

under it many were discharged, but the regulation was revoked, the War Department becoming satisfied that the act by its true construction did not apply to men who were bound by the terms of enlistment to serve for the war. This is the same construction given by me to the act. Under it, all volunteers and substitutes, whether over or under 35 or 45, are to continue in service because they are not embraced by the Conscription Acts. I can see no reason why this construction should not be followed to the further consequence that as substitutes are not embraced by the Conscription Acts, and do not become subject to military service as conscripts. The fact necessary to the application of the regulation of the War Department does not exist; consequently the question that may grow out of that regulation is not presented.

It is said the arrest of Maroney was ordered in disregard of the decision in the matter of Irvin, because the Secretary of War does not consider the construction given to the Conscription Act of September "a sound exposition of the Act," the inquiry naturally suggests itself, who made the Secretary of War a Judge? He is not made so by the Constitution—Congress has no power to make him a Judge, and has by no act signified an intention to do so. It is true for the purpose of carrying acts of Congress into effect the Secretary of War, in the first place, puts a construction on them, but his construction must be subject to the Judiciary, otherwise our form of government is subverted—the Constitutional provision by which the legislative, executive and judicial departments of the government are separate and distinct, is violated, and there is no check or control over the executive.

According to the view taken by me it is not necessary, for the purpose of this case, to decide upon the legal effect of the regulations prescribed by the Secretary of War in regard to receiving substitutes, but as those regulations are relied on as authorizing the arrest of the petitioner, it is proper for me to say that many objections entitled to consideration may be urged to the power of the Secretary of War, to make the regulations in question. The enactment under which it is assumed that the power to make a regulation that "in all cases where a substitute becomes subject to military service, the discharge of the principal shall expire," comes within the scope of the power conferred by Congress, is the 9th section of the Conscription Act of April, 1862, in these words: "Persons not liable for duty may be received as substitutes for those who are under such regulations as may be prescribed by the Secretary of War."

The obvious construction of this section seems to be—substitutes may be received on two conditions, one implied, to wit: The substitute must be an able bodied white man, fit for military service in the field. The other expressed, to wit: The substitute must be a person who is not liable to military duty under the existing law, the time, place and manner of receiving substitutes, in which is included the mode of deciding whether he is an able bodied white man not liable to duty; to be regulated by rules prescribed by the Secretary of War.

If the regulation in question be confined to cases where the substitute being under the age of 18, afterwards arrives at that age and becomes liable to military duty, it accords with the provisions of the act. But if it be extended to cases where the substitute is not at the date of the contract of substitution liable to duty, but is afterwards made liable by a subsequent act of Congress, it departs from, and goes beyond the provisions of the act by adding a third condition, and the power to do so may well be questioned; especially, where the regulation as well as the act of Congress which is supposed to give it application are both subsequent to the contract of substitution, and the discharge is absolute on its face. For illustration, suppose a regulation to be prescribed that in all cases where the substitute is killed or disabled, or where he deserts, the discharge shall expire, which stand on the same footing, with the regulation that the discharge shall expire if the substitute is made liable to duty by a subsequent act of Congress, for all add a third condition to the two imposed by the act, and it may be urged against them that the power to add other conditions than those contained in the enactment is an act of legislation which Congress has no right to delegate to a department of the Executive branch of the Government, and of course an intention to do so, can only be inferred from plain and direct words; and the words in this instance are satisfied by the constitution stated above.

The same question of construction is presented in the matter of Haie, from Caswell county, under a clause in the ex-

emption act which exempts all persons who shall be held unfit for military service in the field under rules to be prescribed by the Secretary of War, where the power is confined to making rules to ascertain whether the person is or is not fit for military service in the field, and it is decided that the act does not confer power to prescribe a rule under which a citizen may be taken as a conscript, although held unfit for military service in the field, on the ground that he may answer some purpose in the hospitals, &c. These instances tend to show the wisdom of the Constitution in not confiding legislative, judicial and executive powers to any one department.

I am of opinion, that the petitioner is entitled to exemption. Therefore it is considered by me, that P. P. Maroney, be forthwith discharged, with leave to go wherever he will. It is further considered, that the cost of this proceeding allowed by law to be taxed by the Clerk of the Superior Court of Rowan county, according to the act of the General Assembly, be paid by Jesse McLean.

The Clerk will file the papers in this proceeding among the papers in his office and give copies.

R. M. PEARSON, C. J. S. C.  
At Richmond Hill, June 4th, 1863.

## Hillsborough Recorder.

HILLSBOROUGH, N. C.  
Wednesday, June 10, 1863.

**Correction.**—The next session of the Hillsborough Military Academy will begin on the 1st day of July. Our printer mistook the marks in the manuscript and made it the 7th. The advertisement is now correct—the session commences on the first day of the month.

**An Extra Session.**—It will be seen by the proclamation of the Governor in to-day's paper, that the General Assembly of this State is required to meet in extra session on Tuesday the 30th day of the present month.

A spirited cavalry fight took place at Brandy Station, near Culpeper Court House, on Tuesday of last week. It began early in the morning, and was continued until five o'clock in the evening. Among the killed is mentioned the name of Col. Solomon Williams of this State, who had been married but two or three weeks, and we sorrowfully add the name of Capt. Robin Jones, the youngest son of the late Col. Cadwallader Jones of this vicinity. We give below from Richmond papers the particulars that have come to hand.

A note from Capt. W. A. Graham furnishes us with the casualties in Co. K, 19th Regiment, under his command:

Killed—Corporal H. J. Bistock.  
Wounded—Sergeant R. J. Tilley, slightly in hip; Privates J. Abell, in neck; J. W. Carden, breast; and C. R. Wilson, in foot, severely.

All the members of the company behaved well. We have reason to believe that Vicksburg still holds out, but the intelligence from there is too meager to judge of the state of things.

The Democratic State Convention of Ohio has unanimously nominated Vallandigham for Governor.

### THE CAVALRY FIGHT NEAR BRANDY STATION.

The Richmond *Seagull* states that the cavalry on Wednesday evening brought down 392 prisoners of war, cavalrymen and artillerymen, captured by Stuart's cavalry in the fight near Brandy Station on Tuesday. Twelve of the number were commissioned officers, including one Colonel, one Major, and sundry Captains and Lieutenants. Twenty prisoners, captured in the Valley, accompanied those above named.

The Richmond *Whig* of Friday has the following particulars:

The details of Tuesday's battle in Culpeper county are still meagre. It appears to have been fought upon the farm of John S. Barbour, Esq., near Brandy Station. The enemy's force, consisting of from fifteen to twenty thousand men, crossed the river at an early hour in the morning, got in the rear of our pickets and captured them, and pressed rapidly on to our camps, which they surprised and threw into some confusion. Falling upon Gen. Jones' brigade, which they found in the act of forming, they pierced and broke our lines, and forced our men to fall back. It is stated that they captured Gen. Stuart's headquarters near Brandy; also Brandy Station, and, it is understood, some stores there. Our men, recovering from their surprise, now came rapidly forward, and threw themselves upon the enemy, and a desperate hand to hand fight, with sabres, ensued. The enemy were driven to a point nearer to the river, with considerable loss in killed, wounded and prisoners. The fight lasted until five o'clock in the even-

ing, when the enemy were repulsed at all points, and finally driven back across the Rappahannock.

The above is, in brief, an account of the battle which is believed to be correct. The enemy's cavalry were commanded by Stoneman, and were the same who made the famous raid above Richmond, previous to the battles on the Rappahannock.

### For the Hillsborough Recorder. THE COMMENCEMENT AT CHAPEL HILL.

When corn is twenty-five dollars a barrel and stage-fare is twenty-five cents a mile; when there is neither coffee nor whisky in the land, when muslins are faded and patent leathers have patent cracks in them, it was not to be expected that the usual crowd would be at Commencement. Nor was this expectation disappointed. The array of female and infantile beauty in the College Chapel was hopeful for the future. The Fresh and Sophs, too, showed that they hoped to be ready when the future came. But when husbands and fathers and brothers and lovers are away where danger is at hand, or where the battle has raged fiercely, those susceptible of the deepest feelings cannot find the heart to mingle in scenes which contrast strongly with the emotions of their own breasts. Nevertheless there were at Chapel Hill several who have been often honored in high places of service by their countrymen, whose virtues adorn every relation of life, and whose examples are worthy of emulation by the youth of our land. Gov. Vance was there, and ex-Governors Graham, Manly, Morehead and Swain, Judge Manly and Mr. Cameron, Judge Battle and the Hon. D. M. Barringer, Mr. Wiggins of Halifax, who has seven sons in the army, and Mr. K. P. Battle, who is to scatter the coal and iron of Deep River over the whole country. These eleven Trustees have all been students at Chapel Hill, and the most of them are the fathers of students there. Of the sixty-three Trustees of the University, forty-one have been students at the University, and of the sixty-five Colonels of N. C. Troops in the army, twenty have had their education there. In every department of public service we find the sons of the University maintaining a high character for probity, activity and intelligence; and it is gratifying to see them taking care that their *Alma Mater* receive but little damage in the times that try men's souls.

The orations by the Seniors were few but well received. Mr. Argo, of Alabama, spoke the Valedictory as the best scholar in his class. Mr. Quarles, of Louisiana, was the second best, and delivered the Latin Salutatory. Mr. Carroll spent only one year at the University, but while there was accounted an excellent scholar, and his essay on the "Elements of Success," was marked by much good feeling and sound judgment well expressed and properly declaimed. No one of the eight graduates passed through his course without an absence from any College duty. The troubles of the times seem to make all duties more than ordinarily difficult. The declamations by the Freshman and Sophomore were of an average respectability. Perhaps it is too soon for us to collect and have repeated the words of enthusiasm and patriotism that our wrongs, our resolutions and our hopes have called from the breasts of those whose place it is to arouse the energies of their countrymen. The speeches declaimed were almost all of the olden time. In the Freshman class Mr. Carr, of Chapel Hill, was praised because the difficulties of his piece did not overwhelm him. Mr. Mickle, of Chapel Hill, Mr. McRae, of Fayetteville, and Mr. Stevenson, of Newbern, also had their admirers. In the Sophomore class Mr. Osborne, of Charlotte, exhibited the best declamation of the week, although Mr. Rankin, of Wilmington, and Mr. Loufion, of Pittsborough, also did well.

As to scholarship, Mr. J. C. Gilmer, of Surry county, was in the first rank among the Juniors; Mr. W. A. Guthrie, of Chapel Hill, was next to him. Messrs. Van Wyck and Boozer, of South Carolina, were in the third rank. So far Mr. Boozer has been entirely punctual in attending his Collegiate duties. In the Sophomore class Mr. P. H. Adams of Greensborough, obtained the first honor alone. The second distinction was awarded to Messrs. Hartsfield of Wake, London of Pittsborough, Prout of Williamsborough, and Wilkins of Brunswick county, Va.; and the third to Messrs. Haughton of Pittsborough, Huff of Brunswick county, Va., and Roan of Yanceyville. Mr. R. Hodge of Wake, so far, has not missed attending any prayer, recitations, or preaching. In the Freshman class, Mr. J. C. Mickle was the only "first rate" man, although Adams, of Petersburg, Va., was not so good a scholar in the Mathematics. Messrs. Slover and Steven-

son were declared second best scholars, and Messrs. Fetter, of Chapel Hill, and Morehead, of Greensborough, shared the third distinction. Mr. Fetter has been perfectly punctual during the whole year, and Mr. F. T. Waiser, of Davilson county, since he joined College in January last. Of the six students from Chapel Hill four were prominent at this commencement, and some of these in high places.

Dr. McGuffey's sermon before the Senior Class attracted the largest audience that was collected in the Chapel of the University, and it well deserved the compliment. Perhaps no one in that audience had ever heard the doctrine of Regeneration by the Holy Ghost explained so clearly, or defended so thoroughly. The object of the gifted and learned Professor was to show that man ought not to expect to be free from the law that regulates all the rest of creation, viz: That development and improvement is not from the force of inherent powers alone, but from these set a work by communion with and the preparation of a higher intelligence. The text was, "The preparation of the heart in man and the answer of the tongue is from the Lord." Thus it was proved that it has ever been and it ever must be, that man will arrive at his best estate only where he has studied the Revelation of God and experienced His Regeneration. Gov. Swain's address before the Societies, prepared at a very short notice, was full of interesting and suggestive statements respecting the Geography and History of North Carolina. No man can write or read History aright without being a good geographer, and a good geographer will always be interested in reading history. The relative influence and importance of these two studies was set forth in a striking manner by one who knows the value of each alone and of both together. Col. Wheeler, in his address before the Historical Society, showed how the history of a country developed its fine arts, and how these in their turn ennobled its history. History is Philosophy teaching by example, and the fine arts teach history in Poetry, Paintings and Statues, and so the worthy deeds of our ancestors are respected.

It is a good thing to go to Commencement at Chapel Hill, for one is likely to see there many good people, to hear many good things, and to eat many good dinners, (especially in scarce times.) And this likelihood is reasonable. It is the main business of the place to educate heads and hearts, and to prepare living words for burning thoughts. And the ladies take care that those who come to inspect the work that is done and shown there, shall not lack "the wine that cheers the heart of man and the oil that maketh his face to shine."

### Obituary.

The sympathy of our entire community has been deeply moved during the past week by the arrival of the remains on Saturday morning last of our friend and neighbor Capt. ROBIN AP C. JONES, slain in the late cavalry fight at Brandy Station, near Culpeper Court House in Virginia. All the properties of friendship and of social life forbid that one so much loved and esteemed, so true a gentleman, so gallant a soldier, so patriotic a martyr in the cause of Southern liberty and independence, should go down to his grave with a simple line announcing his heroic death. It well became him to be a soldier and a martyr in such a cause, descended as he is from a race of men so well known in the early history of North Carolina, who in the war of the Revolution were active patriots from principle, and in the organization of the government the leaders of their people; successful and independent planters of the Lowlands, well and widely known for all that is honorable and estimable in public and private life. Captain Jones was the great grand son of that well known gentleman, Gen. Allen Jones of Halifax, N. C., and the fourth son of the late and lamented Col. Cadwallader Jones, who, both on sea and land, first as an officer of the navy and afterwards in the army of the United States, had served his country most gallantly in times of much peril, especially in the war of 1812, and who for more than thirty years made his residence on the Western borders of our ancient village, "the model gentleman of the old school."

Thus descended, the subject of this sketch was born at West Hill on the 18th day of January, 1826. He passed his entire youth under the ever hospitable roof of his parents, and was prepared for College at the Hillsborough Academy by that well known scholar and instructor, William J. Bingham. Entering the University at Chapel Hill, he was graduated at an early age in the class of 1846, associated with his friends and class mates Judge Person of Wilmington, and Col. Thomas Ruffin of Alamance. For a few years he yielded himself to the charms of his happy home, travel, and general reading. Subsequently he was made most happy by his marriage with Miss Sarah, the eldest daughter of Gen. James J. Polk, of Maury county, Tennessee. For a number