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A Brochure.

During the War
and
After the War.

Second Edition.

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With the compliments of
John Scott of Fauquier
Warrenton Va
February 1900.



During the War



After the War.

The True Index, Warrenton. Va.

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Second Edition.

A Brochure for Private Circulation.

During the War

After the War.

Inscription.

The object of this compilation is to inform my grandchildren that I, their grand-father, in obedience to an imperative sense of duty, was engaged throughout its continuance in the arbitrament of arms, between the two sections of the Union, serving, as best I could, in the army of Northern Virginia, in turn commanded by Generals Beauregard, Joseph Eggleston Johnston, and finally the illustrious Robert Edward Lee; also that, as one of the Commonwealth's Attorneys, I was an actor in Virginia's memorable encounter in the Federal Courts with her British Creditor—"the Coupon Controversy"—an event that deserves a place in the memory of every Virginian. **As a memento of our Comradship** I have the the honour to address the Brochure to the glorious Black Horse, in association with whom, before the war, as their First Captain, I learned to handle cavalry. It was prior to the time at which I offered my sword to President Davis at Montgomery, when the Southern Confederacy was but a germ.

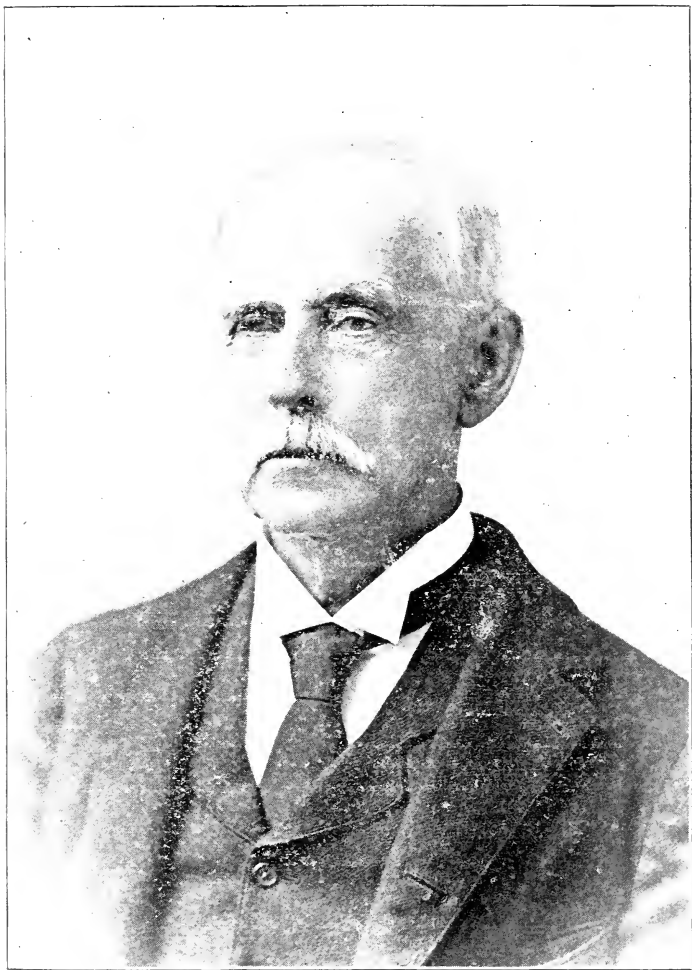
JOHN SCOTT, of Fauquier.
Colonel of Cavalry Confederate States' Army.



The Peace Conference.

The glorious object of the Convocation at the Hague has been attained. Mediation has been recommended and a Court of Arbitration provided to whose just decisions nations will submit their controversies. Disarmament is a consequence. This blest condition comes from the Glad Tidings announced in the silent watches of the night to the shepherds of Judea: "Glory to God in the highest and on earth peace." It is the event of the centuries and mankind will ever revere and bless Nicolas the Second of Russia who causes the beneficent act.





Col. John Scott, of Fauquier.

The Oakwood Family.

To enable those for whom this Brochure is intended, already widely dispersed, to recognise their relations and know from whom they are sprung I attach the names of my parents and their adult children.

Honorable John Scott of Oakwood, Fauquier county, a Judge of the General Court of Virginia and *ex officio* the Judge of the Judicial Circuit in which he resided and his wife, Mrs. Elizabeth Blackwell Pickett Scott a daughter of Martin Pickett Esquire, an extensive planter and slaveholder of Fauquier county and Lieutenant Colonel of the 3rd Virginia Infantry of General Washington's Army of the Revolution. [He was brother to Mr. George Pickett of Richmond from whom was descended General George E. Pickett, called "the Game-Cock."] Their adult children, in the order of seniority, were: Elizabeth Blackwell Scott who died at the age of twenty years unmarried an early victim of misunderstood and mistreated typhoid fever. Honorable Robert Eden Scott; [Major Robert Taylor Scott of Warrenton, Va., was the oldest child of Honorable Robert Eden Scott. He was, throughout the war of the Sections an officer in the Army of the Confederate States and, at the period of his death, August 5, 1897, was Attorney General of the State of Virginia. Honorable R. Carter Scott of Richmond, his son, was chosen to complete his father's unexpired term of office.] Mrs. Maria Martin Scott Morson wife of Arthur Alexander Morson a member of the Richmond Bar; Mrs. Margaret Gordon Scott Lee, wife of Robert Eden Lee Esquire a planter and slaveholder of Fauquier county, son to Honorable Charles Lee Attorney General to President Washington's Administration and uncle to General Robert Edward Lee, Commander of the Army of Northern Virginia; Colonel John Scott of Fauquier; Doctor Martin Pickett Scott Professor of Biology and other branches

of science in the Maryland Agricultural College. Doctor Scott received his medical education in the City of Paris and throughout the War of the Sections was a surgeon in the Confederate Army; Charles Francis Scott who died at the age of eighteen years a cadet of the Virginia Military Institute.

Judge Scott was the son of Reverend John Scott of Gordonsdale in Fauquier county and his wife Mrs. Elizabeth Gordon Scott daughter to Professor Thomas Gordon of Aberdeen University, Scotland, where Reverend John Scott received his education. At the close of his college term Reverend John Scott was ordained a minister of The Established Church of England for the Colony of Virginia by the Bishop of London. Judge Scott was younger brother to Professor Robert Eden Scott of Aberdeen University, who as an infant had been left with his Grand Parents when his father and mother sailed for Virginia on a three months tedious voyage. Thus it happened that the younger brother became a Virginia Judge and the elder an Aberdeen Professor. A Tablet in Latin was placed in the Cathedral of Old Aberdeen to the memory of Professor Robert Eden Scott shown me by Principal Cambelle of the University who did me the honour to transcribe it for my use.

[For further information see Doctor Harden's Virginia Genealogies.

During the War.

A Ruse of War. A Brilliant Exploit.

The following article was published in the Philadelphia Weekly Times, one of the most broad-minded journals of the country, soon after the war, and was afterwards incorporated in "The Annals of the War by the principal participants North and South." We omit notes verifying statements made, because the body of this article takes more space than we can afford in justice to readers in quest of current topics and local news. We take pride in copying the article because a chief actor is a Fauquier man now a last year's leaf, as it were, bronzing the foliage of Spring. When Col. Scott returned from his expedition to Butler's camp, a citizen of Petersburg, the Cockade Town of Virginia, said to him: "If that service had been performed in the Northern Army they would have made you a Brigadier General." To which Colonel Scott modestly replied: "Such things are quite too common with us to receive or to merit attention."—TRUE INDEX.

When General Butler, in the Spring of 1864, landed, at City Point and Bermuda Hundreds, with an army of thirty thousand men, accompanied and guarded by a fleet of iron clads and gunboats, why he did not, at once occupy Petersburg, then without a garrison, to possess which afterwards cost so much blood to the invading army, is a question the answer to which is not obvious. Petersburg lay on the line of railway leading south from Richmond, distant 22 miles. It was twelve miles from City Point, situated at the junction of Appomattox and James rivers, and was connected with Petersburg by a railroad, a navigable river, and a broad highway running through a level country, not occupied by hostile forces. Colonel John Scott of Fauquier was the officer employed by Gen Pickett in the production of causes which resulted in the preservation of Petersburg from capture, and an account of his action is necessary to answer the question stated above. It will display some of the hazards and possibilities of war, on which often turn

important events, and will afford a modicum of information to the historian of the future who would gather up all the facts to enable him, with an impartial pen, to relate the story of the great war of the American Sections, the product of an unnatural Union and a prostituted Constitution. Moreover it will do justice, in a very trying emergency, to the conduct and valor of Major General George E. Pickett, a West Point cadet and an able commander in the renowned Army of Northern Virginia, whose reputation is very dear to the South. To render this incident intelligible to one not informed of the military facts to which it refers, and out of which it grew, it will be necessary to state the situation in the Department of North Carolina, in which Petersburg was included, or so much of it as affected that point. Though General Pickett had been relieved of the command of the Department he was still in Petersburg when Butler dropped, as it were from the clouds, on City Point. The troops for the defence of Petersburg had been transferred to North Carolina, excepting a single regiment of Clingman's brigade of Infantry, numbering about six hundred men; nor had any part arrived of the soldiers of Beauregard, who had succeeded Pickett in the command. Thus the defences of Petersburg, constructed with cost and skill, were left open to occupation by the Federal commander. Why so important a point was left unguarded, even for a day, has never been explained to the public. Colonel Walter Harrison, the biographer of Pickett's men, states that, as early as the preceding November, Pickett had penetrated the enemy's design to make, by James river, an expedition against Petersburg and had held a conference with the Confederate authorities in relation to it. He had even carried his representations to General Lee and had been referred to Beauregard, with whom he had consulted at Weldon. Colonel Harrison continues: "But the expedition at this time was put on foot, much valuable time was wasted and the troops, which at once should have been ordered to Petersburg, were kept in North Carolina, doing little or nothing, while Pickett, in Petersburg, was left

with merely a handful of men." He then adds: "Beauregard was in no way responsible for this. He had no control of the troops, and, I have understood, strongly urged their being hastened to Petersburg to support Pickett." But the danger from the lower James was appreciated not alone by Gen. Pickett. A gentleman of the city, not connected with the army, a short time before the descent on City Point, had pointed out to Colonel Scott, on one of the military maps of the day, its exposed condition from the river, and predicted that Bermuda Hundreds would be the point which the enemy next would strike.

A short time before the occurrence of the events about to be related, Colonel John Scott, but recently returned from Trans-Mississippi, where he had been promoted to the rank of Colonel, had reported to Gen. Pickett for duty. At the time of his arrival Petersburg was vacant of soldiers, everything was in repose and he occupied the leisure by inspecting the fortifications, and in other ways that pleased him. At an early hour while he was engaged with Schiller's "Thirty Years War," an officer of the staff summoned him to report without delay to Gen. Pickett. He found everything astir at Head Quarters, and was informed by General Pickett that Butler had occupied City Point, and that, as he was the only cavalry officer on the ground, he must take a command of cavalry, to reconnoitre the enemy's position, to remain close to his outposts, and, if possible, to induce the belief that an attacking force was at hand; but that he had no troops, and that Petersburg must fall into his hands, unless Butler could be entertained with this false opinion until Beauregard could arrive from the South. The General was asked where the command of cavalry was to be found? He responded that he had no cavalry, but would exert himself to get together a band of mounted citizens, and with these the duty must be performed. With characteristic energy the General set about to get together such a body as he desired and in so chivalrous a community, it was not long before Colonel Scott found himself at the head of thirty horsemen armed with such weapons as each man could provide.

It proved a difficult thing, on the spur of the occasion, for the commander of the party to procure a suitable horse for his own use, but one finally was obtained a superb animal, in the highest keep, recently bought from a James river planter, and named "Planter," but for which a price was agreed to be paid large even in the depreciated currency of the Confederate States. A cavalry man, a very gallant soldier, at home on a furlough, was the only enlisted man who joined the expedition and was the only one killed on that tour duty. As the mounted party passed outside the City, on the road leading to City Point, the regiment North Carolina infantry was seen camped on the right, as if thrown forward to oppose Butler's army, and what guns there were were mounted on the fortifications that side. It was evident that the intrepid Pickett was not dismayed at the storm-cloud which lowered Petersburg.

Towards the close of the day the expedition came in view of the enemy's out-posts. The work of observation was at once begun, the officer in command taking care to make as deceptive a display of his numbers as the lay of the ground permitted.

From early morning these tactics were repeated the next day and the next. There was a barn stored with forage equidistant between the pickets and the position held by the Confederates. Butler would occupy the house by day, but his soldiers would withdraw at nightfall, when Pickett's volunteers would obtain from it food for their animals. When the expedition first drew near the Federal out-posts Gen. Roger A. Pryor, a successful lawyer and brilliant advocate at the New York bar, [now a wise and trusted Judge,] who had joined as a volunteer, was solicitous to engage them. But the officer in command would not allow it to be done. He offered no explanation of Pickett's designs and Gen. Pryor retired from what appeared to be, purposely, a tame and inglorious service. A collision of his loose array with disciplined soldiers, Colonel Scott thought would disclose, to the acute perception of General Butler, the deception he was seeking to impose on him. In this attitude things continued until the third or

fourth day, (Pickett said that the expedition was absent five days) when a reconnoissance in force preceded by skirmishers issued from the Federal lines and advanced on the highway leading to Petersburg. That morning the officer commanding the Confederates had been told by a citizen, who had come from his home to witness the outcome of those singular movements, that Butler's colored soldiers had visited the vicinity of their camps and had learned, from the resident negroes, the insignificant force opposed to them. It was evident to the officer then that the Federal reconnoissance had been sent out to discover the truth, and Colonel Scott replied to his informant: "What was true yesterday is not true to-day, and we are prepared now to receive General Butler's reconnoissance." The volunteers had been broken into many parts and were scattered along the enemy's front. With one of these, consisting of three or four men, the leader retired before the skirmishers until he reached the point where the rail-road crossed the highway.

There Colonel Scott halted, and after placing his men in a protected situation, returned to take a nearer view of the advancing skirmishers, an inexcusable act, for already he had won the prize for which he had been playing the game of war. His horse was fatally wounded in the head by a bullet from the skirmishers, but procuring another, he continued the retreat as before. As soon as the railway was crossed a dense body of wood was entered and it was observed that cavalry had been thrown before the skirmishers and were making ready to charge. It then became a contest of the spur, and the Southerners reached the Confederate outpost in safety. A round of musketry emptied a good number of saddles, and General Butler's reconnoissance retreated to his camps. The citizen soldiers did not reassemble, for each man was conscious that Pickett's design had been carried into effect, and that Petersburg was safe. When Colonel Scott reported to General Pickett that the expedition to Butler's camp had been successful he was received very cordially, though Pickett, indeed, by the arrival of Beauregard, was the first to be informed of the success of his own designs. Had Butler been apprized of the

situation at Petersburg, during the interval between the occupation of City Point and Beauregard's coming, fair Petersburg would have yielded herself his captive and Richmond, in an unguarded point, been exposed to attack. His first object was to sever the Southern connections of Richmond, as appeared by the attack on Port Walthall Junction, repulsed by the gallant Haygood, as well as by the attempt of Cautz's cavalry division on the railroad running South from Petersburg.

Soon after these occurrences Colonel Scott was sent to take charge of the forces stationed for the defence of High Bridge, spanning the Appomattox near Farmville, composed of three hundred reserves—men over, and youths under, the military age. When General Kilpatrick, with fifteen hundred Federal cavalry, reached Burksville, ten miles from High Bridge, with the purpose to destroy that link of the railway between Richmond and Lynchburg, Colonel Scott again employed with entire success but under widely different circumstances, the stratagem of war which had been imposed on General Butler, and so preserved that stately edifice from destruction. Doctor Thackston; the distinguished dentist, and honored citizen of Farmville, having been embodied in the reserve branch of the Confederate army, was a most intelligent and efficient Aid de Camp on the occasion.

A NOTE.

When, after the termination of the Civil war, Colonel Judson was a visitor at Warrenton, Va., he expressed the wish that Colonel Scott would call to see him at his hotel, which as soon as Colonel Judson's wish was communicated to him, Colonel Scott was very glad to do. Colonel Judson then informed him that he was with General Butler at City Point, the time of his landing, in command of a regiment of horse and, along with other officers, had entreated the General to allow them to capture, or drive away the Confederates that were hanging about his pickets, but the General refused his permission, saying: "He was unwilling to expose his men to the masked batteries of the Rebels."

Letter from Dr. Thackston to Col. John Scott.

FARMVILLE, VA.. Sept. 14th; 1894.

Colonel John Scott, Warrenton, Va.

DEAR COLONEL SCOTT:—I hasten to explain and apologize for an accidental delay in acknowledging a printed copy of General Cabell's letter, and your own account of the masterly strategy which under your direction and supervision saved from the enemy High Bridge and the City of Petersburg.

Your enclosure was received while I was too much indisposed to write, or do any thing else, and in some way was misplaced and only just recovered from a package of letters and papers filed away to be attended to on my recovery.

I beg to thank you for the two papers, which I have read with great interest and satisfaction, and especially for the handsome personal allusion you made to the service it fell to my lot to render you at High Bridge.

I don't exactly understand the need of General Cabell's letter. Has any one dared attack your military record? If so you may spare yourself any concern or solicitude, for there are hundreds and thousands of old Confederates yet left who stand ready to vindicate your patriotism and courage in the field and your abilities and skill as a commanding officer in the armies of the Confederacy. Had the war lasted a year longer, your office and title would have been General instead of Colonel of a regiment. Of this I feel assured and satisfied.

Are you going to write a book of your campaigns? If you are set me down for a copy.

Again thanking you, my dear Colonel, for your favor and kind remembrance, and with every good wish for your success, health and happiness, I again have the pleasure of subscribing myself very truly and faithfully your friend and obedient servant.

W. W. H. THACKSTON.

NOTE:—As an explanatinn to Dr. Thackston we add that General Cabell's letter was written to explain the military reason because of which the rank of Colonel was conferred on Colonel Scott in Trans-Mississippi-

the power to do which had been conceded to the Commandant of that Department, by the military authorities in Richmond, after they had lost control of the Mississippi, and communication had become irregular and difficult.

Editor of Index.

General Cabell's Letter.

General W. L. Cabell—a member of the honorable and distinguished Cabell family of lower Virginia, and a graduate of West Point—when the civil war began was Quarter-Master General of Beauregard's command at Manassas, a position of peculiar responsibility in the rapid organization of the first army to breast the onset of the great Northern power. Later General Cabell was promoted and was transferred to an infantry command in the South where he won fame on many a hard-fought field for conduct and gallantry. Finally he was sent to the Trans-Mississippi Department of the Confederate State where he increased his high reputation as a soldier. His superior officers were General Holmes, Commandant of the State of Arkansas, and General E. Kirby Smith, the Military Chief of the entire Department West of the Mississippi, consisting of the States of Arkansas, Texas and the greater part of Louisiana. After the Federal gunboats had obtained control of the Mississippi river the Department of General E. Kirby Smith, for the purposes of the war, was completely severed from the Confederate States and was thrown on its unaided resources. It was a difficult thing then for a Confederate soldier to cross the river, policed night and day by gunboats, and its banks patrolled by Federal cavalry, with spies and informers everywhere. Then it was that the power to bestow military rank was conferred on the Commandant of the Department, thus sundered from the Confederacy, which was generally done on recommendations originating with the officers of the several commands.

When the war closed General Cabell removed from the vicinity of Fort Smith, where his family had resided, to the city of Dallas in Texas, of which repeatedly he has been elected Mayor, a mark of the honor in which

he is held by his neighbors and follow-citizens. The following letter, addressed to the Commonwealth's Attorney of this county, explains itself; and shows the appreciation as a soldier in which he was held by his commander

DALLAS, TEX., Dec. 28, 1890.

Col. John Scott, Warrenton, Va.:

Dear Colonel.—Your letter of the 16th came to hand to-day. It gave me much pleasure to receive it, and much more to know you were in the land of the living.

It has been a long time since we parted, and I would state from memory that you reported to me early in the spring of 1863, probably March or April, as Major. Needing an officer of your experience and military knowledge to take charge of one of my important out-posts, I found trouble on account of your rank, and in order to make use of you as an officer much needed I made you a Colonel and put you in command. I reported it to Major General Holmes in command of the Department, and it was approved by him and forwarded to General E. Kirby Smith who confirmed the appointment, as I always understood he had authority to do; and in a personal interview with both Gens. Smith and Holmes your appointment was referred to, and both reiterated their approval. After my regiments were all filled with officers and and after my command was moved to South Arkansas, you applied to go to Virginia as Colonel, and was allowed to go as such. [Colonel John Scott desired to return to Richmond by reason of erroneous information that the vouchers of a recruiting account had been lost.] I can say you did your duty as a brave, true and patriotic soldier; and I hope you may live many years to come. As to this being an irregular warfare, I had one of the finest brigades in the Confederate service—as well drilled and disciplined as any brigade in the army—fought as many hard battles as any one brigade—killed more Federals, white, black and red, than any one brigade in the Army. The number of fights and the number of men lost in battle will prove what I say. Look at the losses of my Brigade alone at Back Bone Mountain, Poteon River, Arkadelphia, Wolf Creek, Spoonersville, Promis L'Anne

Poison Springs, Elkins Ferry, Marks Mill (where I captured a train of nearly three hundred wagons, a battery of artillery—Robb's Indian battery, six pieces—and fourteen hundred prisoners.) At Poison Springs we captured, Marmaduke and myself, a train of 200 wagons, two pieces of artillery, about fifty prisoners, and killed nearly four hundred, principally negroes of the 1st Kansas, colored. Also Loutonville, Glass Village, Pilot Knob in Missouri, Franklin, Jefferson City, Lexington, La Mine, Independence, West Point, Missouri, the Little Blue, Marrie De Cygne, Mine Creek in Kansas where I was captured in the open prairie. Beside these the Brigade was in a great number of skirmishes. I am inclined to think that this is not the proper time for old Confederates to hunt up flaws, if any ever existed, in the rank of those men who went out to save their country. Yes, sir, you are a Colonel, with all the rank that could be conferred on you by Kirby Smith on the recommendation of General Holmes and General Cabell; and I hope that you will live many years as pleasantly with your family and friends as you served with me.

Will try and see your sons and hope that when you come to Texas that you will pay a visit at my home in Dallas. Please give my respects to my old friends, especially General Payne. Wishing you and yours a merry Xmas and a happy new year,

I am your old friend,

W. L. CABELL.



First Danassas.

CLOSING SCENES OF THE BATTLE—CAVALRY PURSUIT.

The Dispatch has received the following, which is "inscribed to the ladies of Richmond for their generous fidelity to the lost cause."

DISPATCH.

WARRENTON, VA.

The Editor of the Richmond Dispatch: The subjoined letter, which I request you to publish in your widespread and metropolitan journal, is from the artistic pen of Captain William Fitzhugh Randolph of Greenville.

Mississippi. Capt. Randolph, himself a gallant Confederate officer, is brother to Bishop Randolph of Virginia, and of the military and historic family of the very distinguished Captain Buckner Magill Randolph, of the Confederate infantry, as well as kinsman to the courageous and accomplished Colonel Robert Randolph, of the cavalry corps attached to the Army of Northern Virginia, but who sleeps now with the unnumbered dead of our civil war.

JOHN SCOTT, of Fauquier,
Colonel of Cavalry,
Confederate States Army.

GREENVILLE, August, 1895.

COLONEL JOHN SCOTT:

My Dear Colonel:—I hope you will excuse the delay which has occurred in my answer to your letter, received some weeks ago, which has been occasioned, first by my absence from home, and then by a spell of fever, from which I have only recovered in the past few days.

The extract which you give from Colonel Munford's report (see for the report itself, page 534, Official Record of the Union and Confederate Armies, Series 1, Vol. 11) is so entirely inaccurate and at variance with all my own experience, that I think it better to supplement your own narrative by giving a brief account of my observation of some of the incidents of that memorable day. I did not at that time, as, perhaps, you are aware, belong to any organized command, but had been, in company with a few choice companions, scouting in front of our army, and, on the day of the first battle of Manassas, acted as a sort of free lance, taking in the battle from the various stand-points, which gave the best promise of interest and incident. It is well understood now that we were, on that day, out-generaled at every point. The Federal commander, by a sham attack on the 18th, had masked his real design, while he marched the bulk of his army around by Sudley Mill, and thus precipitated a superior force upon the unprotected left flank and rear of the Confederates, turning our entire position and rendering absolutely useless all the defences which

had been erected at Manassas, the day being only saved by the indomitable courage of a few confederate brigades, who fought with a persevering tenacity which has been rarely equaled and never excelled on any of the great battle-fields of the world. Our army numbered nearly 30,000 and less than 10,000 of that number, through that long and terrible day bore the whole brunt of the Federal onset. Step by step, contesting every inch of ground with desperate courage, our line was, slowly but steadily, driven back by the sheer weight of the Federal advance, outnumbered, as they were, almost ten to one.

HEINSELMAN'S REPORT.

Heinselman, who commanded a division of the Federal Army stated in his report to the department at Washington, with grim satire, that their defeat was not the result of masked batteries, or overwhelming numbers, but because regiments repulsed brigades and brigades drove back divisions. But, notwithstanding this fact, the Confederate line was gradually forced back up the long slope leading to the Henry House. When reinforced by a few regiments of fresh troops, which had been hurried up from Manassas, the thin Confederate line closed up for a last stand on the apex of the ridge, which overlooked the stone-bridge and the whole ground over which the enemy had been advancing. I stood close behind, looking at the long solid ranks of the enemy, as they were massing for a final assault, for, as I glanced along our line, it seemed almost certain that those worn and tired soldiers who had fought through the long, hot day, their ranks depleted to one half of their original strength, would surely be overwhelmed at last by the impact of numbers. Bee and Bartow had fallen. Of the Fourth Alabama which had entered the fight 850 strong, more than 400 had gone down on the bloody field, and all that were engaged had suffered in the same proportion, but, with ranks unbroken, resolute, and dauntless still. Johnston and Beauregard both were urging and encouraging the troops, and fully exposed to the whole Federal fire, the minnie-balls coming thick

and fast. Jackson stood near his brigade, with cap drawn close over his eyes, stern and silent, awaiting the catastrophe, and rendered rather more conspicuous by a white handkerchief wound around his left hand which had been slightly wounded by a bullet.

SUCH THE SITUATION.

Such was the situation when looking to our left. On the right flank of the Federal advance, and a little in its rear, we saw the gleam of bayonets on the crest of the hills. It was but a single brigade; 3,000 strong, led by Kirby Smith, who, hearing the steady firing from the cars at Gainesville, had come across the country straight for the battle-field. As the brigade poured over the crest of the hill the pace was quickened to a double-quick, rushing down on the enemy's flank, firing and shouting as they came. The Federal line halted, then wavered, wheeling a little to the right, as if to meet this fresh enemy, but their hearts seemed to fail them, before that onward rush, and the right of the line began to crumble like a rope of sand. Then it was that I saw Jackson raise his wounded hand and point down to that wavering line. Those worn and tired soldiers needed no second bidding. They knew their time had come at last, and, apparently as fresh as when the battle opened in the morning, those young volunteers leaped like bloodhounds down the hill, and closed with the foe.

The end had come, and the battle was won—a victory as amazing as it was unexpected. A moment before the advance of the solid blue lines seemed irresistible; now in the wildest panic, the whole field covered with a host of disorganized fugitives, flying as if all the devils of the lower regions were behind them. I was on many a hard-fought field afterwards, but never saw a scene like that, musket, knapsack, everything in fine that impeded flight, was thrown away, and the disorganized, panic-stricken masses poured like an avalanche across the turn-pike, over the Stone-bridge, into the woods and fields beyond.

THE PRESIDENT.

At this juncture I was standing not far from the Henry

house. Generals Johnson and Beauregard were with President Davis, who hearing that the Confederate army was retreating, had come in a special car from Richmond, and had just ridden upon the field. Capt. Davis, at the head of the Albemarle Troop of cavalry, rode up the hill and was immediately ordered in pursuit. As the troop was passing near me Archie Smith of Winchester, a member of the company, and a near relative, called to me to join them, which I was very glad to do. We passed close to Mr. Davis, with the two Generals, who raised their caps to us, and giving them a rousing cheer, we rode on. At first our progress was slow as we came up with the two regiments of South Carolinians, (Kershaw's Brigade), who together with Kemper's Battery, had been ordered to follow the enemy. We crossed the Stonebridge, on the Warrenton pike, about a half mile beyond the hill. At this point the two regiments of infantry halted on the left of the road, and the Albemarle company formed on their right. Kemper's Battery then unlimbered, the guns were run out to the front, and commenced firing down the pike at what appeared to be a receding cloud of dust. The firing was kept up about fifteen minutes, until all signs of the fugitives had disappeared, resistance on their part having entirely ceased.

· NO ORDERS.

No orders being received to continue the pursuit, the Carolinians remained where they had halted. Captain Scott, whom I then saw for the first time, rode out into the road, and called for volunteers to continue the pursuit. Captain Davis responded that his troop was ready. The gallant Captain Scott did not wait a moment, but dashed on, followed by Captain Davis's sixty men. Captain Scott, rendered conspicuous by a white havelock, rode considerably in advance. Finding no obstruction to our advance, our pace was greatly accelerated. Occasionally a few of the troopers would drop out of ranks, gather up some of the flying enemy, and start for the rear; but for the most part very little notice was taken of these fugitives, as they scattered right and left, we, riding through and over them, looking for better game.

About sunset we descried in the distance a cloud of dust, evidently made by a part of the flying enemy. We spurred our horses to a furious gallop, and dashed down upon them. We soon found what they were, some ten guns, I believe, including the black 32-pounder, called "Long Tom," which was to play such havoc with the Confederate ranks! The cannoneers and drivers made a desperate dash with their guns at Cub Run bridge, which was immediately in their front. But, crowding too rapidly on the bridge, it broke under the weight, and baggage-wagon, ambulance, caison, and all fell through into the stream below, forming an impassable barrier, which blocked the way and effectually prevented further passage. The cannoneers and drivers leaped from their guns and darted into the bushes on either side of the run, leaving everything an easy capture.

A TEMPTATION.

The temptation was too great for the average cavalry man, and Captain Davis himself with most of his men, dismounted and commenced work on the tangled wreck. I myself, was about to dismount having an eye on a fine McClellan saddle, which I wanted to secure, when Archie Smith, who was still at my side, turned to me and said: "Yonder goes the 'White Havelock, Will!'" "All right," I replied and we dashed after Captain Scott who was crossing the stream above the wreck and debris, waving to the men to follow him. About fifteen of Davis's men followed us, but the most of them remained behind to work with the guns and secure horses; saddles, and other plunder. We joined Captain Scott on the other side of the run, and continued our wild ride faster than ever. We soon came to the foot of the hill upon which the little town of Centreville is situated. Crossing a small stream at the base, we rode rapidly up the slope, and on the crown of the hill came in immediate contact with a long blue line of Federal infantry, drawn up in battle-array. Riding up close to them Captain Scott shouted, "Surrender!" For a few seconds they seemed to hesitate, but hearing no sound

of any advancing along the turnpike in our rear, an officer turned to his men and ordered them to fire. Our little band retreated at once and dashed down the hill rather faster than we had come up, receiving as we went the whole fire of perhaps three hundred infantry. Not a man, however was hurt, and we were soon out of sight hidden by the shades of night.

A WHOLE BRIGADE.

I ascertained afterwards that the troops we encountered on the heights of Centreville were a brigade, under Colonel Miles, which had never been in the fight, but had been left to cover the retreat of the Federal army.

With reference to the capture of the artillery and spoil at Cub Run bridge, the assertion that any command, except the Albemarle Troop, led by Capt. Scott, had anything to do with it is without foundation. No other cavalry was in sight or hearing at the time, and had it not been for the headlong, furious charge of these sixty men, all these guns, undoubtedly, would have crossed the bridge in safety and been on their way to Washington long before any other command had reached the scene. To Captain Scott, therefore, and to him alone, the sole credit of the capture is due. The only part in the affair performed by Colonel Munford and his command was in manual labor, required in hauling the cannon out of the wreck, securing the horses, etc.—Had the other cavalry leaders exhibited the same energy, daring and enterprize which characterized Captain Scott, it is not at all improbable that the cavalry arm of the service alone might have ridden to Washington that night. But satisfied with what had been done, the army remained quiescent, our generals not even knowing, until next day, that the enemy had disappeared. Thus ended the first battle of Manassas, memorable not only for the marvelous rout and panic which characterized its close, but for the inconsequential result which followed so complete a victory. That an army of 30,000 men, flushed with victory, enthusiastic, clamorous to advance, without an organized force in its front, capable of resistance, should have lain in camp for six long

months without making the slightest effort, is almost incredible, and altogether past human understanding.

Had the army advanced the next day, or even the day after, Washington would have fallen almost without a battle. We would have taken possession of Maryland and the whole face and character of the war would have been changed. That no attempt was made to do this exhibits, on the part of our generals an incapacity and want of enterprize which has no parallel in the annals of war. General Johnston had visions of Patterson appearing on his flank and rear, and of frowning batteries on Arlington heights, when the truth was that Patterson had already crossed the Potomac, and his army, ready to disband, was fast disappearing over the Maryland hills, while the batteries on Arlington Heights had no existence at all.

Had the energy and skill which distinguished the campaigns of Lee and Jackson been shown by our generals, who commanded that day, then would the First Manassas have been ranked among those great battles of history which have decided the fate of nations and exercised a controlling influence on the civilization of a continent.

W. F. R.

Major Gordon's Letter.

AT FIRST MANASSAS.

THE CAPTURE OF THE GUNS AT CUB RUN BRIDGE.

A LETTER TO COLONEL JOHN SCOTT.

CHARLOTTESVILLE, VA., FEB. 12, 1896.

COLONEL JOHN SCOTT, WARRENTON, VA:

My Dear Colonel:—On Monday I received your letter of the 9th instant, with your address to the Junior Albemarle Light Horse, and your report of the effective service of the old company at the First battle of Manassas, with Captain Randolph's letter, as a companion-piece, and read them all with pleasure and interest.

This morning I called upon Captain Nelson, of our new company and presented him the papers, as you requested, but after reading them aloud to him I begged the privilege of retaining them for a day or two, as I am anxious to read them to a few of my old comrades, who are living in town, before they are published, which Captain Nelson proposed to have done.

I hope you will pardon my delay in acknowledging the receipt of your communication, addressed to the Mayor of our city. These papers were handed me by a member of our camp, about a week ago, with the request that I would attend to the matter. It was at the commencement of the February term of our Circuit Court, when I was very busy, and could not give the subject the consideration and attention I desired, and which it deserved.

I have not, however, been unmindful of my duty in the premises, for I have talked the matter over with several of my old comrades, whom I chanced to meet, and so far, every one of them has substantially sustained Captain Randolph's letter, and your report of the capture of the enemy's artillery at Cub Run, and I am satisfied that your report and the letter are strictly and accurately correct; though I am sorry to have to acknowledge that I was not one of the brave boys who followed the "White Havelock" across the memorable stream on that eventful day nor was I present in the barn at Camp Wigfall, when your report was written, for on that day our worthy and gallant captain had me detailed to cook dinner for the company against my very earnest protest.

Since I received your letter on Monday however, I have been fortunate enough to meet Willis Gooche, W. D. Wheeler and George Marshall, all three of whom were at Cub Run, and followed your lead across, and charged the line of infantry, — Their recollection corresponds with the fact as stated in your report, and they all say that they saw no other cavalry in sight when you made the charge. I very well remember that the capture of the enemy's guns by the company was claimed after the battle by every officer and man in it.

INDELIBLY FIXED.

Many of the incidents of that day are indelibly fixed in my memory, and recently I have been refreshing my recollection by talks with those of my old comrades whom I chanced to meet. When your command was ordered forward from our position, near the Lewis House, Walker's Battery, which belonged to General Holmes' command, had arrived on the field, and opened fire on the retreating column of the enemy on the 'pike, across Bull Run, and as well as I remember his first shot ploughed a gap in their ranks. Your command then went forward, I think in front of Kemper's Battery. Of course, as a private in the ranks, I could get very little general idea of the fight as it was going on; but an incident which occurred at a small frame house near the 'pike, which I remember very distinctly, makes me think I am right. Some seven or eight of my company had been ordered forward, as an advance guard. When we came to this house we found a number of Federals in and behind it. We ordered them to surrender, which they seemed very glad to do; but one fellow did not throw down his gun as quickly as my comrade Pat Marshall, thought he ought. Whereupon Pat raised his gun and fired, but missed his man. Just then you rode up, and drawing your pistol said, "I will shoot the first man who mistreats a prisoner," which scared my friend Pat more than the Federals had done.

Soon after the occurrence, when a number of prisoners were being sent to the rear from this point, you moved our company from the road to the skirt of an adjacent wood, and then it was that Kemper's Battery opened fire down the road on the retreating enemy.

ASKED FOR ASSISTANCE.

While we were drawn up in line on the edge of the wood, fronting a small field, an infantry soldier approached our line and stated that Captain Radford was dangerously wounded; that he heard Captain Scott's name and asked that he would send some one to his assistance. You immediately ordered Dr. William Shackelford, then a private in our company, and myself to go

to Captain Radford. We found him near the edge of the woods, about two or three hundred yards from where our company was drawn up in line. As soon as Shackelford looked at him and saw how he was shot he said that Captain Radford could not live thirty minutes, and I think he was dead before we got him into the ambulance. He was the first man that I ever saw die, and I well remember his last words, "God have mercy on my dear wife and children."

It was while Shackelford and I were with Captain Radford, I think that you again started in pursuit of the enemy. This accounts, my dear Colonel, for my not being with you at Cub Run, and beyond it of which I am glad of, for I would not like my old commander to think me a laggard when such gallant work was being done, under your dauntless leadership.

I recall my service while under your command, as one of the pleasantest of my war experiences, and especially the scouting party you took some six or seven of us on across the Occoquan. It was when you sent our horses back, and we footed it through the woods and fields to within a short distance of Alexandria, and learned that the enemy was getting ready to advance. (They had advanced, and a Baltimore Sun of that day was procured which, as soon as we returned to camp was forwarded to General Beauregard.) On that scout, while resting under the shade of the trees, I know you taught me some history and much States' rights doctrine. That day at old Mr. Nevitt's, where we were so kindly and hospitably entertained by the old people and their two beautiful daughters, has always been marked with a white stone in my memory; and I have often wished to read the novel which you promised the young ladies you would write, after the war, in which the scene was to be laid at and around Gunston Hall, and the fair damsels were to be the heroines of the story.

When I get a little leisure time I will try to procure the statements of as many of the survivors of the old Light Horse as I can, in reference to the charge and capture at Cub Run, and forward them to you. Already I have seen three or four who have promised to come to

my office, read your report and give me their recollection on the subject.

I have never read Colonel Munford's report, but I think my friend and neighbor, General Rosser, has the war series, and I will borrow it and read his account.

I will be glad to do anything that I can to aid in this matter. With best wishes for your health and happiness, believe me to be, very sincerely, your friend,

MASON GORDON.

Sunday Richmond Dispatch.

Substance of the Report.

Substance of the Report made to Brig. Gen. Holmes, by Captain John Scott of Fauquier, of the operations of his squadron of cavalry at the first battle of Manassas.

At the battle of the 21st of July 1861 the extreme right of the Confederate Army was held by Brigadier General Holmes with a brigade of infantry, Lindsay Walker's battery of artillery, and a squadron of cavalry. The last was composed of Captain Swann's Caroline company, with Captain Eugene Davis' Albemarle Light Horse, under the command of Captain John Scott of Fauquier, the whole being quartered at Camp Wigfall, or the Hooe plantation, in the rear of Union Mills on Bull Run, making the right bank of the stream the Confederate line of battle. After the Federal General developed that his plan was to assail Johnston's and Beauregard's left at Sudley Mills, leaving the right unmolested, Brigadier General Holmes marched his force towards the left wing where the sound of cannon and musketry informed him that the fight had opened. By the order of march his cavalry was in the rear, but very soon he sent them to the front with orders to report to Beauregard at the Lewis House, where the command remained inactive until the Federal line was broken. Whilst it was drifting along in the forward movement, Captain Scott reported anew to Gen. Holmes for orders, who told him "to pursue the enemy." Then a period of activity began which was not slackened until the battle closed, though Swann's gallant and regretted company was detached by General Beauregard's command "to guard

prisoners," leaving Eugene Davis' Light Horse unsupported to obey General Holmes' command. After crossing Bull Run at Stone-Bridge the company encountered the Federal Reserve from which the prisoners were taken, spoken of in General Holmes' Report, an easy capture, for the cartridge box of each prisoner was full, except the cartridge which was found in his musket. It was a little after the point on the turnpike was passed where the gallant Captain Radford lay mortally wounded that the Albemarle company was united with Colonel Kershaw's South Carolina brigade of infantry, the officers of the respective commands agreeing in conjunction to pursue the enemy, then visible in the turnpike not far ahead. When the Confederates had reached the section of the turnpike where the fall of the ground towards Cub Run Bridge began the pursuit ceased, it being near sunset. The gallant Kemper, with his battery, was in the advance, occupying the crest of the hill and was engaged in an artillery duel with the enemy stationed near or across, Cub Run. Kershaw's brigade was in the immediate rear of the battery, with Eugene Davis' company of cavalry on its right flank. To the rear of the extension of the right flank of the Albemarle men was posted another command of Confederate cavalry.

At the termination of the artillery duel, but whilst things were in this attitude, an officer who proved to be Major Hill of Georgia, rode into the open space on the right making proclamation that he wanted a squadron of cavalry with which to capture the enemy's artillery. As soon as the officer reached the front of the position, occupied by the Albemarle Light Horse Captain Scott advanced and said to him: "I have not a squadron, but a company ready for the service." The officer replied that a company was sufficient. It was in answer to a question from Captain Scott that Major Hill pointed across the turnpike as the direction which he desired the pursuit to take. To get clear of the soldiers, who occupied the road, it was necessary for the command to pass to the front of the battery and there cross the turnpike. But at some period before this had been done the

Albemarle men had been recruited by two other adventurous spirits. One was a Doctor from South Carolina who had discovered that day that he had joined the wrong arm of the service; the other was Captain William Fitzhugh Randolph, brother to Bishop Randolph of Virginia and of the family of the courageous and accomplished Colonel Robert Randolph of Stuart's Cavalry.

After the troopers had penetrated the open field, but a short distance, a Federal soldier was seen, making his way over the hills in the direction of Centreville. The Column was halted and a trooper dispatched to capture the fugitive and bring him to the commander. Whilst this was being done the officer in command, advancing, put a revolver to the captive's head, saying: "Tell me the direction taken by your artillery." The soldier replied "you are going in the wrong direction. The artillery has gone down the turnpike and is not far ahead." The prisoner was released, the column was reversed, and headed for a lower point on the turnpike. That attained, its pace was quickened to half speed, Captain Randolph observing: "I suppose we are going to the Devil, but I will follow the White Havelock." The sound, from the armed heels of sixty horses on the hard road, might serve as notice, to the Federals at Cub Run Bridge, of the approach of the hostile body and it soon appeared that the notice had been received and had not been disregarded. The crossing below the Bridge where the passage was widest, was a pack of commissary, quarter masters' and suttlers' wagons from which, in the haste of departure, the lead horses only, in some cases, had been carried off, leaving a rich spoil to the captor, whilst Cub Run Bridge was occupied by a train of artillery. The cannoniers, with their attendants, had been more faithful to their charge than the wagon masters had proved. They did not abandon their guns until the Confederates were upon them when they too disappeared in the circumjacent forest. It was reported to the commander that ten pieces of artillery, with their caissons, had been taken and among them a gun which the Federals had

named "Long Tom" and from which great results had been expected.

The capture, at once, was turned over to Captain Davis', and Captain Scott, with fifteen volunteers crossed Cub Run, taking the Road to Centreville, to discover the whereabouts of the enemy, and the extent of the disaster that had befallen the Federal arms. But the progress of the pursuers, at first rapid, was slow, the men often breaking from the command to pursue and capture fugitives from Cub Run Bridge whom they would despoil of their private arms and immediately liberate. Coming to open ground the Confederates discovered Federal infantry on a hill before them over which the road passed. These were rapidly charged and when reached, a demand of surrender was made by the officer in command of the party. But instead of a surrender, the Federal officer gave the order "fire" which was obeyed, it was estimated, by three hundred muskets. The little band of Confederates escaped destruction by the accident of having been halted on the turn of the hill where a rapid descent began. As it was, neither man nor horse was injured. It was quite dark when the volunteers reached their command. Captain Scott proceeding to Cub Run Bridge where he met Colonel Kershaw. Addressing Colonel Kershaw he expressed the opinion that on account of the vicinity of the enemy in force, the capture would not be safe from recapture, if left to the guard of cavalry alone, and proposed that two companies of his infantry should be brought to the Bridge, to act as an auxiliary force. Colonel Kershaw refused to consent to this proposal, but said, as Captain Scott had mustered his regiments into the service at Richmond, and therefore was known to both officers and men, he was at liberty to enter his camp and induce two companies to perform the night's service. Captain Scott at once, unattended, repaired to Colonel Kershaw's regiments and without difficulty, or delay brought back with him to the Bridge two of the gallant Carolina companies, from which their Colonel detailed pickets which he threw across Cub Run. Captain Scott then resumed

command of Captain Davis' company which he conducted back to Hooe Plantation. The next day as ordered by General Holmes, to whom he had made a verbal report, he submitted a Report in writing, prepared in the great plantaton barn, by which he was sheltered from the falling rain, surrounded by his officers and men and with whom each part was canvassed before it was admitted into the Report. It was dictated by Captain Scott to Willoughby Tebbs, an A. M. of the University of Virginia, then a private in the ranks, but who afterwards was elected to be an officer of the company, a distinction which he so well merited. He did not survive the war and was one of those priceless gems which the University of Virginia contributed, from her graduates, to to the army of Northern Virginia. After the battle the cavalry was thrown into regiments and Captain Scott was ordered to report to General Early for staff duty. From the Records of the war, in the captured archives, it appears that his written Report to General Holmes was not sent, or at least was not received, with similar papers, to the Secretary of War and therefore all record of service of the squadron in the fight was lost, but which it is hoped to substitute by this postponed, but imperfect, account. It is true that there is now a brief report, among the captured records, in which Gen. Holmes mentions the considerable number, of prisoners and large amount of "property captured by "Scott's cavalry" but he does not individualize the artillery, though when it is known that all the property, captured by the command in the battle, was captured at the time when the ten guns were taken at Cub Run Bridge, as shown by the foregoing narrative, the word employed by General Holmes was intended to include the artillery. Before the great battle, and under the command of General Early, Captain Scott with two companies, Thornton's Prince William Cavalry and Davis' Albemarle Light Horse, had picketed the crossings of the Occoquan and certain landings of the Potomac. In preparation for the approaching combat that command, with other outlaying forces, was ordered to Manassas to participate in the first great trial of arms between the North and the South.

JOHN SCOTT OF FAUQUIER,

Colonel of Cavalry, Confederate States Army.

RECOLLECTIONS OF THE CIVIL WAR;

POPE'S CAMPAIGN IN VIRGINIA.

“The Army of Virginia,” amounting to about fifty or sixty thousand men commanded by Major General John Pope, was a coalition of the Corps of Fremont and Shields with the forces of Banks and McDowell. With this armament it was the immediate purpose of Pope to occupy Gordonsville, with its two railroads, depriving Richmond of its connections with the central regions of Virginia, whilst it would enable him to co-operate with McClellan at Harrison’s Landing, in his designs on the Capital of the Confederate States, the objective point of both armies. To protect so important a point as Gordonsville, Jackson with his corps had been ordered to that place which he reached on the 19th of July, and A. P. Hill’s division was sent to him as soon as the Federal General had moved in the direction of Rapid Ann River. To attack Pope as he lay at Culpeper Court House, which had been made a principal depot of army supply, before McDowell, at Fredericksburg, had joined him, Jackson—with Ewell’s division, A. P. Hill’s division, and his own division, commanded by Brigadier General Winder, consisting of eighteen thousand effective men—marched upon that place, but, on the 9th of August whilst yet eight miles distant, encountered his adversary and gained the victory of Cedar Run, or Slaughter’s Mountain, as the Field popularly is called. On the night of August 11th he retired from the front of the enemy, camping again at Gordonsville, where easily and certainly he could be re-enforced so as to contend with his opponent after his entire force had collected. Longstreet having been ordered to Gordonsville, Lee about the middle of August proceeded to assume command of his reunited Army. At that juncture with a Battalion of cavalry just recruited and equipped under the patronage of of General George W. Randolph, Secretary of War, whose classmate I had been in the Law School at the University of Virginia, I reported to General Lee in the field, who directed me to report to Jackson also in the

field, who ordered me to report to Ewell camped in the direction of Union Mills on the Rapid Ann river. The Battalion had been recruited in Richmond, become a City of the Strangers, and naturally was formed of diverse material. My flag indeed was a token, an advertisement, an invitation, to all unplaced men who desired to have a hand in the war and they came to it from every direction. A conspicuous element was obtained from adventurers who had been Filibusters with Walker, "the Gray-eyed man of destiny," and who had sought on the Isthmus to win with the sword a throne for their Leader. Some had been engaged in the Slave Trade on the African Coast, whilst others perhaps had been concerned in darker and more tragic scenes. To companies so constituted were added commands of Baltimore Roughs, a still wilder element, and commands from counties in Virginia contiguous or neighboring to Richmond. It was a diversified collection of the war, and a friend seriously advised me that I could not with safety sleep in my own camp. I told him that he did not understand the soldier and that I would sleep in absolute security in the midst of the most ungovernable spirits of my command. There was a gentleman in the Battalion who merits and will receive a more particular description—the Adjutant General, Captain D. Burr Reeve of Richmond and no officer was ever more perfectly suited to that important position. He was brave, cheerful and a Scotchman with an untiring attention to all the duties which appertained to his office. Intuitively, it seemed, he knew every soldier in the command, intimately and perfectly, and by a kind of sorcery taught them to respect and love him. It was to his remarkable capacity for business and that secret charm that the embodiment of the Battalion was to be attributed. He lives now in Henderson "as mild amannered man as ever scuttle^dship or cut a throat," Lord Lambro not more so. But the picture of Captain Reeve would be incomplete without some account of Read, his headquarter's man a strange creation, and united to the Adjutant by some mysterious and powerful sympathy. Read was an Irishman and had been a waif, driftwood tossed on the ocean. His

account of himself was that he had had no parents, and in childhood had been placed as cabin boy on a merchantman trading to Africa. Naturally he had come to be a sailor and from the merchant men had been transferred to the deck of the slaver from which respectable employment by some concatenation of events he was wafted into my battalion. He was very courageous and being an Irishman was ready without or with provocation to whip any soldier in the command and in consequence enjoyed their respect. Notwithstanding his pugnacity he showed a disinclination to go into the fight and that perhaps was the reason of his being attached to headquarters where he was acceptable for he was obedient, docile, affectionate and industrious. "He had his way to make in the world" Read would say "and did not want by fooling with the Federals to have an arm or a leg shot off." One would infer from such a life as the young man had led that his moral sense had been dulled, or obliterated yet such was not the case, disproving the common theory of education, for he was honest, faithful to a trust and capable of devotion as his unshaken attachment to Captain Reeve proved. When the horses obtained on the Chambersburg raid were distributed among the officers a very large and fine mule was sent to my camp and was naturally turned over to Read. By some chance Read was separated from the command and had not been heard of for a week. The suspicion of desertion was very strong and the adjutant was often complimented on the fidelity of his Irishman. Suspicion had settled into belief, when one fine morning Read and the mule, trotted into camp. There was an ovation and Captain Reeve was the happiest of men. Read's account of himself was that by some ill luck he had gotten away from camp, had been "pirouetting" he admitted, and to escape capture had been obliged to lay low 'till the enemy moved. What has become of Read who can tell! Perhaps he is now in Kentucky on the sunnyside of the house, in some trusted employment.

Officers and men had been transferred to Charlottesville from which they were readily moved to the scene of action which the presence of General Pope had pre-

pared, whose campaigns against Lee and Jackson form so interesting a feature of the Civil war in Virginia. At this period, whilst riding through Gordonsville, I chanced to meet with Doctor Mayo of Jackson's Staff and, although it was raining smartly, we stopped to exchange civilities. Very soon Doctor Mayo informed me that the day before or it may have been that very day, he had heard the General say that he wished to know where I was to be found but that no one could give the desired information. Receiving direction as to the situation of General Jackson's Head-Quarters I at once started to find them and discovered without difficulty the object of my search. His tents were pitched on the edge of a wood with an open space in front in the farthest part of which blazed a bonfire, diffusing a comfortable warmth. As soon as my horse was secured, and the General informed of my presence, I drew near the fire to dry my clothes and dispel the chilliness which the rain had produced. It was not long before General Jackson joined me at the fire. His address was direct, yet courteous, and I hastened to explain what Doctor Mayo had told me, adding that I was ready to execute any order he might give. He replied, "the occasion has passed" and expressed a polite regret that I should have turned out in such bad weather. I asked directly what the duty had been on which he had wished to employ me, but again was told that "the occasion has passed" and there the matter rested. The General then remarked that he had heard that my Battalion was badly disciplined and proceeded to instruct me in the mode in which the men ought to be managed. I listened with respect and, first thanking him for the lesson which so kindly he had given me, took my leave of the Great Captain of whom all the world was talking. I was greatly pleased with my commander, but at the same time knew if my soldiers were subject to the rigid control prescribed or recommended that very soon the greater part would desert me. So I continued my system of leaving to each Captain the discipline of his company and by experience found that my orders were obeyed and, when the time for action had come, that the men were in place and acquitted

themselves as good soldiers which I supposed was the object of the organization. How General Jackson had been informed of the ill discipline of my cavalry I could not divine but trusted that it was not from an incident that had occurred whilst my company were camped at Charlottesville and his army was passing through that town to reinforce Lee on the Chickahominy in his memorable struggle with McClellan for the possession of Richmond. Captain Taylor was a planter on the Lower Rappahannock and a descendant of the still remembered and respected John Taylor of Caroline, a leading character in Virginia at the period of the Report and Revolution of '98 and '99 when Jefferson and Madison were engaged in laying the foundation of the Democratic Party. He was the commandant of the military post of Charlottesville whilst my Battalion was camped in that vicinity and the auxiliary Army of Jackson was marching through his jurisdiction. To enable him to enforce order, at so critical a time, he had requested to have one of my companies sent to him as an additional town-guard. Men were ordered to report to the Post Commandant who were supposed to be suitable, but who never before had been on the side of the law. Under the weight of so unusual a responsibility a man of the Battalion had deemed it fitting to kill one of Wheat's Louisiana Tigers, a part of Jackson's Army. The first I knew of the affair was a message from my man in jail. Getting the facts of the case from him which naturally placed all the blame on the dead Tiger, where perhaps it belonged, I called to see the Commandant and experienced no difficulty in getting my man released. But let it be said in explanation that the times were urgent and doubtless Captain Taylor considered that even if the soldier upon a trial were proved to have been in the wrong there was no good reason that because the Confederate Government had been deprived of one soldier it should therefore be called upon to lose the services of another. Whilst at Manassas I had encountered General Wheat in his own camp, surrounded with his Tigers accoutred in their peculiar attire with falling red caps. Never had I been so impressed as I then was with his tall and hand-

some person, gallant bearing and distinguished courtesy and his conversation, abounding in eloquence and poetic sentiment, was as striking as his appearance. His eyes were dark and brilliant, his voice full and melodious, and as twilight fell upon that leader, surrounded by those rugged and martial figures, imagination pictured him as a hero of the Orient, a Conrad or a Lara. What was the impersonation of the romantic adventurer, and his life had been replete with thrilling incident. He had been associated with Garibaldi in the struggle for Italian nationality and now he was the daring and chivalrous knight equally ready to lay lance in rest for a Southern Republic or the smile of a favorite lady. — That heroic soldier, who rises before me in his strange beauty, was mortally wounded in one of the battles around Richmond, but survived to direct his men to bury him where he had fallen. In that remembered and lamented grave the warrior sleeps now as a sacrifice to the honor and safety of Virginia. Shall he not have a place in the pantheon of heroes?

I had seen General Ewell previous to the occasion when I reported to him for duty, and the circumstance was unusual that led to my acquaintance with that distinguished officer. I had been employed at Richmond in the routine of mustering volunteers from the cotton region into the military service of the Confederate States when I applied to Gen. Lee to have me sent to field service with the Army at Manassas, a request with which he obligingly complied. When I called to thank the General for the great favor which he had shown me he said: "Captain, you will be sent to General Ewell. — You will find him lying next to the enemy where he always is. I request you to present my regards to General Ewell." Beauregard ordered me to take command of Captain Thornton's "Prince William Cavalry" with "the Albemarle Light Horse" commanded by Captain Eugene Davis, both gallant companies and destined to perform distinguished service in the war. The duty on which those companies were detailed under the command of Captain Eugene Davis, the ranking officer, was to picket the crossings of Occoquan and the adjacent

landings of the Potomac. That squadron constituted indeed a part of Ewell's command, yet I did not meet General Ewell until after the battle of Manassas as, by the prerogative of victory, the Field has been named by the gallant Beauregard. The meeting was accidental, but dismounting from my horse and approaching General Ewell, I introduced myself, delivering General Lee's message in the words I have written. My reception was gracious as it continued to be whenever I approached General Ewell. The first duty required of me was to pursue the eastern base of the Blue Ridge range of mountains as far as Madison to report upon the condition of the country and enquire into an alleged disaffection to our Confederate Government. If the report be found to be true I was instructed to arrest offenders and bring them to Head Quarters. In due time I reported that the country was in the hands of the enemy, but that there was no disaffection to the Confederate States, the reported disloyalty originating in the fact that certain persons had been prevailed on to take an oath of allegiance to the United States, expecting or hoping in that way to protect their property and houses from destruction or injury, but that no man's fidelity to the South had been shaken by the extorted oath. I was sent again to that mountain region to make a further and a continued recognizance, reporting at discretion, and was so engaged when the Federal troops suddenly and mysteriously withdrew leaving the mountain tops where their signal stations had been erected, "Lookouts" which had rendered the presence of small bodies of our soldiers not free from danger. When the battalion had been on duty the first time in those localities a message had been sent from a Federal camp that a company of infantry would come out from their quarters and surrender if the men were paroled and allowed to return to their homes. My men were greatly in favor of accepting the proffered surrender, but suspecting a snare I paid no attention to it and continued to discharge the duty in respect to which I had been sent. So the important lesson very early was learned to confide in my own opinion and not to be effected by the passing whims of the com-

mand upon whom the responsibility did not rest. The subject afterwards was mentioned to General Ewell who said that the decision was right. That I had been sent to get information useful to the Army and not to make prisoners or to fight, as I had supposed. To explain the sudden and silent evacuation of that section of country by General Pope it will be necessary to recur to the position of the opposing Armies and the cause which induced the change of situation. The information will enable us better to understand the precipitate abandonment of the trans-Rappahannock region by the Federal Army and the rapid course of events which resulted in the capture of the important military supply at Manassas Junction, which had been collected for the use of the Invading Army, the gallant but ineffectual attempt at recapture by Taylor's New Jersey Brigade of Infantry and the subsequent three days Second Battle of Manassas, the most sanguinary of the War of the Sections.

When Lee arrived to resume command of the Army of Northern Virginia which had combated so victoriously at Chickahominy and Malvern Hill, he found Longstreet in the neighborhood of Gordonsville and Jackson on the line of the Rapid Ann. Re-enforced by Burnside, but not yet joined to McClellan, who from James River had been landed at Acquia Creek, Pope had his troops massed along the Alexandria railroad and beyond Culpeper Court House in the direction of the Rapid Ann and up the course of that river as far as Madison, as we have seen, with the intention of crossing its headwaters turning Jackson's left and seizing coveted Gordonsville. Penetrating the the design of General Pope the able ~~con-~~ strategy and unsleeping vigilance of Lee prepared a ^{counter-}stroke, unhappily defeated in the execution by the disobedience of subordinates, a provoking cause which lost finally to the Confederate States a brilliant existence, the object of the war itself. Under cover of the forest, whilst his adversary was indulging these pleasing visions the Confederate Commander like a crouching lion conducted his Army to a position south of Clark's Mountain ten miles east of Orange Court House which

commands the fords of Rapid Ann in that part of its course and exposed to his attack the rear of Pope's Army with its supply at Brandy Station as also the Bridge spanning the Rappahannock near that place. The 18th of August at daybreak was the time which Lee had chosen for this masterly rear attack, but the tardiness of certain of his subordinates, in completing the combination, induced a postponement until the 20th, though Jackson notwithstanding the disappointment advocated the attack as planned. Before the fateful 20th day had arrived the opposing commander, through the capture of a Confederate officer, who bore on his person an official letter, discovered the toils prepared for him and hastily crossed the Rappahannock, placed that considerable stream, in his front as a breastwork which before as an obstacle had ~~him~~ in his rear. Under the new conditions the Federal left covered Rappahannock station, now Remington, whilst the right extended up the river ~~as far and~~ even above Warrenton Springs. The two Armies were placed on contrary sides of the River, until another stratagem of war, but now executed with entire success, empowered Lee to strike the enemy's communication nearer to Washington City, necessitating the second Great Battle on the bloodstained Field of Manassa 6.

After Jackson's Corps had been moved to the south bank of the Rappahannock, confronting Pope, to enable me to rejoin Ewell it was necessary to conduct the Battalion through the intervening counties of Rappahannock and Culpeper. As soon as Little Washington was reached, the seat of justice of Rappahannock county, Mr. Miller, a gentleman residing in that place, accosted the officer in command of the Battalion with the information that Colonel Daniel Ullman of the Northern Army was confined to his house with an attack of typhoid fever and desired very much that the officer would come to him, a request which at once was complied with. The invalid officer was found prostrated and in bed. After the two officers had been introduced by Mr. Miller Colonel Ullman complained "that soldiers of Colonel Scott's command had carried off two of his horses, a field glass

and," he added with evident regret, "a gold watch which he prized as a gift from his mother, requesting to have the property restored to him." The Confederate officer expressed sincere regret at the occurrence and assured Colonel Ullman that he would endeavor to recover the watch which would be returned to him as an act of justice and not at all for the five hundred dollars which had been offered as the price of its restitution. But the field-glass and horses, articles in war, must stand on their own ground. So saying he left the house but soon returned with the watch which was handed back to its owner. Colonel Scott then enquired of the sick gentleman if he could serve him further? Colonel Ullman answered that he had another request to make, that a paper signed by Colonel Scott should be given him declaring him to be a prisoner of war and extending its protection over property as well as person. When such an instrument in writing had been given Colonel Ullman added that he had still another request to prefer, which was that as soon as he was sufficiently recovered to travel that the terms of the parole would enable him to return to Washington City there to remain until duly exchanged. This proposal Colonel Scott answered could not be complied with, he regretted to say. The power to parole prisoners in the Field had been prohibited by the Secretary of War because of the spoliation of citizens under General Pope's order, contrary to the law and usage of civilized warfare, and that if Colonel Ullman thought the refusal hard he must thank General Pope for it. The invalid officer insisted that he ought not to be held responsible for the order of Pope as at the period of its issuance he was in the Valley with Banks. It was replied that the order of the Secretary admitted no exception, "besides Colonel you are here now and the offensive order has not been rescinded." Colonel Ullman then pleasantly taking a volume, which laid beside him and which Mr. Miller had sent him to relieve the tedium of the sick bed, "The Lost Principle of the Federal Government" said if you will argue my side of the question as you argue here I think you will agree for me to go to Washington." Colonel Scott thought

not and settled the matter saying: "When you are sufficiently recovered to travel Colonel you must report to the Commandant at Richmond when my authority will end," an instruction with which Colonel Ullman complied. Colonel Scott then rose and extended his hand which Colonel Ullman took and retained saying: "Though you cannot grant a parole allowing me to return to Washington you can at least give me this promise: This game of war has two sides and you may chance to find yourself a prisoner to our Army. Promise if such should be the case that from the place of your detention you will write to me a letter addressed to the care of the Secretary of War. Then I will come to you and will have influence to have you committed to my custody, when I will take you to New York where you will have a good time. The promise laughingly was given and the officers parted in such kindness as may exist between technical enemies. When in New York City after the war of the Sections was terminated Colonel Scott enquired for General Daniel Ullman and learned that he resided in Albany. So the officers did not meet after the parting at the sick bed in Little Washington and cannot now meet until the great Reunion in the Elysian Fields where both uniforms are discarded and the same bright vestments are worn.

On the 24th day of August General Pope endeavoured to obtain possession of Waterloo Bridge over Carter's Run near the junction of that stream with Rappahannock River on the north side, four miles higher up than the Warrenton Springs. This effort was resisted with gallantry and success by General Fitzhugh Lee, the fight extending through several hours of that day. My Battalion defended the crossing at Hart's Mill, which was not seriously attacked, midway between the Warrenton Springs and Waterloo, and from the high position of the Armstrong House were plainly seen the considerable reinforcements which from time to time were sent to Federal combatants and which, as requested, were duly reported to General Fitzhugh Lee at Waterloo Bridge. The fight at Waterloo Bridge has escaped the attention of history, yet does it deserve mention not only for the

bravery and conduct displayed in its defense but for the importance of the victory to Lee's Strategy, for if the Bridge of Waterloo had been lost Jackson could not have crossed at Hinson's ford in the early morning of the next day without the knowledge of the enemy. So the victory of General Fitzhugh Lee at Waterloo Bridge was a condition of the succeeding great victory of his Uncle at Second Manassas, and deserves to be regarded as the first act in that drama of war. The next day, the 25th of August, Jackson began his celebrated march to Pope's rear at Bristoe Station and Manassas Junction, localities four miles apart on the Alexandria railroad, "the most adventurous and brilliant of all his exploits"—the able and learned Doctor Dabney thinks—leaving Longstreet, across the Rappahannock, to entertain Pope with the music of artillery. At an early hour, whilst the morning dew was on the leaf, the left wing of the Army of Northern Virginia, near the village of Jeffersonton, forded the Rappahannock at Hinson's Mill. The march was through the western division of Fauquier county and in part through Prospect Hill plantation, an estate of Mrs. Eliza Marshall, carefully avoiding at that point, under cover of the forest, observation from the Federal signal station on the crest of Watery mountain, looking down on the town of Warrenton lying at its southern base. That prominent point afforded an extensive range of vision and the prudence of Jackson had stationed an officer to prevent any part of the Army from showing itself on the highway which connected Orlean and Warrenton. That night the army lay along the road between Orlean and Salem in darkness. Not a light was to be seen so implicitly obeyed were Jackson's orders by volunteers recently recruited from civil life. That alone was an augury of victory. With his Staff Jackson passed the night at the residence of Mr. James William Foster who possessed an accurate knowledge of the country through which the Army was passing, intelligence, influence and culture. The next day the Army marched through Thoroughfare Gap, a pass of the Bull Run range of mountains, and at the close of the day reached Bristoe Station one of its objective points.

At Gainesville, on the Manassas branch of the railroad, the Army encountered Stuart, who, by a skilful disposition of his cavalry contributed to the continued secrecy of the march. The important point was the capture of Manassas Junction which Jackson determined to effect at once to anticipate the destruction of its hoarded supply by the enemy. Gallant General Trimble, with the twenty-first Georgia regiment and the twenty-first North Carolina volunteered for the night's adventure, whilst Major General Stuart with a portion of his cavalry commanded the expeditionary force. The garison was surprised, the fortified depot was captured with three hundred prisoners, eight field pieces, three hundred and fifty horses and the immense supply collected for the invading Army, bacon, beef, flour, indeed everything which hungry and tired soldiers wanted, to which was added a proportionate amount of ammunition. "The confessions of Pope show that the loss of these stores were a chief element of his subsequent disaster. It discouraged and intimidated his men and compelled them to enter the arduous struggle of three bloody days without adequate rations or ammunition." Dabney.

The 27th of August General Halleck, from Washington, ordered a New Jersey brigade of infantry, proceeding from the direction of Alexandria, and gallantly commanded by Brigadier General Taylor, to recapture Manassas and so to restore Pope's communication interrupted, he supposed, by one of Stuart's cavalry raids. The Brigade advanced from the direction of the railroad in superb order and with the greatest intrepidity to retake the stronghold, when the guns of the captured fort were turned on them and at the same time their left flank, with deadly aim, was assailed by Braxton's Battery. Their ranks were torn in front and flank, yet those soldiers nothing daunted marched forward to storm the works. Suddenly they halted reversed the direction of their march and began a retreat but with the discipline and courage that had distinguished their advance until they regained the railroad and were lost to view. The explanation given at the time of the retreat was that

General Taylor had discovered that it was with Jackson's infantry and not Stuart's cavalry that he would have to contend and therefore had relinquished the enterprise. General Fitzhugh Lee with a command of cavalry by a circuitous route proceeded to intercept Taylor's infantry at a further point on the railroad and my Battalion accompanied the march. The Brigade was overtaken but was so strongly posted in a wood near the railroad as to render fruitless any attempt to dislodge them with cavalry.

STUART'S INCURSION INTO PENNSYLVANIA.

—THE CHAMBERSBURG RAID, —

Of the exploits and achievements of Lieutenant General J. E. B. Stuart, Commander of the Cavalry Corps attached to the Army of Northern Virginia, his raid to Chambersburg in Pennsylvania deserves to be known and remembered. My acquaintance with Stuart was very slight, only nominal, except as an officer of his command, but that was quite enough to enable me to estimate his high military qualities. McClellan's formidable Army of invasion—two hundred thousand strong as reported—lay at Harper's Ferry, the north gate letting into Virginia, when the expedition started from the vicinity of the Dandridge House, in the spacious park of which the Cavalry Head quarter tents were pitched. Upon General William H. Fitzhugh Lee devolved the duty of organizing the raiding force, which consisted of details taken from the various commands which constituted the cavalry corps, and amounted to sixteen squadrons accompanied by Hampton's Horse Artillery directed by that redoubtable warrior. The squadron to which the quota from Scott's Battalion of horse was assigned was commanded by Colonel John Scott of Fauquier. The name of the commanders of the other squadrons were not learned nor was it necessary to know them as the combination was sudden and temporary, lasting only and during the brief term of that particular service. It was from the standpoint of Colonel Scott's squadron that the facts were derived which compose this detached chapter of military history, and explains why no other squadron

particularly is named. The fifteen other squadrons formed indeed the body of Stuart's command and were of course its effective operative force. The expedition passed into the State of Maryland by a blind and rocky ford of Potomac river above Harper's Ferry, with Chambersburg for its objective point, and the intention after a flying visit to Emmettsburg, to return to Virginia, recrossing the Potomac below Harper's Ferry, thus completing the circle to be drawn around McClellan, as if to serve as a harbinger of the disaster which awaited that proud Army at Fredericksburg—an adventure daring in conception, difficult in execution. A result, if not an object, of the inroad into Pennsylvania was a drove of horses, taken from the farmers and others who should have the ill luck to be found on our line of march. As soon as the physical barrier was surmounted that separated the Twin-sisters, Maryland and Virginia, an order was promulgated that private property should be respected, particularly in Maryland, deemed friendly territory, though in Trans-Potomac, on account of the contingent of heroic soldiers which that gallant State maintained in the Army of Northern Virginia throughout the bloody war of the Sections. To this order from Head Quarters a supplemental order was added, but proceeding from our special squadron commander: "that no officer or soldier should leave the squadron without his personal permission," but disobeyed in a single instance. Lieut. H. was a fine soldier and a fine fellow, but slightly addicted to "pirouting." After the Squadrons had passed the Pennsylvania confine, the Lieutenant, without leave, galloped away to a farm-house to get, it is probable, a slice of Pennsylvania bread spread with apple-butter, a delicacy provided by the hospitable farmer apparently for this unique occasion. Instantly a man was sent for the Lieutenant, who, as soon as he reported, was directed to consider himself under arrest and to ride until nightfall at the rear of the Squadron, an act of discipline which rendered the men better satisfied with the severe curb which restrained them. Our squadron did not quite reach Chambersburg. It was halted outside of the city to allow the rear pickets more conveniently to

be established and visited, not an agreeable duty because of the peltings of a pitiless rain storm. But the month was October. The fields contained their crops of harvested Indian corn whilst the winter's supply of wood having been provided by farmer and houskeeper the bivouac blazed brightly. A romantic incident—a rose gathered by the wayside—occured the next morning as the Squadron proceeded along a street of the town. The ground story, let it be explained, of each of the houses that lined the street was used as a store, whilst the story above was dedicated to the family, with windows letting down to the floor. At one of these open windows was seated a lady richly and fashionably habited, gazing curiously at the surprising spectacle of a command of Confederate soldiers marching quietly along those loyal streets, and as beautiful as if she were girdled with Cytharea's own cestus. With the homage which a soldier offers at all times to the shrine of beauty our commander uncovered bowing to the saddle bow. With a superior grace and mein, as Juno from her throne, the beautiful lady rising accepted the soldier's courtesy. The men attracted by the pantomime, and struck with her superb and elegant look raised a great shout, exclaiming: "She's Secesh, She's Secesh"! The lady had a good nerve and held her position notwithstanding the sudden, but it is hoped, not unfounded claim of title, until the cavalcade passed out of view, losing to us a vision which no man sees but once, and which abides in the memory as a sweet song. Had we have had a Paris we might have carried off the beauteous Helen, producing another war of old Troy, but having a justification far better than the one which brought us to Chambersburg. When the raiders reached Emmettsburg their reception was chilling enough, the men of the town standing ranged along the street as cold, as silent, as motionless as statues. But when the presence of Southern soldiers in the town became known the ladies, who are the true heroes of the war, uncaring consequences, greeted them with handkerchiefs waving from every door, window and balcony, to assure the adventurous band that they were again on Southern soil and among hearts

that beat responsive to their own for a great cause. Grain in the advance having been provided by our leader, who forgot nothing, late in the day the column was halted that no time might be lost from the march except what was necessary to allow the animals to consume their provender. Indeed there was good reason for circumspection and diligence. For from every mountain top and hill top videttes were seen to report our progress and, with an allnight's march before us, there was strong probability of having to reckon with McClellan before "the gentle day dappled the drowsy east with spots of gray." During that long and weary midnight march soldiers through sleep and fatigue, were seen to drop from their saddles a sight never witnessed before. Ahead and not far from our route, stood Poolesville on our right at which was stationed a force of the enemy—ten thousand strong we heard—to waylay the march, or anticipate its arrival at the river. When we reached the road turning off to Poolesville, Captain White a gallant young gentleman, brother to General Elijah White of Loudoun County the famed cavalry leader, with a command posted in front, struck off into the Poolesville road as though Poolesville had been the object of Stuart's attack, excellent strategy, it proved, and the hinge upon which the success of the enterprize turned as later will appear. Weariness and drowsiness vanished in the presence of danger and the squadrons again were on the alert ready for the combat. After drawing closer to the river the command was halted to allow General Stuart to acquire information from the front. Soon there was brought the unwelcome tidings, that a force of Federal cavalry barred all access to the upper ford of White's Crossing, towards which apparently the command was then moving. I watched our commander very closely, for he was not far off, that I might discover the effect of the intelligence upon that steady eye and bronzed cheek.

His composure was undisturbed, Stuart only remarking: "We'll give them the artillery and then they'll skedaddle," with these words galloping off as light-hearted as though he were going to a dance. But not so with those of our men who had heard the report as delivered to

Stuart. They said one to another: "we are caught. Stuart has made one raid too many. Every man now must look out for himself." But Colonel Scott, close at hand, answered the murmurers: "No! We will stick to Stuart, he will take us over the river." His authority restored confidence and the disaffection was arrested. Why the enemy's cavalry were not attacked, as proposed, I do not know. But I do know that instead we were conducted to the lower ford of White's Crossing, in the vicinity of which we were delayed doubtless to enable our commander to ascertain that there was a regiment of infantry posted in the bluff, commanding the lower ford. With the true instinct and nerve of a soldier, and the promptness and energy of Stonewall Jackson, Stuart attacked the regiment with a force of dismounted men. Twenty five of these were contributed from our squadron and were placed under the command of Captain James Pierce Bayly of Fauquier an officer of known gallantry, and of the stock of General Turner Ashby, "the bravest of the brave." It was favour shown by Colonel Scott to Captain Bayly, as a countyman who was sent instead of a lieutenant, as called for, as, in those eventful, stormy days, Fauquier was not entirely satisfied unless she had a hand in every fray. The position was handsomely carried. Stuart immediately ordered Colonel Scott to take direction of the crossing of the river by the command, adding: "Divide your squadron into three parts. One keep at the entrance of the stream, to prevent crowding there. Another have in the river to force the men through it as soon as they strike water. Do not allow a man to stop even to water his horse. Force the men into the river, through the river and out of the river. The third part of your men station on the Virginia shore to prevent crowding at the point of exit. Do not suffer any command to halt on the Virginia side until the highlands are attained." The men and officers of the squadron entered heartily and vigorously into the work, under the direction of the officer charged with the duty. When the Horse Artillery came to the water's edge it was hurried through and over the river as described, but, when it encountered the Virginia bank, it

was discovered that the horses had not the ability to draw after them caisson or gun, but, with difficulty, could crawl, or scuffle up the steep. As soon as this obstacle was presented the men attached to the artillery sprang into the water, and seizing the wheels, drove gun and caisson upon level ground, so that Stuart had the satisfaction of having his whole command, in good time, in Virginia. The squadron at once collected its disjointed parts and was about to follow the trail across the bottom when Lieutenant Hebb, a Maryland man and an officer of the Battalion, who had a quick, discerning eye, called attention to the fact that the enemy's artillery already were in the position evacuated by Hampton's guns, and would shell the command as it crossed the flat, indeed as soon as it left the cover of the heavy growth that fringed the river. This compelled a detour which brought us to the highlands where there was provided food for man and beast, and there we found Stuart in the midst of his soldiers, a martial figure. Thus were Hampton's battery and the squadrons very speedily hurled over the river! The command camped for the night a short distance out from the Virginia city of Leesburg. Taking with him Lieutenant Hebb, Colonel Scott spent the night in Leesburg under the hospitable roof of Honorable John Janney, one of the first lawyers and public men of Virginia, and late the President of the Secession Convention. Mr. Janney, among other topics, entertained his guests with a particular account of the collision of the Confederate military, commanded by General Evans, with the civil functionaries in Leesburg. He felt acutely the rude contact and said bitterly: "How I wished for Judge Scott in his best day to sustain the authority and dignity of the civil law."—Passing through Berryville [Battletown of the colony era,] the squadrons were conducted back to the quarters they had left. On the homeward march, as we skirted the Infantry camps of the Army of Northern Virginia, the soldiers collected on the sides of the roads and greeted Stuart with rousing cheers for the success of his daring enterprize around McClellan's Army, twice crossing the great Potomac. I owe a further duty to

Stuart, who though called away to the New Life, still is with us in the undying page of history. If by troops sent from Harper's Ferry or Poolesville he had been defeated in recrossing the river at White's Crossing, or at any other passway below Harper's Ferry, he would have relinquished, as impracticable, the design of returning to Lee by that route and striking out westward, through Pennsylvania and Maryland, subsisting on the country, fighting when necessary, would have crossed the river barrier into Virginia nearer its head springs, so as to be still the lion in McClellan's path as soon as he moved southward. So the invasion of Pennsylvania was as sagacious in conception as in execution it was bold and successful. "Fortune favors the brave" is a maxim of war from old Rome, and with his good sword Stuart was ever ready to seize the opportunities and accept the challenges of war.

After the return to cavalry head-quarters Stuart in strong terms expressed his approbation of the uncompromising discipline that had been maintained throughout the raid in Colonel Scott's squadron. It is recorded here because the praise was deserved and belongs to the men who co-operated so efficiently and cheerfully in attaining that result. Let it stand as a precedent that indulgent treatment in camp may be compatible, among volunteers at least, with effective service and strict discipline in the field. It was during the Federal advance through Loudoun county that young Captain Bullock of Missouri, the gallant and distinguished Chief of the Sharpshooters of the Cavalry Corps, called at head-quarters to thank Colonel Scott, in the presence of the men, for sending such fine soldiers for his work. He found the Battalion in the woods, as a camp of Indian braves on the war path; there was neither baggage nor tent—only horses and arms.

STUART'S REGIMENT OF EIGHT MEN.

WARRENTON, VA., Jany. 30th, 1896.

MAJ. NORMAN V. RANDOLPH, RICHMOND, VA.

DEAR SIR: A pressure of business must plead my excuse for not returning an answer sooner to your letter, requesting from me a certificate of the period during which you were with my Cavalry Battalion in the War of the Sections and referring particularly to a skirmish with Federal Cavalry, at Markham, in which you were the only man with me, when I left the ground on which it had occurred. As it was thought by Stuart, to whom it was reported by one of his Aids, who had witnessed it, to have been a creditable affair, I will, I suppose, best attain the object of your communication by writing a sketch of it, as far as the particulars can be recalled.

The Cavalry Corps was falling back before McClellan's great Army of Invasion, which started from Harper's Ferry, delaying its march by unceasing combats with its advance, to give Lee, then in the Lower Valley, time to throw his army between Richmond and the invading force. It was whilst this was being done that the Cavalry, with which my command was connected, was at Markham in the County of Fauquier. Its place in the Cavalry Corps was as an attachment to the Fifth Regiment, commanded by the gallant and accomplished Col. Tom. Rosser. When the march of the Fifth began for Barbee's Cross Roads, now Hume, all the men of the Battalion, which were bringing up the rear of the Regiment, had been drafted for that day to act as sharpshooters under brave Capt. Bullock, excepting eight men under my own command. The march had proceeded but a short distance from that part of the highway in front of Colonel Stribling's residence, when a body of Federal sharpshooters issued from the wood on our left and attacked the Regiment. Major Beverly Douglas, so well and so honorably known in Virginia, at the moment was in command. Very successfully and quickly he charged the assailants and drove them back into the woods. One of my men, an Irishman by the name of Keegan, was about to follow the enemy into his covert, where he would

have been bushwhacked, but I called him to return to me, as Major Douglas only proposed to drive the assailants off. That, of course, was Major Douglas' affair, though the Battalion was fully engaged in it. It was claimed that the charge, had saved one of Stuart's batteries from capture. At least Major Douglas, who was always a very gallant officer, claimed that as a result of the charge, and doubtless it was so. We had scarcely regained the road, and resumed the order of march, when the regiment was assailed in the rear by a body of Cavalry, coming from Markham, now in possession of the Federals. Our pistols all had been emptied in the recent skirmish (I think I had one shot left) when the new attack was made.

But, without orders, except from the urgency of the occasion, the two sets of fours, with their sabres drawn, turned on their assailants and forced them back into Markham on their reserves. But here another difficulty was developed which threatened to annul the value of the successful charge. When the men on their return mounted the hill, down which they had just driven the Federal Cavalry, it was discovered that the road in their front was occupied by the sharpshooters, whom Major Douglas, so recently, had repulsed. There was a stone fence too, on the right side of the road, next to the Blue Ridge, whilst the other side of it was effectually guarded by the advancing troops of McClellan. Here was a dilemma. It was soon relieved however by one of the men, who discovered a gap in the fence, through which the command retreated, leaving the commander alone with Norman V. Randolph, but the two speedily followed the men. As soon as they saw their Commander the men gathered around him again and discovered that his horse had been wounded on one of his legs and was bleeding freely. When the Command had reached the top of the elevation across the road, and in front of Colonel Stribling's house, the late Hon. Barnes Kerrick, Benjamin Figgins and others of the locality were recognized. From Mr. Kerrick directions were obtained as to the route among the hills which would enable us to return to Stuart. As we were descending the decline of the elevation, which looked

west-ward, toward the Blue Ridge, our leader saw on the opposite elevation, or hill, only separated by a narrow strip of valley, a body of Confederate Cavalry, apparently without an officer. He sent Norman V. Randolph to them with an order to report to him in the valley below, very promptly, which they did. What ammunition there was among the men was distributed, and thus reinforced and prepared, the Command was ready for business again and none too soon, for descending the elevation, over which the Confederates had just passed a detachment of the Federal sharpshooters was seen in pursuit, expecting to kill or capture the original party of eight. But when they saw instead thirty or more of Stuart's Cavalry in line to receive them, whose metal, so recently they had tried, they relinquished the pursuit and returned to their friends. The wounded animal, as an honored guest, was left at Mr. DeButt's residence in charge of the patriotic "Secesh" ladies of the family, and, after receiving the abundant and cordial hospitality of Mr. Henry M. Marshall for the night, the Command united with Stuart at the Cross Roads, where, fortunately, the leader had a spare horse in his camp. Stuart was greatly pleased when informed of the affair by his Aide de Camp, and proudly called those soldiers "his Regiment of eight men." I have not the dates but can say, generally, that, from its organization to the time when I left it, you were with me, though then but a boy of fifteen years. I have given the affair at Markham with some detail because it was but an example of the hourly combats by which our great Cavalry Commander delayed the Federal march, so that Lee could interpose his devoted army, as a shield, once more between the invader and Richmond.

A word about myself. As soon as I reported to Generals Holmes and Cabell, in the Trans-Mississippi Department, my rank was raised to Colonel of Cavalry to enable me to take command of an important outpost, across Arkansas River, relieving a Lieutenant Colonel.

I hope this loose memorandum will answer your purpose. It will at least enable you, as the memories of the great war grow dim, to recall our double skirmish

at Markham, and the charge of "Stuart's Regiment of eight men," one of whom you were.

Your obedient servant and friend,

JOHN SCOTT OF FAUQUIER,
Colonel of Cavalry, Confederate States' Army.

ADDENDUM:—The foregoing sketch was shown to a soldier of my battalion, who, being along in the scenes, which it describes, reminds me of some forgotten particulars. It was a squadron of the 11th Pennsylvania Cavalry, which we [the Fifth and my eight men] drove through Colonel Stribling's barnyard, which was adjoining the county road. In jumping the bars of the enclosure Major Douglas' horse blundered and fell, throwing its rider, and escaped in the direction of the Federal Cavalry. But the activity and courage of Norman V. Randolph, who was at my side, recovered the animal, though exposed to a heavy fire from the sharpshooters. The Federal cavalry attacked our rear but were repelled by a counter-charge, preventing the capture of a Louisiana battery which, at the time, was in the barnyard. I have been reminded, too, that the Captain of the battery thanked me for the service rendered him, but I was only an officer acting under the direction and employing the troops of Major Douglas, who was present.

JOHN SCOTT OF FAUQUIER,
Colonel of Cavalry Confederate States Army.

AGAIN BETWEEN THE INVADER AND RICH-
MOND; A FALSE IMPRISONMENT AND
WHATCAME OF IT; A GLANCE
AT THE BATTLE OF FRED-
ERICKSBURG.

McClellan's progress through Loudoun and Fauquier Counties from his camp at Harper's Ferry, though moving on shorter lines, was so delayed and halted by Stuart as to enable Lee in the Lower Valley to conduct the Army of Northern Virginia through Chester's Gap in the Blue Ridge into Eastern Virginia and project it, at Culpeper Court House, between the enemy and the Capital of the Confederate States. The invading Army lay

at Warrenton, twenty miles away, but with its outposts thrown forward over the Rappahannock, or Hedgman's river, as at first that considerable watercourse was called in that section of it, and pushed as far as Hazel, a confluent of the Rappahannock, which, with the superior stream, forms the Little Fork of Culpeper county. The Cavalry Corps was camped at Rixeyville where the highway, connecting Culpeper Court House and Warrenton, crossed Hazel. As the Federal Army was picketing the left bank of Hazel it was expedient, or necessary for the Confederates to picket the opposing right bank. In the round of that duty General Rosser directed Colonel Scott taking the Fifth Regiment and his own battalion of Cavalry, to relieve the picket on Hazel. In parting Colonel Scott asked: "How much discretion do you allow me, General?" "As much as you choose to exercise, only keep up the picket line," was the reply for General Rosser was indulgent, or rather reasonable, in such matters, which rendered him a favorite with his officers whilst it infused a spirit of enterprize into his command. As soon as the relief was established Colonel Scott with a scout of cavalry, determined to cross into Little Fork to discover the conditions there. He enquired for a guide acquainted with the country and suitable in other respects. His informant answered: "The best guide in Culpeper, Parson Aldridge Grimsley, lives right here, on the you side of Hazel. You will have to ride to the middle of the river and from there confer with him standing in his own house." This was done and the Reverend gentleman readily agreed to act as guide to the proposed scout in the Little Fork. Mr. Grimsley possessed a striking personality and, it was evident, that he was of "The Church Militant," as well as a pious, eloquent divine. After some time spent, in an ineffectual ride, the scout arrived at the residence of Mr. M—— an intelligent farmer, who had recently returned home. He said in explanation of his absence that he had been arrested on his own land by the Federals who had carried him to Warrenton where, after a detention or several days, he had been set at liberty, but not until an oath was exacted not to disclose any fact

that he had acquired during his captivity, "and yet" continued Mr. M—— "I gathered some particulars, whilst a prisoner, which General Lee ought to know but the oath forbids me to speak." Mr. M—— was then interrogated as to whether he had been in the Confederate Army, or, in any other way, had been in the military service of the Confederacy? "No, no not at all," he said. "Up to the period of my arrest I had been exclusively occupied with looking after my farm and family, as now I am." "This renders you a "Noncombatant in war and as a noncombatant" said Colonel Scott "you were exempted by the laws of civilized warfare from molestation in any way by the enemy. Your arrest and detention were illegal. You were entitled to liberty freed from any condition. Your oath is a nullity because extorted by an illegal imprisonment. It is your duty to the Confederate States to tell me all that you know that, I may send it to General Lee." Mr. M—— then said: "Burnside, instead of McClellan, has been placed in command of the Northern Army and is marching towards Fredericksburg." The evacuation of the Little Fork and the withdrawal of the pickets from Hazel were accounted for, and so the scout was terminated. The important information was sent by couriers, pursuing different routes, to cavalry headquarters and from thence speedily was transmitted to Lee. Soon the highlands about the Marye House were possessed by the Army of Northern Virginia along with the system of hills extending south to Hamilton's Crossing, while Burnside held Fredericksburg and, by means of Coalter's Bridge occupied Stafford Heights, forming the left bank of Rappahannock river, the two Armies by mutual consent dedicating the extensive and cultivated interjacent plain on its right bank, gemmed with villas, as a Field on which to try the conclusions of war. Colonel Scott's cavalry not being employed during the engagement, he was permitted to go to the front and be a spectator of the battle, having acquired, when at school in Fredericksburg a knowledge of that theatre of combat. He was invited by Colonel Henry Peyton on Lee's Staff to abide with him at Head Quarters for the occasion and so

was thrown with Colonel Charles Marshall the Aid de Camp and military Secretary and close friend of the illustrious General and also with Colonel Baldwin the ordnance officer of the Army of Northern Virginia. In the early morning of the second days fight Colonel Baldwin had invited Colonel Scott to accompany him to the front, where the Army lay on its arms to see him burn Fredericksburg, for which he had prepared the necessary incendiary shells. Arrived on the ground, and day being fully broke, Colonel Baldwin was asked why the ball does not open? "I am waiting," the officer replied "until the cloud lifts that now rests on the city." Why Colonel Baldwin's incendiary shells were not employed on that occasion at all, I did not learn, the fury of the engagement calling the attention to other objects. After the war had closed I learned in Fredericksburg from general report that the reason why the town was not laid in ashes was that General Lee could not and would not devote to destruction the women and children of Fredericksburg by the hands of their defenders. Yet a lady, a very noble and courageous lady, daughter of a hero, who had stayed in the town throughout the fight, strongly condemned that humanity in Lee. She said: "What were the lives of a dozen old women worth? They were not so valuable I am sure as the lives of his soldiers. If any useful purpose she insisted was to be gained by destroying the town, Fredericksburg ought to have been burned." As I gazed in her glowing eyes and earnest countenance I thought: "The Roman mothers are not all dead!"

Standing on "Lee's Hill," as the position now is called, the centre of the Confederate line, I saw heavy columns of Federal Infantry, proceeding from the city, deploy in line of battle and splendidly charge Longstreet's position on our left. Amid the roar of cannon, the rattle of musketry and the shouts of the combatants, I saw those assailants recoil broken and routed. A part of them found shelter from the storm of Longstreet's missiles in the cut of an unfinished railroad but which exposed them to the fire of artillery from Lee's Hill. A piece of heavy ordnance, an iron gun cast in Richmond

stood there ready charged. At once it was trained on the railroad cut and was sighted by Lee. "A little lower Captain, a little higher, now Captain!" The discharge was very destructive, for the ground was blue with Federals, but, at the second shot, the treacherous piece burst in the breech, hurting no one, but it might have killed or disabled General Lee. It is sad to reflect that however skilful in the use of the arm, the Confederates at that late day had not learned the art of making a cannon, so exclusively devoted to agriculture had been that war-like people! What would the world have thought of the Spartan who had not been taught to make his spear? Whilst at Lee's Hill I saw the historic figures of Longstreet and Lee as they stood upon the parapet of an earthwork sweeping with their glasses Stafford Heights. Longstreet looked as if cast in iron stern and composed, whilst the face of Lee was radiant with the joy of battle. He was dressed with scrupulous care and had never looked so handsome or so noble, or so like a war-God!

THE RACE PROBLEM.

THE EMIGRATION OF THE NEGRO TO AFRICA SUGGESTED
AS ITS MOST EFFECTIVE SOLUTION.

The following communication is from Col. John Scott, of Fauquier county, Va., a well-known ex-Confederate soldier and brother of the celebrated Robert E. Scott, famous before the civil war as an orator and statesman:—
Baltimore Sun.

"Messrs. Editors.—It is a growing opinion in the South, where the negro problem has become intensely practical, that the stake is the appropriate punishment for the black man who outrages a white woman, excepting a sect who are of the opinion that a bill of indictment is the right kind of weapon wherewithal to wage a race war. A punishment, to act as a deterrent, must, according to reason and the settled rule of criminal law be proportioned to the crime. Here Georgia takes her immovable stand. It is the doom of the American negro to be destroyed by the white man unless the fate is averted by a

deportation to Africa. Here we have another growing idea, but patronized by him who would be good as well as wise. He says: "Transport the negro back to his native home." Hon. Robert E. Scott was a man who in his day was well known in Virginia. He attached a very great importance to the South's union with the North and West. He answered all contentions with the fact that with the union we preserve a vast power having the ability to remove the black race back to Africa, the only solution of the negro question worthy of the statesman and philanthropist, Mr. Scott thought. Let, then, those fond, caressing congeners, England and the United States, who conjointly are responsible for the negro's enslavement and his presence here, obtain, while Africa is still open for settlement, a home for him convenient for residence and suitable for expansion. Upon such an object President McKinley might, with great propriety, spend some of his superfluous millions and England a part of the hoarded gold which she has collected from mankind. Lines of steamers flying from the Gulf and Atlantic ports would soon effect the desired result. If, indeed, the negro be capable of living an independent civilized existence and managing a civilized empire, then might the emancipationist and optimist point with pride to a flourishing sable empire, where fertility of soil, variety of production and geniality of climate would combine with odoriferous gales to offer to the returned exile a final home, guarded from the blighting presence of the white man, the hated son of Japhet, who conquers, enslaves, confiscates, according to his sovereign pleasure. The negro's absence would render this ocean-bound republic the proud dominion of the white man, where his woman-kind might dwell in safety and honor."

Supreme Court,
Judges Chambers

New York, ~~December 2nd,~~ 1892.

My dear Colonel :-

To me your article is very interesting; but editors in this city say that the public curiosity about the incidents of the war is extinct. They will not accept your essay. Accordingly I return it.

I am pleased to hear from you, and to observe that the mind which produced "The Lost Principle", is as clear and vigorous as ever.

With the best wishes for your welfare and hoping to see you again, I am,

Very Sincerely Yours,

Roger A. Preyer.

Col. John Scott,
Warrenton,
Fauquier Co. Va.



After the War.

A Coupon Controversy.

The coupon litigation of the State of Virginia with her British Creditors is worthy of a place in the popular recollection because of two interesting questions of State's Rights which are involved. It had been provided by her two debt settlements that the coupons, or certificates of the year's interest, attached to each bond should be receivable for taxes and other public dues, and the stipulation was printed on each coupon. The tax-receivable coupon was an ingenious contrivance of the creditor to insure the application of the public taxes in the first place, to the payments of the interest on his bond however great might be the emergency pressing upon the Commonwealth, and was founded in distrust of the State's financial honor. These coupons, or certificates of interest, as they became due were separated from the bonds, and were sold in the public market for as much as they would bring. In this way Virginia coupons had accumulated in the money centres of Great Britain, but chiefly in London, to an amount as great as four millions of dollars, but to become five millions, it was estimated, by the time the debt was paid, through the annual additions of coupons. As these debt settlements were contested by the State for unfairness and unconstitutionality, no provision had been made by the Legislature for the payment of coupons. The consequence was a rapid depreciation of the Virginia coupon until it became a subject of speculation. A band of London speculators purchased coupons to a large amount to dispose of to Virginia tax payers.

If the speculation should prove successful, and the market value of the coupon was established, it was evident that Virginia would be brought to the condition of a bankrupt by having her treasury filled to repletion with tax-receivable coupons as often as the legislature should impose taxes, for the state would be compelled

in this way to pay five millions of debt before she could devote a dollar to the support of her government, or her eelemosynary foundations. To avert so great a calamity as bankruptcy, inevitable in her then plundered and impoverished condition, the legislature employed several expedients and finally "the Coupon Crusher," as the act of Assembly was called, enacted at a special session May 12th, 1887. That statute, so memorable in judicial history, directed the county treasurer to report to the Commonwealth's Attorney of his town or county the name of each tax payer who had tendered coupons and also the amount of his tax bills, whilst it commanded each Commonwealth Attorney, under a penalty not less than a hundred dollars nor greater than five hundred dollars to sue the recusant taxpayers in the Circuit Court of his county for his taxes so remaining unpaid. As the law was devised with the utmost legal skill it was confidently expected that it would do the business of the coupon and the expectation was not disappointed. But a stormy experience awaited the Coupon Crusher, a prolonged and bitter controversy in the Courts. The creditor, as the speculator became by the fact of purchase, was advised to have recourse to the Federal Courts, under the belief that they would enable him to destroy the obnoxious statute. It was thought by the creditor and his legal advisers to be a club of Hercules in their hands. Accordingly a suit in equity was instituted by the public creditor in the Circuit Court of the United States for the eastern district of Virginia to enjoin Hon. Rufus A. Ayres, the Attorney General, Colonel Morton Marye, the Auditor of Public Accounts and all the Commonwealth's Attorneys of the state from bringing those suits. The complainant's bill sets forth "that they were British subjects and were the owners of a hundred thousand dollars of the tax-receivable coupons of Virginia for which they had paid thirty thousand dollars; that they had sold fifty thousand dollars of that amount for fifteen thousand dollars or more to the tax payers of Virginia who had tendered the same to the proper state officers in the payment of their taxes, but that the said officers refused to receive the same; that if the offi-

cers of the state were permitted to enforce the act of May 12th, the complainants would be unable to sell the remaining fifty thousand of their coupons to the tax-payers of Virginia for *any price*, and their entire property would be lost; and that the said act of May 12th, 1887 was unconstitutional and void.”

The Attorney General, Hon. Rufus A. Ayers, the Attorney for the Commonwealth of Fauquier County, Colonel John Scott, and the Attorney for Commonwealth of Loudoun County, Judge J. B. McCabe, refused obedience to the restraining order issued from Judge Bond's Court by instituting the prohibited suits. Thereupon a rule was served upon each of those officers of the state of Virginia requiring them to appear in Judge Bond's Court and show cause why they should not be imprisoned and fined for a contempt of his Court. On the 22nd day of September, 1887, at eleven o'clock a. m., the Commonwealth's Attorney of Fauquier County appeared in the Federal Circuit Court in Richmond and filed a paper containing his answer to the Rule, as did the Hon. Attorney General, and Hon. Commonwealth's Attorney for Loudoun County, but not at that time, thus making the issue complete between the United States and themselves. The Court adjudged the Attorney General to be guilty of the alleged contempt, and required him forthwith to dismiss the suit of Commonwealth vs. Baltimore & Ohio R. R. Co., instituted by him in the Circuit Court in the city of Richmond, fined him \$500.00 for his contempt of court and directed that he stand committed in the custody of the Marshal of the court until the same be paid, and to purge himself of his contempt by dismissing the said suit last mentioned. In the other two cases similar judgments were rendered, except that John Scott was fined \$10 and costs, and J. B. McCabe was fined \$100.00 and costs. The result was that the three officers on their non-compliance with the judgments of the Court were confined in the city jail of Richmond there to be kept until the judgments were complied with.

The respondents in the equity suit and defendants to The Rule to Show Cause, each petitioned the Supreme

Court of the United States to grant them writs of habe as corpus that the legality of their detention might be inquired into. The question when eliminated from these proceedings, excited an interest throughout the country, as well it might. It was whether officers of a State government could be fined and imprisoned for preferring to obey the mandate of the State to the contrary order of a Federal Judge. It was indeed a question that reached to the bottom of a government of sovereign States. When stated truly the question was whether a State of the Union was to be degraded from the position of a sovereign State of Union, the where Constitution had placed it, to the condition of vassal to a Federal court.

The Answer is given here of the Commonwealth's Attorney for Fauquier County, presenting two grounds of justification for his refusal to obey the restraining order of Judge Bond, and for his preferring to obey the command of his State.

ANSWER OF JOHN SCOTT, OF FAUQUIER, TO
JUDGE BOND'S RULE TO SHOW CAUSE.

Filed September 22nd, 1887.

Honorable Hugh L. Bond, Judge of the Circuit Court of the United States for the Eastern District of Virginia, at the Court-house in Richmond:

May it please your Honour: In compliance with a rule issued by your Honour against me to show cause before your Honour, at the court-house in Richmond, on the 22nd day of September, 1887, at eleven o'clock a. m. of that day, why I should not be attached for contempt in disregarding a certain restraining order of your Honour, made in the cause of Jas. P. Cooper, H. R. Beeton, F. J. Burt, *et als* vs. Morton Marye, auditor, &c., R. A. Ayers, attorney-general, &c., *ets als*. on the 6th day of June, 1887, I appear now in your Honour's court, and submit this paper, which contains my answer to said rule.

Your Honour's restraining order forbade me, as commonwealth's attorney for the county of Fauquier, to discharge certain duties imposed upon me, as one of the commonwealth's attorneys of the state of Virginia, by a statute of the legislature approved by the governor, May 12th, 1887, which in its 14th section provides, in case of disobedience by any officer to it, a pecuniary penalty not less in amount than \$100, nor greater than \$500.

As your honour well knows, it is a principle recognized by publicists of all civilized countries, as the foundation of political life, that a citizen or subject doing an act enjoined upon him by the state is covered by the panoply of the state, and is exempt from every degree of personal responsibility except to his own sovereign.

As a state can act only through the agency of individuals, this immunity is necessary to enable it to preserve itself and perform its other high functions.

An example of the application of this public law occurs in the history of the United States in the case of the state of New York against McLeod, a British subject, who was released from prison by the direction of Mr. Webster, secretary of state, ordering a *nolle prosequi* addressed to the attorney-general of the state of New York. It was a command to the judicial power, and was based on the fact that McLeod's action had been adopted by the British government as one performed by its authority. ("Webster's Works.")

The principle of exemption referred to applies with all its force to the states of the American Union and to their agents, for these states are admitted to be bodies politic in the highest and completest sense of the words. (*Poin-dexter vs. Greenhow*, 114 "United States Reports," p. 288.)

But it is made a condition by that decision, to enable a defendant to avail himself of the exemption, that "It is necessary for him to produce a law of the state which constitutes his commission as its agent, and the warrant for his act." (*Ib.*)

With this condition I comply now by directing your Honour's attention to the law of Virginia, before referred to, and to the third section, which is in these words:

“The proceeding shall be by motion in the name of the commonwealth, on ten days notice, and shall be instituted and prosecuted by the attorney for the commonwealth of the county or corporation in which the proceeding is; or, if it be instituted by direction of the auditor of public accounts, in the circuit court of the city of Richmond.”

This Act of Assembly was passed obviously with the design to induce the holders of tax receivable coupons to submit them for identification and verification, as required by the previous Act of January 14th, 1882, the condition upon which the commonwealth allowed her treasurers to receive the coupons for taxes.

This law has been examined by the Supreme Court of the United States in *Antoni vs. Greenhow*, and it was decided by that final arbiter to be in accordance with the constitution (107, United States Reports,” p. 770.)

The statute to which I have referred in justification of my acts, being designed simply to render a previous statute effectual, must be regarded as equally constitutional with it: for the means are appropriate, and therefore ought to protect me from the censures of this court.

But, in a very high quarter, it is contended that if the State law, which the agent or officer obeys, be subsequently held to be unconstitutional by the court trying the cause, it becomes a nullity, and does not protect the officer from penal consequences, for only those laws—such is the doctrine—which are decided to be constitutional, can be regarded by a Federal court as mandates of the State; an unconstitutional law or such as a majority of the court may choose to say is unconstitutional, being but the unauthorized act of the individuals who compose the State government.

Thus is a state separated from its government, without which it ceases to be a state.

To enable the learned judges to reach this eccentric conclusion, it was found necessary to define a state to be “an ideal person, intangible, invisible, immutable,” and incapable of wrong or error (Mr. Justice Mathews in *Poindexter vs. Greenhow*, p. 291.)

Thus, by the astuteness of a lawyer, a state is trans-

formed into a mythical personage; along such strange lines does the judical imagination sportively wander!

From what source that definition of a state of the Union was obtained is not known to me; but certainly it was not obtained from the constitution and laws of the United States, the only lexicon which this court will consult in a case which so deeply concerns the highest franchise of a sovereign state, the liberty of its citizens, and the obedience of its officers.

May it please your Honour, a state of the American Union is not a myth, but is a living corporation. It is composed of a collection of individuals, inhabiting a defined geographical space, with a government and laws to organize and impart to them the characteristics of a body political, and which maintains constitutional relations with the government of the United States.

Thus defined a State is tangible, visible, mutable, and is capable of doing wrong and committing error, as the secession of Virginia and other reconstructed States of South section will doubtless prove to so loyal a citizen as Mr. Justice Mathews.

The fourth section of Article 4 of the Constitution provides that "the United States shall guarantee to every state of the Union a Republican form of government." To convince your Honour that this guaranty has been complied with in the case of Virginia, I have but to refer to the readmission of that state into the Union after the close of the civil war with a constitution accepted as Republican by Congress. That was an act of the political power; it binds all, and this court cannot controvert or annul it.

Your Honour will take judicial notice that the Republican Constitution of Virginia, accepted by Congress and guaranteed by the United States, created a government of the people of Virginia, who are the State of Virginia, and that its government must be presumed by this court to be conducted in accordance with their wishes and by their commands. Its acts are their acts. They bind in contemplation of law as much as the acts of any deputy can bind his principal. This presumption of law, not the Supreme Court, in the plentitude

of despotic power, seeking to subordinate the States to its absolute dicta, can break down or set at naught.— Particularly is this true in this deplorable debt controversy, out of which this constitutional problem has arisen—a flower from a fetid soil—so interesting to every intelligent mind in the United States. It is known that over it the State of Virginia, or, to speak with a stricter propriety, a majority of the political body, has passionately taken jurisdiction, moving its representatives as puppets and dictating legislation in relation to it.

If this reasoning be correct, I conclude that whether the act of May 12 be considered constitutional or unconstitutional, it is equally the act of the State of Virginia, and that I, its commanded agent officer, am not in contempt because, when placed in the dilemma of contrary orders, I have yielded obedience to my natural sovereign whose bread I eat and whose laws I have sworn to obey whenever I act as commonwealth's attorney. This then, may be received as an established theorem: The unconstitutionality of a statute in cases like this does not render it less the act of the state; nor less effective in protecting the agent who obeys it from legal responsibility to any other authority.

The state which directs my official conduct, is, by the laws of the civilized world, accountable for it, and to the state of Virginia I refer your Honour as the responsible party in this case.

Arraign Virginia before your judgment seat; visit your penalties on her head—not on me, her agent and subaltern.

But another deduction may be drawn from this reasoning which it is well not to overlook in this place.

If it be true, as a constitutional proposition, that all the acts of a Republican government are assumed to be the acts of the state, and that this ruling of the Supreme Court is, indeed, a blow at the sovereignty of the people of the states, it is a logical consequence that when a Federal court takes jurisdiction of a state officer it thereby assumes jurisdiction of the state itself.

To hold otherwise is to evade its eleventh amendment, and to treat the constitution with contempt, instead of with honour and obedience.

A single consideration will set this truth very clearly before your Honour.

If, by afflicting the agents or officers of Virginia with imprisonment and confiscation, the Supreme Court can succeed in forcing the treasurers to accept coupons without verification and upon simple tender, upon whom, I ask, does the consequence fall? Not upon the treasurers; not upon the commonwealth's attorneys. The consequence falls alone upon the state of Virginia, whose treasury, by this means, will have been bankrupted by unconstitutional action of the Supreme Court. The Supreme Court needs not to be informed that behind those treasurers and these commonwealth's attorneys the state of Virginia stands to be affected by all the decisions against them.

Through all these mazes and crooked paths, Virginia is the party whom the Supreme Court is seeking to reach; that state is the game they are hunting. Although the only party in interest, Virginia, is not made a party to the record, because the eleventh amendment, which forbids a state to be sued in a Federal court by an individual, awkwardly stands in the way. No other reason can be assigned for the omission to stand her at the bar of the Supreme Court. Surely your Honour will allow that this court, because it is forbidden to entertain a suit against the state of Virginia, cannot therefore lay violent hands on me. A defect of power over the state is not a grant over power of the citizen.

This defect of jurisdiction significantly suggest that when the states fashioned the constitution they did not design to confer upon the Federal court that jurisdiction and it affords strong support to the opinion that when the constitution declares a state legislature shall not pass any law impairing the obligation of contracts, it did not mean to include contracts made by the state itself, which, as a body political, it had the election to perform or not according to the dictates of its morality.

If, finally, it comes to be decided—for this great question is yet in a state of fluctuation—that a Federal court can constitutionally step between a state of the Union and its officers and agents, and absolve them from obe-

dience to it, a most fatal blow will have been struck at the existence of the states of this Union.

The clouds will have begun to gather, and preparations made for those evil times which prognosticators foretell are ahead of this Republic.

The states called this Union into existence, and from having been the massive pillars of a Federal system, they will have sunk down into the degraded vassals of the Supreme Court.

Your Honour will be pleased to take notice that this Federal Union, designed and constructed by the fathers of the Republic for the habitation of a free people, may be destroyed as effectually by a consolidation of the states as by red-handed secession. When a stretch of judicial power is proposed which, if successful, must produce that result, surely, by this court, for that reason, it ought to be condemned as unconstitutional; but if your Honour shall reject my arguments as vain and illusory, and shall decide that I have acted in contempt of your Honour's authority, I am here to abide the consequences of your Honour's displeasure.

All of which is respectfully submitted.

JOHN SCOTT,

Commonwealth's Attorney for
Fauquier County, Virginia.

Richmond, September 22nd, 1887.

After solemn argument by able and distinguished counsel the Supreme Court at the October term 1887 decided as follows, Mr. Justice Stanley Matthews delivering the opinion of the court with Mr. Justice Field concurring and Mr. Justice Harlan dissenting:

"The principal contention on the part of the petitioners is that the suit, nominally against them is, in fact and in law, a suit against the state of Virginia, whose officers they are, jurisdiction to entertain which is denied by the 11th Amendment to the Constitution, * * * We adjudge the suit of "Cooper vs. Marye," in which the injunctions were granted against the present petitioners, to be in substance and in law a suit against the State of Virginia. It is, therefore, within the prohibition of the 11th Amendment of the Constitution. By the

terms of that provision, it is a case to which the judicial power of the United States does not extend. The Circuit Court was without jurisdiction to entertain it. All the proceedings in the exercise of the jurisdiction which it assumed are null and void.

The orders forbidding the petitioners to bring the suits, for bringing which they were adjudged in contempt of its authority, it had no power to make. The orders adjudging them in contempt were equally void, and their imprisonment is without the authority of law.

It is ordered, therefore, that the petitioners be discharged.

The second ground urged in the answer given above, was broadly accepted by the court and made the ground of its decision, but not the first position, which is as follows:

"It is a principle recognized by publicists of all civilized countries, as the foundation of political life, that a citizen or subject doing an act on which liability by the state is covered by the monopoly of the state, and is exempt from every degree of personal responsibility except to his own sovereign."

Yet the first contention here given is as well sustained by the Public Law, applicable to this case, as the second position was sustained by the Eleventh Amendment of the constitution. That ground of defense is upheld in an argument printed in the Virginia Law Magazine for September 1895, page 317, and is here submitted to the reader with entire confidence in its soundness.

Charlottesville Va.

7 May 1897

Col. John Scott

Warrenton, Va.

My dear Colonel

Let me thank you for sending me a copy of your "Brochure".

I have read it with great interest and pleasure; not only because it refreshes my recollection of your special services during the war; but because it has given me an opportunity to consider carefully your "Appeal to the Areopagus"; which demonstrates, to my entire satisfaction, that the Supreme Court ought to have decided

in your favor, upon both of the grounds
relied on in your answer to the Rules.

I wish very much that we
could see more of each other than we
have done for many years - but fear
that, with your stay-at-home habits,
and the condition of my own health,
it is not probable that any favorable
breeze will arise by which the "last year's
bronzed leaves", as the "True Index" would
call us, will be brought together again.

Whether it does, or not, you may
feel assured that, while life lasts, I
will never cease to appreciate our
early, and long continued, friendship.

Very Sincerely Yours
J^m "J" Robertson

AN APPEAL TO THE AREOPAGUS.

There is a question of State Rights, lying deeply buried in the voluminous Virginia *Habeas Corpus* cases—*in re Ayres*, *in re Scott*, *in re McCabe* (123 United States Reports, page 443)—to which it is desired, in this place, to invite attention, and to suggest a solution of it different from the one which, so peremptorily, it has received from the Supreme Federal Court. In this country of independent thought and free discussion, there is reserved for an oppressed, or misunderstood, truth appeal to the forum of opinion which is supplied with a more potential executive force than the utterance even of an ultimate Federal Court.

In that jurisdiction a light is permitted to penetrate through any cleft or fissure, although to shine with a feeble and struggling ray. Within those precincts is a Hill of Mars, on which an Areopagus holds midnight sessions, administering a blindfold justice, open to every suitor. To this court, thus high throned, this appeal now is carried.

In a government, as this republic of combined sovereign States poised and balanced between extremes, it is the duty of every court, whenever summoned so to arbitrate, scrupulously to uphold the rights of the States, counteracting and binding, by this policy, the deep, the impetuous, revolutionizing current steadily running towards an antagonistic power, in proximity to the States and connected with them by innumerable ties. To constitute such a bulwark to the rights of the States, without doubt, was the highest function expected of Federal Courts as planned and framed by the architects of the Constitution.

Upon the loyal performance of the brave duty, amid all oscillations and derangements, produced by accident or the times, depended the retention of the system's federative character, as a substantiality, at least as something more than the empty shell which it is the inclination of the Supreme Court to make it. It is doubtless more agreeable, perhaps safer and more profitable, too, to pay court to the great king, throned at the center, rather than to the States, whose jurisdiction has been

absorbed, and whose revenues have been sequestered and dispensed by a profuse imperial hand. To a system, thus nicely arranged, concentration is as destructive as secession. Perhaps it is more so, since consolidation devours the material out of which the Federal conglomerate was composed, whereas secession, as it occurred with the first Federal experiment, may be followed by reconstruction, with a revived spirit and improved forms. As the citizen beholds headlands crumble away, and familiar landmarks disappear, naturally he dreads the encroaching wave. Like Atlas, upholding the superincumbent weight, the States are stationary pillars, whilst the Central Organ, their creature, is imbued with an incessant and powerful activity, whose heart-beats throb through the system. Absorption now is the danger point. After discharging its wrathful vials, like an exhausted vaporous cloud, secession has drifted off. Perhaps no mistake in statesmanship is so great as that which allows terrible objects in the past to blind the statesman to present dangers. Oliver Cromwell, able as he was as General and statesman, with an historical English dread of Armadas, continued to be apprehensive of the power of Spain after that great body had been smitten with palsy, and did not see across a gut of water, but twenty miles from Dover Cliffs, that a new power had risen to threaten the independence and endanger the peace of Europe. The warning, given to the adventurous mariner of antiquity, ought to be inscribed over the judgment seat of each United States Court—*in medio tutissimus ibis*—for, Scylla's barking waves are as terrible as Charybdis, and Charybdis as Scylla.

To carry into effect the reasonable expectation of the fathers of the new-modeled republic, each Federal judge ought to constitute himself a guardian *ad litem* to a State, wherever one of them is a party to a controversy before him, to vindicate its right under the Constitution, not to seize the occasion to strip it still farther of sovereign attributes, to pluck other royal feathers from its crest.

The point proposed for examination will be extricated from the mass of facts with which it is connected, and

set distinctly before us. The validity of the statute, of May 12, 1887, passed at an extra session of the Virginia Legislature, was questioned at the bar of the Supreme Court as authority for certain tax suits which had been instituted by the Attorney-General and the two Commonwealth's attorneys, his co-defendants in the court below and joint petitioners to the Supreme Court. After learned argument, the Supreme Court sustained the impeached statute as a legal basis for the suits which had been enjoined, and discharged the officers of the State of Virginia from the custody of the marshal on the ground that the Circuit Court for the Eastern District of Virginia, in which the suits had been brought was without jurisdiction, because of the exemption contained in the eleventh amendment of the Constitution of the United States, thus annulling and avoiding, from the beginning the proceedings against the defendants. But one of the petitioners, the second name in the record, in his answer to the rule to show cause, had insisted very earnestly, as one of his grounds, that the constitutionality of the act of May 12th was not necessarily, involved in the judicial inquiry—thus introducing into the controversy, with the creditors of the State of Virginia, a very important and, as it proved, a very litigated question of State's Rights—because, he insisted, by an understood principle of public law, applicable to this case, the act of May 12th, whether constitutional or not, was valid as an authority to protect the servants of Virginia, acting in obedience to her law, from all personal responsibility, although it might not be adjudged valid for other purposes.

The case of Alexander McLeod was relied upon to sustain that proposition of law. McLeod was a British subject, who had been indicted in one of the courts of the State of New York for an alleged murder. The British Government avowed its responsibility for McLeod's act and demanded his release from imprisonment and accusation. The homicide had occurred during the administration of President Tyler, and Mr. Webster, in a position appropriate to his great talents, was the Secretary of State. With a noble candor, which distin-

guished his diplomatic career, extending through two Presidential terms, and which imparted dignity to his office and lustre to his character, the Secretary acceded to the British demands, saying: "In the opinion of the United States, the avowal on the part of his government protected McLeod from personal responsibility." (The case of the *Caroline*, Life of Daniel Webster, by George Ticknor Curtis, Vol. II. p. 68.) This recognition of the public law by the United States makes McLeod's case a precedent of the highest authority in the jurisprudence of nations, where it stands as a fixed rock. But is it to govern in cases like that of the agents or officers of the State of Virginia, acting under the compulsion and authority of the act of May 12th, when they are confronted with a restraining order of a Federal Court? That is the further question which we have to consider in the proposition before us. Except where the Constitution of the United States applies, a *casus foederis*, the States of the Union in respect to each other, and to the government of the United States, are to be considered in the light of independent sovereignties, bound by the obligations and protected by the law of nations. It is not necessary to cite authority to sustain this conceded principle of Federal law. There is nothing in the Federal charter of granted powers, which confers on any department of the government, which it designed to create, any authority to punish a State officer for obeying the State laws. If there were any such jurisdiction, it would put a State in chains and, at a single blow, destroy all States' Rights. If we would guard and protect the States of the Union, as entities, and save them from becoming practically non-entities, we must extend to them the principle of the public law, enunciated in McLeod's case by Secretary Webster. Every reason of necessity and policy which entitles an external power, like Great Britain, to the application of the rule of law, equally applies, in the case before us, to the State of Virginia. Government, except where obtained from a superior power as a colonial charter, is a growth of society. It is impossible for a community of human beings to exist without a government. This is true of political society, and in natural society

there is the authority of the magister. When the North American States associated under a federative compact, for self protection, each State possessed a government claiming and exercising the right of control over its subjects, and, as incidental to that great authority, and inseparable from it, the further right to protect them from personal responsibility to any other power for acts of obedience to the home government. The natural right of every political body to provide itself with a government grows out of a necessary inherent sovereignty, and when Mr. Justice Matthews (page 505) instructs the country in the constitutional doctrine that the States of the Union are "invested with that large residuum of sovereignty which has not been *delegated* to the United States," he in effect admits the natural authority of a State of the Union to create a government, an apparatus which cannot act, or even exist, without agents, who are shielded from all external personal responsibility. The right of protection is indeed the condition of the duty of obedience.

When the man of affairs, instead of the idealogue, comes to deal with this problem, the misty atmosphere, with which metaphysics invested it in a court-room, disperses. Happily for the cause of truth in this case, we are not without the authority of a very respectable precedent to sanction this position, which ought to command the assent of lawyer and layman.

When the States of the South Section withdrew from fellowship and union with the United States to found a government in accord with their own ideas, the secession was effected by each State exercising an absolute jurisdiction over its citizens. It was the absolute power over its people which inheres in sovereignty, whether republican or monarchical, and nowhere in history was that absolute principle more fully comprehended, asserted, or conceded than in the Southern Commonwealths of that period. Virginia, in that supreme hour, claimed to extend her sceptre over every man who had been born on her soil. He belonged to her, she asserted, by a perpetual and inalienable allegiance. She spoke like a king, "Once a subject, always a subject." She lifted up her

great voice and her sons came to her from all climates and all localities. It was a proud moment in the history of that mother of statesmen! Here is an historic declaration of that principle, a defiance to the proclamation of President Jackson, from the pen of John Randolph of Roanoke, adopted with one voice by the people of Charlotte county: "The allegiance of the people of Virginia is due to her; to her their obedience is due, while to them she owes protection against all consequences of such obedience." (Home Reminiscences of Randolph, by Powhatan Bouldin.) Here also is another declaration of that organic principle of States' Rights by Josiah Quincy, another great man, but born in the opposite section of the United States: "As it is with the people of every State, so it is with the people of this Commonwealth—the individuals composing this State owe to the people of Massachusetts an allegiance original, inherent, native and perpetual." In the just meaning of the word "State," it ceases to exist when it is despoiled of the right to protect its agents and officers from personal responsibility incurred by obedience to the State. This right to protect is indeed the basanite and touch-stone of the retention of the sovereign principle. This truth Mr. Justice Matthews, and his learned brother of the silken stole, knew as well as others. They understood well enough that, in the language objected to, they were cutting the tap root of the States' system. This is one of the deplorable consequences of intrusting political power to courts and judges, as they are ever seeking to widen and extend their jurisdictions, which acts of aggression, piously they call *law*.

The right of protection denied when men's minds are engrossed in the pursuit of gain, or are sunk in repose, was not called in question by the United States amid the throes of the secession period. Among the great number of Confederate prisoners, captured with arms in their hands and blood stains on their uniforms, not one was held in a treason trial for levying war on the United States, or for conspiring against their government. Even he, the Heresiarch, thus panoplied, was allowed to

walk forth forth from his casemate, untried, unquestioned, unhurt.

Why? Surely not because a justification was conceded to the right of secession, but because, under our system of a Union of Sovereign States, each man, the ringleader and all, were covered from personal responsibility by the admitted duty of obedience, each man to his State. But the States, which had assumed the responsibility for the acts of their statesmen and soldiers, were visited by all the stern methods of war. Here the world has an exposition of the law of our Union applicable to this case, made by the able men who had been put in charge of the Government of the United States by a great nation girded with the sword, the public judgment, and the courts as well, consenting. It is a precedent which even the Supreme Court of this sleepy period might not entirely ignore if it were possible for a lawyer to look abroad into universality and put by his catechism of the court room. It was an historic era which tells us in language, not to be forgotten or misunderstood, what in American law is meant by a sovereign State. It is not an idle form of words, as the Supreme Court appear to consider. This is the memorable lesson which the political power teaches to the judicial power. But Mr. Justice Matthews rejects this interpretation of the Constitution and laws, and the appeal now is taken to the Areopagy of opinion. The autocratic Justice Matthews thus pronounces the sentence of his absolute and final court: "The Government of the United States, in the enforcement of its laws, deals with all persons in its territorial jurisdiction as individuals owing obedience to its authority. The penalties of disobedience may be visited on them without regard to the character in which they assume to act, or the nature of the exemption they may plead in justification. Nothing can be interposed between the individual and the obligation he owes to the Constitution and laws of the United States, which can shield or defend him from their just authority, and the extent and limits of that authority, the United States by the judicial power interprets and applies for itself. If, therefore, an indi-

vidual acting under the assumed authority of a State, as one of its officers, and under color of its laws; comes into conflict with the superior authority of a valid law of the United States, he is stripped of his representative character, and subjected, in his own person, to the consequences of his individual conduct. The State has no power to impart to him any immunity from personal responsibility to the supreme authority of the United States."

Are we in St. Petersburg, or was this dictatorial language used to the sovereign States by their own creature? In this extract from its opinion, the Supreme Court chooses to ignore the fact that the nation of the United States is a *federal* nation, not a solid body of individuals, that each State under the Constitution is a sovereignty, which the Supreme Court, in its interpretation of the Constitution, is not at liberty to impair or destroy. An important point of the argument is that without an irresponsibility in the persons and fortunes of its agents to the Federal Government, or to any of its departments, the State powers may be *destroyed*, since a State must act through the agency of individuals and cannot act in any other way.

Cannot a Federal judge be made to understand that any theory of Federal authority that would operate to accomplish that disastrous result would be, must be, unconstitutional? Surely the Supreme Court does not deny it to be as unconstitutional to strike the system in its entirety as to wound a particular part of it! The Rt. Hon. James Bryce, in his survey of our Government, felt warranted in saying: "The States have learned to fear the Supreme Court as an antagonist." Indeed, it is a *Constrictor* which they feel may crush their system. The apprehension is well founded, and their sovereignty is the only practical limitation to its growing jurisdiction. If additional securities are not provided by the Constitution, or the Courts, it will happen that the States must consult the last volume of the Supreme Court Reports to be taught how much or how *little*, of the old covenanted liberty has been left. The Supreme Court has become a maelstrom in which all ships that navigate Federal sea

may be drowned—a sun into whose glowing furnace, by an irresistible attraction, star, comet, system—all—will be precipitated. But the authority for the imperious language employed by Mr. Justice Matthews, quoted above, is *Osborn vs. Bank of the United States* the Ohio case, as recognized by judges and lawyers, which is found in 9th of Wheaton's United States Reports, page 738; and I cannot, in justice to the cause, which I presume still to champion, forbear its mention here. It has been a landmark in the profession, an idol to which men have bowed, but, happily, it can no longer, I think, be regarded in that light. By a statute of Ohio a tax of \$500 was imposed on each bank of the United States doing business within the State, and by the authority of a warrant, or execution, from Osborn, the Auditor, as the statute provides, Harper entered the bank at Chillicothe and carried off coin and notes sufficient to satisfy Ohio's demand, and delivered the money to Curry, the Treasurer, who placed it to the credit of the State on the treasury books yet kept it in a trunk separate from other monies.

This particular fund, with the rest of the treasury's contents, was delivered to Sullivan, Curry's successor, who receipted for it as Treasurer, "not otherwise," but it was retained in the trunk where Curry had placed it.

On the 4th day of September, 1819, a bill for an injunction was exhibited in the Circuit Court of the United States for Ohio against Osborn and Harper, and the injunction was served on Harper whilst he was on his way to Columbus, and on Osborn before Harper reached Columbus.

In September, 1820, a supplemental and amended bill was filed making Osborn, Harper, Curry and Sullivan parties. On that bill the cause proceeded to a decree against the defendants, and was appealed to the Supreme Court, and heard at the February term, 1824. The Judges treat as undeniable law, and founded their reasoning upon it, that a principal in a trespass is jointly liable with the agent who commits it, and that it is error if he be not joined as a party to the suit.

The court say: "The fact is made out in the bill that

Osborn employed Harper to do an illegal act, and that he is jointly liable with the agent who commits it, is as well settled as any principle of law whatever." (Page 837). This responsibility attaching to an individual trespasser, who acts through an agent, the court applies to a State of the Union. "The direct interest of the State in the suit," the court say, "is admitted, and, had it been in the power of the bank to have made the State a party, perhaps no decree could have been pronounced in the cause, until the State was before the court." "(Page 846-7). According to this exposition, in absence of the eleventh amendment of the Constitution of the United States, the respondents to the amended and supplemental bill would have been Osborn, Harper, Curry, Sullivan, and the State of Ohio, represented by its Governor and Attorney General, according to the precedent of *Chisholm vs. Georgia*, 2 Dallas 419. In this condition of parties by the public law, as stated by secretary Webster, the bill as soon as the relation of the parties was discovered by the Court, would have been dismissed as to the respondents, but retained against Ohio; for already the court had said they had jurisdiction to administer any law connected with the case (page 820-33), and of course, the public law, a part of all civilized codes.

Sustained by these authorities, we stand now on the hard ground of this proposition: Before the adoption of the eleventh amendment to the Constitution, an agent of the State could not have been held to a personal responsibility by a Federal court, because the State, the responsible party, might be produced before the court as a respondent.

If, after the adoption of that amendment, the agent is held responsible, it must be because the amendment creates the responsibility. Here, in its puissance is the eleventh amendment, and let it speak for itself: "The judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State." This amendment confers no power, it transfers no responsibility, it is wholly prohibitory. It in-

terdicts, in particular cases, suits against one of the United States, and that is the whole scope of the amendment. By what authority then, a reader may enquire, is the agent of a State suable, after the offending actor has been guaranteed and protected by an interdict of the Constitution? If such responsibility, which did not exist before the adoption of the eleventh amendment, exists afterwards, it must be because of the words of the amendment, or some proper deduction from them, which we see is not the case. If such responsibility be transferred to the agent, from the exonerated principal, the amendment is made craftily to undo its work. What did Ohio gain, it may be asked, or what did the bank lose by the eleventh amendment? The court compelled the State officer (Sullivan) to enter the treasure-house of Ohio—it was an act of violence—and take the money out of the trunk where Curry had placed it, and hand it back to the bank, the very thing that must have been done if the eleventh amendment had not been appended to the Constitution.

What a nose of wax has not the Constitution become in the dextrous hands of the Supreme Court! The *object* of the eleventh amendment was to vindicate the sovereign principle, attached to each State, which had been impaired by the Constitution as at first made, as we learn from *Chisholm vs. Georgia*.

The principle of State sovereignty was made the sub-base of the Constitution, and it lies there still, as does, in Indian seas, amid all convulsions, the coral foundation of their islands and and continents.

The judge who rendered the opinion of the court felt the burden he was assuming. He said: "It was not in the power of the bank to have made the State a party, and the very difficult question is to be decided whether in such a case the court may act on the agents of the State and the property in their hands." But the difficulty by a masterful effort was overcome, the pioneers smoothed and leveled the way for succeeding judges and courts, and now, instead of the hesitating, apologetic language of the pioneer judges, the States are bearded by the autocratic *dictum* of Mr. Justice Matthews. So power

grows! The amendment, when properly construed, covers with its aegis as well principal as agent: for in every human transaction, by every code, the agent is but the *alter ego* of the principal. In law they are the same man. It is not necessary to say more on this point. To punish or compel the agent of a released principal, it is clear enough now, was a palpable violation of the Constitution.

It was decided also in *Osborn vs. The Bank*, that a State could not be regarded as a party to the suit unless it was so named in the record, the interest of Ohio in the case being conceded in the court's opinion. With a purged vision the Supreme Court now say in the *habeas corpus* cases: "To secure the manifest purposes of the Constitutional exemption guaranteed by the eleventh amendment, requires that it should be interpreted, not literally and too narrowly, but fairly, and with such breadth and largeness as effectually to accomplish the substance of its purpose. In this spirit it must be held to cover not only suits brought against the State by name, but those also against its agents, officers, and representatives, where the State, *though not named as such*, is nevertheless, the only real party against which alone in fact the judgment or decree effectively operates." But in the Ohio case a very serious obstacle was interposed. Such a conclusion would have ousted the Supreme Court of jurisdiction in the cause, as in the *habeas corpus* cases, a conclusion to which, in the inflamed condition of parties, that Court, by any process of reasoning, did not intend to be conducted. Party interests were paramount with the judges of the Supreme Court at that period of the nation's history, as they have been supposed to be since. If the Ohio case is to stand as law, and also the autocratic judgment of Mr. Justice Matthews, the result we have reached is that the Constitution has turned the Judges out of a jurisdiction by the front door, but, with false keys, they have entered again by the back door.

JOHN SCOTT, OF FAUQUIER.

Warrenton, Va.

Note to page 79.

When the two grounds, taken in the foregoing answer of the Commonwealth's Attorney of Fauquier County, are analyzed, they are seen to be rooted both in the bed-rock of State sovereignty, and though coming from different directions, yet they concur in the protection of the State's agent from every species and degree of external responsibility. By the first the agent is shielded by the sovereignty of the States as respected and honoured by international law, enunciated by secretary Webster in McLeod's case [ante]. In the second ground the irresponsibility of the State's agent, or officer, is deduced from the Eleventh Amendment of the Constitution, according to the principles of Law. Let it be understood that the Eleventh Amendment only *restores* to every State of the Union the high and sovereign privilege of exemption from the suit of an individual of which the Constitution, as first written, through inadvertence, or mistake, had deprived a State. In the first go-off of the new government that departure from the principle of the Constitution produced an angry and hostile defiance of the authority of a Federal Court, by the State of Georgia: The whole country saw the fatal error that had been committed in the structure of the Union between those sovereignties and the Eleventh amendment, through the fortunate power of the amendment, was added to the constitution. Now, by the wise decision in the Habeas Corpus cases, the State's agent, no more than the State itself, under that part of the Constitution, is suable by an individual, or by a collection of individuals such as proposed to degrade and bankrupt the state of Virginia by the *hocus pocus* of suing the State's agent when the Constitution forbade them to sue the State itself. The Eleventh Amendment, with its instructive history, has an important bearing on the unending controversy, whether this unexampled American system is a grand congregation of sovereign States, banded in an experiment in government or a mere huddle of federal vassals, whose precarious fate is decided in a quadrennial election. Sovereignty in the Union is an indivisible entity, the "residuum" being left with the States, whilst the

other part is delegated, or entrusted, to a Central Agent, under the instructions of a written Constitution, *until the Principal chooses to revoke the Agency*. The system then does not violently execute the judgment of Solomon! When will the American politician, and the Supreme Court, learn that they enternize the Union when they agree to construe the Constitution in accordance with its fundamental principle, and not keep the States alarmed lest they be destroyed by a huge Octopod at Washington.

IN MEMORIAM.

JUDGE WILLIAM J. ROBERTSON.

Judge William J. Robertson died at 2 o'clock on the morning of May 27, at his residence on Park street. He had been in declining health for two or three years, but was strong enough to go about until Sunday, when he was taken seriously ill. His death was a surprise to the people of the city, who had not generally heard of his illness. (The funeral will take place at 5 o'clock tomorrow (Saturday) afternoon from Christ Episcopal church,) interment at Riverview cemetery.

Judge Robertson was born in the county of Culpeper in December, 1817, where his father, a Scotchman, was master of the classical school. He entered the academic department of the University of Virginia in 1834, remaining through 1836. He then taught a classical school at Captain Lewis Walker's in the Bentivoglio neighborhood, in the lower part of Albemarle. He re-entered the University in 1841 or '42 and graduated with distinction from the law department, then under the late Judge Henry St. George Tucker.

He settled in Charlottesville in 1842 or '43, becoming a member of the Albemarle bar. It was about this time he married Miss Hannah Gordon, daughter of the distinguished Gen. William F. Gordon of Louisa. He rose very rapidly as a lawyer, and in 1850 was one of the leaders of the bar in the counties of Albemarle and Louisa. In 1852 he was commonwealth's attorney of Albemarle, and discharged this duty with a distinction and ability

unsurpassed. About 1856 he became a member of the Board of Visitors of the University of Virginia. In 1859 in a contest with Col. John B. Baldwin of Augusta and Judge Richard H. Parker of Winchester, he was elected a judge of the Court of Appeals of Virginia. He took high rank upon the bench and remained a member of the court until the overthrow of the Virginia government in '65 by the fall of the Confederacy. He thereupon resumed in Charlottesville the practice of the law and was generally, if not universally, regarded as the ablest lawyer in the State, and his practice became commensurate with the State itself, he being employed in special cases of much importance. Some twenty-five years ago, upon the death of Colonel Baldwin, Judge Robertson succeeded him as general counsel of Chesapeake and Ohio Railway and a few years later he became the general counsel in Virginia of the Norfolk and Western Railway Company. These positions he filled with great ability until a few years ago, when the infirmities of age necessitated his retirement from the bar.

His second wife, whom he married in 1863, was Mrs. Alice Watts Morris of Roanoke county, mother of Senator George W. Morris: She, with the five children of this union, survives him.—Charlottesville Progress, copied from the Alumni Bulletin of the University of Virginia.

TESTIMONIALS.

The State of Virginia, in her nobleness, as well as to reward the loyal obedience shown to her high, and superior authority, and, perhaps, to hold it up to other times, awarded to each of her officers, engaged in that important business, a Testimonial of her sovereign approbation. To heighten the honour, and render the gifts more rich, those evidences of the State's appreciation, were sent, to the Recipients, through the gallant and distinguished Confederate General, His Excellency Governor Fitzhugh Lee.

To Maj. John Scott.

United States Senate.

Washington Dec 24 1887.

My dear Maj. Scott:

I have just returned
after 10 days unrecordable
absence and find your
much appreciated letter of
13th inst.

Your noble fight for
Virginia has won its award.

The hour and the men met
- the occasion brought forth its
representatives, and the result
is a civic victory of great
and far reaching results.

With all my heart I thank you

for a service of heart, intellect,
and Courage to our State
which is beyond the measure
of words.

Your Commendation of
my Lee address gratifies
me no little. My soul was
in it, and I am greatly honored
that you deem it worthy —

I wish you a happy Christ-
mas, and a New Year brightened
by the reflection that you have
helped to brighten it for us all
With great respect
Most truly Yours,
Geo. W. Driscoll.

PRESIDENT MCKINLEY AND THE PARLIAMENT OF MAN.

FROM THE TRUE INDEX.

BY COL. JOHN SCOTT OF FAUQUIER.

“The parliament of man” is a distinctive title applied to a convocation of the nations to consider the restoration of silver to its rightful capacity, and is gotten from the select and expressive vocabulary of Mr. Murat Halstead, the able author and distinguished literatus. The consent of so various and multitudinous an assembly to the rehabilitation of silver, and its use in the world’s business, is the precedent condition to its remonetization by the United States, as stipulated in the Republican platform, and repeated by their President-elect in his acceptance of the nomination of his party. But, as in the case of the Brussels’ Conference, the condition might result in a disappointment. Where there are opposing interests little is to be expected from the arts of persuasion. The ultima ratio of force is the only instrumentality to be relied on by President McKinley, if he would at all, or in reasonable time, realize the expectation of his friends, or still the clamors of the productive employments, extending over so extensive an area as the United States.

I do not propose to take arms against a sea of troubles and invite the United States to declare war against the formidable array represented in “the parliament of man.” No! Let this country select its opponent, let it strike the shield of a single illustrious knight and him dare to the encounter. The United States are great and powerful enough to lead the nations in the noble enterprise of a common delivery from slavery to gold. In the power “to regulate commerce with foreign nations” the constitution has forged the weapon with which it has armed Congress for the conflict. Taught by a painful experience the Constitution-makers were aware that it might become as necessary to the interests and rights of the nation they were forming, to be able to wage a bloodless commercial war, as to maintain hostilities with the sword. “England is a creditor nation and should require payments in gold,” as Mr. Gladstone, in the words of a money-lender, has been pleased to announce as a becoming policy in Parliament. She is represented here as the Shylock of this period of the world and should be dealt with as the grinding usurer, and be chosen as the nation upon which the experiment is to be tried and where the example would prove most effective. The United States may well revive, as becoming her character and position, the superb maxim of Rome, *debetare superbos*, and compel that old and haughty nation to abandon the maxims and practices of a money-changer. England demonetizes silver, and induces an unauthorized and disobedient Amer-

ican Congress to imitate her example, that her interest and debts may be paid in appreciating gold—the crooked wisdom of the usurer. It is time for the United States to employ all the reserved powers of their constitution to break this fetter of gold. If Congress, in the plenitude of its authority, were to authorize the President to prohibit, in the whole or in part, British trade with the ports and harbors of the United States, unless the British government would agree to remonetize silver, within a stipulated period, that concession, so important to the producing classes of the Union speedily would be made. The immensity of British trade with the United States was well stated by President Harrison in the letter accepting a nomination for a second term. Its bulk and value expressed the dependence of the United Kingdom upon that interchange of products and showed that it was as absolute as that of a nursing infant. The Venezuelan scare exposed a truth that with propriety may be alluded to in this connexion. It revealed the prudent solicitude of Lord Salisbury to preserve unimpaired the cordial relations of the Queen's government with the republic of North America. The British are a brave and martial people, but are also a politic people, and no one, probably, is better informed of this than the intelligent Premier. Contrast the amiable, good-natured, and acquiescing negotiation with Mr. Cleveland, who was so entirely a volunteer in the boundary dispute of British Guiana, with the menacing attitude when the young Emperor of Germany proposed to interfere with British pretensions in South Africa! With ruffled plumes England then showed that she was still the gamecock of Europe. To this readiness for war, and genius for the affairs of peace, that historical nation owes its supremacy in western Europe. It shows another thing that its primary interests do not lie in America, but on the Dardenelles and in the further East. With her hand on her sword she negotiates in the Mediterranean and the Baltic, but she can afford to be agreeable with the West. The jurisdiction “to regulate commerce with foreign nations,” though expressed in general, perhaps indefinite, terms, has yet a defined historical meaning. The Articles of Confederation, or first Constitution of the United States, contained no such power as that now conceded by the United States, to Congress, and the want of it enfeebled the Government so far as to frustrate action when it sought to protect the foreign commerce of the country. But the States have received a compensation for their losses, thence resulting in the vigorous amended Federal Agent to which attention is now directed.

As soon as the independence of the colonies was acknowledged by the home government the war of arms was succeeded by a war of imposts, in intention by the British Government, in effect by the rest of Europe. Adam Smith but a few years before had published “The Wealth of Nations,” instructing government that freedom in commerce was necessary to its prosperity. The great work had been given to mankind two months before Jefferson

read his Declaration of Independence to Congress, so nearly contemporaneous were those productions. In truth, the two men, one living in the old world, by the boisterous German ocean, the other in the new world as a philosopher, but announced parts of the same valuable truth—one the freedom of man's property, the other the freedom of man's person. Adam Smith's book was eagerly read in America and made the sub-base of both constitutions, but its radiant light more slowly was diffused among the statesmen of the continent, for there trade was still hobbled and hampered by hindrances and prohibitions—so difficult is it to pluck up a rooted error. It was by such causes that the oil industry of New England was destroyed, whilst they rendered unproductive to the planters the rice and indigo of the Carolinas, and the tobacco of Virginia and Maryland. The custom-house, as part of the taxing apparatus, was withheld by the States. Stretched along the seaboard those States, but Virginia particularly, attempted retaliatory measures, but with disastrous results. The exclusions and disadvantages enacted by State statutes drove foreign shippers and cargoes to neighboring harbors, where they were received upon more hospitable terms. To Washington, although in private life, all grievances were carried, and his correspondence is the source of much information relative to the concerns of that period. To the Marquis de La Fayette, the confidant of his opinions, apprehensions and hopes, Washington thus paints the dreary picture: "Whenever we have an efficient government established, that government will surely impose retaliatory restrictions on the trade of Great Britain. At present, or under our present form of Confederation, it would be idle to think of making commercial retaliations upon our part. One State passes a law prohibitory of some article, another State opens wide its avenues for its admission. It is in vain to hope for a remedy for these and innumerable other evils until a general government is established." Upon this part of the correspondence a recent book makes this commentary: "As planter Washington argued, so argued every farmer and planter in the Union. There was a diapason of voices that went up from every neighborhood in favor of conferring upon Congress, in some form, or under some conditions, the power of commercial retaliation, and when men saw that power placed in a new Constitution it went further to reconcile them to it than all other causes so strong is the desire of gain in an unprosperous people."

There can be no doubt as to the meaning of those words, nor of the intention of the men who caused them to be inserted in the Constitution. It is an authority vested in Congress to enable it to wage a commercial war and by that means to remedy wrongs remediable in no other way. The only doubt that can trouble the nation at this time, as to that business, is whether the new Congress and the new President will adopt the stringent measure for which Washington sighed. "The creditor nation," bend-

ing to the control of a cruel gold faction, has been willing to confiscate agricultural and other products to the single gold standard and in its effects to pauperize the colonies and dependencies of every region and race, and the question will soon be propounded whether commerce with America also is to be heaped upon the same sacrificial altar.

When the new President, representing one party, but speaking for all parties, shall present the demand of the United States with the penalty, in cases of refusal, lying in the background there is not a reasonable doubt but that Salisbury with alacrity will again consent. If any adverse influence prevail with him another ministry, with the accomplished Arthur James Balfour as its Chief, will be installed. To every understanding, not blinded to the signs of the times, it is manifest that the trader is resolved to have both the yellow and the white metals in his multifarious and multitudinous transactions. When he calls for both metals why should he be denied? Silver and gold supplement each other and have been used in a relation of value from remotest antiquity. With as much reason might some other despot interdict the use of both eyes because a man can get along with one eye. The law of the Creator is not more clearly visible in the one case than in the other. President McKinley would not enter an untrodden path were he to grapple very soon with the British power. No act of any administration could be so popular as that. It is not ancient history that the United States coerced Germany, notwithstanding her invincible legions, into an observance of comity, through the exercise of their commercial jurisdiction. During the administration of Benjamin Harrison American pork was interdicted the German market under the pretext, it was thought, of its unsoundness. An act was adopted by Congress requiring an examination of all meats intended for foreign markets and a certificate of soundness supplied to the exporter. The President in addition was empowered, if the offensive laws were not repealed, to forbid the ports of the United States to German commerce or to selected articles of it. The efficacy of that legislation was soon verified. The restrictions, like cobwebs, were all blown away and the American, hog grunting and sweating, marched in with all the honors of war. So it would be with persecuted silver. What the nation wants, in this crisis, is a vigorous man at the helm, and it would be well if he were a hickory Jackson. The overlordship of British power in our monetary concerns must be shaken off. The United States do not intend to sink back into a dependency and wear again a colonial yoke under the guise of the reign of a Money Power. England may submit to such a vassalage, America never will. Wm. McKinley must be the President, not Morgan, Drexel & Company. He must redeem his personal pledge, and the pledges of his party, to remonetize silver. It will not do for him to plead his inability to obtain the consent of foreign nations when all the people see the weapons of

coercion which the constitution places in the hands of a President, who has in him the stern stuff of a soldier. The nation has endured this travail long, but at last the the hour and the man have come.

FROM THE TRUE INDEX.

MR. CARLISLE'S FIFTY CENT DOLLAR.

Mr. Editor:—Mr. Secretary Carlisle asserts, in his able speeches on the currency: If silver were coined at the ratio of 16 to 1 that such coinage would fill the treasury with fifty cent dollars, because he avers, in the market of the precious metals, where the relative value of gold and silver is fixed, the silver metal bears to gold a ratio of 32 to 1. In consequence, that these depreciated, or “dishonest” dollars as he calls them, when made legal tender, and employed in the discharge of debts, would defraud each creditor of half his dues. But that result could not follow, it were enough to say, because such a payment would grossly impair the obligation of the contract between the parties, for the constitution declares Article 1, Section 10, “*no State shall pass any law impairing the obligation of Contracts,*” an incapacity which attaches to Congress equally as to a state. This incapacity in Congress to pass any law impairing the obligation of contracts is created by the character of the federal instrument which provides a government of *granted or enumerated powers*, so that if we discover that authority to do a particular thing is not to be found in the constitution, fairly construed, the necessary conclusion is that the power has been denied. That was an important, perhaps a vital, part of the work, for protection to the sacredness of contracts was a base upon which those Conscript Fathers designed to found civil society in the United States. The quoted language was a proclamation from those sovereign democratic communities, in their high federate capacity, of a moral law, as well as the enactment of a convenient constitutional restraint.

The legislator knows, if he would build strongly, that he must build on the foundation of rectitude, a principle in nature—God’s law—which this clause of the constitution reveals to have presided at that Council of The Fathers. If this silent, but potential, negative, which its framers left behind them, is to be taken out of the constitution, or reduced to a nullity by the cunning of lawyer and judge, let it be done by a declaration as plain and positive as that which binds a state of the Union, for if done by the Supreme Court, it would leave the States still in fetters whilst the mischievous project would introduce irresponsible Congress into a new and alarming jurisdiction. It would be to let the treacherous ocean to new beds. No good reason can be suggested why so delicate a power should be withheld from a

state, yet be entrusted to Congress, and such appears to have been the conclusion of the great men who fabricated the constitution. Were the important question, agitated here, allowed to be determined on the words and meaning of the Great Treaty among the States,, there would be little room for doubt, for this part of the fundamental law is a plain piece of work. But the Supreme Court, at once autocrat and oracle, has spoken on the important question and it is necessary to attend to its utterances. In *Julliard against Greenman* the opinion of the Court, the whole Court, except Mr. Justice Field, contains these unpleasant words: "Under the power to coin money and regulate its value, Congress may issue coins of the same denominations as those already current by law, but of less intrinsic value than those by reason of containing a less weight of the precious metals and thereby enable debtors to discharge their debts by the payment of coins of less real value." The case may be found in 110 U. S. Reports 421. The Supreme Court removes all difficulties and confers on Congress, the jurisdiction with the free hand of a proprietor. This power, thus generously bestowed is derived, as we see, from the power "to coin money," [good money of course,] for the transaction of business. But how derived? As an incident, the authority to do a wrong and pernicious act from an authority to do a rightful and beneficent act. Is evil then the legitimate offspring of good, and has the Creator thus organized the moral law? We know how the fathers of the Constitution have dealt with the subject of the repudiation of contracts. We know too how the inner conscience detests and condemns the act, and we demand some higher authority than Supreme Court Judges to legitimate and sanction this new jurisdiction of fraud. Another school of Latitudinarians has sprung into existence—"men not restrained by settled limits of opinions." That sect has assaulted the constitution as once it assailed the Scriptures. It is hoped that some compassionate and friendly overseeing power will save the constitution from the vivisection and arrest the Supreme Court judges who have become a dreaded corps of sappers and miners. To limit the term of office of the court is the only efficacious mode of correcting the evil. *The Judges will then become responsible for what they have said and done.* We don't want an autocrat in our republic. He does not fit into the system. But, if we are to have autocratic power, every lover of his country, and friend of virtue, will pray that it may not be lodged in the bench of judges so bitterly denounced by Senator Vest for annulling the act of Congress which taxed the incomes of the moneycrats, or plutocrats, if the Greek word is better liked. The scandalous decision it is hoped, will not be forgotten when the new Congress assembles.

The Free Coinage of Silver Party have not raised a standard of fraud for dishonest debtors to flock under. They do not wish to pay debts with fifty cent dollars. But they do earnestly de-

sire to have the constitution delivered from such a perverted construction as prevailed in Julliard against Greenman and that the nation be allowed to retain the high morality of the constitution and not have thrust upon society the low morality of the Supreme Court. They know if the victory be given them, that the free coinage of silver will raise the price of the white metal to the former standard of 16 to 1, for it is a part of the free coinage monetary system that government should create at each mint an unlimited demand for all the silver bullion and all the gold bullion that is offered, at the relative value of 16 to 1. Our own experience has shown that even the gold discoveries of California, that wonderful event, did not at our own mints disturb this steady balance. A plenty of metal money would result from the free coinage of silver which would injure no man, unless the usurer.

The productions of the shop, the manufacture, the mine, the farm and of every other honest employment, would rise in value, the hire again would become worthy of the laborer and prosperity would revisit the homes of the people, which is the final object of government.

JOHN SCOTT OF FAUQUIER.

WARRENTON, VA., AUGUST 6, 1896.

A CONSIDERABLE MISTAKE.

In his letter of acceptance Hon. William McKinley states: "Prior to that time, [1878], there had been less than nine millions of silver dollars coined in the entire history of the United States, a period of eighty-nine years." If his words are to have their usual significance given them the intention of the Republican nominee is to say, that in the entire history of the United States the total amount of silver coined at the government mints had amounted, prior to the named year, to nine millions of dollars only. The correct facts are these, that, before demonetization of silver in February 1873, one hundred and five millions of silver were coined by the government and its mints, of which amount eight millions were coined into dollars, the rest into dimes quarters and half dollars. In addition a hundred millions of foreign silver coins, which had worked into circulation here, had been adopted by our government as American money and made legal tender in payment of debts. So that prior to 1873 the United States had, for the various purposes of business, two hundred and five millions of silver in circulation instead of less than nine millions of dollars, as stated by the Honorable Republican candidate. Here then was Bimetallism in the United States, prior to the demonetization of silver by the Congress in 1873, standing on its two strong legs, silver and gold. For to this aggregate of money must be added the gold that, under a free coinage law, was being continually poured into the capacious lap of commerce, bearing a ratio to silver of 1 to sixteen, the market values of the white and yellow metals

being kept equal by the free coinage of both metals. To that prosperous condition Mr. Bryan, and the Democratic party, would restore the labourers and producers of the country by making a money metal again of silver and giving to it, as well as to gold, the liberty of free coinage. Free coinage of silver with free coinage of gold is then not an experiment in finance, as contended by the adversaries of free silver and the people, but is the old and tried system of Hamilton and Jefferson, approved by Washington. When silver was demonetized in February 1873, and of course denied free coinage, the people lost at a blow about one half of their metal money, primary money. Gold then became the sole standard and naturally began to rise in value in the struggle to get it, until now if a farmer wishes to get a sum of money with which to pay debts or taxes, he will have to give for one dollar two bushels of wheat. When the question is stated in this way it is plain enough that by the destruction of half the metal money the half that is left doubles in value as a purchasing agent. High priced gold makes low priced farm products, as the beggary and bankruptcy of the farming class testify. And all for what? That the owners of the gold through means of falling prices, or rising gold, may be the owners of the country, the government becoming not a monarchy, not an aristocracy, but a moneyocracy, a kind of *Devilocracy*.

JOHN SCOTT, of Fauquier, Warrenton, Va.

APPLICATION OF PRECEDENT TO THE WRITTEN LAW.

FROM THE TRUE INDEX.

EDITOR OF THE TRUE INDEX:—It is a serious affair when a government miscarries in one of the main purposes of its foundation and the language and meaning of a written constitution are set at naught by the insolent power of construction. A hasty look at Julliard against Greenman, 110 United States Reports, page 421, has revealed to the reader in what manner the Supreme Court, the Court of the constitution, has produced such a result. That bench of Judges, with the constitution open before them, decided that the authority to "coin money" empowers Congress to coin depreciated dollars with which previously contracted debts might be liquidated, and in consequence, the creditor defrauded of part of his property. Never before has knavery been taken as a ward of the court, and never before so great violence done to human language! Was it ever known before that authority to do a right thing was to be used to authorize a wrong thing to be done? Yet there is no appeal from that decision, unanimous, if the dissent of one member of the Court be excepted. Not only is there no redress for the wrong inflicted in that case, but the decision, by the law of precedent, stands as an authority for later Judges to follow. The reader sees now very

plainly, how the Federal Judge by the autocratic power of construction, helped along by the law of precedent, becomes legislator and even constitution-maker. The decision of the Supreme Court, in *Juliard* against *Greenman*, is now the constitution, though the men who made it turn in their graves. The reader must awake to new times! The constitution, as written and adopted, though still in theory the Supreme law, on that point henceforth takes a back seat, or "retires from active service," as the pensioned Federal Judge might express it. A Supreme Court Lawyer, if consulted, might say: "As to the power of Congress to coin depreciated money to pay debts withal the *constitution has been construed* and the construction of the Judges supercedes the original instrument." That is what precedent and construction, those active co-operators and joint conspirators in wrong, have done for the constitution. It is not easy to see what possible call, with two such forces at command, the Supreme Court can have for the recreating power of amendment. It appears that already the Supreme Court is master of the entire system, the States only their vassals.

The law of precedent in the American Courts was derived from England, the realm of John Bull, and is the God of his idolatry. John Bull is persuaded that all wisdom dwelleth in the past, and that what has not been done or said before is not worthy to be said or done at all.

It is quite useless to argue that point with John Bull. He says he was never wrong in his life, and before he will surrender his opinions he will put his great fleet in commission and call to the field his invincible army of volunteers. That great landed proprietor, it is known, stays a great deal at home and hence moves much within the circle of his own ideas. Another of John Bull's notions is that an English Judge never errs, and his American brother too has planted himself on that deepset rock. But a Free coinage of silver democrat, from a supposed lunatic condition, is to be treated with some indulgence. Taking advantage of that gracious privilege, he would enquire into the origin of precedent in courts of justice and the propriety of extending its application to cases turning upon the written law. It is known, even to the laity, that in the beginning, in the rudimentary condition of Society, from which it emerged, the common law was but a customary law of the King's realm. The authority, or rule of conduct, which the people time out of mind had been obeying as the law was the law administered in the Courts. Particular customs are excepted. The Customary or Common Law, was to be sought in the treaties of learned men but the abundant and perennial source of that jurisprudence was the decisions of the courts and the opinions of Judges. It is obvious that such a legal system must rest upon the law of precedent, the rule of *stare decisis*. But to take that rule, one Judge invoking another Judge, and with no other authority for

the law to look to, out of the common law courts and apply it to a class of cases where there is an ordinance, or statute, to appeal to, is to do an absurd and contradictory thing. What obviously is the function of Judges where there is a written law? To apply the law as written to cases as they arise, for there is the law in the very words of the Supreme power. By what authority does the Judge go anywhere else for the law it may be asked? If he consults another decision in another case, made by another Judge, he may find the law wrongly decided. No! he must refer to the law as written, that alone is his guide. He must not consult an oracle no higher than himself. The judgment of a court where there is a written law, is naturally only its sentence, and is confined in its operation to that case. Thus are we rid of the slavery of precedent! By it a wise judge may be compelled to go wrong, because some blockhead has gone wrong before him.

One of the departures of the French revolution from the beaten track of old Europe and which greatly increased the bitterness of English hostility, [see Burke's indignant invectives,] was the unceremonious manner in which the law of precedent was treated by the French lawyers. The Code Napoleon directs each Judge to interpret the law for himself. I speak with diffidence for I have not read that monument of legal wisdom, but if rightly quoted, the example illustrates the point before us.

In this insurrection of the oppressed masses against the government of the Money-power, it is hoped that, in the General Redress of Grievances, the Constitution, impressed with the seals of the Fathers, may be rescued from the beaks and talons of the Supreme Court Judge. I remember to have heard an able member of our bar, Hon. Charles T. Green, with more emphasis than piety, express the wish that all the Reported cases might be *burned*.

JOHN SCOTT,
of Fauquier.

A CARD.

TO THE VOTERS OF FAUQUIER CO.:—I lay before you a sum of the convictions in the criminal courts whilst I was the prosecuting attorney for the county, embracing felonies and misdemeanors. Of the felonies two were convicted of murder in the first degree, and suffered the extreme penalty of the law. Lists of names of the cases accompanied by the dates of the conviction, are furnished by Mr. J. R. Turner, Clerk of the Circuit Court, and Mr. A. R. Bartenstein, Clerk of the County Court, with certificates of office attached, which now lie before me, but are not published here because of the space they would occupy in the newspaper. The number of the convictions amount to 243 during a period commencing with Jan. 1st, 1871, and extending to 1st of Sept.

1891. My official term, the seventh, ended July 1st, 1891, but at the request of my successor in office, I concluded the prosecutions which I had begun, which carried the time forward to the succeeding 1st of September. This summary by no means represents the labor which I expended on the criminal business during that time. In many cases there were repeated trials of same case, and in the cases which resulted in acquittals, for want of sufficient evidence to satisfy juries of the guilt of the accused, or because of the innocence of the defendants, the labor thrown upon me was as great as that incurred where verdicts of guilty were rendered.

But this survey of the period of my service as our Commonwealth's Attorney, would not be complete without some reference to a trial in a Federal court to which I was subjected, for an alleged contempt. The imputed offence consisted in a refusal on my part to obey a certain restraining order, which had been directed to me as the Commonwealth's Attorney of Fauquier county from the Federal Court referred to, I choosing rather to yield obedience to a command of the State of Va., than to leave undone the act which had been prohibited by the Court's order. An explanation of the circumstances attending the transaction, is necessary to enable you to understand that business, and to determine whether approval or blame ought to be attached to my conduct. It had been provided by the abortive debt settlement of 1871 and also by two similar debt settlements which succeeded it, that the coupons, as the warrants or certificates of interest attached to each bond were called, should be receivable for taxes and other public dues, and the stipulation was printed on the face of the coupon. The tax-receivable coupon was an ingenious contrivance of the creditor to insure the application of the taxes in the first place to the interest on his bonds and founded in a distrust of the honor and punctuality of the State, an insinuation of which every tax-payer was deeply sensible. The interest coupons, as they became due, were torn from the bonds, and disposed of in the market for as much as they would bring. In this way Virginia coupons had accumulated in money centres of England, but chiefly in London, to an amount as great as four and a half, or five millions dollars. No provision having been made, for the payment or redemption, of these coupons, a great depreciation in their value ensued, until they became an object of speculation. A band of London speculators bought them to a large amount, to vend to Virginia tax-payers, or to such of them as would consent to pay their taxes with the cheap and discredited coupon. If the proposed speculation, in tax-receivable coupons, proved to be successful, it was evident that the State of Virginia would become bankrupt from having her treasury filled to repletion by annual harvests of tax-receivable coupons. She would be compelled, according to this scheme, to extinguish a debt of between four and five millions

dollars, added to the periodical increase of the coupons before she could appropriate from her own taxes money enough to carry on her government and support her eleemosynary foundations. To avert the calamity of bankruptcy the legislature employed various expedients, and among them the Act of May 12, 1887, called, "The Coupon Crusher." That statute, passed at an extra session, and now memorable in the judicial history of the United States, directed the county treasurers to report to the Commonwealth's Attorney, the name of each taxpayer who had tendered these coupons for his taxes, together with the amount of his tax bills, whilst it ordered each Commonwealth's attorney, under a penalty, not greater than five hundred dollars, nor less than one hundred dollars, to sue in the Circuit Court of his county for the taxes so remaining unpaid. The coupon crusher was devised by the skill of the best lawyers in the state. It was confidently expected that it would do the business of the coupon, and the expectation was not disappointed. The coupon now is dead or has only a feeble and lingering existence, whilst the public debt, which it was designed to support and secure, is in a course of satisfactory adjustment. But a stormy experience awaited the coupon crusher,—a prolonged and bitter controversy in the courts. The creditors, as the speculators became, by the fact of purchase, were advised to have recourse to the courts of the United States under the belief that those puissant authorities would enable them to destroy the obnoxious statute. They were supposed to be a club of Hercules in the hands of the British creditor. Accordingly, an equity suit was brought in the Circuit Court of the United States, for the eastern district of Virginia, to forbid the Attorney General of Virginia, and all the Commonwealth's attorneys, to institute those tax suits. The complainants' bill set forth "that they were British subjects and were the owners of a hundred thousand dollars of the tax receivable coupons of Virginia, for which they had paid thirty thousand dollars; that they had sold fifty thousand dollars of that amount for fifteen thousand dollars, or more, to the tax payers of Virginia, who had tendered the same to the proper state officials, in payment of their taxes, but that the said officials had refused to receive the same; that if the officers of the State were permitted to enforce the Act of May 12, 1887, the complainants would be unable to sell the remaining fifty thousand of their coupons to the tax payers of the state for any price, and that their entire property would be lost; and that the said Act of May 12, 1887 was unconstitutional and void."

The restraining order was served on me the 11th day of June 1887. As soon as I had read the paper, I informed Mr. Overby, the Deputy Marshal of the United States who had served it on me, that, as an officer of the State of Virginia, it was my purpose to obey the law of Virginia, and to pay no attention to the order of his court. I acted in full accordance with that express

ed determination, and at the ensuing September term of your Circuit Court, I brought more than thirty of these tax suits,

Before judgments could be obtained, indeed, as soon as it was known to the creditors' attorneys that the preliminary notices, which the statute required, had been served, Mr. Overby paid me another visit but now to serve on me a Rule to appear in the Federal Circuit Court in the city of Richmond, at 11 o'clock a. m., the 22nd day of September 1887, to show cause why I should not be fined and imprisoned for not obeying the order prohibiting me from bringing the tax suits. I appeared and justified in an answer, that as an officer of Virginia, my natural sovereign, it was my duty to obey her law in preference to any other authority; that the Act of May 12th, 1887 was constitutional and not void, and that the Circuit Court of the United States could not take jurisdiction of the suit brought against me, because forbidden to do so by the eleventh amendment to the Constitution of the United States. In respect to the impeached statute of May 12, 1887, my answer held this language: "This Act of Assembly, obviously, was passed to induce holders of tax receivable coupons to submit them for identification and verification, as required by the previous Act of January 14 1882, the condition upon which the Commonwealth of Virginia allowed her treasurers to receive the coupons for taxes. That law has been considered by the Supreme Court in *Antoni against Greenhow*, and it was decided by that final arbiter not to be in conflict with the constitution of the United States. [107 United States Reports 770.] The Statute of May 12, 1887, which I have referred to, in justification of my acts, being designed simply to render a previous statute effectual, must be regarded as equally constitutional with it—for the means are appropriate—and ought to protect me from the censures of this Court."

In respect to the eleventh amendment to the constitution the hinge on which the case finally turned, my answer said: "If it be true as a constitutional proposition that all the acts of a republican government are assumed to be the acts of the State, and that this ruling of the Supreme Court is, indeed, a blow struck at the sovereignty of the people of the States, it is a logical consequence that when a Federal Court takes jurisdiction of a state officer, whilst in the discharge of an appointed duty, it thereby assumes jurisdiction of the state. To hold otherwise is, to evade its eleventh amendment and to treat the constitution with contempt instead of with honor and obedience. A single consideration will set this truth very clearly before your Honor.

"If by afflicting the agents and officers of Virginia with imprisonment and confiscation the Supreme Court can succeed in forcing the treasurers to accept coupons, without verification and upon simple tender, I ask upon whom does the consequence fall? Not upon the treasurers; not upon the Commonwealth's Attorneys. The consequence falls alone upon the State of Vir-

ginia, whose treasury, by this means, will have been bankrupted by unconstitutional action of the Supreme Court. The Supreme Court need not to be informed that, behind those treasurers and these Commonwealth's Attorneys, Virginia stands to be affected by all the decisions against them. Through these mazes and crooked paths, Virginia is the party whom the Supreme Court is seeking to reach; Virginia is the game they are hunting. Although the only party in interest, Virginia is not made a party to the record here, because the eleventh amendment, forbidding a state to be sued by an individual, awkwardly stands in the way. No other reason can be assigned for the omission to stand Virginia at the bar of this court. Surely, your Honor will allow that this Court, because it is disabled from bringing a suit against the Commonwealth of Virginia by an amendment to the constitution, cannot therefore lay violent hands on me. A power over a State withheld from a court, cannot, by any known canon, be construed to operate as a grant of power over an individual citizen of that state."

Nevertheless, his Honor Judge Bond adjudged me to be guilty, and sentenced me to pay a fine of ten dollars and the costs, to dismiss the pending tax suits, to enter satisfaction of any judgments obtained, and be held in custody until the judgment of the Court was complied with. I, at once, informed the Marshal who had taken charge of me, that I would not comply with the judgment, and in consequence, was imprisoned in the jail of the City of Richmond, along with my co-defendants, the Honorable Attorney General, Mr. R. A. Ayres, and the Hon. Commonwealth's Attorney for Loudoun county, Mr. J. B. McCabe, where it was my intention to remain, but that I was taken before the Supreme Court of the United States, by virtue of a writ of habeas corpus, which operated to appeal my case to that tribunal for review.

After hearing distinguished counsel, the Supreme Court rendered its decision, through Mr. Justice Stanley Mathews, reversing the Court below, from whose very able opinion I extract for your information the concluding part as follows: "The principal contention on the part of the petitioners," said his Honor, "is that the suit nominally against them, is, in fact and law, a suit against the State of Virginia, whose officers they are, jurisdiction to entertain which is denied by the eleventh amendment of the constitution. We adjudge the suit of Cooper and others against Marye and others, in which the injunctions were granted against the present petitioners, to be in substance and law, a suit against the State of Virginia. It is therefore within the prohibition of the eleventh amendment of the constitution. By the terms of that provision, it is a case to which the judicial power of the United States does not extend. The Circuit Court was without jurisdiction to entertain it. All the proceedings, in the exercise of the jurisdiction it assumed, are null and void. The orders forbidding the petitioners to bring the suits, for the bringing of

which they were adjudged to be in contempt of its authority, it had no power to make. The orders judging them in contempt were equally void and their imprisonment is without the authority of law. It is therefore ordered that the petitioners be *discharged*. In Re Ayres, In Re Scott, In Re McCabe, 123 United States Reports, page 443.

Thus you see, voters of Fauquier county, that the reasons which impelled me to resist the jurisdiction of the United States Circuit Court, as has been shown by an extract from my answer to the rule to show cause, were accepted by the Supreme Court, and made the grunon on which my liberation from confinement was ordered.

The State of Virginia, in her nobleness, as well as to reward the loyal obedience shown to her superior authority and perhaps to hold it up as an example to other times, awarded me, and to each one of the Honorable gentlemen engaged with me in that important controversy, a "Testimonial" of her approbation, and to highten the honour and make the gifts more rich, the Testimonials were sent to the recipients through the distinguished Confederate General, His Excellency, Governor Fitzhugh Lee.

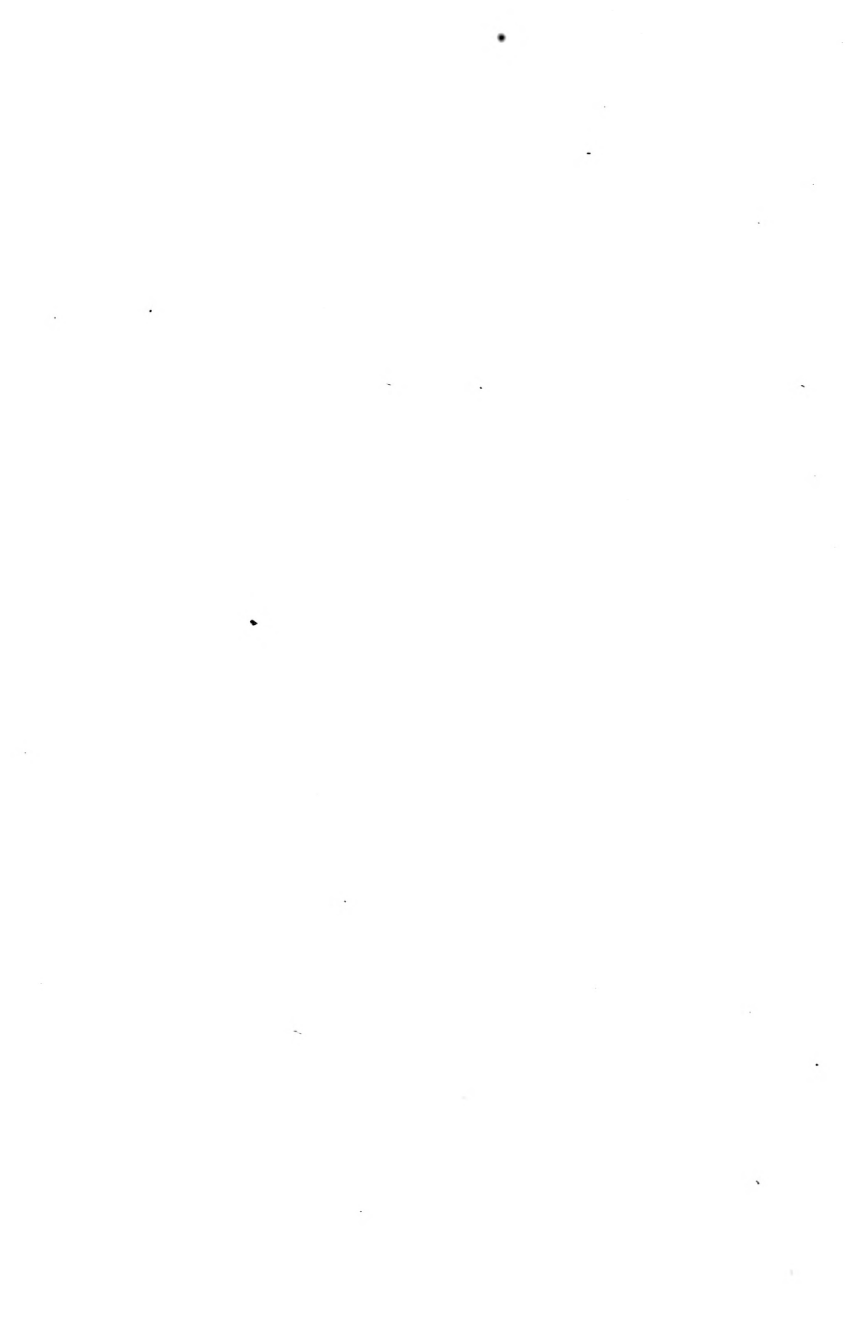
I am your obedient servant,

JOHN SCOTT.

Fauquier County, December 14, '91.

L. W. G.







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