

J. J. BRUNER, EDITOR AND PROPRIETOR.

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From the Progress. HABEAS CORPUS.

The facts of this case bring it within the decision in "the matter of Irving." That decision is put on the ground that the Conscription Act of September, 1862, does not embrace substitutes. And so the questions growing out of the regulations prescribed by the War Department, "where a substitute becomes subject to military service, the exemption of the principal shall expire," was not presented.

It seems to me that any one accustomed to judicial investigation cannot read the act and fail to come to the conclusion that it does not embrace volunteers and substitutes who were already bound to serve for the war; a different construction is excluded by the words used, and is inconsistent and repugnant to its provisions.

The President is authorized "to call out and place in military service all white men." The words "call out," and "place in military service" are not applicable to men who are already in the military service for the war; no legislation was necessary to make soldiers of them. If only a part is called for provision is made for taking "those who are between the age of 35 and any other age less than 45," can this be applicable to volunteers and substitutes? It is further provided that "those called out under this act, and the act to which it is an amendment, shall be first and immediately ordered to fill to their maximum number the companies, battalions, &c., from the respective States, &c., the surplus, &c." This supposes that the volunteers and substitutes composing the companies are to remain in the field, and the companies and battalions are to be filled up by those who are ordered into service under the Conscription Act.

Again, how can the regulation that all conscripts are to be sent to camps of instruction be applicable to volunteers and substitutes? Are they to be taken from the army and sent to camps of instruction? Certainly not, because they are not called out and placed in the military service under the Conscription Acts, but are bound for the war by force of the original contracts of enlistment.

I am informed that, soon after the Conscription Act of April, a regulation was made for the discharge of all volunteers for the war who were over the age of 35; and under it many were discharged, but the regulation was revoked, the War Department becoming satisfied that the act by its true construction did not apply to men who were bound by the terms of enlistment to serve for the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 consequences 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 regulations 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 Meroney was ordered in disregard of the decision in the matter of Irving, because the Secretary of War does not consider the construction given to the Conscription Act of September "a sound exposition of the Act," the enquiry 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 are enticed 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 in the 8th 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 provision 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 construction stated above.

The same question of construction is presented in the matter of Huse, from Cabarrus county, under a clause in the exemption 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. Meroney, 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. FRANKSON, C. J. S. C. At Richmond Hill, June 4th 1863.

An Act to amend an Act entitled "Militia."

SECTION 1. Be it enacted by the General Assembly of North Carolina, and it is hereby enacted by the authority of the same: That during the war, the Governor shall have power to call out as militia for local and temporary service, all able bodied men between the ages of eighteen and forty-five years, or such portion thereof in the whole State or any part of the State as he may deem necessary for the public defence. He shall cause the men so called out from each regimental district, as is now established by law to be formed into companies of not less than sixty nor more than one hundred privates, who shall elect the company officers; whenever any of said districts shall furnish a smaller number than a company, or there shall be a residue after the formation of one or more companies, such smaller number may be attached to any adjoining district, and the companies so formed may be organized into regiments and battalions, in which case the commissioned officers of companies shall elect the field officers; the same number of staff officers for each regiment as are provided for in the militia laws, shall be appointed, and the Governor shall commission all officers during the war, and no longer.

SEC. 2. Be it further enacted, That the officers and men shall be subject to the rules and articles of war of the Confederate States, and shall receive the same pay, rations and allowances while in actual service as those of like grade in the Confederate States' service.

SEC. 3. Be it further enacted, That there shall be exempt from service under this act the following, to wit: The officers of the executive departments of the State, with their clerks and secretaries; members and officers of the General Assembly; judges of the Confederate and State courts; the attorney general, solicitors of the several judicial circuits, clerks of courts of record, marshals and sheriffs, jailors, registers, county trustees and keepers of the poor; one salt commissioner of each county; two blacksmiths who have established shops in each captain's district; one miller for each public mill; regular ministers of the gospel; the officers and necessary employees of the insane asylums, and inmates for the deaf, dumb and blind, with their inmates and pupils; phys-

cians who have been habitually engaged in the practice of their professions for four years immediately before this day; the president, superintendent, treasurer, secretary, an agent for each depot, and a reasonable number of employees, conductors and clerks of each railroad; the editor and the necessary compositors for each newspaper; the president, professors and stewards of colleges; the principal and teachers of academies; the principal and a reasonable number of employees or manufacturers of cotton and woolen goods, iron leather, shoes, and other articles manufactured of leather, who are working under contract with the Confederate or State government, or who have bought themselves within the terms of the act of Congress, by agreeing to take, and by taking no more than twenty five per cent. profit upon their manufactures; but in every case it shall be made appear to the entire satisfaction of such officers or the Governor may appoint, that such contract or agreement was bona fide, and not entered into or pretended merely to escape military duty; and that the Governor shall have power in special and extraordinary cases to exempt any other person.

SEC. 4. Be it further enacted, That in executing this act the Governor is empowered to employ such officers of the militia as may be necessary, and he may appoint a suitable number of drill officers, with the rank and pay of junior second lieutenants.

SEC. 5. Be it further enacted, That whenever the Governor shall deem it expedient to raise secretly, in places where it cannot be done publicly under this act, companies for special service, he may commission officers for that purpose, with authority to raise such companies to consist of as many men and officers as he may determine, who when in active service shall be entitled to the same pay and under the same rules as the force herein authorized except as to the appointment of officers, which shall be made by the Governor.

SEC. 6. Be it further enacted, That the Governor shall have power to appoint field officers to command any force raised under the 5th section that he may think proper and expedient.

SEC. 7. Be it further enacted, That all laws and clauses of laws coming in conflict with this act are hereby repealed, and this act shall be in force and take effect from and after its ratification. [Ratified the 10th day of February, 1863.]

There are such things as the laws of civilized war. They are as well understood and settled as the international laws of peace. While a nation or any army observes and obeys the laws of war in the conduct of hostilities, its citizens or subjects are entitled to certain immunities and protections when they fall into the hands of the enemy. But when a nation or an army persistently violates the known laws of civilized war, that nation is *hostis humani generis*; all its individual members partake of that character, and every man in it should be, and can justly be, shot, hung, destroyed like mad dogs, or noxious reptiles. It is, indeed, a crime not so to treat them, as that omission is a permission of their conduct.

The Federal Government and armies have been and are now, systematically violating the laws of war. Plunder of private property, ravage and devastation of peaceful districts, are not permitted by any modern code. The ravage of the Palatinate by the troops of Louis XIV, is generally cited in the writers on international law as one of the latest instances of this species of public offence, and condemned as an outrage on civilization. Food gathered for the use of a hostile army, or immediately within its reach, may be legitimately destroyed; but to burn the instruments of husbandry, to maim the cattle and destroy the houses, groves, fences and growing crops of a country, is barbarous. To drive away the unarmed population of a conquered State, and send thousands of women and children into the wilderness or foreign lands, is simply devilish. This and much more, the United States are doing, and have been doing for eighteen months. The monstrous acts which bring beggary and starvation on thousands of innocent human beings, are performed systematically, on principle, and in accord with the instructions of a Government.

The United States does not make war on the Confederate authorities, but on the Southern people. There is but one preventative and redress: it is to treat every man, whether officer or private, engaged in the execution of that Government's orders, as felons. This truth has been long ago recognized by the Confederate Government. The proclamation of President Davis cannot have been forgotten. The time to execute the laws which he then fully enunciated has now fully come. It is useless to repeat those proclamations. If our Government and its Generals are too molly hearted to act, they should at least have enough manhood not to threaten and rail. Rich. Examiner.

It will be an interesting item of history hereafter to be able to know the number of soldiers, which each county has furnished in this war. We hope that the Adjutant General will cause such record to be kept, distinguishing the date of entry into the army. The record will be a proud one and its pages be consulted for costs of arms as glorious as any that Heraldry can boast.—State Journal.

Date obolum Belisario! A Yankee editor of a newspaper in Georgia proposes that the people of the Confederacy shall get up a monument to the glory of the late General Jackson to the amount of one hundred thousand dollars, and proceeds to a dextrous puff of one of his townsmen, also a scion of Massachusetts, who has made the magnificent donation of one hundred dollars to the aforesaid sum one hundred thousand. The proposition is characteristic of Yankee vulgarity. In the opinions of this people, money is the panacea of all evils and the cure of all griefs. "A public purse is generally considered as the highest testimony of popular approbation in the North; but the recipients of such quantities are generally as vulgar as the mob that designs them. This course testimony of the popular favor may do very well for actresses and the favorites of the prize ring, while it would insult those whose refined estimation of public honor repels the thought of the pecuniary tribute of parasites.

We have no reason to believe that the family of General Jackson is in any pecuniary necessity or danger, to call for the remarkable scheme of relief proposed by the small editor in Georgia. His munificence, and that of the small grocer who has started his list, had better be directed to the indigent and suffering families of private soldiers. The people of Virginia are quite ready to honor and cherish the family of their great chieftain, and to surround them with the most tender respect and assiduous attentions without the aid of gift schemes, and the interposition of a mutual-admiration society of Yankees and grocers. If their store be small, it will be the duty of the Legislature and of Congress to provide a proper and honorable pension.

Notoriety hunters and private adventurers have already seized upon the name of Gen. Jackson, and used it for the most base and indecorous ends. A subscription of popular pence has been started for his monument. The bogus military of Richmond and newspapers whose skirts are dragged in the "substitute" business and the filth of back door transactions, are delighted with the opportunity of fame in advertising themselves as treasurers and collectors of the patriotic fund. The subscription appears to be an affair of a little man dressed in uniform in Gov. Letcher's closet, and the very enterprising and accomplished theatre manager of Richmond. It is painful to see how the name of this great hero has been dragged in the dust by those who have fastened upon it. The "subscription" to the Jackson monument is the convenient handle, after the most approved fashion of the Yankees, of schemes of self laudation, puffs and pence. It is made a text for showmen's advertisements; paraded by tradesmen to sell their wares; used to advertise theatres; and even prostituted to give a respectable mask to public "balls," which are declared to be for the "Jackson fund." Of course it is a God send to that class of extortioners, who are always busy in displays of patriotism by public subscriptions. We shall look to see the list crowded with the names of plethoric speculators, ungrammatical grocers and peccunious adventurers, who came to Richmond peddling puppies.

We are deeply sensible of the debt of honor and gratitude which the people of this Confederacy owe to the peerless and immortal hero of this war. He deserves a monument to his memory, and his immediate family are wards of the republic. But the debt should be discharged decently; not with Yankee shows and by a Jack pudding in uniform. The Legislature of Virginia, on the representative body of the nation itself, will do a graceful and honorable office in making an appropriation for commemorating the services of Jackson, by a monument or other appropriate public testimonies. Such magnificent acts of legislation are common in every civilized country. They are a far more respectable and dignified mode of testifying to public virtue than popular subscriptions with their invariable adulterations of coarseness and indecency.—Rich. Examiner.

STATE BOUNTY TO NORTH CAROLINA SOLDIERS.

We have been requested to state, in response to the communication in the Progress of Monday, signed W. T. G., complaining that bounty had not been paid to conscripts in the 5th Regiment, that the Paymaster of the State is always ready to pay bounty due to North Carolina soldiers upon presentation of the pay rolls properly made out. The duty of having these pay rolls prepared devolves upon the Company Commanders, and all bounty rolls presented for payment at Raleigh, we are informed, have been paid without any delay. As there is but one officer charged

with the duties of the Paymaster's Department, he is not responsible for the non-payment of bounty. Although many payments have been thus made, but it is expected that the company officers will attend to the interests of their men in this matter. All necessary blanks and instructions are furnished upon application to the Paymaster. It is the practice with many regiments, as volunteers or conscripts come in, or unpaid absentees return to camp, to prepare a roll for each company, and send the whole to the Paymaster by the Regimental Quartermaster, or the first officer attached to the Regiment, who may visit Raleigh. In this way there is no difficulty in obtaining payment of the State bounty.—Daily Progress.

THE WAR IN VIRGINIA.

Contrary to expectations, the Yankees on yesterday still remained on the south bank of the Rappahannock, at Deep Run. They occupied the angle formed by the creek and the river, and were throwing up a line of entrenchments of a mile in length, extending from Bernard's house up to Deep Run. By aid of a field glass their dirt digging operations could be distinctly seen from the hills above Hamilton's Crossing, but it was impossible to form any correct estimate of their numbers. Beside the ditches, only about two regiments were visible, but there may have been several thousand concealed in the gorge of the creek, and under the river bank. On the Stafford hills, just opposite Deep Run, might be seen about a thousand men, apparently cavalry.

There had been no skirmishing or cannonading since Saturday.

We see no reason to change the opinion hitbert expressed, that this demonstration of the enemy was designed solely to disconcert or retard some supposed plan of Gen. Lee. That it has been a dead failure is already known to the Yankee General.

Where Hooker, with the main body of his forces now is, is a matter open to conjecture. He may be at Kelley's Ford, 30 miles above Fredericksburg, at Dumfries, on the Potomac, or even so far away as Munass Junction. We would most strongly incline to the belief that he was at one of the latter places, were he not the great "Fighting Joe," and in command of the finest army on the planet, composed of the victorious veterans of Chancellorsville. But with such a name and such an army he cannot turn his back upon a foe he has always pretended to despise,—wherever he is, we have no fears but that we shall soon hear from him. Even while we write a great battle may have been joined. The latest report which, however, does not come very well authenticated, from King William is, that the Yankee gunboats have again ascended the Mattaponi. But there is little doubt that they will renew their raid unless some steps are taken to prevent them. One battery of flying artillery, stationed at West Point, would effectually keep them out of both the Mattaponi and the Pamunkey. This matter is well worthy the attention of the commandant of this department. The wheat crop on these rivers is uncommonly large and almost ready for the sickle, but unless the farmers are granted some protection it will all be lost. Already we hear the people of means are making preparations to remove with their families and negroes. The Confederacy can at this juncture, but ill afford to throw away so rich and productive a section of country, and especially one that can be retained by so small an expenditure of means.

From other parts of the State we have no recent intelligence of interest, if we except Columbia, on the James river and Kanawha canal. At this place there was a great panic last Sunday, caused by a rumor which obtained circulation and credit that Stoneman was again advancing from Louisa Court House upon the devoted town. For several hours there was a mighty flurry and excitement. Farmers hid their horses, people ran into the woods, and all the boats lying at the wharf, were sent off in haste up and down the canal. By a singular coincidence, at this very time the report prevailed in Louisa that the Yankee cavalry were at Columbia, en route for the Central railroad.—Rich. Examiner.

Council of State.—This body met in this city on Thursday, the 11th, on the call of the Governor. All the members present, to wit: Mr. Satterthwaite, of Pitt, Mr. Stubbs of Martin, Mr. Eldridge of Johnston, Mr. Dick of Guilford, Mr. Hargrave of Anson, Mr. Calloway of Wilkes, and Mr. Patton of Buncombe. We understand the Council has been engaged in considering several subjects of importance.—Proceedings in our next.—Rich. Standard.

Hon. E. G. Reelf, of Person, has been appointed on the Internal Improvement Board, in place of William Eaton, Jr., of Warren, resigned. This is an excellent appointment.—Daily Progress.