Spirit of Jefferson.

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JEFFERSON AND BERKELEY.

Supreme Court of the United States.

December Term, A. D. 1866.

THE COMMONWEALTH OF VIRGINIA
vs.
THE STATE OF WEST VIRGINIA.

Argument of Mr B. R. Curtis, for the Commonwealth of Virginia.

May it please your Honors:

The claim of the Commonwealth of Virginia to jurisdiction over the two counties of Jefferson and Berkeley rests upon a few admitted facts and upon the application to those facts of settled rules of law. Concerning the application of these settled rules of law to these admitted facts there is controversy, and this is the field of debate in the cause. But as to the facts themselves, and as to the rules of law which we assert are applicable to them, there is no room for controversy, and thus far no controversy has been attempted.

To clear the way for argument upon what is a legitimate subject of argument, and to assist the Court to fix upon the questions to be decided, I desire first to state the admitted facts and the settled principles on which the claim of the complainants rests, and then to ask the Court to follow me in an inquiry whether the respondent's counsel have shown these settled principles to be inapplicable to these admitted facts.

These are the facts:

On the twenty first day of January, 1863, the Legislature of the Commonwealth of Virginia passed an act expressing the willingness of the Commonwealth that the county of Berkeley should be ceded to, and become a part of, the State of West Virginia.

On the fourth day of February, 1863, the same legislature passed a similar act expressing a like willingness respecting the county of Jefferson.

Each of these acts contained conditions precedent, which are clearly expressed and in their nature are fundamental conditions. They are: that at the appointed time and in accordance with the legally established usages for ascertaining the will of the people by their votes, the qualified voters of each of these counties should have a safe and fair opportunity to give their votes upon the question of the proposed annexation; that there should be a full and free expression of their opinion thereon; and that the consent of Virginia to the proposed annexation was made dependent on the result of that full and free expression of the opinion of the qualified voters of each of these counties, given upon such legal, safe and fair opportunity.

It is impossible to read the acts referred to without admitting that they contain these requirements as precedent to the consent of the Legislature of Virginia to the transfer of either of these counties.

The bill alleges, and the respondents by their demurrer admit, "that, at the time fixed by the said acts for opening the said polls, the state of the country in the aforesaid counties of Berkeley and Jefferson rendered *it impracticable to open the polls at all the places, or any* CONSIDERABLE PART OF THE PLACES OF VOTING IN THE LAST NAMED COUNTY, OR IN EITHER OF THEM, NOR, IN POINT OF FACT, WERE THE SAME, OR ANY CONSIDERABLE PART THEREOF, OPENED OR HELD, NOR WAS IT PRACTICABLE FOR THE VOTERS OF THE SAID COUNTIES, OR EITHER OF THEM, OR ANY CONSIDERABLE PART THEREOF, TO HAVE NOTICE OF SUCH POLLING, OR TO ATTEND THE SAME, AND IN POINT OF FACT, THEY DID NOT HAVE SUCH NOTICE, AND DID NOT AND COULD NOT ATTEND THE SAME BY REASON OF THE CIVIL WAR THEN AND THERE BEING WAGED AND ACTIVELY CARRIED ON; and, by reason thereof, there could not be, and, in point of fact, was not a full and free expression, or any expression, or any opportunity for any expression of the opinion of the people of the last-mentioned counties, or either of them, concerning such proposed annexation; and, in point of fact, a very great majority of the voters of each of the said counties then were and now are opposed to such annexation."

So that thus far the facts are plain. The Legislature of Virginia was willing to consent that either of these counties should be transferred from the Commonwealth of Virginia to the State of West Virginia, *provided*: that the qualified voters of either of the counties should, after a legal, safe and fair opportunity, fully and freely express by a majority their desire for such annexation. Upon no other terms, and under no other conditions was the willingness of Virginia to make the proposed transfer expressed. Upon the admitted facts these fundamental conditions were not complied with. Not that there was some formal defect in the proceedings. Not that there was an omission to open some one polling place, or that some voters were improperly admitted or excluded; but that from the controlling necessities of the civil war, then actively waged upon the soil of these counties, it was not practicable then and there to open and conduct any voting; that no considerable part of the voters in either of the counties could or did have notice of the proposed polling, or could or did attend the same; in short, that the fundamental conditions on which the Commonwealth of Virginia had expressed its consent to the proposed transfer, utterly and totally failed.

The day appointed for the expression by the qualified voters of these counties of their wish as to the proposed annexation was the fourth Thursday of May, 1863.

On the thirteenth day of February, 1864, a convention assembled at Alexandria, under the authority of that government of the Commonwealth of Virginia which will presently be shown to have been recognized by Congress as the lawful government of the State, and which these respondents are *not in a condition* to deny, and do not deny, was then its lawful government; and that convention adopted and promulgated an amended constitution of government for that State. And the attempt to ascertain the will of the qualified voters of the counties of Jefferson and Berkeley having wholly failed, and the fundamental condition of the proposed annexation not having been satisfied, this constitution expressly included the counties of Jefferson and Berkeley as parts of the Commonwealth of Virginia and extends to them the political and judicial organization of the State.

At this time the civil war still existed and was actively waged and carried on. It is a matter of history of which the Court will take notice, and it is brought directly to judicial knowledge by a proclamation of the President of the United States of the ninth day of May, 1865, to which full reference will be made hereafter, that it continued till the spring of 1865. So that the first legislature of that government of Virginia which was recognized by Congress as the lawful government of that State, which assembled after the close of the civil war, met on the fourth day of December, 1865; and on the second day of its session it passed the act reciting the facts that the fundamental conditions on which the Commonwealth of Virginia was willing to assent to the proposed transfer of these counties had wholly failed, and that no agreement had been entered into, with the assent of Congress, and formally withdrawing, by express repeal, all previous proposals on the subject.

On the tenth day of March, 1866, more than three months after Virginia formally withdrew from the proposed compact, a Congress, in which West Virginia was represented, and Virginia not represented, expressed by a resolve its assent to the transfer of these counties.

These are the facts:

The rules of law on which we rely are as incontrovertible as these matters of fact.

The first of them is in the Constitution of the United States:

"No State shall, without the consent of Congress, *enter into* any agreement or compact with another State or a foreign power."

The second is, that a transfer by one State of a part of its territory and jurisdiction to another State, can be made only by a compact or agreement between them.

It would be difficult to adduce arguments in proof of this proposition. No proof can be more evident than the proposition itself. It is not conceivable how one State can voluntarily proffer a transfer of a part of its territory to another State, and how the latter can accept the proffered transfer without a compact or agreement between them. A compact or agreement is the reciprocal and concurrent consent of two or more parties to a change of rights or interests. That such a compact or agreement was not only necessary to effect this proposed transfer, but is provided for in terms by Virginia, is beyond question. In the act concerning the transfer of the county of Jefferson is this language:

"And *the consent* of this General Assembly is hereby given for the annexation to the said State of West Virginia of such of the said districts, or either of them, as a majority of the votes polled in each district may determine; provided that the Legislature of the State of West Virginia shall also consent and agree to the said annexation."

The act respecting Berkeley is the same in substance. But we are relieved from all necessity of argument on so plain a proposition by the uniform, repeated and explicit declarations of this Court.

In Rhode Island *vs.* Massachusetts, 12 Pet. R. 725, this Court said: "It is most manifest, that by universal consent and action, the words 'agreement,' and 'compact,' are construed to include those which relate to boundary, yet that word boundary is not used.—No one has ever imagined that compacts of boundary were excluded because not expressly named; on the contrary, they are held by the States, Congress and this Court, to be included by necessary implication; the evident consequence resulting from their known object, subject matter, the context, and historical reference to the state of the times and country. No such exception has been thought of, as it would render the clause a perfect nullity for all practical purposes; especially the one evidently intended by the constitution in giving to Congress the power of dissenting to such compacts. Not to prevent the States from settling their own boundaries, so far as merely affected their relations to each other, but to guard against the derangement of their federal relations with the other States of the Union, and the federal government; which might be injuriously affected if the contracting States might act upon their boundaries at their pleasure."

In Poole *vs.* Fleeger, 11 Pet. R. 209, speaking of the power of State to make conventional lines of boundary, this Court declares the right still exists under the Constitution, "guarded in its exercise by the single limitation or restriction, requiring the assent of Congress."

In Florida *vs.* Georgia, 17 How. 494, it was declared, "By the 10th section of the 1st article of the Constitution, no State can enter into any agreement or compact with another State without the consent of Congress. Now, a question of boundary between States is, in its nature, a political question, to be settled by compact made by the political departments of the Government. And if Florida and Georgia had, by negotiation and agreement, proceeded to adjust this boundary, any compact between them would have been null and void, without the assent of Congress. This provision is obviously intended to guard the rights and interests of the other States, and to prevent any compact or agreement between any two States, which might affect injuriously the interest of the others. And the right and the duty to protect these interests is vested in the General Government."

The recent case of Massachusetts *vs.* Rhode Island is instructive, because it involved the action of Congress as well as of this Court. The case is not reported, no action adverse to either of the parties being had by the Court.

The suit was originally an adverse suit brought by Massachusetts against Rhode Island to determine and fix a part of the boundary line between the two States, and to restore to Massachusetts jurisdiction over the territory in dispute.

After the answer of Rhode Island had been filed, contesting the pretensions of Massachusetts, the two States, through their authorized commissioners, whose acts were approved by the Legislature of each State, made a conventional line of boundary, the establishment of which would operate to make mutual cessions of territory by way of exchange. The two States *united* in requesting Congress to sanction their proposed compact and in requesting this Court to establish by its decree the proposed conventional line. By an act passed February 9, 1859, (11 Stats. at Large, 382,) Congress empowered the Attorney General to intervene in the cause, and consent for the United States "to the conventional line to be agreed on by the parties;" and upon such consent being given, this Court passed the decree establishing the proposed line.

Some attempt is made in the printed argument filed by the counsel for West Virginia to show that in several instances there referred to, occurring before 1820, States had adjusted disputed boundaries without the consent of Congress. But these precedents will not be found to have any tendency to prove that it was understood by the States concerned in them that one State could *cede territory* to another State without the consent of Congress. Doubtless, the parties have as complete power to find and mark a disputed boundary, and to establish it by their several and solemn admissions of its correctness, as this Court has to find and mark and establish it, when it is in dispute, without the consent of Congress; and this is the character of the acts referred to. They do not purport or pretend to establish a merely conventional line, but to ascertain and mark an existing line. Such action rests on the existing rights of the parties, and not on a compact by which new rights are created.

It is asserted in the printed argument of the counsel for West Virginia—and the assertion has been repeated here at the bar—that States may legislate concurrently upon a variety of subjects, such as lines of railroads, bridges, ferries and the like, without the consent of Congress. This is not denied.

But whether concurrent legislation of two States requires the consent of Congress depends on the object of the concurrent legislation and upon what is requisite to effect that object.

If the only purpose is severally to exert the legislative power of each State in a particular way, so that some object, in which each has its own interest, can be better accomplished, and each State retains its own unrestricted powers, and no relation whatever arises, or is to arise between themselves, such legislative action does not require the assent of Congress, for the plain reason that no compact is contemplated or necessary to effect all that is proposed. But, if the object of the concurrent legislation is a cession of territory by one State to another State, inasmuch as this can only be effectually done by the reciprocal and *united consent* of each State, given so as to be binding on both, that is, by a compact or agreement, then, by the express terms of the Constitution, the consent of Congress is necessary.

I respectfully submit to the Court that we have advanced as far as this upon firm ground; that a transfer of the territory and jurisdiction of these two counties from the Commonwealth of Virginia to the State of West Virginia could be made only by a compact or agreement, which the two States were prohibited from entering into without the consent of Congress.

It is most material to observe how the Constitution has left this power of the States to contract with each other. As was stated by this Court in Poole *vs.* Fleeger, in 11 Peters' R. 209, the States, if not restrained by the Constitution, would have had the same capacity to make compacts concerning their territory and jurisdiction as other independent States. It was deemed wise to restrain this power. Different modes of restraint were practicable. One was to leave the States free to make compacts with each other, which should become finally binding only when ratified by Congress. This would have placed the States, in respect to their capacity to make compacts with each other, on the same footing as independent nations, contracting through agents having full powers, except that the power of ratification would have been in a third party. If the Constitution had been thus framed, States might have entered into compacts, and been so far bound by them, before ratification, as independent nations are now understood to be bound by a compact made by their respective representatives, having full powers. And it may be remarked in passing that in that case, before ratification, either may withdraw its consent, if it shall appear that from mutual mistake and without any deception, conditions known to both parties to be essential, have not been complied with.

Lawrence's Wheaton, 452, and Note.

But in point of fact the constitutional restraint on the power of the States goes much further than this.

"No State shall, without the consent of Congress, enter into any compact or agreement with another State."

It is not the requirement of some act to be done by a third party to give complete validity and effectual operation to a compact, leaving the parties free to make one.

It is a prohibition to contract. It is a disability to *enter into* the relation of parties to a compact. They may negotiate; they may ascertain and express a mutual willingness to agree to the same thing, but this is all; they can "*enter into no compact or agreement*."

It is said Congress may assent after the States have framed and settled the terms of their compact. Not only is this true, but it may be correctly said that, considering the evident purpose of the Constitution in requiring this assent, Congress should never give it until the terms of the proposed compact have been fully framed and settled.

But the time when Congress may give its consent is not material. The essential fact is that, until its consent is given, no compact or agreement has been *entered into* by the States; the relation of contracting parties does not exist; the obligation of a contract has not been created.

The effect of this provision of the Constitution is to render the consent of three parties absolutely necessary to the formation of a compact or agreement between two States. And it is a principle of universal application in all systems of law, whether public or municipal, that, to form an effective compact or agreement, there must be a reciprocal and concurrent consent of all the parties whose consent is necessary. Not that the consent of all must be *signified* at the same time.—One may express its consent to-day, another to-morrow, the third the next day. But the consent of each must be an existing fact down to the moment when, by the consent of the third necessary party, there is brought into existence a union of the three minds. And if, before any compact is entered into by such reciprocal and concurrent consent of the three parties, one of them withdraws its assent and refuses to proceed further, there can be no compact or agreement entered into. If this can be made clearer by reasoning than it is upon a mere statement of propositions so plain, let us inquire *at what point of time* Virginia is supposed to have entered into the compact necessary to cede a part of its territory. Certainly not before the assent of Congress was given. The constitutional disability to enter into any compact or agreement fixes that, and the only remaining supposition is that Virginia *entered into* a compact to cede these counties at the time when the assent of Congress was given, although before that time the Legislature of Virginia had, for ample and sufficient reasons, repealed all enactments looking to such a compact, and had clearly and expressly declared that no such cession should be made.

In another connection I shall have occasion to refer more particularly to the sufficiency of those reasons, and to the nature and extent of the power of Congress in reference to compacts between States. Here it is enough to say, that when Virginia withdrew its assent, no compact existed, and none could be made afterwards without its assent.

I now desire the attention of the Court to the grounds assumed by the counsel for West Virginia.

The first position is, that, if this cession of territory by Virginia to West Virginia could be made only by a compact or agreement, the consent of Congress thereto was not required by the reason or spirit of the Constitution, because only the States of Virginia and West Virginia can have any interest in its subject-matter, and they adduce reasons why this cession of territory can affect neither the United States, nor any other of the several States of the Union.

These reasons may or may not be sufficient. Whether sufficient or otherwise is purely a political question, which this Court has neither the means nor the authority to determine. It depends on no system of law which this Court can administer. It is too clear for argument, that Congress alone has authority to decide it. The Constitution does not say the States may enter into such compact as this Court may consider concern only the parties to the compacts; but no State shall enter into any compact with another State without the consent of Congress.

But it is insisted that Congress did give its consent to the cession of those two counties by Virginia to West Virginia when Congress admitted West Virginia to the Union.

This assertion is rested on two provisions, existing in the Constitution of West Virginia, when that State was admitted into the Union by Congress.

The second section of the first article of the Constitution of West Virginia offered to the people of the proposed State for their adoption, contained a clause, that if a majority of the people of a district, composed of the counties of Pendleton, Hardy, Hampshire and Morgan, should vote in favor of adopting that Constitution, that district should be included in West Virginia; and if a majority of the people of another district, composed of the counties of Jefferson, Berkeley and Frederick, should also vote in favor of the adoption of that Constitution, and the first district should be included, this last mentioned district should also be included in West Virginia.

A majority of the people of the district first named did vote in favor of the adoption of that Constitution; and, when the assent of the Legislature of Virginia was given to the formation and erection of a new State within the jurisdiction of Virginia, the district first named, composed of the counties of Pendleton, Hardy, Hampshire and Morgan, *nominatim*, is included within the limits of the proposed new State, to the erection and formation of which, Virginia, by its Legislature, assented.

But a majority of the people of the other district, composed of the counties of Jefferson, Berkeley and Frederick, did not vote in favor of the proposed Constitution; and the last-named district was excluded from the limits of the proposed new State by the act of the Legislature of Virginia assenting to the formation and erection of a new State within the jurisdiction of Virginia.

And when the new State was admitted to the Union, the act of Congress (12 Sts. at Large, 633), reciting the consent of the Legislature of Virginia to the formation within the jurisdiction of the State of Virginia of a new State, consisting of certain enumerated counties, and including Pendleton, Hardy, Hampshire and Morgan, but excluding Jefferson, Berkeley and Frederick, thereupon admits that new State into the Union.

These are the facts; and the argument is that Congress, by admitting the new State, gave its assent to that provision of its constitution which looked to the acquisition of the three counties of Jefferson, Berkeley and Frederick, and that, if the people of two of those counties have *since* voted to become part of the State of West Virginia, this action is within the consent of Congress.

But this argument is founded on a total disregard of the substantial facts. This second section of the first article of the Constitution of West Virginia was merely *a proposal* addressed to the people of two distinct districts, on which they were invited to act. The people of one district accepted the proposal. The people of the other district did not accept it. The first district became a part of the new State so far as the constitution of West Virginia could make it a part thereof, and the Legislature of Virginia included it in its assent, and Congress included it in its admission to the Union. The people of the other district did not accept the proposal; and therefore neither the Constitution of West Virginia, nor the assent of the Legislature of Virginia, nor the consent of Congress, had any application whatever to this second district. It was no more a part or even a proposed part of West Virginia, by reason of anything in the Constitution of West Virginia, than by reason of the assent of the Legislature of Virginia or the consent of Congress, each of which excluded it.—For though the second section of the first article of the Constitution had proposed to include it, the proposal was accompanied with conditions which were not complied with; and when that Constitution was presented to Congress the proposal had already been rejected, and had no significance or effect whatever.

And the only argument left to the counsel is this: that because the proposed new State had once offered to include this district on certain conditions, which offer had been declined, so that it came to naught before the State applied for admission; yet Congress, when it admitted the new State, consented that this district might be included in it.

It is plain that Congress assented to the admission of the new State of West Virginia to the Union with certain described territory which excluded the district now in question: that if Congress had any knowledge of a proposal in the Constitution of the new State to include other territory, it knew it was a rejected proposal—and therefore that it was in no way called on to consider, and, in fact, could not have considered the question, whether the territory now in question should be allowed to belong to the new State. It did not belong to the new State. It did not belong to the State, and therefore Congress could not have passed on the question whether it should or should not be a part of it.

Indeed, the learned counsel cannot and do not so contend. What they say is that because West Virginia in its proposed Constitution held out to the inhabitants of this district an opportunity to become a part of the new State, which opportunity they did not accept, Congress, by admitting the new State to the Union, must be considered to have given its assent that at any time thereafter and under any circumstances which might exist, not only that district, but any of the several counties of which it was composed, might be ceded by Virginia to West Virginia; and that such cession might be made, not on the terms held out by the second section of the first article of the Constitution of West Virginia, that a majority of the voters of the district composed of the three counties of Jefferson, Berkeley, and Frederick, should vote in favor of the proposed Constitution, but only if a majority of the voters of some one or more of these counties, severally, should vote in favor of annexation to West Virginia.

How Congress can be supposed to have assented to something which, so far as appears, had not then been conceived of, and which is greatly and substantially different from anything which had then been conceived of, I leave the learned counsel to show.

The counsel for West Virginia also rely on another clause found in the constitution of that State when it presented itself to Congress for admission to the Union, which is in these words:

"Additional territory may be admitted into and become part of this State with the consent of the Legislature."

When a new State formed and erected within the jurisdiction of an existing State presents itself to Congress for admission to the Union, that body has four things, and four things only, to consider. The first is, whether the legislature of the State within whose jurisdiction the new State has been formed, has given the consent required by the Constitution. The second is, whether its constitution is a republican form of government. The third is, whether that form of government has been freely, fairly and deliberately adopted by its people. And, lastly, whether the interests of the United States require the admission of the new State to the Union.

Particular provisions of the Constitution of the new State, having no connection with either of these four subjects, are wholly aside from the consideration of Congress. They concern exclusively the people of that State. What powers they may choose to confer on the legislative, executive or judicial branches of their government, so long as such powers are in harmony with a republican form of government, and can have no prejudicial effect on the interest of the Union, is a matter for the people of the State alone to determine. And when Congress admitted the State of West Virginia into the Union, it must be considered that Congress did not find it inconsistent with the general interests of the United States, or with a republican form of government, that the people of West Virginia should grant to the legislative branch of their government the power to consent that additional territory should become a part of that State.

It must be conceded that the admission of the State to the Union did express the consent of Congress, that the people of the State of West Virginia might properly confer on their Legislature all the power they could confer to acquire additional territory. But surely it is a groundless assumption that Congress thereby gave its assent that the new State might acquire additional territory in a manner prohibited by the Constitution of the United States. Did Congress assent that the new State might wage war, and acquire additional territory by conquest? This will not be pretended, for each State is prohibited by the Constitution from waging war. But not more expressly than from acquiring new territory by a compact, without the consent of Congress to that compact.

Congress consented that the people of the State might confer on their legislature all the power to acquire additional territory which that people had, but not all the power Congress had to assent or dissent when the case should be formed so as to be intelligently acted on. Congress had no ability to make such a grant of power. It is imperatively bound by the Constitution to have before it some particular compact for its assent or dissent; and a general license to a particular State to make any and all compacts with any other State for the acquisition of territory, without the consent of Congress would be futile.

And it would be something which there is no plausible reason to contend that Congress intended to do in this case. The act admitting West Virginia to the Union expressly declares, as all such acts do, that it is admitted "on an equal footing with the other States in all respects whatever." What ground is there for the assertion that, instead of being on an equal footing with the other States in all respects whatever, it came in with an unlimited license to make compacts to acquire territory without the consent of Congress?

We have now arrived at a distinct train of argument, which, while it admits that the territory and jurisdiction of these two counties could be ceded and acquired only by compact, and that the consent of Congress to such compact was necessary, endeavors to establish that the the resolve of Congress, giving its assent to their cession, passed March 10, 1866, *more than three months* after Virginia had withdrawn from the proposed compact, was effectual to complete the transfer.

The first position is that this resolve, expressing the consent of Congress to the cession of these two counties is a *curative law*, which relates back to the moment of time when the two States had agreed on the cession of this territory, and makes the compact, then in fact existing, valid and complete from that moment.

It is respectfully submitted that this position rests only on a misconception of the respective powers and functions of the States and of Congress under the Constitution; and that it will be completely untenable as soon as those powers and functions are clearly seen.

It is the obvious meaning of that clause of the Constitution which relates to compacts between the States, and so it has been repeatedly declared, by this Court, that the States retained the same powers to make compacts with each other concerning their respective territory and jurisdiction as belong to independent nations, subject only to the restriction placed on such compacts by the Constitution.

That restriction is a positive prohibition to enter into any compact or agreement without the consent of Congress.

On the one hand two States cannot, by their own will, form a compact. On the other hand Congress can neither make a compact for two States, nor in any particular change the stipulations or terms of any such compact. Its function is simply and solely to assent to, or dissent from, what two States are willing to agree on.

This is not only apparent on the face of the Constitution itself, but has been so declared by this Court, in Green *vs.* Biddle, 8 Wheaton and Rhode Island *vs.* Massachusetts, 12 Peters.

Congress, then, has no general legislative power over the subject of State compacts.

In the language of this Court (12 Peters, 726,) the power of Congress "is limited in express terms to assent or dissent when a compact or agreement is proposed to them by the States."

With the exception of this power to assent or dissent to a compact otherwise complete, Congress has no more control over anything necessary to the formation of a valid compact between two of the States of the Union, than it has to control the formation of a compact between two foreign and independent nations.

The States alone have the control over whatever is necessary to the formation of a compact save the assent of Congress; they alone have power, each acting for itself, to "enter into" a compact. Neither can exert this power without the consent of Congress. But whether exerted, or not exerted, must depend solely on the will of each State.—Whether so exerted as to amount to a concluded agreement, must depend solely on the will of each; and if what has been done by one of them, before the power to enter into an agreement or compact springs into existence by the consent of Congress, is not sufficient to amount to a concluded agreement on its part, Congress can no more make it sufficient than it can make the supposed compact. Indeed, if it could, against the will of one of the States, make that a compact which that State then expressly and distinctly dissented from, then it would exert a power not to consent that the two States might enter into that compact, but to make a compact for one of them against its will.

The fallacy of the argument comes to the surface with the terms used in stating it.—The position of the learned counsel for West Virginia is this: "The effect of the resolution" (of Congress) "is to legalize the transfer from the time it was *completed by the action of the States*." It relates back to the time of the transaction which it ratified, and has the same legal effect as if it had been passed on the day the State of West Virginia accepted the transfer."

This assumes there was a "transfer completed by the action of the States." How could there be a transfer of territory from one State to another State completed by the action of the States at a point of time when the Constitution prohibited these States from "*entering into* any compact or agreement."

At the time when it is falsely assumed the two States were agreed to make and accept the transfer, they were incapable of doing so.

There was no agreement between them. Virginia was willing to agree to the cession, provided certain conditions should be complied with.

Even in the distressing and overruling necessities of the civil war, by which the people of the State were oppressed, the legislature was not unmindful of the duty of every civilized State to preserve its territory and protect its people; and not to alienate them by cession save under the pressure of some necessity, or for their own advantage with their own consent. This consent was made a condition. With it, ascertained by means then thought sufficient, Virginia was then willing to consent to the cession. But when it became known that this fundamental condition had not been complied with; that the means provided by the legislature to ascertain its performance, had through fraud and deception proved wholly inadequate; and that the cession if made, would be against the will of the people of those counties, then with as much clearness as language is capable of, Virginia dissented, and wholly withdrew from the proposed compact. What completed agreement then existed for Congress to assent to? Manifestly none.

It remains to advert briefly to the last position on which the counsel for West Virginia rely, to show that the necessary compact existed between the two States.

It is that the resolve of Congress, passed March 10, 1866, is conclusive evidence that at its date the two States were agreed upon the cession of the territory and jurisdiction of these two counties.

As some reliance is placed on the particular terms of this resolve it is necessary to see what its terms are.

"That Congress hereby recognizes the transfer of the counties of Berkeley and Jefferson from the State of Virginia to West Virginia; and consents thereto."

The argumint is, first, that this resolve "was manifestly designated to have a retrospective operation and to overreach any attempt which might have been made to invalidate it." and secondly, that as Congress can only consent to an existing compact between two States, this resolve concludes all inquiry here by this Court upon the question whether there was a compact then existing between the two States.

The first branch of this argument has been partly answered. It has been shown that the only power of Congress is a power to assent or dissent when a compact is proposed by two States.

If this resolve was, either manifestly or covertly, designed to have any other operation than this; if, as is asserted, it was designed to *overreach* any party, or to accomplish anything, except a simple assent to a compact actually and freely proposed by two States for the assent of Congress, then it was designed to accomplish something not within the powers of Congress. Whatever may be its language, the only power of Congress was the power of assent or dissent to a compact into which two States then desired to enter. The power to overreach one of the States; the power to control its action; the power to disregard its dissent, and to convert it into its assent, did not exist, and it would not be so respectful to Congress as this Court certainly will be, to attribute to it an intention to attempt to do what surely it ought not to have desired to do, and had no power to do, even if it had so desired.

If the two States desired the consent of Congress that they might "enter into a compact or agreement" when this resolve was passed, there was a subject matter on which the resolve could constitutionally operate. If, at that time the two States were not fully agreed on the subject-matter of the resolve, by force of it, they might thereafter "enter *into*" the compact or agreement it contemplates. But the consent of Congress that two States may enter into a compact or agreement cannot make such a compact or agreement, or take the place of that free consent of either

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of them which is necessary to constitute a compact or agreement between them.

Let us not lose sight of the essential ideas which belong to the subject. The contracting parties are the two States. Though they cannot become contracting parties without the consent of Congress, though they cannot "enter into" any compact or agreement without that assent, they alone can frame the compact; and, if they do not mutually and concurrently agree, at a time when they have capacity to *enter into* an agreement, there can be no agreement. And, under the Constitution, Congress has no more power to supply the want of the consent of one, or by its will to treat the dissent of one as its assent, than it has to supply the consent of both or treat their joint dissent as their joint assent.

But the learned counsel insist that the resolve is conclusive evidence that a compact or agreement of cession was in point of fact proposed to Congress for its assent, and was before that body for its assent, at the time the resolve in question was passed; and that this Court cannot inquire and judicially ascertain whether the two States were then agreed on the proposed cession.

The substance of this argument is, that because Congress has given its assent to the transfer of the territory and jurisdiction of these two counties by the one State to the other State, there can be no inquiry here whether the two States, or either of them also assented.

Let it be remembered that this technical objection to preclude inquiry is made in a case in which it has been already shown, upon admitted facts, that there was no compact or agreement entered into by the two States to transfer this territory.

It must also be remembered that whether, upon admitted facts, a compact or agreement was concluded between the two States, is in this case, and under the powers possessed by this Court, purely a judicial question. It depends exclusively on the public law which governs compacts of independent States, modified only by the Constitution of the United States.

Upon this judicial question, it is expected this Court will decide that because of this resolve of Congress, there was a concluded compact between two States, when it knows there was not such a concluded compact.

The first and most obvious practical objection to this assumption is, that, in effect, it confers on Congress the power to *make* compacts between States, which this Court is bound judicially to declare the existence of, and to engage the executive power to carry into execution.

It is not possible to stop short of this. If Virginia in this case cannot call on this Court to decide upon admitted facts and principles of law known to the Court, whether a concluded compact existed, because Congress has given its assent to such a compact, neither could West Virginia make a similar requirement. If one party is estopped either or both are estopped, in this and all other cases in which the existence of a concluded compact comes in question; and in no case can this Court inquire into the existence of a compact between two States, if Congress has given its consent to a compact.

And the necessary result is, that in place of the powers of States to make compacts with each other, which this Court has declared were preserved by the Constitution, subject only to the consent or dissent of Congress, we have the power of Congress to declare that compacts exist, and then to consent to them, and so to end the matter.

It is respectfully but confidently submitted that no such estoppel binds the States or the action of this Court upon their compacts.

Whether a binding compact has been made between two States is purely a judicial question. The consent of Congress is necessary. It may be given before, or it may be given after the two States have finally assented.—The order in which the three necessary parties may finally severally consent, is not fixed either by the Constitution, or by the nature of the transaction. Each of the three parties must concurrently consent. And the consent of each at such time and under such circumstances as the law requires, is a mere matter of fact, which, when shown, is to have its just and proper legal operation. But the consent of one of the necessary parties can have no just or proper legal operation without the consent of the other necessary parties; and this is equally true of each of them. The consent of Congress can no more dispense with or stand legally in the place of the consent of either of the States, than the consent of the States can stand legally in the place of the consent of Congress, and no technical rule of estoppel can supply the want of one any better than it can supply the want of the other.

With these principles there is nothing in the resolve of Congress which necessarily conflicts.

"Congress hereby recognizes the transfer of the counties of Berkeley and Jefferson from the State of Virginia to the State of West Virginia, and consents thereto."

Having in mind that the only power of Congress was to assent to a compact of transfer proposed by the two States, and that Congress could neither make a transfer nor assent to one unless the two States were consenting thereto, the only interpretation of this resolve respectful to Congress is, that it gave its assent to the transfer, provided the action of the two States had been, at the date of the resolve, *or should be after its date*, such as to effect the transfer with the assent of Congress. To assume that it meant to assent to a transfer though there was not then existing, and though there should not afterwards be any concluded agreement between the two States, is to attribute to Congres the intention to assert power it did not possess; and the only other alternative is equally objectionable. It is that because the Constitution had conferred on Congress power to assent to or dissent from the compacts of States, this Congress arrogated to itself the judicial power to determine, conclusively, that there was a concluded agreement between two States, awaiting only its consent to be made legally binding on the parties.

It is submitted that neither of these assumptions is admissible. Congress did not intend to adjudicate upon the existence of a concluded agreement, nor to enact that an effectual transfer of territory might be made, against the will of either of the States, whose concurrent consent was necessary to that transfer.

I have now to consider some grounds of defence to this bill, which we certainly had not anticipated would be assumed by West Virginia, but which we have no reluctance to submit to the judgment of this Court.

The first of these is, that the Legislature of Virginia which passed the act of December 5, 1865, repealing all former laws relating to the proposed cession of these counties, and finally withdrawing from the proposed compact, *was not the lawful legislative power of the State of Virginia, and this act cannot be treated by this Court as a law.*

By the 3d section of the 4th article of the Constitution "no new State shall be formed or erected within the jurisdiction of any other State, without the consent of the Legislature of the State concerned, as well as of the congress."

The act of congress (Dec. 31, 1863, 12 Sts. at Large, 633), for the admission of West Virginia to the Union, recites: "Whereas *the Legislature of Virginia* by an act passed on the 13th day of May, 1862, did give its consent to the formation of a new State *within the jurisdiction of the said State of Virginia.*"

From this act the following are inevitable deductions:

1st. That on the 31st day of December, 1862, there was a "State of Virginia."

2d. That the new State was to be formed "within the jurisdiction of the said State of Virginia—out of that portion of Virginia known as West Virginia."

3d. That there was a "Legislature of Virginia" capable of exercising one of the highest functions of legislative power, by assenting to the erection of a new State within the jurisdiction of the State of Virginia.

It is admitted on the brief of the defendants' counsel, that Virginia had a government which was recognized by Congress until the close of the 37th Congress, and a part if not all the 38th, Congress; but it is asserted that the Legislature which met on the first Monday of December, 1865, Congress has steadily refused to recognize.

It is plain that when Congress has once recognized a government as lawfully established in a State, no further recognition is necessary for any judicial purpose so long as that same government is perpetuated, according to the forms and by the means provided in its Constitution. Under all American Constitutions those representatives of the people who personally exercise legislative power, cease to hold their offices at fixed times, and are either re-elected or others chosen in their stead. But these changes of the natural persons who represent the people in legislation are not changes of the established government. They are changes in conformity with the organic law of the government and which that organic law *must* provide for to be republican in form. The government of the United States is the same government as went into operation in 1789, though there have been forty different Congresses assembled under it.

It is manifest therefore that a recognition by Congress, in 1862, of the Legislature of Virginia as then the legislative power of a lawfully established government of that State in the Union, is a recognition not of a particular body of natural persons, but a recognition of a lawfully established Constitution of government, republican in form, and capable of perpetuating itself through elections by the people, and so long as that same government, without any essential change in its organic law, has perpetuated itself through regular election made in conformity with its organic law, so long the effect of the recognition necessarily continues. For notwithstanding the changes in the natural persons who exercise its powers, the government which was recognized continues unchanged—the same in 1865 as in 1862.

That the government of Virginia, recognized in 1862, has perpetuated itself by regular elections, made in conformity with its organic law down to December 5, 1865, when the act withdrawing the consent of Virginia was passed by its legislature, is not capable of question.

I do not suppose this involves any matter of fact of which the Court will not take judicial notice. If it does, all such matters of fact are confessed by the demurrer to the bill, which alleges that this act was passed by "the Legislature of the State of Virginia.

But I suppose the Court will take judicial notice and make judicial presumptions concerning all facts and laws necessary to cover this question whether the same government recognized in 1862 had been regularly perpetuated down to December 5, 1865.

The case is this: In 1862, by the recognition of Congress, there was a lawfully established government of Virginia, republican in form, having as one of its branches a legislature.

That government was organized under a written constitution, of the existence and contents of which this Court has judicial knowledge. That constitution provided for elections by the people of senators and representatives at stated times. And when it appears, as it does by the allegations of this bill, that by the Legislature of Virginia, on the 5th of December, 1865, the act now in question was passed, the presumption, *omnia rite esse acta* covers the whole ground. This legislature must be taken to have been duly elected, assembled and organized so as to pass *this* law, as clearly as the Legislature of Massachusetts was presumed to have been duly elected, assembled and organized to pass the prohibitory liquor laws, on which this Court has recently acted.

Indeed no question is made on this subject by the defendants' counsel. What they rely on is not that the same government, recognized by Congress in 1862, as the lawfully established government of Virginia, was not continued in existence without any change whatever down to December, 1865, but that Congress *withdrew its recognition of that government.*

Their argument is, that Congress passed a "concurrent resolution" on the second day of March, 1866, declaring that no senator or representative should be admitted into either branch of Congress from the State of Virginia.

The first answer to this is, that if this were a mortal blow, it was not struck until more than three months after the act in question was passed by the Legislature of Virginia. The date of that act was December 5, 1865; that of the "concurrent resolution" was March 2, 1866.

Certainly it is incumbent on defendants to show not only that the recognition of this existing government of the State of Virginia by Congress was at some time, and to some extent, or for some purposes withdrawn, but that it was at such a time, to such an extent, and for such purposes withdrawn, that this Court cannot recognize the act of December 5, 1865, as a valid law.

The defendants rely on the refusal of each branch of Congress to admit representatives from Virginia. But each branch of Congress is not the legislative power of the United States. Congress can manifest the legislative will of the people of the United States only by a law or resolution to which each branch separately assents, and which is either signed by the President, or passed by the constitutional majority without his signature.

But not to dwell on this, *exclusion* of representatives by the one house and senators by the other house of Congress has no necessary connection with the lawfulness of the State government from whence they come.—Their *admission* necessarily carries with it an assumption that there is a lawfully established State government under whose immediate authority they have been regularly elected.

But their exclusion does not necessarily imply that there is not a lawfully established government capable of legislating for the State concerning its own internal affairs.—Such exclusion may be rested by the majority which sanctions it upon considerations of policy and expediency which have no reference to the question whether the people of a State shall continue to live under a lawfully established government, already recognized by Congress.

It may be thought, that having reference to all the circumstances, it is not safe to admit the people of the State to participate in national legislation by their representatives; or that, inasmuch as they are not now in possession of that privilege, it is expedient not to allow them again to enjoy it, until they shall have complied with certain conditions. Many different motives and reasons may be supposed to act on different minds to induce such a result.

But what necessary connection is there between this result, or the motives or reasons inducing it, and the abrogation of the lawful government of a great State, leaving its people without law? For it must be remembered that if through the action of Congress the legislative power was gone, the executive and judicial powers went with it; and there was no more any law within its borders.

The government recognized by Congress in 1862, was in December, 1865, the *only* government of Virginia. If that was not the lawfully established government, capable of making, applying and executing the laws, then it had no lawful government, and the supposition is, that because each branch of Congress declined to receive representatives from Virginia, for reasons which this Court cannot know, therefore it was the collective legislative will of the people of the United States, that the people of Virginia should have no lawful government at all.

So monstrous a conclusion cannot be reached from the narrow premises afforded by this concurrent resolution of Congress, which has no necessary connection with the existence of a lawful State government, and is fully satisfied if confined to the single and temporary object it proposed.

I have thus far been attempting, I trust successfully, to answer the position that the Legislature of Virginia, which passed the act of December 5, 1865, withdrawing the consent of the State to the proposed cession of these two counties, was not a body which this Court can recognize as capable of passing a law. I respectfully submit the position wholly fails.

FIRST. Because that action of Congress which is relied on was not had until after the passage of this law.

SECOND. Because this action of Congress is consistent with the continuance of the same lawful government of the State, including, of course, its legislature, as was recognized by Congress and the *President as the existing lawful government of the* State at the time West Virginia was admitted to the Union.

But there is a question raised by the argument of the defendants' counsel, of a character much more grave, though I believe it will be found not more difficult of judicial solution than that last discussed.

Their position is, that, though Virginia *was* a State in December 1862, when Congress admitted West Virginia into the Union, yet, by force of the recent legislation of Congress, Virginia is not now a State and, therefore, not capable of prosecuting a suit in this Court under the grant by the Constitution, of original jurisdiction to this Court, which enables States to sue here.

The legislation referred to consists of the two acts of March 2, 1867, and March 23, 1867, commonly called the reconstruction acts, and the argument is, that by force of these acts, Virginia ceased to be a State, and so this suit must fail.

I am not unacquainted with the theories upon which the powers of Congress to pass these acts are rested. They are as I understand them, that a limited government, possessing only the powers granted to it by a written constitution, may, by putting down a rebellion against its authority, acquire the absolute and unlimited powers of a conqueror over a great part of its own territory and people. That it may subdue a part of its people, not to obedience to itself nor to its limited authority, but to submission to a government completely absolute. That it may acquire by arms that unlimited authority over a large part of its territory and its people, which is wholly and necessarily inconsistent with its own nature and character, and with the fundamental principles of its own existence. And that it may hold and exercise this absolute power so long and in such ways and to such extent as may suit its own sovereign and uncontrollable will. And that this unlimited power and this uncontrollable will are vested in and to be exercised by that Congress of the United States which the Constitution created and whose powers it defines. This is the theory of *constitutional law* put forth here, as well as elsewhere, in support of this legislation.

For reasons which will presently appear, I do not intend to enter into any discussion of this general subject. These reasons will show that this case calls for no such discussion. And strong as is my conviction that the entire theory is radically false, and serious as is my apprehension that the action of Congress upon it must hereafter be attended with consequences deeply injurious to the preservation of constitutional government in our country, yet my duty here is to argue no question which this Court is not required to pass upon to arrive at a decision of this cause.

To render clear what the Court is to pass upon, under this branch of the case, it is necessary to bring into view some things already shown, and to connect them with other matters which relate to the same subject.

It has already been shown that in December, 1862, after the civil war had been more than eighteen months in active progress, and after numerous battles had been fought upon its soil, and while a large part of its territory was in the possession of armies hostile to the United States, Virginia was still a State of the Union, having a lawfully organized government recognized by Congress and the executive as in harmony with the Union. This is too clear for controversy, and has not been controverted. West Virginia exists only by reason of its truth.

It has been shown that the lawfully organized government of this State of Virginia, recognized by Congress and the executive as the government of a State in harmony with the Union, was continued and perpetuated in accordance with its organic law until after all forces hostile to that government and to the United States had been subdued.

On the ninth day of May, 1865, (13 Sts. at Large, 777), the President of the United States, in discharge of his constitutional duty to see that the laws of the United States are faithfully executed, issued his proclamation relating solely to the State of Virginia, ordering the Secretaries of State, of the Treasury and the Interior, and the Postmaster General to put in force all the laws of the United States connected with their several departments; and that the District Judge of the United States proceed to hold Courts within the said State in accordance with the provisions of the acts of Congress; and, finally, it is ordered, "That, to carry into effect the guarantee by the Federal Constitution of a republican form of State Government, and afford the advantage of security and domestic laws, as well as to complete the re-establishment of the authority and laws of the United States, and the full and complete restoration of peace within the limits aforesaid, Francis H Pierpont, Governor of the State of Virginia, will be aided by the Federal Government, so far as may be necessary, in the lawful measures he may take for the extension and administration of the State Government throughout the geographical limits of the said State."

On the 22d day of May, 1866, Congress passed an act requiring the Circuit Court of the United States for the District of Virginia, to be held in the city of Richmond on the first Monday of May and the fourth Monday in November in each year; and that the current term of that Court holden at Norfolk might be adjourned to Richmond and be there held.

And this Court has judicial knowledge that since the above mentioned proclamation of the President the Courts of the United States have been regularly open in the State of Virginia; and, since the last-mentioned act of Congress, have been opened and held in the City of Richmond in pursuance of that act.

Nothing can be more clear, than the facts that down to a period after the civil war had wholly ceased, and after the laws and authority of the United States were completely restored there, a government of the State of Virginia, recognized by Congress and the executive as in harmony with the Union, and at all times at peace with the United States, had a lawful existence in and over that State, and long before the dates of this recent legislation of Congress, this government of the State was in the peaceable and full exercise of all its just powers, throughout the entire territory of the State. So that what our opponents have to maintain is, that in time of peace, Congress has power to destroy the lawful government of a State, which government has at all times been in harmony with the Union and at peace with the United States, and has been constantly recognized by Congress and the executive, as being so.

Now, as well as I can understand it, what is glibly called the "war power" has no defined limits in the views of its advocates; but I have not supposed it was understood by any one to extend so far as to enable Congress, in time of peace, to make war by legislation on a friendly State government, and destroy it, and expel from the Union, the State over which it had during the war been established *de jure*, and since the peace, *de facto*. When is this power supposed to be exerted? In March, 1867, when every function of the government of the United States, and of the government of the State of Virginia was as regularly and completely performed within the limits of that State, as at any period of its history. According to the long-established rule, this Court holds that to be time of peace, when the Courts of justice are open, and can peaceably execute their judgments and decrees. But not only was there peace in Virginia by this standard, but by any and every standard of law or common sense, in March 1867.

On whom is this "war power" supposed to be exerted? Upon that regular, established and constitutional government, republican, in form, which was recognized by Congress and the executive in December, 1862, as in harmony with the Union and the Constitution of the United States, and so continuing till the close of the war. A government which the President of the United States by his proclamation of May 9, 1865, declared was to be upheld and maintained by the power of the United States. A government within whose territory Congress, so lately as May 22, 1866, directed courts to be held, which, under the Constitution, can be held only within a State of the Union.

Why is this supposed war power exerted to destroy the government of the State and expel the State from the Union? The only possible reason is, that during the rebellion, this lawful, recognized and friendly government of Virginia, existing *de jure* over the entire territory of the State, did not actually control the whole of its people and territory, so that much the larger part set at naught its authority, and were in arms against it, as well as against the government of the United States. But whose fault was that? Were not the United States bound by the Constitution to maintain and uphold, and make effectual throughout the entire geographical territory of Virginia the authority of the lawful government of that State—the authority of that government of the State which the United States recognized as in harmony with itself—a government entitled by the express words of the Constitution, at all times to be protected from invasion and insurrection? And having failed in the performance of this clear duty, can the United States attribute it as a fault to the lawful government of Virginia, that this duty was not performed, and attach to its own failure of performance the penalties of destruction of that lawful government, and the expulsion of the State from the Union.

Upon the plainest principles, when the United States suppressed the rebellion in Virginia, it suppressed it in the performance of its constitutional obligation, as well to the lawful government of that State, as to the government of the United States. If the word conquest can have any obligation, it was a conquest of territory to restore the lawful government of the State to the actual possession of its constitutional powers, as well as to restore the government of the United States to the actual possession of their constitutional powers.—And the assertion by the United States of an absolute and uncontrollable authority by conquest over the territory and people of that State and over the lawful government of that State which the United States was bound to restore and maintain, is as inconsistent with good faith and with the public law of the world, as it is with the Constitution of the Union.

I deny the power of Congress thus to destroy the State of Virginia; and if it shall be found that this recent legislation of Congress has that extent, I respectfully insist and submit to this Court that Congress exceeded its power.

It does not seem absolutely necessary so to interpret these acts of Congress. However objectionable they may be, and, in my opinion, are, it is not necessary to say that they affect to expel this State from the Union, or deprive it of power to sue as a State in this Court, and certainly this Court will go no further in this direction than it shall find to be absolutely necessary.

Because Congress has undertaken, without constitutional authority to interfere with and control some of the just powers of the State for temporary purposes and to gain particular ends, the Court is neither required to declare, nor warranted in declaring what Congress has not declared, *that there is not a State of Virginia.* Congress has not so declared, consistently or inconsistently. These acts recognize the existence of the State and of its government.

They speak throughout of the States to which they relate, as existing States; they refer to their respective governments as competent to execute their appropriate functions, and though they in terms empower military force in some things to control the action of the State authorities, they nowhere attempt to authorize the military power to destroy a State or its government or to be superior to the action of those tribunals of the United States, which can lawfully exist and act only within the limits of States of the Union.

The learned counsel for West Virginia refers to the impracticability of reconciling military interference with the legitimate powers of the States.—Not unto us is this task committed.

We are not concerned with the consequences of the continued existence of the State of Virginia, but only with the fact of its continued existence.—That we respectfully submit, has been demonstrated. Its consequences will remain to be considered by this Court, in cases and controversies wherein they may be drawn in question. In this case they are not drawn in question.

I must now turn to another branch of the argument, to which I am to reply. It is, in substance, that inasmuch as the State of Virginia committed to its Governor the power to certify the results of the election in these counties of Jefferson and Berkeley, and inasmuch as the Governor was of opinion that the elections were held, and a majority of votes of the people of each county given in favor of its annexation, and he so certified, therefore the Commonwealth of Virginia is *estopped* to assert the facts stated in this bill, that the voting was a sham, and the certificates obtained by fraud.

But the counsel for West Virginia has misapprehended the purpose for which these facts are charged in the bill, and do not appreciate their just relation to this cause and its parties.

This bill is not founded on fraud. It does not ask that a concluded agreement should be set aside by a court of equity, because one of the parties was induced by deception to enter into the agreement.

It is founded on the want of any concluded agreement, because one of the contracting parties seasonably withdrew from the treaty before any compact, capable of changing any rights, had been formed.

The subject of inquiry is a compact between two States, concerning their respective territory and jurisdiction; a subject as to which they had the same rights, and were governed by the same principles of public law as two independent nations, when enabled to enter into a compact by the consent of Congress. And, upon the question whether these two States did effectually make such a compact, it is most material to consider that the willingness to do so, expressed by one of them, was manifestly based upon a condition precedent, which its duty to a part of its people required it to prescribe, and which it plainly and clearly did prescribe. The same duty which required its prescription, required that its performance should be insisted on. And when Virginia ascertained that it had not been performed, that the consent of the people of these counties have not been given, *for that cause* ascertained for itself, and admitted by the demurrer to this bill to have been correctly ascertained, it withdrew its consent to the cession before any compact or agreement had been entered into.

Bound by its own self-respect, as well as by a just regard to the opinions of this high tribunal to justify its withdrawal from the proposed compact, it puts forward these true and sufficient reasons:—That its original consent was conditional; that the condition was expressly coupled with its consent; that it was a condition prescribed by its own duty; that it was manifestly and clearly fundamental—that it had not been complied with—and that the means devised for ascertaining its performance had proved to be ineffectual through fraud and deception: therefore, and not from any want of good faith on its own part, the State withdrew from the proposed compact.

A few words more on one other topic and I shall cease to task the patience of the Court.

The counsel of West Virginia have exhibited to the Court a picture of the deplorable consequences which will ensue if these two counties should be restored to the parent State. Taxes have been collected, courts held, judgments and decrees pronounced, and criminals punished on the territory of these two counties, under the authority of West Virginia. And it is asked will a court of equity set aside a contract when the parties to it, and those claiming under them, cannot possibly be restored to their former condition.

To this there are two answers.

The first is, this is not a bill to set aside a contract, but to obtain a declaration that no contract was ever made.

The second is, that these formidable consequences are all imaginary.

West Virginia is the *de facto* government of these counties. As between the inhabitants of these counties and that State its acts of taxation and of administration generally, are and will remain lawful.

The question raised by this bill is not of the past or present jurisdiction over the people and territory of these counties, but of the future jurisdiction over them, when the decrees of this Court shall take effect and change that jurisdiction. And such a change can have a retroactive effect in this case no more than in any other of the cases which have drawn into question before this Court the boundary of States. If the objection now taken be sufficient to prevent the Court from granting the relief prayed for in this case, it must wholly defeat its settled jurisdiction and control over the controversies respecting boundaries of States—for it applies to all cases and controls all, if it applies to and controls this case.

Loudoun County.

The Leesburg *Washingtonian* of Friday last has the following:

—Registration for the Leesburg District has been in progress since Tuesday last. Up to Thursday at noon 320 had registered, 171 whites and 149 colored. It will close Saturday evening, and we hope all who have not registered up to this time, will come in and promptly do so to-day and to-morrow. We should not permit the Radicals to get control of this precinct, which they will do, unless all who can will register.

—The Rev. Geo. W. Harris, an able and efficient minister of the Baptist Church, who has, for a number of years, preached in this county, has accepted a charge in Shelbyville, Kentucky. Mr. H. will carry with him the best wishes of his numerous friends in Virginia.

—The young gentlemen of Leesburg have organized a Base Ball Club, which game they are rapidly learning to perfection.

—The Martinsburg *New Era* says work has been commenced, and is now progressing, on the foundation of the new Southern Methodist Church in that place. It is the purpose to have the church completed and ready for service early in the Fall.

Spirit of Jefferson.

BENJAMIN F. BEALL, Editor.

CHARLESTOWN, VA.

Tuesday Morning, June 25, 1867.

☞ See the RED MARK. It means your time is up, and you are liable to have your paper stopped at any time. Do not subject yourselves to such a calamity.

JUDGE CURTIS' ARGUMENT.

To the exclusion of our usual variety, we this week present in full, the admirable and conclusive argument of Judge CURTIS, before the Supreme Court of the United States in the case of Virginia *vs.* West Virginia involving the question of jurisdiction over the counties of Jefferson and Berkeley. The interest which our people feel in this question will induce a careful reading of this paper, and we are sure will furnish ample apology for the space which it occupies in our columns.

In the array of facts, the conclusions arrived at, and the force and pungency with which they are presented, this argument is unanswerable and convincing, and without the addition of a single word we should be content to let our case rest with the high tribunal which is now to decide upon it.

We have printed a number of extra copies of the paper containing this argument, which can be had on application at our office.

OUR BIG SHOW.

The Monkeys Stirred.

At some period between the years 1861 and 1865, there located at the county seat of Berkeley, two wandering Yankees, who stuck up their shingles to practice law in the courts established by the Boreman dynasty; and although they came unheralded and without pedigree, they were soon found to possess the necessary requisites to become radical leaders, and they were taken up and placed in position—the one made a senator from this district, and the other prosecuting attorney of the county of Berkeley. Another official or political relation these unknown characters sustain to the public. In Berkeley county the radicals have an organ, and at its editorial head fly the names of these two legal adventurers—Hoke and Wissner. It is not often that we get to see a copy of this sheet, which is misnamed the "*Berkeley Union*," but a friend has kindly placed us in possession of the last number, in which we find the following article:—

THE SPIRIT OF JEFFERSON AND ITS BIG SHOW.—We have had several conversations with prominent men of Jefferson county in regard to the villianous and slanderous articles in the *Spirit of Jefferson*, under the head "Big Show." There is a point at which forbearance ceases to be a virtue, and we will inform the benign, kind, loyal, reconstructed rebel editor, and that known contributor of his, the bushwacker, guerrilla guide, that other *animals* will be shown up if this thing is not stopped; and as Shepherdstown seems to be the place from which they make their selections, we will also make a few selections from the same town, *i. e.*, a few rebels among which preachers who formerly owned their mulatto children, and women of doubtful character, occupying high social positions in the estimation of the F. F. V's., will not be exempted. We dislike exceedingly to enter into personalities, but we want rebel editors to understand that loyal men will be protected from their malicious assaults. A word to the wise, &c.

We do not wish our readers to understand that we intend to nauseate them with a controversy with the paper in question—a controversy which would be damaging to the reputation of any decent journal, but as the article above quoted conveys a cowardly attempt to intimidate us in our work of exposing the radical leaders of this county, we take up the gauntlet that is thrown down, and avail ourselves of the opportunity to give expression to our views and feelings, without fear, favor or affection.

First then, as to the articles which are termed "villainous and slanderous." For nearly two years we have been exposing with an unsparing hand, the rascalities of the leaders of the radical party of Jefferson—those who have been honored with position, and those who have thrust themselves into notoriety.—In all that time we have published nothing that we are not fully prepared to substantiate, and the proof of which is at our command at any day that an issue may be joined. The force of our articles has been the foundation upon which they rested—truth, undeniable and indisputable. To sum up briefly:—

We charged Joseph A. Chapline, one of the Senators of this District and the grand gyasticutis of radicalism in this county, with having purchased goods of a house in Baltimore, for which he gave a check on a Bank in Hagerstown in payment, knowing at the same time that he had no money on deposit in said Bank, and that the check was repudiated by the officers of the Bank, when presented. This charge we can prove, and other acts equally damaging we have yet in the background, and which shall be forthcoming in due time. We have charged Joseph T. McKevitt and and Anthony Turner with unprincipled conduct in the discharge of their duties as members of the Board of Registration of this county. Does any one doubt our ability to prove these charges? Let the issue be made, and we are ready to meet it.—We have charged Byers, a ranting hypocrite of the Northern Methodist church, with having, in the excess of his piety, punched out the eye of a bull and attempting to trade a horse which he knew to be unsound. This is true to the letter, and we are ready to furnish the proof. We charged John Spangler with having exhibited himself to Gov. Wise as a "live Know-Nothing." Hundreds are willing to testify to the truth of this charge, though it is not known that he ever repeated the exhibition. And so throughout the whole series of articles published by us, there has been nothing said about these radical leaders that cannot be sustained by competent witnesses in a court of justice—and this they themselves well know.

And these are the "loyal" men who are to have protection from the assaults of "rebel" editors. As to the character of that protection. Is an attempt to be made to disprove our charges? Is there to be any manly resort to vindicate these craven-spirited "loyalists?" We have no intimation of anything of the kind, but we have a promise of just such protection as poltroons and cowards alone would offer—a threat to invade the private circle, and visit upon innocent persons, punishment for offences which they have had no part in committing. Feeling their inability to rescue themselves from the odium which the exposure of their meanness has brought upon them, they seek to retaliate upon unoffending ministers and females. Let them dare attempt this game, and our word for it, there will be found manliness enough at Shepherdstown to resent and punish the cowardly insult.

We know nothing of the characters of the editors of the Berkeley *Union*, but we have no doubt they are susceptible of successful ventilation, and as they are high in the confidence of the radical party, we shall give ourselves some trouble to ascertain their private histories, so that we may be able to give them that place in the "big show" for which they seem ambitious.

A word in conclusion. We are not to be intimidated or turned aside from our purpose. We started with the purpose of breaking down the radical party, in this county, and we are succeeding. The few decent men who belonged to that party, are becoming ashamed of their leaders, and are quitting the rotten concern. After we have fully succeeded in accomplishing our work at home, we mean to turn our attention to Berkeley county, and we invite the co-operation of the conservative men of that county in the work of overthrowing this political abomination—this incubus upon the prosperity and happiness of the people. Furnish us with the facts, and we will lay them before the people. You have had bond-forgers in your midst. One of them is suffering in his own person the sins of his accessories. Ferret out the participants in this nefarious transaction who are yet at large, and if they are to go unwhipt of justice, let them be branded with a mark as indelible as that of Cain, who slew his brother. We are through for the present, but the "show" will be continued indefinitely.

WASHINGTON COLLEGE.

Among the graduates in law at this institution, we are happy to notice the name of our young and gallant county-man, Capt. GEORGE W. BAYLOR. We hope he may be as successful in his profession, as he was fearless and efficient as a soldier; and if merit be a recommendation to such success, we feel assured that he will attain that eminence to which his talents and energy entitle him.

FIRST NEW WHEAT IN NEW YORK.—The first new wheat of the season received in New York arrived there on Friday last from Augusta, Ga. It was sold at *four dollars per bushel* to a miller in Bridgeport, Conn. This, of course, was a fancy price. Sales of old crop at $2 to $2.65.

[Less than two months ago the cry was rung in our ears that the people of Georgia, and of the immediate vicinity of Augusta, were famishing for bread. This cry was not unheeded, and thousands of bushels of grain and pounds of bacon were sent from our own county to relieve the necessities of the suffering. Now her wheat raisers are sending their new crop to the North, because it commands a high price, on account of its being the first in market. Have the perishing thousands at home been supplied with bread, that this greed for Northern money, and New England money at that, should take possession of her grain growers? Are the sufferings of these people all alleviated? If so, the charity of our people may cease its offices; and if these wants are not supplied, let the people of Georgia keep their wheat at home.

☞ The State Department at Washington appears to have got into a difficulty with Mr. Lewis D. Campbell, the Minister of the U. S. to Mexico. Orders have several times been sent to Mr. Campbell to proceed at once from New Orleans to San Luis Potosi, where Juarez is, and present his credentials to the Mexican government, but for some reason, Mr. Campbell does not go. Early this week it is announced that Secretary Seward telegraphed to Gen. James D. Steedman, now in New Orleans, asking him to accept the mission to Mexico, and proceed to San Luis as soon as possible; but General Steedman, owing to the condition of his private business, declined the appointment. It appears to be the determination of the Government to remove Mr. Campbell as soon as a successor can be found who will undertake the mission.

Affairs in Berkeley County.

From the *New Era* of last week, we copy the following items of local interest in Berkeley County:—

—The Commencement Exercises of Science Hill Female Academy, near Gerardstown, under the management of Miss Bettie S. Payne, which commenced Wednesday night with an Address in the Presbyterian Church, by Hon. Wm. H. Travers, and closed Thursday evening with an Exhibition and Concert.

—The Sheriff of Washington Co., Md., arrived here on Tuesday morning from Wheeling, whither he had gone with a requisition upon the Governor of this State, for the custody of Spidel, (who was confined in this jail,) charged with horse-thieving in the neighborhood of Clearspring, Md. The Sheriff left here with his prisoner in charge, the same day.

—A large concourse of colored persons were in town on Monday, to witness the ceremonies of laying the corner stone of their new church. The ceremonies were conducted by the Masonic fraternity, in the manner usual on such occasions. The Martinsburg Independent Brass Band supplied the music, and a brief Address was delivered by H. H. Blackburn, Esq.

—The Sheriff left on the 9:20 train Sunday night, for Wheeling, having in charge the five prisoners sentenced to the Penitentiary at the last term of the Circuit Court. He took a posse with him.

—Maj. R. H. Glass, of the Lynchburg *Republican*, was attacked by two sons of D. E. Booker on Monday last, and dangerously wounded by a pistol shot in the eye, by which he will certainly loose the sight. The difficulty occurred in consequence of an editorial in the *Republican*, criticising the political course of D. E. Booker, who is now a radical.

The Drinker's Farm Murder.

On our fourth page we publish an article from the Richmond *Dispatch* with reference to this tragedy, which has so long remained enveloped in mystery. In February last the body of a murdered female was found in Drinker's woods, about five miles from the city of Richmond, and although repeated efforts had been made to discover its identity, it is only within the past two weeks that light has been shed upon the dark transaction, and the murderer discovered, as well as the murdered identified. No case has ever excited greater interest in Richmond, and the local columns of the daily papers are filled with the accounts of the preliminary examination of the accused man, who seems to have murdered deliberately and in cold blood, the wife of his choice. The relatives of the murdered woman visited the prisoner in his cell during last week, when the following interview took place. We copy from the Richmond *Dispatch* of Wednesday:—

About an hour after the adjournment, Miss Roxana Pitts and Mr. B. F. Pitts, sister and brother of the missing woman, having arrived in the afternoon train, by request of the magistrates visited the jail, in order to have an interview with the prisoner. We give the conversation exactly as it occurred. The party being ushered into the cell by Constable Cole, Phillips arose and exclaimed:

"How are you, Frank? How are you, Roxy?"

Both drew back, and the brother exclaimed:

"Don't touch him, Roxy!" Phillips repeated: "Don't touch me!" and with head hung, retired to another part of the cell.

Miss P. then asked: Mr. Phillips, where is my sister whom you took from us on the 15th of February?" No reply.

In a moment after the prisoner inquired when Mr. Pitts left home. The latter exclaimed: "Home! what home? whose home?" No reply was given, but Phillips sat down, and Mr. Pitts continued:

"Where is your wife? *Did* you carry her to Surry as you said?" Still no answer.—Miss Pitts then asked in tones which would have touched the sternest heart:

"Oh Jeter, do you remember what occurred in our parlor on the 13th of July?"

"A great many things."

"Do you remember Miss Annie Dishman?"

"I think I ought to."

"Do you remember when you sat upon the sofa and she asked you were you frightened. You told her no, and asked if your voice trembled when you said 'I will.' You said Em was more frightened than you."

The prisoner again hung his head.

Frank Pitts then asked: "Do you remember promising to protect her, saying clearly you would?" Receiving no reply, Miss Pitts asked: "Do you know that Dr. Baynham is with us?"

"I have heard so."

"Can you face him?"

"Yes."

"Can you face *our* mother?"

"Yes I can."

"*Your* mother?"

"Yes I can face any person," he answered, with a slight smile.

Miss Pitts then remarked in a low tone:

"I left at home a heart-broken mother and sister, who have not tasted food since Saturday. You have disgraced one mother and broken another's heart."

Phillips dropped his head, and the lady continued:

"Here we stand side by side, with a just God looking down upon us; can you deny that you murdered my sister?"

"I refer you to my counsel for an answer to that."

"I left at home," continued Miss Pitts, "a mother who wants to know the last words of her dying daughter? What did my sister say?"

The prisoner was still silent, and the party rose—Miss Pitts exclaiming as she looked once more upon the prisoner: "My, God! My God! Could he offer me the hand that clasped my sister's throat?" Phillips turned away, with tears in his eyes.

After the party had left the jail, Miss Roxana Pitts described minutely every article of ladies' apparel in Phillips's trunk.

[At last accounts the examination of Phillips was still in progress, and the circumstantial evidence as to his guilt, is of the most conclusive character.]

DEATH OF A NOTED ARMY OFFICER.—Colonel Thedore O'Hara, of Kentucky, died recently in Alabama, where he had become a farmer. He was known throughout the country both as a soldier and a man of letters. He was formerly an officer in the United States army, and distinguished himself in the Mexican war. Subsequently he was associated with General Lopez in his invasion of Cuba, and was also connected with General Walker in his Nicaragua expidition. During the late war he served in the Confederate army. He was present at the battle of Shiloh, when General A. S. Johnson fell mortally wounded, and held him in his arms until he breathed his last. During the absence of Hon. John Forsyth as minister to Mexico, Colonel O'Hara conducted the Mobile *Register* as editor in chief with great brilliancy and success. He wrote "The Burial of Our Dead," on the occasion of the reinterment of the members of the Kentucky regiment who fell in Mexico. This peice has recently had the singular compliment paid it of having selected from it, as an inscription for a monument, recently erected in Boston to the Union dead, the following lines:

"On Fame's eternal camping ground
Their silent tents are spread,
And memory guards with solemn round
The bivouac of the dead."

The Surratt Trial.

WASHINGTON, June 21.—To-day, in support of a motion to recall the prosecution's witnesses for cross examination, Surratt filed an affidavit that he could develope the fact that it was on the 21st, instead of the 17th, when the handkerchief was dropped at the depot at St. Albans, and that his defence depended much on that date, also that Dye was indicted for passing counterfeit money.

The motion was refused. The defence could summon the witness if wanted.

The evidence given to-day was mostly confined to occurrences before the assassination, showing the intimacy between the prisoner and Booth and others.

—We learn from the Petersburg *Express* that the Rev. George T. Williams, of Suffolk, has been honorably acquitted of the charge of picking a woman's pocket in New York, and that he was to have left that city for his home in Virginia, Monday afternoon. The indictment against him was quashed on the ground of the insufficiency of the evidence and the character of the witnesses.

—Rev. Theodore Carson has accepted a call to the Episcopal church at Orange C. H. Va.

Spirit of Jefferson.

LOCAL MISCELLANY.

Sabbath School Exhibitions.

Within the past week the Sabbath School connected with the M. E. Church, South, of Charlestown, favored the public with two exhibitions, which for perfection of arrangement, appropriateness of programme, and beauty of execution, stand unsurpassed by any entertainments ever given in our town, and which, we are proud to say, were attended with a success commensurate with their merits. The satisfaction afforded by the first exhibition, which was held on Tuesday evening, induced the managers to repeat the exhibition on Friday evening, when the house was crowded to its utmost capacity. Unable to present anything more appropriate, we copy from our neighbor, the *Free Press*, an account of the first exhibition, and will only add that the second was but a successful repetition of the first—with only a slight variation of the programme:—

Owing to the persevering efforts of the Officers of the Sunday School, cheifly the Ladies, the decorations were most appropriate and beautiful. On entering the Church the eyes of the spectator were attracted by an Arch extending over the stage, adorned with Evergreens, and with the Mottoes, in large letters of green:—

"AND ALL THY CHILDREN SHALL BE TAUGHT OF THE LORD;"

And "OF SUCH IS THE KINGDOM OF HEAVEN," arranged on it in perfect taste. From this arch depended the painted curtain—used on a former occasion—which is the work of one of our townsmen, displaying rare artistic skill. Below the curtain and illuminated with fine effect by foot lights, was the inscription, "Blessed are the pure in heart." The galleries were festooned with evergreen hanging, wreaths and many colored flowers, while the Scriptural texts—"Peace be within thy Walls and Prosperity within thy Gates."—and "Feed my Lambs;" with the words "Truth," "Love," "Hope" interspersed among the decorations gave an additional interest to the scene. The Cross, Star and Anchor were examples of skill, ingenuity and taste such as have been seldom seen in our community.

A large and appreciative audience filled the house at an early hour, and the exercises were calculated to impress and gratify all present. Music—Solos, Duetts, Quartettes and Choruses, with Addresses, Dialogues, Tableaux and a variety of other entertaining performances held the spectators enchained up to a late hour.

At a meeting of the Committee of Arrangements on Saturday, the following resolution was adopted, which we have been requested to publish:

Resolved, That the thanks of the Committee be tendered, through the papers of the town, to the following persons for essential services rendered:—Mrs. Aglionby, Messrs. Dinkle, Marstellar, Tomlinson, Hawks, Beall and Gallaher, and to the Christian Association. Z. SHUGART, *Sec. of Com.*

RELIGIOUS.—The "Bush Meeting" at Shannondale Furnace, on Sabbath last, was largely attended, and the Rev. Mr. Robey deserves great credit for his zeal in good works in this sparsely settled portion of the moral vineyard. The Rev. Mr. Baird, Presiding Elder of the District, preached during the day, and performed a similar service in the Methodist Church of this town at night. In the absence of Rev. Mr. Hopkins, Rev. Mr. Beatty, of New Orleans, occupied the pulpit of the Presbyterian Church, morning and night. This accomplished divine, with his family, is on a visit to our neighborhood for recuperation of health, which we hope may soon be sufficiently restored to permit frequent ministrations to our people.

OUR SCHOOLS.—With the present week will close the semi-annual session of our schools in this town, and for the efficient manner in which they have been conducted and liberality of support, no similar term has excelled. The examination at the Academy commenced yesterday, and will be continued from 8 A. M. to 1 P. M., until Friday, when the exercises will close by the reading of compositions, reports, &c. The "commencement" exercises of Mrs. Forrest's Seminary, will take place on Friday evening, to which the parents and friends of her numerous pupils have been invited, and an instructive and agreeable entertainment may be expected.—The examination and awards of the excellent school, under the direction of R. T. Brown, Esq., will be completed during the week, and the ladies permitted a short respite from the labors of study, which we are assured has been diligent and of course profitable.

PRAISEWORTHY.—We are pleased to see that the work of enclosing the Methodist Graveyard in this place, has been begun.—This sacred spot, robbed of its fencing by ruthless and desecrating hands during the late war, has for four or five years been laid open to the depredations of our roving cattle and hogs, and we earnestly hope that those who have the matter in charge, will be enabled to push it to completion in a short time.

DEBATE.—The debate which was postponed from last week, will come off at the Academy, on Saturday evening next. Question:

"Which exerts the greater influence over man, Hope or Fear?"

DEBATERS.

Affirmative.—A. W. Hawks, W. K. Kearsley and Austin Lock.

Negative.—W. W. Rowan, Wm. Downey and Harry Moore.

—The Winchester *Times* says: "It is understood that Gen. Schofield has issued an order directing that a joint possession be given to the M. E. Church of the church property at Berryville, held since the close of the war by trustees of the Methodist Episcopal Church South. This joint possession is to continue until the military authorities determine who are entitled to exclusive occupancy."

Inhuman Execution in Missouri.

The St. Louis *Times* of a recent date contains the particulars of the inhuman execution by a mob, in Warrensburg, Mo., of THOMAS W. LITTLE, son of Mr. John Howe Little, formerly of this county. The following is the statement as presented by the *Times*:—

"Thomas W. Little and Fred. Myers were arrested in St. Louis on their way South, on the 29th day of May, 1867 charged with complicity with the late bank robbery and outrage, at Richmond, in Ray County. They were taken without warrant, on the order of Gov. Fletcher, communicated by telegraph, and sent, not to Ray County, but to Johnson County, and placed in the hands of a mob calling themselves a vigilance committee.—We have the statement of Mr. George Washington that Little and Meyers were in the hands of this mob, and by them confined in the county jail at Warrensburg, on Monday, 3d inst. The jail was closely guarded, and Mr. Washington, in company with the mother and sister of Little, was permitted to communicate with him thro' the grating of the window. Upon obtaining from the prisoner the names of persons residing in Dover, Lafayette County, who would testify that at the time of the Richmond outrage he was in Dover, and could not have participated in that act, with the assurance from Little's jailors that he would be held till his friends could return from Dover with the necessary proofs, and that as soon as the testimony of one responsible person should establish his innocence he should be released, Mr. Washington, accompanied by the brother of Little, rode over to Dover and returned, after having traveled about one hundred miles, about midnight on the 4th, with the affidavits of several persons of well attested character and standing, to the effect that both Little and Meyers were in Dover and not in Richmond on the day of the outrage. Mr. Washington was assured he would be heard in the morning on behalf of his friend, and retired to rest.

"About five o'clock in the morning Little was taken out of the jail and hanged just in the edge of Warrensburg. He had on his person at the time his parole as a confederate soldier and prisoner of war, which guaranteed him protection both in person and property.

"Little was likewise charged with the robbery of a Mr. Fitzgerald, but on being confronted with Mr. Fitzgerald the latter stated he was not the person."

Mr. Washington produced a number of affidavits procured in Dover in support of Little's innocence. The *Times* comments with severity upon Gov. Fletcher for placing Little in the hands of an excited mob, and says:

"Nothing can excuse the Warrensburg mob; nothing can excuse Governor Fletcher for complicity, nor any amount of reparation wipe out the wrong. An innocent man has been foully and murderously deprived of life—and by men who are the sworn administrators of the law. The documents which we publish elsewhere are the indisputable proofs of a foul crime of which Governor Fletcher cannot wholly wash his hands."

BALTIMORE MARKETS.

SATURDAY, June 22, 1867.

We heard of no transactions in Flour today worthy of remark. Sales still confined to retail lots for local consumption. We renew quotations of Friday, viz: Extra Shipping $10.50@$11.25; City Mills Super $10.50@$11.50; Welch's Family $17; Baltimore high grade Extra, $16.00@$16.50.

GRAIN.—The offerings on change to-day were only 558 bushels of Wheat, which sold as follows:—200 bushels choice Maryland red $2.50; 225 bushels prime $2.40; 160 bushels medium $2.20. Corn seemed good and prices improved two cents, with sales of 9,000 bushels white ordinary to prime at $1.05@$1.08; mixed brought $1.03, and inferior 95 cents; good to prime yellow sold at $1.11 to $1.13. Oats sold at 78 cents. Rye $1.40 to $1.50 as to quality.

GOLD is quoted 138.

MARRIED.

On the 13th inst., at St. Timothy's church, Baltimore county, Md., by the Rev. Dr. C. W. Andrews, assisted by Rev. Dr. L. Van Bokkelen, JOHN H. FOWLER, of Baltimore county, Md., to NANNIE, daughter of the late John H. McEndree, of Shepherdstown.

On the 12th inst., at the "Berkeley House," Martinsburg, by Rev. D. Shoaff, Mr. JOHN A. TABLER and Miss SARAH FRANCIS CONE, all of Berkeley county.

On the 5th inst., at the home of the bride, in Williamsport, Md., PETER L. LEMON, Esq., of Berkeley county, Va., and HELEN M. STAKE, Rev. E. Didier, officiating.

On Wednesday the 12th inst., at the Toll-Gate, where the groom has resided for twenty years or more, by the Rev. William Hank, Mr. JOHN J. WATKINS to Miss ELIZABETH JANE WILSON, all of this county.

[Uncle Johnny is somewhat past the time of life when folks are supposed to be legitimate targets for the arrows of cupid, but we have his own word for it, that age has no guarantee against the tender sentiment, and what he says must be so. We wish him and his blooming bride an extended life of connubial joy, but we question whether this is not doing him injustice when we consider that he is now verging on his three score years and ten.]

DIED.

In Louisville, Ky., on the 2d inst., of Typhoid Fever, GEORGE BROWN TABB, formerly of Berkeley county, Va., in the 40th year of his age.

SPECIAL NOTICES.

The Drinker's Farm Murder.

The Murdered Woman's Family.

Messrs. Cole and Knox returned yesterday from Essex county, whither they went to ascertain such further particulars as were accessible relating to the wife of J. J. Phillips, and throwing light upon her fate. They reached the residence of the widow Pitts on Saturday, and found the family entirely ignorant of the supposed murder of Mrs. Phillips, formerly Emma Pitts. The family consisted of the aged widow, two daughters, and one son, B. F. Pitts, Jr. They reside in Essex county near the Caroline boundary.

The probable fate of Mrs. Phillips was communicated first to the son, whose grief was so uncontrollable that the other members of the family were necessarily immediately informed of the matter. The officers represent that they have never witnessed a scene of deeper distress. Mrs. Phillips seemed to have been the centre of the attachments of the family, and the news of her fate was a dreadful shock to them. Their grief soon brought sympathizers, and the neighbors came to condole with them, soon filling the house. Mrs. Phillips seemed to have been greatly beloved in the vicinity, and was represented with one accord as a young woman of the gentlest and most affectionate disposition.

When feelings were somewhat composed the family were questioned by the officers with reference to Phillips and his wife, and a good many facts were gathered to be used in the trial. We may generally state the main points as follows:

J. J. Phillips was in the Confederate army, and being taken sick in the neighborhood of Mrs. Pitts's found shelter and attendance in her house, where he remained about nine months. Miss Emma Pitts was exceedingly kind and attentive to him. Her gentle ministrations during his sickness were gratefully acknowledged by him. Gratitude gave place to a warmer sentiment, which being reciprocated by the lady, they were married on the 13th July, 1865. Mrs. Phillips was twenty-five or thirty years of age, and older than her husband. She was in delicate health, supposed to be consumptive.

Phillips only remained with his wife three weeks after the marriage. He then absented himself about six months. Returning, he remained only a few weeks, and was again absent some five months. The neighbors considered his conduct unpardonable, and much censure was cast upon him, his wife always earnestly defending him. She always treated him with the most devoted affection upon each of his visits to her mother's.

Matters proceeded in this way until February last, when he went to Essex to bring his wife to Henrico. He left Essex with her between the 15th and 18th of February, taking the cars at Milford Depot on the Fredericksburg railroad.

Since then the family have had no information of her whereabouts, save through Phillips's letters, of which there were several.—The officers procured the last letter received from him. It is dated "River View on James river, May 14." This place, it is believed, is entirely fictitious. He states that he was living with a Dr. Dorsett, ten miles below Richmond. No such person lives thereabouts, and Phillips was all the time employed by Mr. Turner.

He spoke in previous letter of the comfortable manner in which he and his wife were getting along—speaking of household matters, her success in raising chickens, &c. He threw in, however, occasional reference to the health of the locality. It was very sickly, &c. In the last letter, in addition to this suggestion for alarm with her family, Phillips informs B. F. Pitts that his wife has a whitlow on her finger, occasioned by sewing, which gives a great deal of pain, rendering the administration of morphine necessary. The doctor, he said, feared lock jaw! He speaks of family matters; wants to know how his sister-in-law and a certain young gentleman are getting on, and wants to move to Essex; wants Pitts to get him a situation. This letter was brought up by the officers.

Mrs. Pitts and her daughters described accurately the clothing of Mrs. Phillips, which corresponded exactly with that found upon the body in Drinker's woods. Unfortunately a part only of that clothing is preserved.—Under the order of the Mayor of Richmond, several pieces of the garments taken from the body were turned over to the Chief-of-Police of this city. They were placed in the Old Market station and were, strange to say, recently sold as rags for the paper mill by the negro man who attends the place! Fortunately several pieces are yet in the hands of Mr. Cole, and they will be produced at the trial. It will be remembered that a breast-pin found upon the body was lost by a gentleman who brought it to town the day after the discovery, to advertise it with the hope of getting a clue to the name of the murdered person. This pin, the officers say, was accurately described by the ladies.

B. F. Pitts had answered the last letter of Phillips; but accidently the answer was not sent to the post-office, and this letter the officers also obtained. It is very friendly and unreserved.

The exact day of the departure of Phillips and his wife from Essex will be ascertained before the trial. Mrs. Brown met them after their arrival in this city on Eighth street, and knowing Mrs. P., greeted her cordially, and was introduced by her to Phillips as her husband. The dates are here important, and are no doubt easily ascertained. Mr. Dowden, toll-keeper on the Williamsburg road, saw a man and woman pass by in a wagon in the afternoon and in a half hour or so the man returned alone. This was a day or two before the body was discovered. The thread of this mysterious and shocking affair being discovered, much more will probably be developed. In leaving Essex, Phillips put his wife's clothing in a trunk without a lock and without a name upon it, leaving his own trunk which was a better one and *had his name* upon it, behind.

Phillips, it is understood, had not informed his relatives of his marriage, and he denied that he was married when arrested. Officer Cole visited him yesterday, and informed him where he had been, showing to him his letter of the 14th May. Mr. C., alluding to the Pitts family and their deep distress, Phillips drew his hat down over his eyes for awhile, and, raising his head, inquired for Colonel Spalding, one of his counsel.

Considering the letters of Phillips, and their allusions to prevalent unhealthiness of the locality, (as healthy a region as any,) and the last alarm he gave as to the critical condition of the wife, it may be inferred that a plan was being worked out for the final announcement of her death by disease. The 14th May letter arrived at this crisis. But pursuing this theory, we may imagine just there a terrible pause. Here was a second murder! calling up all the horrors of the first, and involving new perils, new dangers of detection!

But this extraordinary murder will be soon fully investigated. The Rev. Dr. Baynham, who married Phillips, one of the Misses Pitts, and B. F. Pitts will arrive here to-morrow, whether in time for the investigation of the case we do not know. They will come on the Fredericksburg railroad.

[*Richmond Dispatch.*

SPECIAL NOTICE TO FARMERS.

IMMEDIATELY after Harvest I will again have in operation my Superior Threshers and Separators. I am fully equipped with IMPROVED MACHINES, &c., and will leave no effort undone to secure entire satisfaction.

I am authorized to refer to the following prominent farmers of this County:

COL. R. W. BAYLOR, C. J. MANNING,
HARRISON ANDERSON, THOMAS LOCK,
B. W. COOKE.

Letters addressed to me at Charlestown, or orders left at my father's residence at "Claymont," will receive attention. J. HENRY NOLAND.
April 16, 1867—4m.

TO TRAVELLERS.

BALTIMORE & O. R. R. COMPANY.

SCHEDULE of Passenger Trains arriving and departing at the Harper's Ferry Station:

TRAINS BOUND EAST.

	ARRIVES.	DEPARTS
Mail Train,	12 41 P. M.	12 47 P. M.
Fast Line,	7 16 A. M.	7 17 A. M.
Express Train,	12 37 P. M.	12 38 P. M.

TRAINS BOUND WEST.

	ARRIVES.	DEPARTS.
Mail Train,	1 02 P. M.	1 10 P. M.
Fast Line,	8 36 P. M.	8 37 P. M.
Express Train,	1 31 A. M.	1 32 A. M.

Office open at all hours for trains. Through Tickets sold to all the principal cities of the Union. For further Information inquire at the Office.

A. B. WOOD, AGENT.
Harpers Ferry, May. 14, 1867.

WINCHESTER AND POTOMAC R. R.

TIME TABLE.

TRAINS GOING WEST.

Leave Harper's Ferry at 6 20 A M and 1 15 P M
Leave Shenandoah at 6 24 A M and 1 19 P M
Leave Keyes' Switch at 6 38 A M and 1 27 P M.
Leave Halltown at 6 48 A M and 1 33 P M.
Leave Charlestown at 7 07 A M and 1 45 P M.
Leave Cameron's at 7 26 A M and 1 57 P M.
Leave Summit Point at 7 45 A M and 2 08 P M.
Leave Wadesville at 8 07 A M and 2 23 P M.
Leave Opequon Bridge at 8 12 A M and 2 26 P M
Leave Stephenson's at 8 31 A M and 2 38 P M.
Arrive at Winchester at 8 55 A M and 2 50 P M

TRAINS GOING EAST.

Leave Winchester at 9 40 A M and 3 10 P M.
Leave Stephenson's at 9 52 A M and 3 26 P M
Leave Opequon Bridge at 9 54 A M and 3 47 P M
Leave Wadesville at 10 04 A M and 3 51 P M.
Leave Summit Point 10 22 A M and 4 13 P M.
Leave Cameron at 10 34 A M and 4 31 P M.
Leave Charlestown at 10 46 A M and 4 49 P. M.
Leave Halltown at 10 57 A M and 5 07 P. M.
Leave Keyes' Switch at 11 03 A M and 5 16 P M.
Leave Shenandoah at 11 11 A M and 5 30 P M.
Arrive at Harper's Ferry 11 15 A M and 5 35 P M.

J. H. SHERRARD, PRESIDENT.
May 14, 1867.

BALTIMORE & OHIO RAILROAD RE-OPENED.

THIS GREAT NATIONAL THOROUGHFARE is again open for

FREIGHTS AND TRAVEL.

The Cars and Machinery destroyed are being replaced by NEW RUNNING STOCK, with all recent improvements; and as the Bridges and Tracks are again in Substantial Condition, the well earned reputation of this Road for

SPEED, SECURITY AND COMFORT,

will be more than sustained under the re-organization of its business.

In addition to the unequalled attractions of natural scenery heretofore conceded to this route, the recent Troubles upon the Border, have associated numerous points on the Road, between the Ohio River and Harpers Ferry, with painful but instructive interest.

CONNECTIONS

At the Ohio River, with Cleveland and Pittsburg Central Ohio, and Marietta and Cincinnati Railroads; and through them with the whole Railway System of the Northwest, Central West and Southwest. At Harpers Ferry with the Winchester Road. At Washington Junction, with the Washington Branch for Washington City and the Lower Potomac. At Baltimore with seven daily trains for Philadelphia and New York.

TWO DOLLARS additional on Through Tickets to Baltimore or the Northern Cities, give the *privilege of visiting* WASHINGTON CITY *en route*.

This is the ONLY ROUTE by which passengers can procure *through Tickets and through Checks* to WASHINGTON CITY.

L. M. COLE, General Ticket Agent Baltimore. } JOHN L. WILSON, Master of Transportation, Baltimore.
June 5, 1866.