

FITZ-JOHN PORTER.

JANUARY 9, 1884.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. SLOCUM, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany bill H. R. 1015.]

The Committee on Military Affairs, to whom was referred the bill for the relief of Fitz-John Porter, late major-general, United States Volunteers, having carefully considered the subject, beg leave to submit the following report:

On the 27th day of November, 1862, a court-martial was convened at Washington, D. C., by order of Major-General Halleck, general-in-chief of the armies of the United States, for the trial of certain charges and specifications exhibited against Maj. Gen. Fitz-John Porter, United States Volunteers, by B. S. Roberts, inspector-general on the staff of General Pope, for violations of the ninth and fifty-second articles of war. Said Porter was by said court-martial found guilty of both charges and a part of the specifications, and was sentenced "to be cashiered and forever disqualified from holding any office of trust or profit under the Government of the United States," which finding and sentence were approved by the President of the United States, January 21, 1863.

Upon the application of General Porter, President Hayes appointed Maj. Gen. John M. Schofield, Brig. Gen. A. H. Terry, and Col. G. W. Getty a Board to examine the record of the trial of General Porter, together with such new evidence relating to the merits of the case as is on file in the War Department, and 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 by the President.

On the 19th of March, 1879, this Board made a report from which the following are extracts, viz :

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 report then discusses the evidence taken, and concludes as follows :

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 29, 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 misrepresentation 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 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 3d Artillery.

The following letter accompanied the bill which was referred to this committee. In view of the high positions held by General Grant in the civil as well as military history of our country, we have deemed it proper to make this letter a part of our report, viz:

NEW YORK, November 3, 1883.

DEAR GENERAL: As there is some discussion as to the probable reasons for my change of mind in regard to your case, now pending before the people of the United States, I deem it proper that I should give them myself.

In the first place I never believed you to be a traitor, as many affected to believe. I thought I knew you too well to believe for one moment that you would accept the pay, rank, and command you held for the purpose of betraying the cause you were professing to serve. Then, too, your services had been too conspicuous as a staff officer at the beginning of the war and as commander of troops later, to support such a theory for a moment.

But I did believe that General Pope was so odious to some of the officers in the East that a cordial support was not given him by them. I was disposed, too, to accept the verdict of a court-martial composed as the one which tried you was. Some of the members of that court I knew personally, and had great confidence in their judgment and justice. I supposed you had shared in this feeling towards Pope, and while not more guilty than others you were unfortunate in being placed in a position where specifications could be made showing this hostility.

After the close of the war, when I was requested to read your new defense, I read it with the feeling above described. At the same time I read the other side as prepared—or furnished—by General Pope. This gave maps showing the positions of the two armies substantially as shown by the first of the diagrams presented by Mr. Lord, of San Francisco, from whom I copied in the article in your case, and did not indicate the presence of any other force than Jackson's. Then, too, it appeared that you had actually received an order at about 5 or 5.30 in the afternoon of August 29 to attack the enemy's flank, and that, too, at a time when a fierce battle was raging in the front.

I was first shaken in my views, however, when such a man as General Terry, who unites the lawyer with the soldier, a man of high character and ability, and who had believed as I had, and possibly worse, after many weeks of investigation should entirely vindicate you, and be sustained too by men of the known ability of his colleagues on the board. Until in 1881, when I re-examined for myself, my belief was that on the 29th of August, 1862, a great battle was fought between General Pope, commanding the Union forces, and General Jackson commanding the Confederate forces; that you, with a corps of twelve or more thousand men, stood in a position across the right flank of Jackson and where you could easily get into his rear; that you received an order to do so about 5 or 5.30 o'clock, which you refused to obey because of clouds of dust in your front, which you contended indicated an enemy in superior force to you; that you allowed Pope to get beaten while you stood idly looking on, without raising an arm to help him. With this understanding, and without a doubt as to the correctness of it, I condemned you.

Now, on a full investigation of the facts, I find that the battle was fought on the 30th of August; that your corps, commanded directly by you in person, lost a greater percentage than any other corps engaged; that the 4.30 order of the day before did not reach you until night-fall; that your immediate superior had cautioned you early in the day that you were too far out to the front then; that General Pope had cautioned you against bringing on an engagement except under such circumstances as he described, and that in any event you must be prepared to fall back behind Bull Run that night, where it would be necessary for you to be to receive supplies; that from 11 o'clock of the 29th you were confronted by a force of twice your own number, of whose presence you had positive proof, while General Pope did not know of it.

This last fact is shown by the wording of the 4.30 order. It directed you to attack the enemy's right and to get into his rear. General Pope's circular of the morning of the 29th said that General Lee was advancing by way of Thoroughfare Gap. At the rate at which he was moving he would be up the night of the 30th or the morning of the 31st.

In his testimony before the court-martial which tried you he said, under oath, that he did not know of the arrival of Lee's command until 6 o'clock of the 29th, an hour and a half after he had dictated the order for your attack.

His circular and testimony prove conclusively that Jackson, and Jackson alone, was the enemy he intended you to attack. Your knowledge of this fact, as well as of the fact that you had another force, quite double yours, in addition in your front, would have been sufficient justification for your not attacking, even if the order had been received in time. Of course this would not apply if a battle had been raging between Jackson and Pope. At the hour you received the order all was quiet.

This very short, hastily written and incomplete summary shows why and when my mind underwent a change. I have no doubt now but the change would have taken place in 1867 if I had then made an investigation. I regret now that I did not understand your case then as I do now. Your whole life since your trial, as well as your services before, disprove the great burden of the charges then sustained by a court-martial. As long as I have a voice it shall be raised in your support without any reference to the effect upon me or others. Your restoration to the Army, simply, I would regard as a very inadequate and unjust reparation. While men—one at least—have been restored to the Army because of their gallantry and wounds, after conviction and sentence, and when there is no doubt of their guilt are given all their pay for the years they were out of the service, I can see no reason for your having less.

I hope for you a thorough vindication, not only by Congress but in the minds of your countrymen.

Faithfully yours,

U. S. GRANT.

General F. J. PORTER, *Morristown.*

It appears from the proceedings of the court-martial which tried General Porter that during the progress of the trial the following letter was read in open court, viz:

WAR DEPARTMENT,
Washington City, D. C., January 5, 1863.

GENERAL: The state of the service imperatively demands that the proceedings in the court over which you are now presiding, having been pending more than four weeks, should be brought to a close without any unnecessary delay. You are therefore directed to sit without regard to hours, and close your proceedings as speedily as may be consistent with justice and the public service.

EDWIN M. STANTON,
Secretary of War.

Major General HUNTER,
President, &c.

One of the most important points involved in the trial of General Porter was as to the position of certain corps and divisions of the Confederate army at particular hours during the battle. The evidence of the Confederate officers commanding these corps and divisions could not be obtained at that time.

After the lapse of sixteen years, when the passions and prejudices existing during the original trial had abated, when the reports of the Confederate officers as to the position of their commands could be obtained, and when these officers themselves could appear and give evidence,

when the proceedings could be conducted without unseemly haste, a Board, composed of the most distinguished officers of our Army, is convened by the President to review the case and take this additional evidence.

The conclusions of this Board are presented to us in the extracts from their report above quoted. These conclusions are most earnestly indorsed and approved by General Grant, whose opinions upon a subject of this nature are certainly entitled to the consideration of his countrymen.

The question presented to Congress is : Shall the decision of a court held in the heat and excitement of a civil war, laboring under such disadvantages in securing important evidence, stand as the final verdict of our Government as against the later and more exhaustive researches of a Board composed of the most distinguished officers of our Army, possessing every means of securing evidence ?

In considering this case it should not be forgotten that while we know the recent Board was unanimous in its decision, no one outside the members of the original court knows, or ever can know, how the vote of that court stood. For aught that is known to the contrary the vote for the conviction of Porter may have been carried by a single member, and that member may have been the one who left his seat as a judge in the case and became the most important witness against the accused.

Under the circumstances your committee believe that the report of the Board appointed by the President should have the greater weight ; and we therefore respectfully recommend the passage of the bill herewith submitted.

W. S. ROSECRANS, *Chairman.*
 H. W. SLOCUM.
 G. G. DIBRELL.
 JOHN C. NICHOLLS.
 R. M. MURRAY.
 THEODORE LYMAN.
 W. A. DUNCAN.
 MARTIN MAGINNIS.
 FRANK L. WOLFORD.
 CHARLES H. MORGAN.
 JAMES LAIRD.
 THOS. M. BAYNE.

FITZ-JOHN PORTER.

JANUARY 15, 1884.—Ordered to be printed.

Mr. STEELE submitted the following as the

VIEWS OF THE MINORITY :

The minority of the Committee on Military Affairs submit the following as among the reasons why it cannot support the bill (H. R. 1015):

Should the bill as reported by the majority become a law it restores Fitz-John Porter, late a major-general of United States Volunteers, and a brevet brigadier-general of the Army, to a position as colonel in the Army, with the same grade and rank, together with all the *rights*, titles, and privileges held by him at the time of his dismissal from the Army by sentence of court-martial promulgated January 27, 1863, and, in the discretion of the President, to place him on the retired list of the Army of that grade, and especially increases the retired list for that purpose, but says the act shall not be construed as authorizing pay, compensation, or allowance prior to appointment. This bill sets aside the judgment of the highest military tribunal ever organized in this country, thereby conflicting with the very spirit of our Constitution. It will say the judgment of that court either was corrupt or founded upon mistaken or faulty evidence, although taken when the events were fresh in the minds of the witnesses, and that we have a higher regard for the evidence of the officers in the army we were fighting at that time than we have for that given by those fighting on our side.

The minority do not feel warranted in saying that it was the intention of the framers of the bill to give Mr. Porter pay from the date of his dismissal, but a careful reading of it, in the opinion of your minority, will leave it an open question whether or not he would not be authorized under it to receive such pay. It "authorizes his appointment as colonel, with the same *grade* and *rank* held by him at the *date* of his *dismissal*, with all the *rights*, *titles*, and *privileges* held by him at *that time*," and among his rights was the one to draw pay; so that while this bill may not give him pay directly it gives him his original status in the Army, and would thereby give him the same right to draw pay as was and is vested in any colonel in the Army on the active list until the President should see proper to retire him, when he would receive two-thirds pay as colonel with 40 per cent. service allowance, *i. e.*, \$4,500 per annum as full pay, or \$3,000 retired pay from any date he would hereafter be retired; so that the minority of your committee suggests that if it is not the intention of the bill to give pay under or by it, that the words "appointment under it," at the last of the bill, be stricken out, and the words the "passage of this act" be inserted.

The minority of your committee is pleased to adopt the able report of the minority of the Committee on Military Affairs of the 46th Congress on a similar bill for the relief of Mr. Porter, and to make it a

part of this report so far as it applies to this bill under consideration, viz, as expressing in the main our views:

[House report, No. 129, 46th Congress, second session.]

VIEWES OF THE MINORITY:

The minority of the Committee on Military Affairs submit the following report, giving some of the reasons why they cannot approve and support House bill 2976. That bill, which meets with the approval of the majority, sets aside and revokes the findings of the court-martial by which Fitz-John Porter was cashiered, on the grounds that the findings and sentence "were based in error, and without due knowledge of the facts in the case." It also restores him to the service of the United States, with all the rank and privileges to which he would have been entitled had there been no court. It creates the new and, so far as we know, heretofore unknown position of supernumerary colonel for him, to be held by him until a vacancy occurs, when he is to be regularly assigned; and it gives him the retired pay of a major-general and colonel, amounting, in the aggregate, to the enormous sum of between fifty and sixty thousand dollars.

All this, as the majority say, because he has had a wrong done him; because he has been deprived of the rights of citizenship upon unfounded charges, and because he has been at great expense in vindicating his character and conduct as an officer and soldier from the disgrace and obloquy cast upon him. To each and every one of these assertions the minority of your committee object, and from the conclusions drawn and the bill itself they dissent.

It is with great regret and a very considerable degree of embarrassment that they find it necessary to do so. Regret, because no one can read unmoved the appeals of General Porter; and embarrassment, because the majority have adopted as the basis of their report the finding and recommendation of the board of officers convened by the President of the United States in June, 1878. That board was composed of three distinguished officers of the Army—two graduates of the Military Academy—and naturally, perhaps, its report is entitled to weight. Notwithstanding this, the minority of your committee in the discharge of the duty imposed upon them do not hesitate to antagonize the findings of the board, and to express the opinion that they were based largely upon evidence not fairly or properly applicable to a correct determination of the case.

At all events the record shows that although the board was convened by the President in order that "he might be fully informed of the facts of the case," the information given by it only satisfied him—to quote his language—"that he ought to lay the proceedings and conclusions before Congress." In this shape and in this manner it has reached the Committee on Military Affairs, and with a clear understanding of the apparent presumption of the non-professional and ex-volunteer mind criticising the conclusions of a board of regular officers, we have the honor to submit the following:

In August, 1862, Fitz-John Porter was a major-general of volunteers, colonel and brevet brigadier-general in the regular Army, and in command of the Fifth Army Corps. For certain alleged offenses he was tried and convicted by a court-martial and sentenced to be cashiered, and on the 21st of January, 1863, the sentence was approved by Abraham Lincoln, then President of the United States. In this connection it is proper to state that the appeal made by Porter to President Lincoln in August, 1863, for a reopening of the case was disregarded, as were the subsequent ones to President Johnson in 1867 and to President Grant in 1869. The charges upon which General Porter was tried were violation of the ninth and fifty-second Articles of War, the punishment for which was death, or such other penalty as a court-martial might inflict. Generally speaking they provide for the punishment of any officer or soldier who disobeys the command of his superior officer, or for the punishment of any officer or soldier who misbehaves himself in the presence of the enemy.

On these charges General Porter was found guilty, was cashiered, and forever disqualified from holding any office of profit or trust under the Government of the United States. His trial was held within a few months of the battle of Manassas, and when witnesses who were present on the side of the national forces were easily obtained. The movements of the armies were fresh in the minds of those interested; the court was composed of men eminent in their profession, six of them graduates of West Point, some intimate personal friends of the accused, and some have become equally eminent in civil life; and nothing has been shown to convince us that they were not honestly anxious to do justice in accordance with their oaths, without partiality, favor, or affection. Porter himself made no objection to the detail of the court, and, in addressing it, said: "Yourselves most, if not all, have known me well."

The proceedings lasted for forty-five days, and many witnesses appeared before it including Generals Pope, McDowell, Heintzelman, Morell, Griffin, Reynolds, Sykes,

Butterfield, and Buford, who commanded corps, divisions, and brigades on the days of the 27th, 28th, 29th, and 30th of August, 1862. In addition, the court had the benefit of the testimony of Generals McClellan, Burnside, Parke, and others, who were not present in the action, but were conversant with some of the facts connected with it, and the accused was represented by distinguished counsel. After a patient investigation the court reached its conclusions, and the minority of your committee, after as careful an examination of the proceedings as possible under the circumstances, do not hesitate to say that they fail to see how from the evidence the court could have determined otherwise. At the time, and perhaps since, efforts were made to make it appear that some scapegoat was necessary for the disasters of that most disastrous campaign. Then, and possibly since, suggestions were made that Porter's trial was a persecution, that it was partisan or political, and that perhaps some one else was aimed at through him. Assertions like these, to which more or less publicity was given by the press, attracted much attention to the case, and in consequence it has been loaded down by all sorts of criticisms reflecting upon many distinguished men, and, in our judgment, foreign to its merits.

The minority of your committee at the outset express no opinion in regard to the wisdom of many, or any, of General Pope's movements, from the time when he assumed command of the Army of Virginia until he relinquished it. Neither do they deem it at all necessary that they should express any opinion in regard to his competency for the place to which the President had called him. Competent or incompetent, he was there by proper authority, and he was General Porter's lawful superior from the time he reported to him for duty. The orders he issued to Porter he had the right to issue, and he also had the right to expect that they would receive unquestioning and cheerful obedience. Almost from the time when Porter disembarked at Aquia Creek and marched from there to the Rappahannock, and until after the battle of Manassas, he kept up a correspondence with General Burnside then and until he reported to Pope, his superior officer. Many, perhaps all, of these dispatches are published in part I of Senate Ex. Doc. 37, 46th Congress, and we invite attention to them to show the spirit in which General Porter marched to report for duty to General Pope, and the spirit in which he received orders, statements, and explanations from him. Complaining, doubting, fault-finding, and critical, they indicate very clearly an utter want of confidence in General Pope, and a determination to sit in judgment upon him, his orders, and his acts. Loyalty to his chief, in the sense that he was to give a cheerful if not an eager obedience and support to him, there was none; but, on the contrary, he manifested so querulous a disposition that even the board which apologizes for him find him censurable in this respect (see paragraph III, page 25, Report of Board of Officers). That he disobeyed positive orders is undeniable; and that he rendered himself amenable to the same strict rule and letter of the law that he was constantly applying to his chief is, in our opinion, equally undeniable.

The excuse or justification for his disobedience is set forth fully in the report of the board, now adopted as the report of the majority of your committee; and its refutation in detail will require more time and space than can be given in this report. Largely, if not exclusively, the board relies for their conclusions, in regard to the second charge especially, upon testimony gathered from Confederate sources since the suppression of the rebellion, to show that on the 29th of August, 1862, Fitz-John Porter deserved well of the Republic by not attacking on or near the Gainesville road. Such an attack, they say, would have been not only a "great blunder," but a "great crime;" failure to attack "saved the Union Army from disaster on that day," and "his conduct was obedient, subordinate, faithful, and judicious."

With deference to this distinguished board, the minority report that those are questions for discussion; that they will be prepared to discuss them before the House and the country at the proper time; and that they believe they can establish by evidence that on that day (the 29th of August, 1862) Fitz-John Porter's conduct was *not* "obedient," was *not* "faithful," was *not* "judicious." They further say that they do not believe that the proper rule by which to judge Fitz-John Porter's conduct is the one that permits the subsequent testimony and statements of Confederate officers to be used to establish his innocence. What he must be held responsible for, in our opinion, is what he knew at the time, not what he has discovered since from Confederate sources. We do not question the right of General Porter to introduce this newly-discovered evidence before the board of officers, because the terms of the order convening it authorizes him to do so; but we do emphatically dissent from the opinion that Confederate testimony is not only to acquit Fitz-John Porter and restore him to his former rank in the Army but to convict the court which tried him.

On the 29th of August he had no information, so far as we can discover, beyond what other Federal officers had of the character of the force confronting him. What he did know, however, was that he was ordered to "push towards Gainesville"; that subsequently he was ordered in express terms to attack; that he failed to do so, and he had the serious problem presented to him throughout the greater part of the day of remaining inactive within striking distance of the enemy, while the thunder of the

guns near Groveton indicated serious work between the enemy and his comrades, but three miles distant on his right. Even if it be admitted that the Confederate testimony and Confederate reports are to determine the right or the wrong of the action of a Union corps commander on the day of battle, or in the presence of the enemy, and they are to be made the foundation for his restoration to the Army and the receipt of a large money award, we deny that those reports are so unanimous or so pertinent as to warrant the conclusions of the board and of the majority of your committee.—(See Confederate General Lee, Hill, Longstreet, and Stewart's report, and others.)

The reference by the board of officers to the action of Porter and his command on the 30th of August, in order, as they state, "to fully understand the case," is, in the opinion of the minority, not only foreign to it, but wholly out of place. His presence on the battle-field on that day was in consequence of a peremptory order, issued in terms so direct and distrustful that it clearly expressed the opinion of his superior officer that he had signally failed in his duty on the 29th. No discretion was possible under it, but the board do not hesitate to say that at first sight it would appear that in his prompt and unhesitating movement under this order General Porter committed a "grave fault." They assume that upon its receipt he was on what they are pleased to call the "field of battle," confronting the enemy "in force," and "holding a position of vital importance to the security of Pope's army." That he was not on the field of battle in the sense sought to be conveyed by the board is shown not only by testimony of witnesses, but by the absence of the usual results of a battle—the record of the killed and wounded in his command. That he was confronting the enemy is true, but the battle had been going on for the greater part of the day, some three miles from him on the right, while he remained inactive or substantially so, confronted by a force that, outside of Confederate sources, we have no reason to believe was large or dangerous. Until the arrival of McDowell at about 12 o'clock, communicating the dispatch of Buford that seventeen regiments and a battery had passed "through Gainesville up the pike towards Centreville," there was nothing to show the presence of anything but cavalry in Porter's vicinity, and it was not until 3 o'clock that the officer in command of the skirmishers announced the presence of a large force in the front. At no time during the day was a reconnaissance in force made or a vigorous effort to develop his strength, and it is mere guess-work to say that the forces reported by Buford passed down the road toward Manassas and in the direction of Porter.

Notwithstanding the conviction that forced itself upon the board that Porter very nearly committed a "grave fault" in obeying the order dated at 8.50 on the night of the 29th, they do, however, conclude that nothing remained but for him to obey. They also assert that the action of the Fifth Corps, on the 30th of August, amply vindicated the character of its chief, and showed to the world that "disobedience of orders" and "misbehavior in the presence of the enemy" could not possibly have found any place in the head or heart of its commander. To this view of the case the minority of your committee also dissent.

The gallant behavior of the Fifth Corps on the 30th did not "vindicate" either the head or the heart of its commander for his conduct on the previous day; but it did vindicate and illustrate the high qualities of the Union soldier, the patient rank and file of the army, who never failed their superiors, and whose patriotism, devotion, and courage are about the only redeeming features of those disastrous days. They fought as they always had fought when the opportunity was given them—well. They died as their comrades had died in the Peninsula, without complaint or repining, and they neither criticised the order, nor were "surprised" at the order, nor hesitated about the order that pushed them against the deadly rifles of the Confederate soldier. They obeyed orders loyally.

For all the purposes of determining the guilt or innocence of Fitz-John Porter on the 29th, his conduct on the 30th has, in our opinion, no more pertinence than had his conduct at Mechanicsville or Malvern Hill. Indeed, it is more than probable that at last, realizing the awkwardness of the position in which he had placed himself by his singular conduct since reporting to Pope, he found it necessary to display more than ordinary zeal and energy when fighting under his immediate and personal command. Whatever his motives, he deserves credit for what he did on the 30th of August; for what he did, or rather did not, on the 29th of August, he deserved censure and punishment; but certainly his action on the second day cannot be made to justify and explain away his conduct on the first, though a distinguished board says it should.

The board of officers also seem to be of the opinion that the actions of the 29th and 30th have been confounded by nearly every one but themselves. To use their own expression, "General Porter was in effect condemned for not having taken any part in his own battle." On this also the minority beg leave to report that they join issue with the board. No one who follows the movements of Porter's corps from the 27th to the night of the 30th can possibly mistake its positions on the important days of the 29th and 30th, or confound it in any way with other troops. The statement made by the board, "that the reports referring to 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," is, in our opinion, not sustained by the facts. In our opinion it is established by official reports made immediately after the battle, as well as by the testimony of witnesses, that a battle of serious proportions was in progress during the greater part of the 29th, the firing swelling and increasing in volume towards the middle of the afternoon.

Every Union official report which we have examined speaks of the early hour at which fighting began on the 29th, of its duration and its fierceness. Not one of the officers from whom we shall quote fails to distinguish between the two days, keeping them clearly separate and apart; and not one in speaking of the action the 29th refers even indirectly to the presence of Porter either in their front, their rear, or on their flank. They all, however, or nearly all, mention the action of his corps on the 30th, and in every case the narrative of the two days is continuous, intelligent, and easily followed. We quote from volume VI, Official Military Reports of the Rebellion, Adjutant-General's Office, and we desire to call attention to the fact that some were written almost on the battle-field, and all, perhaps, within a month of the action.

General Sigel, commanding the First Corps, says, "In the course of about four hours, from 6½ to 10½ in the morning, our whole infantry force, and nearly all our batteries, were engaged with the enemy." At the last hour the "enemy threw forward masses of troops which were driven back by troops of Milroy and Shurz." Schenck's division was then engaged and the enemy was trying to turn the left. "At this critical moment General Kearney arrived on the field and deployed on our right, while General Reno's troops came to our support." "Scarcely were these troops in position when the contest began with renewed vigor and vehemence, the enemy attacking along our whole line from extreme right to extreme left." At 12 o'clock, he then speaks of Reynolds' troops taking position on his left, and at 2 o'clock of General Hooker's troops arriving on the field of battle so that by 2 p. m., according to Sigel, his whole corps, with Kearney's, Reynolds', Hooker's, and Reno's divisions were engaged. General Shurz speaks of "the fire extending along his whole line and that it became lively." This was before 10 o'clock, for at that hour he speaks of Kearney's arrival on the field. Schenck, division commander, states "that before one or two o'clock all his brigades were engaged." General Heintzelman, corps commander, says: "At 10 a. m. reached *field of battle*; at 11 a. m. head of Hooker's division arrived, and General Reno an hour later; that at the request of Sigel he ordered Hooker to place one of his brigades at Sigel's disposition *then hard pressed*."

Kearney, a division commander, who was killed on the first of September at Chantilly, wrote his report of the battle at Centreville on the 31st, but had not time to sign it. It was forwarded by General Birney, who succeeded him. That report states substantially that on the 29th, on his arrival, he was assigned to the holding of the right wing, with his left on the Leesburg road; that during the first hours of combat, on some tired regiments falling back, General Birney, on his own accord, rapidly pushed across to give them a hand. "*In the early afternoon*" General Pope's order was received to send a strong force diagonally to the front to relieve the center in the woods from pressure. General Robinson's brigade, with some other regiments, drove forward several hundred yards, but the center of the main battle being shortly driven, my detachment was obliged to cease to advance. All this appears to have happened before five o'clock, for he says, "At five o'clock, thinking I might drive the enemy by an unexpected attack, I brought up the most of Birney's regiment, changed front to the left to sweep with a rush the line of the enemy. This was most successful. The enemy was rolled up on his right. We took no part in the fighting of the 30th."

General J. B. Carr, of the State of New York, says: "At two o'clock, 29th, Friday morning, received orders to march at 3 a. m., to support General Kearney. A march of ten miles brought us to Bull Run battle-field. *About eleven a. m.* was ordered into position to support a battery where the enemy was engaged with Sigel. Remaining in that position some time, was ordered to send two regiments to relieve Sigel's troops. Did so, and afterwards received orders to take balance of brigade into woods, which I did about *two p. m.*, where I at once engaged the enemy and fought him for a space of two hours, holding my position until ammunition was expended, and about four p. m. was relieved." He was in Hooker's division, and the country knows that Hooker's command, before expending its ammunition, as a rule did some fighting that was more serious than a "sharp combat."

Grover, another brigade commander, says, "Arrived on the battle-field about nine a. m. *The battle had already commenced*, and the brigade was temporarily placed under the orders of Sigel." At three he says he received the order to advance, which was *immediately* obeyed, to carry the embankment, which he did, in a charge that was, perhaps, unequalled in the history of the war. The conflict was hand to hand with bayonets and clubbed muskets, and his brigade broke in succession two lines of the enemy, but the third line swept him back. In this fierce encounter he lost out of five small regiments 41 killed, 327 wounded, and 116 missing.

Even the authority referred to by the Board (Gen. Robert E. Lee's report, pages 519 and 520, Record of Board) speaks of "the battle raging with fury," and of its continuing until nine p. m. He also says that Steuart (the cavalry officer on the right) reported the advance of a large force threatening Longstreet's right; that the brigades of Wilcox were sent to re-enforce Jones, but "no serious attack was made, and after firing a few shots the enemy withdrew." He also speaks of this demonstration as having been made on the right, while a large force advanced to assail the left, Jackson's position. The enemy which he speaks of as having made a demonstration and firing a few shots could have been no other command but that of Porter's, and Lee subsequently says that Wilcox was withdrawn from the right where he had been sent.

From this and other evidence the minority of your committee report that, in their opinion, there was much and serious fighting on the 29th, except in Fitz-John Porter's front, where there appears to have been none. Serious as it was, and reaching the dignity of a battle, according to General Lee, as well as many officers on the Union side, the Board of officers speak of it as a number of "sharp and gallant combats between small portions of the opposing forces." From the best evidence we can gather, Sigel with his corps was engaged on the 29th. Heintzelman with Hooker's and Kearney's divisions were engaged on the 29th. Reno and Stevens's divisions were engaged on the 29th. Reynolds and part of King's were engaged on the 29th, and, in fact, all the available forces were in action on that day except Porter's command and Rickett's division. How long "intervals" there were between the fighting we cannot say; but, judging from the reports of officers engaged, they were neither frequent nor prolonged; and unless those who made them are much mistaken, there was a long list of killed and wounded on the 29th.

When the Board predicts the disastrous consequences that would have followed an attack by Porter at any time after the early afternoon, they enter the field of speculation. There we shall not follow them, but we simply call attention to the reports (p. 519, Board Record, report of General Lee) from Confederate sources, which show that the mere appearance of the head of Porter's column was so threatening that General Lee detached a division to meet it. Who can predict the result had a powerful and well-sustained attack been made by 8,000 or 10,000 men, at any time during the day, on the Gainesville road? On this point we wish to call attention to the opinion of a careful military historian—the author of, perhaps, the best history of our civil war that has been written. With ample facilities to inform himself, and so situated that he can and does write without prejudice or passion, the *Compte de Paris*, in vol. ii, p. 292, of his history, says:

"His (Porter's) attack, therefore, could not have produced the results upon which the commander-in-chief had counted. But neither the impossibility of executing to the letter the order of the latter, nor even the instructions which McDowell may have given him during the day, afford any excuse for his having remained so long inactive in the presence of the enemy, with two fine divisions, while a great battle was being fought in his vicinity. In short, if the road he had to follow was barred against him—if, therefore, he could not cut the enemy's army in two and secure its defeat—it is equally certain that a vigorous attack made by him upon Longstreet's right would have drawn out all the forces of this general, and, by freeing the rest of the Union line, would probably have prevented the reverse which the latter sustained at the close of the day. We cannot avoid, therefore, blaming his inaction at such time and under such circumstances.

"This indifference on the part of Porter to the cannon's appeal, the manner in which he interpreted the orders of superiors, and the tardiness with which these orders reached him, were the inevitable consequences of the confusion we have already referred to in the general movement of the army."

This is the deliberate opinion of a disinterested writer, who, while he accepts the Board's theory that Longstreet was up within supporting distance of Jackson early in the day, still censures in distinct terms the inaction of Porter. Whatever may be the action of Congress on the bill now before it, that this will be the verdict of history the minority of your committee certainly believe.

The minority concede that if the Government does injustice to one of its citizens it should make reparation; but in this case, in their opinion, no injustice has been done. Notwithstanding this, they have concluded to recommend to the House the passage of a joint resolution removing so much of Fitz-John Porter's sentence as prohibits him from holding any office of profit or trust under the Government. Its passage will give him no claim, however, upon his former rank, or upon the Treasury of the United States. Logically, perhaps, the minority should not recommend it, but when we consider that amnesty and pardon have been given to those formerly in arms against the Government, and that the removal of disabilities for offenses certainly as dangerous as his to the perpetuity of the Union are of every day occurrence, the reason for their action in Porter's case are obvious.

One of his complaints is that his sentence is a continuing one, and that he has been

deprived of the rights of citizenship. The passage of the resolution will remove these disabilities, and enable him to remit the whole question to the people, or to some other tribunal than Congress. It is, in our opinion, quite clear that he should not be restored to his former rank in the Army, and that he should not receive the retired pay, amounting to \$50,000 or \$60,000 provided in the bill for his relief; but his restoration to the rights of citizenship is an act of grace and clemency that the Government can do without in any way manifesting its disapproval of the findings and sentence of the court-martial that tried and convicted him. There were periods of his life when his services were of value to his country, and it is but fair, perhaps, that they should be considered now in determining his case; but that they should go to the extent of the relief proposed by the majority would be, in our opinion, unwise, inexpedient, and unjust.

ANSON G. MCCOOK.
B. F. MARSH.
THOMAS M. BROWNE.

All of which is respectfully submitted.

GEO. W. STEELE.
B. W. CUTCHEON.

