thought that the depression of the repulse was felt throughout his army and produced its effect upon the Pennsylvania regiment and the New York battery which insisted (their terms having expired) upon their discharge, and on the 21st, as he expressed it, "marched to the rear to the sound of the enemy's cannon." Even Tyler himself felt the depressing effect of his repulse, if we may judge by his cautious and feeble action on the 21st when dash was required.

The operations of the 18th confirmed McDowell in his opinion that with his raw troops the Confederate position should be turned instead of attacked in front. Careful examination had satisfied him that the country did not favor a movement to turn the enemy's right. On the night of the 18th the haversacks of his men were empty, and had to be replenished from the provision wagons, which were late in getting up. Nor had he yet determined upon his point or plan of attack. While resting and provisioning his men, he devoted the 19th and 20th to a careful examination by his en-

gineers of the enemy's position and the intervening country. His men, not soldiers, but civilians in uniform, unused to marching, hot, weary, and footsore, dropped down as they had halted and bivouacked on the roads about Centreville. Notwithstanding Beauregard's elation over the affair at Blackburn's Ford on the 18th, he permitted the 19th and 20th to pass without a movement to follow up the advantage he had gained. During these two days, McDowell carefully examined the Confederate position, and made his plan to manœuvre the enemy out of it. Beauregard ordered no aggressive movement until the 21st, and then, as appears from his own statement, through miscarriage of orders and lack of apprehension on the part of subordinates, the effort was a complete *fiasco*, with the comical result of frightening his own troops, who, late in the afternoon, mistook the return of one of their brigades for an attack by McDowell's left, and the serious result of interfering with the pursuit after he had gained the battle of the 21st.

But Beauregard, though not aggressive on the 19th and 20th, was not idle within his own lines. The Confederate President had authorized Johnston, Beauregard's senior, to use his discretion in moving to the support of Manassas, and Beauregard, urging Johnston to do so, sent railway transportation for the Shenandoah forces. But, as he states, "he at the same time submitted the alternative proposition to Johnston that, having passed the Blue Ridge, he should assemble his forces, press forward by way of Aldie, north-west of Manassas, and fall upon McDowell's right rear," while he, Beauregard, "prepared

for the operation at the first sound of the conflict, should strenuously assume the offensive in front." "The situation and circumstances specially favored the signal success of such an operation," says Beauregard. An attack by two armies moving from opposite points upon an enemy, with the time of attack for one depending upon the sound of the other's cannon, is hazardous even with well-disciplined and well-seasoned troops, and is next to fatal with raw levies. Johnston chose the wiser course of moving by rail to Manassas, thus preserving the benefit of "interior lines," which, Beauregard says, was the "sole military advantage at the moment that the Confederates possessed."

The campaign which General Scott required McDowell to make was undertaken with the understanding that Johnston should be prevented from joining Beauregard. With no lack of confidence in himself, McDowell was dominated by the feeling of subordination and deference to General Scott which at that time pervaded the whole Army, and General Scott, who controlled both McDowell and Patterson, assured McDowell that Johnston should not join Beauregard without having "Patterson on his heels." Yet Johnston's army, nearly nine thousand strong, joined Beauregard; Bee's brigade and Johnston in person arriving on the morning of the 20th, the remainder about noon on the 21st. Although the enforced delay at Centreville enabled McDowell to provision his troops and gain information upon which to base an excellent plan of attack, it proved fatal by affording time for a junction of the opposing forces. On the 21st of July General Scott addressed a dispatch to McDowell, say-

ing: "It is known that a strong re-enforcement left Winchester on the afternoon of the 18th, which you will also have to beat. Four new regiments will leave to-day to be at Fairfax Station to-night. Others shall follow to-morrow—twice the number if necessary." When this dispatch was penned, McDowell was fighting the "strong re-enforcement" which left Winchester on the 18th. General Scott's report that Beauregard had been re-enforced, the information that four regiments had been sent to McDowell, and the promise that twice the number would be sent *if necessary*, all came too late—and Patterson came not at all.*

* On the 17th of July Patterson, with some 16,000 three-months' men, whose terms began to expire on the 24th, was at Charlestown, and Johnston, with about the same number, was at Winchester. On that day General Scott telegraphed Patterson, "McDowell's first day's work has driven the enemy behind Fairfax Court House. Do not let the enemy amuse and delay you with a small force in front while he re-enforces the Junction with his main body." To this Patterson replied at half-past one o'clock in the morning of the 18th, stating his difficulties and asking, "Shall I attack?" General Scott answered on the same day: "I have certainly been expecting you to beat the enemy, or that you at least had occupied him by threats and demonstrations. You have been at least his equal and I suppose superior in numbers. Has he not stolen a march and sent re-enforcements toward Manassas Junction?" Patterson replied on the same day (18th), "The enemy has stolen no march upon me. I have caused him to be re-enforced;" and at one o'clock P.M. on that day he added: "I have succeeded, in accordance with the wishes of the General-in-Chief, in keeping General Johnston's force at Winchester." At the very hour that Patterson was writing this dispatch Johnston's advance was leaving Winchester. On the 18th Johnston telegraphed to Richmond that Patterson was at Charlestown, and said: "Unless he prevents it, we shall move toward General Beauregard to-day." He moved accordingly, and the Confederate armies were united for battle. It rested, however, with higher authority than Patterson to establish between his army and McDowell's the relations that the occasion called for. In considering the requirements for McDowell's movement against Manassas, General Scott gave great weight

During the 19th and 20th the bivouacs of McDowell's army at Centreville, almost within cannon range of the enemy, were thronged by visitors, official and unofficial, who came in carriages from Washington, bringing their own supplies. They were under no military restraint, and passed to and fro among the troops as they pleased, giving the scene the appearance of a monster military picnic.* Among others, to the general and irresistible fear then prevailing in Washington that the capital might be seized by a dash. Its direct defence was the first purpose of the three-months' militia. The Potomac at Washington was itself a strong barrier, and with the field-works on its south bank afforded security in that quarter. The danger was thought to be from the Shenandoah, and that induced the Government to keep Patterson in the valley. Indeed, on the 30th of June Colonel C. P. Stone's command was ordered from Point of Rocks to Patterson at Martinsburg, where it arrived on the 8th of July; whereas the offensive campaign against Manassas, ordered soon after, required Patterson to go to Stone, as he proposed to do June 21, instead of Stone to Patterson. The campaign of McDowell was forced upon General Scott by public opinion, but did not relieve the authorities from the fear that Johnston might rush down and seize Washington. General Scott, under the pressure of the offensive in one quarter and the defensive in another, imposed upon Patterson the double task, difficult, if not impossible, of preventing Johnston from moving on the capital and from joining Beauregard. If that task was possible, it could have been accomplished only by persistent fighting, and that General Scott was unwilling to order: though in his dispatch of the 18th in reply to Patterson's question, "Shall I attack?" he said, "I have certainly been expecting you to beat the enemy." Prior to that, his instructions to Patterson had enjoined caution. As soon as McDowell advanced, Patterson was upon an exterior line and in a false military position. Admitting that he might have done more to detain Johnston, bad strategy was probably more to blame for the result than any action or lack of action on Patterson's part.

* The presence of senators, congressmen, and other civilians upon the field on the 21st gave rise to extravagant and absurd stories, in which alleged forethought and valor among them are contrasted with a lack of these qualities in the troops. The plain truth is that the non-combatants and their vehicles merely increased the confusion and demoralization of the retreat.

the venerable Secretary of War, Cameron, called upon McDowell. Whether due to a naturally serious expression, to a sense of responsibility, to a premonition of the fate of his brother who fell upon the field on the 21st, or to other cause, his countenance showed apprehension of evil; but men generally were confident and jovial.

McDowell's plan of battle promulgated on the 20th, was to turn the enemy's left, force him from his defensive position, and, "if possible, destroy the railroad leading from Manassas to the Valley of Virginia, where the enemy has a large force." He did not know when he issued this order that Johnston had joined Beauregard, though he suspected it. Miles's Fifth Division, with Richardson's brigade of Tyler's division, and a strong force of artillery was to remain in reserve at Centreville, prepare defensive works there and threaten Blackburn's Ford. Tyler's First Division which was on the turnpike in advance, was to move at 2.30 A.M., threaten the Stone Bridge and open fire upon it at daybreak. This demonstration was to be vigorous, its first purpose being to divert attention from the movements of the turning column. As soon as Tyler's troops cleared the way, Hunter's Second Division, followed by Heintzelman's Third Division, was to move to a point on the Warrenton Turnpike about one or two miles east of Centreville and there take a country road to the right, cross the Run at Sudley Springs, come down upon the flank and rear of the enemy at the Stone Bridge, and force him to open the way for Tyler's division to cross there and attack, fresh and in full force.

Tyler's start was so late and his advance was so slow as to hold Hunter and Heintzelman two or three hours on the mile or two of the turnpike between their camps and the point at which they were to turn off for the flank march. This delay, and the fact that the flank march proved difficult and some twelve miles instead of about six as was expected, were of serious moment. The flanking column did not cross at Sudley Springs until 9.30 instead of 7, the long march, with its many interruptions, tired out the men, and the delay gave the enemy time to discover the turning movement. Tyler's operations against the Stone Bridge were feeble and ineffective. By 8 o'clock Evans was satisfied that he was in no danger in front, and perceived the movement to turn his position. He was on the left of the Confederate line, guarding the point where the Warrenton Turnpike, the great highway to the field, crossed Bull Run, the Confederate line of defence. He had no instructions to guide him in the emergency that had arisen. But he did not hesitate. Reporting his information and purpose to the adjoining commander, Cocke, and leaving four companies of infantry to deceive and hold Tyler at the bridge, Evans before 9 o'clock turned his back upon the point he was set to guard, marched a mile away, and, seizing the high ground to the north of Young's Branch of Bull Run, formed line of battle at right angles to his former line, his left resting near the Sudley Springs road, by which Burnside with the head of the turning column was approaching, thus covering the Warrenton Turnpike and opposing a determined front to the Federal advance upon the

Confederate left and rear.* In his rear to the south lay the valley of Young's Branch, and rising from that was the higher ridge or plateau on which the Robinson house and the Henry house were situated, and on which the main action took place in the afternoon. Burnside, finding Evans across his path, promptly formed line of battle and attacked about 9.45 A.M. Hunter, the division commander, who was at the head of Burnside's brigade directing the formation of the first skirmish line, was severely wounded and taken to the rear at the opening of the action. Evans not only repulsed but pursued the troops that made the attack upon him. Andrew Porter's brigade of Hunter's division followed Burnside closely and came to his support. In the meantime Bee had formed a Confederate line of battle with his and Bartow's brigades of Johnston's army on the Henry house plateau, a stronger position than the one held by Evans, and desired Evans to fall back to that line; but Evans, probably feeling bound to cover the Warrenton Turnpike and hold it against Tyler as well as against the flanking column, insisted that Bee should move across the valley to his support, which was done.

After Bee joined Evans, the preliminary battle continued to rage upon the ground chosen by the latter. The opposing forces were Burnside's and Porter's brigades, with one regiment of Heintzelman's division on the Federal side, and Evans's, Bee's, and Bartow's

* Evans's action was probably one of the best pieces of soldiership on either side during the campaign, but it seems to have received no special commendation from his superiors.

brigades on the Confederate side. The Confederates were dislodged and driven back to the Henry house plateau, where Bee had previously formed line and where what Beauregard called "the mingled remnants of Bee's, Bartow's, and Evans's commands" were reformed under cover of Stonewall Jackson's brigade of Johnston's army.

The time of this repulse, as proved by so accurate an authority as Stonewall Jackson, was before 11.30 A.M., and this is substantially confirmed by Beauregard's official report made at the time. Sherman and Keyes had nothing to do with it. They did not begin to cross Bull Run until noon. Thus, after nearly two hours' stubborn fighting with the forces of Johnston, which General Scott had promised should be kept away, McDowell won the first advantage; but Johnston had cost him dearly.

During all this time Johnston and Beauregard had been waiting near Mitchell's Ford for the development of the attack they had ordered by their right upon McDowell at Centreville. The gravity of the situation upon their left had not yet dawned upon them. What might the result have been if the Union column had not been detained by Tyler's delay in moving out in the early morning, or if Johnston's army, to which Bee, Bartow, and Jackson belonged, had not arrived?

But the heavy firing on the left soon diverted Johnston and Beauregard from all thought of an offensive movement with their right, and decided them, as Beauregard has said, "to hurry up all available re-enforcements, including the reserves that were to have moved upon Centreville, to our left, and fight

the battle out in that quarter." Thereupon Beauregard ordered "Ewell, Jones, and Longstreet to make a strong demonstration all along their front on the other side of Bull Run, and ordered the reserves, Holmes's brigade with six guns, and Early's brigade to move swiftly to the left," and he and Johnston set out at full speed for the point of conflict, which they reached while Bee was attempting to rally his men about Jackson's brigade on the Henry house plateau. McDowell had waited in the morning at the point on the Warrenton Turnpike where his flanking column turned to the right, until the troops, except Howard's brigade, which he halted at that point, had passed. He gazed silently and with evident pride upon the gay regiments as they filed briskly but quietly past in the freshness of the early morning, and then, remarking to his staff, "Gentlemen, that is a big force," he mounted and moved forward to the field by way of Sudley Springs. He reached the scene of actual conflict somewhat earlier than Johnston and Beauregard did, and, seeing the enemy driven across the valley of Young's Branch and behind the Warrenton Turnpike, at once sent a swift aide-de-camp to Tyler with orders to "press the attack" at the Stone Bridge. Tyler acknowledged that he received this order by 11 o'clock. It was Tyler's division upon which McDowell relied for the decisive fighting of the day. He knew that the march of the turning column would be fatiguing, and when by a sturdy fight it had cleared the Warrenton Turnpike for the advance of Tyler's division, it had, in fact, done more than its fair proportion of the work. But Tyler did not attempt to

force the passage of the Stone Bridge, which, after about 8 o'clock, was defended by only four companies of infantry, though he admitted that by the plan of battle, when Hunter and Heintzelman had attacked the enemy in the vicinity of the Stone Bridge, "he was to force the passage of Bull Run at that point and attack the enemy in flank."* Soon after McDowell's arrival at the front, Burnside rode up to him and said that his brigade had borne the brunt of the battle, that it was out of ammunition, and that he wanted permission to withdraw, refit and fill cartridge-boxes. McDowell in the excitement of the occasion gave reluctant consent, and the brigade, which certainly had done nobly, marched to the rear, stacked arms, and took no further part in the fight. Having sent the order to Tyler to press his attack and orders to the rear of the turning column to hurry forward, McDowell, like Beauregard, rushed in person into the conflict, and by the force of circumstances became for the time the commander of the turning column and the force actually engaged, rather than the commander of his whole army. With the exception of sending his Adjutant-General to find and hurry Tyler forward, his subsequent orders were mainly or wholly to the troops under his own observation. Unlike Beauregard, he had no Johnston in rear with full authority and knowl-

* After the affair at Blackburn's Ford on the 18th and Tyler's action in the battle of the 21st, a bitterness between Tyler and McDowell grew up which lasted till they died. As late as 1884, McDowell, writing to me of Tyler's criticism of him after the war, said, "How I have been punished for my leniency to that man! If there is anything clearer to me than anything else with reference to our operations in that campaign, it is that if we had had another commander for our right we should have had a complete and brilliant success."

edge of the situation to throw forward reserves and re-enforcements. It was not until 12 o'clock that Sherman received orders from Tyler to cross the stream, which he did at a ford above the Stone Bridge, going to the assistance of Hunter. Sherman reported to McDowell on the field and joined in the pursuit of Bee's forces across the valley of Young's Branch. Keyes's brigade, accompanied by Tyler in person, followed across the stream where Sherman forded, but without uniting with the other forces on the field, made a feeble advance upon the slope of the plateau toward the Robinson house, and then about 2 o'clock filed off by flank to its left and, sheltered by the east front of the bluff that forms the plateau, marched down Young's Branch out of sight of the enemy and took no further part in the engagement. McDowell did not know where it was, nor did he then know that Schenck's brigade of Tyler's division did not cross the Run at all.

The line taken up by Stonewall Jackson upon which Bee, Bartow, and Evans rallied on the southern part of the plateau was a very strong one. The ground was high and afforded the cover of a curvilinear wood with the concave side toward the Federal line of attack. According to Beauregard's official report made at the time, he had upon this part of the field, at the beginning, 6,500 infantry, 13 pieces of artillery, and 2 companies of cavalry, and this line was continuously re-enforced from Beauregard's own reserves and by the arrival of the troops from the Shenandoah Valley.

To carry this formidable position, McDowell had at

hand the brigades of Franklin, Willcox, Sherman, and Porter, Palmer's battalion of regular cavalry, and Ricketts's and Griffin's regular batteries. Porter's brigade had been reduced and shaken by the morning fight. Howard's brigade was in reserve and only came into action late in the afternoon. The men, unused to field service, and not yet over the hot and dusty march from the Potomac, had been under arms since midnight. The plateau, however, was promptly assaulted, the northern part of it was carried, the batteries of Ricketts and Griffin were planted near the Henry house, and McDowell clambered to the upper story of that structure to get a glance at the whole field. Upon the Henry house plateau, of which the Confederates held the southern and the Federals the northern part, the tide of battle ebbed and flowed as McDowell pushed in Franklin's, Willcox's, Sherman's, Porter's, and at last Howard's brigades, and as Beauregard put into action reserves which Johnston sent from the right and re-enforcements which he hurried forward from the Shenandoah Valley as they arrived by cars. On the plateau, Beauregard says, the disadvantage of his "smooth-bore guns was reduced by the shortness of range." The short range was due to the Federal advance, and the several struggles for the plateau were at close quarters and gallant on both sides. The batteries of Ricketts and Griffin, by their fine discipline, wonderful daring, and matchless skill, were the prime features in the fight. The battle was not lost till they were lost. When in their advanced and perilous position, and just after their infantry supports had been driven over the slopes, a fatal mis-

take occurred. A regiment of infantry came out of the woods on Griffin's right, and as he was in the act of opening upon it with canister, he was deterred by the assurance of Major Barry, the chief of artillery, that it "was a regiment sent by Colonel Heintzelman to support the battery."* A moment more and the doubtful regiment proved its identity by a deadly volley, and, as Griffin states in his official report, "every cannoneer was cut down and a large number of horses killed, leaving the battery (which was without support excepting in name) perfectly helpless." The effect upon Ricketts was equally fatal. He, desperately wounded, and Ramsay, his lieutenant, killed, lay in the wreck of the battery. Beauregard speaks of his last advance on the plateau as "leaving in our final possession the Robinson and Henry houses, with most of Ricketts's and Griffin's batteries, the men of which were mostly shot down where they bravely stood by their guns." Having become separated from McDowell, I fell in with Barnard, his chief engineer, and while together we observed the New York Fire Zouaves, who had been supporting Griffin's battery, fleeing to the rear in their gaudy uniforms, in utter confusion. Thereupon I rode back to where I knew Burnside's brigade was at rest, and stated to Burnside the condition of affairs, with the suggestion that he form and move his brigade to the front. Returning, I again met Barnard, and as the battle seemed to him and me to be going against us, and not knowing where McDowell was, with the concurrence of Barnard, as

* Griffin himself told me so as we rode together after leaving Centreville. He and I were classmates and warm friends.

stated in his official report, I immediately sent a note to Miles, telling him to move two brigades of his reserves up to the Stone Bridge and telegraphed to Washington to send forward all the troops that could be spared.

After the arrival of Howard's brigade, McDowell for the last time pressed up the slope to the plateau, forced back the Confederate line, and regained possession of the Henry and Robinson houses and of the lost batteries. But there were no longer cannoneers to man or horses to move these guns that had done so much. By the arrival upon this part of the field of his own reserves and Kirby Smith's brigade of Johnston's army about half-past three, Beauregard extended his left to outflank McDowell's shattered, shortened and disconnected line, and the Federals left the field about half-past four. Until then they had fought wonderfully well for raw troops. There were no fresh forces on the field to support or encourage them, and the men seemed to be seized simultaneously by the conviction that it was no use to do anything more and they might as well start home. Cohesion was lost, the organizations with some exceptions being disintegrated, and the men quietly walked off. There was no special excitement except that arising from the frantic efforts of officers to stop men who paid little or no attention to anything that was said. On the high ground by the Matthews house, about where Evans had taken position in the morning to check Burnside, McDowell and his staff, aided by other officers, made a desperate but futile effort to arrest the masses and form them into line. There, I went to Arnold's

battery as it came by, and advised that he unlimber and make a stand as a rallying-point, which he did, saying he was in fair condition and ready to fight as long as there was any fighting to be done. But all efforts failed. The stragglers moved past the guns, in spite of all that could be done, and as stated in his report, Arnold at my direction joined Sykes's battalion of infantry of Porter's brigade and Palmer's battalion of cavalry, all of the Regular Army, to cover the rear, as the men trooped back in great disorder across Bull Run. There were some hours of daylight for the Confederates to gather the fruits of victory, but a few rounds of shell and canister checked all the pursuit that was attempted, and the occasion called for no sacrifices or valorous deeds by the stanch regulars of the rear-guard. There was no panic, in the ordinary meaning of the word, until the retiring soldiers, guns, wagons, congressmen and carriages were fired upon, on the road east of Bull Run. Then the panic began, and the bridge over Cub Run being rendered impassable for vehicles by a wagon that was upset upon it, utter confusion set in: pleasure-carriages, gun-carriages and ammunition wagons which could not be put across the Run were abandoned and blocked the way, and stragglers broke and threw aside their muskets and cut horses from their harness and rode off upon them. In leaving the field the men took the same routes, in a general way, by which they had reached it. Hence when the men of Hunter's and Heintzelman's divisions got back to Centreville, they had covered about twenty-five miles. That night they walked back to the Potomac, an additional distance

of twenty miles; so that these undisciplined and unseasoned men within thirty-six hours walked fully forty-five miles, besides fighting from about 10 A.M. until 4 P.M. on a hot and dusty day in July. McDowell in person reached Centreville before sunset,* and found there Miles's division with Richardson's brigade and three regiments of Runyon's division, and Hunt's, Tidball's, Ayres's, and Greene's batteries and one or two fragments of batteries, making about twenty guns. It was a formidable force, but there was a lack of food and the mass of the army was completely demoralized. Beauregard had about an equal force which had not been in the fight, consisting of Ewell's, Jones's, and Longstreet's brigades and some troops of other brigades. McDowell consulted the division and brigade commanders who were at hand upon the question of making a stand or retreating. The verdict was in favor of the latter, but a decision of officers one way or the other was of no moment; the men had already decided for themselves and were streaming away to the rear, in spite of all that could be done. They had no interest or treasure in Centreville, and their hearts were not there. Their tents, provisions, baggage, and letters from home were upon the banks of the Potomac, and no power could have stopped them short of the camps they had left less than a week before. As before stated, most of them were sovereigns in uniform, not

* I left the field with General Franklin. His brigade had dissolved. We moved first northerly, crossed Bull Run below the Sudley Spring Ford, and then bore south and east. Learning by inquiries of the men I passed that McDowell was ahead of me, I left Franklin and hurried on to Centreville, where I found McDowell, just after sunset, rearranging the positions of his reserves.

soldiers. McDowell accepted the situation, detailed Richardson's and Blenker's brigades to cover the retreat, and the army, a disorganized mass, with some creditable exceptions, drifted as the men pleased away from the scene of action. There was no pursuit, and the march from Centreville was as barren of opportunities for the rear-guard as the withdrawal from the field of battle had been.* When McDowell reached Fairfax Court-House in the night, he was in communication with Washington and exchanged telegrams with General Scott, in one of which the old hero said, "We are not discouraged"; but that dispatch did not lighten the gloom in which it was received. McDowell was so tired that while sitting on the ground writing a dispatch he fell asleep, pencil in hand, in the middle of a sentence. His Adjutant-General aroused him; the dispatch was finished, and the weary ride to the Potomac resumed. When the unfortunate commander dismounted at Arlington next forenoon in a soaking rain, after thirty-two hours in the saddle, his disastrous campaign of six days was closed.

The first martial effervescence of the country was over. The three-months' men went home, and the three-months' chapter of the War ended—with the South triumphant and confident; the North disappointed but determined.

* The revised losses are as follows: Federal, 16 officers and 444 enlisted men killed; 78 officers and 1,046 enlisted men wounded; 50 officers and 1,262 enlisted men missing; 25 pieces of artillery and a large quantity of small arms. Confederate, 25 officers and 362 enlisted men killed; 63 officers and 1,519 enlisted men wounded; 1 officer and 12 enlisted men missing.

THE OPPOSING ARMIES AT THE FIRST BULL RUN AS GIVEN BY "CENTURY MAGAZINE."

[The composition and losses of each army as here stated give the gist of all the data obtainable in the Official Records. K stands for killed; w for wounded; m for captured or missing; c for captured.]

COMPOSITION AND LOSSES OF THE UNION ARMY.

Brig.-Gen. Irvin McDowell. Staff loss: w, 1. (Capt. O. H. Tillinghast, mortally wounded.)

FIRST DIVISION, Brig.-Gen. Daniel Tyler. Staff loss, w, 2. *First Brigade*, Col. Erasmus D. Keyes: 2d Me., Col. C. D. Jameson, 1st Conn., Col. G. S. Burnham; 2d Conn., Col. A. H. Terry; 3d Conn., Col. John L. Chatfield. Brigade loss: k, 19; w, 50; m, 154—223. *Second Brigade*, Brig.-Gen. Robert C. Schenck: 2d N. Y. (militia), Col. G. W. B. Tompkins; 1st Ohio, Col. A. McD. McCook; 2d Ohio, Lieut.-Col. Rodney Mason; E, 2d U. S. Arty., Capt. J. H. Carlisle. Brigade loss: k, 21; w, 25; m, 52—98. *Third Brigade*, Col. W. T. Sherman: 13th N. Y., Col. I. F. Quinby; 69th N. Y., Col. M. Corcoran (w and c), Capt. James Kelly; 79th N. Y., Col. James Cameron (k); 2d Wis., Lieut.-Col. H. W. Peck; E, 3d U. S. Arty., Capt. R. B. Ayres. Brigade loss: k, 107; w, 205; m, 293—605. *Fourth Brigade*, Col. Israel B. Richardson: 1st Mass., Col. Robert Cowdin; 12th N. Y., Col. Ezra L. Walrath; 2d Mich., Major A. W. Williams; 3d Mich., Col. Daniel McConnell; G, 1st U. S. Arty., Lieut. John Edwards; M, 2d U. S. Arty., Capt. Henry J. Hunt. This brigade was only slightly engaged in front of Blackburn's Ford, with the loss of one officer killed.

SECOND DIVISION, Col. D. Hunter (w), Col. Andrew Porter. Staff loss: w, 1; m, 1—2. *First Brigade*, Col. Andrew Porter: 8th N. Y. (militia), Col. Geo. Lyons; 14th N. Y. (militia), Col. A. M. Wood (w and c), Lieut.-Col. E. B. Fowler; 27th N. Y., Col. H. W. Slocum (w), Major J. J. Bartlett; Battalion U. S. Infantry, Major George Sykes; Battalion U. S. Marines, Major J. G. Reynolds; Battalion U. S. Cavalry, Major I. N. Palmer; D, 5th U. S. Arty., Capt. Charles Griffin. Brigade loss: k, 86; w, 177; m, 201—464. *Second Brigade*, Col. Ambrose E. Burnside: 2d N. H., Col. Gilman Marston (w), Lieut.-Col. F. S. Fiske; 1st R. I., Major J. P. Balch; 2d R. I. (with battery), Col. John S. Slo-

2D ME
1ST CON
2D "
3D "
1B

cum (k), Lieut.-Col. Frank Wheaton; 71st N. Y. (with two howitzers). Col. H. P. Martin. Brigade loss: k, 58; w, 171; m, 134=363.

THIRD DIVISION, Col. Samuel P. Heintzelman. *First Brigade*, Col. W. B. Franklin: 5th Mass., Col. S. C. Lawrence; 11th Mass., Col. George Clark, Jr.; 1st Minn., Col. W. A. Gorman; I, 1st U. S. Arty., Capt. J. B. Ricketts (w and c), Lieut. Edmund Kirby. Brigade loss: k, 70; w, 197; m, 92=359. *Second Brigade*, Col. Orlando B. Willcox (w and c), Col. J. H. H. Ward; 11th N. Y., Lieut.-Col. N. L. Farnham; 38th N. Y., Col. J. H. H. Ward, Lieut.-Col. A. Farnsworth; 1st Mich., Major A. F. Bidwell; 4th Mich., Col. D. A. Woodbury; D, 2d U. S. Arty., Capt. Richard Arnold. Brigade loss: k, 65; w, 177; m, 190=432. *Third Brigade*, Col. Oliver O. Howard: 3d Me., Major H. G. Staples; 4th Me., Col. H. G. Berry; 5th Me., Col. M. H. Dunnell; 2d Vt., Col. Henry Whiting. Brigade loss: k, 27; w, 100; m, 98=225.

FOURTH (RESERVE) DIVISION. [Not on the field of battle.] Brig.-Gen. Theodore Runyon. *Militia*: 1st N. J., Col. A. J. Johnson; 2d N. J., Col. H. M. Baker; 3d N. J., Col. Wm. Napton; 4th N. J., Col. Matthew Miller, Jr. *Volunteers*: 1st N. J., Col. W. R. Montgomery; 2d N. J., Col. Geo. W. McLean; 3d N. J., Col. George W. Taylor; 41st N. Y., Col. Leopold von Gilsa.

FIFTH DIVISION. [In reserve at Centreville and not engaged in the battle proper. It had some skirmishing during the day and while covering the retreat of the army.] Col. Dixon S. Miles. *First Brigade*, Col. Louis Blenker; 8th N. Y. (Vols.), Lieut.-Col. Julius Stahel; 29th N. Y., Col. Adolph von Steinwehr; 39th N. Y. (Garibaldi Guards), Col. F. G. D'Utassy; 27th Penna., Col. Max Einstein; A, 2d U. S. Arty., Capt. John C. Tidball; Bookwood's N. Y. battery, Capt. Charles Bookwood. Brigade loss: k, 6; w, 16; m, 96=118. *Second Brigade*, Col. Thomas A. Davies: 16th N. Y., Lieut.-Col. Samuel Marsh; 18th N. Y., Col. W. A. Jackson; 31st N. Y., Col. C. E. Pratt; 32d N. Y., Col. R. Matheson; G, 2d U. S. Arty., Lieut. O. D. Greene. Brigade loss: w, 2; m, 1=3.

Total loss of the Union Army: killed, 460; wounded, 1,124; captured or missing, 1,312,—grand total, 2,896.

STRENGTH OF THE UNION ARMY.

General James B. Fry, who was General McDowell's Adjutant-General, prepared, in October, 1864, a statement of the strength of the army, in brief as follows:

"It was not practicable at the time to ascertain the strength of the army with accuracy; and it is impossible now to make a return which can be pronounced absolutely correct.

"The abstract which appears on page 309, vol. ii., 'Official Rec-

ords,' is not a return of McDowell's army at the Battle of Bull Run, and was not prepared by me, but, as I understand, has been compiled since the war. It purports to give the strength of the 'Department of Northeastern Virginia,' July 16 and 17, not of McDowell's army, July 21. It does not show the losses resulting from the discharge of the 4th Pennsylvania Infantry and Varian's New York battery, which marched to the rear on the morning of the 21st, nor the heavy losses incident to the march of the army from the Potomac; it embraces two regiments—the 21st and 25th New York Infantry—which were not with the army in the field; and it contains the strength of Company E, Second United States Cavalry, as a special item, whereas that company is embraced in the strength of the Second (Hunter's) Division, to which it, with the rest of the cavalry belonged.

"In his report of the battle (p. 324, vol. ii., 'Official Records') General McDowell says he crossed Bull Run 'with about eighteen thousand men.' I collected information to that effect for him at the time. His statement is substantially correct. The following is an exhibit in detail of the forces actually engaged:

COMMANDS.	Officers.	Enlisted men.
General staff.....	19	
First Division, two brigades.....	284	5,068
Second Division, two brigades.....	252	5,717
Third Division, three brigades.....	341	6,891
Total—seven brigades.....	896	17,676

"Only Keyes's and Sherman's brigades of the four brigades of the First Division crossed Bull Run.

"The Fifth Division, with Richardson's brigade of the First Division attached, was in reserve at and in front of Centreville. Some of it was lightly engaged on our side of Bull Run in repelling a feeble advance of the enemy. The Fourth (Reserve) Division was left to guard our communications with the Potomac, its advance being seven miles in rear of Centreville.

"That is to say, McDowell crossed Bull Run with 896 officers, 17,676 rank and file, and 24 pieces of artillery.

"The artillerymen who crossed Bull Run are embraced in the figures of the foregoing table. The guns were as follows: Ricketts's Battery, 6 10-pounder rifle guns; Griffin's Battery, 4 10-pounder rifle guns, 2 12-pounder howitzers; Arnold's Battery, 2 13-pounder rifle guns, 2 6-pounder smooth-bores; R. I. Battery, 6 13-pounder rifles; 71st N. Y. Reg't's Battery, 2 Dahlgren howitzers.

“The artillery in addition to that which crossed Bull Run, was as follows: Hunt’s Battery, 4 12-pounder rifle guns; Carlisle’s Battery, 2 13-pounder rifle guns, 2 6-pounder smooth-bore guns; Tidball’s Battery, 2 6-pounder smooth-bore guns, 2 12-pounder howitzers; Greene’s Battery, 4 10-pounder rifle guns; Ayres’s Battery, 2 10-pounder rifle guns, 2 6-pounder smooth-bore guns, 2 12-pounder howitzers; Edwards’s Battery, 2 20-pounder rifle guns, 1 30-pounder rifle gun.”

COMPOSITION AND LOSSES OF THE CONFEDERATE ARMY.

General Joseph E. Johnston.

ARMY OF THE POTOMAC, Brig.-Gen. G. T. Beauregard. *First Brigade*, Brig.-Gen. M. L. Bonham: 11th N. C., Col. W. W. Kirkland; 2d S. C., Col. J. B. Kershaw; 3d S. C., Col. J. H. Williams; 7th S. C., Col. Thomas G. Bacon; 8th S. C., Col. E. B. C. Cash. Loss, k, 10; w, 66=76. *Second Brigade* [not actively engaged], Brig.-Gen. R. S. Ewell: 5th Ala., Col. R. E. Rodes; 6th Ala., Col. J. J. Seibels; 6th La., Col. J. G. Seymour. *Third Brigade*, Brig.-Gen. D. R. Jones: 17th Miss., Col. W. S. Featherston; 18th Miss., Col. E. R. Burt; 5th S. C., Col. M. Jenkins. Loss; k, 13; w, 62=75. *Fourth Brigade* [not actively engaged], Brig.-Gen. James Longstreet: 5th N. C., Lieut.-Col. Jones; 1st Va., Major F. G. Skinner; 11th Va., Col. S. Garland, Jr.; 17th Va., Col. M. D. Corse. Loss: k, 2; w, 12=14. *Fifth Brigade*, Col. P. St. Geo. Cocke: 8th Va., Col. Eppa Hunton; 18th Va., Col. R. E. Withers; 19th Va., Lieut.-Col. J. C. Strange; 28th Va., Col. R. T. Preston; 49th Va. (3 cos.), Col. Wm. Smith. Loss: k, 23; w 79; m, 2=104. *Sixth Brigade*, Col. Jubal A. Early: 7th La., Col. Harry T. Hays; 13th Miss., Col. Wm. Barksdale; 7th Va., Col. J. L. Kemper; 24th Va., Lieut.-Col. P. Hairston, Jr. Loss: k, 13; w, 67=79. *Evans’s command* (temporarily organized), Col. N. G. Evans: 1st La. Battalion, Major C. R. Wheat (w); 4th S. C., Col. J. B. E. Sloan; Cavalry, Capt. W. R. Terry; Artillery, Lieut. G. S. Davidson. Loss: k, 20; w, 118; m, 8=146. *Reserve Brigade* [not actively engaged], Brig.-Gen. T. H. Holmes: 1st Arkansas and 2d Tennessee. *Unattached Infantry*, 8th La.; Col. H. B. Kelly; Hampton’s (S. C.) Legion, Col. Wade Hampton. Loss: k, 19; w, 100; m, 2=121. *Cavalry*: 30th Virginia, Col. R. C. W. Radford; Harrison’s Battalion; Ten independent companies. Loss: k, 5; w, 8=13. *Artillery*: Battalion Washington Artillery (La.), Major J. B. Walton; Alexandria (Va.) Battery, Capt. Del Kemper; Latham’s (Va.) Battery, Capt. H. G. Latham; Loudoun (Va.) Artillery, Capt. Arthur D. Rogers; Shields’s (Va.) Battery, Capt. J. C. Shields. Loss: k, 2; w, 8=10. Total loss Army of the Potomac: k, 105; w, 519; m, 12=636.

ARMY OF THE SHENANDOAH, General Joseph E. Johnston. *First Brigade*, Brig.-Gen. T. J. Jackson: 2d Va., Col. J. W. Allen; 4th Va., Col. J. F. Preston; 5th Va., Col. Kenton Harper; 27th Va., Lieut.-Col. John Echols; 33d Va., Col. A. C. Cummings. Loss: k, 119; w, 442 =561. *Second Brigade*, Col. F. S. Bartow (k): 7th Ga., Col. Lucius J. Gartrell; 8th Ga., Lieut.-Col. W. M. Gardner. Loss: k, 60; w, 293 =353. *Third Brigade*, Brig.-Gen. B. E. Bee (k): 4th Ala., Col. Jones (k), Col. S. R. Gist; 2d Miss., Col. W. C. Falkner; 11th Miss. (2 cos.). Lieut.-Col. P. F. Liddell; 6th N. C., Col. C. F. Fisher (k). Loss: k, 95; w, 309; m, 1=405. *Fourth Brigade*, Brig.-Gen. E. K. Smith (w). Col. Arnold Elzey: 1st Md. Battalion, Lieut.-Col. George H. Steuart; 3d Tennessee, Col. John C. Vaughn; 10th Va., Col. S. B. Gibbons; 13th Va., Col. A. P. Hill. Loss: k, 8; w, 19=27. *Artillery*: Imboden's, Stanard's, Pendleton's, Alburdis's, and Beckham's batteries. *Cavalry*: 1st Va., Col. J. E. B. Stuart. (Loss not specifically reported.) Total loss Army of the Shenandoah: k, 282; w, 1,063; m, 1=1,346.

Total loss of the Confederate Army: killed, 387; wounded, 1,582; captured or missing, 13,—grand total, 1,982.

STRENGTH OF THE CONFEDERATE ARMY.

In October, 1864, General Thomas Jordan, who was General Beauregard's Adjutant-General, prepared a statement of the strength of the Confederate Army at Bull Run or Manassas, of which the following is a condensation:

“So far as the troops of Beauregard's immediate Army of the Potomac are concerned, this statement is condensed from two that I prepared with the sub-returns of all the commands before me as the Adjutant-General of that army, September 25, 1861, and I will vouch for its exactness. In respect to the Army of the Shenandoah, I have been obliged to present an estimate of 8,340 as the total of the rank and file of Johnston's army, my authority for which is a statement written by me in the official report of the battle, and based, as I distinctly recollect, upon official documents and returns in my hands at the time, of the accuracy of which I was and am satisfied. The totals of General Beauregard's Army of the Potomac are:

ARMY OF THE POTOMAC AVAILABLE ON THE FIELD.

Generals and Staff	37
Infantry, Rank and File	19,569
Cavalry. “ “	1,468
Artillery “ “	826
	<hr/>
	21,900
Field Guns	27

MILITARY MISCELLANIES.

ARMY OF THE POTOMAC ACTIVELY ENGAGED.

Generals and Staff.....	10
Infantry, Rank and File	8,415
Cavalry, " "	1,000
Artillery, " "	288
	<hr/>
	9,713
Field Guns.....	17

RECAPITULATION.

	<i>Infantry.</i>	<i>Cavalry.</i>	<i>Artillery.</i>	<i>Staff.</i>	<i>Total.</i>
Army of the Potomac—Rank and File engaged.....	8,415	1,000	288	10	9,713
Army of the Shenandoah, Rank and File engaged (estimated)..	7,684	300	350	6	8,340
	<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
Total Rank and File, both Confed- erate armies, engaged.....	16,099	1,300	638	16	18,053'

ARTICLE VII.

Smith's "Confederate War Papers."*

This is a book in four parts by General G. W. Smith, late Major-General Confederate Army. It is a contribution to the controversies going on among ex-officers of the Confederacy; but its real value is in the new light it throws upon the battle of Seven Pines, or Fair Oaks.

The book adds one more to the proofs that the President of the ex-Confederacy had to contend with formidable opposition inside of his own lines. Nevertheless, he stood from beginning to end at the head of the able and ambitious generals and politicians turbulently thrown together by secession. That fact is evidence of his ability, earnestness of purpose, and force of character. That he should have bitter opponents was inevitable. The author of this book appears as one of them; but he says something on both sides of the subject and comments with moderation.

When General Smith reported for duty at Fairfax Court-House in September, 1861, General J. E. Johnston, commanding the army, and General Beauregard, second in command, were on bad terms with Mr.

* "Confederate War Papers: Fairfax Court-House, New Orleans, Seven Pines, Richmond and North Carolina." By Gustavus W. Smith, late Major-General, Confederate States Army. New York: Atlantic Publishing and Engraving Co.

Davis, the Confederate President. General Smith, the third in rank, was on friendly terms with all of them. The three Generals were in favor of having the army under them strengthened and authorized to invade the North that fall, by turning Washington. With a view to convincing Mr. Davis of the wisdom of this course, and securing the necessary re-enforcements, he was invited to visit headquarters, at Fairfax Court-House, for a conference, and accepted, thinking the conference was for general purposes. The meeting took place early in October—the exact date is not stated. General Smith was the common friend. The Generals wanted “to concentrate in that vicinity, as rapidly as possible, all the available forces of the Confederacy, cross the Potomac with the army thus re-enforced, and by pressing the fighting in the enemy’s country, make a determined effort in the autumn of 1861 to compel the Northern States to recognize our (the Southern) independence.”

Mr. Davis, on the other hand, said that “the whole country was demanding protection at his hands, and praying for arms and troops for defence”; that he hoped for arms from abroad before spring; and he advocated minor military operations—some of which he specified—to occupy, instruct, and encourage the troops during the winter. The Generals, finding themselves disappointed in the one grand operation which they advocated, failed to undertake the minor operations pointed out by their President. Bad feeling between the two parties continued to grow; questions arose among the people as to the war policy of Mr. Davis; and it seemed that the President might

be credited with the views the Generals had advocated and he had opposed. The conference held in October was informal, and was not recorded. But in January following (1862) General Smith wrote out his recollection of it, signed the paper, obtained the signatures of Johnston and Beauregard, and filed the document away. He says in his book that the statement was "mildly drawn, care being taken to make it as respectful as possible, consistent with the facts." He could have given this statement a better character by simply asserting that it was a true record of what occurred. He adds: "It was not intended to publish it unless it became necessary to use it in vindication of the truth." That is to say, it was a secret document, prepared by the Confederate President's subordinates, held by one of them to be drawn against his superior officer if the holder thought best. By the time General Smith drew up the paper in January, 1862, he had, no doubt, joined Johnston and Beauregard in opposition to their President. Mr. Davis says in his book: "Twenty years after the event I learned of this secret report by one party—without notice having been given to the other—of a conversation said to have lasted two hours. I have noticed the improbabilities and inconsistencies of the paper, and, without remark, I submit to honorable men, the concealment from me in which it was prepared, whereby they may judge of the chances for such co-intelligence as needs must exist between the Executive and the commanders of armies to insure attainable success."

There is not likely to be much difference of opinion

upon this issue. The verdict will be in favor of the ex-President of the "lost cause."

A word as to the merits of the war policy, for which the Generals were anxious to secure credit at the expense of their President. The author says, "I believed that by the course proposed we could, before winter set in, convince the people of the Northern States, that it was unwise for them to persist in trying to hold the Southern people in the Union at the point of the bayonet. By pressing the fighting in the enemy's country we expected to compel the Northern States to recognize our independence." As the author anticipated such remarkable results, it is not strange that he deems it important to fix on Mr. Davis the responsibility for "the failure of the Confederate army in Virginia to make an active campaign of invasion, fighting on Northern soil, in the autumn of 1861." But General Smith was mistaken in his premises. Bayonets were necessary to settle the questions which were open at the time, but they are not required to "*hold* the Southern people in the Union." Furthermore, his great expectations from an invasion in the fall of 1861 would not have been realized. It would not have compelled the Northern States to recognize the independence of the Southern Confederacy. General Smith's belief, affected no doubt by his hope, may have been due somewhat to the fact that Northern valor and soldiership were at that time underestimated in the South; Union troops were looked upon, not as earnest men contending for a principle, but as "Lincoln hirelings." One Southern man, some people thought, was equal in war to five or six Yankees.

The truth is, that in addition to the desire for human freedom, as an independent principle, there was in the North a determination to preserve the Government, and a deep-seated, old-fashioned patriotism which many prominent Southerners did not reckon upon. The war, from the nature of the case, could not be decided by a dash. It had to be a trial of courage, endurance, and resources combined. But there were more direct considerations which also tended to induce Mr. Davis to reject the war policy presented by his Generals at Fairfax Court House. He saw, no doubt, that while the proposed policy was tempting from a purely military point of view, it took small account of political conditions which he could not disregard. "The whole country," as he told the Generals, "was demanding protection at his hands, and praying for arms and troops *for defence.*" He could not have consolidated his people for the long struggle which had to come, if he had denied defence to all, for the sole purpose of an invasion from Virginia. General Smith admits that there "was the hope and expectation that, before the end of winter, arms would be introduced into the country; and *all were confident that we could then not only protect our own country, but successfully invade that of the enemy.*" This admission alone is a sufficient answer for Mr. Davis to the war policy of his Generals.

SEVEN PINES.

Part III. is entitled "Notes on the Battle of Seven Pines, or Fair Oaks." This is much the most important part of the work.

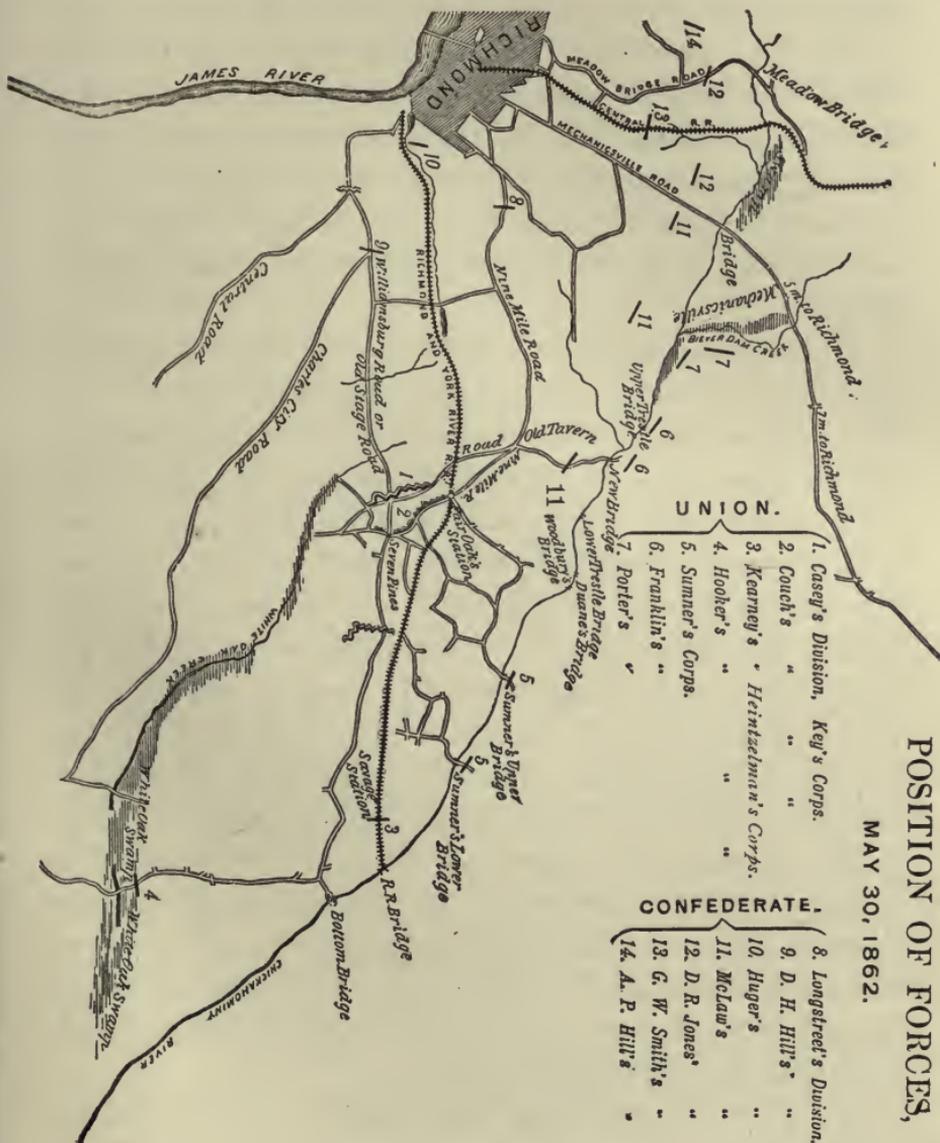
During that action Smith was next in rank to John-

ston, the General-in-Chief, and commanded the left wing of the Confederate army during the first day, and the whole army from 7 P.M. on the first day, when Johnston was wounded, till 1 P.M. on the second day. Historians have failed to commend his part in the action. In his book, Smith, with drawn sabre, boldly charges upon them all; attacking especially the accounts given by Jefferson Davis in his "Rise and Fall of the Confederacy," Joseph E. Johnston in his "Narrative," Richard Taylor in his "Destruction and Reconstruction," writers on the Confederate side; and Swinton and Webb, Union authors.

To weigh the points General Smith makes, it is necessary to recall the main features of the situation at the time the battle of Seven Pines was fought.

As McClellan followed the retiring Confederates up the Peninsula from Williamsburg, in May, 1861, his main line of advance, nearly due west, was the Richmond and Williamsburg, or Old Stage, road. About ten miles east of Richmond this road crosses the Chickahominy River by Bottom's Bridge. The part of the Chickahominy with which we are concerned runs almost in a right line from northwest to southeast. At the point on the Williamsburg road where it is spanned by Bottom's Bridge, the stream is about forty feet wide, and for fifteen or twenty miles above it varies in width from forty to seventy-five or eighty feet. It is skirted by heavy timber, and its valley, or bottom-land, varying from half a mile to a mile in width, is low and marshy, and is subject to overflow. A mile above Bottom's Bridge the stream is crossed by the bridge of the Richmond and York River Railroad.

This railroad runs from Richmond to West Point at the head of York River. It crosses the Pamunkey



POSITION OF FORCES,
MAY 30, 1862.

River just above the point where the stream empties into the York. This crossing, called White House,

only about twelve miles by the railroad from the Chickahominy, was the Union depot—York and Pamunky rivers being open to our shipping.

As they withdrew from Williamsburg, the Confederates crossed to the Richmond side of the Chickahominy, and destroyed the bridges as far as they could, but did not undertake to defend the crossings. They did not appear disposed to make a stand until they were under cover of the entrenchments around Richmond.

McClellan's advance (Keyes's 4th Corps) reached the Chickahominy at Bottom's Bridge on the 20th of May, forded the stream, and occupied the high ground on the west side. Although the season was unusually wet, the Chickahominy was then fordable at all crossings above Bottom's Bridge. Neither the river nor the enemy, therefore prevented the Union army from continuing the advance. But McClellan threw his army forward into line upon his leading corps as his left, and established the centre and right of it in rear of the Chickahominy, the left being in front of that stream. He deemed this disposition of his centre and right necessary to guard his line of communication (twelve miles long) with his depot at the White House, and to protect his right and rear; although he assumed that, as a final result, the opposing army would take shelter behind its defences near Richmond, and that a siege would ensue.

As the Chickahominy was liable to rise suddenly, become impassable, and sweep away temporary bridges, and thus cut him off from his base on the Pamunky, McClellan was not willing to throw all of his army

across the stream until he had built bridges which would enable him to pass troops and supplies with certainty and celerity. While constructing these bridges he held a strong position. On the left a stream called White Oak branch rises near Richmond, flows easterly just south of the Williamsburg road, and empties in the Chickahominy two or three miles below Bottom's Bridge. The valley of this creek, from its mouth for several miles toward Richmond, is a difficult and in most places an impassable morass, called White-Oak swamp. The left wing of the army, Keyes's 4th Corps, with Heintzelman's 3d Corps as reserve, was thus well covered. A stream called Beaver-Dam creek runs nearly due south, and empties into the Chickahominy at a point north of Richmond. Upon the high bank of this creek, at right angles to his main line along the Chickahominy, the Union commander posted his right flank. His line thus established, covered, speaking broadly, the northeastern quarter of a circle drawn around Richmond with a radius of about twelve miles, and extended from Bottom's Bridge, east of Richmond, along the Chickahominy to Meadow Bridge north of that city, a distance of about fifteen miles. The weakness of the position was in the fact that the army was astride a stream which might, and did, rise so as to prevent one wing from supporting the other.

The Confederate army was posted between the Chickahominy and Richmond, and was necessarily well concentrated; but the entrenchments around the city were weak.

In addition to the danger he was in from McClell-

lan, the Confederate commander was menaced by McDowell, who, with over forty thousand men and a hundred guns (if not deterred by counter movements against Washington), threatened to advance on McClellan's right, from Fredericksburg, some sixty miles north of Richmond.

Johnston, with his entire army well in hand, had resolved to pursue an offensive-defensive policy. While he was deliberating upon striking a blow at McClellan's left near Bottom's Bridge—or waiting an opportunity to do so—he heard (May 27) that McDowell was advancing from Fredericksburg. Thereupon he resolved to cross the upper Chickahominy and (on 29th May) destroy or “double-up” McClellan's right before McDowell could get within supporting distance; and for this purpose he strengthened his left and placed General G. W. Smith in command of his left wing. But learning on the 28th that McDowell had abandoned the advance—had in fact turned north—Johnston countermanded his orders for attacking the Union right.*

In the meantime McClellan had been pushing his left wing forward. On the 24th Casey's division (of Keyes's 4th Corps) occupied and entrenched a point called Seven Pines, only seven miles from Richmond by the main Williamsburg road. Couch's division (the other part of Keyes's corps) was not far in rear;

* General Smith repeats with a little sly sarcasm how the Confederate President, Davis, hurried through his office work on the morning of the 29th, and rode about the field trying to find the performance, which he finally learned from subordinates that Johnston—with whom he was not on cordial terms—had countermanded, without notifying him.

and Heintzelman's 3d Corps had crossed the Chickahominy at Bottom's Bridge, and was guarding the road to the left through White-Oak swamp, and ready to support the troops in front.

On the 29th Casey's division was pushed forward a half or three quarters of a mile to the front of Seven Pines, and began to entrench; and Couch occupied the position vacated by Casey at Seven Pines.

By the 30th the time had come when the Confederate commander felt that some positive move must be made in support of his offensive-defensive policy. The season, being unusually wet, increased actually and relatively the difficulties of the Union army. The Chickahominy had overflowed the bottom-lands, destroyed some of the new bridges, and delayed the completion of others. The elements were decidedly in favor of the Confederates.

On the 30th Johnston, encouraged by a reconnoissance in force, decided to attack McClellan's left next day, the 31st, and the battle of Seven Pines, or Fair Oaks, was the result.

To use almost literally General Smith's description—which agrees generally with that of Union writers—the point known as Seven Pines is merely the junction of two roads; it is seven miles east of Richmond, on the Williamsburg (or Old Stage) road, which starts out from the southern part of the city. From the northern suburb of the city another road starts out, and runs in an easterly direction, keeping about two miles to the north of the Williamsburg road for a distance of seven miles from Richmond, where it forks at a point called Old Tavern. The fork to the left leads

northerly to New Bridge on the Chickahominy, opposite McClellan's centre. The fork to the right runs southeasterly two miles, where it intersects the Williamsburg road at Seven Pines. This fork of two miles from Old Tavern to Seven Pines, with the main road (seven miles) from Old Tavern to Richmond, is the "Nine-Mile Road." The Richmond and York River Railroad lies between the Williamsburg and Nine-Mile roads, until it crosses the latter at a point called Fair Oaks, a mile northwest from Seven Pines.

The Charles City road branches off from the Williamsburg road at a point three miles east of Richmond, and leads to the southwest, below White-Oak swamp; but before reaching the swamp, going by that road from Richmond, lateral country roads lead from the Charles City to the Williamsburg road.

The country about Seven Pines is generally flat and swampy, with farms and heavy timber interspersed. Although there are many country roads through the neighborhood, it is a bad region for army movements in rainy weather, even on the roads.

The natural features of the battle-field afforded no special favor either to attack or defence; but the Confederates had some advantage in the fact that the two best highways—the Williamsburg and Nine-Mile roads—lying at a safe and convenient distance apart, led from their camps and intersected at the point occupied by the Union forces; thus enabling a ready concentration upon the field of battle.

The official morning report made at the time ("Records of Rebellion," vol. xi., part iii., p. 204) shows that on the 31st of May, McClellan's Army of

the Potomac in the Peninsula, had 98,008 present for duty, not including McDowell's army, 41,000 near Fredericksburg, nor Wool's command of 11,514 for duty, at Fort Monroe.

No return of the Confederate forces for May 31 appears; but a return for May 21 (vol. xi., part iii., p. 530) gives the strength of Johnston's army (Smith's 1st Division, Longstreet's 2d Division, Magruder's 3d Division, D. H. Hill's 4th Division, Cavalry Brigade, and Artillery Reserve) as 53,688. But before the battle of Seven Pines the force was increased by Huger's division, 5,000, and by other re-enforcements, which ran it up, no doubt, to the figures given by General Smith, 62,000 present on May 31.

On the 30th—when Johnston ordered the attack—although the Chickahominy was high, McClellan had several bridges by which, at that time, he could cross to support his left wing. But during the night of the 30th–31st the rain fell in torrents, and raised the already swollen stream, so as almost to prove the ruin of the Union left. Sumner got to its relief by anticipating orders. Receiving instructions at 1 p.m. to "*be in readiness* to move at a moment's warning," he did not simply prepare his command, but, hearing the sound of battle on the opposite side of the river, he formed his two divisions, and marched each to the bridge it had built across the Chickahominy, and waited with "the heads of columns on the bridges," holding the flooring down against the rising waters, for word to advance. The orders came at two o'clock. Just before that, one of the bridges was swept from under the feet of the men, but both divisions rushed

across the other bridge before it became impassable, and reached the field in time to avert the impending disaster. This is one of the few instances in which a great result in war can be traced directly to a single exhibition of good soldiership by a subordinate. In auditing the public services of its soldiers this Government cannot overestimate its debt to General E. V. Sumner for his conduct on the 31st of May, 1862.

Johnston's purpose of attacking Keyes at Seven Pines was adopted before the heavy rain of the night of the 30th-31st, and was not suggested by the advantage which that storm gave him by destroying bridges. His orders were based upon the assumption that the Chickahominy, as he said, would "be high—passable only at the bridges." In fact, the battle was due rather to the course of events than to his conception. Speaking of Casey's advance beyond Seven Pines, and Longstreet's desire to attack him, Johnston said in a letter to Generals Whiting and G. W. Smith on the 29th: "Who knows but in the course of the morning Longstreet's scheme may accomplish itself. *If we get into a fight here, you must hurry to help us.*" Up to that time certainly Johnston had not decided to attack. This is further shown by his instructions of the 30th to Huger, hereafter quoted. But during the day—the 30th—Longstreet was with him in person, and received verbal instructions for next day's operations.

Johnston's orders for this battle constitute one of the principal topics discussed in General Smith's book. They do not show a well defined purpose in the commander's mind.

The general control of the attack was entrusted to

Longstreet, who had his own division 14,000, D. H. Hill's division 11,000, and Huger's division 5,000, a force of 30,000 men present. In addition to this, Hood's brigade of Smith's division joined Longstreet during the afternoon of the battle. Longstreet's orders from Johnston were verbal. D. H. Hill received orders from Longstreet to conduct the attack. Huger, who had arrived only the day before the battle, though the senior, was required to act under Longstreet; but, nevertheless, Johnston gave him written orders as if he were independent. Huger was blamed for not taking an earlier and more active part than he did, but he appears to have defended himself successfully against the accusations. His orders from Johnston were as follows:

"May 30, 1862, 8.40 P.M.

"MAJOR-GENERAL HUGER:—*General*: The reports of Major-General D. H. Hill give me the impression that the enemy is in considerable strength in his front. It seems to me necessary that we should increase our force also. *For that object I wish to concentrate the troops of your division on the Charles City road, and concentrate the troops of Major-General Hill on that to Williamsburg. To do this, it will be necessary for you to move as early in the morning as possible, to relieve the brigade of General Hill's division now on the Charles City road. The road is the second large one diverging to the right from the Williamsburg road; the first turns off near the toll-gate. On reaching your position on the Charles City road, learn at once the routes to the main roads to Richmond on your right and left, especially those to the left, and try and find*

guides. *Be ready, if an action should be begun on your left, to fall upon the enemy's flank.*

"Most respectfully your obedient servant,

"J. E. JOHNSTON, *General.*

"P. S.—It is important to move early."

Certainly under such orders, clearly expressing a defensive purpose, and telling him *to be ready* if an action should *be begun* on his left, an officer could not be expected to begin an action himself. But apparently, lest he might do something, the Confederate commander sent Huger a second order as follows :

"MAY 31.

"MAJOR-GENERAL HUGER:—*General: I fear that in my note of last evening, of which there is no copy, I was too positive on the subject of YOUR ATTACKING the enemy's left flank.** It will, of course, be necessary for you to know what force is before you first. I hope to be able to have that ascertained for you by cavalry. As our main force will be on your left, it will be necessary for your progress to the front to conform at first to that of General Hill. *If you find no strong body in your front, it will be well to aid General Hill; but then, a strong reserve should be retained to cover our right.* Yours truly,

"J. E. JOHNSTON, *General.*"

These orders are in "Records of Rebellion," vol. xi., part i., page 938. They show conclusively that Johnston did not expect Huger to begin an attack, which beginning Longstreet reported that he lost several hours waiting for. In fact, the most that these orders

* Italics by the reviewer in all instances in this review.

required of Huger was to co-operate in a battle which was to be begun by others. *If* he found no strong body in his front, it would "*be well to aid* General Hill"; but even in that case he was to retain "a strong reserve" to cover the right.

Huger claimed, and it does not appear to have been controverted, that though he was the senior, he was ready to take Longstreet's orders, and so expressed himself to Longstreet at the time, but that he received no orders from that officer.

Yet, in the face of these facts, Longstreet said in a note to Johnston dated June 7 ("Records of Rebellion," vol. xi., part iii., p. 580): "The failure of complete success on Saturday, May 31, I attribute to the slow movements of General Huger's command. This threw perhaps the hardest part of the battle upon my own poor division. . . . I can't help but think a display of his forces on the left flank of the enemy by General Huger would have completed the affair, and given Whiting as easy and pretty a game as was ever had upon a battle-field. Slow men are a little out of place upon the field." The Records do not show that Johnston repelled the imputation put upon Huger.

Although the attack was entrusted to the right wing, some 30,000 men under Longstreet, the Confederate commander gave orders for co-operation by his left wing. At 9.15 P.M. on the 30th he wrote General G. W. Smith, commanding the left wing ("Records of Rebellion," vol. xi., part iii., p. 563): "If nothing prevents we will fall upon the enemy in front of Major-General Hill . . . as early as possible. The Chickahominy will be high, and passable

only at the bridges,—a great advantage to us. Please be ready to move by the Nine-Mile road, coming as early as possible to the point at which the road to New Bridge turns off. Should there be cause of haste,* General McLaws on your approach will be ordered to leave his ground for you, that he may reinforce General Longstreet.”

The part assigned to the left by this order was but little, if any, more aggressive than that allotted to Huger on the right. Evidently all the fighting orders were given to Longstreet verbally. Yet both Smith and Huger were blamed as if they had received orders to attack; and the former has been forced to defend himself in a book against the charge of having failed to do what there is nothing to show he was ordered to do, or ought to have done. General Smith shows quite clearly that historians of the battle of Seven Pines have wronged him. While other writers may have been ignorant, Johnston, according to General Smith, knew the truth, but did not divulge it—in fact, suppressed it. Smith, the second in command, was on intimate terms with Johnston, the chief. He shows in his book that he was fully informed as to Johnston's plans and intentions. When the movement was ordered on the 30th, Longstreet's division was on the Nine-Mile road,† and Johnston directed that it should proceed to the attack by that road; while D. H. Hill's division advanced by the Williamsburg road on which it was lying; and Huger's by the

* That is to say, should Longstreet need assistance before you reach McLaws's position.

† See map.

Charles City road, further to the right—south. That would have brought Longstreet's division upon Keyes's right flank, the weakness of which is shown by the following remark from Keyes's recent book ("Fifty Years' Observations," etc., p. 452): "The left of my lines was all protected by the White-Oak swamp, but the right was on ground so favorable to the approach of the enemy, and so far from the Chickahominy, that if Johnston had attacked there an hour or two earlier than he did, I could have made but a feeble defence comparatively, and every man of us would have been killed, captured, or driven into the swamp or river before assistance could have reached us." The loss of this grand opportunity, the existence of which is admitted on all sides, has been charged by most, if not all, writers on the subject to General G. W. Smith. By his book he succeeds in transferring the responsibility to Johnston and Longstreet. He proves, using Johnston as principal witness, that Johnston's orders required *Longstreet's division* to proceed to the Nine-Mile road against the weak point of Keyes's line described above; but that on the morning of the 31st Smith ascertained and informed Johnston that Longstreet's division had left that road and gone down to the Williamsburg road and fallen in behind Hill. Johnston sent orders for Longstreet, if not too late, to send at least part of his division back to proceed as ordered by the Nine-Mile road. But it was too late, or was thought to be. Having entrusted the management of the attack to Longstreet, Johnston left him to conduct it by the Williamsburg road, and went himself along the Nine-Mile road with G. W. Smith's

division, and held that division until late in the afternoon, watching the north side of the Chickahominy. Smith stated these particulars in his official report, dated June 23, 1862, but they were stricken out by request of Johnston, because he did not want "to make generally known the misunderstanding between Longstreet and himself in regard to the direction in which Longstreet's division was to move into action." Certainly it is due to General Smith, as well as to history, that these important points should become generally known now.

But after giving due weight to the fact that Longstreet, not Smith, was ordered to attack Keyes's exposed right flank by the Nine-Mile road, it remains true that Smith's division and Smith in person early in the day reached the position on that road from which the fatal attack could and should have been made. The question is, Who was to blame for the failure of Smith's division to make it at the right time? The answer is, Johnston, as proved by Smith's book. The same conclusion must be drawn from Johnston's official report, dated June 24, 1862 (vol. xi., part i., pp. 933, 934, "Records of Rebellion"). He says: "General Smith was to march to the junction of the New Bridge road and the Nine-Mile road, *to be in readiness either to fall on Keyes's flank or to cover Longstreet's left.* . . . In the meantime I had placed myself on the left of the force employed in his (Longstreet's) attack, *with the division of General Smith, that I might be on a part of the field where I could observe and be ready to meet any counter-movements which the enemy's General might make against*

our centre or left. Owing to the peculiar condition of the atmosphere, the sound of the musketry did not reach us.* *I consequently deferred giving the signal for General Smith's advance until about four o'clock, at which time Major Jasper S. Whiting, of General Smith's staff, whom I had sent to learn the state of affairs with General Longstreet's column, returned, reporting that it was pressing on with vigor. Smith's troops were at once moved forward."*

This proves beyond all cavil that Smith's attack was made at the very time and place that Johnston himself designated; and there does not appear to be any charge that the attack was not well conducted. But, as has been shown, Johnston, who was with the division, did not order the attack until four o'clock, and by the time it was under way one of the "counter-movements of the enemy's General," which Johnston had placed himself on his left to watch, had actually been made. Sumner, with Sedgwick's division, reached the field from the north side of the Chickahominy, at 4.30, and was joined later by Richardson's division; so that no sooner had Smith commenced his attack upon Couch, of Keyes's corps, than he was compelled to turn and defend himself against Sumner, who was on his flank and threatening his rear.

* This is precisely what occurred at the battle of Perryville, except that Johnston had ordered and was expecting the sound of the musketry fire he anxiously listened for, but failed to hear; whereas, Buell simply failed to hear musketry fire which he had not ordered, and which he had no particular reason to expect. It is a coincidence, also, that in both cases notice of the heavy firing, which began about two o'clock, reached the commanders by staff-officers about four o'clock, and thereupon the wing not engaged was immediately ordered into action.

To summarize: Keyes's 4th Corps, about 9,000 strong, consisting of Casey's and Couch's divisions, the former composed mainly of raw troops, constituted the advance of the Union left wing, and was the force upon which the Confederate assault was made. McClellan's orders to Keyes were to hold Seven Pines strongly. Keyes made a line of entrenchments a mile in rear (east) of Seven Pines, then moved forward and occupied the forks of the road at Seven Pines, and made a line of rifle pits a mile long from Seven Pines to Fair Oaks. On the 29th, Keyes moved Casey's division forward a half a mile or more on the Williamsburg road, covering a point where a country road started north to Old Tavern, on the Nine-Mile road. Couch's division, at the same time, was posted in Casey's old position at Seven Pines, and both divisions set to work to strengthen their lines by rifle pits and by slashing the timber for *abatis*. Casey made a redoubt for artillery on the left, his line extending on both sides of the Williamsburg road. From the nature of the country, Casey's pickets were only a thousand yards in advance of his line.

Heintzelman's 3d Corps had taken position between Seven Pines and Bottom's Bridge; Hooker's division on the left, watching the road through White-Oak swamp, and Kearney's division on the right and front, near Savage Station. On the 25th, Heintzelman was placed in general command of the two corps—his own and Keyes's.

On the 31st, Keyes's forces occupied two weakly-entrenched lines—to wit: the line of Casey's division, about half a mile in front of Seven Pines, and the line

of Couch's division at Seven Pines. Besides these, there was the third line of rifle pits a mile in rear of Seven Pines. The left flank of the Union forces was well covered by White-Oak swamp, watched by Hooker; but the right flank of Casey and Couch resting on or near the Nine-Mile road, by which the enemy could advance, was entirely exposed. Fortunately for the Union cause, the attack came by the Williamsburg road upon the strongest point. Nevertheless, it was successful, due, mainly, to its inherent strength—partly to the fact, that Casey's division was composed largely of raw troops, and partly also to the fact that the enemy, with the advantage of the initiative, had quietly concentrated for the attack; whereas Keyes, though not surprised, had to call his troops from their labors and resist, with fragments at a time, the heavy onslaught made upon him by a solid column. He was beaten in detail.

When convinced that the attack was real, Casey sent one regiment forward to support his pickets—that, of course, was quickly driven back. In the meantime, he formed a line of one battery and four regiments of infantry, a quarter of a mile in front of his rifle pits. This too was soon swept out of the fight, and his main line in the rifle pits was that much the weaker. Soon the rifle pits, but thinly manned, were attacked, outflanked, and carried, and the last of Casey's division was driven to the rear. The full weight of the Confederate assault then fell upon Couch, who had already been weakened by efforts to sustain Casey, and cut his line in two between Seven Pines and Fair Oaks, driving him in person, with

Abercrombie's brigade, to the northeast, where, at 4.30 P.M., Sumner succored him in the desperate resistance he was making against G. W. Smith's attack by the Nine-Mile road.

In due time Heintzelman's troops aided in checking the Confederate advance on the left and centre, as Sumner did on the right; but night closed in with the Confederates in possession of the battle-field; Johnston, the Confederate commander, was taken to the rear, wounded, about 7 P.M., and the command devolved upon Major-General G. W. Smith, the author of the book under review. Smith held command until 1 P.M. the next day, June 1st, when, by Jefferson Davis' order, he was superseded on the field by General R. E. Lee, and, naturally enough, his feelings have been on edge ever since. During the night both sides re-formed their shattered ranks, rectified their lines, and prepared to attack next morning.

There were three Union corps in the field, but they were beyond support; the rise in the Chickahominy having swept away the bridges. Their situation was perilous, but they were equal to the emergency. Seizing the initiative, they attacked with vigor at daylight, recovered their lost ground, and, after a severe contest, re-occupied the position from which they had been driven, and the status before the battle was resumed.

The result, as so often happened during the war, was not satisfactory to either side—less satisfactory, no doubt, to the Confederate than the Union side, because they started with several advantages, among them the initiative and an overpowering force at the

point of attack, and because also the victory which they ought to have gained promised great fruits. They lost one of the best opportunities they had in the war.

In judging the principal actors in this battle, it should be borne in mind that the war was young at that time. These opposing armies had done a good deal of digging, and some fighting about Yorktown and Williamsburg, and had floundered through the mud from the lower Peninsula up to the Chickahominy, but, except the few officers and men who may have been in the battle of Bull Run, they had not had a serious engagement. Both sides were astounded, possibly a little dazed, by the realities of battle, which they experienced for the first time at Seven Pines. Casey says in his report, it was "the most terrible fire of musketry I have ever witnessed"; and when Longstreet had fought only five or six of his thirteen brigades he called for help on the 31st, and actually begged for it during next day's fight.

The Confederate commander's reason for not concentrating his force on the three isolated Union corps about Seven Pines, east of Richmond on June 1, probably was that, not knowing the exact state of the Chickahominy, he feared he might expose Richmond and the rear of his army to the Union corps, which threatened him from their positions only six or seven miles north of the city.

In relation to his failure to advance upon Richmond after the success of June 1, the Union commander says in his official report: "The only available means for uniting our forces at Fair Oaks, for an

advance upon Richmond after the battle, was to march the troops from Mechanicsville and other points on the left bank of the Chickahominy down to Bottom's Bridge, and thence over the Williamsburg road to Fair Oaks, a distance of about twenty-three miles. In the condition of the roads at that time, this march could not have been made with artillery in less than two days; within which time the enemy would have been secure within his entrenchments around Richmond. . . . Therefore I held the positions already gained, and completed our crossings as rapidly as possible."

On the 26th of June, nearly a month after the battle of Seven Pines, the Confederates assumed the offensive, attacked the Union right flank north of the Chickahominy, and the "seven days" battle, and Union withdrawal to James River, began, and the campaign of the Peninsula ended.

ARTICLE VIII.

Dodge's "Campaign of Chancellorsville."*

Colonel Theodore A. Dodge, U. S. Army (retired), has made a rich contribution to military literature by his work entitled "The Campaign of Chancellorsville," published recently by Osgood & Co., of Boston. Colonel Dodge has evidently consulted authorities with great care and good judgment, but he appears to have leaned rather too heavily upon the Committee on the Conduct of the War.

The proceedings of that anomalous tribunal were *ex-parte* and irregular. It did not observe sufficiently either the rules of evidence or the principles of fair dealing. Officers before it were induced, or permitted, to boast and growl under oath; to criticise their absent companions in arms, and to express opinions concerning the qualifications and services of others, including even their military superiors. Its record has value as secondary or corroborative testimony. Standing alone, it is not sound evidence, especially when the witnesses are speaking of others; and when they testify concerning themselves, of course their statements must be tested by the rules especially applicable to such cases.

* * * * *

Notwithstanding conflicting claims and statements,

* *Journal of Military Service Institution.*

there is not much room left for difference of opinion about the main features of the campaign of Chancellorsville. Hooker with about 113,000 men, not including a cavalry corps of 11,000—which was detailed to cut the enemy's line of communications—occupied the north side of the Rappahannock, confronted by Lee with about 55,000, strongly entrenched on the heights behind Fredericksburg, on the south side. Hooker was fully justifiable by his superiority in numbers and other attending circumstances, in dividing his force for an offensive campaign. The real object of the left wing under Sedgwick was to make such a demonstration in front, as would enable the right wing under Hooker to cross the river, turn Lee's left flank, and place itself unopposed at Chancellorsville, to the west and south of Fredericksburg and only ten miles from it. Both wings performed their parts of this bold plan faultlessly, and on the evening of Thursday, April 30, Hooker in person with four corps was at Chancellorsville and was joined during the night by Sickles's corps withdrawn from the left wing. Hooker gave instructions for an advance on the following (Friday) morning, and issued general orders No. 47, saying "that the operations of the last three days have determined that the enemy must ingloriously fly, or *come out from behind his defences and give us battle on our own ground* where certain destruction awaits him." It was not until Thursday night that Lee understood what was going on. Then, instead of ingloriously flying, he "seized the masses of his force, and with the grasp of a Titan swung them into position as a giant might fling a mighty stone

from a sling." (Swinton). The hostile forces advancing, the one from Chancellorsville, and the other from Fredericksburg, met about a mile from the former place, where the Federal troops seized a strong line of battle, and needed nothing but Hooker's permission to realize the predictions of his boastful order of the preceding day. But that permission was denied them. They were required to give up the good position they had gained in front, and fall back to a bad one in rear, and were kept in retreat from day to day until they had recrossed the Rappahannock on the night of May 5 and 6. From the moment of discovering (Friday, May 1) Lee's determination to fight, Hooker's management of the campaign was beneath criticism.

He abandoned the offensive before Jackson's flank movement of Saturday morning was begun or resolved upon, so that he had not even the poor excuse of that move of the enemy for retreating. When on Saturday he found that Lee would not fall back, he sent to Sedgwick for Reynold's corps, which reached him late that night, making him stronger than he was before Howard's defeat of Saturday evening. Yet he stuck to a losing defensive. On Friday night, May 1, Lee, with but little more than half the force which Hooker had under his immediate command on the field of Chancellorsville, divided his army into two parts, sending one under Jackson on a march of fifteen miles along Hooker's front and to his extreme right and rear. After that, nothing could have saved Lee from destruction if Hooker had taken advantage of the opportunity. But lying, as he did, between the two wings of Lee's army, and being far stronger than both of

them combined, instead of beating them in detail, he devoted four days and all of his energy to slipping out from between them and moving back to his own side of the river, doing the enemy only such harm as was unavoidable in getting away. Saturday night—having withdrawn Reynold's corps from the left wing—and knowing that the Rebel force (commanded by Lee in person), which for two days had been attacking his five corps from the east, lay directly between him and Sedgwick, and that Sedgwick could not advance without first carrying by assault the defences of Fredericksburg which the Army of the Potomac had failed to carry in December, and that, besides the fighting, a march of twelve or fourteen miles would have to be made—he, at eleven o'clock at night, ordered Sedgwick with his single corps of 22,000 men to carry the heights behind Fredericksburg and be in the vicinity of the Commanding General at daylight next morning, *destroying en route any force he might meet with.* Swinton says "for the successful execution of this plan not only was Sedgwick bound to the most energetic action, but Hooker also was engaged by every consideration of honor and duty to so act as to make the dangerous task he had assigned to Sedgwick possible." It is surprising that so able and consistent a writer as Swinton should dignify this wild venture by calling it a "plan" and discussing it. He admits that "this move would under the circumstances have been an impossibility even had no enemy interposed."

It is only necessary here to recall the fact that Sedgwick carried the works at Fredericksburg on Sunday forenoon, advanced five or six miles to Salem Heights,

where, single-handed, at 4 or 5 P.M., he fought a battle with Lee, and not a thing was done by Hooker to rescue or relieve him. On the contrary, while he was fighting Lee with the remnant of his corps of 22,000, Hooker with "the Union right wing, 80,000, retreated to a place where it could not be hurt, leaving Sedgwick and his companions to take care of themselves."* By stubborn fighting, Sedgwick held out until the night of May 4 and 5, when, through skill, bravery and good-fortune, he was able to recross the Rappahannock at Bank's ford, having lost 5,000 men—about a quarter of his force, and nearly a third of the loss of the whole army. Couch thinks that the din around Hooker's ears at the Chancellor House prevented his hearing the sound of Sedgwick's guns at Salem Heights, but that is immaterial. He knew what his orders required Sedgwick to do, and about where he ought to be. Furthermore, high officers in Couch's own corps heard Sedgwick's guns. Yet Hooker blamed this able and gallant officer for the loss of the campaign. Sedgwick did wonders. It was almost impossible for him to do more. But if he had "destroyed" Lee and *pursued* Hooker he could not have stopped him. The commander of the Army of the Potomac was in such a state that he probably would have continued his retreat. His movements were dictated by personal demoralization, not by military conditions. Stonewall Jackson's corps, though badly shattered, would have remained in the field, and in Hooker's frame of mind that would have been enough for him to retreat from. Hooker opened the

* Couch.

campaign imbued with the belief that Lee would necessarily retreat as soon as he found the Army of the Potomac on his left flank and rear. Another idea which perhaps unconsciously found a lodgment in his mind was defending himself in the remote contingency that Lee did not retire. This view is sustained by the second part of his order of April 30, wherein he says Lee must "ingloriously fly or come out *from behind* his defences, and give us battle *on our own ground*"—that is, behind our defences; *defence* being instinctively his purpose, provided Lee came out. He went to Chancellorsville not for a fight, but for a foot race. He fully expected Lee to withdraw. But, like the braggart in the duel, when he found at the last moment the enemy *would not* run, he determined that he *would*. His subsequent management was quite in harmony with this theory, which is substantially the one entertained by Swinton and Couch. The thump on the head at the Chancellor House counts for nothing, because he did not receive that until Sunday, which was after his gravest blunders had been made. Couch says, "As to the charge that the battle was lost because the General was intoxicated, I have always stated that he probably abstained from the use of ardent spirits when it would have been far better for him to have continued *in his usual* habit in that respect." This conveys the impression that a lack of whiskey was the trouble. Bad as it is, that is as good an explanation of Hooker's extraordinary conduct as any that has been offered. If his habits were as indicated, Couch's opinion may be correct, for a *sober drunkard* is not unlikely to be

both stupid and timid in action. But however that may be, when the campaign was over, instead of being permitted to attack his subordinates before the Committee on the Conduct of the War, he ought to have been required to defend himself before a Court of Inquiry. As heretofore stated, his own responsibilities were heavy enough without having any of Howard's transferred to him.

It can be said of Howard, concerning the behavior of the 11th Corps at Chancellorsville, that he had been in command of it only thirty days, that subsequently he improved its discipline and instruction, and it won the special commendation of Thomas at the battle of Lookout Mountain.

ARTICLE IX.

Doubleday's "Chancellorsville and Gettysburg."*

In his preface General Doubleday says that he has had "better opportunities to judge of men and measures than usually falls to the lot of others who have written on the subject;" that he has "always felt it to be the duty of every one who held a prominent position in the great war to give to posterity the benefit of his personal recollections" at the risk of "severe criticism and much personal feeling," announces that he cannot "consent to fulfil his (my) allotted task by a colorless history praising everybody and attributing all disasters to dispensations of Providence for which no one is to blame," and adds, that "where great disasters have occurred it is due both to the living and the dead that the causes and circumstances be justly and properly stated." A belligerent beginning! It is the opening of the controversialist rather than of the historian, and suggests a purpose—which perusal of the work confirms—to enhance the value of "personal recollections" as compared with "dry official statements," and thus settle some old scores with both the "living and the dead." This is dangerous ground for history, especially as affecting the dead.

* "Chancellorsville and Gettysburg," by Abner Doubleday, Bvt. Maj.-Genl. U. S. A. Vol. VI. "Campaigns of the Civil War." New York: C. Scribner's Sons. 1882.

Journal of Military Service Institution.

General Doubleday discusses the questions of General Meade's intention and behavior at the battle of Gettysburg, but there is nothing in his personal recollections which will be likely to fasten on General Meade the accusations of which he was long ago acquitted by the "dry official" records and his own explanations. Nevertheless, for more reasons than those given by General Doubleday, it will probably be the verdict of history that General Meade failed to gather the legitimate fruits of his victory. In fact he did not seem to appreciate that he had gained a victory. President Lincoln was bitterly disappointed. When (in Meade's congratulatory order which was telegraphed to him) he read the sentence about driving the invaders from our soil, he dropped his hands, and in sad and measured tones repeated, "*Drive the invaders from our soil! My God! is that all?*" Disheartened and apprehensive, he, on the 6th of July, telegraphed from the Soldiers' Home to General Halleck: "I left the telegraph office a good deal disappointed. You know I did not like the phrase in Order No. 68, I believe,—'drive the invaders from our soil.' Since that I see a dispatch from General French saying the enemy is crossing his wounded over the river in flats, without saying why he does not stop it, or even intimating a thought it ought to be stopped. Still later, another dispatch from General Pleasanton, by direction of General Meade, to General French stating that the main army is halted because it is believed the rebels are concentrating 'on the road towards Hagerstown beyond Fairfield,' and is not to move until it is ascertained that the rebels intend to evacuate Cum-

berland Valley. These things all appear to me to be connected with a purpose to cover Baltimore and Washington, and to get the enemy across the river again without a further collision; and they do not appear connected with a purpose to prevent his crossing and to destroy him. I do fear the former purpose is acted upon and the latter is rejected. If you are satisfied the latter purpose is entertained and is judiciously pursued, I am content. If you are not so satisfied, please look to it.

“A. LINCOLN.”

On July 15th, the day after the enemy crossed the Potomac, President Lincoln used the following remarkable language in a telegram to Mr. Cameron: “I would give much to be relieved of the impression that Meade, Couch, Smith and all, since the battle of Gettysburg, have striven only to get Lee over the river without another fight.” Probably President Lincoln’s famous letter of October 16th for General Meade, proposing to take all the responsibility in case of defeat, and none of the credit in case of success, was inspired by the President’s disappointment at the result of the operations following the battle of Gettysburg. A military admirer says of Mr. Lincoln—“He was the best General we had, and it is a wonder the other Generals did not break his heart.”

It is a pity General Doubleday, going beyond the question of Meade’s generalship, makes statements which may be understood as flings at that high officer’s personal bearing in action. On page 177, forgetting that the position of the Commanding General on the field of battle is not a proper subject for impu-

tation or criticism by his subordinates, he says that an officer who rode to Meade's Headquarters during the battle of Gettysburg with the intelligence that Sickles' line was driven in, “found the General walking up and down the room apparently quite unconscious of the movements *which might have been discerned by riding to the top of the hill,*” etc.; and again, “General Meade's Headquarters was in the centre of this cannonade, and as the balls were flying very thickly there, and killing the horses of his staff, he found it necessary, temporarily, to abandon the place.” “He rode over to Power's Hill, made his Headquarters with General Slocum, and *when the firing ceased rode back again.*” It is true General Doubleday adds, in the way of apology for General Meade, that “where nothing is to be gained by exposure, it is sound sense to shelter men and officers as much as possible.” The explanation merely tends to confirm the impression which the reader may fairly entertain of the author's unfriendly purpose in introducing the incident.

There is rather an unkind imputation upon two dead officers—Halleck and Meade—where the author says, page 116, “as the new commander of the Union Army” (Meade) “was a favorite of General Halleck, no notice was taken of his disregard of instructions in detaching the garrison of Harper's Ferry.” In fact, General Doubleday appears to have a poor opinion of many of his brother officers, especially of Howard, who lives to speak for himself. He says of a number of them *en masse* (page 32, speaking of Chancellorsville), “the subsequent investigation of this sad business by the Congressional Committee on

the Conduct of the War was very much of a farce and necessarily unreliable, for so long as both Hooker and Howard were left in high command, it was absurd to suppose their subordinates would testify against them." What kind of officers must we have had if it is "absurd to suppose" that they failed to tell the truth because Hooker and Howard were left in high command? General Doubleday himself was a witness before the Committee on the Conduct of the War, and he testified not only in plain but in bitter language against his superior officer, General Meade, while he, Meade, was still in high command. There is nothing to show that other officers did not speak with equal conscientiousness if not with equal severity.

The main features in the campaigns of Chancellorsville and Gettysburg have been pretty well agreed upon by military students and writers. It is not worth while, therefore, to go into a detailed review of General Doubleday's account of those operations. He attaches more importance than most other writers have done to the part taken by General Sickles, in both campaigns, and to the operations of the cavalry force under General Pleasanton at Chancellorsville. The author makes an argument and presents a diagram to demonstrate mathematically that "it is impossible for *any* troops to hold their ground when attacked at once on both fronts," if posted on the two sides of a right angle as General Sickles posted his corps at Gettysburg. The attack from "both sides," which the author here assumes, would be a marked case of "converging columns" (as he uses that term) which he tells us *always* fail. But passing that over, General Doubleday is

correct in pronouncing the disposition a faulty one in *theory*. Whether or not it is so in *practice* depends on circumstances. The line occupied by General Sickles' corps was substantially the same in figure as that occupied by the whole Army at Gettysburg, and that position was so good that a dispute is yet going on about the credit for having selected it, and our Army held its ground there though *attacked on both fronts at once*.

There is certainly exaggeration in the results attributed by the author to some of the minor affairs of the cavalry. For example (page 37) he says that a charge, at the cost of his life, by Major Keenan with four hundred of the Eighth Pennsylvania Cavalry, against Stonewall Jackson's front of ten thousand men at Chancellorsville, “saved the army from capture” and “*the country from the unutterable degradation of the establishment of slavery in the Northern States.*” Without disparaging Major Keenan's gallantry and sacrifice, it is not too much to say that slavery would not have been established in the Northern States, if he had never charged or never been born. The author seems to concern himself more than necessary in such a book as his, with the objects the rebels aimed to accomplish by the war. Page 48, that object was “Vengeance,” page 188 it was “Conquest of the North,” and same page it was to determine “whether freedom or slavery was to rule the Northern States”; page 195 it was “to extend the area of slavery over the free States”; but after all by page 197, it was “the acknowledgment of the independence of the Southern Confederacy.”

It was worth while for the military profession to weigh carefully General Doubleday's sweeping and unsparing condemnation of "converging columns," on the field of battle as well as in strategy. Page 52 he says, "in the history of lost empires we almost invariably find that the cause of their final overthrow on the battlefield may be traced to the violation of one military principle, which is *that the attempt to overpower a central force by converging columns is almost always fatal to the assailants.*" "Yet this is the first mistake made by every tyro in generalship." Strengthening the broad assertion he adds, the columns "*never arrive at the same time,*" "the outer army is *always* beaten in detail," "one portion is *sure* to be defeated before the other arrives." Page 67 he says of Chancellorsville, "Sedgwick's movement, in my opinion, added another example to the evil effect of converging columns against a central force"; page 157, "*universal* experience demonstrates that columns converging on a central force almost invariably fail in their object and are beaten in detail. Gettysburg seems to be a striking exemplification of this." Page 159, "Lee boldly directed that each flank of the Union Army should be assailed at the same time, while constant demonstrations against our centre were to be kept up to prevent either wing from being re-enforced." It was "another attempt to converge columns," etc. This is repeated, page 176. Page 179, "There is *always* some reason why columns *never* converge in time." The military principle for which General Doubleday contends so stoutly has long been accepted as a sound one in strategy, but his claims in its favor are prob-

ably more absolute and comprehensive than any which have ever before been made. These claims suggest the question whether the principle admits of more rigid application now than in former times. The facilities for concentrating columns on a given point at a designated time have increased with the improvements in the means of transportation, and especially with the means of communication by telegraph and signal. That being so, the objection to converging columns would seem to be *less* than in earlier times. Certainly the author goes too far in saying the columns "*never*" arrive in time, that the outer army is "*always*" beaten, that one portion is "*sure*" to be defeated before the other arrives, etc., etc. A few cases may be cited. The Prussians in 1866 marched converging columns through different passes in the mountains, formed a timely junction on the field of Sadowa and gained a decisive victory. The Germans were victorious at Wörth, yet their staff account says of the final attack of Froschwiller, "troops from the *southeast* and *north* reached and stormed the common goal almost simultaneously."

There was a striking case of the success of "converging columns" at Aladja-Dagh, near Kars (1877). The Russian plan was to attack the position in front with about 30,000 men, and in rear with about half that number. The latter force, keeping in communication with the main body by field telegraph, marched some forty miles around the enemy's flank. The columns attacked simultaneously and gained a decisive victory.

McDowell's converging columns at our first Bull

Run were successful, and he lost the battle only because the enemy, resorting to a similar manœuvre, brought Johnston's converging columns on our central force in the nick of time. Hooker's converging of columns at Chancellorsville was successful, but he lost the benefit of it through his sudden and unaccountable temporary imbecility, and was finally overthrown by Lee's resort to a similar operation in sending Jackson to converge and attack the central force after a circuitous and difficult march of fifteen miles. Furthermore, the author furnishes evidence against himself on this point. He says (page 181), speaking of the second day at Gettysburg, "A night attack on the rear of our army in conjunction with an *advance from the opposite side* on Hancock's front would have thrown us into great confusion and *must* have succeeded." Such an attack which the author says "*must* have succeeded," would have been a marked example of converging columns, which he tells us always fail.

There is much that is interesting in General Doubleday's work, but he indulges too freely in surmises, and men's intentions, and there is now and then a lack of precision as to events. For example, he tells us positively, page 29, of "Stonewall" Jackson's death, that "his own troops fired into him with fatal effect," whereas, on the following page he says, "whether the rebels killed him or whether some of his wounds came from our own troops *is a matter of doubt.*"

ARTICLE X.

De Trobriand's "Four Years with the Army of the Potomac."*

General de Trobriand is a charming writer. Without any disparagement to his soldiership, which is of a high order, it might be said that his pen is mightier than his sword.

The book under consideration was prepared immediately after the close of our Civil War, and was written in the French language and for the French people.

In his preface to the French edition, dated May, 1867, the author says: "Everything which I have here related which I have not myself seen, I have from the evidence of the actors themselves, and by a minute comparison with the official documents and depositions *in extenso*, taken before the Congressional Committee on the Conduct of the War." The tripod of authority upon which the work stands is, therefore, 1st. What the author saw (and he kept a diary). 2d. What he calls "the evidence of the actors themselves"; but how that was obtained does not appear. 3d. The

* "Four Years with the Army of the Potomac," by Regis de Trobriand, Brevet Major-General U. S. Vols. Translated by George K. Dauchy, late Lieutenant Commanding 13th New York Battery Light Artillery U. S. Vols. With portrait and maps. Boston: Ticknor & Co. 1889.

Journal Military Service Institution, March 1, 1889.

official documents and depositions before the "Committee on the Conduct of the War." By far the most interesting and valuable part of the work is that which rests upon the first leg of the tripod. Neither the evidence, as he must have received it, from "the actors themselves," nor the report of the Committee on the Conduct of the War, affords a substantial foundation for the accounts given of campaigns and battles which the author did not witness. The Committee on the Conduct of the War was an anomalous tribunal, which sprang from the loyalty and zeal of a free and earnest people. It was composed of Congressmen, not of soldiers. It had its uses. Its report furnishes some bright side-lights, but to rely upon that report as a basis for history and criticism must lead to error and injustice. When General de Trobriand wrote his book, the compilation of the War Records had not been commenced. Indeed, these indispensable vouchers for historical accounts of the Civil War had not been assorted. But few of those from the Confederate side had been received by our Government, and all—Union and Confederate—were, for practicable purposes, inaccessible.

For more than twenty years since General de Trobriand's book first appeared, the Government has been preparing and publishing the official records which are essential to correct and fair accounts of the campaigns and battles of the Civil War. It is not possible within the compass of a book review to point out the important discrepancies between the Records and the accounts given in "Four Years with the Army of the Potomac." Discrepancies were up-

avoidable in a book written at the close of the War, when, if the memory was fresh the feelings were strong. It would not be necessary to make note of them if it were not that, in the broad light of the present day the work is translated into English and published in this country without revision. Indeed, the author, without making or authorizing any revision of the historical matter, says to the translator: "Leave intact, without modification or extenuation, my judgments upon men and things, for, whatever may be otherwise their value, they have at least the recommendation in their favor that they are the honest expression of seasoned convictions based upon *facts*, and which I did not find cause to modify since the above was published." The "facts" in some instances turn out to be like the fact stated by the man who said the horse was sixteen *feet* high, and then stuck to it because he had said sixteen feet instead of sixteen hands. General de Trobriand adheres to his conclusions regardless of manifest changes in his premises, which is in effect saying to the world: "If the established facts of the present day do not agree with what I said twenty years ago, so much the worse for the facts." It is a pity the author takes this bourbonistic view of the subject. It is not meant that the historical and critical parts of his work are wholly wrong; far from it. It is because the book is good that the American edition of it deserved revision that would bring it up to the enlightened standard of the present time. In so far as it conforms to the assurances in the preface, the book is of the highest interest. "This book," the author says, "is a narra-

tive. I have limited myself to those things which I have seen. I tell of events as they have passed under my eyes, and as I wrote them down, day by day, in a journal"; and he adds: "the reader can follow me in perfect security." The parts of the book which conform to these assurances are admirable and delightful. So, too, in general, are the accounts of political matters, though the effect of political interference in military affairs during the War is overdrawn. The first chapter of the book, treating of the causes of the War is particularly good. The personal sketches, though not free from the appearance of bias, are spirited and graphic. The criticisms of high commanders are usually severe, in some cases harsh.

The grave defects of the book are in the accounts of events of which the author knew nothing of his own knowledge, and in the judgments he bases upon these accounts, and still adheres to. As heretofore mentioned, the book was written while the war feeling remained hot. It shows some strong prejudices, but that was to be expected. Prejudice is a natural outgrowth from those human organisms in which both the intellect and the feelings are highly developed. Yet it is an unwholesome fungus that ought not to be swallowed even when highly seasoned and daintily served.

A brief reference may be made to some questionable parts of the work. Undoubtedly, President Buchanan's part in public affairs between the election and inauguration of his successor (November, 1860, to March, 1861) was far from creditable, but there were extenuating circumstances which do not appear in the

book. After the new President was elected, the old President was practically powerless. Congress (which assembled in December, 1860) did not heed Buchanan's recommendations. He submitted several measures looking to coercion of the South, but they were not acted upon. Everything which appeared to be of national importance was held by Congress to await the incoming administration. In fact, Congress was almost as uncertain as the President about what ought to be done. At that time, upon the question of the constitutional powers of the Government, a large majority of the Northern people shared Mr. Buchanan's views. The coercive power of the General Government was admitted to be ample within certain limits. That is to say, it could enforce its authority, acting directly upon individual citizens within a State, but it could not make war upon a State or upon the whole people of a State, guilty and innocent alike. This belief which merely embarrassed citizens in general, completely confused and confounded the citizen who happened to occupy the Presidential chair. President Buchanan knew that he had no legal power to raise armies of his own volition, and if he had attempted to call out the Militia and increase the Regular Army and Navy by his own order as President Lincoln did, after Fort Sumter was fired upon, it is quite possible he would have been impeached.

In speaking of Pope's campaign the author says: "Finally the ill-will and disobedience of at least one of his corps commanders contributed sensibly to defeat his plans and paralyze his efforts." The corps commander he refers to is Fitz John Porter; and the

author adds, "in regard to Porter's conduct, military justice has pronounced. He was cashiered, dismissed from the Army, and declared incapable of occupying any position of confidence, honor or profit, under the Government of the United States."

When the author (December 14, 1886) authorized the American edition of his book, Porter had been restored to the Army by the nomination of the President and the confirmation of the Senate, the restoration being specially authorized by Act of Congress. The restoration was the result of an impartial, and searching investigation by a just and learned tribunal, of which Major-General Schofield, now General-in-Chief, was President. This tribunal, with essential information before it which the court-martial did not and could not have, said, "The judgment of the court-martial upon General Porter's conduct was evidently based upon greatly erroneous impressions," and after pointing out these impressions, the tribunal adds: "The reports of the 29th and those of the 30th of August, have somehow been strangely confounded with each other. Even the Confederate reports have, since the termination of the War, been similarly misconstrued. Those of the 30th have been misquoted as referring to the 29th, thus to prove that a furious battle was going on while Porter was comparatively inactive on the 29th. The fierce and gallant struggle of his own troops on the 30th has thus been used to sustain the original error under which he was condemned. General Porter was, in effect, condemned for not having taken any part in his own battle. Such was the error upon which General Porter was pro-

nounced guilty of the most shameful crime known among soldiers. We believe not one among all the gallant soldiers on that bloody field was less deserving of such condemnation than he.

"Having thus given the reasons for our conclusions, we have the honor to report, in accordance with the President's order, that, in our opinion, justice requires at his hands such action as may be necessary to annul and set aside the findings and sentence of the court-martial in the case of Major-General Fitz John Porter, and to restore him to the positions of which that sentence deprived him. Such restoration to take effect from the date of his dismissal from service."

In the face of these facts the American edition of General de Trobriand's book appears without revision and with the injunction to the translator "to leave intact" the author's "judgments upon men and things."

Of the defenders of Fort Sumter, the author says: "They had done their duty—nothing more. Left to themselves, in a hopeless position, they had undergone a bombardment of two days, which injured only the walls, though they wished it to be well-understood that they yielded to force only; after which they had packed their baggage and surrendered the place. With the best will in the world, it seemed impossible to find anything heroic in it. And yet, to see the ovations given to them, to read the dithyrambs composed in their honor, it would appear that Anderson and his eighty men had rendered for America, at Fort Sumter, what in ancient times Leonidas and his three hundred had done for Greece at Thermopylæ." This is rather a narrow view of Anderson's part. The

strictly military defence of Fort Sumter was but a small part of his difficult service. Never in the history of this country has a public officer been placed and held by his Government in such a responsible and difficult position. With the end of an old administration and the beginning of a new one, with revolution and civil war fomenting, and neither administration knowing whether to rely upon conciliation or coercion, whether to pocket insults or resent them, whether to apologize or fight, Anderson, besieged by armed enemies for nearly five months, was furnished with no other instructions than equivocal ones, which at best fixed upon him the responsibility of submitting to humiliation and starvation in the cause of peace and good citizenship, or of precipitating civil war by responding to the dictates of military duty and true soldiership.

It was not the military defence of Sumter, but his bearing under the trying circumstances that made Anderson's conduct heroic.

Speaking of General Scott, the author says (p. 49), "Enfeebled morally and physically by years, the old candidate for the Presidency saw but one issue to the strife already entered on, the division of the Union into four confederations."

This is entirely wrong. General Scott was never enfeebled "morally," and never thought the one issue of the strife would be the division of the Union into four confederations.

McClellan's part in the War invites adverse criticism, but the author seems too severe upon him. Certainly he is entitled to all that the developments of the

last twenty years have produced in his favor, as well as to the softening influence of time. In their eulogistic "Life of Lincoln," Nicolay and Hay describe McClellan at great length and with no partiality for him. They have before them not only the official records, and the military publications to date, but all the papers of Mr. Lincoln. In conclusion they say in the last number of the *Century Magazine* (Feb., 1889):

"Thus ended the military career of George Brinton McClellan. Now, that the fierce passions of the War, its suspicions and its animosities, have passed away, we are able to judge him more accurately and more justly than was possible amid that moral and material tumult and confusion. He was as far from being the traitor and craven that many thought him as from being the martyr and hero that others would like to have him appear. It would be unfair to deny that he rendered, to the full measure of his capacity, sincere and honest service to the Republic. His technical knowledge was extensive, his industry untiring; his private character was pure and upright, his integrity without stain. In the private life to which he retired he carried with him the general respect and esteem and the affection of a troop of friends; and when by their partiality he was afterwards called to the exercise of important official functions, every office he held he adorned with the highest civic virtues and accomplishments. No one now can doubt his patriotism or his honor, and the fact that he was once doubted illustrates merely the part which the blackest suspicions play in a great civil war, and the stress to which the public mind was driven in the effort to account

for the lack of results he gave the country in return for the vast resources which were so lavishly placed in his hands."

There are, of course, errors and omissions in the book, some of which may be noted. In his able chapter upon the causes of the War, the author, describing the growth of the anti-slavery feeling in the North, says: "In 1848 ex-President Van Buren was the anti-slavery candidate. This fact alone is enough to show the great progress in public opinion during the administration of President Polk. General Taylor was elected, it is true, but the large number of votes cast for Mr. Van Buren gave the party he represented an importance, which, increasing from day to day, already presaged the part it would play in the near future."

This way of presenting a historical matter is misleading. The reader, especially a foreign reader, might well infer from the foregoing account that the Presidential contest in 1848 was between Taylor and Van Buren. The fact is, however, that the contest was between Taylor, the candidate of the Whig party, and Cass, the candidate of the Democratic party. The entire electoral vote was divided between them. Van Buren, the candidate of the so-called free-soil party, did not receive one electoral vote and polled only about two hundred and ninety thousand of the popular vote.

Speaking of the assumption of the Presidential functions by Mr. Lincoln, the author says (p. 51): "Mr. Lincoln surrounded himself immediately with men devoted to the Union cause, and resolved to give

force to the will of the people. They were: Mr. Seward, of New York, . . . for Secretary of State; Salmon P. Chase, of Ohio, Secretary of the Treasury; Simon Cameron, of Pennsylvania, Secretary of War; Gideon Welles, of Connecticut, Secretary of the Navy; Caleb D. Smith, Secretary of the Interior." Two very active and important functionaries are omitted, namely: Bates, the Attorney-General, and Montgomery Blair, the Postmaster-General. Blair was a graduate of the Military Academy in the same class as Meade, and busied himself with military affairs in Lincoln's cabinet.

It would seem that there ought not to be any reason for mistakes about the date of the first Bull Run, yet one occurs in this book, due no doubt to misprint. We are told (p. 72), "The officers (of the author's regiment), were called together to choose a Colonel on the 21st of July, *the evening before the battle* of Bull Run. I was elected. On the 23d, *the morning of the battle*, a telegraphic dispatch announced to me that my regiment was accepted, etc."

The translator appears to have given accurately the meaning of the author, and to have preserved faithfully the force of the French idioms. Some parts of the translation are perhaps too literal. Page 48 affords an example: "Anderson and his little faithful troop were left, abandoned to their fate, and, under the effect of such an insult to the national flag, Mr. Buchanan humiliated himself to promise to send no more men nor munitions of war nor provisions to that handful of brave men who had displayed and defended the flag of the United States in face of the rebels of South

Carolina." If one happened to turn from contemplation of the excellent portrait of the author, which forms the frontispiece, to page 48 of the text, he could hardly read that page without a French accent.

ARTICLE XI.

Pittenger's "Capturing a Locomotive."*

On the 7th of April, 1862, General O. M. Mitchel, U. S. Volunteers, commanding in Middle Tennessee, organized a party of twenty-four men to steal into the enemy's lines, assemble at Marietta, Ga., capture a locomotive and run north, destroying *en route* the bridges and telegraph between the place of capture and Chattanooga. The expedition was suggested and conducted by J. J. Andrews, a spy. The soldiers volunteered for the service, and were told the nature and purpose of it. They were armed only with revolvers, exchanged their uniforms for citizen's dress, and deceived the enemy's troops and people. Twenty-two of the party assembled at Marietta on Friday evening, April 11, took passage on the north-bound train about daylight next morning, and when the train stopped for breakfast at a station called Big Shanty, they quietly uncoupled the locomotive and three box cars and started at full speed up the track. Pursuit was made as soon as possible. The adventurers met with unexpected difficulties and delays, and after running about a hundred miles were compelled to abandon the train and scatter in the woods. The surrounding country was aroused. The fugitives were hunted down and all were captured and thrown into loathsome prisons. After some months Andrews

* *Journal of Military Service Institution.*

the leader and seven others were tried by court-martial and hanged, and eight made their escape. The remaining six were exchanged in the following March.

The absorbing story of this unparalleled enterprise is told in detail by the Reverend William Pittenger, one of the survivors, in a volume entitled "Capturing a Locomotive," recently published by J. B. Lippincott & Co.

No romance contains more of danger, pluck, resolution, endurance, suffering, gloom and hope than this truthful account of an actual occurrence in our War of Rebellion. It does not detract from the interest of the story that the author is not fully informed as to the origin of the enterprise, and is not strictly correct as to its purposes and their importance. The adventure he describes was the second that was planned, both of which he erroneously assumes were inaugurated under the authority of General Mitchel for the purpose of enabling or facilitating the capture of Chattanooga by that officer. The facts are about as follows: The rebel line, extending in the winter of 1861-62 from Columbus, on the Mississippi River, to Bowling Green, Kentucky, was broken in the centre by the capture of Forts Henry and Donelson, and the enemy was forced to fall back. The main body from Bowling Green retired *via* Nashville through Middle Tennessee to the south of the Tennessee River. General Halleck, adhering to his interior line, moved his troops up the Tennessee River in March, with a view to breaking the new line the enemy had established, or was about to establish, along the Memphis and Charleston Railroad. Buell, who with the army of

the Ohio had seized Nashville in the latter part of February, 1862, and was about marching westward to join Grant at Savanna on the Tennessee, was not unmindful of the advantage of breaking *west of Chattanooga* the railroad which led the rebel forces from the east and south to his flank, and also directly connected them with Corinth against which Halleck was moving. The spy Andrews, who was in Buell's service, represented early in March, 1862, that, with a party of six trusty men, he could destroy the railroad bridges between Chattanooga and Bridgeport, and also the important bridge over the Tennessee at the latter place, and thus effectually prevent the enemy from using that route either to re-enforce Corinth or return to Middle Tennessee. Buell had received but little benefit from Andrews's services, and did not encourage the proposition, but, in consequence mainly of the confidence and urgency of the spy, he finally directed his Chief-of-Staff, Colonel James B. Fry, to confer fully with Andrews and use his discretion as to authorizing and organizing the enterprise. The Chief-of-Staff, on the strength of Andrews's assurance that an engineer running a regular train over the road was in our interest, and would use his locomotive for the purpose, sanctioned and arranged the undertaking. General Mitchel was directed to furnish six men *if volunteers for the service could be found*. That is all General Mitchel had to do with the original enterprise.* It

* SARATOGA, August 5, 1863.

TO GENERAL L. THOMAS,

Adjutant-General U. S. A., Washington City, D. C.

SIR:—In the "Official Gazette" of the 21st ultimo, I see a report of Judge Advocate-General Holt, dated the 27th of March, relative to

appears from Mr. Pittenger's book that the party assembled at Atlanta, but failing to find the engineer on whose co-operation the enterprise was based gave it up, and all the men made their way safely back to our lines. This terminated the effort to destroy bridges *west* of Chattanooga by capturing a locomotive. In relation to the merits of this scheme, it may be said that, at the time, perhaps the object was of sufficient importance to cover the probabilities of failure and the risk to the men engaged, but at best the undertaking was hardly commendable. Buell, basing no plans on the success of it, marched with the main body of his army for the field of Shiloh without knowing the result. When Andrews returned early in April, he found General Mitchel in command near

"an expedition set on foot in April, 1862, under the authority and direction," as the report says, "of General O. M. Mitchel, the object of which was to destroy the communication on the Georgia State Railroad between Atlanta and Chattanooga." The expedition was "set on foot" under my authority; the plan was arranged between Mr. Andrews, whom I had had in employment from shortly after assuming command in Kentucky, and my Chief-of-Staff, Colonel James B. Fry; and General Mitchel had nothing to do either with its conception or execution, except to furnish from his command the soldiers who took part in it. He was directed to furnish six; instead of that he sent twenty-two. Had he conformed to the instructions given him it would have been better; the chances of success would have been greater, and in any event several lives would have been saved. The report speaks of the plan as an emanation of genius; and of the results which it promised as "absolutely sublime." It may be proper therefore to say, that this statement is made for the sake of truth, and not to call attention to the extravagant colors in which it has been presented.

Very respectfully, your obedient servant,

[Signed.] D. C. BUELL, Major-General.

[NOTE.—General Buell knew only of the first expedition—the one he authorized. The second, sent by Mitchel, without Buell's authority, was never reported.]

Nashville, and reported to him in Buell's absence. Mitchel, with no enemy to oppose him, was advancing through Middle Tennessee, and occupied Huntsville on the Memphis and Charleston Railroad on Friday, April 11. The author says Mitchel's purpose was to capture Chattanooga. Appropriating the idea of bridge-burning, Mitchel on the 7th of April—the last day of the battle of Shiloh—started a party of twenty-four men under Andrews to capture a locomotive and destroy bridges *south* of Chattanooga, between that place and Marietta. No exception can fairly be taken to the author's graphic account of the failure of that effort, but he and the Judge Advocate-General of the Army and the Southern newspapers appear to have attached undue importance to the object of it. The destruction of bridges between Marietta and Chattanooga would not have enabled General Mitchel to take the latter place. If his instructions or the military conditions had justified him in an attempt to capture Chattanooga—which they did not—the preservation of the bridge over the Tennessee would have been important to his success. The enemy had only to burn that structure, as they did when Mitchel's troops approached it April 29, in order to check an advance on Chattanooga. Furthermore, if Mitchel's party had succeeded in burning bridges between Marietta and Chattanooga, that would not have prevented the reinforcement of the latter place, as the regular railroad route through East Tennessee was open and in the enemy's possession, and it was from the east, and not from the south, where there were but few if any available troops until Corinth was evacuated, that the

place was most likely to be re-enforced. Mitchel's bridge-burners, therefore, took desperate chances to accomplish objects of no substantial advantage. Judge Advocate-General Holt probably had not examined carefully into the military aspects of the subject when he reported of this enterprise in 1863, "in the gigantic and overwhelming results it sought and was likely to accomplish, it was absolutely sublime." General Mitchel made no such claim. In fact, seeing as he no doubt finally did, the insufficiency of the object, and the completeness of the failure and its deplorable consequences, he never made any report whatever of the operation.

It is not strange that when the men engaged in this affair were captured, they endeavored to have the enemy treat them as prisoners of war, but it is rather remarkable that the author at this late day claims that their only offence "was that of accepting a dangerous service proposed by their own officers," and complains that the rebels treated them as spies. They were soldiers who stripped off their uniforms and went into the enemy's lines to *war against him in disguise*. The author maintains that, as they did not "lurk" about the enemy's camps for the purpose of getting information they were not spies. That plea is technical and feeble; nor is the argument that the rebel partisans and guerillas came in citizen's dress within our lines of any material weight in this connection. We are convicted on these points out of our own mouths. Our authorities say "a spy is punishable with death." "A person proved to be a regular soldier of the enemy's army, found in citizen's dress within the lines of

the captor, is universally dealt with as a spy." "Armed prowlers by whatever names they may be called, who steal within the lines of the hostile army for the purpose of robbing, killing, or of *destroying bridges, roads, or canals, or of robbing or destroying the mail, or of cutting the telegraph wires*, are not entitled to the privileges of the prisoner of war." Mr. Pittenger has given us the most thrilling story of the Rebellion, but his heroes, brilliant and daring, were, by the rules of war, marauders and spies, who knowingly and voluntarily bet their lives on a desperate game and lost. Only eight of the twenty-four were executed. Instead of blaming the winner for taking *one-third* of the stakes, the author should have thanked him for not enforcing his right to the other *two-thirds*.

ARTICLE XII.

Keyes's "Fifty Years' Observation of Men and Events."*

This is one of the most entertaining books of the period. The author's characteristics, so well known to the old Army, speak from every page. He never fails to be earnest and forcible. If his opinions are not always sound, they are openly and honestly entertained. His observations of men and events of his time are perhaps the more entertaining from the fact that while his convictions are strong and sincere, his work is notional rather than logical—spicy, not prosy. The apothegms in his book will please the cynic more than his military criticisms will instruct the soldier. The flavor of the former may be found in the following quotations: "The antics of military and political jealousy, like the follies of love, are beyond the scope of prose." "Religion, surgery, chemistry, and engineering are prosperous; and if a man is more to be pitied when he falls into the clutches of the law, and his property is converted by sharpers, he is safer when

* "Fifty Years' Observation of Men and Events, Civil and Military." By E. D. Keyes, Brevet Brigadier-General U. S. Army; Late Major-General U. S. Volunteers, Commanding the Fourth Corps. Charles Scribner's Sons. New York, 1884.

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he trusts himself with a doctor." "The directors and stockholders of railroads (in early times) constituted the meekest and most sorrowful class of our citizens. They were palid, meagre, and supplicating men; but now they are a distinct class, to which all the world makes obeisance, and they have become ruddy, surfeit-swelled, and dictatorial." "The most surprising of all legal contests originate in the vagaries of true or simulated love." "The practice of law hardens most men, and renders them insensible to the torments of litigation." "The abuses of no human organization can ever be corrected by those who profit by them."

As an example of General Keyes's military criticism, the following is cited (p. 216): "The operations of the Army of the Tennessee under its new leader were full of vigor, and in the month of May, 1863, General Grant crossed the Mississippi below Vicksburg, placed himself between Pemberton, who commanded in that city, and Joseph E. Johnston, who was at the head of an army in the interior. From the moment I became acquainted with the nature of that movement, I have considered Grant as one of the great captains of history. The story of nearly every one of them embraces a similar history. Alexander of Macedon crossed the Indus to capture old Porus. Scipio went over the Mediterranean to fight and vanquish Hannibal. Cæsar, already as great as any man in the world, crossed the Rubicon, and became the greatest. Tamerlane passed the sea on the ice to die of fatigue. Turenne crossed the Rhine to drive back Monticuculi, and to be killed. Napoleon fought his way over the

Adige to enter the temple of fame, and at a later date, when success had turned his head, he ventured to the northern side of the Boristhenese to see the lustre of his star pale in the smoke of burning Moscow."

From this commingling of rivers, seas, mountains, generals, victories, defeats, and death, Grant's greatness is deduced, without counting the campaign of kisses Leander won by swimming the Hellespont. The military merit of Grant's Vicksburg campaign, when he decided to run the batteries, and pass the city, is beyond dispute. He crossed the dividing waters to get at the enemy, and so did the other great leaders mentioned by General Keyes, but the use of that coincidence as proof in itself of Grant's generalship is something quite new.

With all its amiability and frankness, this book shows some aversions, and Halleck appears to be one of them. The author says, speaking of the firm of Halleck, Peachy & Billings, in early times in San Francisco (p. 301): "Halleck was thrifty and persevering, but his distinctive characteristics were obduracy and laboriousness. I was less intimate with him than with the other two, for he was more inclined to be my enemy than my friend." This perhaps accounts for a disposition which appears in the book to misjudge Halleck. Speaking of Thomas (p. 168) the author says: "Not long before the battle of Nashville, which gave permanence to his renown, he was accused of dilatoriness and inefficiency. The disadvantageous reports were credited, and General-in-Chief of the Army Halleck issued an order and had it printed, re-

lieving Thomas, and directing General Schofield to assume command of his army. For some reason unknown to me, the order was not sent," etc. The proposition above mentioned, to supersede Thomas, has been under public and private discussion ever since the close of the War. General Keyes's errors concerning it are unaccountable. When the battle of Nashville was fought, December 15-16, 1864, Lieutenant-General Grant was General-in-Chief, having (under the act of March, 1864), superseded Halleck in that duty nine months previously. Major-General Halleck held then, and for the preceding nine months had held, only the nominal position of Chief-of-Staff.

The further facts in the case are as follows :

On the 2d of December Stanton telegraphed to Grant: "The President feels solicitous about the disposition of General Thomas to lay in fortifications for an indefinite period, until Wilson gets equipments. This looks like the McClellan and Rosecrans strategy, to do nothing and let the rebels ride the country. The President wishes you to consider the matter." This telegram was followed on the 7th of December by another from Stanton to Grant, saying: "General Thomas seems unwilling to attack because it is hazardous, as if all war was anything but hazardous. If he waits for Wilson to get ready Gabriel will be blowing his last horn." To this Grant replied on the same day: "You probably saw my order to Thomas to attack. If he does not do it promptly, I would recommend superseding him by Schofield, leaving Thomas subordinate." The next day (the 8th) Grant

telegraphed Halleck: "If Thomas has not struck yet, he ought to be ordered to hand over his command. There is no better man to repel an attack than Thomas, but I fear he is too cautious to ever take the initiative," to which Halleck, at nine that evening, replied: "If you wish General Thomas relieved from command, give the order. No one here will, I think, interfere. The responsibility, however, will be yours, as no one here, so far as I am informed, wishes General Thomas's removal." To this Grant replied immediately (10 P.M. December 8): "Your dispatch of 9 P.M. just received. I want General Thomas reminded of the importance of immediate action. I sent him a dispatch this evening which will probably urge him on. I would not say relieve him till I hear further from him." On the morning of the 9th of December Halleck telegraphed Thomas: "General Grant expresses much dissatisfaction at your delay in attacking the enemy. If you wait until General Wilson mounts all his cavalry you will wait until Doomsday, for the waste equals the supply. Moreover, you will soon be in the same condition that Rosecrans was last year, with so many animals that you cannot feed them. Reports already come in of a scarcity of forage." On the morning of December 9, Grant telegraphed Halleck: "Dispatch of 8 P.M. last night from Nashville shows the enemy scattered for more than seventy miles down the river, and no attack yet made by Thomas. Please telegraph order relieving him at once and placing Schofield in command. Thomas should be directed to turn over all orders and dispatches received since the battle of Franklin to Schofield."

In pursuance of these instructions, Halleck had an order drawn up in terms as follows :

WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE,
 GENERAL ORDERS } WASHINGTON, D. C., Dec. 9, 1864.
 No. — }

In accordance with the following dispatch from Lieutenant-General Grant, viz.: "Please telegraph order relieving him (General Thomas) at once and placing Schofield in command. Thomas should be directed to turn over all dispatches received since the battle of Franklin to Schofield.

"U. S. GRANT, *Lieutenant-General.*"

THE PRESIDENT ORDERS,

I. That Major-General Schofield assume command of all troops in the Department of the Cumberland, the Ohio, and the Tennessee.

II. That Major-General George H. Thomas report to General Schofield for duty, and turn over to him all orders and dispatches received by him as specified above.

By order of the SECRETARY OF WAR.

OFFICIAL: J. C. KELTON, A. A.-G.

Halleck, however, did not promulgate the order. While he was holding it upon his sole responsibility, he, at 3.20 P.M., December 9, received the following telegram from Thomas, sent at 2.15 P.M. same day: "Your telegram of 10.30 A.M., to-day received. I regret General Grant should feel dissatisfaction at my delay in attacking the enemy. I feel conscious that I have done everything in my power to prepare, and

that troops could not have been got ready before this, and if he should order me to be relieved I will submit without a murmur. A terrible storm, freezing rain, has come on since daylight, which will render an attack impossible until it breaks."

Halleck instantly—at 4.10 P.M. same day—telegraphed Grant as follows: "Orders relieving General Thomas had been made out when his telegram of this P.M. was received. If you still wish these orders telegraphed to Nashville they will be forwarded." To which Grant replied at 5.30 P.M. on the same day: "General Thomas has been urged in every way possible to attack the enemy, even to giving the precise order. He did say he thought he would be able to attack on the 7th, but did not do so, nor has he given a reason for not doing it. I am very unwilling to do injustice to an officer who has done so much good service as Thomas has, however. You will therefore suspend the order relieving him until it is seen whether he will do any thing."

It thus appears that Stanton's impatience with Thomas was brought to bear upon Grant as early as December 2, and that Grant shared it very soon after, if not at the time; that the President's order superseding Thomas by Schofield was made in pursuance of Grant's advice, and that it was drawn up by Halleck as Chief-of-Staff; that instead of promulgating it instantly and relieving Thomas by telegraph, as Grant directed on the morning of the 9th, Halleck held the order on his own responsibility, and at 4.10 in the afternoon asked Grant by telegraph whether he still wished the order concerning Thomas and Scho-

field telegraphed to Nashville. It was in response to this that Grant suspended the order. Clearly Halleck's action was in Thomas's interest, and comment upon the injustice done Halleck by General Keyes is unnecessary.

But notwithstanding the foregoing order was suspended on the 9th, Thomas had not attacked by the 13th, and on that day Grant took the matter of superseding him into his own hands and made the following order from the field :

HEADQUARTERS OF THE ARMY OF THE UNITED STATES.
SPECIAL ORDERS } CITY POINT, VA., Dec. 13, 1864.
No. 149. }

I. Major-General John A. Logan, U. S. Volunteers, will proceed immediately to Nashville, Tenn., reporting by telegraph, to the Lieutenant-General Commanding, his arrival at Louisville, Ky., and also his arrival at Nashville. . . .

By command of LIEUTENANT-GENERAL GRANT,
T. L. BOWERS, A. A.-G.

Though not expressed in the foregoing order Grant's intention was to supersede Thomas by Logan and go to Nashville himself to supervise operations. But before Logan arrived at Nashville on the 17th, Thomas had fought the battle of Nashville, December 15-16, and gained his crowning victory. Logan telegraphed Grant from Louisville at 10 A.M., December 17: "I've just arrived, weather bad, raining since yesterday morning. People here jubilant over Thomas's success; confidence seems to be restored. I will remain here to hear from you. All things going right

It would seem best that I return soon to join my command with Sherman." On the 19th of December Grant telegraphed Logan, who was still at Louisville: "The news from Thomas so far is in the highest degree gratifying. You need not go farther. Before starting to join Sherman report in Washington." That was the end of the two moves to supersede Thomas.

On the 14th of February, 1864, Grant addressed to Logan a letter in explanation of the purpose and scope of the orders given to Logan, making it clear that Grant was dissatisfied with the slowness of General Thomas's "moving," and on that account sent Logan "out with orders to relieve him"; though he did not intend Logan's orders to settle any question which might arise between Logan and Schofield as to the general command of the combined armies of the Cumberland and Ohio.

The author (p. 214), in speaking of Fort Donelson, 1862, says: "General H. W. Halleck was a man of talent and a patriot, but often a slave to prejudice. He knew nothing about Grant's character, and he wished to know nothing good. . . . General Halleck accused him of neglect, superseded him in his command by General C. F. Smith, and finally, upon some pretence, placed Grant in arrest." This is unjust to Halleck. The records show that early in March, 1862, Halleck subjected Grant to some unmerited censure, for occurrences subsequent to the capture of Fort Donelson (February 16, 1862), and that in reports to Washington he alleged that Grant left his command and went to Nashville without authority; that he failed

to make reports and returns, and that his army was badly demoralized. In response to Halleck's report concerning Grant, McClellan, then at the head of the Army, telegraphed Halleck (March 3): "Do not hesitate to arrest him at once if the good of the service requires it, and place C. F. Smith in command. You are at liberty to regard this as a positive order, if it will smooth your way." On the next day (March 4) Halleck replied to McClellan: "I do not deem it advisable to arrest him at present, but have placed General Smith in command of the expedition up the Tennessee." On the 10th of March the President, through the Adjutant-General, called upon Halleck for an official statement concerning the reports against Grant; and Halleck stated in response (March 15): "General Grant and several officers of high rank in his command immediately after the battle of Fort Donelson went to Nashville without my authority or knowledge. I am satisfied, however, from investigation that General Grant did this from good intentions and from a desire to subserve the public interests. During the absence of General Grant and part of his general officers numerous irregularities are said to have occurred at Fort Donelson. These were in violation of the orders issued by General Grant before his departure, and probably under the circumstances were unavoidable. General Grant has made proper explanations, and has been directed to resume command in the field. As he acted from a praiseworthy, although mistaken zeal for the public service in going to Nashville and leaving his command, I respectfully recommend that no further notice be taken of it. There

never has been any want of military subordination on the part of General Grant, and his failure to make returns of his force has been explained as resulting partly from the failure of Colonels of regiments to report to him on their arrival, and partly from an interruption of telegraphic communication. All these irregularities have now been remedied." The foregoing documents give all the essential facts in the case afforded by the official records. They fail to show that Halleck "placed Grant in arrest." They show, on the contrary, that under specific authority from the General-in-Chief to place Grant in arrest Halleck declined to do so; that he put General C. F. Smith in immediate command of an expedition up the Tennessee River, leaving Grant on duty at Fort Henry. As soon, however, as Halleck received explanations of what he had supposed to be irregularities, he sent Grant forward to his command, and in a formal letter to the Adjutant-General of the Army explained away what had been reported against him.

Another criticism is in relation to Halleck's operations against Corinth. The author says: "Halleck continued to fortify against a retreating enemy, gained nothing, so far as I have discovered, but disadvantages, until the month of July, and being convinced that to command an army in the field was not his vocation, he recommended Colonel Robert Allen as his successor, and departed for Washington to assume command of the whole Army, vice General George B. McClellan. Allen declined the command and Grant was restored to it."

This novel bit of military history and criticism is

full of errors. Halleck's operations as commander in the field, from April to July, 1862, were not brilliant, but it cannot correctly be said that he gained nothing but disadvantages, and it is far from correct to say he became convinced that command in the field was not his vocation. He is the best witness as to what he became convinced of concerning his fitness to command in the field; and on that point he said in a telegram to Buell, July 15: "I am ordered to Washington and shall leave day after to-morrow. *Very sorry, for I can be of more use here than there.*" He left the field for Washington with reluctance, in compliance with the President's positive order of July 11, and a telegram of the 14th, saying "I am very anxious, almost impatient, to have you here." General Keyes says Halleck recommended "Colonel Robert Allen as his successor and departed for Washington," and that "Allen declined the command." The meaning of this must be not simply that Halleck recommended Allen, but that the command was offered, otherwise it could not have been "declined."

In Badeau's "Life of Grant" (vol. i., p. 108, note) there is a letter from Allen written July 9, 1866, more than four years after the event, in which Allen says: "I had joined General Halleck a short time subsequent to the fall of Corinth, and was attached to his immediate command when he received his appointment of General-in-Chief, with orders to repair at once to Washington. Shortly after he came to my tent. After a somewhat protracted conversation he turned to me and said, 'Now what can I do for you?' I replied that I did not know that he could do anything.

'Yes,' he rejoined, 'I can give you command of this army.' I replied 'I have not rank.' 'That,' said he, 'can easily be obtained.' I do not remember exactly what my reply was to this, but it was to the effect that I doubted the expediency of such a measure. . . . He did not press the subject." The word of General Robert Allen is not to be questioned, but even if his recollection is correct, it is probable that undue weight has been attached to what occurred. He and Halleck were warm friends. Whatever Halleck said on the occasion, probably, was "gush," arising from good-fellowship and the exuberance of spirits so common around the camp-fires of successful armies. Allen, it will be observed, did not say that he "*declined*" the command, but only that he "doubted the expediency of such a measure," and Halleck "did not press the subject."

There is nothing in the official records to prove or indicate that the command was offered to Allen, or that Allen was recommended for it, or that Halleck had any other purpose than to turn the command over to Grant, the next in rank. Halleck had no power to make Allen his successor, nor was there any custom of war or statute by which the President even could have given the command to Allen, who was only a Major in the Quartermaster's Department, and an additional Aide-de-Camp with the rank of Colonel. Grant, who was on duty in that field, was a Major-General. The resolution of April 4, 1862, then in force, said: "Whenever military operations may require the presence of two or more officers *of the same grade* in the same field or department, the President may assign

the command of the forces in such field or department without regard to seniority of rank"; but that did not, and was never construed to, permit the President to disregard grades, and assign a Colonel to the command of Major-Generals.

The official records show that on the 11th of July, 1862, the President "ordered that Major-General Henry W. Halleck be assigned to the command of the whole land-forces of the United States, as General-in-Chief, and that he repair to this capital as soon as he can with safety to the position and operations within the department under his charge." This order was telegraphed to Halleck on the day it was issued, and the Secretary of War added to it: "State when you may be expected here. Your presence is required by many circumstances." Immediately after receiving the foregoing order, Halleck telegraphed to Grant, who was at Memphis: "You will immediately repair to this place, and report to these headquarters," and July 11 he telegraphed the President: "Your orders of this date are this moment received. General Grant, next in command, is at Memphis. I have telegraphed to him to immediately repair to this place. I will start for Washington the moment I can have a personal interview with General Grant." On the 15th of July, Halleck telegraphed the Secretary of War: "In leaving this department, shall I relinquish the command to the next in rank, or will the President designate who will be the commander?" and receiving no reply he, on the 15th, answered as follows President Lincoln's telegram urging him to hasten to Washington: "General Grant has just arrived from Memphis.

Hope to finally arrange distribution of troops, and to leave here Thursday morning, 17th." There is nothing in the official records to indicate any other plan or wish on Halleck's part than to turn over the command to Grant, the next in rank. In fact, in the absence of other evidence, the foregoing telegrams disprove General Keyes's assertion that Halleck recommended "Colonel Allen as his successor," and that "Allen declined the command."

Allen wrote August 6, 1862, from St. Louis to General Halleck in Washington: "A delegation goes from this city to Washington to-day to solicit the appointment of a Military Governor for this State. This is an office I think I could fill, and since I am one of the supernumerary brigadiers (now no brigadier at all), I would accept this office, and give my whole ability to it. I am willing, however, to abide your judgment, and serve you where I may be most useful. Two of the four delegates are, I know, in favor of me." But Halleck declined to recommend Allen for the comparatively unimportant position of Military Governor of Missouri, though invited to do so by the foregoing letter, written but a few days after Halleck is said by the author to have recommended Allen as his successor in command of all the West, of which Missouri was a part.

Notwithstanding his admiration for Grant, the author, in some instances, does not do that great captain justice. He says (p. 214), in relation to a dispute between Halleck and Grant concerning reports and returns after the capture of Fort Donelson: "It is possible that Grant's stupendous success may have

over-excited him, and caused him to omit making customary reports to headquarters." It has already been shown that this was all explained. Grant did make, as far as practicable, the reports and returns he was at the moment censured for not making, but through the confusion of war Halleck did not receive them. Grant was well poised, and even his wonderful success never disturbed his equilibrium. Again the author says of Grant: "Lest his adversary should infer he was influenced by fear, he assailed the almost impregnable position of Cold Harbor, at a cost of 7,000 men at least, while he inflicted but trifling loss on the Confederates." Grant gave the enemy no chance to think he was afraid to fight, and certainly never made an attack to remove an opinion which the enemy could not entertain.

General Keyes, like some other distinguished soldiers of the Rebellion, makes a fling at the officers of our Engineer Corps. He says: "At the beginning of the War the engineers were everywhere in the direction. The engineers are worthy of all respect for their talents, integrity, and devotion to duty, but they appeared always to overlook and disregard the necessity of service with troops of the line, as a preparation for command in the field. At West Point I had McClellan under instruction. I knew how proud he was of being in the Engineer Corps." McClellan served with troops in the principal battles of the Mexican War, and proud as he may have been of being in the Engineer Corps, he promptly gave up his first lieutenancy in that corps for a captaincy of cavalry in 1855. In choosing officers of the Regular

Army for command during the Rebellion, the Government gave no preference to corps, and General Keyes's assertion that at the beginning of the War the engineers were everywhere in the direction, will not bear examination. Anderson, of the artillery, commanded during the attack upon Fort Sumter, April 12-13; Lyon, of the infantry, was in command at Camp Jackson, Mo., May 10; Benjamin F. Butler, of the volunteers, was in the direction at Fort Monroe, Virginia, when the battle of Great Bethel was fought on June 10; Patterson, of the volunteers, was in the direction on the Upper Potomac, June and July; and McDowell was in the direction in front of Washington during the same time. The army which made the first Bull Run campaign, July, 1861, was commanded by McDowell. His division commanders were Tyler, Hunter, Heintzelman, Runyon, and Miles—not one of them was ever in the Engineer Corps. McClellan's Army of the Potomac, as organized for its first campaign, 1862, contained five corps. McDowell commanded the 1st, Sumner the 2d, Heintzelman the 3d, Keyes the 4th, Banks the 5th, and Marcy was Chief-of-Staff. There was not an engineer officer among them, unless McClellan, who had ceased to be a Lieutenant of engineers to become a Captain of cavalry, can be called one.

The truth is, General Keyes himself, an artillery officer, was the earliest in direction, and possessed the most ample authority. He and Meigs of the engineers, without the knowledge of General Scott, and behind "the ambush of original power," as hereafter explained, prepared plans for the defence of Fort Pickens;

whereupon the President issued the following comprehensive and extraordinary document :

“ EXECUTIVE MANSION, April 3, 1861.

“ LIEUTENANT-COLONEL E. D. KEYES, *United States Army, Military Secretary* :

“ You will proceed forthwith to the city of New York, to carry out the instructions which you have received here. All requisitions made upon officers of the staff by your authority, and all orders given by you to any officer of the Army in my name, will be instantly obeyed.

[Signed] “ ABRAHAM LINCOLN.”

Although engineer officers were not in the direction at the beginning, it must be admitted that by the time the War closed, the Engineer Corps, in proportion to other arms of Service, had furnished at least its full quota of high commanders ; among them may be mentioned Meade, Pope, Humphreys, Tower, Wright, Newton, Whipple, Franklin, W. F. Smith, Foster, Parke, McPherson, Gillmore, Warren, and Weitzel.

To estimate at its true value what General Keyes says of General Scott, the reader should begin at the end of the book. He will there find the feeling under which the author has recalled and presented the incidents of an association and friendship of nearly thirty years with his old chief. In 1833, only sixteen months after Keyes had graduated, General Scott took this young Lieutenant on his staff, kept him till 1838, when he was appointed Assistant Adjutant-General, with rank of Captain, and went to duty elsewhere. But

he remained away only a few months. By December 1 he was back again. How glad he was to return he shows by saying: "I sacrificed actual rank to gratify my desire to enjoy New York and Washington, and to be for a limited time longer with my old commander." He then remained on Scott's staff two years, till promoted to a captaincy in his regiment. By January 1, 1860, he for the third time joined General Scott's staff, and continued upon it till the General discharged him April 19, 1861. General Keyes says that the "irritation" against his chief caused by this discharge "continued for several years, but it gradually subsided and was finally extinguished." His book does not sustain his conclusion. In depicting General Scott the author has, unconsciously perhaps, woven through his work from beginning to end a notion, which is finally used instead of the real cause, to account for his dismissal from the staff. The error referred to is that while General Scott was a sound Union man, his sentiments were so intensely Southern that he could not deal justly with Northern officers; that his treatment of them was tyrannical, and General Keyes would have us believe that he, the trusted friend and confidential staff-officer, fell a victim to the prejudices of his chief. Is he not mistaken as to the cause of his removal? Amidst the turmoil of the outbreak of the Rebellion, the General in-Chief found that his confidential military secretary had prepared and submitted to the Secretary of State and President a plan for re-enforcing and holding Fort Pickens, matters which belonged to General Scott's province as General-in-Chief, and which he was attend-

ing to. The plan was accepted. Keyes was sent to New York with authority, heretofore quoted, to use the President's name in carrying it out. The fact that General Scott was the ambitious, jealous, rigid, punctilious soldier which General Keyes proves him to have been, is enough in itself to account for his displeasure at the course pursued by his staff-officer. That Keyes realized the character of his own course is shown (pp. 381-2) where he says, in an interview with the President and Secretary of State: "'I am ready,' said I, 'but I have not had time to see General Scott, who is entirely ignorant of what I am doing; as I am his military secretary, he will be angry if I don't let him know.' Notwithstanding I had been long subject to obey military commands implicitly, a rebellious thought arose in my mind when I received from Secretary Seward such clean-cut orders. Nevertheless I reflected that he could speak from the ambush of original power, and concluded to obey him with alacrity." The book shows that while in New York under the Secretary of State, General Keyes issued orders not only in the name of the President, for which he had authority, but in the name of General Scott, for which he had no authority. General Keyes's breach of propriety, as he claims, was not so great as some officers of the time supposed it to be. But the fact is well established that Keyes was dismissed from the staff for the reason that General Scott believed his confidential secretary had committed a grave military impropriety, and there is no reason to think that in reaching that conclusion General Scott was influenced by hostility toward Northern officers. In fact, there

is no evidence that General Scott was ever unjust or unfair to Northern officers. Cullum, who was appointed to Scott's staff just before Keyes left it, was born in the North, had as strong Northern proclivities as Keyes, and so had General Townsend, Scott's Adjutant-General, and Colonel Schuyler Hamilton, Keyes's successor, and Colonels Van Rensselaer and Wright, all Northern men, who remained on Scott's staff until he retired. If General Scott had treated Northern officers as represented, these honorable men would not have remained upon his staff, nor would General Keyes have voluntarily returned to it twice, once at the sacrifice of rank, and spent a large part of his military life upon it. But if General Scott had entertained any prejudice at all against Northern men, Keyes should have escaped the effects of it. According to his own account, he was a member of the South Carolina slaveocracy in good standing. He says (p. 183): "Under the old *régime*, to such as enjoyed their confidence, the hospitality of the South Carolinian was supremely attractive. My initiation to it was due to an event, the relation of which recalls a condition of things now forever past. One day, when my wife found it difficult to hire a cook, I went up to Charleston and bought a female slave. As she stood upon a block I bid her off. Then I went to a desk, and received a bill of sale for one wench, aged twenty-three years, price \$350. I had already experienced the pride of ownership in its various gradations, as the proprietor of a dog, a horse, a bit of land; but it was only when I could call a human being my property, that I enjoyed the self-importance of a capitalist. No

sooner was my purchase known than I was admitted to the society of Charleston, with a stamp of merit above my value. I visited the plantations in winter," etc. With an intense, inborn Northernism, and a hatred of the curse of slavery, so uncontrollable as to arouse General Scott's hostility and tyranny, General Keyes quite joyously bought and held the right to the fetters and the lash. It is hardly credible that he sold the right when the use of it ceased to be to his advantage, but on this point he says nothing. He accepted and enjoyed the pecuniary and social benefits of slavery. If General Scott entertained the overruling Southern sentiments attributed to him by General Keyes, surely the Southern fellowship into which Keyes was admitted by becoming a slave-holder would have protected him from their direful effects. "War," the author says (p. 210), "was the only means to get rid of the curse of slavery." Did his woman-slave remain in bondage till released by the Rebellion? Her history is of more interest than that of General Scott's negro Tom; because Tom was free.

A word now for the white woman. The author says (p. 20): "General Scott was then so popular that . . . he was frequently beset by women who clustered around him like summer flies." If the ladies had to be likened unto flies, so gallant a soldier as General Keyes might have used butterflies instead of summer flies for the comparison.

One of General Keyes's jokes is that old Colonel Burke having signed the record as president of a council of administration, returned after a brown study and added an *l* to the word council. If the

Colonel were alive he might have revenge by pointing out that after having spelled correctly the name of his Adjutant, Colonel (then Lieutenant) Lawrence Kip, General Keyes returns to p. 271 of his book, and puts the debasing extra *p* to that illustrious name. In fact General Keyes or the printer's devil has played havoc with names. Even the veteran General Harney in this book loses his middle name in one instance, and is simply William Harney. The distinguished General Birney, having lost his life, now loses an *i*, and is metamorphosed into *Burney*. General D. McM. Gregg becomes D. McGregg. Colonel Robert N. Scott, who is known far and wide as engaged in the herculean labor of compiling the records of the Rebellion, and correcting and preventing errors in war literature, finds (p. 465) that his work is being done by Colonel *Thomas* Scott. That is all bad enough, but not the worst. Of the services rendered to the Military Academy by his friend, General G. W. Cullum (who p. 401, is called *Callam*, as aid to Scott), the author speaks in the highest terms, and justly so, for of all graduates not one has made more direct and valuable return to his *Alma Mater* for her fostering care than General Cullum; and greater love for her than his hath no man known. Imagine his feelings when he finds General Keyes saying of the Military Academy (p. 194): "That institution accomplishes all that finite means can perform in equal space of time to increase a man's value in war and his integrity in peace, and among those whose faithful and efficient devotion to it entitles them to honor, I place the name of General George W. *McCullum*, second only to that of

Sylvanus Thayer." *McCullum!* To that favor comes the man who has performed the enormous task of making a correct record of the name and services of every graduate of the Military Academy.

But one more event can be noticed in this review. Speaking of the successful and festive winding up of Indian operations in Oregon in 1858, the author says: "The feast being over, I went away, but an hour later returned by the tent, and saw old Moses stretched flat on the floor, his feet in the shade, his face in the sun, dead drunk and asleep."

"I doubt if in the history of our country there has ever been an Indian campaign in which so much was accomplished at an equal cost. The good result was due to three causes: the proper instruction of the soldiers at the commencement, the excellence of the Quartermaster's Department, and the admirable fitness of our Commander, Colonel George Wright." Surely in his commendation the author should have mentioned the Commissary Department which furnished the whiskey that laid old Moses out.

General Keyes's book, written mainly from memory, contains errors, some of which have been pointed out; but is replete with information, anecdotes and striking pen pictures. The Army will enjoy it.

Whether the author has drawn the veil from more of the inner life of his dead chief, General Scott, than a confidential staff-officer and trusted friend should expose, and whether the light he has thrown upon that life is white or colored, are open questions.

ARTICLE XIII.

Killed by a Brother Soldier.*

“General Davis has just shot General Nelson!” said John J. Crittenden, as he walked rapidly up to his son, General T. L. Crittenden, at the Galt House breakfast-table, on the 29th of September, 1862. This announcement, in the clear and impressive voice peculiar to the great Kentucky orator and statesman, sent a thrill of horror through all who heard it. Men hurried to witness or hear of the death-scene in the tragedy. Nelson, shot through the heart, laid at full length upon the floor. General Crittenden kneeled, took his hand, and said: “Nelson, are you seriously hurt?” “Tom, I am murdered,” was the reply.

When the Army of the Ohio, under Buell, was moving on Chattanooga, in the summer of 1862, the line of railroad—some three hundred miles long—from Louisville, Ky., upon which the troops were dependent for supplies, was so frequently broken by the enemy that Buell detached Nelson, in whom he had great confidence, and sent him to Kentucky with orders to take command there and re-establish and protect the line of supply. Upon reaching his destination Nelson found himself second to General H. G. Wright, whom the President, without Buell’s knowl-

edge, had placed in command of a military department, embracing the State of Kentucky. Wright's troops under the immediate command of Nelson, and the Confederate forces, under Kirby Smith, fought a battle at Richmond, Ky., on the 30th of August, in which the former were defeated, and Nelson was wounded. The Confederates took possession of Lexington and Frankfort, held the "Blue-grass" region, and threatened Cincinnati and Louisville. Wright looked to Cincinnati, his headquarters being there, and entrusted the defence of Louisville to Nelson. Louisville, threatened by both Bragg and Kirby Smith, was in great peril. Nelson, able, energetic, arbitrary, was straining every nerve for the defence of the city. Davis, who was then on sick-leave in Indiana, appreciating the condition of affairs in Kentucky, and hearing that general officers were needed there, volunteered his services, reported to Nelson, by order of Wright and was charged with the duty of organizing and arming the citizens of Louisville. Nelson's quarters and offices were in the Galt House, at the north end of the west corridor, on the first or main floor. His Adjutant-General's office was in room No. 12, and his Medical Director's office in room No. 10. After Davis had been for a day or two on the duty to which he had been assigned, he called in the afternoon at headquarters, and Nelson said: "Well, Davis, how are you getting along with your command?" Davis replied: "I don't know." Nelson asked: "How many regiments have you organized?" Davis again replied: "I don't know." Then Nelson said: "How many companies have you?" To which

Davis responded in a seemingly careless tone: "I don't know." Nelson then said, testily: "But you should know," adding, as he arose from his seat, "I am disappointed in you, General Davis. I selected you for this duty because you are an officer of the Regular Army, but I find I made a mistake." Davis arose and remarked, in a cool, deliberate manner: "General Nelson, I am a regular soldier, and I demand the treatment due to me as a general officer." Davis then stepped across to the door of the Medical Director's room—both doors being open, as the weather was very warm—and said: "Dr. Irwin I wish you to be a witness to this conversation." Nelson said: "Yes, Doctor, I want you to remember this." Davis then said to Nelson: "I demand from you the courtesy due to my rank." Nelson replied: "I will treat you as you deserve. You have disappointed me; you have been unfaithful to the trust which I reposed in you, and I shall relieve you at once," adding, "you are relieved from duty here, and you will proceed to Cincinnati and report to General Wright." Davis said: "You have no authority to order me." Nelson turned toward the Adjutant-General and said: "Captain, if General Davis does not leave the city by nine o'clock to-night, give instructions to the Provost-Marshal to see that he shall be put across the Ohio."* Upon such occasions Nelson was overbearing and his manner was peculiarly offensive. Highly incensed by the treatment he had received, Davis withdrew; and that night went to Cincinnati and re-

* As given by Dr. Irwin, now Surgeon, with rank of Major and Brevet-Colonel U. S. A.

ported to Wright, who assigned him to command in front of Covington and Newport, Ky. A few days thereafter (Sept. 25) Buell reached Louisville and superseded Nelson in command, and Wright ordered Davis to return to Louisville and report to Buell. In pursuance of Wright's order, Davis, on the morning of September 29, 1862, appeared at the Galt House, Louisville, the headquarters at that time of both Buell and Nelson. When Nelson entered the grand hall, or office, of the hotel, just after breakfast, there were many men there, among them Davis and Governor O. P. Morton, of Indiana. Nelson went to the clerk's office, asked if General Buell had breakfasted, and then turned, leaned his back against the counter, faced the assembled people, and glanced over the hall with his clear black eye. In the prime of life, in perfect health, six feet two inches in height, weighing three hundred pounds, his great body covered by a capacious white vest, his coat open and thrown back, he was the feature of the grand hall. Davis, a small, sallow, blue-eyed, dyspeptic-looking man, less than five feet nine inches high, and weighing only about one hundred and twenty-five pounds, approached, charged Nelson with having insulted him at their last meeting, and said he must have satisfaction. Nelson told him abruptly to go away. Davis, however, who was accompanied by Morton, pressed his demand till Nelson said: "Go away, you d——d puppy, I don't want anything to do with you!" Davis had taken from the box on the counter one of the visiting cards kept there for common use, and, in the excitement of the interview, had squeezed it into a small ball, which,

upon hearing the insulting words just quoted, he flipped into Nelson's face with his forefinger and thumb, as boys shoot marbles. Thereupon, Nelson, with the back of his hand, slapped Davis in the face. He then turned to Morton and said: "Did you come here, sir, to see me insulted?" "No, sir," replied Morton, and Nelson walked away toward his room, which, it will be remembered, was on the office floor, and at the north end of the hall or corridor which extends along the west side of the building. A doorway connects this corridor with the grand or office hall, and near that doorway starts a staircase which leads from the hall to the floor above. After the slap, Davis turned to Captain ——, an old Mexican-War friend from Indiana, and asked for a pistol. Captain —— did not have a pistol, but he immediately obtained one from Thomas W. Gibson and gave it to Davis. Gibson was a friend of Davis, and was from Indiana, but at the time of this occurrence he was a practising lawyer in Louisville. In the meantime Nelson had passed from the office hall into the corridor which led to his room, had walked toward his room, then turned back and was near the foot of the staircase and in front of the doorway leading to the office hall when Davis reached the threshold from the office. They were face to face and about a yard apart, the one with pistol in hand, the other entirely unarmed. Davis fired and Nelson walked on up stairs. Buell, at the time, was in his room, which was near the head of the stairs on the second floor. It is believed that Nelson was on his way to report to Buell what had occurred, when he was confronted and shot by Davis. Be that as it

may, he walked up stairs after he was shot, and fell in the hall between the head of the stairs and Buell's apartment. Those who had gathered around carried him into the room nearest the spot where he fell and laid him on the floor. He said to Silas F. Miller, proprietor of the hotel, who had rushed to the scene when he heard the pistol: "Send for a clergyman; I wish to be baptized. I have been basely murdered." The Rev. J. Talbot, an Episcopal minister, was called. All the medical aid available was summoned. Surgeon Robert Murray, Buell's medical director at the time (afterward Surgeon-General of the Army), says: "I was summoned from the Louisville Hotel to the Galt House when he was shot. I found him on the floor of his room insensible, with stertorous breathing, and evidently dying from hemorrhage. The ball, a small one, entered just above the heart, had passed through that organ or the large vessels connected with it. I am quite sure that he did not utter an intelligible word after I saw him." Before Surgeon Murray arrived, however, a number of persons went into the room, among them General Crittenden, mentioned in the opening of this narrative, the Rev. J. Talbot, and myself. At half-past eight A.M., within less than an hour from the time Nelson was shot, he was dead.

I was in the grand hall of the Galt House when the encounter took place, but I did not know Davis was there; nor had I heard of the difficulty that had occurred some days before between him and Nelson. They were both my warm friends. Davis had been 2d Lieutenant in the company of which I was 1st Lieutenant, and part of the time commander.

We had been companions and messmates. Upon hearing the sound of the pistol, I ascertained what had happened, and made my way through the crowd that had gathered around Davis, put my hand upon his shoulder, and told him that I placed him in arrest by order of General Buell. I was at that time Buell's Chief-of-Staff. Davis, though greatly agitated, showed no signs of rage. He was glad to be taken from his surroundings, and placed in formal military custody by a friend and proper military official. I took his arm, and we immediately went together to his room on an upper floor of the Galt House. No policeman had any thing to do with his arrest; nor did one appear so far as I know. When we entered the room and closed the door, Davis said he wanted to tell me the facts in the case while they were fresh. He then gave me details of the affair, including the decisive incident of flipping the paper wad into Nelson's face. I remained with Davis but a few minutes. I am satisfied that he had not anticipated the fatal ending to the encounter he had just closed with Nelson. He sought the interview unarmed, and so far as known none of his friends were armed except Gibson, and it is not probable that he had provided himself for this occasion with the small pistol which was passed from him to Davis. It seemed to be Davis's purpose to confront Nelson in a public place, demand satisfaction for the wrong done him a few days before, and if he received no apology, to insult Nelson openly, and then leave him to seek satisfaction in any way, personally or officially, that he saw fit. It was to fasten upon Nelson the insult of a blow that the paper wad was.

flipped into his face. Nelson, no doubt, had that offensive act in mind when he said to Morton just after it was committed: "Did you come here, sir, to see me insulted?" But, instead of waiting to send a challenge, or take official action, if he had been inclined to do either, for the insult he had received through the paper wad, Nelson avenged himself on the spot by returning the blow. Davis then carried on the fight, and it reached an end he had not designed. Nelson (as well as Davis) had many devoted friends about the Galt House at the time, and there were mutterings of vengeance among them. But wiser counsels prevailed. Generals Jackson and Terrill were the most difficult to appease. They both found soldiers' graves a few days later upon the battlefield of Perryville.

Buell regarded Davis's action not only as a high crime, but as a gross violation of military discipline. He felt that the case called for prompt and vigorous treatment; but he could not administer it. The campaign was beginning. A new commander was found for Nelson's corps, and the army marched the second day after his death. Buell could neither spare from his forces the high officers necessary to constitute a proper court-martial, nor could he give the necessary attention to preparing the case for trial in Louisville, where it was best, if not necessary to try it. He therefore reported by telegraph as follows:

"FLOYD'S FORK, KY.

"*Via Louisville, Oct. 3, 1862.* (Received 6.20 P.M.)

"GENERAL H. W. HALLECK:

"Brigadier-General Davis is under arrest at Louis-

ville for the killing of General Nelson. His trial by a court-martial or military commission should take place immediately, but I can't spare officers from the army now in motion to compose a court. It can perhaps better be done from Washington.

"The circumstances are, that on a previous occasion Nelson censured Davis for what he considered neglect of duty, ordered him to report to General Wright at Cincinnati, Ohio. Davis said with reference to that matter that if he could not get satisfaction or justice he would take the law in his own hands. On the occasion of the killing he approached Nelson in a large company and introduced the subject. Harsh or violent words ensued, and Nelson slapped Davis in the face and walked off. Davis followed him, having procured a pistol from some person in the party, and met Nelson in the hall of the hotel. Davis fired. The ball entered the right breast, inflicting a mortal wound, and causing death in a few minutes.

"D. C. BUELL, *Major-General.*"

The military authorities did not institute the proceedings suggested in the foregoing report from Buell to Halleck; nor was Davis taken from military custody by the civil authorities; but in a few days he was at large. Wright, the General commanding the Military Department in which the offence was committed, explains Davis's release as follows: "The period during which an officer could be continued in arrest without charges (none had been preferred) having expired, and General Buell being then in the field, Davis appealed to me, and I notified him that he

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should no longer consider himself in arrest." Wright adds: "I was satisfied that Davis acted purely on the defensive in the unfortunate affair, and I presumed that Buell held very similar views, as he took no action in the matter after placing him in arrest." I do not know upon what Wright based his opinion that Davis acted purely on the defensive, but he is in error as to Buell's views in the matter.* Davis's course in taking the law into his own hands, and the failure to bring him to trial, both met with Buell's unqualified disapprobation.

The case is without a parallel. A Brigadier-General in the highly disciplined army of a law-abiding people, reaching the headquarters just as the forces were ready to march to the battlefield, instead of reporting for duty against the common enemy, as he was under orders to do, sought out a Major-General commanding a corps of the army to which both belonged, killed him on the spot, and then went to duty without punishment, trial, or rebuke. Though officially reported, as already shown, no military trial was instituted.

It appears from the records of the Jefferson Circuit Court, Louisville, Ky., that on the 27th of October (1862), Davis was indicted by the Grand Jury for "manslaughter," and admitted to bail in the sum of \$5,000. T. W. Gibson, who furnished the pistol with which Davis killed Nelson, and W. P. Thomasson were sureties on his bond. The case was continued from time to time until the 24th of May, 1864, when it "was stricken from the docket, with leave to rein-

* See Buell's article on Shiloh in *Century Magazine*.

state ”; and nothing more was heard of it in the halls of justice.*

It has been said that Davis was pardoned by the Governor of Kentucky, but the Secretary of State, of the Commonwealth, contradicts this in a letter dated April 8, 1885, saying: “There is nothing on the Executive Journal, to indicate that Governor Robinson or Governor Bramlette issued a pardon to General Jeff. C. Davis for the killing of General Nelson.”

There is good reason for the belief that Morton’s influence was exerted to prevent proceedings against Davis. An able and influential lawyer, James Speed, Esq., of Louisville, who was afterwards appointed Attorney-General in President Lincoln’s Cabinet, was retained as Davis’s counsel, and succeeded in saving his client from both civil and military prosecution.

Davis was born in Clarke County, Indiana, March 2, 1828. He began his military career, June, 1846, by volunteering for the Mexican War, as private in the 3d Indiana Infantry. He took part in the battle of Buena Vista, was appointed 2d Lieutenant 1st U. S. Artillery, June 17, 1848; 1st Lieutenant, February 29, 1852; and Captain, May 14, 1861. He was engaged in Anderson’s defence of Fort Sumter, at the outbreak of the Civil War, April, 1861; and in August of that year became Colonel of the 22d Regiment of Indiana Volunteers. Before the close of the War he had reached the grade of Major-General of volunteers, and the command of the 14th Army Corps; to which General Sherman says he had “fairly

* Collin’s History of Kentucky is in error in stating that “General Davis was never *indicted*, nor tried by the civil authorities.” Page 581, Vol. II.

risen by merit and hard service." "He threw his whole soul into the contest," adds General Sherman, "and wherever fighting was hardest for four years, we find him at the front. To recount his deeds would require a volume." When the War was over, he was appointed Colonel of the 23d U. S. Infantry, and held that office until his death from pneumonia, November 30, 1879.

Davis was brave, quiet, obliging, humorous in disposition, and full of ambition, daring, endurance, and self-confidence. He felt that he was a born military chieftain. As early as 1852, when he was but twenty-four years of age, and only a 2d Lieutenant, I heard him express entire confidence in his ability to command an expedition for the invasion and capture of the Island of Cuba. The last years of his life were passed in broken health, and were somewhat embittered by disappointment at not receiving the Brigadier-Generacy, for which he felt qualified, and which he, as well as others, thought he had earned by his services in the Civil War; but I never heard that he expressed, and I do not believe that he felt, any regret for having killed Nelson.

Nelson was born at Maysville, Ky., September 27, 1824; was appointed Acting Midshipman in the Navy, January 28, 1840; Passed Midshipman, July 11, 1846; Lieutenant, September 18, 1855; and Lieutenant-Commander, August 5, 1862.

In the Navy he acquired the principles and rules of rigid obedience and discipline, which he applied with marked effect to the volunteer land forces that came under his control early in the Civil War. He was

distinguished for gallant and meritorious services as a Navy officer in the War with Mexico. When the Rebellion broke out in 1861, Nelson was on duty at the Washington Navy-Yard. His pronounced Unionism, and his clearness and vigor in discussing existing affairs and forecasting the course of events, at once attracted the favorable notice of the Government. In the summer of 1861, his native State, Kentucky, was torn by contending parties, one trying to drag her into rebellion, another seeking her distinct action in favor of the Union cause, and a third advocating the middle course of armed neutrality. At that critical time, Nelson, an officer of the Navy, was directed to report for special duty to the Secretary of War; and under date of July 1, 1861, was "ordered by the Adjutant-General of the Army to organize and muster into the United States Service, volunteer troops from East Tennessee, West Tennessee, and South-East Kentucky." Under these instructions, but left to rely mainly upon his own resources, judgment, and discretion, Nelson went to Kentucky and established "Camp Dick Robinson," a spot that is now historic as the scene of the early labors by which he began an active defence against the invaders and the internal foes of his native State, and anchored her to the cause of the Union.

On the 16th of September, 1861, he was appointed Brigadier-General, U. S. Volunteers, and his authority was extended to the command of troops operating in Eastern Kentucky. Buell assumed command of the Department of the Ohio (including Kentucky) November 15, 1861, and Nelson then fell under his control. When Buell organized the army which was first called

the Army of the Ohio, and later the Army of the Cumberland, he assigned Nelson to the command of the 4th Division. From that time until his death (September 29, 1862) Nelson's career grew more and more brilliant and meritorious; and on account of his gallantry and good conduct in the campaign at Shiloh (April, 1862), he was promoted to the grade of Major-General. The summary of services and character, made in Buell's order issued upon the occasion of Nelson's death, is enough for the purpose of this article. The order says:

"The General commanding announces with inexpressible regret, the death of Major-General William Nelson, which occurred in this city at half-past eight o'clock this morning. The deceased was bred a sailor, and was an officer of the Navy while holding a commission in the military service. History will honor him as one of the first to organize by his individual exertion, a military force in Kentucky, his native State, to rescue her from the vortex of rebellion toward which she was drifting.

"He was a man of extensive information, comprehensive views, and great energy and force of character. By his nature he was intolerant of disobedience, or neglect of public duty; but no man was more prompt to recognize and foster merit in his inferiors; and in his own conduct he set an example of vigilance, industry, and prompt attention to duty which he exacted from others. In battle his example was equally marked. On more than one field, at Shiloh, Richmond, and Ivy Mountain, he was conspicuous for his gallant bearing."

Nelson's remains were buried at Cave-Hill Cemetery, Louisville, October 2, 1862. On the 21st of August, 1863, they were transferred to Camp Dick Robinson, and interred there with appropriate honors; but were subsequently removed by his relatives to his native place, Maysville, Ky., where they now rest.

Erroneous versions of the encounter between Nelson and Davis, unfavorable to the former, were scattered broadcast at the time. Nelson's habitual violence of character was exaggerated, the idea of retribution supplanted the demands of justice; and public attention became fixed upon Nelson's alleged violent conduct toward men generally, and not upon Davis's specific act of violence in shooting Nelson. Though Davis was aggrieved, it is difficult to see now, even if it was not then, how he can be justified in provoking the final quarrel and committing the foul deed of death. The facts will not sustain the theory of self-defence; and the military law, as he well knew, offered prompt and ample redress for all the wrong Nelson had done him at their first meeting. But he made no appeal to law. On the contrary he deliberately took all law into his own hands. Whether he proceeded solely upon his own judgment, or was advised and incited by others, is not positively known; but I do not doubt that Morton, and perhaps others, without designing or foreseeing the fatal consequences, encouraged Davis to insult Nelson publicly for wrong done in an official interview. One step led to another in the attempt to place and fix the insult, until the end was Nelson's violent death.

It was a cruel fate that brought about a collision

between these two rash men. General officers whose country needed them, great soldiers, brother soldiers, the one—bearing an unhealed wound received in battle for the cause to which both had pledged their lives—was slain by the other, the Union arms, at a critical juncture, lost services of incalculable value, and the result of a great campaign was very different from what it would have been if these men had not prevented each other from performing their proper parts in it.

NOTE.

Many erroneous accounts of this tragic encounter have been published. One of the latest is that of a correspondent of the *Philadelphia Press*, who wrote to that paper from Cleveland, Ohio, February 23, 1885, as follows:

“General James B. Steedman was an eye-witness to the killing of General Nelson, the bully, by General Jeff. C. Davis, a quiet, little man whom he had grossly insulted.

“There was a lot of us standing at the Galt House bar,” said he, “among them being General John T. Croxton, of the Kentucky Infantry. I heard voices down the long hall and looked that way, and saw a group in which were General Nelson, Governor Morton, and General Davis. They were quite excited and talking in a vehement manner. Almost immediately Nelson drew back his right hand and slapped Davis in the face. Davis was a small man, while Nelson was over six feet tall, weighed well on to three hundred pounds, and was as strong as a giant. I

turned to Croxton and said: 'There is going to be trouble. Nelson has struck Davis.' We moved toward the group, and as we did so Nelson moved back a few steps and leaned against the office rail. Morton and Davis moved back a short distance. The former took a pistol from his hip-pocket and handed it to Davis, who stepped forward, levelled it and fired. Nelson threw his hand up to his breast and said: 'Jim, I'm a dead man; send for an Episcopal minister.' We all took hold of him and carried him into a little side room. His clothes were thrown open, and near the heart was found a small blue mark, about the size of a shot. No blood was seen, and the wound had closed. A clergyman came running in, and as he entered we withdrew and closed the door. In ten minutes Nelson was dead.

"Davis remained quietly near where the encounter had taken place. Among those who first appeared in answer to the shot was a policeman, who placed Davis under arrest. He went along quietly, but was soon released on the demand of General Buell or the Mayor. He was never called to account in any way for the deed. There was nothing else the man could have done under the circumstances. He would have had no show in a physical contest. To have received a blow in that manner and in that public place, and then to have walked away with his hands in his pockets, would have driven him from the Army in disgrace. There have been questions raised as to whether Morton furnished the weapon or not. I was not near enough to see that it was a pistol he gave Davis, but I do know he took something from his

pocket, handed it over, and that Davis raised his hand and immediately fired. The homicide did not seem to change Davis in the least—he was always a morose, quiet man.”

A more formal and more erroneous account, as well as a more unjust one to Nelson, is found in Shaler's "History of Kentucky" (p. 319): "Always a man of passionate nature, the defeat of his forces by Kirby Smith made him furious, though he was responsible for the condition that brought it about, for to him more than to any one else must be attributed the leaving of Morgan's forces at Cumberland Gap. When organizing the forces in Louisville under Buell, his rage broke forth against General J. C. Davis. During a trifling dispute concerning some unimportant matter, he insulted his opponent, and on his dignified remonstrance struck him with his hand. Davis instantly killed him. Davis's act was generally approved by his brother soldiers." In a foot-note to this the author says in justification of Davis: "In war the personal dignity of officers and men must be preserved. It cannot be kept without such cruel customs."

The foregoing statement that "*he* insulted *his* opponent, and on *his* dignified remonstrance struck *him* with *his* hand," leaves a doubt as to who made the dignified remonstrance, who was struck, who did the striking, and whose hand was used for the blow; but there can be no doubt about the general inaccuracy of Professor Shaler's account of the affair.

The assertion that Nelson, "more than any one else," was responsible for leaving Morgan's forces at

Cumberland Gap, or that he was in any degree responsible for it, is erroneous. He had no authority or responsibility in the matter. He was subordinate to Gen. H. G. Wright, who, as Department Commander assigned by the President, controlled Morgan. But Wright even, superior as he was to Nelson, was not responsible for Morgan's remaining at Cumberland Gap after the position had been turned by Kirby Smith's advance into Kentucky. On the 22d of August, eight days before the defeat which according to the author settled Nelson into a month's "rage," Halleck, the General-in-Chief of the Army—pursuing a precedent determination—telegraphed Morgan: "Hold on firmly. I will see that you are very soon supported by other troops"; and on the 30th of August he telegraphed Wright: "The relief of Morgan and the holding of Cumberland Gap are deemed of the first importance." Halleck, therefore, held Morgan at Cumberland Gap. Nelson had nothing to do with it.

The difficulty between Nelson and Davis occurred, not when Nelson "was organizing the forces in Louisville under Buell," but when he was organizing them under himself, and in the excitement of a threatened attack upon the city.

In the author's account, the two interviews between Nelson and Davis, which were about a week apart, are merged into one; and Nelson is represented as first insulting Davis, and then striking him when Davis submitted a "dignified remonstrance." This is incorrect and unjust.

In his attempt to justify Davis the author says :

“In war the personal dignity of officers and men must be preserved. It cannot be kept without maintaining such cruel practices.” The duty of maintaining personal dignity is not confined to war, nor to soldiers, nor does it depend upon “cruel practices” either in peace or war. No men have so little excuse for resorting to the pistol and the bowie-knife, in their dealings with one another, as the very men whom the author encourages in the use of them. Soldiers are not only protected by the civil code, but by the more stringent military code, to which they are pledged by oath of office, and by duty to their country.

NEW YORK, September 1, 1885.

ARTICLE XIV.

Custer's Defeat by Sitting Bull.*

Speaking broadly, battles, as public events, are always sharp and conspicuous. Their results are immediate and important. These are reasons why we are both hasty and extravagant in criticising the parts played in them by the principal actors. Before we have sufficient information to deal modestly with praise or blame, we commence an arbitrary and lavish distribution of glory and shame. The erection of monuments to the dead, and the sinking of bottomless pits for some of the living, are begun before the smoke has sufficiently cleared away to permit a fair view of the battlefield; and it often happens that information which should have been patiently waited for, comes in time to stop both the monument and the pit, before the one has risen above, or the other sunk below, the surface of the earth.

As will be seen further on, it is not our purpose to discourage the noble sentiment that is manifesting itself in subscriptions for a monument to Custer. We aim only to enjoin moderation in judgment and action towards all concerned in the recent disaster on the Little Big Horn. There are two sides to every case, but in this instance one side is silenced by death. General Terry has been placed in a somewhat false position by the relative order in which his two reports

* *Army and Navy Journal*, July 22, 1876.

reached the public. The second one, marked "Confidential," and evidently intended only as an explanation to his military superior, Sheridan, was, accidentally, the first received, and was evidently published in response to the public anxiety; whereas the official report of the occurrence was not received at Army Headquarters, and could not be given out, until an erroneous impression, to the effect that Terry had been eager to seize the public ear in his own defence—had been created by the confidential explanation. These two reports taken in connection with such other reliable information as has come to hand, justify certain general inferences:

1st. The enemy was underrated by Sherman, Sheridan, Terry, Crook, and Custer. It should be borne in mind that when Custer left Terry, June 22, both were ignorant of the fact that the enemy they were seeking had defeated Crook on the 17th of that month.

2d. Ignorant of the enemy's real strength and prowess, Terry, as well as Custer, thought that the 7th Cavalry (12 companies) under the latter officer, was fully able to defeat the Indians, the only trouble apprehended being to catch them. This is shown by the fact that Custer did not want, nor did Terry require him to take, the Gatling battery, which would have retarded his movements, but strengthened his command, and the fact is admitted in Terry's confidential explanation, where he says, "he expressed the utmost confidence that he had all the force he could need, and I shared his confidence." Under this impression Terry, the commander, being fully and solely responsible for the strength, equipment, and orders of

Custer's force, started that officer on the expedition. That Custer thought he was strong enough does not relieve Terry of his responsibility on that point.

3d. As to the instructions from Terry under which Custer moved. They are dated June 22. Reno had just returned from a scout in which he had discovered the Indian trail, but had turned back without pursuing it to contact with the Indians. Terry says to Custer—having furnished him with fifteen days' rations—"You will proceed up the Rosebud *in pursuit* of the Indians whose trail was discovered by Major Reno a few days since. It is impossible to give any definite instructions in regard to this movement, and were it not impossible to do so, the Department Commander places too much confidence in your zeal, *energy* and ability to wish to impose upon you precise orders which might hamper your action *when nearly in contact with the enemy.*" The Department Commander, however, in general terms indicated his "views," but did not require compliance with, if Custer saw a sufficient reason for a departure from, them. There was evidently no material difference of understanding between the two officers. In Terry's confidential explanation of July 2 to Sheridan, as well as in his letter of instructions of June 22 to Custer, the point of prime importance was to get Custer to the south of the enemy, and this because Terry feared the Indians would escape if they had the least opportunity to do so. It was not in Terry's instructions, and it clearly was not in his mind that Custer, if he came "in contact with the enemy," should defer fighting him until the infantry came up.

We knew but little of the country except that it was wild, very broken, and without roads. It was surmised that the enemy was on the Little Big Horn River, but his position was, in point of fact, unknown. He was known, however, to be vigilant, to move with celerity, and to possess a thorough knowledge of the country. There could be no justification for any plan of operations which made an attack dependent upon a junction between Custer and Gibbon, after three or four days' march from different points, in the wilderness.

The views which Terry expressed as to Custer's best line of march would probably have carried the latter farther to his left—the south—than he went. But these were views to be acted upon or disregarded at Custer's discretion, and they were evidently expressed with no eye to Custer's danger, but solely to prevent the dreaded escape of the enemy.

Admitting for the moment that Custer had gone quite to the south of the enemy, and that Gibbon was known to be approaching from the north, there were, still, wide doors open for escape. This was not an enemy to be leisurely bagged, and if Custer had simply watched him, as soon as the Indian vigilance showed Gibbon to be in dangerous proximity, he would have escaped, and Custer would have suffered disgrace for not attacking with a force the sufficiency of which had been admitted by all concerned. Without further argument the inference is fair that, finding himself in the presence of the enemy whose flight was to be expected, with its well known serious consequences to our side, and having no knowledge of Gibbon's position, Custer was right in attacking.

4th. For the marches to the fatal field, the preliminaries to the attack, and for the plan of battle, Custer was clearly responsible. Terry says that Custer told him he would march at the rate of about thirty miles a day, but adds that "on the 22d he marched twelve miles, on the 23d, twenty-five miles, from 5 A.M. until 8 P.M. of the 24th, forty-five miles, and then, after night, ten miles further, resting but without unsaddling, and then twenty-three miles to the battlefield," the implication being that some blame attached to Custer for not conforming more nearly to the thirty miles average. It is easy to understand that through a very difficult and unknown country, no great regularity could be expected in the marches of a large military force. Water and grass must be reached at due times, unforeseen obstacles have to be overcome.

It has been asserted that, smarting under the wounds which preceding events had inflicted upon his pride, Custer dashed recklessly into this affair for the purpose of eclipsing his superior officers in the same field, regardless of cost or consequences. This is going too far. Custer was doubtless glad of the opportunity to fight the battle alone, and was stimulated by the anticipation of a victory which, illuminating his already brilliant career, would make him outshine those put on duty over him in that campaign. But his management of the affair was probably about what it would have been under the same circumstances, if he had had no grievance. His mistake was in acting in mingled ignorance of, and contempt for, his enemy. He regarded attack and victory in this instance as synonymous terms, the only point being to

prevent the escape of the foe. Under this fatal delusion he opened the engagement, with his command divided into four parts, with no certainty of cooperation or support between any two of them. Three companies, under Benteen, were far away on the left, ordered in, it is true, and by chance they arrived in time to aid Reno. One company, under MacDougal, was in rear with the pack train. Reno was sent to the left bank of the river to attack the enemy with three companies, while Custer with the other five companies not only remained on the opposite bank from Reno, but moved back of the bluff, and three miles lower down the stream, thus placing mutual support, in case of necessity, out of the question, and fell into a complete or partial ambushade.

Neither ambition, nor wounded vanity, prompted these fatal dispositions, nor were they due to lack of knowledge of the principles of his profession. They proceeded, as heretofore stated, from a misconception, which Custer shared with others, in relation to the numbers, prowess, and sagacity of the enemy.

ARTICLE XV.

Farrer's "Military Manners and Customs."*

Under the misleading title of "Military Manners and Customs," James Anson Farrer makes an earnest appeal to mankind to construct a temple of universal and everlasting peace. But in place of beginning by laying a solid foundation in the hearts of men, and then building the edifice up stone by stone, the plan is to commence at the steeple and build downward by magic. Soldiers, whose business it is to conduct war, are called upon to prevent it. The process is easy. All soldiers must at once resolve that they will not fight except in a cause that is just, and then only in defence of their country. Everybody being thus thrown upon a permanent defensive, there can be no offensive; and soldiers, weapons and war will soon vanish into thin air. To have announced this end in so many words would have been breaking bad news for soldiers too suddenly; but it follows from what is disclosed. With soldiers refusing to fight except on the defensive, nations will be confined within their own boundaries, will cease to want what they do not have, and will be quiet and contented for evermore.

* "Military Manners and Customs," by James Anson Farrer, author of "Primitive Manners and Customs," etc. New York: Henry Holt & Co., 1885.

A single turn of one *crank* thus throws all the military machines of earth out of gear, and blocks the game of war forever. The features of the process can only be described here in general terms. Those who want the details should read the book, which abounds in learning and information.

Men cannot fight without courage of some sort, and "the soldier's courage," we are told (p. 7), "is a miracle of which discipline is the simple explanation." The soldier has only by a moral effort to undo the miracle which has destroyed his moral powers, and fighting must cease. The plan is beautiful, and its execution rests with the man of war. "The soldier claims to be a non-moral agent. That is the cornerstone of the whole military system" (p. 279). Knock that out, "and the custom of war will shake to its foundation, and in time go the way that other evil customs have gone before it" (p. 280).

The soldier's part in the demolition, though all-important, is quite simple. It may be learned in two or three easy lessons: *First*, he must evolve from his inner consciousness the resolution that he will not fight until he is "fully satisfied in his own mind of the justice of the cause he fights for" (p. 277), and the object must be (p. 264) "to defend his country in case of invasion." Before obeying orders to fight he must, therefore, ascertain from all governments concerned the causes of quarrel, and render judgment upon them. *Secondly*, if he decides that the war is to be offensive on the part of his government, he must discard discipline and refuse to fight. But if he finds that the war is to be defensive and just, he must preserve discipline

—the miracle that makes him fight—and proceed to repel the enemy. *Thirdly*, he should be vigilant during the progress of hostilities, and stop fighting whenever the war in his judgment assumes an offensive form.

We find (p. 227) that “fighting is only possible between civilized countries, because discipline first fits men for war and for nothing else, and then war again necessitates discipline.” Thus, an evil perpetual-motion machine is running, with the “miracle of discipline” as its main-spring. The soldier who, according to this book, has always been the worst of mankind, and gives no promise of improvement, is called upon to undo the miracle, break the main-spring, and wreck the machine which his own existence depends upon preserving in good order.

The author very naturally says of his plan (p. 277): “The objection to it, that its adoption would mean the ruin of military discipline, will appear the greatest argument of all in its favor, when we reflect that its universal adoption would make war itself, which is the only reason for discipline, altogether impossible.”

The importance of destroying discipline and war is shown (p. 215) where it is said that war is an “evil custom, which lies at the root of almost every other, and is the main cause and sustenance of crime and pauperism and disease.” War, therefore, not “money,” is the root of all evil.

If the principle that soldiers should pass upon the justness of the decisions and orders they receive from their country before executing them is sound, it must

apply to other officers and agents of government as well as to soldiers, because individual responsibility is no more incumbent upon military than upon non-military men. If the soldier must refuse to obey duly constituted authority until he is "fully satisfied in his own mind" that the cause in which he is ordered to act is just, so must the marshal or the sheriff refuse to obey the mandates of the court to seize person or property until he is "fully satisfied in his own mind" that the cause in which he is to make the arrest or seizure is just. In short, upon the principle mentioned, every man would have to disregard constituted authority whenever he differed in judgment from those empowered to decide; then society would disintegrate, and mankind would be in a bad way, unless by a miracle all the individual elements should be made perfect at the same time, and in that event this world would be of no further use. But the truth is that soldiers, marshals, sheriffs, and men generally are trying to live up to their highest lights. As Abraham Lincoln expressed it, they are trying to do right as God gives them to see the right. Public servants, military as well as civil, are sustained by judgment and conscience in executing the legal orders of the duly constituted authorities of their country, and are not to blame if those orders are not abreast with the morality preached by the most advanced thinkers of the age. Those who would prevent war should base their efforts upon the fact that war results from the character and conduct of men, not from the existence or discipline of the few called soldiers. If every soldier and weapon on earth should be destroyed to-day, and men left as

they are, they might be fighting to-morrow or next day. Our own experience supports this assertion. We, a peaceably disposed people, have several times resorted to war; yet, practically speaking, we have never had a standing army—none, certainly, which gave the military sentiment any power among us. In 1861, with a population of some thirty millions, we had only about thirteen thousand soldiers. The great war that broke out that year was caused by men not in the military service, and was in direct opposition to such military sentiment as so small a force could express. Undisciplined and unarmed civilians caused the war, and millions of them took what weapons they could get and fought one another, until one side, after four years of bloody strife, established what it thought to be right. They fought, because in the course of events a great question arose upon which civilized, intelligent, educated, honest men could not agree; nor could they agree to disagree, because to do nothing was, as they saw it, to do wrong. They thought that as long as the same God that gave them their convictions of right allowed them strength to defend that right, the cowardly abandonment of it was worse than war and devastation and death. Soldiers and discipline have nothing to do with causing such contests, though there is some variety in the soldier's manner of conducting them. In our Civil War the policy of some commanders—prompted by a public sentiment among civilians in the North—was to impose the actual horrors of war not only upon the men in arms but on the whole people of the South. On the other hand, of all the prisoners taken by the great captain, “Unconditional Surrender

der " Grant, not one was ever, with his consent, treated with the least cruelty; and the kind terms which this grim soldier granted his foes, when Lee and his army surrendered at Appomattox, created wide-spread and outspoken indignation in the so-called moral circles of our most enlightened civil centres.

The disposition of the author to attribute war to the action of particular individuals, rather than to the character and passions of men generally, is shown in his statement (p. 21) that "writers on the laws of nations have, in fact, led us into a fools' paradise about war—which has done more than anything else to keep the custom in existence—by representing it as something quite mild and almost refined in modern times." It is hardly fair to charge great and learned jurists with deliberately deceiving men into the sufferings of war by misrepresenting the horrors of it; nor does the assertion that men have been misled in that way accord with our every-day experience, which is that the horrors of war are known by all men.

Probably to remove the erroneous impression which he says writers on the laws of nations have created, the author has gleaned history from the dawn of time to noon of the present for examples of cruelty and bad faith by military men; but he does not compare them with the cruelty and perfidy of non-military men of the same countries and periods. He omits nothing that could tend to bring the profession of arms into disrepute, and is unsparing in his denunciation of military men and measures. "The soldier, the thief, the murderer," he says (p. 119), "are seen in scarcely distinguishable colors"; "destruction is practised for

its own sake"; "the burning of grain and villages for the mere pleasure of the flames, forms almost invariably the most prominent features" (p. 163); and humane "arguments hardly ever prevail over that passion for wanton destruction, and for often quite unnecessary slaughter, which finds a ready and comprehensive shelter under the wing of military expediency."

The stratagems of war, as well as its cruelties, receive the author's severe condemnation. "What," he asks (p. 148), "is the moral difference between entering a town as a spy and the military service of winning it by surprise?" "The military code regarding the fair and legitimate use of fraud and deception has nothing whatever in common with the ordinary moral code of civil life, the principle openly professed in it being so totally foreign to our simplest rule of upright and worthy conduct, that in any other than the fighting classes of our civilized societies they would not be advocated for very shame, nor listened to for a moment without resentment."

After looking upon these highly colored pictures we are prepared for the statement (p. 153) that, "the realism of war threatens to become more repellent than its romance was once attractive, and to deter men more and more from the choice of a profession of which similar disgusting scenes are the common and the probable episodes." The author's wish is probably father to his prediction, and is no doubt due to his peace principles, which are so strong that he says (p. 139): "If we are justified in contending for our rights by force, it is hard to say we may not do so by

fraud." When, in contending for our rights, there is no difference between force and fraud, when men become too good to practise stratagems or take advantage of one another in war, they will be too good to go to war, and there will be no soldiers. But as long as the individuals constituting nations use force among themselves in contending for their rights; as long as societies organized for the common good of their constituent elements have governors, marshals, sheriffs, constables, policemen, jailors, executioners; as long, in fact, as men need government, that long may nations be expected to contend by force for their rights as they understand them, and to keep armies for that purpose. In the meantime men will not be deterred from entering the military profession by the horrors of war, the defects in the laws of nations, or the presumption that force is as bad as fraud in contending for what is right. Soldiers who continue to obey the laws of their country and the laws of war, need not fear being mistaken for thieves or murderers, even though moralists and advanced thinkers see grave defects in those laws. And when the men of all other professions and employments conform, as closely as soldiers of the United States do, to established law and accepted principles of morality, justice, and honor, there will be fewer wars and fairer dealing among men in both peace and war.

APPENDIX A.

The Court of Claims in the case of Major John B. Collins *v.* the United States (Reports, Vol. XIV.) held that Congress may "authorize the President or the head of the War Department to appoint an army officer, because the officer to be appointed is inferior to the one thus vested with the appointing power. The word inferior is not here used in a sense of petty or unimportant; but means subordinate or inferior to those officers in whom respectively the power of appointment may be vested—the President, the courts of law, and the heads of departments." . . . "Whenever, therefore, Congress thinks proper to vest in the President alone, in a court of law, or in the head of a department, the appointment of any of their respective subordinate officers, other than those named in the clause under consideration, or whose appointment is otherwise provided for by the Constitution, it must be held that such officers are inferior officers in the meaning of the Constitution, whose appointment in that manner, Congress has the power to authorize."

The Supreme Court of the United States (in the case of the United States *v.* Germaine, 99 U. S., 503) has rendered a decision in accord with the foregoing views of the Court of Claims. Whether officers of the Army are "inferior officers," whose appointments may be *vested by law* in the President alone, or in the Secretary of War, is one question, while the right of Congress under the provisions of the Constitution which say that Congress shall have power to "raise and support armies," and make rules for their government and regulation, is another question.

On the 25th of April, 1822, the Senate of the United States adopted the following Report from its military committee: "In the 8th Section of the 1st Article of the Constitution of the United States it is provided that Congress shall have power 'to make rules for the government and regulation of the land and

naval forces.' In virtue of this power Congress have directed, both with land and naval service, that promotion shall be according to seniority. This principle has heretofore been held sacred. . . . The Constitution of the United States provides that 'Congress shall have power to make rules for the government and regulation of the land and naval forces. Under this article of the Constitution, it is competent for Congress to make such rules and regulations for the government of the Army and Navy as they may think will promote the Service. This power has been exercised from the foundation of our Government in relation to the Army and Navy. Congress have fixed the rule in promotions and appointments. Every promotion is a new appointment.'" (See Am. State Papers, Military Affairs, Vol. II., pp. 406-7.)

Attorney-General Brewster said in an opinion in the Fitz-John Porter case: "I am aware that the power of Congress over military and naval appointments has been put upon grounds not applicable to civil appointments." These "grounds" must be the constitutional power of Congress to raise and support armies and make rules for their government and regulation. There can be no other grounds for the difference.

The Attorney-General of the United States (14 Opin. 164) says: "It may be regarded as definitely settled by the practice of the Government, that the regulation and government of the Army include, as being properly within their scope, the regulation of the appointment and promotion of officers therein. And as the Constitution expressly confers upon Congress authority to make rules for the government and regulation of the Army, it follows that that body may, by virtue of this authority, impose such restrictions and limitations upon the appointing power as it may deem proper in regard to making promotions or appointments to fill any and all vacancies of whatever kind occurring in the Army, provided, of course, that the restrictions and limitations be not inconsistent or incompatible with the exercise of the appointing power by the department of the Government to which that power constitutionally belongs."

As it is conceded that, *by virtue of the authority to make*

rules for the government and regulation of the Army, Congress may, in the matter of Army appointments, impose upon the appointing power all the restrictions and limitations that Congress deem proper, and as the power to make Army appointments "constitutionally belongs" to the appointing power only so far as Congress does not restrict and limit it, there can be no force so far as Army appointments are concerned in the Attorney-General's proviso that the rights of the appointing power shall not be interfered with.

In the opinion already cited, Attorney-General Brewster said concerning the foregoing extract from his predecessor: "Conceding all that is here claimed for Congress under the provision of the Constitution adverted to, it does not follow that the right to regulate appointments to offices in the Army can be carried to the designation of particular individuals to fill such offices, without imposing an unconstitutional restriction upon the appointing power." In this as in the preceding extract, the concession and the denial are inconsistent. As the right is conceded to impose in Army appointments *all* the restrictions and limitations Congress deem proper, there cannot be a proviso that the unrestricted and unlimited right be restricted and limited so that particular individuals are not designated for office. In both opinions the concession concedes the whole case. The right of Congress to regulate *promotions* has been exercised without protest from the foundation of the Government. Yet every promotion is an appointment, and regulating promotion is, at best, limiting the President to the designation of one of a class, and is often, in fact, the designation of a particular individual. This important and conceded right of Congress is founded in their constitutional power to raise and support armies, and make rules for the government and regulation of the land and naval forces; and is entirely independent of the question, whether officers of the Army are "inferior officers" in the meaning of the term as used in that clause of the Constitution which says that "Congress may by law vest the appointment of such inferior officers as they think proper in the President alone, in the courts of law, or in the heads of departments." The statutes contain many exam-

ples of the exercise of the right by Congress to regulate appointments and some even to designate individuals. A law, approved June 17, 1874, required "that an additional Major be added to the Second Regiment of artillery, *to be filled by the nomination and appointment* of Captain James M. Robertson of said regiment." The President approved the act, and executed the law, which designated a particular individual for the office. Acts of like bearing upon the question under consideration, though not all so pointed, were passed as follows:

March 1, 1873, in case of Ashton, of the Navy; March 2, 1874, in case of Kilburn, of the Navy; June 16, 1874, in case of the Inspector-General of the Army; June 18, 1874, in case of Book, of the Navy; June 22, 1874, in case of Plunkett, of the Navy; June 23, 1874, in case of Preble, of the Navy; June 23, 1874, in case of Payne, of the Army; January 30, 1875, in case of Wykoff, of the Navy; March 3, 1875, in case of Beaumont, of the Navy; March 3, 1875, in case of McLean, of the Army; March 3, 1875, in case of Chamberlin, of the Army; June 21, 1876, in case of Sinclair, of the Army; June 24, 1876, in case of Olmstead, of the Army; June 26, 1876, in case of Emory, of the Army; July 25, 1876, in case of Preston, of the Army; March 3, 1877, in case of a Signal Sergeant to be a Lieutenant in the Army; March 3, 1877, in case of Spencer, Freudenberg and Maley, of the Army; March 15, 1878, in case of Hammond, of the Army; April 8, 1878, in case of Darling, of the Army; April 23, 1878, in case of Armes, of the Army; June 19, 1878, in cases of Walker and Mullen, of the Army; March 3, 1879, in cases of Hunt and Collins, of the Army; February 19, 1879, in case of Wyse, of the Army; and March 3, 1879, in case of Stanhope, of the Army, in which case the authorization to appoint the individual was accompanied "with directions to the Secretary of War to place him upon the retired list." An act noteworthy in its relation to the power of Congress to designate particular individuals for office, was that in case of Major Granville O. Haller, 7th U. S. Infantry, who was dismissed in July, 1863. An act, approved March 3, 1879, required "the Secretary of War to order a military court-martial or court of inquiry, to inquire into the matter" of Haller's dismissal;

“said *court* to be fully empowered to confirm or annul the action of the War Department by which said Haller was summarily dismissed; and *the finding to have the effect of restoring* said Haller to his rank, *with the promotion to which he would be entitled*, if it be found that he was wrongfully dismissed.” Under this act, Haller, who left the Army a Major in 1863, came back to it a Colonel in 1879.

APPENDIX B.

SEC. 1. That when any number of officers of the United States Army, not less than two hundred and fifty, shall signify to the Secretary of War their desire to unite for mutual survivorship annuity protection, and shall be deemed eligible thereto by the Secretary of War, it shall be the duty of the Secretary of War to make, through the Pay Department of the Army, equitable deductions, determined as provided in section 2 of this act, from the monthly pay of said officers, and to deposit the same to the credit of the Treasurer of the United States, to be passed into the general balances of the United States Treasury, and be known as the Army Mutual Survivorship Annuity Fund.

SEC. 2. It shall be the duty of the Secretary of War to adopt, as soon after the passage of this act as practicable, a set of Survivorship Annuity Tables, based upon suitable Life Tables, and six per cent. interest to regulate the deductions to be made from the monthly pay of such officers of the Army as may be accepted by the Secretary of War under this act, to secure to each one of said officers the survivorship annuity which he may elect to purchase for a nominee to be designated by him.

SEC. 3. It shall be the duty of the Secretary of War to have

such examinations made of officers applying for purchase of annuities under this act, as he may deem necessary; to issue such certificates of purchase, and to prescribe such rules and forms, not inconsistent with this act, as may be needful to govern the applications of officers for said annuities, and to secure prompt and proper responses to said applications.

SEC. 4. The purchase of a survivorship annuity under this act shall take effect from the date that the application therefor shall receive the approval of the Secretary of War, and the annuity shall be due to the nominee from the date of the death of the purchaser.

SEC. 5. Nothing in this act shall be construed as limiting the number of annuities which may be purchased by the same person; and in case any purchaser of an annuity under this act shall elect to terminate the monthly deductions from his pay, required by this act on account of such purchase, he shall be entitled to receive, in lieu of a certificate for a full annuity, a paid up certificate for an annuity in equitable proportion to the amount of deductions which shall have been made from his pay on account of said purchase, the payment of which annuity to his nominee shall commence at the death of said purchaser.

SEC. 6. Estimates for so much of the Army Mutual Survivorship Annuity Fund as may from time to time be required to pay annuities falling due under the provisions of this act, shall be made and transmitted to Congress in the same manner as estimates for pay of the Army.

SEC. 7. It shall be the duty of the Secretary of War to have the annuities falling due under this act, paid by the Pay Department of the Army in the same manner that officers of the Army are paid; and all laws and regulations fixing the accountability for public funds shall apply to the moneys of the Army Mutual Survivorship Annuity Fund.

SEC. 8. It shall be the duty of the Secretary of War, to submit to Congress, annually a full statement of the Army Mutual Survivorship Annuity Fund, and he is hereby authorized to adopt such rules and forms as may from time to time be found

necessary to carry out the purposes of this act; *Provided*, that no compensation, pay or fee shall be allowed to any officer for services rendered under this act.

Lieut. Col. J. B. Fry, Asst. Adjt.-Genl., U. S. A.

DEAR SIR: I have carefully examined the project of a law for the creation of an Army Survivorship Annuity Company, sent to me with your note of the 1st instant. I can only judge, without hesitation, of the object of the law, which I deem of the highest importance to the Army. Whether the terms as you have stated them, be the best to secure the object, I cannot say, though they commend themselves very strongly to my judgment. Such a society has long been needed, and the wonder is that, in view of all the circumstances, it has never been created. It is, in my judgment, the only means of affording adequate protection to the dependent widows and orphans of deceased Army officers, free from all charge against the Government.

The necessary funds will be easily provided by the officers themselves, by a voluntary reduction of their receipts from the Army Paymaster. The amount of this reduction will be retained by the Treasury, and be available for the current expenses of the Government, and Congress will not, I am sure, in view of the humane object, refuse to allow an interest upon this money equal to that paid upon the most favored bonds of the United States. Should your project become law, it will give me great pleasure to aid the company forward by having prepared a suitable set of Annuity Tables for its use. Not only this, but it will afford me great pleasure to aid in any other way in my power.

Very truly yours,

WM. H. C. BARTLETT.

MUTUAL LIFE INSURANCE Co., March 3, 1874.

General J. B. Fry, N. Y.

MY DEAR GENERAL: I have read with great care and interest the proposed bill for the formation of an Army Mutual Survivorship Annuity Society, with remarks accompanying it.

It seems to me that the plan proposed will meet, in the best possible manner, the wants of the officers of the Army. It is simple and practicable. The expense of management will be so small, that the annuities purchased will be obtained for the smallest possible premiums—a great benefit to the officer—while at the same time, the premiums may be so arranged as to give to the Government all the profits which, with the same expenses, could be made by a well-managed private company.

The arrangement in section 5, of the revised copy sent me yesterday, of giving to a purchaser desiring to cease making payments, a paid up policy for an equitable annuity, removes the only objection that had occurred to me on the first draft of the bill.

I am very truly yours,

A. E. CHURCH.

WEST POINT, N. Y., March 13, 1874.

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