LETTER ADDRESSED TO HON. WM. C. RIVES,

BY

JOHN H. GILMER,

ON THE

EXISTING STATUS OF THE REVOLUTION, &c.

RICHMOND, NOVEMBER 1, 1864.

Honorable William C. Rives:

SIR,—You have the honor to represent the Albemarle district in the Congress of the Confederate States. That body is about to meet under the most appalling circumstances. The period has now arrived in Virginia which challenges the honest and fearless efforts of her ablest and best men to prevent the most calamitous results to her people. Her destiny, as a sovereign State, hangs suspended between two conflicting governments, whose rulers seem actuated more by blind passion than influenced by enlightened reason; who seem to have grasped and hold the reins of power that they might oppress the people, destroy the individuality of the States, and crush individual rights under the iron heel of a military despotism, to the utter subversion of constitutional law and the extinction of all true manhood.

These are strong terms. But are they not true? As to the Federal government there can be no question; it stands outlawed before the civilized world; stereotyped in its own self-pollution. Let us review the brief history in a few prominent points of the Confederate government, and test it by the guage of the laws, and weigh it in "the balances of the constitution." Empty words and vague implications are now useless. History is her own best expounder. We live in the burning light of historic despotism, while we profess to worship at the "altar of freedom." Deeds speak out, and will not yield to soft appliances, or be glossed over by hollow pretensions. The representative who now allows himself to be hoodwinked and muzzled is worthy of the fate which awaits him, and must soon overtake the people and States if "a bit is not put in the mouth of tyranny."

I will not, sir, disguise the fact that I thus address you because of your recognized ability, your ripe statesmanship, your enlarged experience, your advanced age, and your personal familiarity with those great men of the past who tutored you in "the science of free government;" because you are the representative of the *Albemarle* district, and reside in that noble old county where lie the bones of my revered ancestors, and where I first learned the lessons taught by the "great apostles of liberty." You know me, sir; you knew my ancestors. With that knowledge you will at least do me the justice to admit that my motives are pure, as my object is honorable. No true son of *Albemarle* can ever fear to plead the cause of constitutional freedom and true manhood even before a nation in arms.

We are in a death struggle for liberty, and shall we be slaves to the agent which we delegated to hold the reins and guide us in the storm of revolution? Shall we not protect the constitution from the vandal hands of those who seek its destruction? Are we to barter all for the poor privilege of choosing masters? Are the laws to prevail, or are we pliable minions of executive and ministerial self-will? Is Virginia a sovereign State or a vassal of Confederate dominion? Is the military or civil law to prevail? Are all courts to be closed, all remedies

annulled, and every vested right placed at the disposal of the executive and his ministers?

These are not idle questions, as I shall show before I close this letter. I shall take care to "speak by the card," nor will I write a word which cannot be "vouched by the record." The naked truth is far too appalling to need the slightest embellishment. It stands forth recognized by all men who are not blinded by passion or swayed by self-interest. It hangs "like the pall of death on the warrior's shield." It colors every view and disfigures every aspect of the "political horoscope." It has no parallel, save in the Lincoln dynasty, from which we are seeking to escape.

There is, sir, one other reason which induces me to address you this letter. You, unfortunately for the country, I will not say for your own great fame, advocated, at the last session of Congress, the suspension of the writ of *habeas corpus*. In that position I fear you inflicted a severe blow on the main pillar of all constitutional government. The case which I shall furnish you with is an unanswerable fact, which no eloquence can dislodge; a conclusive deduction, which no sophistry can weaken. It will disclose the vital importance of always preserving sacred that shield to personal liberty without which civil liberty is a mere shadow. It is not to be disguised that this grand bulwark of civil liberty has been sported with in this revolution as though it were an ordinary and unimportant remedy—to be allowed or denied with as little regard to consequences as though it were a worthless garment, to be thrown off and resumed with as little concern as a thoughtless lad would his threadbare overcoat.

The case to which I refer is given in full at the close of this letter. As a Virginian, it challenges your profound consideration. As a statesman, it merits your deep solicitude. As a patriot, it appeals to your highest impulses. As a representative, it addresses itself to your enlarged experience. Ponder over it, sir, in its ample developments, and tell me if it does not indicate a sad state of ministerial oppression and executive neglect? Where is the patriot who will oppress or neglect the veteran and war-worn soldier? Where the statesman who will countenance the deliberate violation of the laws? Where the representative who will allow the sanction of his own legislation to be sported with as a worthless injunction? Where the Virginian untutored in the art of tyranny or unschooled in the appliances of fraud who will recognize the right of any power to violate the solemn compacts of Virginia? What does this case (consider it closely) disclose? Does it or not establish the fact that the Secretary at War has accomplished all this? Does it or not show that Mr. Seddon has assumed to violate this compact of Virginia? That he deliberately refused to appeal, as directed by the President, to the law of the case? Does it or not show that in this high neglect of an imposed duty the Secretary at War has been sustained by the President, whose directions he disobeyed?

But you may ask why I thus publicly bring this case before you at this time? I assure you, sir, I do so for no idle or improper purpose. The motives which actuate me are pure, however unpleasant the subject matter. You are a ripe statesman, and familiar with the thoughts and writings of that great man, Edmund Burke. In his letter to "a member of the National Assembly" he uses these words: "there is no safety for honest men but by believing all possible evil of evil men, and by acting with promptitude, decision and steadiness on that belief." Again, in his "Reflections on the Revolution in France," "Better be despised for too anxious apprehensions than ruined by too confident security." And those beautiful words and noble thoughts which I heard you recite in your masterly style in your unfortunate advocacy of the repeal of the writ of *habeas corpus* last session.

"But what is *liberty* without wisdom and without virtue? It is the greatest of all possible evils, for it is folly, vice and madness, without tuition or restraint. To make a government requires no great prudence. Settle the seat of power; teach obedience, and the work is done. To give freedom is still more easy. It is not necessary to guide. It only requires to let go the rein. But to form a *free government*—that is, to temper together these opposite elements of liberty

and restraint, in one consistent work, requires much thought, deep reflection, a sagacious, powerful, combining mind." "Rage and phrensy will pull down more in half an hour than prudence, deliberation and forethought can build up in an hundred years."

I design no flattery, sir, when I appeal to your "reflecting, sagacious, powerful, combining mind." We are in a deadly strife, with an unscrupulous and revengeful foe. We are in war, a fearful and bloody war, fighting for constitutional liberty as states, and vested rights as individuals. Executive and ministerial oppression, in violation of chartered franchises, caused this war, and justifies this revolution. To escape official and governmental oppression, we can well afford to bequeathe this war, with its sacred trusts, to our posterity. But if we are to be oppressed without law and against law, then, of all things imaginable, this war is the most needless occurrence of the nineteenth century. It is not only needless, but it is cruel and sacriligious. This, sir, is a sentiment deeply rooted in the hearts of the people; it is ineradicable, pervasive—stronger than the love of life. We fight for state independence and individual vested rights. Deprive us of those inestimable blessings, and we are the slaves of an irresponsible power, as hateful as it is despicable.

To quote once more from Burke—"In all mutations (if mutations must be) the circumstance which serves most to blunt the edge of their mischief and to promote what good may be in them, is, that they should find us with our minds *tenacious of justice and tender of property.*" What maxim could be more applicable, more instructive, more admonitory?

In this spirit, and under such lofty sentiments, I ask you to consider the case now brought to your notice at the end of this letter. What "property" is more valuable or more sacred than the vested right of the freeman, under a specific contract, to exemption from military or ministerial oppression? What oppression more galling to the freeman than to be denied his legal franchises, without the semblance of law to sustain the denial? And yet, when you come to read this case, and comprehend all of the facts and circumstances attending it, you will discover that, in the face of the solemn judgement of the court adjudicating the principle, each of these veteran, war-worn soldiers, whose character, worth and position are not over-drawn in my argument, was required to sue out his individual writ in order to avail himself of the operation of the adjudication. And yet we profess to be waging this war for the protection and enforcement of individual vested rights?

But you may ask why again agitate this question? The answer is at hand. Because this flagitious violator of the adjudicated rights of the *soldier* is still in office, unrebuked, unchecked, and as avaricious of the illegal exercise of unauthorized power to the oppression of the soldier as ever. This fact stands out prominent, and is suggestive of reflections which must press themselves with great force upon every sound thinker and true lover of constitutional liberty. Of all men, the *soldier who fights for liberty is entitled to the blessings of legal protection.*

It is with this view that I have addressed you, sir, this letter, and with it communicated the entire case. It is proper that the case, as it rests on the adjudication of the Confederate court, should pass into the hands of Congress. And in thus communicating it, it is pertinent to enquire, *whether the judgment of a Confederate court, upon a Confederate law,* is inferior to the mere official whims and ministerial pertinacity of the Secretary at War? Is the Judiciary to be subordinated to the mere *volition* of the Secretary at War? If not, are the parties, benefitted by the *principle* thus adjudicated, only to derive the benefit of the adjudication through the mandates of the court, at ruinous expense, in each case? Is not the Secretary at War as much bound by the adjudication as the soldier? If so, by what *authority*, and under what color of right, is the soldier to be held until released, by judgment, *in personam?* These are enquiries which I shall not undertake to answer. I respectfully submit them for your enlightened consideration, as an experienced, patriotic, ust legislator. The question is not, how many soldiers we shall have? but

whether all the adjudicated *rights* of the soldier shall be respected? and if not, what is the proper remedy against the officer who disregards them? The strictest discipline in the army is absolutely necessary. *The soldier must obey the orders of his superior, implicitly and without qualification.* But must not the Secretary at War obey the law? respect adjudicated rights? The higher the officer, the more sacred the imposed duty *of obedience to the law.* The member of the Cabinet who seeks to extinguish the light of the law, is indeed a poor and dangerous worshiper "at the shrine of liberty." The Secretary at War who disobeys the injunctions of the President, and neglects the mandates of the Judiciary, is setting an unworthy example to Generals under his authority. EX PEDE HERCULEM.

But there is yet another and higher view of this case, which merits your consideration. It points to the "inner temple of the altar," and is suggested by the inquiry, "What, in these cases, would have become of the rights of these soldiers, but for the writ of *habeas corpus?*" This renders necessary a brief review of the *position* occupied by the Administration on this important and vital question. I respectfully direct your attention to it. It is admonitory and suggestive. It is important and instructive, even to you, sir, to review the acts of the authorities, as well as the deliberations of Congress, on this question. None of us are too old to learn, and none so wise that we may not derive edification even from our own reflections, when conducted in the proper spirit. It is only by degrees that the atmosphere becomes impregnated, particle by particle, with the poisonous malaria: so it is by degrees—here a slight move, and there a cautious and stealthy step—that the goal of tyranny is reached. "Eternal vigilance is the *price* of liberty."

Now, sir, with your accustomed sagacity, read General Orders, (army) current series, 1862, Nos. *nine, eleven, fifteen, eighteen, twenty-one, thirty-three, thirty-five, forty-two, fifty-five, fifty-six* and *sixty-six.* Read them, consecutively, and your mind will stand aghast at the concrete evidence of absolute, arbitrary, irresponsible, tyrannizing dominion over the civil rights of the people, the courts, and personal franchises. No darker page rests, in its muffled gloom, on the history of the French revolution. You will discover all civil remedies suppressed, the courts closed, except in such cases as they are *"permitted" to sit by military orders.*

What, sir, would WASHINGTON have thought of such orders? What, sir, would Wythe and Pendleton, Marshall and Carr, Barbour and Daniel have thought of such meagre *"permissions?"* What would Henry and Lee, Bland and Madison, Jefferson and Randolph, Monroe and Taylor, have *felt* under such mandates? *Where is the spirit of our ancestors.* Where the genius of our ancient institutions? You form, as it were, a link, a precious and cherished link, between those great men and the present generation. It is a link of "choice gold"—let it not be alloyed, in the furnace of heated passions, which should but heighten its quality and purify its materials. Look back upon the past. Cast a hopeful glance at the future, and ponder these weighty words of your favorite author, Burke: "A spirit of innovation is generally the result of a selfish temper and confined views. People will not look forward to posterity, who never look back to their ancestors." Let not Achilles retire to his tent. The battle is at hand, in which reason must overcome passion, wisdom must subdue phrensy, sanity must be restored, or all is lost. The people mourn, the State trembles to her foundation. The sentiment of a lofty patriotism burns in every bosom as brightly as ever; but the mad rule of red republicanism at the South, and black republicanism at the North, like the "daughters of the horse leach," cry out for dominion, for absolute sway, over constitution, laws and people. Is there no remedy? Are the States doomed? the people enslaved?

Look now, sir, at General Order No. *thirty-one,* current series, 1864. What a lesson *that* teaches to Virginia? Ponder well its provisions, its mandates, its chains, forged by hasty legislation, to fetter the will and manacle the action of a proud, high-souled, brave people, who prefer death to dishonor, the grave to political serfdom! Are we fighting to sustain one tyrant against another? Are

sovereign States to bow down, in the dust, to the imperial will of their agent—created, endowed with a *borrowed* life, that it might impart fresh vigor to confederated vitality? Is there no "breathing time to reason," in which the darker passions shall be subdued? Surely not, if the reign of terror is to be protracted, the one-man-power still enlarged, extended, individualized. Is all social existence to be merged into camp life, and the very graves of our ancestors to be the battle-ground for *power*, and not for *right?* for absolutism in government, and not *constitutional restraints upon government?* Are we a betrayed people? enslaved States? Is the will of the Secretary at War *to be the law of the land? Is his mere volition to silence the laws, fetter the courts, enslave the citizen?* These questions arise from the case reported, and the orders quoted, and *must be answered*. If any one is so lost to a sense of the existing exigences of the country, as to answer them in the affirmative—and the past is to be re-enacted, in the re-adoption of similar acts and orders—he who will consult the "oracles of the dead" will read this significant question—"Is it not time for Virginia to look to her colors and close her columns?"

But, sir, your enlarged experience, your ripe statesmanship, your profound sagacity, will discover the remedy. It is in Congress. It is at hand. Curb executive power; restrain it within its *constitutional limits;* rebuke ministerial presumption; manifest the power of the law, and re-kindle, by legislative energy, its well nigh extinguished spirit, in the confidence of the people. Let them feel *assured* that the laws are wise, just, constitutional, and that they shall be fairly and scrupulously executed; that the Confederacy is not a grand prison-house, over which the Secretary at War presides, in the gloom of an intellect obscured by an official *idiosyncracy*, equalled only by the selfishness of his policy. Teach him to realize that the War Department is under Congressional supervision, and held in trust for the *benefit, not the oppression*, of the people and States. Teach him that law is over him, and not he over the law. Teach him that the army needs moral as well as physical power; and that when a petty tyrant, like him, seeks to rule against law, the "spirit and genius of the law" will rebuke him, and check him, and subdue him. Teach him that the Judicial and Legislative Departments are real existences in the Government, and not the mere shadow of a withered substance. In a word, sir, restore the *spirit of the Constitution;* re-invigorate the genius of the revolution, by shielding the liberty of the citizen, and protecting the vested rights and adjudicated status of the soldier, *and he will protect and save* STATE SOVEREIGNTY.

This revolution does not move in a circle, of which the Secretary at War is the centre. It is deep-laid in its foundations, pervasive in its spirit, widening and strengthening in its influence. It rests on proud, sovereign, independent States, who "are masters of the position." No puny arm can control it. Its *motive power is the will of the people;* its true test, the innate power of the States; its object, anything but man-worship and the one-man power; and woe betide the functionary who grasps at arbitrary power.

You are thoroughly versed in the "philosophy of history." Its teachings are familiar to your well-stored mind. It would be mere *pedantry* for me to recite illustrations. I may, however, ask you one question, in conclusion. If our forefathers, situated as they were, could erect a new temple of liberty in the wilderness, cemented with their blood, and consecrated by the god-like spirit of WASHINGTON—why shall *Virginia* bend the knee and bow the head to any earthly authority, North or South, which seeks the demolition of her "ancient prerogatives," more sacred than the glittering diadem in any kingly crown?

I now, sir, call your attention to the cases refered to, and commend them to your consideration.

RICHMOND, AUGUST 25, 1864.

To His Excellency President Davis:

SIR:—I have the honor to address you, as counsel for twenty-nine members of the First Maryland Artillery, Capt. Wm. F. Dement.

These men enlisted, as citizens of Maryland, for a specified and agreed period. They have faithfully performed their respective engagements, as I am informed

and respectfully asked their discharge. The matter was referred, in the regular way, to the Honorable, the Secretary at War, for instructions. He, I am informed, refused to discharge these men, and directed that they should be retained in military service, under his orders.

From this ruling, I am informed, Capt. Dement respectfully appealed to your Excellency, some time since, enclosing the original papers, with the endorsement of the officers in command and the Honorable, the Secretary at War, from which, as yet, nothing has been heard.

In this position of the matter, I am retained as their counsel. Under which circumstances it is made my duty, as a preliminary step, to possess myself of the papers placed in your hands.

May I be allowed, most respectfully, to suggest that, if not, in your opinion, directly adverse to sound policy or accredited administrative will, it would be advisable to discharge these men, without a resort to their ascertained legal remedies? It will not, I hope, be regarded as presumptuous in me, to express the opinion that they are, in law, entitled to a discharge; nor will this respectful expression of opinion, it is hoped, be deemed in the light of any reflection on the ruling of the Honorable, the Secretary at War.

There are, however, I respectfully suggest, certain legal features involved in this subject-matter of investigation, from the court discussion of which I would, at this particular period, be most gladly relieved by your ordering the discharge of my clients.

If, in your wisdom, you sustain the ruling of the Honorable, the Secretary at War, in this matter, I very respectfully ask that you will, at your early convenience, enclose the original papers to

Very respectfully, your obedient servant,

JOHN H. GILMER.

To this letter no reply was received. And the writs were issued, and the following proceedings had:

To the Editor of the Examiner:

SIR,—In the local reports in the *Examiner* of the Maryland cases which I argued in Judge Halyburton's court, it has been stated that my clients were discharged *because they were Marylanders.* This is a mistake. It should be corrected to prevent serious misapprehension. I send you a copy of the *points of my argument, with the opinion of the learned judge who adjudicated the cases.* You will please publish them, and send your bill to me. Judge Halyburton is perhaps the most learned and accomplished Confederate judge on the bench.—For patriotism, lofty integrity and sterling merit, he has not his superior on the continent. Pure as he is learned, patriotic as he is firm and conscientious, his judgment in these cases is a full guarantee to the country that my clients are clearly entitled to their discharge on legal and constitutional grounds; and this fact should not be misapprehended or misapplied.

Respectfully,

J. H. GILMER.

Notes of Argument Delivered in Judge Halyburton's Court by John H. Gilmer, in Reply to the Argument of Mr. Sands, in the Cases of J. H. Briscoe and Others, Marylanders.

May it please the Court: Before I proceed to answer the very ingenious, able and eloquent argument of my learned friend, it is proper that I should notice particularly one remark which fell from his lips, I hope, inadvertently.—The learned attorney said, in his concluding remarks, that "any other government but ours would have *resisted these applications.*"

Sir, these were strong, significant words, coming from the legal adviser of this court, with his official robes around him. They awakened feelings in my

bosom which I find it difficult to suppress. I *feel* that I stand in the presence of, and before, an august tribunal, where all passions are silenced, all prejudice hushed, *all power subdued*, by the "still small voice" of justice, emanating from that source which *awes into subjection* every authority not derived from the law and sanctioned by the constitution. There is no power on earth which can rightfully silence the mandates of this court, and to RESIST them is treason against the constitution and open rebellion against the laws. When your judgment in these cases shall have been announced, it will be the law of the land; and there is no power which can resist it. Though it falls in the mild and modest tones of enlightened wisdom, soft and pure as the dew of heaven, it is, sir, more authoritative than "an army with banners," more conclusive than all other orders combined; *and it cannot be resisted.*

But, sir, it is a melancholy fact, made manifest in the evidence before this court, that the Secretary at War has, at every point, in every aspect, and with every conceivable means at his disposal, up to this point, *resisted* these applications. Yea, sir, he has gone farther—he has disregarded the expressed wishes, put aside the written directions of the President as to the disposition and control of these cases. This I say "more in sorrow than in anger." His statement here in court in explanation of his failure to adopt the suggestions and act in accordance with the directions of the President, I regret as much as I do the non-compliance itself. I am sure the honorable Secretary did not intend—what might be inferred from his explanation—to put the weight of his and Judge Campbell's opinion as to the law in opposition to any anticipated reasoning and authorities which I might, in my poor way, adduce and offer for your consideration; much less could he have designed to forestall the judgment of this honorable court.

Be that as it may, I can only say that, however learned in the law, high in official position, and infallible in military literature, those eminent gentlemen may be, their *opinions*, as now made known, are only *persuasive;* they have no binding effect; they possess no inherent virtues which entitle them to that high consideration and ascertained legal measurement to which the *law is entitled, as it stands expounded, declared, illustrated and enforced, on the pages of reported cases, binding even on this court, because they are adjudicated.*

You and I, sir, here at least, know the value of the written law; *declared principles, adjudicated cases.* The judgment of a competent court—well-pronounced and recognized as authority—is as permanent as it is pervasive, as uniform as it is universal. It yields to no logic; it gives way before no rhetoric; it stands firm against every *outside pressure.* Once recognized as a settled and adjudicated principle, it sheds its light over every other luminary, and rebukes self-interest with as much severity as it tames assumed authority with its self-sustaining vigor. Here, at least, the voice of law is potent, even to controlling this court, no matter what the views, the feelings, or the policy of the government may indicate. It is, then, to that tribunal I address myself. If my clients are sustained in their applications by the law, it matters not what may be the opinions of "all comers," however exalted in their station and unerring in their convictions.

The facts of these cases—indeed, all thirty-four—are plain and few. They need but a simple statement to render them clear and beyond doubt. My clients are Marylanders. They enlisted in the military service of *Virginia* under a special, written, agreed contract, in 1861, for three years, if the war should last so long; but to be discharged sooner, if the war should be closed before the expiration of the period of their enlistment; but, at all events, to be discharged at the expiration of the three years. These were the stipulated, executed terms of their enlistment. Virginia assented to these terms. She afterwards turned these men, *with this contract, over to the Confederate States.*—The Secretary at War accepted them, and, along with them, this *written agreement.* Here is the whole case. And yet these men, after the expiration of the period of their enlistment, are still claimed by the Secretary at War as *soldiers for the war.* Can this asserted claim be sustained?

First, as to the facts. What I have just stated is in full proof. But this is not all. It is proved that when these citizens of Maryland volunteered in the service of Virginia, they then, and have always since, intended to return to Maryland at the expiration of the period of their enlistment. The act and terms of enlistment prove this. Their uniform declarations since prove it—their application for a discharge confirms it. But this is not all. It is in proof, by their commander, that they have all been true to their contract; that they have performed their whole duty, at all times, under all circumstances, and under every trial. They have been brave, obedient, gallant and steady. In storm and in repose, on the battle-field and in the camp, on picket and in the trenches, everywhere, they have all been faithful, brave, efficient soldiers. Yea, more: that they are now true, loyal, high-toned, devoted friends of the Confederate cause, and would have, *to a man, re-enlisted, if the Secretary at War had asked their services for the balance of this campaign.* Such are the facts as to the petitioners. How do they stand as to the Secretary at War?

On the 8th July last, Captain Dement addressed this note to the proper authorities:

"CAMP FIRST MARYLAND BATTERY,
"McINTOSH'S BATTALION ARTILLERY,
"July 8th, 1864.

"*Col. W. H. Taylor, Assistant Adjutant General:*

"SIR: I respectfully ask for the proper authority to discharge certain members of my company, (First Maryland Battery), whose term of service will expire on the 13th July, 1864."

This letter was, by order of General Lee, referred to the Secretary at War, who returned it with this endorsement: "Returned through General R. E. Lee. The Secretary of War has decided that Marylanders in service may justly be considered as staying in the Confederacy for an indefinite period as residents; that they have cast their lots with us, and are liable to like duties, in resisting a common enemy, with our own citizens. These men will be retained in service."

Captain Dement, not precisely comprehending this novel mode of constituting Marylanders in the service, under a special contract, and for a limited period, as "residents," appealed to the President. No reply being received from the President, my services were retained. These petitions were filed, after an effort on my part, in the most respectful manner, to prevent litigation, without success. Now, these parties are here before this court, with one other singular fact on the record, which it is proper to comment on as an important branch of the history of these cases. It seems that the letter of Captain Dement, addressed to the President, was, on the 22d of July, by that high and respected functionary, regularly referred to the Secretary at War, with this endorsement:

"Secretary of War: As this appeal is founded on a construction of laws applicable to the case, I suggest that the record be presented, with these letters, and referred to the Attorney General for an opinion.

JEFFERSON DAVIS."

The Honorable Secretary at War informs us that reference was never had. The Attorney General was never consulted, because, says the Secretary, he and Judge Campbell concurred in the opinion that the law was against the appeal, and it was not necessary. This is to be regretted. But, sir, the opinion of the Attorney General, had it been given, would not have been conclusive in this court as to the law. I wish, however, we had it. We need all the light at our command in these grave deliberations. It is not here, however, and I proceed to consider the *law as I believe it to exist*, with the remark that the President has, in this matter, done his whole duty to these men.

By what authority the Secretary at War arrives at the singular *decision* announced, I am at a loss to know. It is not only, in my opinion, against all law in all civilized countries, but it has not (I say it with all due respect) *the semblance of law* to stand on or under. Not an elementary writer, or an adjudi-

cated case, that I am familiar with, countenances such a conclusion. They all repudiate it. They all establish, or tend to establish, precisely the reverse. The very authors referred to by my learned friend establish the converse of his proposition. I need not cite them. They are too familiar to your mind to need special citation here. Phillimore, Bouvier, Domat, Story on Conflict of Laws, Kent—all refer to the general principle as to *domicile*. They all treat this question with learned refinement, and from them all the *grand criterion* is the *intention*, the *quo animo*, of the party. Residence is but one of the *indicia*, an elemental ingredient among various other *facts and circumstances*. But, after all, *there must be a domicile, accompanied with the formed, ascertained, established intention of remaining*, or rather of not *returning to the former domicile*. Here is the grand test fact on which the entire structure must rest.

Indeed, sir, I need no further or other *authority* against the *Secretary at War* than his own published orders. They estop him in these cases. They must have been drawn by *a learned lawyer*—perhaps the eminent gentleman, Judge Campbell, whose *opinion* is now invoked in this court by my learned friend and the Secretary at War. General Order No. 82, current series, 1862, paragraph IV, treats of these very cases:

"1. Foreigners not *domiciled* in the Confederate States are not liable to enrollment. Domicile in the Confederate States *consists in residence with intention permanently to remain in those States, and to abandon domicile elsewhere. Long residence of itself does not constitute domicile. A person may acquire domicile in less than one year, and he may not acquire it in twenty years' residence. If there is a determination to return to the native country, and to retain the domicile there*, NO LENGTH OF RESIDENCE CAN CONFER DOMICILE."

This is sound law, deduced by a skilled and learned mind from the very authors now cited by my learned friend. By this rule, are the petitioners *residents?* Are they within the scope, object, or purview of the act of Congress? Where have they *domiciled?* In what *house* have they resided? Their *residence* has been on the tented field, in the thickest of the fight—many of them, gallant, heroic men, in the grave—leaving a few only to claim the resulting benefits of the original contract.

But my learned friend says they intended to remain in the Confederate States if Maryland cast her lot with the Lincoln dynasty. Indeed? Where is the proof of this? It is not to be presumed. But they were "traitors to their State" if they came here intending to return under such circumstances, says the attorney. Indeed? And who *declares* them traitors except my learned friend? Traitors, sir? I respectfully repel the imputation. They are brave, cultivated, patriotic *Marylanders*, who came to *Virginia* under a contract with her to fight the battles of Maryland and Virginia—twin sisters in all the past; inseparable in the future.

Maryland is a sovereign State—afflicted, oppressed, but not subdued. The iron heel of oppression rests heavily on her proud, patriotic bosom. Her sons and daughters weep over her down-trodden posture. But, sir, the time is not far distant when Maryland will rise equal to the occasion. The grasp of tyranny is not perpetual. The tread of the tyrant is not as measureless as the monotonous step of the Wandering Jew. Time, energy, caution, love of country, devotion to principle, will all conspire to loose the bonds by which she is now held. Yea, sir, who shall say that the hour of deliverance is not even now at hand, and these, her gallant sons, panting to grasp the weapon of vengeance on their beloved native soil, and thus aid in her redemption.

The petitioners, *traitors?* Sir, such treason is holy devotion to constitutional liberty and eternal hatred to usurped powers of abitrary government. Traitors! to whom? to what government? Sir, they came here and rallied, as patriots, under *Virginia's* flag—proudly waving, in token of ultimate success, over this ocean of blood, shed on and around the altar of liberty! And is *that treason to Maryland?*

Traitors! When and how has the Secretary at War arrived at the opinion

that Maryland is doomed and lost to Virginia? God joined *these* States by the indissoluble ties of territory, inland and ocean links. Separate as States, their people *are* homogenous—their destiny *is one and the same.* They are now torn asunder—cut apart by the sword; but the healing process of time—the austere and better wisdom of solemn reflection—enlightened action—will yet draw them together. Maryland will never turn her back on Virginia and wed herself to the black hearted people of New England. No, sir, Maryland is yet a sovereign State, and as such, these petitioners—her citizens—are no traitors in fighting under Virginia's banner for Maryland's redemption.

But, says my learned friend, these men are "not traitors." They left Maryland with no intention of ever returning if she should not become one of the Confederate States. Where is there any evidence of this? None, sir, but this voluntary contribution of my learned friend Their contract, their acts, their declarations, all prove the reverse. And this assumed benevolence of my learned friend, and this asserted fact of the Secretary at War, are mere gratuities. They cease to exist when contrasted with the *solid facts in the case.*

But, says my learned friend, the Secretary at War complimented, and was anxious to protect these men in his retaining order. I can only say save me and my clients from such complimentary protection. As Marylanders, they enlisted; as Marylanders, they served out the period of their enlistment; and now claim their discharge. Shall they be denied? What *says the law!* Are they residents within the terms of the law? Could they be conscripted? Have they not performed their part of the contract? If so, who has a right to hold them? I do not argue this case on the ground of my clients being *Marylanders.* That is not the ground. Suppose they were all *English* subjects, enlisted as now for three years, what court would refuse their discharge? Sir, these men stand before you to-day as though they were Italians, domiciled in Rome; or Irishmen, domiciled in Ireland; or Massachusetts men, domiciled in Boston—that hot-bed of hellish propensities. And shall they be treated by a different rule of law from what would apply to their cases if they were Italians, Irishmen, Englishmen or Yankees? The law books say not.

But, says my learned friend, these men are only restive under military restraint; they want a holiday.

Indeed! Sir, when were they restive under the fire of the enemy? When were they eager to escape military restraint in the last three years? Where were they, or any of them, when the cannon balls flew thick and fast, and death claimed almost every third man? When were they, or any of them, restive, or absent, or derelect in duty, while the battled hosts of the enemy hurled their missiles of death around them swift and thick as hail?

Restive! Sir, could my friend, who now applies this language to my clients, have watched them on those terrible occasions, through which they have so often and so gallantly passed with credit to themselves and honor to their State, when their tread was as firm as the soil on which they stood, their resolution as impenetrable as the metal of which their cannon was formed; their eyes unblanched, their hearts proudly beating in high unison with the irrepressible pulsations of liberty, he could not, here in this court room, apply such epithets to them. Brave, without a fault; heroic, without a murmur; stern in their integrity, as they were honorable in their deportment, these men—ah! sir, the word will out—these *gentlemen* and patriots—have performed their whole duty, discharged their entire obligation, and they now respectfully ask at your hands that justice which has been denied them by the Secretary at War. They are not restive, save as brave, gallant, heroic soldiers should be restive, when their clear rights and ascertained remedies are denied them. They feel assured of their rights and self-sustained in their consciences. They have never re-enlisted. They are under no new contract or accruing obligations. Without re-enlistment they cannot be held—so has the War Department, under precisely similar facts, *ruled and ordered,* in General Orders Nos. 44 and 46, current series, 1862; so has Virginia declared, in her legislative acts, passed *in pari materia.* Why re-enlist at all, if by joining the army they "may justly be considered as staying in

the Confederacy for an indefinite period?" Is the term "re-enlistment" meaningless? If not, what is the status of the non-conscript who has not re-enlisted?

With these views, I submit these important cases, with every confidence in the result. I feel that I *know what the law is*, and am not uneasy as to the result. I may have spoken with too much zeal, and manifested too much feeling in what I have said. If so, I humbly ask pardon. My whole heart has been enlisted. I feel for the peerless honor of *Virginia*. These men enlisted under *her flag*. In God's name let no stain of repudiation rest on that escutcheon, which, up to this period, has been as pure as it is emblematic; as stern in its demands of justice as it is ever rigid in its dispensation of right. Let the law prevail. Shut not out the light of legal science in this period of dark passion and turgid commotion. I have no fear of failure in this grand revolution so long as we adhere to the ancient landmarks, and keep steady the "balance wheels" of the constitution by the hand of experienced wisdom and adjudicated remedies. The life blood of the country is vigorous, and flows in the healthful and natural channels; seek not to chill, or pervert, or deplete it by untoward innovations. Virginia is an empire within herself. Respect her rights and honor her obligations.

Whatever may be the determination and judgment of this honorable court, I pledge my clients to a cordial submission, as soldiers, men of honor and patriots. Will the government accord the same hearty acquiescence?

JOHN H. BRISCOE vs. CAPTAIN W. P. DEMENT.

Opinion of the Court.

It appears by the return to the writ of *habeas corpus* in this case, that the petitioner "volunteered on the 16th August, 1861, for three years, as a member of the army of Virginia;" that "he has been in service ever since," and is now held, "under orders from the Secretary of War of the Confederate States, as a soldier in the Confederate service, and for no other cause." It further appears by the testimony in the cause, that after his enlistment in the service of this State the petitioner was regularly transferred to the service of the Confederacy.

The act of Congress of the 17th of February, 1864, entitled "An act to organize forces to serve during the war," declares that from and after the passage of this act all white men, residents of the Confederate States, between the ages of seventeen and fifty, shall be in the military service of the Confederate States for the war.

The second section of the act provides "that all the persons aforesaid, between the ages of eighteen and forty-five, shall be retained during the present war with the United States, in the same regiments, battalions and companies to which they belong at the passage of this act, with the same organization and officers, unless regularly transferred or discharged, in accordance with the laws and regulations for the government of the army;" upon certain conditions, which I need not mention.

The petitioner, who is between the ages of seventeen and forty-five years, alleges that he is not a resident of the Confederate States, within the meaning of the act of Congress, and is therefore not liable to be held in service under that act; his term of enlistment having expired in August last.

The only legal question of any difficulty in this case is one of domicile, and has been properly so treated, I think, by the counsel for the defendant, Captain Dement.

The act of Congress, it is true, uses the word "resident," and not the word "citizen," or the phrase "domiciled inhabitant;" but there can be very little, or no doubt, that the word "resident" is not used here in its broadest sense.

A person who stays in a country for a brief and definite period—for a year

or two, or a month or two—may be, in one sense of the word, a "resident" there. "When the word is applied to strangers or travellers," says Webster, "we do not say a man resides in an inn for a night; but he resided in London or Oxford for a month or a year; or he may reside in a foreign country a great part of his life. A man lodges, stays, remains, abides, for a day, or very short time; but *reside* implies a longer time, though *not definite*."

"The original national character is not changed," says the learned counsel, T. A. Emmett, in the case of Elbers and Krafts *vs.* the United States Insurance Company, 16 Johnson, 128, "by an *occasional residence* in another county for a *temporary* purpose. It must be a residence there *animo morandi*"

The Judge, speaking of the *criteria* of domicile, in the case of Stanley *vs.* Bernes, (3 Haggard's Ecclesiastical Reports,) remarks that time alone is not conclusive; for where is the line to be drawn? Will the *residence of a month*, or *a year*, or *five years*, or *fifty years*, be conclusive?

If, therefore, we were to take the word "resident" in its widest acceptation, it might apply to persons who came here to remain for a few months, as the correspondents of a foreign newspaper; or to purchase certain commodoties for exportation; or to study medicine; or to observe the progress of the war and acquire military information; or merely to see the country and become acquainted with its laws and institutions, and resources; or for any one of a thousand other reasons or objects, which might induce a stranger to visit this country for a short time, or a year or two, without the least idea of changing his permanent residence or domicile. It might apply, indeed, to a foreign consul or commercial agent, or even a minister sent to treat with us on the subject of recognition. We cannot suppose that Congress intended any such exclusion of foreigners from our shores, or any such violation of all the rules of international comity and international law, as this would amount to.

Besides, the term "resident" has, heretofore, been uniformly interpreted by our courts of justice to mean domiciled inhabitant, if I mistake not; and if Congress had intended to give it a more extensive signification they would probably have said so, or used some other expression.

Some line of demarkation it is necessary to draw between that class of residents who are liable to military service and those who are not so liable; and if we stop short of domicile, where shall the line be drawn? It would be extremely difficult, if not impossible, for any court or judge to fix upon any other limit satisfactory to himself, and no two courts or judges would probably agree about it; so that we should have no fixed or steady rule on the subject at all.

I shall regard the legal question, then, in this case, as one of domicile: but what is domicile? Perhaps no complete and entirely satisfactory definition of it has ever yet been given.

Bynkershock, we are told, would not attempt it.

According to Vattel, "domicile is an habitation fixed in some place with an intention of *remaining there always*." Wildman (International Law, page 36), tells us that "the domicile of a person is where he has taken up his abode with the intention of permanent residence;" a very unsatisfactory definition indeed.

Judge Story says that the definition given by Vattel is not accurate. It would be more correct, he thinks, to say that "that place is properly the domicile of a person, in which his habitation is fixed, with no *present intention* of removing therefrom." (Conflict of Laws, section 43. "If a person," he observes, "has actually *removed* to another place with an intention of remaining there for an indefinite time, *and* as a place of *final* present domicile, it is to be deemed his place of domicile; notwithstanding he may entertain a *floating* intention to return at some future period." *Idem*, section 46. "Perhaps," says Phillimore, (Law of Domicile, page 14), "the American judges have been the most successful in their attempts, and, from a combination of their *dicta* upon several occasions, we may arrive at a tolerably accurate definition in designating it "a residence at a particular place, accompanied with positive or presumptive proof of *an intention* to remain there for an *unlimited* time." He cites Guier

vs. Daniel, 1 Binney's Reports, 340 in note; Elbers & Kraft's *vs.* The United States Insurance Company, 16 Johnson, 128; and the Francis S. Crouch.

It seems quite clear that when a person removes from one domicile to another, with the intention of residing there for a *limited period only*, he does not acquire a new domicile by such removal and residence. In order to constitute domicile there must be *animus et factum;* the fact of residence must be connected with an intention to remain such a length of time as the law requires to constitute domicile; or at least there must be no intention to return, no *animus revertendi*, at the end of any *limited* period. There can be no domicile without such intention to remain, or the absence at least of any fixed intention to return. "It has been said by some civilians that when a person retained the *intention of returning* to his former domicile, a thousand years would not be sufficient to establish a new one." Phillimore on Domicile, page 14. "All jurists agree," says this author, "that there must be *both intention and fact* to constitute a domicile. The French jurists seem to have rather leant to the extreme doctrine of the Civil and Canon Law, that without intention no length of time can constitute a domicile, to which I shall have occasion to show, in another part of this treatise, the law of England has been less inclined." "It seems, however," he continues, "to be universally admitted by all jurists, that the fact is admitted, *only as proof of the intention*, but then there are certain facts which the law considers as undoubted *evidence of that intention*—facts which may be regarded as speaking a language on this point, at least equally entitled to belief, with any declarations, oral or written, even of the person himself."—Law of Domicile, page 14.

"There must be *animus et factum*," said the court in Craigie *vs.* Lewis, 3 Custer's Ecclesiastical Reports, page 435; "that is the result of all the cases."

In another case the court, after having laid it down "that time alone is not conclusive" as to domicile, goes on to say that, "As a criterion, therefore, to ascertain domicile, another principle is laid down by the authorities quoted, as well as by practice: it depends upon the *intention*, upon the *quo animo*—that is the true basis and foundation of domicile; it must be a residence *sine animo revertendi*, in order to change the *domicilium originis:* a *temporary residence*, for the purpose of health, or travel, or business, has not that effect; it must be a fixed, permanent residence, *abandoning, finally and forever, the domicile of origin; yet liable still to a subsequent change of intention.*" Stanley *vs.* Bernes, 3 Haggard's Ecclesiastical Reports, 110.

Now, what are the facts and circumstances of the case before the court?—The petitioner is a citizen and native of a foreign State—of Maryland. He came to Virginia in June, 1861, soon after the present war broke out. He then had a mother, who must be presumed to be still living there, as we have no evidence to the contrary, and two or three brothers, land owners, and a sister, who are still residing there. He did not leave Maryland, so far as the evidence shows, or there is any reason to believe, *with any intention whatever never to return;* or for any purpose, or to engage in any business which might probably last as long as he lived, or for an unlimited time. He left there in consequence of the disturbed state of the country and his sympathies with the South, which rendered it unsafe, or dangerous and uncomfortable for him to remain there under the circumstances then existing. He often declared that he meant to return to Maryland when he was discharged; though it does not distinctly appear whether he intended to return for the purpose of residing, or on a temporary visit.

He came here, according to the testimony of the witness Browne, for the purpose of avoiding danger at home, and for the purpose of aiding the Confederacy in this war; and he seems to have come with no other view.

Captain Dement says that the attachment of Briscoe, and all the other Marylanders of his company, to their native State was so ardent that he is convinced they meant to return to it when the war was over.

He entered our army as a volunteer for three years only, in August, 1861, and has remained in the service ever since.

From all the facts and circumstances of the case, and from the whole of the testimony, I think the inference a fair and reasonable one, that he did not come here to reside *for life*, or for an unlimited, or, as some of the books express it, for an indefinite time; but that he expected and intended to return at the end of the war, if not at the expiration of the term of his enlistment.

He came here not at all to war against his native country; but to uphold her rights and to fight against the existing government of that country.

He is to be regarded, I think, as an emigrant or fugitive from his native land, on account of civil war: and Phillimore, in the 11th section of the 8th chapter of his work on domicile, headed "The Emigrant," states, in the first paragraph of that section, the law to be, "that the fugitive from his country, on account of civil war, is held not to have lost his intention of returning to it; and therefore still retains his domicile in his native land." For this he cites, along with other authorities, Mascardus, and the case of DeBonneval *vs.* DeBonneval, 1 Custer's Ecclesiastical Reports, 856.

The case before me does not differ at all, in principle, so far as I can discern, from the case of DeBonneval, who, having emigrated from France during the French revolution in 1793, to England, was held not to have lost his native domicile thereby. The learned judge said, in that case, that there was no doubt that the domicile of origin of the deceased was France: for there he was born and continued to reside from 1765 to 1792, and that "he left that country only in consequence of the disturbances that broke out there." "He came here," said the judge, "in 1793; but he came in the character of a Frenchman, and retained that character till he left this country in 1814; for he received an allowance from our Government as a French emigrant. Coming with no intention of permanently residing here, did anything occur while he was resident here to indicate a contrary intention? It is clear to me that, as in the case of the exile, the absence of a person from his own country, will not operate as a change of domicile; so where a party removes to another country *to avoid the inconvenience* attending a residence in his own, he *does not intend to abandon his original domicile, or to acquire a new one* in the country to which he comes, to *avoid such inconveniences*. At all events it must be considered as a compulsory residence in this country; he was forced to leave his own, and was prevented from returning till 1814. Had his residence here been in the first instance voluntary; had he come here to take up a permanent abode in this country, and *to abandon his domicile of origin*, that is *to disunite himself from his native country*, the result might have been different. It is true that he made a long and continued *residence* in this country; but I am of opinion that a continued *residence* in this country is not sufficient to produce a change of domicile; for he came here avowedly as an emigrant, with an intention of returning to his own country as *soon as the causes ceased to operate* which had driven him from his native home."

In this case of DeBonneval the time of residence was at least as indefinite and unlimited as in the case before me, and very much longer.

It was insisted, however, by the counsel for the defendant, that the petitioner, by entering the military service here, had become domiciled here; and the case of Sir C. Douglas, cited by Phillimore, Law of Domicile, pages 73 to 75, is relied on to support that proposition. I have always supposed, however, that what is said in that case about entering the service of a foreign State was only intended to apply to persons who enter such military service for life, or *without* any limitation of time. This, I think, is apparent from what Phillimore says in relation to the case of Mr. Bruce, and some other cases cited by him. "These cases," he says, "are founded upon the *peculiar nature* of the East India Company's service; as long as he was engaged in that service he held an *irrevocable office*, binding him to residence in a certain country. Upon *the same principle*," he continues, "it was held by the House of Lords, in Sir C. Douglas' case, that persons who enter the military service of a foreign State acquire the domicile of that State."

It will be seen, by an examination of the case of Mr. Bruce, that "it turned

upon his residence in India, under an obligation *that was to last during his whole life.*" These cases are cited by Phillimore to illustrate the rule of law, that where a person accepts an office which is conferred for the life of the holder, and *is irrevocable*, the law fixes his domicile in the place where its functions are discharged, and admits of no proof to the contrary; but that where the office is of a *temporary* nature and revocable nature, "the law does not *presume* that the holder has changed his domicile; but allows the fact that he has done so to be established by the usual proof." Phillimore on Domicile, page 61.

In treating of the public officer Phillimore says, "We have now to consider the domicile of the Public Officer of the State. The existing French court has laid down the following rules respecting the domicile of the officers, civil or *military*, employed in the public service of the State.

"1. If the office be *for the life of the holder and irrevocable*, the law fixes his domicile in the place where its functions are to be discharged, and admits of no proof to the contrary. For the law, says Denisart, admits of no proof contrary to an indispensable duty.

"2. If the office be of a temporary nature and revocable nature, the law does not presume that the holder has changed his original domicile; but allows the fact to be established by the usual proof." Law of Domicile, pages, 61, 62. He then proceeds to illustrate these rules by decisions of the English courts; so that I presume he does not regard them as confined to France, but means to lay them down as general rules of law, which are established and prevail in the English courts as well as in France. If so, I see no reason why a man who enlists in the military service of a foreign State for a year or three years, should be deemed to have changed his domicile thereby, any more than if he enlists in the military service of his own country.

If a native of England, domiciled there, would not be deemed to have changed his domicile by enlisting and binding himself to serve for three years in Ireland, why should he be presumed to have done so, if he agrees to serve for three years in France?

Indeed I can see no difference in this respect between an agreement to serve in the army of a foreign country for three years, and the acceptance of a *civil office* there for three years or one year.

It would depend, I suppose, upon the intention of the party, in either case, whether he had changed his domicile or no; and I am entirely at a loss to discover by what process of reasoning we can arrive at the conclusion that a person *means and intends* to reside in a country *during his whole life*, from the naked fact that he agrees to serve there, or to hold an office, either *civil or military*, there for three years.

A person who is exiled to a foreign country for a term of years, is not regarded as having changed his domicile in consequence of having been so exiled; Law of Domicile, page 88; though if he be banished for life his domicile is thereby changed. The reason is that, in the first case, he is not presumed to have abandoned his intention to resume his original domicile when his banishment is at an end; while, in the second case, there is no room for any such presumption.

The servant who contracts to serve a foreign master for a limited time, is not deemed to have lost his native domicile by such service.

Whether he is to be considered as having abandoned his original domicile in such case, *depends upon his intention, which is to be inferred from circumstances*, as in other cases. Law of Domicile, 58.

The student who goes to a foreign University to pursue his studies there for a limited time, does not lose his domicile thereby.

Why then should the soldier who agrees to serve for a year in a foreign country be *presumed* to have abandoned his domicile of origin for that reason, and no proof be admitted to the contrary? It is certainly true that a person is *prima facie* presumed to be domiciled where he is found "living" or "residing." Wildman on International Law; Bempde *vs.* Johnson, 3 Vesey, 198; Bruce *vs.* Bruce, 2 Bos. & Pull., 229 in note, and Ennis *vs.* Smith *et al.*, 14th Howard, 423.

In the case before me, however, that presumption is, in my opinion, suffi-

ciently rebutted by the circumstances of the case and the testimony in the cause. I am satisfied that the petitioner only intended to stay here until the present war should be over and he could return to his home with safety. He can no more be deemed to have abandoned and lost his native domicile on this account, I apprehend, than DeBonneval was; who left his country amidst the storms of the French revolution in 1793, and did not go back to France till the restoration of the Bourbons.

If a foreigner volunteered to serve in our army for three years only, it is not possible, I think, to found, upon this voluntary act of service alone, a legal right to compel him by force to serve for three years or for an indefinite period longer.

If so foreigners will be extremely cautious how they volunteer in our service hereafter.

In accordance with these views I shall order the discharge of the prisoner—John H. Briscoe.

After the judgment and discharge of a few of these men—wishing to avoid further excitement and discussion—I addressed the following letter to the President:

RICHMOND, OCTOBER 12th, 1864.

To His Excellency, President Davis:

SIR,—I have the honor, very respectfully, to enclose you a paper containing the opinion of Judge Halyburton, on the Maryland cases, to which I respectfully called your official attention previous to litigation.

I send you this opinion as an act of courtesy and respect. It is proper, after what has occurred, and is now a part of your official history, that I should do so. Your official course, in this matter, has won the confidence and elicited the admiration of these men; and I assure you they are "true men." I have not overdrawn their character.

I respectfully suggest, as a matter of *policy* as well as *justice*, that the judgment of the Confederate Court be so far recognized and respected as to order the discharge of those men, whose cases are not yet specifically adjudicated. *From you, such an order will be, in my opinion, worth ten thousand men to the service.*

Very respectfully,

J. H. GILMER.

To this letter no reply was received. And each of these soldiers was necessitated to sue out his special writ. And this in the face of the established fact, that *the facts of his case had been* properly certified and vouched by his commanding officer, which, in military practice, is regarded as *conclusive as to facts.*

Such, sir, is the history of these cases. It speaks in trumpet tones, and should awaken the dead spirit of the Constitution. Virginia's honor, plighted faith was involved. And yet a *Virginia* Secretary violated her pledge, stained her escutcheon, and sought to shroud the legal remedies in the folds of his own perturbed will.

You, sir, have long known my views as to Maryland and Virginia. They are candidly expressed in my argument. What I have there uttered will, in a few years, be history. One of two results must now occur on this continent. The ultimate establishment of a vast consolidated, absolute government—based on fraud and sustained by military force: or *three* separate governments—independent, the one of the other. *Two rival governments cannot exist.*

To prevent the first alternative, State sovereignty must be sustained; and to secure State sovereignty, Maryland and Virginia must be re-united. This is a mere question of time. You nor myself may live to see it. But the sooner the fact is clearly discerned and practically developed, the better. Remember sir, you deliberate for posterity.

Respectfully,

JOHN H. GILMER.

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