The vacancies in the 17th regiment of Georgia Volunteer, to be filled by election, or, by appointment of the President?

This regiment was organized at Atlanta, Georgia, about the middle of August, 1861. At that time the companies comprising the regiment were not fully organized, and the officers holding commission from the Governor were, at an order by that gentleman, therefor asked to assist in filling the field officers. This they promised to do, and elected me, Colonel Geo. DeF. Trego, now Colonel of the 16th, Lieutenant Colonel, and Thomas Walker, Major. The Governor immediately gave me a commission dated 17th August, 1861, for which I accepted. In a few days he gave one to Maj. Walker, who accepted it. Colonel Bryan declined to accept his, as he was already Lieutenant Colonel of the 16th. So that there may or be a vacancy in the office of Lieutenant Colonel.

The Governor expressed the wish to fill the command of the regiment, which I did. The regiment was supplied by order of Congress with guns, cartridges, etc.
Un[leaded] themselves to the advancement of volunteer for the war, in answer to a call of her, for volunteers for the war were accepted by her, as volunteers for the war, and on this request, were ordered by her, to organize themselves into an engrault to elect their field officers.
plate, with cooking utensils, &
tents, with proper provisions suffi-
cient to subsist it until it should
reach Lynchburg by the rail road,
whether there. The Governor ordered
me, to carry the regiment to
Lynchburg, to report there, to
the officer in command of
the Post. I carried the regi-
ment to Maj. Bledsoe, who was
the officer in command of the
Post. In a few days - say about the
last of August 1861 - I was made the
regiment, as a regiment, into service
for the war.

The regiment remained
some weeks at Lynchburg. While
there, new Col. that Col. Logan
had declined to accept the office,
and Col. Young, now of Cobb's Regiment,
were chosen. He, however, preferred
his present place, it declined
to accept the office. Before
notice of this, reached the regiment,
it had been ordered to Manassas,
that camped at Compt., John
son, about two miles from that
place. There, on the 19th of Sept,
another election for Second Colonel
was held, at which Colonel Hadley,
the present Second Colonel, was
re-elected. He was a fellow in a Company
in the 20th Regiment of Georgia
volunteers. They made it necessary
as I thought, to obtain the consent of Genl Johnson to the acceptance of the office. Accordingly, I addressed Genl Johnson a note, requesting to that effect. I sent it up to him, by the Sergeant Major of the Regiment, Maj. Robt. Howard. Maj. Robt. did not receive the note, I immediately declared, that the situation was void. The vacancy was to be filled by the President. Having the report from the Agent, Genl Johnson, and after giving the subject a good deal of consideration, decided, that, by the regulations, it came through the State authority; the filling of the vacancy may be accorded to State Law, and that whoever should hear Governor Brown have the right Commission, provided he drew my note to fill the vacancy. I repeated what the Sergeant Major reported to me. There was no reply to my note.

Colonel Hadley, soon after wards, received the Commission from Governor, he has been acting a, Chief Commissary, since, except when absent, as he is now, having gone home wounded.

I think the time of this message, I heard that Mr.
Benjamin, the attorney general, had
made the same decision, and
I know that it was generally
believed that he had

Thus it seems, that the
question, as far as it is affected by
laws of a date prior to the 19th
September, 1801, has been deter-
mmed, as very high official

Immediately, many became
vice and from time to time in
the Company offices, and at
last, a vacancy occurred in a field
office, Mr. Walker having
matured his health, resigned. In
every instance, except one new
arriving, the vacancy was filled
by election, the person elected,
was commissioned by the
Governor of Georgia. It may
be, that Commissions have not
arrived for the person elected at
the latest election, but I have
the assurance of Governor Ross,
the Secretary and Adjutant General
of Georgia, that, in every case of an
election, a Commission will be
sent.

A large proportion of these
elections, have taken place since
the passage of the Constitution,
and, in a number of cir-

ously related cases, I think—The
person elected was not the nest in
appunt to the late occupant, but may
have been something a
private.

Of these two, the case of
Lieut. McCauley, the one brings the
question before the department.
He was the first lieutenant in Company
F, of which, Thompson was the
Captain, & Gettunger, junior
Second Lieutenant. Thompson
resigned, & Gettunger an election
was offered; and the three lieut.
ent candidates--McCauley, Dink
& Gettunger became candidates, &
Gettunger was elected. Afterwards,
his Cou, Commissioned by the
Governing General, I
Considered him entitled to the
office of Captain, and gave
him to be obeyed as such.
Lieut. McCauley, after being
located in the election, asserted
his right to the place, as
the senior officer of the Com-
pany--and said, that he would
not obey Capt. Gettunger. I told
him, that if he refused to obey an
order given to him, by Gettunger
I would arrest him. Shortly
afterwards, he did refuse to
obey an order of Gettunger,
I did arrest him. At the time
when I took him, the record

precaut: I should not make a note

on it.
That makes up the present case. These, I think, are all of the facts and I am for a decision of the question.
These being the facts, I am convinced in the Company office, to be filled by the officers of the Company, in the regiment by election of the regiment, or are they to be filled by appointment of the President.

The first is, The Power is presented by the Law of Georgia. By this, there is, I believe, no dispute. I shall therefore assume it as true.

The Law of Georgia, such a power in the case, unless they are to be confined to Georgia, or whether they be considered special, even as a superior right, to a Confederate law. Even if such a power in the case, they shall, I must observe, shall be, that a non-Constitutional law. This I shall also assume.

The question becomes, therefore, in the first place, that, is there any Confederate law, in which conflict with the Law of Georgia? In the second place, the question, I must notice all the Confederate laws, which is possible to regard as in conflict with those laws.

In the second place, the question becomes this, if any of those Confederate laws do, do the laws of Georgia, are they Constitutional?
These being the first of the questions is how are vacancies in the management to be filled by election of the governor or by appointment of the principal.

The mode prescribed by the law of Georgia is election.
To the first of these Questions.

Of the Confederate Case, above indicated, the first that I shall notice, is the 8th of May, 1861: "To raise an additional Military Force to serve during the war." (Act, Feb. 2nd, Prov. Cong. 5.)

This act does not apply to the case. It applies only to a case in which the volunteers themselves offer their service, directly to the President, through their Governor. The President may accept the service of volunteers, or he may offer their service, (of course) to him and on condition.

And "without regard to the plan of enlistment" that is, he may accept volunteers coming from different States, one company from Alabama, another from Georgia, and so it shall be seen, by Section 7, may organize them into regiments. This could not be so, if it were the intention of the act, that the corps received should come through the Governor of the State, for no Governor could send up any troops except troops enlisted in his own State.

The volunteers are to be accepted in Companies, or from one received by the Governor. The Companies are to
be organized by him into Squadrins, &c. Our new organization by Governor Brown.

The President is to appoint "all field officers," and all officers are to be commissioned by the President. Other field officers are elected by the regiment, all of whom were commissioned by Governor Brown.

Congress itself has, Constitution this act, as applying only to the case of volunteers offering themselves directly to the President. "The third section of the Act of May 1861, "Further to provide for the public defense," is as follows: "Nothing in the said Act shall be construed to extend to or in any wise to affect, any act heretofore passed, authorizing the President to receive troops offered directly to the Confederate States, for the war, or for any contingency." (18)

The only act previously passed any way authorizing troops to be received for the war, is The act of 1861, which granted Congress in Speaking of an act authorizing the President to receive troops offered, the President, must have foreseen that any act applying only to the case of troops offered directly to the President, must not be construed as disregarding the organization of the two armies, wholly disregarded, and that disregard
own satisfaction, they have long acted on
by the Confederate Government.
be applicable to the Case.
the force not only break
The present organization of the
regiment, but would render a
avoid, every thing done from first to
last, under that organization.
And after all, as
progress, so far as the
present question is concerned.
the question as to the mode of filling
vacancies, it would be
made; for this act provides
the very same mode for filling
vacancies, which is provided by
the laws of Georgia; viz., the
mode of election. (Sec. 3.)

I am just this, then, I think,
in saying, that this act does not
apply to this Case, and, therefore,
that it cannot be in conflict with the
laws of Georgia.

The next act I shall
notice, is that of the 11th of May,
1861, "To make further provision for
the public service."
That act, both, in
preamble I think, dictates so clearly
the fact that it was intended to apply,
only to troops offering themselves
directly to the President, that I shall
dismiss it with a word or two.
The act applies only to a Case in which the President prescribe the Term of Service. The term of Service is not regulated by the Act, but is regulated by the President. And, if the act were now made to apply to civil employment, it would be at the option of the employment to accept or refuse to accept it. If an office is to be held, he would have the right to refuse to be trusted in, for a term, unless he expressly refuses, to be promoted, or to be reappointed. And, then, as on the preceding act, nothing would be gained in the matter of filling an opening, for this act, as that, filled them by election. It says that the person raised under the act, "Shall be organized in accordance with," the act entitles an act to provide the public defense. And, that act declares, that the "officer shall be appointed in the manner prescribed by law in the several states, to which he shall belong" (54004)

The next act requiring attention is that of the 8th of August 1861; "Further to provide for the public defense" (18. Acts)

The act seems to apply to the Case in all respects, except
The President is authorized to ask for, and accept the service of any number of volunteers, not exceeding 50,000, to serve for a period of not less than twelve months, nor more than three years. The act prescribe a period of service, different from that for which the regiment enlisted. The act of course, that the act in question takes place to the case in the extent, it will, in fact, make the enlistment for at least three years, unless the act should sooner terminate.

But this act, however, does not conflict with the act of Georgia, in the Currying it adopted the law that the volunteer, under it, shall be organized, under the act of the 6th of March 1861, entitled, "An act to provide for the public defense," and that act, as we have seen, declare, that the "officer shall be appointed, in the manner provided by law, in the several states to which the troops "belong."

I am not aware of any other act requiring notice, until the act of the 16th of April 1862, "to provide for the public defense," called the Conscription act. And I maintain that it.
And as to that act, I maintain it to be clear, from its title, its preamble, and its body, that it does not apply to the case of this regiment.

It is true, as you further to provide for the public defence, to convert a war regiment, into one for three years, unless the war shall have been sooner ended, it is not for the purpose of providing for the public defence, but to the contrary, diminish the provision already made. Besides, it will be making this act of animation to be a more than "one subject to the further provision for the public defence, and to regulate different subjects the diminution of the provision for the public defence itself as a George Sa. Act. For there are many other reasons, in the situation of this regiment, and to make the act do this, will be to make it violate the 20th paragraph of section 7 of the Constitution.

The preamble of the act is: "In view of the exigency of the country, and the absolute necessity of keeping in the service, our gallant army, and of placing in the field, a large additional force, to meet the advancing columns of the enemy; therefore it is expedient to apply this act to our own service, it would not better, or as well accomplish either of
of these proposed objects, as would, allowing the regiment to
stand free of the city, a war regiment. On the other hand
applying the act to persons not in
service, it to persons in service for
shorter term than three years
or
the F. Conferring it to those two classes,
would advance all of
those proposed objects, of the act.
To the body of the act.
The first sentence is, "The
President be he is hereby authorized to
Call out and place in the Military ser-
vice of the Confederate States, for three
years, unless the war shall have been
forever ended, all white men who are res-
idents of the Confederate States, between
the ages of eighteen. Every five years, at the
7th Time. The Call or Calls may be made to
are not legally exempted from military
service." The person here included, are
persons under 40, not in the service. They
can persons to be called other persons to be
placed in the Military service, not persons
already called out and placed in that service.
Consequently the person of this regiment
are not here included in the
The next sentence is, "All of the
army of the Confederate States, who are now in the army
or the Confederate, and whose term of service will
expire before the end of the war, shall
be continued in the service for three years
from the date of this original enactment,
even if the war shall have been sooner ended

It appears that the sense is clearly expressed, but it certainly is not clearly expressed of the person "all of the persons..." as taken literally, it will include only persons at home, persons not in service at all, therefore persons, some of whom were in the army of the Confederate States. Consequently, to take the expression literally, would be to exclude from the clause every person on whom it could operate... I do not insist on the literal construction.

There is such danger, as connecting the plain word, of a law. I suppose the sense would be clearly expressed if the words were, "All of the persons... who are not in the army." Again, as to the expression, "whose term of service will expire before the end of the war"—such as Constables, when the term will end. Therefore, who Can Know, what term of service will expire before the end of the war? and therefore, who Can Know, who are the persons in service, that are to be subjected to the operation of the clause. The thing is plainly an impossibility. I suppose, however, from other words in the clause, from the title or preamble, or from the next clause, or from the 11th section, that the persons meant were persons who had enlisted for indefinite terms, and that, therefore, persons whose terms of service were almost out at the date.
of the act, and, consequently, none of whom it was pretty safe to predict that their terms of service would expire before the end of the year. Certainly the event has justified the prediction, notwithstanding any applications of the act made to twelve, twenty, or thirty men. The event, however, has not got any satisfactory applications to men enrolled for two or three years. I shall, from it, again however, receive instruction on the literal, and, at least, I Trust, the correct meaning of that sentence shall be considered to be, 'that the term of service shall expire at the end of the period of service, or the time from the date of their original enlistment.'

The whole clause, then, I conclude may stand thus: 'all officers of the regular army, who are now in the service of the Confederate States, and whose term of service will expire at the end of twelve months, or less time, shall be continued in the service for three years from the date of their original enlistment, unless the term shall have been sooner ended.' The clause standing thus, it is clear that it does not touch our regiment, for our regiment is not one which was solicited for twelve months or a lesser time. Indeed, if we leave the word, 'whose term of service will expire before the end of the next' in this full power, and of the sentence, 914 to the consequence.
of our doing so, etc, that it will be impossible, to find fewer of the young men in each of the districts to answer the call. On the principle only of the voices &c, the &c., so as not to make the matter, for the regiment is one whose term of service will not end before the end of the war.

Thus far, there is nothing in the act, which can be made to apply to the case of this regiment.

All of the men remaining for the first section, refer expressly exclusively to twelve month men.

The second section refers expressly exclusively to Company, Squadrons, Battalions or Regiments, not yet in service, but already in a condition to complete their organization in thirty days.

The third is confined to the enrollment of those who are not already in service.

The fourth entirely itself exclusively to the subject of the distribution of the enrolled men.

The fifth relates exclusively to the same enrolled men.

The sixth to enrolled men in slavery service.

The seventh is confined to persons "who are contained in ser-

...
...by this act. And we have seen that this regiment is made up of rich of such persons, but of persons who are touched by the act. Besides, at Marshall, that this section does, i.e., to confer a bounty.

The eighth section merely provides pay for private army.

The ninth makes provision for substitutes.

The tenth relates to the filling of vacancies, and it is true, that the phrase "shall be filled by the president" is, but, by a common rule of interpretations, general terms used in a statute, are to be extended to persons or things outside of the statute. Can those words include a vacancy in the regular army? Vacancy is in the military, is a vacancy in the military? That is? No, or why because the regular army, the Marine, the army, the constipation, (on the)

...
militia are clearly not within any other part of the act. And this is not more true of them than it is of a war regiment. All are equally outside of the act.
in this Sub Point for inquiring also it is shown that that the "man on duty for a longer term than twelve months and until a mere of those included in the preceding part of the act," if it has it, follows that the expression "all men" means "all men included in that part of the act," I think that has been shown.

The eleventh section applies as part of the act, to a small proportion namely those in the same organization of war men, compared with twelve months men. That part which gives the right of reorganization by elections. And this fact gives strong confirmation to the argument, that the previous position of the act, due, did not extend to that men. for if it were, on the maxim of inclusio unius excludatur alterius, that the intent was to include, of war men, only a small proportion, and to exclude the only a to one particular law. That of reorganization by elections, would not a special provision been equally necessary to make war men become men for three year or nearly. The men should be some, ended to make war men entitled to the protection of the law. Communication, to extend a privilege given by the act to give them the right to reorganize by elections.

At the most, this section makes only those war men whose
in the same organization with
Twelve Month Sen-
Section twelve of the
General Law have no bearing on
the question. And they are

Then, then, it appears
that there is not a single section
of the act, such that it will
receive into it, poor money
such that it will fill the term of
this regiments—men enlisted for
the bar oath in organization
with Twelve Month. Men, in
fact, such that it will receive into
it, men for three years. The bar
shall soon terminate.

I know of but one
this act. That may be supplied to
bear on the question, that in the
act of 24th April 1862, Compendary
of the Conscription act—(52 A)

That act only authorized
the power to found
the funds necessary to
supply officers by
extending it
to vacancies in the Colon
grade of commissioned officers.
The expiration of it, all
vacancies in the Colon To have
the same effect which by law in
the act amended.

The conclusion, then from
a review of all the
Confidentially
leaving on the subject of the Confederates, it appears that not one of them, by all of the Court's reports, meets the cases of Vermont, which present the special of filling vacancies in the Senate. They have not met, but to come consequently the House proceeded by some means, unless a new Congress be called to be observed.

As this finishes the argument on one of the questions, and as that is a question which may decide the whole case, I think it best to send up this part of the argument to the Secretary of War: promising to send the other part as soon as I can possibly prepare it. He is well aware of the vast importance of the question yet to be argued.

21 July 1862
Henry L. Bemis
Col 17, Reg. Ga.
In 1776 Georgia to be forty.