FOR THE OBSERVER.

Messrs. Editors:—I have read the Opinions delivered by Judges Pearson and Battle in the Habeas Corpus cases and published in the Observer, 2d and 6th of July;—and I ask your permission to record my respectful and decided dissent from the doctrine therein laid down. I have been taught to believe that no State has the Constitutional right to obstruct the machinery of the General Government. If the State cannot, then no department of the State can. In 1830 South Carolina claimed the right to construe the laws of the United States, and to obstruct the machinery of that Government wherever it was acting beyond its constitutional *limits, as these were understood by the State.* There can be no doubt that if the United States had exceeded its Constitutional limits by the tariff act then in force, this latter was a mere nullity, and no citizen was bound to obey it. The revenue officers in such case would have been acting without any legal authority, and no just exception could be taken to a resistance of their pretended authority. South Carolina did not deny her obligation to obey a law of the Union, but denied that she could be bound by what was essentially *no law*, asserting her own competency to decide upon this point. The only objection taken to this position was that it was not competent for her to make this decision. The other States objected to her jurisdiction. There was no doubt of the right of her courts to question the Constitutionality of the Tariff law in suits between citizens, or wherever the matter in ordinary controversies was a collateral inquiry. But it was denied that in any case where the General Government was *directly* a party to the controversy, the Courts or any other department of a State had jurisdiction to try the question of the right of that Government to do what it claimed authority to do. That would be nullification. It seems to me that our Judges have fallen into an error: Arguing that State Courts have a right to decide questions of the constitutionality of laws, they make no distinction as to the character of the cases in which these questions occur. Whereas it seems as clear upon principle that they have not this power in *public cases*, involving directly the action of the Government, as that they have it in other cases. I may illustrate this by saying, that although a State writ cannot be used for removing the hand of the Confederate Government in the person of Col. Mallett as its officer, yet a suitable State writ may be used to recover damages against that officer for a violation of the personal liberty of a man arrested by him. In the latter case the action of the Government would not be suspended, and any construction of the Conscript Act injurious to the Confederate Government could be reversed by the Supreme Court of that Government, if it is ever to have one. A State has no right under the constitution to cause a *suspension* of the action of the General Government: That was all that South Carolina could have done. The matter would finally have been decided against her claims by the Supreme Court of the United States, and only in the mean time would there have been nullification. A suspension of that action however is intolerable, and would amount to an annihilation of it in matters requiring expedition or continuity of action. Supposing that a Habeas Corpus case decided by a State Judge can at least be overruled by the Supreme Court of the Confederate States, is not the military power of those States nullified for all practical purposes by the delay until such decision is made? And if one soldier may be discharged by Habeas Corpus, an army may be. It is no reply to this to say, that Congress may avoid the difficulty by suspending the writ, for the gist of the objection is that such suspension should be a perpetual one, that is, that the existence of the right to deliver is incompatible with the existence of the Government. Besides, the suspension authorized by the Constitution can take place only in times of invasion, or rebellion; and my illustration requires it in any time of war, or even of peace.

The fact is that the position is a general one, relating to all points in which the States and the General Government touch,—and I had thought (with Mr. Calhoun) that ever since the debates in the Senate in 1830, it was the generally received opinion of the American people. I had no doubt but it was the opinion of the "Observer."

In the particular cases that came before the Court my view of the law is, that whenever a case of presumed illegal imprisonment is made out before a State Judge, he must issue the writ of Habeas Corpus; but that upon its appearing by the return to that writ, or otherwise, that the petitioner is held by, or by color of, Confederate authority, it is his duty to decline any further jurisdiction of the cause.

As for the authorities, cited by the Court, in which it has been repeatedly decided in State Courts for forty years past that State Tribunals have such authority, I may say of them in general, that in the days of the United States the discharge of a soldier was a matter of very small concern to the government, as the army was a mere cypher, and it was easier to get a new man than to contest the discharge of the old one. Of so little importance were these cases that there was never an appeal from any of them to the Supreme Court. This applies to all the authorities. Another objection applying to a great many of them is, that the Courts, after asserting jurisdiction, *remanded the prisoner*, rendering it unnecessary to question their jurisdiction. In other cases the community was too much interested in claiming a right to relieve *fugitives from labor*, for the Courts which sympathized in this interest to abdicate the right of interfering with persons arrested under the laws of the United States. However, in some cases the State Courts denied that they had jurisdiction. A very notable one is that of Fergnson, in New York, in which Chancellor Kent some fifty years ago denied such jurisdiction. In another case, coming before him a year or two after (Stacy's) he enforced obedience to a writ issued by the Court to General Lewis, commanding the United States forces. I think that our Judges have misapprehended the force of this case. I do not question its authority. A State Judge has the right to issue a writ of Habeas Corpus in all cases, and he has a right to enforce obedience and a due return thereto. It is only when, by that return or otherwise, it appears to him judicially that the prisoner is held by, or by color of, Confederate authority, that he is made aware of his want of jurisdiction. General Lewis having made an evasive reply was liable to attachment. Nor was the fact that Lewis was a United States General any *color* for his conduct. Military men, and indeed most officials, act now and then without the smallest color for their conduct. If in such action they imprison a citizen, he may have his writ of Habeas Corpus and his discharge from a State Judge. This distinction as to acts done *colore officii* and acts done without that, is one well understood by lawyers, and is vital in this investigation. It completely does away with the authority of the case in 2d Wheaton, cited by Judge Pearson. In that a revenue officer had seized *the cargo* of a vessel for a forfeiture. A replevin was issued by the owner before a State Court. To this a plea to the jurisdiction was entered, and thereupon there was a demurrer. The law authorizing the forfeiture did not mention the word *cargo*, but applied solely to the *vessel*. Here there was no *color* for the seizure;—the officer was acting not for the government, but as a mere trespasser, and an arrest of his action was not interference with the government. The Court seems to be of opinion that if upon any reason it is called upon to look at a law and ascertain its extent, the door is open for it to make use of all means whatever for that purpose; and that whatever would be its course in case of finding out such meaning at a glance, such must it be when it shall have satisfied itself thereof by all the means within its power. I most repectfully differ. That would be to destroy the effect of *color* wherever it exists. And so Judge Marshall thought in the case last mentioned, for he goes on to say that upon the supposition that the case were one which involved a question whether the particular cargo had incurred a penalty which the act imposed upon cargoes having particular incidents specified in the act, then the State Courts would have had no jurisdiction. That is, as I understand his argument, if the act had imposed a penalty upon cargoes trading to certain ports, then if the defence had been that the cargo in question were exempted because of a license granted to it by government, a State Court could not have tried such a question. The seizure would have been colorable, and no State Court could have decided whether or not such color was substance. That is, whenever the cause involves *directly* the action of the government (even colorably) a State Court has no jurisdiction. I can illustrate Judge Marshall's position with particular reference to the case before us. Thus, if the conscript law authorized Col. Mallett to seize a citizen, Col. Mallett upon seizing a horse would be liable to an action of replevin in a State Court. He would have had no color for his conduct. But if upon seizing a citizen the case were that the latter claimed an exemption for such and such reasons, the State Court would have no jurisdiction. Judge Pearson relies upon this case and calls particular attention to the nice analogy between the action of replevin and the writ of Habeas Corpus—in that in each the State seizes the article in dispute and impounds it until a decision is made. I draw an additional argument for my view from the very nature of the writ of replevin, which at common law cannot be used where the article in dispute is *in the custody of the law:*—(that is, *colorably* so, for if the meaning were *really in the custody of the law*, it would be no more than to say that in this sort of action as in all others the plaintiff could not recover if the defendant were rightfully in possession.) But wherever an officer has possession of goods *colore officii*, I apprehend the law to be that a writ of replevin does not lie against him—which shows that the case in 2d Wheaton is not authority for the doctrine for which it is cited, but rather for the contrary.

It is true that Chancellor Kent, in his Commentaries, says that it has been *settled* that States have concurrent jurisdiction in such cases of Habeas Corpus. For this he refers to the numerous cases in which this has been decided in State Courts, calling attention however to his own argument against it. This does not show what he thought of the principle of these decisions. He merely records a fact, viz: that the State decisions were so, there being no Federal decision at that time upon the point. Now State decisions cannot in the very nature of things *settle* a point as to their jurisdiction over Federal matters. Their decisions do not settle such matters as much as decisions upon several Circuits in North Carolina, in the absence of a decision in the Supreme Court, settle the law of this State. We know how often *constructions* that have prevailed upon the Circuit for years have received a *quietus* upon the first appeal to the Supreme Court. Decisions upon the Circuit give only a presumption as to what the law is, and so it is with decisions in the Supreme Courts of the States upon matters which may go by appeal to the Supreme Court of the Confederate States. Chancellor Kent's statement then must be subject to this qualification, and so must any reference to these decisions as *authorities*, in other States than those in which they were made. They are not *authorities*, in the strict sense of the word. The whole matter is *sub judice* until the voice of the Supreme Court of the General Government shall be heard.

Since Chancellor Kent's time a decision has been made by the Supreme Court of the United States in a case analogous to those before us, which I submit is, notwithstanding what Judge Pearson has said, a valid *authority* against the position which our Court has taken. And here we may remark, that Mr. Hurd says that the Federal Courts (in their inferior organizations) have uniformly denied the jurisdiction of State Courts in these cases. In Ableman vs. Booth (decided in 1858) two cases between the same parties are reported under the same name. I am interested in only one of these. In that a commissioner under the Fugitive Slave law had arrested a man who had assisted in rescuing a slave, and had bound him over to the District Court of Wisconsin. The Supreme Court of Wisconsin discharged the prisoner by Habeas Corpus. Upon writ of error to the Supreme Court of the United States it was held, that the Wisconsin Courts had no jurisdiction to discharge by Habeas Corpus in such cases. The decision was that in such cases the Courts of the State could not inquire into the action of the commissioner at all;—and not that they had made an improper decision. In fact the State Court had held the Fugitive Slave law unconstitutional, and so that the commissioner was without power to act as he did. Now I ask, in what respect material to the present inquiry is there any difference betwixt the position of a commissioner under the Fugitive Slave law, and an enrolling officer or Commandant of conscripts under the conscript act? Neither one is a *judicial* officer in the constitutional sense of that word. By the Constitution all the judicial power therein granted is vested in the Supreme Court and such inferior Tribunals as Congress shall create. Now the office of a commissioner is not an Inferior Tribunal in the meaning of the Constitution; because no appeal lies from his action, no superintendence over him is given to the Superior Courts; he is appointed by the Judges. And yet in another sense he acts judicially, inasmuch as he has to *decide*, and make use of *discretion* in coming to his conclusions. It is not then from deference to the *judicial* department of the Confederate States that the State Courts are debarred from interfering with his action. It is because he is a part of the machinery of the Confederate States, and so not liable to be obstructed in his action by State officials. He has just as much and just as little judicial character as a commandant of conscripts. Both are appointed by law, both have to decide upon the status of individuals, and both have to use discretion in coming to their conclusions. Nor can the decision in Ableman vs. Booth be put upon the ground that the person arrested had been bound over *to a Court* of the U. S. The question recurs, what right had the person binding him to do this? The question is not, to what Court was he bound, but, by whom was he bound? Surely, it will not be said that anybody has a right to arrest a citizen and place him in jail for refusing to give bond to appear at Court, and that an interference with such arrest is an interference with the Court to which he was bound! The only question before the Wisconsin Supreme Court in this case was as to the power of the commissioner. He was not technically a Judicial officer. He is liable to all the criticism that Judge Pearson makes upon the power of Congress to give judicial powers to the Secretary of War. Yet the Wisconsin Courts had no jurisdiction over his action. To give another case: Suppose that commissioner had arrested an alleged slave in order to transmit him to Louisiana, could the State Courts have heard an allegation that the prisoner was a freeman all his life, notoriously a resident of the North, and thereupon discharged him by Habeas Corpus? No Federal Court would have been interested in such proceeding, and yet the State Courts would have had no jurisdiction. It is idle to put illustrations involving gross abuses of their powers by Confederate authorities and ask if State Courts can give us relief in such event. Cases quite as severe can be imagined under the Fugitive Slave law—and were imagined, as we all recollect, by persons who denied its constitutionality. The answer in both cases is that the General Government is a *Free Government*,—is *our* Government as much as any State Government; that it has all the machinery and every faculty requisite for protecting citizens from encroachments by its own officers, and that it is indecent to suppose that it will not do so. It is no part of the theory of our complicated Institutions that the action of the States is necessary to preserve the liberty of the citizen from the action of the Confederate States within the sphere appropriated to their operation. The Confederate States is a Government of checks and balances within its own sphere, and so the States are in their sphere. The States do not check the Confederate States upon subjects incident to its jurisdiction (nor *vice versa*, except as the Constitution has expressly provided.) How then could the Supreme Court of the United States, in the case mentioned above, put its decision upon the ground selected for it by Judge Pearson? The Opinion given by C. J. Taney is the Opinion of a unanimous Court, and so are all the reasonings. They selected a principle upon which to place it which would convince the refractory communities at the North, that the action of the Commissioner was not to be impeached in State Courts in any matter done *colore officii*, whether in the arrest of an alleged slave, or in the arrest of one who had rescued such slave. I submit that Judge Pearson's great and deserved reputation has not been founded upon decisions like that on which he would defend the case of Ableman vs. Booth. No man is more celebrated for seizing a broad principle and so applying it to the case before him as to stop litigation upon not only that but all kindred cases divided from it by narrow and immaterial considerations. The Supreme Court of the United States had not only to consider the principle which protected the action of Commissioners under the Fugitive Slave law, but all similar action by United States officers. The same person who is Commissioner under the Fugitive Slave law may be Commissioner under an Extradition Treaty. Suppose this latter officer, pursuing the forms of law, acting *colore officii*, seize one alleged by French authorities to be a criminal fled from France; can a State Court, upon the strongest possible representation of facts showing that the prisoner could not be guilty, interfere by Habeas Corpus? We may imagine a case of presumptive oppression the most outrageous possible, and yet the State Courts must decline jurisdiction. This is admitted. Yet in what respect is such a Commissioner a judicial officer that will not make Col. Mallett one too? Our only resource in any such case is that the General Government is a free one, quite as able and as well disposed to succor its citizens as any State Government can be. We set up its machinery, *we* are responsible for its working. If its officers do not discharge their duty, we are to discharge them. But if we do not, or if our representatives do not put into operation all parts of that machinery, it was never contemplated that thereby powers should be conferred upon other portions thereof which otherwise they would not possess. For if this were so, if the only remedy for not failing to give their Constitutional effect to certain parts of our machinery, were to confer new powers upon other portions thereof, it is very clear that our political system would lose its harmony and proportions; and we would depend upon usage more than a written Constitution for the charter of our liberties. Therefore, that Congress has not created a Supreme Court does not give jurisdiction to State Courts which they did not possess before. This omission only gives us the stronger sense of the stupidity and unfaithfulness of our representatives. If we wish to preserve our Constitution in its present form, we will insist that every part shall have its natural operation, and not compensate a deficiency in one part by increased activity in another.

I think it clear then, Messrs. Editors, that the principle of the state of things in which we are, requires of North Carolina Judges to abstain from interference with the direct action of Confederate officials colorably discharging their duties, and I believe that the situation of the case Ableman vs. Booth required that the Supreme Court of the United States so decide. That their opinion is expressly to that effect is not denied. With such a principle staring them in the face as it were, it would have been a dereliction of their duty not to have declared it. Judge Pearson's sight upon it seems to me to be entirely too fine—and if such were the manner in which Courts habitually decided causes, I submit that no cause would be an authority beyond the very same facts which constituted it.

It seems to me to be impossible after a broad view of the whole case as a great question in public law, to believe that the principle which I have laid down is at all touched by the decisions made in State Courts, or before State Judges, upon *ex parte* arguments, in causes where the General Government felt no interest to contest their decisions; or in other causes, unappealed from, in which the public opinion of the communities where the Court was sitting had given a bias to every view of the right of the States to nullify the laws of the United States. I cannot bring myself to feel their force.

I wish to put upon record two other arguments tending to this same end, and will then close. In reply to the argument that the Constitution gives to Congress no power to suspend the State writ of Habeas Corpus Judge Pearson says that Congress may do it, or may authorize the President to do so, in all cases where the person is imprisoned by Confederate authority, and this would be the supreme law of the land, and so binding upon State Tribunals. The *clause* in the Constitution giving the right to suspend the privilege of the writ of Habeas Corpus clearly applies only to the Confederate writ. The whole *section* is confined to provisions about one or another part of Confederate machinery. This is evident to common apprehension by observing that in the next section some of the provisions of this are repeated so as to apply to State machinery. Besides, it is a well established principle of construction, that things and principles referred to in that Constitution, without explanation to the contrary, are things and principles parts of the government created by that Constitution. It is to be admitted then, that there is no provision in the Confederate Constitution authorizing a suspension of the State writ of Habeas Corpus. It is now asserted, that although a suspension of the Confederate writ is fenced around with prohibition—except only in times of great distress, and then only in *public cases*—there is no prohibition as to its suspension of the State writ. It may do so in all cases in which an Act of Congress would be the supreme law of the land, and may even authorize the President to do it. The right of Congress to *suspend*, or to authorize the President to suspend, a State law or State writ [illegible] certainly it cannot be a fundamental one in State rights. Surely that is no part of *State rights* which can be suspended by law of Congress or order of the President. This position detracts greatly from, perhaps annihilates, the value attributed to this position of our State Courts as a vindication of the rights of the citizen against attacks by the General Government or its officials,—for it seems that the power exists at the sufferance of that Government; more than that, at the sufferance of a department of that Government, and even at the sufferance of one man in that Government. The matter requires grave consideration. For myself I cannot believe that the sticklers for State rights in 1788 (if they intended to use the State writ of Habeas Corpus in cases like the present) would not have made an express provision in the Constitution by which it should be liable to suspension only for the causes and in the way in which the Confederate writ is. Believing that the system of Government which they have established shows that they did not intend it to be so used, I conclude that, by the express provision for a suspension at some times, they considered that they had made all the arrangement that was necessary to prevent on the one hand the improper use of that writ in critical conjunctures, and on the other its too ready suspension. They did not intend that the State writ might be suspended at any time, whilst the Confederate writ could be suspended only under rare circumstances and to a certain extent.

Judge Battle takes the position, that as the writ of Habeas Corpus existed without limit for all cases of illegal restraint before the creation of the United States Government, therefore it exists at present unless its exercise can be brought under one or other of three heads, viz: that it confers a power exclusively vested in the United States, or that this power is expressly forbidden to the States, or that its existence in the State is *incompatible* with the relations between the States and the Confederacy. I submit that I have shown reason for thinking the case as at present constituted comes under the last category. What I will add here is, that our Habeas Corpus Act does not contemplate such a state of things as is presented by the application of it to a Confederate officer acting under color of his office. For the penalties expressed in that act cannot be exacted from such officer. If he be acting under his Government the latter must take all the responsibilities of such action, and the officer is not personally responsible therefor. So acting he is not liable to the penalty or to the indictment specified in that Act as to be visited upon officers detaining persons in violation of its provisions. That is the principle of the McLeod case which came near producing a rupture between this country and England in 1842. McLeod had committed homicide in New York by cutting out the Steamer Caroline and sending her down over Niagara Falls. Some time after he was found in New York and held to answer for murder. Great Britain avowed herself to be responsible for his act, and applied to the United States to have him released. The principle under which he was demanded was well recognized by both Governments. A private individual, an officer of his Government, cannot be made responsible for carrying out its orders. In McLeod's case the issue was avoided by an acquittal. Provision was made by Act of Congress granting in all such cases thereafter a writ of Habeas Corpus from a Confederate Tribunal to take such persons from State custody into the hands of the General Government, so as to avoid complications. I therefore argue that our Statute upon Habeas Corpus never anticipated the state of things involved in the present collision, and is not applicable thereto. If the proceedings before the Court were under the Statute, I conceive this to be an additional argument for my position upon these cases. The other arguments apply to the Common Law writ as well as to that generally used.

I have now finished what I had to say. Not having been employed in the cases before the Court, or in any other like case, I may claim exemption from one of the ordinary causes of bias in such investigations. My sympathy has been with the petitioners—with the whole community of North Carolina—in the corroding cares and the bitterness of the times. I have no idea that any substantial harm has come to the Government from the interference. I had indeed taken up a different view of the law governing the relation of substitute and principal from that expressed in recent decisions. I cannot regard the condition in which the principal stands towards the Government as one of contract. I think the whole matter beyond the sphere of contracts. As Congress cannot bind itself by contract not to call out the men of a certain generation to war,—cannot bind itself by contract never to make war at all—so I think it cannot contract with a particular citizen not to call him out. And when it said to a certain man that if he would put in a substitute he should be exempt, it gave him no higher claim thereto than when it said to a physician he should be exempt at all events. It may change the law as to either. So when it gives the Secretary of War a right to make regulations, &c.—inasmuch as the condition of him who has put in a substitute is not that of one who holds the Government bound by contract—the regulations made subsequently to the substitution may very well act upon the status of him who has made the substitution. So far as to the law; but I had a strong conviction that it was the policy of the General Government to act *liberally* towards these men, and not to sour the community by disappointing hopes that had been excited, even if inconsiderately—and especially when in the opinion of excellent lawyers they had been excited justly. The Government should not have stickled for its pound of flesh. It was unwise—and I do not care that it has been defeated.

I am sorry however for the principle upon which this has been done. If the Court could have satisfied itself by putting its decision upon some ground that might disappear with the occasion—for instance, upon the imperfect organization of the Confederate Courts and consequent imperfect machinery for issuing Confederate writs—although I might have differed, I should not have expressed such dissent. This State has been sworn to the bone in the prosecution of this war. The least to which she has been set down is far other than that to which she has been invited. The table is covered with the bones and blood of her sons. I cannot bring myself to regret the *immediate* result of the action of our Judges.

I had some difficulty for other reasons in publishing my views upon the principles set forth by the Supreme Court. The Judges who have acted upon these cases have been made the objects of gross abuse. I would not have the appearance of sitting down in the company of such accusers. No considerate person, I am sure, will rank me with them. I feel the very highest regard for the various Judicial excellencies of Judge Pearson and Judge Battle. They have been administering justice in North Carolina for nearly a generation, and have illustrated and adorned our Bench. Their abilities and acquirements are among the treasures of the State, and he is no true son of hers who would undervalue them. Their position before the public and the bar is not to be varied by criticisms upon individual decisions made by them. They stand upon the general course of their Opinions.

Yet, gentlemen, I could not refrain from a protest against what I conceive to be nullification, no matter how palatable in the instance, or how fortified by the opinion of gentlemen for whom I have so much deference. I cannot consent to believe the present government a different one in principle from the one we have abandoned; or to do otherwise than resist the introduction into its system of principles which we have seen bring forth such a harvest of death and ruin in the breaking up of the U. States. I cannot agree that this Government shall be made a dead fail to crush the heads of another generation of American young men. Heaven forbid for us the adoption of anything like secession or nullification.

CAMDEN.

9th July 1863

INTERESTING CORRESPONDENCE.

The following correspondence will explain itself:

RICHMOND, 2d July, 1863.

Hon. A. H. Stephens, Richmond, Va.

Sir:—Having accepted your patriotic offer to proceed as a Military Commissioner, under flag of truce, to Washington, you will receive herewith your letter of authority to the Commander-in-Chief of the Army and Navy of the United States.

This letter is signed by me, as Commander-in-Chief of the Confederate land and naval forces.

You will perceive from the terms of the letter that it is so worded as to avoid any political difficulties in its reception. Intended exclusively as one of those communications between belligerents which public law recognizes as necessary and proper between hostile forces, care has been taken to give no pretext for refusing to receive it on the ground that it would involve a tacit recognition of the independence of the Confederacy.

Your mission is simply one of humanity, and has no political aspect.

If objection is made to receiving your letter, on the grond that it is not addressed to Abraham Lincoln, as *President*, instead of Commander-in-Chief, &c., then you will present the duplicate letter, which is addressed to him, as President, and signed by me, as President. To this latter, objection may be made on the ground that [illegible] federacy. In this event, you will decline any further attempt to confer on the subject of your mission, as such conference is admissable only on the footing of perfect equality.

My recent interviews with you have put you so fully in possession of my views that it is scarcely necessary to give you any detailed instructions, even were I, at this moment, well enough to attempt it.

My whole purpose is, in one word, to place this war on the footing of such as are waged by civilized people in modern times, and to divest it of the savage character which has been impressed on it by our enemies, in spite of all our efforts and protests. War is full enough of unavoidable horrors, under all its aspects, to justify, and even to demand, of any Christian rulers who may be unhappily engaged in carrying it on, to seek to restrict its calamities, and to divest it of all unnecessary severities. You will endeavor to establish the cartel for the exchange of prisoners on such a basis as to avoid the constant difficulties and complaints which arise, and to prevent, for the future, what we deem the unfair conduct of our enemies in the delivery of the prisoners who fall into their hands; in retarding it by sending them on circuitous routes, and by detaining them, sometimes for months, in camps and prisons, and in persisting in taking captive non-combatants.

Your attention is also called to the unheard of conduct of Federal officers in driving from their homes entire communities of women and children, as well as of men, whom they find in districts occupied by their troops, for no other reason than because these unfortunates are faithful to the allegiance due to their States and refuse to take an oath of fidelity to their enemies.

The putting to death of unarmed prisoners has been a ground of just complaint in more than one instance, and the recent execution of officers of our army in Kentucky, for the sole cause that they were engaged in recruiting service in a State which is claimed as still one of the United States, but is also claimed by us as one of the Confederate States, must be repressed by retaliation if not unconditionally abandoned, because it would justify the like execution in every other State of the Confederacy, and the practice is barbarous, uselessly cruel, and can only lead to the slaughter of prisoners on both sides—a result too horrible to contemplate without making every effort to avoid it.

On these and all kindred subjects you will consider your authority full and ample to make such arrangements as will temper the present cruel character of the contest, and full confidence is placed in your judgment, patriotism, and discretion, that while carrying out the objects of your mission, you will take care that the equal rights of the Confederacy be always preserved.

Very respt'y, JEFFERSON DAVIS.

RICHMOND, 8th July, 1863.

His Excellency Jefferson Davis:

Sir:—Under the authority and instructions of your letter to me of the 2d inst., I proceeded on the mission therein assigned, without delay. The steamer Torpedo, commanded by Lieut. Hunter Davidson, of the navy, was put in readiness as soon as possible, by order of the Secretary of the Navy, and tendered for the service. At noon, on the 3d, she started down James river, hoisting and bearing a flag of truce after passing City Point. The next day (the 4th) at about 1 o'clock P. M., when within a few miles of Newport News, we were met by a small boat of the enemy, carrying two guns, which also raised a white flag before approaching us. The officer in command informed Lieut. Davidson that he had orders from Admiral Lee, on board the United States flag ship Minnesota, lying below, and then in view, not to allow any boat or vessel to pass the point near which he was stationed without his permission. By this officer I sent to Admiral Lee a note stating my objects and wishes, a copy of which is hereto annexed, marked A. I also sent to the Admiral, to be forwarded, another in the same language addressed to the officer in command of the United States forces at Fort Monroe. The gunboat proceeded immediately to the Minnesota, with these dispatches, while the Torpedo remained at anchor. Between 3 and 4 o'clock, P. M., another boat came up to us, bearing the Admiral's answer, which is hereunto annexed, marked B.

We remained at or about this point in the river until the 6th inst., when, having heard nothing further from the Admiral, at 12 o'clock, M., on that day, I directed Lieut. Davidson again to speak the gunboat on guard, and to hand to the officer in command another note to this Admiral. This was done. A copy of the note is appended, marked C. At 2½ o'clock, P. M., two boats approached us from below, one bearing an answer from the Admiral to my note to him of the 4th. This answer is annexed, marked D. The other boat bore the answer of Lt. Col. W. H. Ludlow to my note of the 4th, addressed to the officer in command at Fort Monroe. A copy of this is annexed, marked E. Lieut. Col. Ludlow also came up in person in the boat that brought his answer to me, and conferred with Col. Ould, on board the Torpedo, upon some matters he desired to see him about in connection with the exchange of prisoners. From the papers appended, embracing the correspondence referred to, it will be seen that the mission failed from the refusal of the enemy to receive or entertain it, holding the proposition for such a conference "inadmissible."

The influences and views that led to this determination after so long a consideration of the subject, must be left to conjecture. The reason assigned for the refusal by the United States Secretary of War, to-wit: that "the customary agents and channels" are considered adequate for all needful military "communications and conferences," to one acquainted with the facts, seems not only unsatisfactory, but very singular and unaccountable; for it is certainly known to him that these very agents, to whom he evidently alludes, heretofore agreed upon in a former conference in reference to the exchange of prisoners (one of the subjects embraced in your letter to me,) are now, and have been for some time, distinctly at issue on several important points. The existing cartel, owing to these disagreements, is virtually suspended, so far as the exchange of officers on either side is concerned. Notices of retaliation have been given on both sides.

The effort, therefore, for the very many and cogent reasons set forth in your letter of instructions to me, to see if these differences could not be removed, and if a clearer understanding between the parties as to the general conduct of the war could not be arrived at before this extreme measure should be resorted to by either party, was no less in accordance with the dictates of humanity than in strict conformity with the usages of belligerents in modern times. Deeply impressed as I was with these views and feelings, in undertaking the mission, and asking the conference, I can but express my profound regret at the result of the effort made to obtain it; and I can but entertain the belief, that if the conference sought had been granted, mutual good could have been effected by it; and if this war, so unnatural, so unjust, so unchristian, and so inconsistent with every fundamental principle of American constitutional liberty, "must needs" continue to be waged against us, that at least some of its severer horrors, which now so eminently threaten, might have been avoided.

Very respectfully,

ALEXANDER H. STEPHENS.

Annexed to this correspondence are the letters which passed between Mr. Stephens and the yankee authorities of Fort Monroe. Mr. Stephens wrote to Admiral Lee and Col. Ludlow that he was the bearer of a communication from President Davis to President Lincoln, and that he desired to go to Washington to deliver it. The reply was (on the 4th) that instructions would be asked from Washington by telegraph. On the 6th Mr. Stephens received the following replies:—

U. S. FLAG SHIP MINNESOTA,
Off Newport News, Va.,
July 6, 1863.

Sir:—The request contained in your communication of the 4th inst., is considered inadmissible.

The customary agents and channels are adequate for all needful military communications and conferences between the United States forces and the insurgents.

Very respt'y, yours,
S. P. LEE, A. R. Admiral,
Comd'g N. A. Block'g Sq'n.

Hon. Alex'r H. Stephens.

HEADQ'RS DEPARTMENT OF VA.,
Seventh Army Corps,
Fort Monroe, July 6, 1863.

Hon. Alex. H. Stephens:

Sir:—In the temporary absence of Maj. Gen. John A. Dix, commanding this department, I have the honor to acknowledge the receipt of your communication of the 4th instant, addressed to the officer commanding U. S. forces, Fort Monroe, and in the execution of instructions from the Secretary of War, to inform you that the request therein contained is deemed inadmissible.

The customary agents and channels are considered adequate for all needful military communications and conferences.

I am, very respt'y, your ob't servant,
WM. H. LUDLOW,
Lieut. Col. and Ass't Insp'r Gen'l,
Seventh Army Corps,
Agent for Exchange of Prisoners.

From New Orleans.—We have been shown a letter, says the Mobile Advertiser and Register of the 7th, written from a point near New Orleans, by a lady, to her son in this city, from which we make the following extract. It was brought by a gentleman who left New Orleans last Tuesday, and came by the writer's residence. He was told by a respectable person residing in the neighborhood of Kenner, that our troops were there. He himself had crossed to Algiers and saw the Confederate troops and flag. The yankee officers were cursing Banks for abandoning the city.

"WEDNESDAY NOON, July 1.—"I sit down to tell you the news. Judge ——, your friend, and two other gentlemen, are here; one left the city twenty-four hours ago. Banks has raised the siege of Port Hudson, and is in Baton Rouge—3000 of his men were killed in the last assault. The St. Louis Hotel is a hospital, and filled with wounded and dying yankees.

"Our army is at Kenner. Manchac is abandoned by the devils. Magruder, with his men, is on his way to the forts down the river. The Confederate flag is seen distinctly from the St. Charles. The citizens are rejoiced, and ready to join our people. Many, however, have left hurriedly. Among them Wm. Hunt!!!"

P. W. A., the Savannah Republican's correspondent says:

Gen. Hood is reported to have said that if he were a betting man, he would stake all he is worth that peace would be made by Christmas. Gen. Longstreet evidently entertained the same opinion, as one might infer from his recent order exhorting men and officers to a faithful and rigid discharge of their duties as tending to bring about a speedy peace.

THE ATTACK ON CHARLESTON

From the Charleston Courier, 13th instant.

The assault Saturday morning on Battery Wagner, and the heavy bombardment kept up on that work by the Monitors and wooden gunboats for several hours Saturday and Sunday, has demonstrated fully that the enemy has determined to make his present movement a decisive attack on our city. It is not known as yet with certainty what the force of the enemy is, but prisoners report it from fifteen to twenty thousand. Several demonstrations have been made on James' Island and the Savannah Rail Road, doubtless intended as feints, to divide attention and endeavor to carry some weak point.

About daylight Saturday morning the enemy made their first determined assault on Battery Wagner, the centre fortification on Morris' Island. It was no doubt intended to be a surprise. The assault was made by between four and five thousand men. The front line advanced bravely up to the battery, our men, according to previous orders, reserving their fire until the enemy had got within musket range, when a terrible fire of grape, canister and musketry opened upon the advance. Some few of the foremost companies rushed forward only to be shot down or taken prisoners. The havoc in the front line caused the others to waver but for a moment, when they retreated precipitately in apparent confusion back behind the sand hills.

The enemy's loss is estimated to have been at least fully five hundred of his dead lay directly in front of the battery, one hundred and thirty unhurt and about eighty wounded were taken prisoners. The commanding officer of the assaulting column, Gen. Strong, reported by the prisoners to be seriously wounded. The last seen of him he had fallen from his horse and was carried off the field by his men. Several other officers said to be either killed or badly wounded. Our loss was reported to be 5 killed and 10 wounded.

The prisoners report their loss of the previous day about fifty killed and wounded.

The Bombardment Sunday.—The bombardment of Battery Wagner was renewed Sunday forenoon, by three of the monitors, assisted afterwards by two wooden gunboats. The firing was very heavy and kept up for several hours. Our casualties through the day were two killed and three wounded. One shot from Fort Sumter is said to have taken effect on one of the gunboats, as she immediately after being struck moved off, evidently laboring very hard, as if her machinery was damaged. Many rumors were afloat that a Monitor was badly damaged in the engagement Sunday. The report of one being crippled on Saturday was correct. She was towed off and has not since made her appearance.

The Yankee land forces are under the command of Gen. Gillmore. Admiral Dahlgren commands the fleet.

A demonstration was made by the enemy on Saturday on James Island. They shelled the woods very briskly for about one hour.

The Enemy's Raids on the Coast.—On Friday last, three of the enemy's gunboats steamed up towards Willtown Bluff. After engaging a section of Schultz's Battery, they succeeded in landing and took off a number of negroes belonging to Mr. Heyward Manigault. Two of the gunboats, after removing the obstacles in the river passed up the river, and when opposite Dr. Glover's plantation their progress was checked by a section of Capt. Walter's battery. The boats were so damaged as to be compelled to draw off. One boat was so much crippled that she sunk on her way down.

The Courier gives a list of 151 prisoners, brought to the City, among them several Colonels, Captains, &c.

The official list of casualties in the 21st S. C. V. on Saturday is 183 killed, wounded and missing.

81 wounded are reported in the different Hospitals, brought to Charleston after Friday's fight. Among them are H. F. Black and E. Noble, 51st N. C. Troops.

From Jackson.—JACKSON, July 11.—Another day has passed without an engagement. In the morning the enemy threw a force on our right, threatening to flank Gen. Featherston. Gen. Buford was sent to reinforce him and drove the enemy back after half an hour hard fighting. Gen. Buford lost 60 men—principally of the Seventh and Eighth Kentucky. The enemy then withdrew from our right, and in the afternoon made a demonstration on our left centre, when Dan Amburg's Brigade repulsed them after a hard fight. Our loss to-day is about 200.

11 P. M.—The enemy is still concentrating on our right to reach Pearl river. Our forces have just driven them back in the centre and burned the houses occupied by their sharpshooters.

JACKSON, July 12.—The enemy opened fire at six o'clock this morning from his batteries on our left, and at 8 o'clock, A. M., rained shells on the city. The enemy made a charge, the Washington Artillery and Cobb's battery repulsed them with heavy loss. Three hundred prisoners and three stand of colors.

The Florida at Work.—The following is an extract of a semi-official letter received here yesterday by a late arrival from Bermuda:

"The Florida has recently captured and *burned* the Clipper Ships Red Gauntlet, Southern Cross, and Benjamin Hoxie, the latter with a half a million of gold and silver aboard. The crews were sent in to Bermuda.—*Wil. Journal, 14th.*

Ship Ashore.—The steamer Kate of London went ashore on Bald Head, 12 miles North of Fort Fisher, on Sunday morning last. We learn from the Wilmington Journal that Col. Lamb took 100 sharpshooters and a Whitworth gun to her relief, exposed on the way to a heavy fire from seven blockading steamers. Eleven shots from the Whitworth, nearly every one striking, drove off these steamers from the Kate and from the Colonel's force, which suffered no loss, though the enemy fired 300 times.

North Carolina Casualties.—We have many painful rumors which we do not credit, and therefore will not give currency to them. We may mention, however, a few which seem to be credited, viz: Col. H. K. Burgwyn, 26th regiment, reported killed. It is further reported that most of the commissioned officers of that regiment are killed or wounded. Another report is that Col. G. H. Faribault, of the 47th N. C. regiment, is severely if not fatally wounded, and that Lieut. Col. J. A. Graves and Maj. Crudup of the same regiment, are killed. Lieut. Geo. Whiting, of the 47th, is reported killed and Lieut. J. F. Haywood, of the 5th, is severely though not dangerously wounded, and in the hands of the enemy.

Since writing the above we learn that Col. Burgwyn is not killed. He is severely wounded and within our lines. Col. Marshall and Maj. Richardson 52d are reported killed, and we regret exceedingly to learn the rumor that Capt. Cam. T. Iredell, 47th regiment, is killed, and his brother, Lieut. Cad. J. Iredell, 1st N. C. cavalry, is severely wounded.—*Ral. State Journal.*

Milliken's Bend.—From Gen. McCulloch's official report of his attack on Milliken's Bend, it appears that he did capture it, driving the enemy to the water's edge, under his gunboats. Our loss was 184; the enemy left hundreds dead. Our forces destroyed all the stores not wanted by themselves, and retired to their camp at Richmond, 8 miles off. They could not hold Milliken's Bend, because the gunboats commanded it. Shortly afterwards they started on another expedition and in their absence the enemy gathered his forces and made a dash on Richmond, and entirely burned it.

Another Great Freshet.—We are again visited with a destructive freshet. Dan River is now higher than it has been since the freshet in 1850. Any quantity of wheat is seen floating down, and all the corn on bottom land is submerged.

Milton Chronicle.