CHILD LABOR

DANGEROUS PLACE TO WORK IN—PETTIT v. R. R., 156 N. C., 133

Chief Justice Clark Holds that a Railroad Company Should be Held Responsible When, to Keep Down the Price of Other Labor, it Puts an 11-Year-Old Boy to Work in a Dangerous Place, Where He is Soon Killed —Judge Hoke Agrees With the Chief Justice.

CLARK, C. J. (dissenting). The plaintiff was not accorded the privilege of a jury trial to determine the facts. Therefore the evidence must be taken in the most favorable aspect for him and in the light of the most favorable inferences which could have been drawn therefrom by the jury. His intestate was a child, small for his age, which was under 12, and had not taken off knee pants. He was employed at South Rocky Mount to carry messages across a yard filled with 18 or 20 tracks, with engines and trains moving backwards and forwards every few minutes. Among these were through trains, and also the shifting engines, moving freight and passenger cars to make up trains. His duties required him to carry messages over and across this yard. A more deadly and perilous place could not be imagined. Such duty would have taxed the discretion and judgment of a much maturer person. The defendant did not attempt to show that it had given the child any caution or instruction whatever.

In *Fitzgerald v. Furniture Co.*, 131 N. C., 640, 42 S. E., 947, this Court cited with approval the following language from Thompson on Negligence: "The law puts upon a master, when he takes a child into his service, the duty of explaining to him fully the hazards and dangers connected with the business and of instructing him how to avoid them. Nor is this all; the master will not have discharged his duty in this regard unless the instructions and precautions given are so graduated to the youth, ignorance, and inexperience of the employee as to make him fully aware of the danger to him, and to place him, with reference to it, in substantially the same state as if he were an adult." This being a duty devolving upon the defendant, the burden was upon it to show that such caution was given, and its nature. But nothing of the kind was even attempted to be shown. It follows that the presumption that such caution was not given is not removed.

In *Ward v. Odell*, 126 N. C., 948, a child 11 years old, employed in a factory, in passing from one part of the mill to another stopped for

a moment at a bench where a wire was being cut, when a piece of wire flew off and put out his eye. It was held by CLARK, J., that the injury was conclusive that the work was dangerous, and that in such case "these little creatures exposed to such dangers against their will cannot be held guilty of contributory negligence." Nor was it a defense that the child was hired to the company by the father. "It was the child's eye which was put out, not the father's. The father could not sell his child nor give the company the right to expose him to danger. The superintendent put these children to work, knowing their immaturity of mind and body, and, when one of them thus put by him in places requiring constant watchfulness is injured, every sentiment of justice forbids that the corporation should rely on the plea of contributory negligence." If that is true as to cutting wires in a factory when the child was not on duty at the time, it is necessarily so as to the danger ten times more deadly, of crossing 18 to 20 tracks with engines and cars constantly moving backwards and forwards and when the child's duties required him to cross the tracks.

On this occasion there was no eye-witness how the child was killed, but he was found dead upon one of these tracks with his leg cut off. The inference is irresistible that he was killed by a passing train. *Powell v. R. R.*, 125 N. C., 370. If there could be any possible doubt about it, the evidence was certainly sufficient to be submitted to a jury to draw the inference. The little child being found dead with his leg cut off in such a network of tracks, among constantly shifting trains, creates as strong a presumption that his leg was cut off by one of these trains as, when a soldier is found dead on a battlefield with a bullet through his head, that he was killed by the enemy.

It is urged that it is not shown that the little boy in his knickerbockers was on duty, because there is evidence tending to show that he was killed on Sunday morning. The opinion of the Court says: "No one testifies that he was killed on Sunday. We assume it." Yet nothing is better settled than that nothing can be assumed against the plaintiff on a nonsuit. The evidence is that he was employed to carry dispatches across these tracks. The very nature of the work as a necessity in operating trains is conclusive that it was carried on every day. There is no evidence whatever that these messages were not required to be sent on Sunday as well as on other days. It is well known that these through trains, and that also the shifting of cars and engines on these tracks, are operated on Sunday, as well as on other days. His duty was such as could not cease on Sunday. Reference to the decisions of this Court will show cases in which this defendant was sued for the penalty in sending out its freight trains from this very yard on Sunday, and the defense was upheld that it had a right to send out through freight trains. The statute also permits the dispatching of both local and through passenger trains. It is in evidence in this case that other laborers were present on the yard that morning. Taking the evidence in the light most favorable to the plaintiff, it is a reasonable inference that the child was there

in the performance of the duty of carrying messages from one office to another across these tracks at the time of his death. It is not shown that he had occasion to go there for any other purpose, nor is it reasonable to suppose that after his arduous labors on these other days he would have revisited this spot on the morning in question as a matter of sport or play. The child was killed where he was required to do his work. If for any reason he was not at work at that spot on that day, it was the duty of the defendant to show it, and it could have readily done so, if such was the fact. It did not attempt to make such proof.

It was also suggested that the child might have been killed by jumping up on one of the passing trains. One witness testified that he saw him riding on one of the shifting trains that morning. But there is no evidence that he was killed while doing so, and, even if it had been shown that he was killed while so riding, this would have been contributory negligence, which this Court held in *Ward v. Odell*, 126 N. C., 946, 32 S. E., 194, could not be set up against a child under 12 years of age. Besides, contributory negligence must be proven by the defendant. Rev., 483. The Court refers to "statements in the answer," as if the answer was evidence.

If we are to observe Judge Daniel's wise injunction, quoted by the Court, "that we should not be wiser than the law," we will not reverse the humane decisions of this Court, above quoted, in order to defeat a recovery for the death of the little sufferer who by the avarice of the defendant was sent to his death by exposure to an accumulation of perils greater to him in his unguarded and unwarned innocence than that which met the charging column of brave men on Cemetery Ridge. Many soldiers survived four years of war. This child was slain on the fourth day of his employment.

It may be asked, and it will be asked, by future ages as well as by the present, why an innocent child of this immature age should have been subjected to such perils, so far beyond his comprehension. This record gives the answer. His mother had seven other children to support. He had a stepfather. And, in this combination of circumstances, the mother testifying that she did not know the dangerous nature nor the character of the employment, and indeed did not consent to his being employed, the defendant was able to procure this child's services for the munificent sum of $12.50 per month. This was truly "the price of innocent blood." Had the defendant employed a man or a boy of mature years, it would have had to pay a sum for his services more in proportion to the peril. Such a person would have known the dangers and would have charged for the risk.

By employing these little children the defendant is able to cheapen to that extent, by the competition, the price of other labor.

Nor is there any reason shown why the defendant company should not have put telephones across these tracks, and thus transmitted the messages without exposing any one to such dangers. The only answer to this is the one that was ineffectually made in the *Troxler*

case (124 N. C., 189; 44 L. R. A., 313; 70 Am. St., 580), and *Greenlee case* (122 N. C., 977; 41 L. R. A., 399; 65 Am. St., 734), that it would have cost the defendant company some expenditure to put in the automatic couplers, as here it would cost a little something to put in the telephone. This Court held, without any statute, but upon the principles of right and justice, in the *Troxler* and *Greenlee cases*, that it was negligence *per se* to subject a grown man to the danger of making a coupling without using automatic couplers, even when the man was instructed as to the danger, and that in such cases the railroad company could not set up the defenses of assumption of risk or contributory negligence. This decision has been followed in other States and is a well-settled law in our own courts. Our law is humane.

Chief Justice Fuller, not long before his death, in a case of personal injury, in words of burning conviction, said: "It is a reproach to our civilization that any class of American workmen should, in the pursuit of a necessary and useful vocation, be subject to a peril of life and limb as great as that of a soldier in time of war." *Johnson v. R. R.*, 196 U. S., 1.

A conservative estimate of the number of workmen killed or maimed in this country every year in industrial accidents is about 500,000. It is said that the total number killed and wounded in the Union Army during the Civil War was 385,325. In other words, the whole Confederate Army was unable to kill and cripple as many Union men in four years as are now killed and crippled in industrial employment in a single year. We cannot expect this condition to improve if the courts can be induced to place the blame upon those killed and wounded, because, in order to make a livelihood, and with a purpose of obeying those for whom they labor, they venture in dangerous pursuits, while under such conditions the same courts relieve the master, who created the condition and gave the orders, of all liability and blame whatsoever.

The courts elsewhere have not yielded their assent to the validity of the considerations urged by the defendant in this case.

In *Molaske v. Coal Co.*, 86 Wis., 220, it was held: "The presumption is that a boy under 14 years of age is not competent to perform duties involving personal safety and requiring the exercise of a good degree of judgment and constant care and watchfulness; and, in an action for injuries resulting from negligence of a boy so employed, the burden is upon his employer to show that he was in fact competent. Further, no usage to employ boys of such tender years to perform such duties can be upheld." Here the boy was under 12, instead of 14; no negligence by him was shown, and no usage to employ boys of such age for such duties.

In *Wayne v. Conklin*, 86 Ga., 40, it was held: "Whether a boy of 13 employed by the defendant to work in a tinshop was of sufficient age and capacity to appreciate his hazard and provide against danger is for the consideration of the jury." In

this case the boy was under 12, and the danger to which he was exposed was full an hundredfold greater than that in a tinshop; and a North Carolina jury in all justice should have considered and determined the question whether he was "of sufficient age and capacity to appreciate his hazard and provide against the danger" to which he was exposed.

In *Goff v. R. R.* (C. C.), 36 Fed., 299, it was held an act of negligence on the part of a railroad company to take into its employment as a brakeman a minor of such tender years as to not know the risk of the service.

The rule established by *Bare v. Coal Co.*, 61 W. Va., 28, 8 L. R. A. (N. S.), 284, 123 Am. St., 966, that "it is actionable negligence for an employer to engage and place at a dangerous employment a minor who lacks sufficient age and capacity to comprehend and avoid the dangers of such employment, even though the employer instructs him as to the dangers incident to the work," is a well-established rule, being laid down in Labatt on Master and Servant, sec. 251; S. and Redf. Neg. (5th Ed.), sec. 219; 4 Thomp. Neg., secs. 3826, 4093, 4689; Bailey, Pers. Inj., secs. 2758-2777; Dresser, Employers' Liability, 466; Buswell, Pers. Inj., sec. 203; 2 Cooley, Torts (3d Ed.), 1130, 1131; 20 A. and E. Enc. (3d Ed.), 299.

It is a question for the jury to say whether or not the deceased could appreciate the dangers and knew how to avoid them. *Turner v. R. R.*, 40 W. Va., 675; 4 Thomp. Neg., sec. 4098.

The place where the child was put to work being a dangerous one, the question was open for the jury to pass upon the negligence of the defendant. *Cahill v. Stone Co.*, 153 Cal., 571, 19 L. R. A. (N. S.), 1094; *Lynch v. Nurdin*, 1 Q. B., 29; *Pressly v. Yarn Mills*, 138 N. C., 410.

In this case a child under 12 years of age, undergrown, and therefore known to be immature, was set to work by the defendant in a most dangerous place, exposed to be run over by the constantly passing trains and shifting engines crossing eighteen or more tracks, to carry messages which might have been sent by telephone. He was found dead on the track in the yard with his leg cut off. Under our decisions the company could not show contributory negligence, and did not offer to show any. It was the duty of the company to show that they had instructed any employee, much more a child, placed in such employment, of its dangers. The defendant did not show this. The work was of a nature which required employment on Sunday as on other days. The child being found dead where he would be passing in carrying his messages, if he was killed that day or not at work that day the burden was upon the defendant to show it. The defendant did not offer to do so. Upon all the evidence, taken in the light most favorable to the plaintiff, it would seem impossible to conclude that there was not more than a scintilla of evidence tending to show negligence on the part of the defendant.

HOKE, J., concurs in dissenting opinion of CLARK, C. J.

THE CONFEDERATE SOLDIER.

But they say that, nevertheless, we failed. The Confederacy failed, but not the Confederate Soldier. Your past is secure. The great soldiers of history are the Macedonian Phalanx of Alexander the Great, the Tenth Legion of Cæsar, the Ironsides of Cromwell, the Old Guard of Napoleon. The Confederate soldier is their worthy comrade and their equal. The government which each of those brave bodies of soldiers served went down into irretrievable and utter defeat, but their fame, like yours, is immortal.

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What is true of these great historic battalions is true, Comrades, of the Confederate soldier. The fame of the soldiers of Alexander, of Cæsar, of Cromwell, of Napoleon, and the principles for which they stood survived the ephemeral government under whose banner they fought and was in nowise affected by its downfall. Not only has the fame of your valor, of your splendid soldierly qualities, survived the short life of the Confederacy, but the principle of local self-government has survived Appomattox and will endure throughout all generations.—*Extract from Judge Clark's Speech.*

U. S. PENSIONS FOR N. C. SOLDIERS

ADDRESS OF

CHIEF JUSTICE WALTER CLARK

TO CONFEDERATE VETERANS AT CHARLOTTE, N. C., 25 AUGUST, 1909

[Reprinted from Charlotte Papers, 25 August, 1909.]

federate Veterans, Comrades, Ladies and Gentlemen:

face to face with the survivors of the great armies of the Confed cy, we stand in the presence of history. Those scarred and vet- n columns made history. Their fame now belongs to the ages.

o place more appropriate for this meeting could be found than this t, which first on this Continent heard the immortal declaration the right of freemen to govern themselves, and which witnessed first enactment of an Ordinance of Secession on that ever mem- ble 20 May, 1775.

t is needless, soldiers, for me to attempt to recount the story of r great deeds—to recall how with 600,000 soldiers, half fed, scant- clothed, and unpaid, you kept at bay for four years nearly 3,000,000 he best furnished and best equipped troops the world has ever wn. Cut off from the outside world by the blockade, without ufactures except such as we improvised in the stress of war, with- money save depreciated paper, unable to spare enough men to e provisions because they were needed to face the enemy—with ing but our courage in our hands and our faith in God and the h of our women in us, we held the line!

BASED ON FEDERAL RECORDS.

hat you did may be based on the Federal Records. Aside from e killed, and those who died from wounds in the years after the forty years after the war began—that is, in 1901—there were e than one million of men on the Federal pension rolls, each of m had sworn that he had incurred serious disability by reason pposing you, and the truth of the statement of each had been dged to be true after full examination and report by the proper mal. And even now, by the last official Government report, h I have here, in this year 1909, over forty-eight years, nearly a century, after the war began, there are on the Federal pension 620,000 survivors of the war—more men than your armies had in ranks during the entire four years.

hen peace was made at Tilsit, between France and Russia, the eror Alexander paraded his guard before Napoleon. Pointing ne tall veteran who had been terribly hacked by sword and he said to Napoleon, "What do you think of soldiers who can ive such wounds as those?" Napoleon grimly replied: "What

do you think of soldiers who can give such wounds as those?" By the enemy's own showing you made it terribly unhealthy for them down South.

THE SOUTH ALMOST SUCCEEDED.

Had the South been solid, it had succeeded beyond question; but from the border States, Maryland, that part of Virginia which is now West Virginia, from Kentucky, from Missouri, from East Tennessee, from certain sections of other States, and from our colored population, the North recruited over 250,000 troops—nearly half as many as the whole Confederacy. These were not only taken from our side, but were added to the overwhelming numbers against us. But even with this defection, soldiers, such were your splendid staying qualities you would have compelled success but for the short-sightedness of your civil government. The battle was lost there, and not in front of your lines. When in 1861 our ports were still open, we sent commissioners to England and France to negotiate a loan. They were instructed to negotiate for a loan of $15,000,000. They reported that a loan of $600,000,000 could be negotiated, but a small one could not be. The foreign money lenders knew that if $600,000,000 were invested in Confederate bonds by French and English capitalists the governments of those countries would never let the Confederacy fail. Had we authorized the $600,000,000 loan, not only would the governments of England and France have become practically sureties to our success—for they would never have permitted their subjects to lose so large a sum—but we could have kept our currency at par besides importing the best arms and ammunition and other supplies, and could have created a navy which would have kept our ports open. Had the statesmanship of the Confederacy equaled its splendid soldiery, you would have won independence ere the close of the second year of the war.

But notwithstanding this and other blunders of the civil government, time and time again, you nearly compelled success. To mention a few occasions only: At Shiloh, in 1862, the enemy were a disorganized rabble, fleeing to the unfordable river in their rear, and the capture of their entire army in less than an hour was inevitable when a minie-ball struck our leader, Albert Sydney Johnston, causing our lines to halt. His successor delayed to renew the advance for more than an hour. In that time the capable leaders of the Federal army reorganized their lines, put confidence in their men, and brought up others so that when we did advance again, we met a murderous reception. If that army, with Grant and Sherman, had been taken, the war would have practically been ended. The Federal army was in utter flight again at Chickamauga, and was saved from capture only by the gross incompetence of the Confederate general. Again, at the battle of Chancellorsville in May, 1863, Hooker's army was demoralized and cut off from the United States ford. The fall of Stonewall Jackson by a ball from our own men, who fired by

mistake, stopped the advance at the critical moment when we were on the eve of capturing Hooker's army and ending the war.

At Gettysburg some of our troops, among them Hoke's Brigade, climbed Cemetery Heights on the evening of the second day. Had Stonewall Jackson been there we would have held our ground and the enemy would have retreated precipitately, and the third day at Gettysburg, so fatal to the fortunes of the Confederacy, would not have occurred. Disaffection was rife throughout the North. The draft riots were at that moment in progress in New York. Had the Federal army been forced to retreat from Gettysburg with Lee's army in pursuit, Washington and Baltimore would have been evacuated and the Confederacy established.

It is generally thought that Gettysburg was the high-water mark of our fortunes, and that thereafter the fortunes of the Confederacy were hopeless. But General Horace Porter, who was on Grant's staff around Petersburg, shows in his book that as late as the fall of 1864 the North was tired of the war and disheartened, and that McClellan, the Peace Candidate, would have been elected over Lincoln, but for the fall of Atlanta and Sherman's march through Georgia—events which were due to the mistake of removing Joseph E. Johnston from the command of the Western Army.

It is easy now to say that our defeat was inevitable from the very beginning, but nothing is farther from the truth. Success, time and again, was almost in our grasp. The qualities of our soldiers and of our leaders would have insured our independence, but as Napier said of Napoleon, "Fortune, that name for the unknown combinations of an infinite power, was wanting to us, and without her aid the designs of man are as bubbles on a troubled ocean."

Then there was the Trent affair, when Admiral Wilkes took Mason and Slidell, our ministers to England and France, off an English vessel at sea. No one would have believed that the United States would humble itself to apologize and restore the prisoners. But it did so. If this had not been done, England, with her great wealth and powerful navy, would have entered the war as our ally.

In 1862, Mr. Gladstone, in his Newcastle speech, said: "The leaders of the South have made an army, and they have made, gentlemen, what is more than either, they have made a nation. We may anticipate their success so far as regards effecting their separation from the North. I, for my own part, cannot but believe that that event is as certain as any event yet future and contingent can be."

The great majority of thoughtful observers in England, even among the element opposed to our success, conceded that it was inevitable, among them Richard Cobden.

So far from our cause being hopeless from the beginning, we again and again were in reach of success. In spite of the want of judgment on the part of our civil government, which might early in the war have taken steps which would have insured Southern inde-

pendence, the brilliant courage of our soldiers often would have won it but that it was frustrated by circumstances so unforeseen that it seems as if it were the hand of Providence.

THE SOUTH FAILED, BUT NOT THE CONFEDERATE SOLDIER.

But they say that, nevertheless, we failed. The Confederacy failed, but not the Confederate soldier. Your past is secure. The great soldiers of history are the Macedonian Phalanx of Alexander the Great, the Tenth Legion of Cæsar, the Ironsides of Cromwell, the Old Guard of Napoleon. The Confederate soldier is their worthy comrade and their equal. The government which each of those brave bodies of soldiers served went down into irretrievable and utter defeat, but their fame, like yours, is immortal. More than 2,200 years ago, Alexander, a mere boy, crossed into Asia with a small army of which the Macedonian Phalanx was the flower. In three years he had invaded Africa, captured Egypt, rolled up the Empire of Darius and swept through Asia like a cyclone to the Indus, by whose banks he sat down to weep because there were no other worlds to conquer. In ten years he lay dead and his empire was hopelessly shattered for all time. But the fame of that splendid soldiery lives on and the superiority of Europe over Asia and Africa was settled by them for all the ages.

Nearly 300 years later Cæsar led the Roman Legions from "Pontus into Gaul." He conquered the barbarian and destroyed the aristocratic supremacy at Rome. The heart of his army was the famous Tenth Legion. In ten years he lay dead at the foot of the statue of Pompey, his great rival. Like Alexander, he left no successor, and his conquests were divided and fought over by smaller men. But the fame of the Tenth Legion lives always, and the superiority of civilized man over barbarian established by them has not since been questioned.

Coming down the ages, we meet the famous Ironsides of Cromwell, that somber soldiery who at Naseby, at Edgehill, at Marston Moor, shattered forever the fiction of the divine right of kings. In a few short years his rule vanished and the Stuarts returned (for a while). But the fame of the Ironsides lives on and the principle they established cannot be shaken.

And then a century ago arose that splendid soldier, the first Napoleon, who ran up the tricolor of France over every capital in Continental Europe from Madrid to Moscow. The heart of his army was the "Old Guard."

That famous body of men existed less than ten years, for the meteoric splendor of the great captain died away as suddenly as it had arisen; but the fame of the "Old Guard" will never die. They represented the principle that the people of a country have a right to establish their own government and change its form at will. That principle abides to-day and has become world-wide and undisputed.

What is true of these great historic battalions is true, Comrades, of

the Confederate soldier. The fame of the soldiers of Alexander, of Cæsar, of Cromwell, of Napoleon, and the principles for which they stood survived the ephemeral government under whose banner they fought, and was in no wise affected by its downfall. Not only has the fame of your valor, of your endurance, of your splendid soldierly qualities survived the short life of the Confederacy, but the principle of local self-government has survived Appomattox and will endure throughout all generations. Without it, this Union of coequal States would become a centralized despotism, and the head of its government (whatever it might be called) a military dictator requiring the constant support of a great army.

SERVICES AFTER THE WAR.

Nor will I linger, soldiers, to speak of your services after the war, when unawed by garrisons in your midst and unseduced by promises of offices and of public plunder, you were the mainstay of public order and of private security. Your services during those years are not less worthy of remembrance by a grateful people than your more brilliant services during four years of war. When Anglo-Saxon supremacy was threatened and a repetition of Hayti and San Domingo was imminent, it was the quiet determination and shoulder-to-shoulder discipline of the Confederate soldiers that upheld the tottering fabric. These men had been at Chancellorsville, at Fredericksburg, at Spottsylvania, at Chickamauga. They were disciplined and accustomed to act together. The carpet-baggers gave you but one look and then they packed their grips and left.

But I do not wish to speak to you longer of the past. The youngest of those who wore the gray have long since crossed the crest of the narrow ridge that divides two great oceans, and like Balboa, have descried from the western slope the wide waste of waters which reach beyond the sunset. Not many years shall pass ere the last of those who followed the fortunes of Lee and Jackson, of Johnston and Forrest, shall have set sail on that shoreless sea, and the last footfall of the tread of the Old Confederate Regiments whose march shook a continent shall be echoing in eternity. It is of the present and of what in my judgment justice to you demands that I shall now briefly speak.

PENSIONS.

In so doing, I wish to say that I speak my own sentiments, without consultation with any officer of this association. Whatever responsibility, if responsibility there be, is on me, not on them. When at the close of the bloody war between those hereditary enemies, France and Germany, in 1871, an indemnity of $1,000,000,000 was laid on France, the entire civilized world stood aghast. If at Appomattox beneath the generous terms of Grant there had been written a supplement laying a contribution of $1,000,000,000 upon the South it would have staggered indignation. Yet that, and more than that, has been laid upon the South as a direct war contribution.

I speak not of the hundreds of millions which in the years after the war were collected out of the South by three cents a pound tax on cotton, when not a cent of such tax was or could be levied in the Northern States. No court held that tax a direct tax and therefore unconstitutional, though the court held that a tax upon large incomes, which were mostly at the North, was illegal because a direct tax, and set it aside.

Nor do I refer to the tariff taxes which have always been ingeniously framed to throw an undue share of its weight upon the South and to the benefit of wealthier States.

You had returned to your devastated fields and to your stricken homes, where amid departed hopes there too often lingered the melancholy attractions of the grave. It was not generous, it was not magnanimous, that the victors, wealthy with the contracts of a successful war and the profits of an enhancing currency, should throw an excessive share of taxation upon you in your poverty. But let that pass. I will say, however, that Congress ought to refund the amount of the illegal cotton tax, and if the heirs of the original taxpayers would be difficult to trace, the sum could be paid over in proper proportions to the different cotton-growing States as a fund for schools and good roads. I refer, as I have said, not to the cotton tax, nor to the unjust discriminations of the tariff. I refer to the more direct contributions laid upon the South to defray the expenses arising out of the war. I have in my hand the Government report which shows that since the war for pensions and the support of "Soldiers' Homes," we have paid near $4,000,000,000. The South pays one-third, at the least, of this, probably more, and has thus paid over $1,300,000,000 of direct war indemnity. While the North has paid, say, $2,600,000,000, nearly the whole of the $4,000,000,000 has gone there, so that the pensions have not only been no tax upon that section, but out of our poverty we have been making those wealthy States wealthier still. Out of the more than $1,300,000,000 paid by the South for pensions, almost none comes back to North Carolina, and to the States farther South. If we allow for the troops in the Union army that went from West Virginia, Kentucky, Missouri, East Tennessee, and the colored troops, perhaps one-fourth of the $1,300,000,000 has come back to parts of the South. There remains the enormous sum of $1,000,000,000, exclusive of interest, which the South has paid as a war indemnity, direct, pure and simple. North Carolina has over one-fortieth of the population of the Union. If there was no discrimination against us by reason of the tariff and the Internal Revenue tax, North Carolina would still pay one-fortieth of the Federal taxation. So, of the one hundred and sixty millions annual appropriations for pensions (it is something less now) North Carolina pays at least four millions yearly, and gets scarcely anything back. North Carolina has up to date paid more than one hundred millions into the Federal pension fund.

I am not opposing pensions to Federal soldiers; indeed, I am in favor of the system in force in Germany and England of paying old age pensions to laborers, as well as to soldiers—to all who have spent their lives for the good of the public, without adequate return. Nor do I advocate payment of pensions to Federal soldiers out of the taxation levied only on the States that sent soldiers to the Union army. That would be both impracticable and unconstitutional.

What I do advocate, as a matter of justice, as a matter of sound public policy, as well as of magnanimity, is to place the needy disabled Confederate soldiers upon the pension rolls on equal terms with the soldiers already there, so far as the future is concerned, but without any arrearages. And as the "Soldiers' Homes" are thinning out, getting too large for the decreasing numbers of their inmates, Confederate soldiers should be admitted to such of those homes as are located in the South.

Why not? There is no reason, save that it has not been done heretofore. One-third of the money paid into the United States Treasury is paid by the Southern States. The Federal Government could establish old age pensions, and if so, the law would apply to all the States. If they pay pensions to old men only, who have served in the army between 1861 and 1865, why not let it be paid to all the soldiers of that war?

The States existed before the Union and created the Union. In joining the Union many of the States expressly reserved the right to withdraw. New England repeatedly asserted that right. The constitutional text-book, "Rawle on the Constitution," which was taught at West Point while Robert E. Lee and Joseph E. Johnston and Stonewall Jackson were cadets, laid down the principle that a State had the right to withdraw from the Union. In 1861 eleven States withdrew. Twenty-two did not, and refused to let the eleven withdraw. The Massachusetts troops went to the front because Massachusetts ordered them to do so, and not because the United States ordered them. North Carolinians went to battle, not because the Confederate States so ordered, but because North Carolina sent them. We met regiments from Massachusetts, New York regiments, Pennsylvania regiments, but rarely, if ever, met a United States regiment. We fought alongside of Virginia regiments, South Carolina regiments, Georgia regiments, but not Confederate States regiments. The pension rolls to-day bear the names of men from Ohio regiments, from Michigan regiments, from New Jersey regiments. North Carolina pays annually $4,000,000 into the pension fund. Why are not the surviving disabled soldiers of North Carolina upon the pension roll? The men from Ohio and other Northern States went because their States ordered them. Men from North Carolina and other Southern States went on this side because their States ordered them. Both did their duty as they saw it. The whole world admits this. The twenty-two States won. The principle of an indissoluble Union won. No one questions the result. Over forty-four years ago we came together,

after four years of separation. We have had a common treasury ever since. Why should not pensions be paid out of it to the poor and needy soldiers, who served and suffered at the command of their State, whether that State was New York or North Carolina?

ENORMOUS WAR INDEMNITY.

It is neither just nor wise to continue the enormous war indemnity which the South has been paying. It is levied now on a new generation, and of the four million dollars annually paid into the pension fund by North Carolina, very little comes back.

It is folly to say that these Confederate soldiers were traitors. The United States Government indicted Jefferson Davis for treason, but abandoned the prosecution. Not a man has been convicted of treason. We are treated as an integral part of the Union when we pay taxes, and when troops were needed for war with Spain. Why, when pensions are paid for services in a Pennsylvania regiment, should they not be paid for disabilities incurred in a North Carolina regiment?

Confederate officers of rank have sat in the United States Senate, in the Cabinet, on the Supreme Court bench, and have represented the Government abroad. Should the punishment and disabilities for treason rest alone upon the now aged and disabled private soldiers who followed them?

The statue of General Robert E. Lee stands by the side of George Washington in the Capitol and his name is inscribed on a tablet by the side of Grant in the Pantheon of Fame, the stately building by the side of the Hudson River in New York City. The name of Jefferson Davis has been restored by command of the Federal Government upon the arch of Cabin John Bridge, in sight of the Capitol, from which it had been erased during the war, and his lineaments are chiseled on the service of silver presented to a war vessel of the United States by the State of Mississippi, and the vessel went under Government orders up the river to Vicksburg to receive the gift. Nearly a half century has elapsed since the war began. Most of the survivors of the soldiery of the South went into the war as mere youths. Why should they alone bear the punishment? As a matter of justice, the private soldiers who obeyed the call of their States should receive equal payment for disabilities incurred out of the treasury of a reunited country, irrespective of the States from which they came.

As a matter of public policy, this step should be taken, and soldiers of the Southern States admitted also to vacant places in the "Soldiers' Homes," that the last relic of the animosities aroused by the war be banished forever.

As a matter of magnanimity, there should be an end to the vast war indemnity which the South is paying, and which is the largest and most unjust known to history. There is no other way to end it than to pay pensions to soldiers of all the States. If a war indemnity was just, we have paid it long enough, and the present generation at

the South should not be burdened with the payment of a vast indemnity for a war in which they had no part and which was over before they were born. The whole country is proud of the fame of the Confederate soldiers. Let not the few living survivors of the rank and file of those armies which shed glory upon the race bear the sole punishment.

Soldiers, I have spoken for justice to you, and for the justice of the South. I know your pride, but we should feel that this is our Government, and it should feel that you are its citizens. This money will be but part of our own money coming back to us. For forty odd years we have been paying out of our poverty, and it all went the other way. This of itself would have kept us poor, if we had not naturally been one of the richest countries in the world.

Some will say that the conquerors do not pay pensions to the soldiers of the conquered. But this loses sight of our system of government. The victorious twenty-two States are not the Government. We have "come together," as they insisted we should do, and are now one-third of this Government, and should not be discriminated against.

If the survivors are in the same ratio as the number of troops on the respective sides during the war, this would only add 125,000 Confederates to the 620,000 Union survivors now on the pension roll, and this only after the lapse of forty odd years.

Whether this act of justice is done or not, posterity will say that it should have been done.

The "thin gray line" is growing thinner every day. We are so few we rarely meet now, but pass one another as ships in the night. But wherever you are, and wherever you go, may God's blessing be upon you, gallant men that you are.

THE TRUSTS OPPOSING CLARK FOR SENATOR.

Insidiously They Now Say, "He is Too Good a Judge to Lose." Yet They Fought His Nomination and Election in 1902.

[From Fayetteville Observer.]

In 1902, when Judge Clark was a candidate for nomination for Chief Justice, great claims of his weakness were published; and yet when the roll call ended, the vote for his opponent was hardly visible. And this, too, when the great corporations and allied special interests had raised a large sum and employed all their agents to defeat his nomination and election.

It is worth noting, in this connection, that, while in the nine years that have elapsed Judge Clark has done nothing to win the affection of these interests, the cry goes out that he is "too good a Judge to be spared from the Bench"! We do not think this cry comes from those who wished Judge Clark to secure the Chief Justiceship in 1902. It strikes us that the argument that he "cannot be spared from the Bench" is an attempt to do what an assault would fail to do. It is the first time, we imagine, in history that it has been used as an argument against promoting a man or rewarding him, that "he has done his duty."

As a matter of fact, in the present state of affairs—namely, since the usurpation of legislative powers by the Supreme Court of the United States—a man of the attainments and legal equipment such as Judge Clark possesses can do infinitely more against the Trusts and for the people in the Senate than where he now is. The issue presented by the opinion of the Supreme Court in the Standard Oil decision is the most momentous that has confronted the American people since the Republic was declared. When it is tried in the halls of Congress, as soon it will be, the Progressive States will vie in the effort to send their mightiest men there. Who can hesitate, in this crisis, where the choice shall lie in North Carolina?

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