

MEMORIAL  
OF  
FITZ-JOHN PORTER,  
IN FAVOR OF

*Such action by Congress as will restore him to the positions of which he was deprived by the action of a court-martial.*

MAY 8, 1882.—Referred to the Committee on Military Affairs and ordered to be printed.

[To accompany S. 1844.]

*To the Senate and House of Representatives in Congress assembled :*

Your memorialist would respectfully represent that, in January, 1863, he was most unjustly declared guilty of certain charges preferred against him before a court-martial convened at the city of Washington, and by the sentence of said court was cashiered and forever disqualified from holding any office of trust or profit under the Government of the United States; which sentence was carried into effect on the 27th day of January, 1863.

That, from the promulgation of said finding and sentence, your memorialist has protested against the injustice of the same, and, by every means in his power, has sought to be relieved therefrom, and to be restored to the positions of which said sentence deprived him.

That after repeated applications to the President for such relief as might be in the power of the Executive Department of the government, on the 12th day of April, 1878, the President issued the following order :

[Special Orders No. 78.]

HEADQUARTERS OF THE ARMY,  
ADJUTANT-GENERAL'S OFFICE,  
Washington, April 12, 1878.

The following order has been received from the War Department.

An appeal has been made to the President, as follows :

“NEW YORK, March 9, 1878.

“To His Excellency RUTHERFORD B. HAYES,  
“President of the United States :

“SIR: I most respectfully, but most urgently, renew my oft-repeated appeal to have you review my case. I ask it as a matter of long delayed justice to myself. I renew it upon the ground heretofore stated, that public justice cannot be satisfied so long as my appeal remains unheard. My sentence is a *continuing sentence*, and made to follow my daily life. For this reason, if for no other, my case is ever within the reach of executive as well as legislative interference.

“I beg to present copies of papers, heretofore presented, bearing upon my case, and trust that you will deem it a proper one for your prompt and favorable consideration.

“If I do not make it plain that I have been wronged, I alone am the sufferer. If I do make it plain that great injustice has been done me, then I am sure that you, and all others who love truth and justice, will be glad that the opportunity for my vindication has not been denied.

“Very respectfully, yours,

“FITZ-JOHN PORTER.”

In order that the President may be fully informed of the facts of the case of Fitz-John Porter, late major-general of volunteers, and be enabled to act advisedly upon

his application for relief in said case, a board is hereby convened, by order of the President, to examine, in connection with the record of the trial by court-martial of Major-General Porter, such new evidence relating to the merits of said case as is now on file in the War Department, together with such other evidence as may be presented to said board, and to report, with the reasons for their conclusion, what action, if any, in their opinion justice requires should be taken on said application by the President.

*Detail for the board.*

Maj. Gen. J. M. Schofield.  
 Brig. Gen. A. H. Terry.  
 Col. G. W. Getty, Third Artillery.  
 Maj. Asa B. Gardner, Judge Advocate, Recorder.

The board will convene at West Point, N. Y., on the 20th day of June, 1878, and is authorized to adjourn from time to time, and to sit in such place as may be deemed expedient.

By command of General Sherman :

E. D. TOWNSEND,  
*Adjutant-General.*

Official :  
 L. H. PELOUZE,  
*Assistant Adjutant-General.*

And the said board took the case into consideration and submitted the following report :

REPORT OF BOARD OF OFFICERS CONVENED AT WEST POINT, IN JUNE,  
 1878.

NEW YORK CITY, *March 19, 1879.*

To the honorable the SECRETARY OF WAR, *Washington, D. C. :*

SIR : We, the Board of Officers appointed by order of the President to examine the evidence in the case of Fitz-John Porter, late major-general of volunteers, and to report, with the reasons for our conclusions, what action (if any), in our opinion, justice requires should be taken by the President on the application for relief in that case, have the honor to make the following report. The Recorder has been directed to forward to the Adjutant-General of the Army the printed record of our proceeding, including all the evidence examined and the arguments of counsel on either side.

We have made a very thorough examination of all the evidence presented and bearing in any manner upon the merits of the case. The Recorder has, under instructions from the board, sought with great diligence for evidence in addition to that presented by the petitioner, especially such as might appear to have a bearing adverse to the claims urged by him.

Due care has been exercised not to inquire into the military operations of the Army of Virginia, or the conduct of officers thereof, any further than has seemed necessary to a full and fair elucidation of the subject submitted to us for investigation. On the other hand, we have not hesitated to examine fully into all the facts, accurate knowledge of which seemed to us to be necessary to the formation of a correct judgment upon the merits of the case, and to the determination of the action which justice requires should be taken by the President on the petitioner's application for relief.

We have had the benefit of the testimony of a large number of officers of the late Confederate army, a kind of testimony which was not available at the time of General Porter's trial by court-martial. We have also availed ourselves of the testimony of many officers and soldiers of the Union forces who were present on the battle-field and of much documentary evidence, to throw additional light upon points not made perfectly clear in the record of evidence taken before the court-martial ; and we have had the use of accurate maps of the battle-field of Manassas, constructed from recent actual surveys made, under the direction of the Chief of Engineers, by a distinguished officer of that corps, who was himself a participant in that battle.

Without such a map neither the testimony upon which General Porter was convicted nor the additional testimony submitted to this board could have been correctly understood.

The evidence which we have thus been able to examine, in addition to that which was before the court-martial, has placed beyond question many important facts which were before the subjects of dispute, and in respect to some of which radically erroneous opinions were entertained by General Porter's accusers, and doubtless by the court-martial that pronounced him guilty.

The result has been, as we believe, to establish beyond reasonable doubt all the

facts essential to the formation of a correct judgment upon the merits of the case of Fitz-John Porter. We are thus enabled to report, with entire unanimity, and without doubt in our own minds, with the reasons for our conclusions, what action, in our opinion, justice required should be taken by the President on the petitioner's application for relief.

The evidence presents itself under several distinct heads, viz:

First. The imperfect, and in some respects erroneous, statements of facts, due to the partial and incorrect knowledge in possession of witnesses at the time of the court-martial, and the extremely inaccurate maps and erroneous locations of troops thereon, by which erroneous statements were made to convey still more erroneous impressions.

Second. The opinions and inferences of prominent officers based upon this imperfect knowledge.

Third. The far more complete and accurate statements of facts now made by a large number of eye-witnesses from both the contending forces.

Fourth. The accurate maps of the field of operations and the exact positions of troops thereon at different periods of time, by which statements otherwise contradictory or irreconcilable are shown to be harmonious, and opposing opinions are shown to have been based upon different views of the same military situation; and,

Finally. The conflicting testimony relative to plans of operations, interpretation of orders, motives of action, and relative degrees of responsibility for unfortunate results.

A careful consideration of all the material facts now fully established, in combination with the conflicting or inconclusive testimony last above referred to, gives rise to several diverse theories respecting the whole subject with which General Porter's case is inseparably connected. These diverse views of the subject necessarily involve, in a greater or less degree, the acts, motives, and responsibilities of others as well as those of the petitioner. We have considered with great care and labor, and with our best ability, each and all of these phases in which the subject can be and has been presented, and we find that all these possible views of the subject, when examined in the light of the facts which are fully established by undisputed testimony, lead inevitably to one and the same conclusion in respect to the guilt or innocence of Fitz-John Porter of the specific charges upon which he was tried and pronounced guilty by the court-martial.

Therefore, while exposing General Porter's conduct to the test of the highest degree of responsibility which recognized military principles attached to the command he held under the circumstances in which he was placed, and the orders which he had received, we are able to take that view of the whole subject which seems to involve in the least possible degree any question as to the acts, motives, or responsibility of others.

We will now proceed to give, as concisely as we are able to do, a narrative of the events which gave rise to the charges against Maj. Gen. Fitz-John Porter, omitting the multitude of interesting but unessential details and all facts having no necessary bearing upon his case, and limiting ourselves to a plain statement of the essential facts of the case which have been established, as we believe, by positive proof.

While the Army of the Potomac was withdrawing from its position on the James River in August, 1862, the Army of Virginia, under Major-General Pope, was ordered to hold the line of the Rappahannock, and to stand on the defensive until all the forces could be united behind that river. General Pope was given to understand that, when this concentration was effected, Major-General Halleck, the General-in-Chief, was to take the field in command of the combined armies. On the other hand, it appears that Major-General McClellan, then commanding the Army of the Potomac, was given to understand that he was to direct the operations of all the forces in Virginia as soon as they should be united.

It appears that General Pope was notified on the 25th of August that an active campaign was soon to be commenced, without waiting for a union of all the forces, and under some commander other than either of those before named. But this information appears to have been of a secret character, afterwards suppressed, and not made known to General McClellan and his subordinates until five days later, when the order appeared from the War Department, depriving McClellan of the command of all his troops then between the Potomac and the Rappahannock, although leaving him in nominal command of the Army of the Potomac.

Thus General Porter, who joined General Pope's army about that time, was left under the impression, which all had previously shared, that the operations of the army were to continue of a defensive character until all the forces should be united and proper preparations made for the commencement of an offensive campaign under a general designated by the President to command the combined armies. But just then the Confederate general, Jackson, with three divisions of infantry, one of cavalry, and some artillery, commenced his movement to turn the Union right through Thoroughfare Gap, which gap he passed on the 26th, and that night struck the rear of the Union army at Bristoe and Manassas Junction. The next morning, August 27, the Union

army changed front to the rear, and was ordered to move on Gainesville, Greenwich, and Warrenton Junction.

General Porter, with his two divisions of the Fifth Corps, arrived at Warrenton Junction on the 27th, and there reported in person to General Pope. That afternoon Hooker's division was engaged with the enemy at Bristoe Station; McDowell and Sigel were moving on Gainesville, and Heintzelman and Reno on Greenwich. Banks was covering the rear below Warrenton Junction, and guarding the trains in their movement toward Manassas Junction. Porter was at first ordered to move toward Greenwich upon the arrival of Banks at Warrenton Junction, but after Hooker's engagement at Bristoe the following order was sent him, and he received it at 9.50 p. m.:

"HEADQUARTERS ARMY OF VIRGINIA,  
"Bristoe Station, August 27, 1862—6.30 p. m.

"Major-General F. J. PORTER, Warrenton Junction:

"GENERAL: The major-general commanding directs that you start at 1 o'clock to-night and come forward with your whole corps, or such part of it as is with you, so as to be here by daylight to-morrow morning. Hooker has had a very severe action with the enemy, with a loss of about 300 killed and wounded. The enemy has been driven back, but is retiring along the railroad. We must drive him from Manassas, and clear the country between that place and Gainesville, where McDowell is. If Morell has not joined you, send him word to push forward immediately; also send word to Banks to hurry forward with all speed to take your place at Warrenton Junction. It is necessary on all accounts that you should be here by daylight. I send an officer with this dispatch who will conduct you to this place. Be sure to send word to Banks, who is on the road from Fayetteville, probably in the direction of Bealeton. Say to Banks, also, that he had best run back the railroad trains to this side of Cedar Run. If he is not with you, write him to that effect.

"By command of General Pope.

"GEORGE D. RUGGLES,  
"Colonel and Chief of Staff.

"P. S.—If Banks is not at Warrenton Junction, leave a regiment of infantry and two pieces of artillery as a guard till he comes up, with instructions to follow you immediately upon his doing so. If Banks is not at the Junction, instruct Colonel Clary to run the trains back to this side of Cedar Run, and post a regiment and a section of artillery with it.

"By command of General Pope.

"GEORGE D. RUGGLES,  
"Colonel and Chief of Staff."

This order plainly contemplated an aggressive movement against the enemy early on the 28th, and required the presence of General Porter's corps at Bristoe Station as early as possible in the morning, to take part in the pursuit of and attack upon the enemy.

The order did not indicate any anticipation of defensive action at Bristoe, but, on the contrary, it indicated continuous, active, and aggressive operations during the entire day of the 28th, to drive the enemy from Manassas, and clear the country. Hence the troops must arrive at Bristoe in condition for such service.

The evidence clearly shows that General Porter evinced an earnest desire to comply literally with the terms of the order, and that he held a consultation with his division commanders, some of his brigade commanders, and his staff officers on the subject. One of his divisions had arrived in camp late in the evening, after a long march, and was much fatigued.

If the troops marched at 1 o'clock, none of them could have much sleep before starting, and, even if they could arrive at Bristoe by or soon after daylight, they must be in poor condition for a vigorous pursuit of the enemy, who was already some distance beyond Bristoe. But this was not regarded by General Porter as sufficient reason for hesitating to make the attempt to comply literally with the order. He still urged, against the advice of his division commanders, the necessity of implicit obedience. Then, further consideration of the subject disclosed the fact that the road was filled with army trains, which had been pressing in that direction all day and as late at night as they could move, until the way had become completely blocked with wagons. The trains of the army moving back from the line of the Rappahannock had been ordered to take that road to the number of "two or three thousand." In the language of one of the most intelligent witnesses, the mass of wagons blocked together at places in the road was "like a lot of ice that jams in on the shore." The night had become very dark, or, as testified by most of the witnesses, excessively dark. It would have been difficult to march troops upon a plain and unobstructed road. It was a manifest physical impossibility to march over that road that night, or to remove the obstructions in

the darkness of the night. When this situation was made evident, General Porter reluctantly consented to delay the movement two hours, or until 3 o'clock. At that hour the march was commenced, but it was found that no appreciable progress could be made before daylight. Nothing was gained, or could have been gained, by the attempt to move before the dawn of day. It would have been wiser to have delayed the attempt to move until 4 o'clock.

A vigorous and persistent effort to make that march, commencing at 1 o'clock, could only have resulted in greatly fatiguing the troops and throwing them into disorder, from which they could not have been extricated until long after daylight, without making any material progress, and would thus have caused the corps to arrive at Bristoe at a later hour and in a miserable condition.

Abundant experience in situations similar to that above described leaves no room for doubt what General Porter's duty was. He exercised only the very ordinary discretion of a corps commander, which it was his plain duty to exercise, in delaying the march until 3 o'clock, and in his attempt to move at that time instead of at 4 o'clock he showed only too anxious a desire to comply with the letter of his orders.

If the order had contemplated, as has been represented, an attack by the enemy at dawn of day, then it would have been General Porter's duty to start promptly, not at 1 o'clock, but at the moment he received the order, so as to have brought at least some fragments of his infantry to Bristoe in time to aid in repelling that attack. That was the most that he could have done in any event, even by starting the moment the order was received, and then his troops would have been in no condition for any aggressive movement that day.

General Porter reached Bristoe Station as soon as practicable with his corps on the morning of the 28th, and there remained, under orders from his superior commander, until the morning of the 29th, taking no part in the operations of the 28th.

In the morning of the 28th, McDowell sent Ricketts' division of his corps to Thoroughfare Gap to resist the advance of re-enforcements from the main body of Lee's army, then known to be marching to join Jackson. Banks was at Warrenton Junction and Porter at Bristoe. The rest of the army moved from Gainesville, Greenwich, and Bristoe on Manassas Junction to attack Jackson at that place; but that general withdrew his forces during the night of the 27th and morning of the 28th toward Sudley and Groveton. He was followed by Heintzelman and Reno, via Centreville; and McDowell and Sigel, after having marched some distance toward Manassas, were ordered to direct their march toward Centreville. In this movement toward Centreville, King's division of McDowell's corps struck the right of Jackson's force, late in the afternoon, just north of the Warrenton turnpike, a mile west of Groveton. A sharp contest ensued, lasting until some time after dark, when King still held his ground on the turnpike. Reynolds was then near the right of King, Sigel on his right near the Stone House, Heintzelman and Reno near Centreville; Ricketts, who had been sent in the morning to Thoroughfare Gap, was disputing with Longstreet the passage of the gap.

Thus it was still hoped to strike Jackson a decisive blow on the morning of the 29th, before re-enforcements could reach him. In the mean time the Confederate general had taken up a favorable position a little to the north and west of Groveton and Sudley to await attack.

Under these conditions General Porter, who was still at Bristoe Station, received, at 6 a. m., the following order from General Pope:

"HEADQUARTERS ARMY OF VIRGINIA,  
"Near Bull Run, August 29, 1862—3 a. m.

"GENERAL: McDowell had intercepted the retreat of Jackson. Sigel is immediately on the right of McDowell. Kearney and Hooker march to attack the enemy's rear at early dawn. Major-General Pope directs you to move upon Centreville, at the first dawn of day, with your whole command, leaving your trains to follow. It is very important that you should be here at a very early hour in the morning. A severe engagement is likely to take place, and your presence is necessary.

"I am, general, very respectfully, your obedient servant,

"GEORGE D. RUGGLES,

"Colonel and Chief of Staff.

"Major-General PORTER."

Under this order, General Porter marched promptly with his corps toward Centreville. He had passed Manassas Junction with the head of his column, when he was halted by counter orders, issued in consequence of a grave change which had occurred in the situation since the night before.

King had withdrawn from his position near Jackson's right, on the Warrenton turnpike, and had fallen back to Manassas Junction. Ricketts had fallen back in the night from Thoroughfare Gap to Gainesville, and thence, in consequence of the movement of King, had retired to Bristoe Station.

Thus the way had been left open for the retreat of Jackson to Thoroughfare Gap, or for the advance of Longstreet from that point, and ample time had elapsed for them to effect a junction, either at the Gap or near Groveton, before a force could again be interposed to prevent it. The opportunity to attack Jackson's detached force with superior numbers had passed beyond the possibility of recall.

As soon as the withdrawal of King became known to General Pope, he hastily sent a verbal message to General Porter to retrace his steps and move towards Gainesville, and soon followed this message with the following order, which was received by General Porter about 9.30 a. m.:

"HEADQUARTERS ARMY OF VIRGINIA,  
"Centreville, August 29, 1862.

"Push forward with your corps and King's division, which you will take with you, upon Gainesville. I am following the enemy down the Warrenton turnpike. Be expeditious or we will lose much.

"JOHN POPE,  
"Major-General, Commanding."

Under these orders General Porter advanced promptly with his corps, followed by King's division, on the direct road from Manassas Junction toward Gainesville, having knowledge of the military situation as above described.

General Porter had met General McDowell near Manassas Junction, and they had conversed with each other relative to this order, placing King's division under Porter's command. McDowell claims that it was conceded that he might go forward and command the whole force, under the 62d Article of War, but he desired to reunite all the divisions of his corps on that part of the field where Reynolds then was. Hence he wrote to Pope on this subject, awaited his orders, and did not exercise any command over Porter's corps until after the receipt of further orders from Pope.

When, about 11.30 o'clock, the head of Porter's column arrived at Dawkins' Branch, about three and a half miles from Gainesville and nine and a half miles from Thoroughfare Gap, he met the enemy's cavalry advance, and captured some of Longstreet's scouts. The clouds of dust in his front and to his right, and extending back toward Thoroughfare Gap, showed the enemy coming in force, and already arriving on the field in his front.

Morell's division was at once deployed; Sykes closed up in support, King's division following. A regiment was sent forward across the creek, as skirmishers, and Butterfield's brigade was started across the creek to the front, and somewhat to the right, with orders to seize, in advance of the enemy, if possible, the commanding ground on the opposite ridge, about a mile distant. Morell's division, with Sykes in support, was ready to advance at once to the support of Butterfield.

At this stage of Porter's operations, some time between 11.30 and 12 o'clock, McDowell, in person, arrived on the field and arrested the movement Porter was making, saying to him in the hearing of several officers, "Porter, you are too far out. This is no place to fight a battle," or words to that effect.

McDowell had received, a few minutes before, a dispatch from Buford, informing him that seventeen regiments of infantry, a battery, and some cavalry had passed through Gainesville at 8.45 o'clock, and moved down the Centreville road towards Groveton, and hence must have been on the field in front of Sigel and Reynolds at least two hours.

The dust in Porter's immediate front and extending across toward Groveton, as well as back toward Gainesville, showed that large forces of the enemy, in addition to those reported by Buford, were already on the field. The latest information from the Confederate army showed the whole force of the enemy within reach of Gainesville by noon on the 29th. McDowell's troops (Ricketts' division and some cavalry) had delayed Longstreet's advance at Thoroughfare Gap from about noon until dark on the previous day, 28th. Hence, Lee's column had had eighteen hours by the morning of the 29th to close up in mass near the Gap, and seven hours that morning in which to march eight miles and form line on the field of battle.

Jackson, who had been supposed anxious to retreat, and for whom the way had been left open, had not retreated, but was still holding his position of the previous evening, as if confident of adequate reinforcements. Sigel's pursuit had been checked, where it started that morning, at Groveton.

It was certain that the head of column of Lee's main army had arrived on the field in front of Groveton at least two hours in advance of the arrival of the head of column of Porter's and McDowell's corps at Dawkins' Branch, and it was so nearly certain that the main body of Lee's army was already on the field and in line of battle as to absolutely require corresponding action. This was Porter's impression at the time, and he conveyed it to McDowell by words and gesture that left no doubt in the mind of the latter that he (Porter) believed the enemy was in force in his immediate front.

In contrast to this evident preparation of the enemy for battle, only Porter's nine or

ten thousand men were ready for action, of the thirty-five thousand men then composing the left wing of the Union Army.

Banks' corps, ten thousand, was still at Bristoe without orders to move beyond that point. Ricketts' division, eight thousand, was near Bristoe, under orders to move to the front, but his men were so worn out by constant marching, night and day, that they could not possibly be got to the field even for defensive action that day. King's division, seven thousand, was just in rear of Porter, but was so fatigued as to be unfit for offensive action, and hardly able to march.

Thus this long column, stretching back from Dawkins' Branch by way of Manassas Junction to and even beyond Bristoe, had struck the right wing of the Confederate army in line of battle, while a gap of nearly two miles remained in the Union line between Porter and Reynolds, who was on the left of Sigel, near Groveton.

The accompanying map, marked Board Map No. 1, illustrates the positions of the Union troops at noon of August 29th, and the probable positions of the Confederate troops at the same time, as indicated by the information then in possession of the Union generals. This map is not intended to show the actual positions of the troops at that time, but to correctly interpret the information upon which the Union generals then acted.

This was the military situation on the Union left and Confederate right of the field when McDowell arrested Porter's advance, and Porter's operations under the direct orders from Pope heretofore mentioned ceased, and, under new orders just received, Porter became subordinate to McDowell.

Not only had the effort to destroy Jackson before he could be reinforced totally failed, but the Confederate army was on the field and in line, while the Union army was not. The time to resume defensive action, awaiting the concentration of the army, had not only arrived, but had been too long postponed.

On his way to the front McDowell had received the following order from General Pope, addressed jointly to him and Porter, and Porter had received a copy of the same order a moment before McDowell's arrival.

" [General Order No. 5.]

" HEADQUARTERS ARMY OF VIRGINIA,

" *Centreville, August 29, 1862.*

" Generals McDOWELL and PORTER: You will please move forward with your joint commands towards Gainesville. I sent General Porter written orders to that effect an hour and a half ago. Heintzelman, Sigel, and Reno are moving on the Warrenton turnpike, and must now be not far from Gainesville. I desire that as soon as communication is established between this force and your own the whole command shall halt. It may be necessary to fall back behind Bull Run, at Centreville, to-night. I presume it will be so on account of our supplies. I have sent no orders of any description to Ricketts, and none to interfere in any way with the movements of McDowell's troops, except what I sent by his aid-de-camp last night, which were to hold his position on the Warrenton pike until the troops from here should fall upon the enemy's flank and rear. I do not even know Ricketts' position, as I have not been able to find out where General McDowell was until a late hour this morning. General McDowell will take immediate steps to communicate with General Ricketts, and instruct him to rejoin the other divisions of his corps as soon as practicable. If any considerable advantages are to be gained by departing from this order it will not be strictly carried out. One thing must be had in view, that the troops must occupy a position from which they can reach Bull Run to-night or by morning. The indications are that the whole force of the enemy is moving in this direction at a pace that will bring them here by to-morrow night or next day. My own headquarters will be for the present with Heintzelman's corps or at this place.

" JOHN POPE,

" *Major-General, Commanding.*"

This order and the 62d Article of War made it the duty of McDowell to command the combined corps, so long as they should continue to act together, and General Pope should be absent from the field. In this interpretation of the law Generals McDowell and Porter agreed, and upon it they acted at the time. Upon McDowell devolved the responsibility of modifying the joint order as its terms authorized, and as the military situation seemed imperatively to require.

The terms of the order contemplating that communication should be established with the troops on the other road, or, as General McDowell interpreted it, that line should be formed in connection with those troops, that the whole command should then halt, and that the troops must not go beyond a point from which they could reach Bull Run by that night or the next morning, and the military situation, as it then appeared to them, was briefly discussed by the two generals.

The situation was exceedingly critical. If the enemy should attack, as he seemed about ready to do, Porter's two divisions, about nine thousand men, were all the force then ready to stand between Lee's main army, just arrived on the field, and McDowell's long and weary column, or the left flank of Pope's army near Groveton. McDowell was "excessively anxious" to get King's division over on the left of Reynolds, who then occupied with his small division that exposed flank; and he quickly decided that "considerable advantages" were "to be gained" by departing from the terms of the joint order, so far as to make no attempt to go further toward Gainesville, and to at once form line with the troops then engaged near Groveton; and this departure from the strict letter of the joint order was evidently required by the military situation as it then appeared and as it did actually exist.

After this brief consultation the two generals rode together through the woods to the right, about three quarters of a mile toward Groveton, and made a personal examination of the ground. As soon as this was done, McDowell decided not to take the troops through these woods, but to separate his own corps from Porter's, take King's division (Ricketts following) around the woods by the Sudley Springs road, and thus put them in beyond the woods and on the left of Reynolds.

McDowell then left Porter very hurriedly, announcing his decision, as he testified, by the words, "You put your force in here, and I will take mine up the Sudley Springs road on the left of the troops engaged at that point against the enemy," or words to that effect. Even these few words, we are satisfied, Porter did not hear, or did not understand, for he called, as McDowell rode away, "What shall I do?" and McDowell gave no audible answer, but only a wave of the hand. In this state of uncertainty, according to the testimony of one of General Porter's staff officers, Porter sent a message to King's division to ascertain positively if that division was ordered away by McDowell, and, if not, to give proper orders for its action with his corps, and a reply was returned by McDowell himself that he was going to the right and should take that division with him; that Porter had better stay where he was, and if necessary to fall back he could do so on McDowell's left.

This testimony has given rise to much controversy; but in our opinion the question whether that message was or was not sent is unimportant. If it was sent, it did not differ in substance from the instructions which General McDowell testifies he had previously given to General Porter, "You put your force in here," &c. Neither could be construed as directing what Porter's action should be, but only as deciding that he should continue on that line while McDowell would take his own troops to another part of the field.

There appears to have been an understanding, derived either from previous conversation or from the terms of the joint order, that when McDowell did get King's division on the other side of the woods, Morell's division on the right of Porter's corps should make such connection or establish such communication with that of King as might be practicable through the woods. None of them then knew how wide was that belt of woods, nor what was its character beyond where they had reconnoitered, nor whether the ground beyond was in possession of the enemy.

When the two generals had started to take that ride to the right, Morell's troops had been ordered to follow them, and Griffin's brigade had led off after its pickets had been called in. After McDowell took his departure this movement was continued for some time and until Griffin had crossed the railroad and reached a point near half-way across the belt of woods and where the forest became dense. There the movement was arrested. This movement might have meant an attempt to stretch out Morell's line through the woods, so as to connect with King's on the right or a completion of the deployment for an attack upon the enemy in front. General Porter explained it as intended for an immediate attack upon the enemy if he found he could keep King in support, and that he only desisted upon being informed that King was going away. But the attack would have been a rash one under the circumstances, even with King's support. Soon after this, scouts were sent on through the woods to look for King, Reynolds, Sigel, or some body of Union troops in the direction where artillery firing was heard.

Presently Griffin was withdrawn to the south side of the railroad. The enemy's artillery opened on his troops during this latter movement, and was replied to by one of Morell's batteries, but few shots being fired on either side. Then Morell's division was put in defensive order to hold the ground then occupied and under cover from the enemy's artillery. The scouts sent through the woods ran upon the enemy's pickets, and were driven back. This effort to get scouts through the woods was repeated from time to time until late in the afternoon, but every effort failed. The scouts were all driven back or captured. As it turned out, this resulted from the fact that King's division did not get up on the right of the woods at all. That division reached a point some distance in the rear of its position in the line about 4.30 p. m., and then, after some marching and countermarching, was sent northward to the Warrenton pike. Thus the gap in the line which McDowell's troops were to occupy remained open all the afternoon, and the margin of the timber remained in possession of the enemy's pickets.

These failures to connect or to communicate directly along the front were reported by Porter to McDowell by way of the Sudley Springs road, on which McDowell had gone. The reports were made in at least four different written dispatches, which have been preserved. The hour was named in only one, apparently the latest, sent at 6 o'clock in the evening. Two reports—one about 4 o'clock and the other about 6.30 p. m.—were sent to General Pope direct. Both of these were received by him, but have not been preserved.

About the time General McDowell arrived on the field at Porter's position, and for an hour or two thereafter, a heavy artillery combat was going on between the Union batteries near Groveton and the Confederate artillery. During this artillery combat, and until 5 o'clock p. m., there was no infantry engagement, except skirmishing and some short and sharp contests between small portions of the opposing forces, and until 6.30 p. m. no musketry was audible to any one in Porter's corps.

On the Confederate side, as it now appears, Porter's display of troops—three brigades in line—in the early part of the afternoon, had given rise to the expectation of an attack on their right. This having been reported to General Longstreet, that commander sent his reserve division (Wilcox's) from his extreme left, just north of the Warrenton turnpike, to his extreme right, on the Manassas and Gainesville road. Wilcox reached this latter position about 4 o'clock p. m., and Porter having before that time withdrawn his troops under cover, some troops from the Confederate right (D. R. Jones') were pushed to the front in the woods occupied by Porter's skirmishers, apparently to reconnoiter. This movement gave rise to the impression among Porter's officers (Morell's division) that the enemy was about to attack about 5 p. m.

General Pope having arrived some time after noon on the field in the rear of Groveton, and General McDowell's column approaching that part of the field by the Manassas and Sudley road, an attack was ordered upon the enemy's extreme left near Sudley, and a written order was sent, dated 4.30 p. m., to Porter to attack the enemy's right, and, if possible, his rear. After some time had elapsed, General Pope ordered McDowell, with King's division and other troops, to pursue up the Warrenton turnpike the enemy, who, thus to be assailed upon both flanks, would be compelled to retreat.

The attack on Jackson's left was begun by Kearney about 5 p. m.; but the order to Porter was not delivered in time. The messenger did not find General Porter until sunset. Thus, at 5 o'clock, nothing having occurred to suggest to General Porter any change in the plan indicated in the joint order to retire behind Bull Run instead of giving battle that day, the sound of artillery near Sudley, so much apparently to the rear of Groveton, suggested to Porter, who was then at Bethlehem Church, that Sigel was retiring or perhaps being driven back, and that his artillery was then in a new position near the Sudley Springs road.

If it was true that Sigel was being driven back, the military situation was extremely perilous, and Porter must instantly do what he could to avert disaster. His order to Morell, which must have been issued at that instant, shows what he proposed to do. It is as follows, viz:

"General MORELL: Push over to the aid of Sigel and strike in his rear. \*If you reach a road up which King is moving,\* and he has got ahead of you, let him pass; but see if you cannot give help to Sigel. If you find him retiring, move back toward Manassas, and, should necessity require it, and you do not hear from me, push to Centreville. If you find the direct road filled, take the one via Union Mills, which is to the right as you return.

"F. J. PORTER,  
"Major-General.

"Look to the points of the compass for Manassas.

"F. J. PORTER."

This movement would have left Porter with Sykes alone to hold the Manassas road and cover the retreat of Ricketts' worn-out troops, who then were stretched along the road for four or five miles both toward Sudley and back toward Manassas Junction, while Morell should cover the retreat of the center of the army. But now, before Morell had time to commence this movement, came a report from him that the enemy was coming down in force to attack both his front and flank. Porter might in a few minutes have to meet the attack of twenty thousand men. The purpose to cover the retreat of Sigel must needs be abandoned. Hence Porter dispatched to Morell:

"General MORELL: Hold on, if you can, to your present place. What is passing?  
"F. J. PORTER."

Again:

"General MORELL: Tell me what is passing quickly. If the enemy is coming, hold to him, and I will come up. Post your men to repulse him.

"F. J. PORTER,  
"Major-General."

\* The Sudley road.

And again, in reply to advice from Morell that they had better retire, &c.:

"We cannot retire while McDowell holds on."

Notwithstanding contradictory testimony, we believe it was at this time that Porter ordered Piatt's brigade, of Sturgis' command, about eight hundred men, to move back to Manassas Junction and take up a defensive position to cover the expected retreat.

General Porter reported to General McDowell his views and intentions in the following dispatches:

"Generals MCDOWELL and KING: I found it impossible to communicate by crossing the woods to Groveton. The enemy are in great force on this road, and as they appear to have driven our forces back, the fire of the enemy having advanced and ours retired, I have determined to withdraw to Manassas. I have attempted to communicate with McDowell and Sigel, but my messengers have run into the enemy. They have gathered artillery and cavalry and infantry, and the advancing masses of dust show the enemy coming in force. I am now going to the head of the column to see what is passing and how affairs are going, and I will communicate with you. Had you not better send your train back?"

"F. J. PORTER,  
"Major-General."

"General MCDOWELL or KING: I have been wandering over the woods and failed to get a communication to you. Tell how matters go with you. The enemy is in strong force in front of me, and I wish to know your designs for to-night. If left to me, I shall have to retire for food and water, which I cannot get here. How goes the battle? It seems to go to our rear. The enemy are getting to our left.

"F. J. PORTER,  
"Major-General Volunteers."

"General MCDOWELL: The firing on my right has so far retired that, as I cannot advance and have failed to get over to you except by the route taken by King, I shall withdraw to Manassas. If you have anything to communicate, please do so. I have sent many messengers to you and General Sigel and get nothing.

"F. J. PORTER,  
"Major-General."

"An artillery duel is going on now; been skirmishing for a long time.

"F. J. P."

"General MCDOWELL: Failed in getting Morell over to you. After wandering about the woods for a time I withdrew him, and while doing so artillery opened upon us. My scouts could not get through. Each one found the enemy between us, and I believe some have been captured. Infantry are also in front. I am trying to get a battery, but have not succeeded as yet. From the masses of dust on our left, and from reports of scouts, think the enemy are moving largely in that way. Please communicate the way this message came. I have no cavalry or messengers now. Please let me know your designs, whether you retire or not. I cannot get water and am out of provisions. Have lost a few men from infantry firing.

"F. J. PORTER,  
"Major-General Volunteers."

"AUG. 29—6 p. m."

But Porter soon found the sounds of artillery had deceived him. The renewal of the firing toward Groveton showed that Pope's troops were still there. Piatt's brigade was then recalled, and no further preparations for retreat were made.

Next came to Porter about 5.30 o'clock a report from the right that the enemy was in full retreat, and heavy sounds of musketry soon after showed that serious work had commenced near Groveton. Porter ordered Morell to make a strong reconnoissance to learn the truth. Morell, knowing the report must be false, at least as to the enemy in his front, prepared to support this reconnoissance with his whole division. While this preparation was being made came the long delayed order, dated 4.30 p. m., to attack the enemy in flank or rear:

"HEADQUARTERS IN THE FIELD,  
"August 29—4.30 p. m."

"Major-General PORTER: Your line of march brings you in on the enemy's right flank. I desire you to push forward into action at once on the enemy's flank, and, if possible, on his rear, keeping your right in communication with General Reynolds. The enemy is massed in the woods in front of us, but can be shelled out as soon as you engage their flank. Keep heavy reserves and use your batteries, keeping well closed

to your right all the time. In case you are obliged to fall back, do so to your right and rear, so as to keep you in close communication with the right wing.

"JOHN POPE,  
Major-General, Commanding."

This order, though dated at 4.30 p. m., was not received by Porter, at Bethlehem Church, before 6.30 p. m.

The evidence before the court-martial tending to show that Porter received the "4.30" order in time to execute it is found in the testimony of the officer who carried the order, and of one of the orderlies who accompanied him. Neither of these two witnesses appears to have carried a watch, and their several statements of the time when the order was delivered were based on estimates of the time occupied by them in riding from General Pope's headquarters to the place where they found General Porter. One of them at least knew from an inspection of the order that it was dated at 4.30; he, and probably both of them, therefore assumed that it was then that they started to deliver it, and adding to that hour the estimated time occupied by them, they severally fixed the hour of delivery. It is now proved by the testimony of the officer who wrote the dispatch that "4.30" was not the hour when the messenger started, but was the hour when he began to write the dispatch, and consequently that it was after that hour that the officer started to deliver it.

It is also shown that these messengers did not and could not, if other parts of their own testimony are true, have traveled over the route which they supposed they had taken. Moreover, it was proved by unquestionable testimony, that since the court-martial trial one of these witnesses had made statements and admissions inconsistent with and contradictory of his former testimony, and the other witness confessed before us that recently he had deliberately made false statements in regard to the route taken while carrying the dispatch. We have therefore felt compelled to lay the testimony of these witnesses out of the case. An attempt was made to support these witnesses by the testimony of another person, who, as it was alleged, also accompanied as an orderly the officer charged with the dispatch, but his testimony was so completely broken down by cross-examination that we regard it as entitled to no weight whatever.

On the other hand, the testimony of General Sykes, Lieutenant-Colonel Locke, Captain Montieth, Lieutenant Ingham, and Lieutenant Weld before the court-martial that the order in question was not delivered until about sundown, either a little before or a little after that hour, has now been supported by a new and entirely independent witness, Captain Randol, and has been singularly confirmed by the production, for the first time, of the dispatch from Porter to McDowell, dated 6 p. m., the terms of which utterly forbid the supposition that at that time Porter had received the order.

The moment this order was received Porter sent his chief of staff, Colonel Locke, to General Morell with orders to make the attack at once. He then wrote and sent a reply to Pope, and immediately rode to the front. On his arrival there Morell had about completed his preparations for the attack under the previous order to make a reconnaissance, but darkness had already come on. It was evidently impossible to accomplish any good that night, for, even if Morell might have begun the attack before dark, Sykes could not have been got into line after the order was received. The contest at Groveton had already so far spent its force as to derive no possible aid from Morell's attack. The order was based upon conditions manifestly erroneous and directed what was impossible to be done. To push Morell's division against the enemy in the dark would have been in no sense obedience to that order. Porter wisely ordered the preparations to cease, and the troops were put into position to pass the night, picketing in all directions, for Porter had but a few mounted men and the enemy had two thousand five hundred cavalry near his flank.

About this time, when darkness had come on, the rear of McDowell's column of weary troops were passing by the rear of Porter's column, still several miles from their destined place on the field. The Union army was not even yet ready for battle.

The accompanying maps, marked Board Maps Nos. 2 and 3, exhibit respectively substantially the military situation at the time the 4.30 p. m. order was issued, and that which was then understood by General Pope to exist, as explained to the court-martial upon the trial of General Porter.

We believe this plain and simple narrative of the events of the 29th of August clearly shows the true character of General Porter's conduct during that time. We are unable to find in that conduct anything subject to criticism, much less deserving of censure or condemnation.

Porter's duty that afternoon was too plain and simple to admit of discussion. It was to hold his position and cover the deployment of McDowell's troops until the latter, or some of them, should get into line; then to connect with them as far as might be necessary and practicable, and then, in the absence of further orders, to act in concert with those troops and others to the right.

If King's division had come up on the right, as was expected, and had advanced to

attack, Porter would have known it instantly, and thus could have joined in the movement.

If the main army retired, as indicated in the joint order, it was Porter's duty to retire also, after having held his ground long enough to protect its left flank and to cover the retreat of Ricketts' troops.

Porter did for a moment entertain the purpose of trying to give aid to Sigel, who was supposed to be retiring before McDowell had got King's division up to his support. That was the nearest to making a mistake that Porter came that afternoon. But it soon enough became evident that such a purpose must be abandoned; Porter had quite his full share of responsibility where he was.

The preparations made for retreat were the ordinary soldierly dispositions to enable him to do promptly what he had good reason to expect he might be required to do at any moment and must do at nightfall.

He made frequent reports to his superiors, stating what he had done and what he had been unable to do; what his situation was in respect to the enemy in his front and the strength of the enemy there; what his impressions were from the sounds of action toward his right; how he had failed thus far to get any communications from any commander in the main army, or any orders from General Pope; asking McDowell who was nearest to him, for such information and his (McDowell's) *designs for the night*; sending an aid-de-camp to General Pope for orders and receiving no reply, not even information that the 4.30 order had been sent to him; and, finally, informing his superiors that if left to himself, without orders, he would have to retire at night for food and water, which he could not get where was. These reports were sent not only frequently, but early enough to insure the receipt of orders from Pope or correct information from McDowell, if they had any to send him, before it would be time for him to withdraw. All these dispatches were sent in the latter part of the afternoon. They all indicated a purpose to retire only after being assured that the main army was retiring, and then to cover the retreat of the army as far as possible, or to withdraw after nightfall, as the joint order had indicated, if no further orders or information of General Pope's plans could be obtained.

There is no indication in any of those dispatches, when fairly construed, nor in anything which Porter did or said, of any intention to withdraw until after dark, unless compelled to do so by the retreat of the main army; and even then he was compelled to hold on until McDowell's troops could get out of the way, and that was not until after dark, for Ricketts' division was on the road in Porter's rear all the afternoon.

It is perfectly clear that Porter had no thought whatever of retreating *from the enemy*, or of withdrawing because of the enemy in his front; for when the enemy was reported advancing as if to attack, his orders were: "If the enemy is coming, hold to him." "Post your troops to repulse him." "We cannot retire while McDowell holds on."

(It appears to have been assumed in the condemnation of General Porter's conduct that he had some order to attack or some information of aggressive plans on the part of General Pope, or some intimation, suggestion, or direction to that effect from General McDowell, or that there was such a battle going on within his hearing, or something else in the military situation that required him to attack the enemy without orders before receiving the 4.30 p. m. order at sunset. All this was the exact reverse of the truth. General Pope's last order, General McDowell's directions while he was with General Porter, the military situation as then known to both Porter and McDowell, and the movement McDowell had decided to make to get his own troops into line of battle, and the state of the action on the right of the field, all combined to absolutely forbid any attack by Porter during that entire afternoon until he received Pope's order at sunset, and even that order could not possibly have been given if the situation had been correctly understood. An attack by him would have been a violation of the spirit of his orders, and a criminal blunder leading to inevitable disaster. In short he had no choice as a faithful soldier but to do substantially what he did do.)

The range of our investigation has not enabled us to ascertain the source of the great error which was committed in the testimony before General Porter's court-martial respecting the time of arrival of the main body of Lee's army on the field of Manassas. But the information which was in possession of the Union officers at noon of the 29th of August, and afterwards published in their official reports, together with the testimony before the court-martial, affords clear, explicit, and convincing proof that the main body of that army must have been there on the field at that time.

The recent testimony of Confederate officers hardly adds anything to the conclusiveness of that proof, but rather diminishes its force by showing that one division (Anderson's) did not arrive until the next morning; while the information in their possession at that time required the Union officers to assume that that division as well as the others had arrived on the 29th. Yet General Porter's conduct was adjudged upon the assumption that not more than one division under Longstreet had arrived on the field, and that Porter had no considerable force in his front.

(The fact is that Longstreet, with *four* divisions of full 25,000 men, was there on the field before Porter arrived with his two divisions of 9,000 men; that the Confederate general-in-chief was there in person at least two or three hours before the commander of the army of Virginia himself arrived on the field, and that Porter with his two divisions saved the army of Virginia that day from the disaster naturally due to the enemy's earlier preparation for battle.)

If the 4.30 order had been promptly delivered, a very grave responsibility would have devolved upon General Porter. The order was based upon conditions which were essentially erroneous, and upon expectations which could not possibly be realized.

It required an attack upon the enemy's flank or rear, which could not be made, and that the attacking force keep closed on Reynolds, who was far to the right and beyond reach. Yet it would have been too late to correct the error and have the order modified. That order appeared to be part of a general plan. It must be executed promptly or not at all. If Porter had made not the impossible attack which was ordered, but a direct attack on the enemy's right wing, would he have been blameless for the fruitless sacrifice of his troops? We believe not. It is a well-established military maxim that a corps commander is not justifiable in making an apparently hopeless attack in obedience to an order from a superior who is not on the spot, and who is evidently in error in respect to the essential conditions upon which the order is based. The duty of the corps commander in such a case is to make not a real attack, but a strong demonstration, so as to prevent the enemy in his front from sending reinforcements to other parts of his line.

This is all that Porter would have been justifiable in doing, even if he had received the 4.30 order at 5 o'clock; and such a demonstration, or even a real attack made after 5 o'clock by Porter alone could have had no beneficial effect whatever upon the general result. It would not have diminished in the least the resistance offered to the attacks made at other points that afternoon. The display of troops made by Porter earlier in the afternoon had all the desired and all possible beneficial effect. It caused Longstreet's reserve division to be sent to his extreme right in front of Porter's position. There that division remained until about 6 o'clock—too late for it to take any effective part in the operations at other points of the line.

(A powerful and well-sustained attack by the combined forces of Porter's corps and King's division upon the enemy's right wing, if it had been commenced early in the afternoon, might have drawn to that part of the field so large a part of Longstreet's force as to have given Pope some chance of success against Jackson; but an attack by Porter alone could have been but an ineffective blow, destructive only to the force that made it, and, followed by a counter-attack, disastrous to the Union Army. Such an attack, under such circumstances, would have been not only a great blunder, but, on the part of an intelligent officer, it would have been a great crime.)

(What General Porter actually did do, although his situation was by no means free from embarrassment and anxiety at the time, now seems to have been only the simple, necessary action which an intelligent soldier had no choice but to take. It is not possible that any court-martial could have condemned such conduct if it had been correctly understood. On the contrary, that conduct was obedient, subordinate, faithful, and judicious. It saved the Union Army from disaster on the 29th of August.)

This ends the transactions upon which were based the charges of which General Porter was pronounced guilty; but some account of the part taken by him and his corps in the events of the following day, August 30th, which gave rise to a charge which was withdrawn, is necessary to a full understanding of the merits of the case.

At 3 a. m. of the 30th, General Porter received the following order, and in compliance with it promptly withdrew from his position in presence of the enemy and marched rapidly by the Sudley road to the center of the battle-field, where he reported to General Pope for orders :

“HEADQUARTERS ARMY OF VIRGINIA,  
“IN THE FIELD NEAR BULL RUN,  
“August 29, 1862—8.50 p. m.

“GENERAL: Immediately upon receipt of this order, the precise hour of receiving which you will acknowledge, you will march your command to the field of battle of to-day and report to me in person for orders. You are to understand that you are expected to comply strictly with this order, and to be present on the field within three hours after its reception, or after daybreak to-morrow morning.

“JOHN POPE,  
“Major-General, Commanding.

“Major-General F. J. PORTER.”

[Received August 30—3.30 a. m.]

At first sight it would appear that in this prompt and unhesitating movement, under this order, General Porter committed a grave fault. He was already on the field of battle confronting the enemy in force, and holding a position of vital importance to the security of Pope's army; while the latter appeared, from the order, to be wholly in the dark respecting these all-important facts. It is true the order was most positive, imperative, and also distrustful in its terms. But those very terms served to show only the more forcibly that the order was based upon a total misapprehension of the essential facts, without which misapprehension it would not seem possible that such an order could have been issued. The well-established military rule is that such an order must never be obeyed until the commander who gave it has been informed of his error and given an opportunity to correct it; but, upon close examination, the opposite view of Porter's conduct under this order appears to be the just one.

Porter had repeatedly reported to McDowell the presence of the enemy in large force in his front. Presumably these reports had gone to Pope, as one of them had in fact. Porter had also sent an aide-de-camp with a written message to Pope about 4 p. m., and had sent a written reply to the 4.30 p. m. order after 6.30 p. m. These last two dispatches have not been preserved by General Pope, and hence their contents are not known to us; but we are bound to presume that they reported the situation as Porter then knew it, and as he had frequently reported it to McDowell, and the last of these dispatches, in reply to the 4.30 p. m. order, was later than the latest of those in which Porter had spoken of any intention to fall back. Hence, Porter had already given to his superior all the information which it was possible for him to give, and nothing remained for him but to obey the order. This movement of Porter's corps on the morning of the 30th was the beginning of the unfortunate operation of that day. This corps, which had been protecting the left flank of Pope's army, was withdrawn from its important position, leaving the left wing and flank exposed to attack by greatly superior force of the enemy, brought to the center of the field and then ordered "in pursuit of the enemy."

" [Special Orders No. — ]

" HEADQUARTERS NEAR GROVETON,  
" August 30, 1862—12 m.

"The following forces will be immediately thrown forward in pursuit of the enemy and press him vigorously during the whole day. Major-General McDowell is assigned to the command of the pursuit; Major-General Porter's corps will push forward on the Warrenton turnpike, followed by the divisions of Brigadier-Generals King and Reynolds. The division of Brigadier-General Ricketts will pursue the Hay Market road, followed by the corps of Major-General Heintzelman. The necessary cavalry will be assigned to these columns by Major-General McDowell, to whom regular and frequent reports will be made. The general headquarters will be somewhere on the Warrenton turnpike.

"By command of Major-General Pope :

" GEO. D. RUGGLES,  
" Colonel and Chief of Staff."

" HDQRS. THIRD CORPS, ARMY OF VIRGINIA,  
" August 30, 1862.

"Major-General McDowell being charged with the advanced forces ordered to pursue the enemy, directs me to inform you that your corps will be followed immediately by King's division, supported by Reynolds. Heintzelman with his corps, preceded by Ricketts' division, will move on your right, on the road from Sudley Springs to Hay Market. He is instructed to throw out skirmishers to the left, which is desirable you should join with your right. General McDowell's headquarters will be at the head of Reynolds' division, on the Warrenton road. Organize a strong advance to precede your command, and push on rapidly in pursuit of the enemy, until you come in contact with him. Report frequently. Bayard's brigade will be ordered to report to you; push it well to the left as you advance.

"Very respectfully, your obedient servant,

" ED. SCHRIVER,  
" Colonel and Chief of Staff."

"Major-General PORTER,  
" Commanding, &c."

These orders led to an attack upon the Confederate left wing, Jackson's command, made mainly by Butterfield's and Barnes' brigades, of Morell's division, and by Sykes' division, which is described as follows by the Confederate generals :

Extract from General Lee's report of operations of the army of Northern Virginia, battle of Manassas.]

"HDQRS. ARMY OF NORTHERN VIRGINIA,  
" March 6, 1863.

"SIR: \* \* \* About 3 p. m. the enemy, having massed his troops in front of General Jackson, advanced against his position in strong force. His front line pushed forward until engaged at close quarters by Jackson's troops, when its progress was checked, and a fierce and bloody struggle ensued. A second and third line, of great strength, moved up to support the first, but in doing so came within easy range of a position a little in advance of Longstreet's left. He immediately ordered up two batteries, and two others being thrown forward about the same time by Col. S. D. Lee, under their well-directed and destructive fire the supporting lines were broken and fell back in confusion. Their repeated efforts to rally were unavailing, and Jackson's troops being thus relieved from the pressure of overwhelming numbers, began to press steadily forward, driving the enemy before them. He retreated in confusion, suffering severely from our artillery, which advanced as he retired. General Longstreet, anticipating the order for a general advance, now threw his whole command against the Federal center and left. \* \* \*

"I have the honor to be, very respectfully, your obedient servant,

"R. E. LEE, *General.*

"General S. COOPER,

"*Adjutant and Inspector-General, Richmond, Va.*"

[Extract from the report of General James Longstreet, October 10, 1862.]

\* \* \* "During the day Col. S. D. Lee, with his reserve artillery placed in the position occupied the day previous by Colonel Walton, and engaged the enemy in a very severe artillery combat. The result was, as the day previous, a success. At 3.30 o'clock in the afternoon I rode to the front for the purpose of completing arrangements for making a diversion in favor of a flank movement then under contemplation. Just after reaching my front line I received a message for reinforcements for General Jackson, who was said to be severely pressed. From an eminence near by, one portion of the enemy's masses attacking General Jackson were immediately within my view and in easy range of batteries in that position. It gave me an advantage that I had not expected to have, and I made haste to use it. Two batteries were ordered for the purpose, and one placed in position immediately and opened. Just as this fire began I received a message from the commanding general informing me of General Jackson's condition and his wants. As it was evident that the attack against General Jackson could not be continued ten minutes under the fire of these batteries, I made no movement with my troops."

\* \* \* \* \* \* \* \* \*

[Extract from report of General Jackson of operations from August 15 to September 5, 1862.]

"HEADQUARTERS SECOND CORPS, A. N. V., April 27, 1863.

"GENERAL: After some desultory skirmishing and heavy cannonading during the day, the Federal infantry, about 4 o'clock in the evening, moved from under cover of the wood and advanced in several lines, first engaging the right, but soon extending its attack to the center and left. In a few moments our entire line was engaged in a fierce and sanguinary struggle with the enemy. As one line was repulsed another took its place and pressed forward as if determined, by force of numbers and fury of assault, to drive us from our positions. So impetuous and well sustained were these onsets as to induce me to send to the commanding general for re-enforcements; but the timely and gallant advance of General Longstreet on the right relieved my troops from the pressure of overwhelming numbers, and gave to these brave men the chances of a more equal conflict. As Longstreet pressed upon the right the Federal advance was checked, and soon a general advance of my whole line was ordered.

"T. J. JACKSON,

"*Lieutenant-General.*

"Brigadier-General R. H. CHILTON,

"*A. A. A. General, Headquarters Department A. N. V.*"

As Longstreet's army pressed forward to strike Pope's exposed left wing and flank, Warren, with his little brigade, sprung into the gap and breasted the storm until but a handful of his brave men were left alive. Then Sykes, with his disciplined brigades, and Reynolds, with his gallant Pennsylvania Reserves, seized the commanding ground in rear, and, like a rock, withstood the advance of the victorious enemy and saved the Union Army from rout.

Thus did this gallant corps nobly and amply vindicate the character of their trusted chief, and demonstrate to all the world that "disobedience of orders" and "misbehavior in the presence of the enemy" are crimes which could not possibly find place in the head or heart of him who thus commanded that corps.

These events of the 30th of August were excluded from the evidence before the court-martial that tried General Porter; but justice requires that they should be mentioned here as having an important bearing upon the question of animus which was so strongly dwelt upon in the review of Porter's case by the Judge-Advocate-General.

The foregoing is the simple history of the part taken by Porter and his corps in the events which gave rise to the following charges and specifications, findings, and sentence, and executive action:

"[General Orders No. 18.]

"WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE,  
"Washington, January 22, 1863.

"I. Before a general court-martial which convened in the city of Washington, D. C., November 27, 1862, pursuant to Special Orders No. 362, dated Headquarters of the Army, November 25, 1862, and of which Major-General D. Hunter, U. S. Volunteers, is president, was arraigned and tried Major-General Fitz-John Porter, U. S. Volunteers.

"CHARGE I. 'Violation of the 9th Article of War.'

"SPECIFICATION 1ST.—'In this: that the said Major-General Fitz-John Porter of the volunteers of the United States, having received a lawful order, on or about the 27th August, 1862, while at or near Warrenton Junction, in Virginia, from Major-General John Pope, his superior and commanding officer, in the following figures and letters, to wit:

"HEADQUARTERS ARMY OF VIRGINIA,  
"August 27, 1862—6.30 p. m., Bristoe Station.

"GENERAL: The major-general commanding directs that you start at one o'clock to-night and come forward with your whole corps, or such part of it as is with you, so as to be here by daylight to-morrow morning. Hooker has had a very severe action with the enemy, with a loss of about three hundred killed and wounded. The enemy has been driven back, but is retiring along the railroad. We must drive him from Manassas and clear the country between that place and Gainesville, where McDowell is. If Morell has not joined you send word to him to push forward immediately; also send word to Banks to hurry forward with all speed to take your place at Warrenton Junction. It is necessary, on all accounts, that you should be here by daylight. I send an officer with this dispatch, who will conduct you to this place. Be sure to send word to Banks, who is on the road from Fayetteville, probably in the direction of Bealeton. Say to Banks, also, that he had best run back the railroad train to this side of Cedar Run. If he is not with you, write him to that effect.

"By command of Major-General Pope:  
(Signed)

"GEO. D. RUGGLES,  
"Colonel and Chief of Staff.

"Major-General F. J. PORTER, *Warrenton Junction.*

"P. S.—If Banks is not at Warrenton Junction leave a regiment of infantry and two pieces of artillery as a guard till he comes up, with instructions to follow you immediately. If Banks is not at the Junction instruct Colonel Clary to run the trains back to this side of Cedar Run, and post a regiment and section of artillery with it.

"By command of Major-General Pope:  
(Signed)

"GEO. D. RUGGLES,  
"Colonel and Chief of Staff."

Did then and there disobey the said order, being at the time in the face of the enemy. This at or near Warrenton, in the State of Virginia, on or about the 28th of August, 1862.'

"SPECIFICATION 2D.—'In this: that the said Major-General Fitz-John Porter, being in front of the enemy, at Manassas, Virginia, on or about the morning of August 29, 1862, did receive from Major-General John Pope, his superior and commanding officer, a lawful order, in the following letters and figures, to wit:

"HEADQUARTERS ARMY OF VIRGINIA,  
"Centreville, August 29, 1862.

"You will please move forward with your joint commands towards Gainesville. I sent General Porter written orders to that effect an hour and a half ago. Heintzel-

man, Sigel, and Reno are moving on the Warrenton turnpike, and must now be not far from Gainesville. I desire that as soon as communication is established between this force and your own, the whole command shall halt. It may be necessary to fall back behind Bull Run at Centreville to-night. I presume it will be so on account of our supplies. I have sent no orders of any description to Ricketts, and none to interfere in any way with the movements of McDowell's troops, except what I sent by his aide-de-camp last night, which were to hold his position on the Warrenton pike until the troops from here should fall on the enemy's flank and rear: I do not even know Ricketts' position, as I have not been able to find out where General McDowell was until a late hour this morning. General McDowell will take immediate steps to communicate with General Ricketts and instruct him to join the other divisions of his corps as soon as practicable. If any considerable advantages are to be gained by departing from this order, it will not be strictly carried out. One thing must be held in view: that the troops must occupy a position from which they can reach Bull Run to-night or by morning. The indications are that the whole force of the enemy is moving in this direction at a pace that will bring them here by to-morrow night or the next day. My own headquarters will, for the present, be with Heintzelman's corps or at this place.

(Signed)

"JOHN POPE,

*Major-General Commanding.*

"Generals McDOWELL and PORTER."

Which order the said Major-General Porter did then and there disobey. This at or near Manassas, in the State of Virginia, on or about the 29th of August, 1862.

"SPECIFICATION 3D.—'In this: that the said Major-General Fitz-John Porter having been in front of the enemy during the battle of Manassas, on Friday, the 29th of August, 1862, did on that day receive from Major-General John Pope, his superior and commanding officer, a lawful order, in the following letters and figures, to wit:

"HEADQUARTERS IN THE FIELD, August 29, 1862—4.30 p. m.

"Your line of march brings you in on the enemy's right flank. I desire you to push forward into action at once on the enemy's flank, and, if possible, on his rear, keeping your right in communication with General Reynolds. The enemy is massed in the woods in front of us, but can be shelled out as soon as you engage their flank. Keep heavy reserves, and use your batteries, keeping well closed to your right all the time. In case you are obliged to fall back, do so to your right and rear, so as to keep you in close communication with the right wing.

(Signed)

"JOHN POPE,

*Major-General, Commanding.*

"Major-General PORTER."

Which said order the said Major-General Porter did then and there disobey, and did fail to push forward his forces into action either on the enemy's flank or rear, and in all other respects did fail to obey said order. This at or near Manassas, in the State of Virginia, on or about the 29th of August, 1862.

"SPECIFICATION 4TH.—'In that the said Major-General Fitz-John Porter, being at or near Manassas Junction on the night of the 29th August, 1862, did receive from Major-General John Pope, his superior and commanding officer, a lawful order, in figures and words as follows, to wit:

"HEADQUARTERS ARMY VIRGINIA, IN THE FIELD NEAR BULL RUN,  
"August 29, 1862—8.50 p. m.

"GENERAL: Immediately upon receipt of this order, the precise hour of receiving which you will acknowledge, you will march your command to the field of battle of to-day, and report to me in person for orders. You are to understand that you are expected to comply strictly with this order, and to be present on the field within three hours after its reception, or after daybreak to-morrow morning.

(Signed)

"JOHN POPE,

*Major-General, Commanding.*

"Major-General F. J. PORTER."

And the said Major-General Fitz-John Porter did then and there disobey the said order, and did permit one of the brigades of his command to march to Centreville—out of the way of the field of battle—and there to remain during the entire day of Sat.

urday, the 30th of August. This at or near Manassas Station, in the State of Virginia, on the 29th and 30th days of August, 1862.

“SPECIFICATION 5TH.—‘In this: that the said Major-General Fitz-John Porter, being at or near Manassas Station, in the State of Virginia, on the night of the 29th August, 1862, and having received from his superior commanding officer, Major-General John Pope, the lawful order set forth in specification fourth to this charge, did then and there disobey the same, and did permit one other brigade attached to his command—being the brigade commanded by Brigadier-General A. S. Piatt—to march to Centreville, and did thereby greatly delay the arrival of the said General Piatt’s brigade on the field of the battle of Manassas, on Saturday, the 30th August, 1862. This at or near Manassas, in the State of Virginia, on or about the 29th day of August, 1862.’”

“CHARGE II.—‘Violation of the 52d Article of War.’

“SPECIFICATION 1ST.—‘In this: that the said Major-General Fitz-John Porter, during the battle of Manassas, on Friday, the 29th August, 1862, and while within sight of the field and in full hearing of its artillery, did receive from Major-General John Pope, his superior and commanding officer, a lawful order to attack the enemy, in the following figures and letters, to wit:

“HEADQUARTERS IN THE FIELD, August 29, 1862—4.30 p. m.

“Your line of march brings you in on the enemy’s right flank. I desire you to push forward into action at once on the enemy’s flank, and, if possible, on his rear, keeping your right in communication with General Reynolds. The enemy is massed in the woods in front of us, but can be shelled out as soon as you engage their flank. Keep heavy reserves, and use your batteries, keeping well closed to your right all the time. In case you are obliged to fall back, do so to your right and rear, so as to keep you in close communication with the right wing.

(Signed)

“JOHN POPE,

“Major-General, Commanding.

“Major-General PORTER.”

Which said order the said Major-General Porter did then and there shamefully disobey, and did retreat from advancing forces of the enemy without any attempt to engage them, or to aid the troops who were already fighting greatly superior numbers, and were relying on the flank attack he was thus ordered to make to secure a decisive victory and to capture the enemy’s army, a result which must have followed from said flank attack had it been made by the said General Porter in compliance with the said order which he so shamefully disobeyed. This at or near Manassas, in the State of Virginia, on or about the 29th of August, 1862.’

“SPECIFICATION 2D.—‘In this: that the said Major-General Fitz-John Porter, being with his army corps on Friday, the 29th August, 1862, between Manassas Station and the field of battle then pending between the forces of the United States and those of the rebels, and within sound of the guns and in the presence of the enemy, and knowing that a severe action of great consequence was being fought, and that the aid of his corps was greatly needed, did fail all day to bring it on to the field, and did shamefully fall back and retreat from the advance of the enemy without any attempt to give them battle, and without knowing the forces from which he shamefully retreated. This near Manassas Station, in the State of Virginia, on the 29th of August, 1862.’

“SPECIFICATION 3D.—‘In that the said Major-General Fitz-John Porter, being with his army corps near the field of battle of Manassas on the 29th of August, 1862, while a severe action was being fought by the troops of Major-General Pope’s command, and being in the belief that the troops of the said General Pope were sustaining defeat and retiring from the field, did shamefully fail to go to the aid of the said troops and general, and did shamefully retreat away, and did fall back with his army to the Manassas Junction, and leave to the disasters of a presumed defeat the said army; and did fail, by any attempt to attack the enemy, to aid in averting the misfortune of a disaster that would have endangered the safety of the capital of the country. This at or near Manassas Station, in the State of Virginia, on the 29th day of August, 1862.’

“SPECIFICATION 4TH.—‘In this: that the said Major-General Fitz-John Porter, on the field of battle of Manassas, on Saturday, the 30th August, 1862, having received a lawful order from his superior officer and commanding general, Major-General John Pope, to engage the enemy’s lines, and to carry a position near their center, and to take an annoying battery there posted, did proceed in the execution of that order with unnecessary slowness; and by delays give the enemy opportunities to watch and know his movements, and to prepare to meet his attack; and did finally so feebly fall upon the enemy’s lines as to make little or no impression on the same, and did fall back and draw away his forces unnecessarily, and without making any of the great personal

efforts to rally his troops or to keep their lines, or to inspire his troops to meet the sacrifices and to make the resistance demanded by the importance of his position, and the momentous consequences and disasters of a retreat at so critical a juncture of the day.”

To which charges and specifications the accused, Major-General Fitz-John Porter, United States Volunteers, pleaded as follows:

“CHARGE I.

“To specification 1st, ‘Not guilty.’  
 “To specification 2d, ‘Not guilty.’  
 “To specification 3d, ‘Not guilty.’  
 “To specification 4th, ‘Not guilty.’  
 “To specification 5th, ‘Not guilty.’  
 “And to the charge, ‘Not guilty.’

“CHARGE II.

“To specification 1st, ‘Not guilty.’  
 “To specification 2d, ‘Not guilty.’  
 “To specification 3d, ‘Not guilty.’  
 “And to the charge, ‘Not guilty.’

“FINDING.

“The court, having maturely considered the evidence adduced, find the accused, Major-General Fitz-John Porter, of United States Volunteers, as follows:

“CHARGE I.

“Of the 1st specification, ‘Guilty.’  
 “Of the 2d specification, ‘Guilty.’  
 “Of the 3d specification, ‘Guilty.’  
 “Of the 4th specification, ‘Not guilty.’  
 “Of the 5th specification, ‘Not guilty.’  
 “Of the charge, ‘Guilty.’

“CHARGE II.—Of the 1st specification, ‘Guilty, except so much of the specification as implies that he, the accused, “did retreat from advancing forces of the enemy,” after the receipt of the order set forth in said specification.’ Of the 2d specification, ‘Guilty.’ Of the 3d specification, ‘Guilty, except the words “to the Manassas Junction.”’ Of the charge, ‘Guilty.’”

“SENTENCE.

“And the court does therefore sentence him, Major-General Fitz-John Porter, of the United States Volunteers, ‘to be cashiered, and to be forever disqualified from holding any office of trust or profit under the Government of the United States.’

“II. In compliance with the 65th of the Rules and Articles of War, the whole proceedings of the general court-martial in the foregoing case have been transmitted to the Secretary of War, and by him laid before the President of the United States.

“The following are the orders of the President: ‘The foregoing proceedings, findings, and sentence in the foregoing case of Major-General Fitz-John Porter are approved and confirmed; and it is ordered that the said Fitz-John Porter be, and hereby is, cashiered and dismissed from the service of the United States as a major-general of volunteers, and as colonel and brevet brigadier-general in the regular service of the United States, and forever disqualified from holding any office of trust or profit under the Government of the United States.

‘January 21, 1863.

‘ABRAHAM LINCOLN.’

“III. The general court-martial, of which Major-General Hunter is president, is hereby dissolved.

“By order of the Secretary of War:

‘L. THOMAS, *Adjutant-General.*

“Official:

“*Assistant Adjutant-General.*”

(These charges and specifications certainly bear no discernible resemblance to the facts of the case as now established. Yet it has been our duty to carefully compare with these facts the views entertained by the court-martial, as shown in the findings and in the review of the case which was prepared for the information of the President by the Judge-Advocate-General, who had conducted the prosecution, and thus to clearly perceive every error into which the court-martial was led. We trust it is not necessary for us to submit in detail the results of this comparison, and that it will be sufficient for us to point out the fundamental errors, and to say that all the essential facts in every instance stand out in clear and absolute contrast to those supposed facts upon which General Porter was adjudged guilty.)

The fundamental errors upon which the conviction of General Porter depended may be summed up in few words. It was maintained, and apparently established to the satisfaction of the court-martial, that only about one-half of the Confederate army was on the field of Manassas on the 29th of August, while General Lee, with the other half, was still beyond the Bull-Run Mountains; that General Pope's army, exclusive of Porter's corps, was engaged in a severe and nearly equal contest with the enemy, and only needed the aid of a flank attack which Porter was expected to make to insure the defeat and destruction or capture of the Confederate force in their front under General Jackson; that McDowell and Porter, with their joint forces, Porter's leading, had advanced towards Gainesville until the head of their column had reached a point near the Warrenton turnpike, where they found a division of Confederate troops, "seventeen regiments," which Buford had counted as they passed through Gainesville, marching along the road across Porter's front, and going toward the field of battle at Groveton; that McDowell ordered Porter to at once attack that column thus moving to join Jackson, or the flank and rear of the line if they had formed in line, while he would take his own troops by the Sudley Springs road and throw them upon the enemy's center near Groveton; that Porter, McDowell having then separated from him, disobeyed that order to attack, allowed that division of the enemy's troops to pass him unmolested, and then fell back and retreated toward Manassas Junction; that Porter then remained in the rear all the afternoon, listening to the sounds of battle and coolly contemplating a presumed defeat of his comrades on the center and right of the field; that this division of the enemy having passed Porter's column and formed on the right of Jackson's line, near Groveton, an order was sent to Porter to attack the right flank or rear of the enemy's line, upon which his own line of march must bring him, but that he had willfully disobeyed, and made no attempt to execute that order; that in this way was lost the opportunity to destroy Jackson's detached force before the other wing of General Lee's army could join it, and that this junction having been effected during the night of the 29th, the defeat of General Pope's army on the 30th thus resulted from General Porter's neglect and disobedience.

Now, in contrast to these fundamental errors, the following all-important facts are fully established:

As Porter was advancing toward Gainesville, and while yet nearly four miles from that place and more than two miles from the nearest point of the Warrenton turnpike, he met the right wing of the Confederate army, twenty-five thousand strong, which had arrived on the field that morning, and was already in line of battle. Not being at that moment quite fully informed of the enemy's movements, and being then under orders from Pope to push rapidly toward Gainesville, Porter was pressing forward to attack the enemy in his front, when McDowell arrived on the field with later information of the enemy, and later and very different orders from Pope, assumed the command, and arrested Porter's advance. This latter information left no room for doubt that the main body of Lee's army was already on the field and far in advance of Pope's army in preparation for battle. General McDowell promptly decided not to attempt to go further to the front, but to deploy his column so as to form line in connection with General Pope's right wing, which was then engaged with Jackson. To do this General McDowell separated his corps entirely from General Porter's, and thus relinquished the command and all right to the command of Porter's corps. McDowell did not give Porter any order to attack, nor did he give him any order whatever to govern his action after their separation.

It does not appear from the testimony that he conveyed to General Porter in any way the erroneous view of the military situation which was afterward maintained before the court-martial, nor that he suggested to General Porter any expectation that he would make an attack. On the contrary, the testimony of all the witnesses as to what was actually said and done; the information which McDowell and Porter then had respecting the enemy, and the movement which McDowell decided to make, and did make, with his own troops, prove conclusively that there was left no room for doubt in Porter's mind that his duty was to stand on the defensive and hold his position until McDowell's movement could be completed. It would have indicated a great error of military judgment to have done or ordered the contrary, in the situation as then fully known to both McDowell and Porter.)

General Pope appears from his orders and from his testimony to have been at that

time wholly ignorant of the true situation. He had disapproved of the sending of Ricketts to Thoroughfare Gap to meet Longstreet on the 28th, believing that the main body of Lee's army could not reach the field of Manassas before the night of the 30th. Hence, he sent the order to Porter, dated 4.30 p. m., to attack Jackson's right flank or rear. Fortunately that order did not reach Porter until about sunset—too late for any attack to be made. Any attack which Porter could have made at any time that afternoon must necessarily have been fruitless of any good result. Porter's faithful, subordinate, and intelligent conduct that afternoon saved the Union Army from the defeat which would otherwise have resulted that day from the enemy's more speedy concentration. The only seriously critical period of that campaign, viz, between 11 a. m. and sunset of August 29th, was thus safely passed. Porter had understood and appreciated the military situation, and, so far as he had acted upon his own judgment, his action had been wise and judicious. For the disaster of the succeeding day he was in no degree responsible. Whoever else may have been responsible, it did not flow from any action or inaction of his.

(The judgment of the court-martial upon General Porter's conduct was evidently based upon greatly erroneous impressions, not only respecting what that conduct really was and the orders under which he was acting, but also respecting all the circumstances under which he acted. Especially was this true in respect to the character of the battle of the 29th of August. That battle consisted of a number of sharp and gallant combats between small portions of the opposing forces. Those combats were of short duration and were separated by long intervals of simple skirmishing and artillery duels. Until after 6 o'clock only a small part of the troops on either side were engaged at any time during the afternoon. Then, about sunset, one additional division on each side was engaged near Groveton. The musketry of that last contest and the yells of the Confederate troops about dark were distinctly heard by the officers of Porter's corps; but at no other time during all that afternoon was the volume of musketry such that it could be heard at the position of Porter's troops. No sound but that of artillery was heard by them during all those hours when Porter was understood by the court-martial to have been listening to the sounds of a furious battle raging immediately to his right. And those sounds of artillery were by no means such as to indicate a general battle.)

The reports of the 29th and those of the 30th of August have somehow been strangely confounded with each other. Even the Confederate reports have, since the termination of the war, been similarly misconstrued. Those of the 30th have been misquoted as referring to the 29th, thus to prove that a furious battle was going on while Porter was comparatively inactive on the 29th. The fierce and gallant struggle of his own troops on the 30th has thus been used to sustain the original error under which he was condemned. General Porter was, in effect, condemned for not having taken any part in his own battle. Such was the error upon which General Porter was pronounced guilty of the most shameful crime known among soldiers. We believe not one among all the gallant soldiers on that bloody field was less deserving of such condemnation than he.)

The evidence of bad animus in Porter's case ceases to be material in view of the evidence of his soldierly and faithful conduct. But it is our duty to say that the indiscreet and unkind terms in which General Porter expressed his distrust of the capacity of his superior commander cannot be defended. And to that indiscretion was due, in very great measure, the misinterpretation of both his motives and his conduct and his consequent condemnation.

Having thus given the reasons for our conclusions, we have the honor to report, in accordance with the President's order, that, in our opinion, justice requires at his hands such action as may be necessary to annul and set aside the findings and sentence of the court-martial in the case of Major-General Fitz-John Porter, and to restore him to the positions of which that sentence deprived him—such restoration to take effect from the date of his dismissal from the service.

Very respectfully, your obedient servants,

J. M. SCHOFIELD,  
Major-General U. S. Army.  
ALFRED H. TERRY,  
Brigadier-General U. S. Army.  
GEO. W. GETTY,

*Brevet Major-General U. S. Army, Colonel Third Artillery.*

Thereupon the President transmitted the following message to Congress:

*To the Senate and House of Representatives:*

I transmit herewith the "proceedings and report" of the Board of Officers, convened by Special Orders No. 78, Headquarters of the Army, Washington, April 12, 1878, in

the case of Fitz-John Porter. The report of the board was made in March last, but the official record of the proceedings did not reach me until the 3d instant.

I have given to this report such examination as satisfies me that I ought to lay the proceedings and conclusions of the board before Congress.

As I am without power in the absence of legislation to act upon the recommendation of the report further than by submitting the same to Congress, the proceedings and conclusions of the board are transmitted for the information of Congress, and such action as in your wisdom shall seem expedient and just.

R. B. HAYES.

EXECUTIVE MANSION, *Washington, June 5, 1879.*

No final action was reached by Congress in the matter, and your memorialist addressed the following letter to the President:

NEW YORK, *December 23.*

SIR: I respectfully represent, that in January, 1863, by court-martial I was most unjustly declared guilty of charges against me, and sentenced "to be cashiered and forever disqualified from holding any office of trust or profit under the Government of the United States." From the promulgation of the verdict of that court I have protested my innocence of all wrong done, and asserted the injustice of the sentence, and presenting the sustaining evidence, I have, from time to time, urged a rehearing. In 1878 the President, in order to be fully informed of the facts of the case, and to be enabled to act advisedly upon my application for relief, appointed a Board of Army Officers to examine into the merits of the case, and to report what action, if any, in their opinion, justice required should be taken on my application. That board after a thorough examination into the facts of the case, vindicated me in every respect, and reported that, in their opinion, justice required at the hands of the President such action as might be necessary to annul and set aside the findings and sentence of the court-martial, and restore me to the position, of which that sentence deprived me, such restoration to take effect from the date of dismissal from the service. And I now respectfully and urgently represent that the sentence is a continuing sentence, and so long as it exists is within the reach and under the control of Executive power; that harsh and burdensome originally, and lasting through many years, it is for stronger reasons a subject for the consideration and action of the Executive, now that it is proven to have been founded in error and to be unjust; and I respectfully ask you, if convinced of the justice of the recommendation of the advisory board, to annul and set aside the findings and sentence of the court-martial, and to nominate me to the Senate for restoration of my rank in the Army under an act of Congress, 1868, allowing that mode of redress of wrong committed by a court-martial. And this I ask, not merely in justice to me and those most dear to me, but in justice to the Army to which I belonged, and which has ever believed in me, and to the government which honored and trusted me.

Very respectfully, yours,

FITZ-JOHN PORTER.

To the PRESIDENT.

To which your memorialist received the following communication and reply:

WAR DEPARTMENT,  
*Washington, D. C., April 15, 1882.*

SIR: The President has had under consideration your letter of 23d December, 1881, in which you allege an injustice of the sentence of the court-martial under which, in 1863, you were, as an officer of the Army, "dismissed from the service of the United States, and forever disqualified from holding any office of trust or profit under the Government of the United States," and refer to the report of the advisory board made in 1879, and ask the President, if convinced of the justice of the recommendation of the advisory board, to annul and set aside the finding and sentence of "court-martial," and to nominate you to the Senate for restoration to your rank in the Army. It being advisable that before considering the propriety of the action requested by you, the question of the power of the President in the premises should be determined, your letter was by the President referred to the Attorney-General for an investigation of that subject.

By direction of the President—

I have to inclose to you a copy of the opinion of the Attorney-General, dated March 15, 1882, and to inform you that the President concurs in the views therein expressed, and consequently that a compliance with the application contained in your letter is not within his authority.

I have the honor to be, very respectfully, your obedient servant,

ROBERT T. LINCOLN,

*Secretary of War.*

General F. J. PORTER, 44 *West Twenty-fifth Street, New York, N. Y.*

SIR: Major-General Fitz-John Porter was, in 1863, tried and convicted by a general court-martial and sentenced "to be cashiered, and to be forever disqualified from holding any office of trust or profit under the Government of the United States." The proceedings and sentence of the court were subsequently, in regular course, laid before the President, who, on the 21st of January, 1863, approved and confirmed the same, and by his order of that date, in execution of the sentence, it was "Ordered that the said Fitz-John Porter be, and hereby is, cashiered and dismissed from the service of the United States, as a major-general of volunteers, and as colonel and brevet brigadier-general in the regular service of the United States, and forever disqualified from holding any office of trust or profit under the Government of the United States."

Thereupon General Porter ceased to be an officer in the military service of the United States, and his name was accordingly dropped from the rolls of the Army.

Afterwards, in 1878, upon an application then made by General Porter for relief, the President (in order that he might be fully informed of the facts of the case, and be enabled to act advisedly on said application), convened a board of Army officers "to examine, in connection with the record of the trial by court-martial of Major-General Porter, such new evidence relating to the merits of said case as is now on file in the War Department, together with such other evidence as may be presented to said board, and to report, with the reasons for their conclusion, what action, if any, in their opinion, justice requires should be taken on said application by the President." The board so convened made a report to the Secretary of War under date of March 19, 1879, in which, after giving the results of their investigations, they state that in their opinion "justice requires at his (the President's) hands such action as may be necessary to annul and set aside the findings and sentence of the court-martial in the case of Major-General Fitz-John Porter, and to restore him to the positions of which that sentence deprived him, such restoration to take effect from the date of his dismissal from service."

On the 5th of June, 1879, the report and proceedings of the board were transmitted to Congress by the President, who in his accompanying message said: "I have given to this report such examination as satisfies me that I ought to lay the proceedings and conclusions of the board before Congress. As I am without power, in the absence of legislation, to act upon the recommendations of the report further than by submitting the same to Congress, the proceedings and conclusions of the board are transmitted for the information of Congress, and such action as in your wisdom shall seem expedient and just."

There has since been no legislation by Congress on the subject. General Porter has, however, in a communication dated December 23, 1881, renewed his application to the President for relief, the relief there asked for being specifically stated by him in the following words: "To annul and set aside the finding and sentence of the court-martial, and to nominate me to the Senate for restoration to my rank in the Army under act of 1868." What hereinafter follows is addressed to the question whether it is competent for the President to afford the applicant the relief he asks, under existing law and the circumstances of his case.

On entering upon this question, we are first led to inquire as to the source of the jurisdiction exercised by courts-martial in our military service. That has been precisely and authoritatively determined. In the case of *Dymes vs. Hoover* (20 *Horr.*, 65), the Supreme Court of the United States, after citing section 8 of the first article of the Constitution, which confers upon Congress power "to make rules for the government and regulation of the land and naval forces," the fifth amendment which requires a presentment of a grand jury in cases of capital or otherwise infamous crimes, but expressly excepts from this requirement "cases arising in the land and naval forces," and also section 2 of the second article, which declares that "the President shall be Commander-in-Chief of the Army and Navy"—remarks: "These provisions show that Congress has the power to provide for the trial and punishment of military and naval offenses in the manner then and now practiced by civilized nations, and that the power to do so is given without any connection between it and the third article of the Constitution defining the judicial power of the United States; indeed, that the two powers are entirely independent of each other."

Congress, in the exercise of this power, by the act of April 10, 1806, chap. 20, enacted rules and articles for the government of the armies of the United States, and therein provided for the creation of courts-martial for the trial of military offenses. (See that act, articles 64, 65, *et seq.*) These rules and articles, as modified and added to by subsequent legislation, were in force when the proceedings in the case of General Porter occurred. And in this connection it may also be stated that the Supreme Court again, in the recent case of *ex parte Reed* (100 *U. S. Rep.*, 13), observes: "The constitutionality of the acts of Congress touching Army and Navy courts-martial in this country, if there could ever have been a doubt about it, is no longer an open question in this court."

It is assumed (there being no allegation to the contrary) that the court-martial in this case was constituted, convened, and organized in conformity with the law of the

military service as ordained by Congress; that it had jurisdiction both of the offense alleged and of the person accused; that there was no fatal irregularity in the proceedings nor any illegality in its sentence, and that the latter was confirmed and carried into execution agreeably to law. Upon this state of facts it may be inquired, has the President power now to review the proceedings of the court-martial and to annul its sentence?

Unless he possesses such power, it is submitted that this mode of relief is not available.

The sixty-fifth Article of War (act of April 10, 1806, cited above) provided that "no sentence of a court-martial shall be carried into execution until after the whole proceedings shall have been laid before the officer ordering the same, or the officer commanding the troops for the time being; neither shall any sentence of a general court-martial in the time of peace, extending to the loss of life, or the dismissal of a commissioned officer, or which shall, either in time of war or peace, respect a general officer, be carried into execution until after the whole proceedings shall have been transmitted to the Secretary of War, to be laid before the President of the United States for his confirmation or disapproval and orders in the case." (See also Rev. Stat., p. 240, articles 105, 106, 108, in which the same provision is embodied.) Under this provision it was that the proceedings in the case of General Porter were laid before and confirmed by the President, and no other statutory provision then existed or now exists giving him a power of review over such case.

In the case of Lieutenant Devlin, who was tried by a general court-martial in 1852, and sentenced to be dismissed, and whose sentence was afterwards approved by the President under the same provision and carried into execution, Attorney-General Cushing considered the question whether the proceedings of that court-martial could then (in 1854) lawfully be reopened, reviewed, and set aside, and he held that they could not. He says, in his opinion:

"The decision of the President of the United States in cases of this sort is that of the ultimate judge provided by the Constitution and the laws. Like that of any other court in the last resort of the law, it is final as to the subject-matter. There is one, and but one, legal question which would be competent in this case after the final decision of the President upon it, namely, that a nullity of the proceeding, as being, for instance, *coram non jndice* or, for other cause, absolutely void, *ab initio*." (6 Opin., 370 711.)

In another case (that of Major Howe) the same Attorney-General remarks:

"Unless the memorial show that the court-martial had no lawful jurisdiction of the case, no cognizance of him and the offense charged, his memorial must be unavailing, for the President of the United States has not now (in 1854) any rightful authority to review and reverse the sentence of a court pronounced in a case within its jurisdiction in 1842, then duly appointed by the revising power and actually carried into full and complete execution. True it is that the office and powers of the President are perpetual, and every successor has all the powers which his predecessor had whilst in office. But this must be understood of matters executory, of things to be done, and not in relation to matters executed rightfully and legally transacted." (5 Opin., 507.)

To the same effect are earlier opinions given by Attorneys-General Legare and Nelson (4 Opin., 170 and 274) and also later opinions given by Attorney-General Bates (10 Opin., 64; 11 Opin., 19). The latter in this opinion last cited uses this language:

"Undoubtedly the President in passing upon the sentence of a court-martial and giving to it the approval without which it cannot be executed acts judicially. The whole proceeding from its inception is judicial. The trial, finding, and sentence are the solemn acts of a court, organized and conducted under the authority and according to the prescribed forms of law. It sits to pass upon the most sacred questions of human rights that are ever placed on trial in a court of justice—rights which in the very nature of things can neither be exposed to damage nor entitled to protection from the uncontrolled will of any man, but which must be adjudged *according to law*. And the act of the officer who reviews the proceedings of the court, whether he be the commander of the fleet or the President, and without whose approval the sentence cannot be executed, is as much a part of this judgment, according to law, as is the trial or the sentence. When the President, then, performs this duty of approving the sentence of a court-martial dismissing an officer, his act has all the solemnity and significance of the judgment of a court of law.

"As it has to be performed under the same consequences now, one of the consequences is that when a judgment has been regularly entered in a case properly within the judicial cognizance, from which no appeal has been provided or taken, and it has been followed by execution, it is final and conclusive upon the party against whom it is entered. And this effect attaches, in my opinion, to the action of the President in approving the sentence of a court-martial dismissing an officer, after that approval has been consummated by actual dismissal."

Furthermore, the Supreme Court, in the case of *ex-parte* Reed, above cited, referring to a general court-martial whose doings were involved in the case, says:

"It is the organism provided by law and clothed with the duty of administering

justice in the class of cases. \* \* \* Its judgments, when approved, as required, rest on the same basis, and are surrounded by the same considerations which give conclusiveness to the judgments of other legal tribunals, including as well the lowest as the highest, under like circumstances."

Here it is proper to add that the very inquiry now under examination has been resolved in the negative by the deliberate decision of a former administration, as appears by the message of the President of June 5, 1879, hereinbefore referred to, transmitting to Congress the report and proceedings of a board of Army officers upon the case of General Porter. The conclusion then reached was that the President was "without power, in the absence of legislation, to act upon the recommendation of the report further than by submitting the same to Congress." This conclusion is a denial of the existence of any power in the President to review and "to annul and set aside the findings and the sentence of the court-martial" in that case, as recommended by the board; and it is entitled to great weight, as being the view, not only of the President himself, but presumably that of his Cabinet, among whose members were men eminent in the profession of the law. These opinions of my predecessors and the Supreme Court, and also the decision last above mentioned all go to establish this proposition, that where the sentence of a legally constituted court-martial in a case within its jurisdiction has been approved by the reviewing authority and carried into execution, it cannot afterward, under the present state of the law, be revised and set aside. The proceedings are then at an end, and the action thus had upon the sentence is, in contemplation of the law, final.

I am unable to arrive at a different conclusion, and I accordingly hold that in the case under consideration the President has no power to review the proceedings of the court-martial and annul its sentence. It follows from this view that the President can afford the applicant no relief through a revision of the sentence in his case. That sentence involved immediate dismissal from the Army and disability to hold office thereafter. The dismissal is an accomplished fact, and so far the sentence is completely executed; the disability is a continuing punishment, and in regard to that the sentence is being executed. The latter may be remitted by the exercise of the pardoning power, but the former cannot in any way be affected thereby. Thus a pardon would not restore the applicant to the office in the military service from which he was dismissed. (*Ex parte Garland*, 4 Wall., 333.) This could only be done by an appointment under special authority from Congress; since by the general law of the military service appointments to the rank of general officer are to be made by selection from the Army, and all vacancies in established regiments and corps to the rank of colonel are to be filled by promotion according to seniority, except in cases of disability or other incompetency (Army Register of 1881, article 6; 14 Opinions Attorney-General, 499). In this connection I remark that the act of 1868, referred to by General Porter in his letter of request, was, as its title imports, only meant to be declaratory of the law, namely, that an officer cashiered or dismissed by sentence of a court-martial cannot be otherwise restored to the military service than through a new appointment, with the consent of the Senate. The law is the same as to officers of the Army who cease to be such in any other way. (*Mimmack vs. United States*, 97 U. S., 427; *Blake vs. United States*, 103 U. S. 237.) Power to appoint is not conferred by that statute. This power remains subject to the general law already adverted to, and in the absence of special authority from Congress it can only be exercised with respect to a person who has ceased to be an officer in the manner above stated, where it might equally well be exercised if such person had never been an officer in the military service.

Upon the general question considered the conclusion arrived at is that it is not within the competency of the President to afford the applicant the relief he has asked for—that is to say, that it is not competent for the President to annul and set aside the finding and sentence of the court-martial and to nominate to the Senate for restoration to his former rank in the Army.

I am, sir, very respectfully,

BENJAMIN HARRIS BREWSTER,  
*Attorney-General.*

To the PRESIDENT.

Upon the reception of which communications your memorialist addressed to the President the following petition:

MORRISTOWN, N. J., April 17, 1882.

The PRESIDENT,

*Washington, D. C.:*

SIR: I have the honor to acknowledge the receipt, through the Secretary of War, under date of the 15th inst., of your decision upon my application of December 23, 1881, "to annul and set aside the findings and sentence of the court-martial in my case and to nominate me to the Senate for restoration to my former rank in the Army."

Your decision, after determination of the powers of the President, as expressed in the opinion of the Attorney-General is, "that compliance with the application contained in my letter is not within your power." I may have misunderstood the extent of the constitutional power of the President when I asked you to do directly with the aid of the Senate, that which a board of distinguished Army officers had, in the interest of justice, recommended should be done, but which you, concurring in the opinion of the Attorney-General, inform me you have now the power only in part to perform, and that special legislation by Congress is needed to complete the justice asked for. My application was based upon the recommendation of an advisory board appointed by the President "to examine into the facts, and to report what action, in their opinion, justice required should be taken by the President." That board found and reported, after a long and patient examination and consideration of all the facts in the case, that my "conduct" in all the events of August, 1862, inquired into by the court-martial, by which I was tried, "was," in the light of the full evidence, that which was then laid before the court, and also that which was unattainable at the time of my trial, "not subject to criticism, much less deserving of censure or condemnation, and was obedient, subordinate, faithful, and judicious. It saved the Union Army from disaster on the 29th of August," and the advisory board recommended "that, in their opinion, justice required at his (the President's) hands such action as may be necessary to annul and set aside the findings and sentence of the court-martial in the case of Major-General Fitz-John Porter, and to restore him to the positions of which that sentence deprived him, such restoration to take effect from the date of dismissal from service." Relying also upon the clear and emphatic language of the said board, "that all the essential facts, in every instance, stand out in clear and absolute contrast to those supposed facts upon which he (I) was adjudged guilty, and that it is not possible that any court-martial could have condemned such conduct if it had been correctly understood," and believing I am entitled to the complete and just vindication recommended by the board, and that a sentence of a court-martial, subsequently proven by overwhelming and irrefragable testimony, to have been palpably erroneous in its basis of assumed facts, and utterly destructive of the happiness and welfare of an officer who has never failed in the strictest and most honorable fidelity to his government, should not be a barrier to the relief to which I consider myself entitled, I again renew to you, as chief magistrate, my appeal for justice. Conscious of my absolute and entire innocence, I have not ceased, from the hour of the promulgation of the sentence of the court-martial, persistently to protest against the terrible injustice done me, and have striven in every proper mode to secure my vindication, all of which public records now before you will fully establish. I now respectfully and most earnestly ask that you will grant a remission of that portion of the sentence of the court-martial which remains unexecuted, and carry into effect the recommendations of the advisory board, so far as the same lies within your constitutional power, and transmit the result of your action, together with the finding of the board, to Congress, coupled with such recommendation in the premises as you may deem just and proper.

Very respectfully, yours,

FITZ-JOHN PORTER.

In response to which the President executed and delivered to your memorialist the following instrument of remission:

CHESTER A. ARTHUR, PRESIDENT OF THE UNITED STATES OF AMERICA.

*To all to whom these presents shall come, greeting:*

Whereas on the 10th day of January, 1863, Fitz-John Porter, then a major-general of volunteers in the military service of the United States, and also colonel of the Fifteenth Regiment of Infantry, and brevet brigadier-general in the United States Army, was, by a general court-martial, for certain offenses of which he had been thereby convicted, sentenced "to be cashiered, and to be forever disqualified from holding any office of trust or profit under the Government of the United States";

And whereas on the 21st day of January, 1863, that sentence was duly confirmed by the President of the United States, and by his order of the same date, carried into execution;

And whereas so much of that sentence as forever disqualified the said Fitz-John Porter from holding office, imposed upon him a continuing penalty, and is still being executed;

And whereas doubts have since arisen concerning the guilt of the said Fitz-John Porter of the offenses whereof he was convicted by the said court-martial, founded upon the result of an investigation ordered on the 12th day of April, 1878, by the President of the United States, which are deemed by me to be of sufficient gravity to warrant the remission of that part of said sentence which has not yet been completely executed:

Now, therefore, know ye that I, Chester A. Arthur, President of the United States, by virtue of the power vested in me by the Constitution of the United States, and in consideration of the premises, do hereby grant to the said Fitz-John Porter full remission of the hereinbefore mentioned continuing penalty.

In witness whereof, I have hereunto signed my name and caused the seal of the United States to be affixed.

Done at the city of Washington this fourth day of May, A. D. 1882, and of the Independence of the United States the one hundred and sixth.

[SEAL.]

CHESTER A. ARTHUR.

By the President:

FRED'K T. FRELINGHUYSEN,  
*Secretary of State.*

In view of all the foregoing facts, your memorialist would pray that such action may be taken by Congress in the premises as will restore him to the positions of which the sentence of said court-martial unjustly deprived him.

And as in duty bound your memorialist will ever pray, &c., &c.  
FITZ-JOHN PORTER.

MORRISTOWN, N. J., *May 5, 1882.*

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