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## Some Unpublicized History of West Virginia and the Restored Government of Virginia

COL. JULIAN G. HEARNE, JR.\*

West Virginians have been reminded constantly during this Centennial year that the Restored Government of Virginia served two important purposes: It saved western Virginia for the Union, and it gave the assent of Virginia to the formation of West Virginia. Governor Francis Harrison Pierpont<sup>1</sup> has been receiving honors at this time as the "Father of West Virginia," and his role in the creation of the new state has been duly publicized.

I respectfully submit, however, that the people of West Virginia, Virginia, and the United States as a whole have not been sufficiently reminded of the patriotic and humane services rendered by Governor Pierpont to the people of our mother Commonwealth of Virginia and to the United States *after* West Virginia had become a state. Likewise, in my opinion, the legal brotherhood of the two Virginias of the present day has not been sufficiently reminded of the many matters relating to the bench, litigation, law enforcement, and other subjects which posed serious problems to the lawyers of the Restored Government, old Virginia and West Virginia back in the early sixties. To the best of my knowledge the following questions have received no adequate attention as yet, during this Centennial year: Was there a Supreme Court of Appeals of

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\* Colonel Hearne (LL.B., 1930, W.V.U.), practiced law in Wheeling until ordered to active duty as an Infantry Reserve Officer in 1941. Although his present place of abode is Alexandria, Virginia, his domicile continues to be Wheeling, and he is an inactive member of the West Virginia State Bar. He is the composer-lyricist of "West Virginia, My Home Sweet Home", which has been adopted by the Legislature as one of the official state songs.

<sup>1</sup> Until sometime after the close of the Civil War he spelled his surname "Pierpoint." In XI CALENDAR OF VA. STATE PAPERS, 461, there is a letter dated in February of 1866 in which the surname of his signature contains the letter "i" twice. A book published in 1867, *PARTISAN LIFE WITH COL. JOHN S. MOSBY*, Harper & Bros., contains several references to Governor "Pierpont"—with only one "i." The exact time of change is unknown to me. A book by the Governor's daughter, Anna Pierpont Siviter, *RECOLLECTIONS OF WAR AND PEACE*, Putnam's Sons, 1938 spells the name "Pierpont" throughout, and makes no reference to any other spelling. Mrs. Siviter's book, by the way, is delightful reading, and contains many incidents which I have not found reported elsewhere. This book seems to be largely forgotten, however, and I would therefore suggest the desirability of some appropriate organization undertaking the mission of procuring the publication of a reprinted edition. While this project will be too late for completion during the Centennial year, nevertheless it would be worthwhile during any year thereafter as well.

the Restored Government? If so, who were the judges thereof? What happened to the cases from the federally-held counties which were pending before the Supreme Court of Appeals in Richmond at the time of organization of the Restored Government? And what disposition was made of the cases pending in the courts of western Virginia as of midnight June 19, 1863, when West Virginia became a state and the jurisdiction of the courts of the Restored Government ceased in that area?

To find the answers to questions such as these, as well as to accord to Governor Pierpont the *complete* recognition and honor that is justly due him, it must be firmly fixed in mind that from June 19, 1861 (date of adoption by the Second Wheeling Convention of the ordinance which organized the Restored Government) until President Johnson's proclamation of May 9, 1865 (which stripped all Confederate state governments of any vestige of authority whatever), there were *two* governments, or states if you prefer, of Virginia. Neither recognized the other, and each claimed complete jurisdiction and authority over the other's territory and populace; but each had to depend entirely on the military forces of its own side in the war with respect to the geographical limits within which its writs could run and be enforced. (After May 9, 1865 Pierpont's Restored Government was the *only* government of Virginia.)<sup>2</sup> Thus, at the battle of Antietam on September 17, 1862 there occurred an event unique in the history of any country during any era: The Seventh Virginia Infantry Regiment was pitted in combat against another Seventh Virginia Infantry Regiment! One of those units continued to carry the same designation until the end of the war, but the other became the Seventh West Virginia Infantry on June 20, 1863 by virtue of a prior act<sup>3</sup> of the General Assembly of the Restored Government which provided that "the troops of Virginia now in the service of the United States, from those parts of the state that will become West Virginia, shall thereafter be West Virginia troops."<sup>4</sup>

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<sup>2</sup> Virginia school history books usually refer to it as a "provisional government," and recognize its authority after that date. Prior thereto, however, it is commonly referred to as a "pretended" government, a "usurping" government, or a "rump" government.

<sup>3</sup> UNION VA. ACTS, ch. 52 (Wheeling, Extra. Sess. Jan. 31, 1863).

<sup>4</sup> No Virginia unit from any county that did not become a part of West Virginia was ever in the federal service, except for the "16th Virginia Infantry." This regiment had a brief history, and did not participate in combat. Governor Pierpont had commissioned James T. Close, of Alexandria County, as Colonel of the 16th, whose members were volunteers from Virginia east

Inasmuch as "The Restored Government of Virginia" is a long and cumbersome phrase which, of necessity, must be included here-in many times, I shall hereafter take the liberty of referring to it simply as "Union Virginia."

When Mr. Pierpont succeeded to the governor's chair of Union Virginia on June 20, 1861 he had to start from scratch, so to speak. Literally, the "chair" of the Governor of Virginia was in Richmond, quite beyond reach, and there were no state funds immediately available in Wheeling with which to purchase a new chair, desk, or anything else. Most of those problems, however, and the courageous and capable manner in which Governor Pierpont solved them, are now well publicized. But the plight of the judiciary and the chaotic conditions which posed novel and difficult problems for lawyers have been generally overlooked. Governor Pierpont has written: "Strange as it may seem, nearly all the office holders in the State—State and County officers—became tainted with treason, and adhered to the Rebel cause."<sup>5</sup> It is clear that the Governor included judges, justices of the peace, sheriffs and clerks of court in his indictment, and it is a simple fact that through the length and breadth of Union Virginia he was compelled to call a number of special elections to fill vacancies on the bench.<sup>6</sup> But vacancies were only a part of the difficulty in the orderly administration of law and justice. Some western counties<sup>7</sup> over which Union Virginia (and, later on, West Virginia) attempted to exercise jurisdiction were held by Confederate military forces during much of the war, and what justice was dispensed at all therein came on numerous occasions from Richmond rather than from Wheeling. *Mann v. Parke*,<sup>8</sup> decided February 3, 1864, is an example. This was a case taken to the Confederate Virginia Supreme Court of Appeals, al-

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of the mountains. The Alexandria Gazette tells us what happened to this outfit: Item, June 2, 1863: "In the camp of the 16th Va. Regiment, near this place, a riding horse, saddle, and equipments complete, were presented by the officers under command of Col. James T. Close, to Mrs. Close." Item, June 3, 1863: "Col. James T. Close has resigned his office as Colonel, 16th Virginia Volunteer Infantry, in order that he may accept the commission of U. S. Marshal of Virginia." The final "taps" for the 16th is sounded with this item of June 5, 1863: "The 16th Virginia Regiment, U.S.V., formerly commanded by Col. J. T. Close, have been mustered out of service, the regiment never having reached the minimum in numbers required by the regulations."

<sup>5</sup> XI CALENDAR OF VA. STATE PAPERS 355.

<sup>6</sup> The Wheeling Ordinance of June 19, 1861 provided for such special elections. Later, after removal of the capital to Alexandria, the (Union) Virginia Constitution was amended to permit the Governor to appoint judges.

<sup>7</sup> Greenbrier, Pocahontas, and Monroe, to name a few.

<sup>8</sup> 16 Gratt. 443 (1864).

though it originated in Monroe County in 1862, during the war. It concerned a man who had been inducted into the Confederate military service, and the decision was based on construction of an act of the Confederate Congress. Furthermore, the appellate court reversed the circuit court, and presumably the order of reversal got back to Monroe County and was duly executed!

Grattan's Reports, Volume XVI, covering the period 1861-1865, contains two other cases of interest in this discussion. *Bayly's Adm'r. v. Chubb*<sup>9</sup> originated in the Circuit Court of Accomack County in 1854. Accomack is an "Eastern Shore" county, presumably safe within Union Virginia throughout the war.<sup>10</sup> But the Confederate Virginia Supreme Court of Appeals remanded the cause back to the trial court for further proceedings on March 5, 1862. I have not had an opportunity to search the records at the county seat and cannot say whether or not the appellate court order ever was received there and, if so, whether or not further proceedings were in fact held. The other case referred to from Grattan XVI is *Smith's Adm'r. v. Lloyd's Ex'r.*, brought in Alexandria County in 1852. Again the date of appeal is not shown, but the appellate decision was handed down in Richmond on March 5, 1862, during hostilities. It was a reversal of the trial court, and I attempted locally to run down the record of the case. Alexandria County was abolished many years ago, however, and I found that the record was not conveniently available—if it still exists at all. Alexandria County was at no time under Confederate control, and these two cases, therefore, raise the question: Was there a tacit agreement in the eastern part of the state that the Confederate court would continue its appellate jurisdiction on matters that had been appealed prior to the outbreak of hostilities? Such an assumption, I submit, would more likely be fallacious than sound. On the other hand, the next volume of Grattan, in which all the decisions were handed down by a court appointed by Governor Pierpont subsequent to the collapse of the Confederacy, contains a number of cases<sup>11</sup> which

<sup>9</sup> 16 Gratt. 284 (1862).

<sup>10</sup> It may be, however, that federal control of the "Eastern Shore" was interrupted at various times, and that occasionally the Confederacy was able to exercise some jurisdiction therein. Such a theory is supported by UNION VA. ACRS, ch. 23 (Wheeling Feb. 13, 1862), which provided that "the fines imposed upon all loyal [to the union, of course] citizens in Accomac[k] and Northampton Counties by secession Courts of Inquiry and Court-Martials (*sic!*) from the first of April 1861 to the first of December 1861 be, and are hereby released."

<sup>11</sup> *E.g.*, Orange & Alexandria R.R. v. City Council of Alexandria, 17 Gratt. 176 (1867); Sawyer v. Corse, 17 Gratt. 230 (1867).

were pending from Alexandria County, all during the war. (There are none from western Virginia.) This would indicate the more likely supposition that litigants would not or could not press their cases during the war, or that the Confederate court in Richmond realized the futility of any act by it in the premises and simply continued the cases from term to term until the Peirpont court inherited them. I admit, however, that this theory does not solve the mystery of the cases of *Bayly's Adm'r.* and *Smith's Adm'r.*, and throw the challenge to historians.

Volume XVI, Grattan, contains no case from any county that became a part of West Virginia, other than *Mann v. Parke*. Perhaps the Confederate court lost all interest in such cases and simply struck them from the docket and filed the records in a waste basket. I would think it more likely, however, that these cases were held in abeyance, hopeful of a Confederate victory and restoration of the court's ability to exercise jurisdiction. But in either event, affected litigants had a remedy when West Virginia became a state, and this will be discussed later. As no subsequent volume of Grattan contains any case from Union western Virginia or from West Virginia, I am convinced that all such cases found their way into the West Virginia court and were disposed of there.

But, it may well be asked, where was the Union Virginia Supreme Court of Appeals? What was it doing all the while? I have searched many authorities and have been unable to find any reference at all to such a court, or to any judge of such a court prior to Governor Pierpont's appointment of a Supreme Court of Appeals of Virginia in 1866<sup>12</sup>—well after the conclusion of hostilities—when Mr. Pierpont was the undoubted Governor of all Virginia. It should be remembered that the Virginia Constitution provided for the election of appellate judges until amended by "The Alexandria Convention" of 1864, at which time Union Virginia contained little more

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<sup>12</sup> XI CALENDAR OF VA. STATE PAPERS 462-464. In November of 1865 nine members of the Loudoun County Bar wrote Governor Pierpont, urging the appointment of Hon. Richard C. L. Moncour to the supreme bench of the Commonwealth. Judge Moncour had served on that (Confederate) bench all through the war and for many years prior thereto. He was highly respected, capable and experienced, and the Governor accepted this advice and made the appointment, notwithstanding the fact that Judge Moncour had written the opinion of the court in the case of *Mann v. Parks*, which completely ignored the existence of both Union Virginia and West Virginia. His other appointments, all early in 1866, were William T. Jaynes and Lucas P. Thompson. Mr. Thompson died before becoming "Judge" Thompson, and Alexander Rives was appointed in his place.

real estate than a few bridgeheads here and there. Being unable to find even one reference to any such election, I am convinced that for reasons about which I can only surmise, no such court existed until 1866.

But appellate cases were not the only matters of concern to the lawyers of Union Virginia and early West Virginia. Fairmont, Grafton, Beverly, Weston, Charleston, Summersville, Morgantown, Fayetteville, Lewisburg and other western Virginia communities were invaded or raided from time to time, and some of these places were occupied by Confederate forces for weeks and even months at a stretch. In Union Virginia east of the mountains the situation was far more chaotic, and "Mosby's Confederacy" comprised large slices of Fairfax, Prince William, and Loudoun Counties, although they were represented in the Union Virginia General Assembly. Under such circumstances, finding trial judges, clerks and justices of the peace who were both competent and loyal was no easy task. Numerous history books relate details concerning the holding of court and preserving court records. At times various records were apparently in transit on horseback, and sometimes carried into Confederate Virginia or hidden in homes of citizens, some of whom were Unionists, and others Secessionists.<sup>13</sup> Contemporary public records which are still available for perusal tell of conditions of chaos in which records were stolen or destroyed altogether, and of judges and justices of the peace who were unable to hold court or not available at all.<sup>14</sup> By the same token, it was frequently difficult, and sometimes impossible, to bring an action in the proper county, to hold elections, or to collect taxes. Take, for example, the case of Alva Teter, the Union Virginia Sheriff of Upshur County, whose deputy was forced by Confederate soldiers to surrender 125 dollars in tax money which he had collected. The General Assembly by special act,<sup>15</sup> relieved him from liability in the premises. The legislators did their best to remedy situations such as this and, *inter alia*, they enacted statutes enabling the bringing of actions in, and transferring cases to, other counties;<sup>16</sup> to organize courts where none were functioning;<sup>17</sup> and to hold elections in other pre-

<sup>13</sup> See, for example, 1 CALLAHAN, HISTORY OF WEST VIRGINIA 369 (1923).

<sup>14</sup> XI CALENDAR OF VA. STATE PAPERS 208 and 370, give examples.

<sup>15</sup> UNION VA. ACTS, ch. 23 (Wheeling Dec. 1861).

<sup>16</sup> UNION VA. ACTS, ch. 11 (Wheeling, Extra. Sess. July 1861); UNION VA. ACTS, ch. 33 & 38 (Wheeling, Extra. Sess. Dec. 1862). See also, W. VA. ACTS, ch. 24 (1863). W. VA. ACTS, ch. 37 (1863) provided a remedy in cases in which records and papers had been lost or destroyed.

<sup>17</sup> UNION VA. ACTS, ch. 10 (Wheeling, Extra. Sess. Dec. 1862).

cincts when regularly designated voting places were untenable for the purpose.<sup>18</sup> There being no penitentiary in Union Virginia, the General Assembly provided that felons be lodged in county jails;<sup>19</sup> and "whereas certain base and wicked disposed persons—marauders posing as Confederate soldiers—" were at large in many counties, the Governor was authorized "to take such steps as he may think proper for [their] apprehension."<sup>20</sup>

It is interesting to note that the General Assembly of Union Virginia was approximately eighty years ahead of the "Soldiers and Sailors Civil Relief Act" presently extant and with which all lawyers are familiar today. That General Assembly enacted a very similar statute<sup>21</sup> in 1863, but as it was then a common practice for the more affluent inductees to hire substitutes, this statute specifically excluded from its benefits all persons who had hired others to perform their military service for them.

A circumstance peculiar to a civil war rather than to a foreign war gave rise to another statute,<sup>22</sup> which provided that any person who voluntarily left his usual place of abode, or who had already done so, to enter the military service of the Confederacy, and any person suspected of Confederate sympathy who stayed away from his usual place of abode for ninety days beyond reach of service of process, should be deemed to be a non-resident, and could be "prosecuted by attachment or otherwise, as now provided by law."

I have cited only a few of the chaotic conditions of those trying days, and the remedies provided therefor. All these matters are, or, I think, should be, of much interest to West Virginians (and Virginians too) during this Centennial year, and members of the Bar should have an interest greater than others.

Having touched briefly on the state courts, it should now be noted that the United States District Court for the Western District of (Union) Virginia continued to function throughout the war. (It became the Federal District Court for West Virginia when the new state came into being.) One appeal from it was decided by the United States Supreme Court during the conflict, and we may

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<sup>18</sup> UNION VA. ACTS, ch. 19 (Wheeling, Extra. Sess. July 1861).

<sup>19</sup> UNION VA. ACTS, ch. 34 (Wheeling, Extra. Session. Dec. 1862).

<sup>20</sup> UNION VA. ACTS, Jt. Res. 10 (Wheeling Dec. 1861).

<sup>21</sup> UNION VA. ACTS, ch. 36 (Wheeling, Extra. Sess. Dec. 1862).

<sup>22</sup> UNION VA. ACTS, ch. 64 (Wheeling Dec. 1861).



be proud to know that its decision was affirmed.<sup>23</sup> Likewise, in eastern Union Virginia the Federal District Court remained open for business in Norfolk, but its geographical jurisdiction at any given time depended on the extent to which federal military forces could take and hold ground. An admiralty case which arose in Hampton Roads during the war was appealed from the District Court to a court which the Supreme Court called "The United States Circuit Court for Maryland,"<sup>24</sup> as that state was the only whole state remaining from the pre-war Fourth Judicial Circuit in which federal writs then could run!

Timely provisions were made for the orderly transfer of court jurisdiction from western Union Virginia to West Virginia when the latter became a state. The Union Virginia General Assembly provided for the transfer to the new state of all its interest in property, uncollected taxes, fines, etc., in counties embraced within the proposed state as of the date of its admission to the Union,<sup>25</sup> and also appropriated<sup>26</sup> 150,000 dollars to the new state to tide it over its initial growing pains. The members of that General Assembly were, of course, wholly favorable to the formation of West Virginia and were fully aware of the provisions of its soon-to-become-effective constitution which related to the transfer of judicial functions. Indeed, some of those legislators had played important roles in the drafting of that constitution. Apparently, then, they considered it unnecessary for the General Assembly to enact any legislation whereby Union Virginia specifically transferred judicial functions, court records, seals or other such matters to West Virginia. The West Virginia Constitution of 1863, Article XI, provided that:

Section 8. "Such parts of the common law and of the laws of the State of Virginia as are in force within the boundaries of the State of West Virginia when this Constitution goes into operation, and are not repugnant thereto, shall be and continue the law of this State until altered or repealed by the Legislature. All offenses against the laws of Virginia heretofore committed within the boundaries of this State shall be cognizable in the Courts of this State in the same manner they

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<sup>23</sup> *Harvey v. Tyler*, 69 U.S. (2 Wall.) 328 (1864). This case involved land in Kanawha and Mason Counties. It had been heard twice before in the Supreme Court.

<sup>24</sup> *The Louisiana*, 70 U.S. (3 Wall.) 164 (1865).

<sup>25</sup> UNION VA. ACTS, ch. 68 (Wheeling, Extra. Sess. Dec. 1862).

<sup>26</sup> UNION VA. ACTS, ch. 72 (Wheeling, Extra. Sess. Dec. 1862).

would be if hereafter they would be committed in this State. All civil and criminal suits and proceedings pending in the County or Circuit Courts of the State of Virginia, held within the said boundaries, shall be docketed and thereafter proceeded in before the Circuit Court of the proper county; and all such suits and proceedings pending in the Supreme and District Courts of Appeals of the State of Virginia, if the defendant in the court below resides within the said boundaries, or the subject of the suit is land or other property situated or being therein, and the plaintiff is entitled to prosecute in this State, shall be docketed, and thereafter proceeded in before the Supreme Court of Appeals thereof."

Section 9. "The records, books, papers, seals and other property and appurtenances of the former Circuit and County Courts, within the State of West Virginia, shall be transferred to, and remain in, the care and custody of the Circuit Courts of the respective counties, to which all process outstanding at the time this Constitution goes into operation shall be returned, and by which new process in suits then pending, or previously determined, in the said former Courts, may be issued in proper cases. Copies and transcripts of the records and proceedings of the said former Courts shall be made and certified by the Courts having the care and custody of such records and proceedings, or the former officers thereof, and shall have the same force and effect as if they had been heretofore properly made and certified by the said former Courts."

In addition to the foregoing constitutional provisions, there was a statute<sup>27</sup> which provided, *inter alia*, as follows: Section one granted to the Judges of the West Virginia Supreme Court of Appeals, and to the court itself, all jurisdiction and powers appertaining to the judges and the Supreme Court of Appeals of Virginia as of June 19, 1963. Section two provided that:

"The Supreme Court of Appeals of this State shall hear and determine all causes legally docketed therein or transferred thereto. And it shall be the duty of the clerk of the said court, *if in his power to do so* [italics supplied], to procure without delay the record of every such cause which, on

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<sup>27</sup> W. VA. ACTS, ch. 17 (1863).

the 19th day of June, 1863, was pending in the Supreme Court of Appeals of Virginia and the district courts thereof, if the Supreme Court of Appeals of this state have jurisdiction of such cause; and to docket the same in his said court" [before the first term thereof for 1864.]

It seems to me that the words in italics leave no doubt that the clerk was being directed to communicate with Conferdate Virginia courts. If he did so, and was successful, one of the questions heretofore discussed has now been definitely answered. If he did not do so, or was unsuccessful, another section of this Act charged the appellants' attorneys with the responsibility of getting copies of records to the high court. Still another section provided that:

"It shall be the duty of the several persons who have heretofore acted as clerks of the above mentioned courts which have ceased to exist within this state, to deliver to the clerk of the Supreme Court of Appeals of this state the records, books, papers, seals and other property of the said courts."

I would interpret this to mean that the former clerks, now private citizens of West Virginia, were directed to do their full share in the orderly transfer of court jurisdiction from the old state to the new. Another very important Act of the first session of the West Virginia Legislature, chapter thirty-seven, provided ways and means to remedy situations wherein court records had been stolen, lost or destroyed. I should think it a reasonable assumption that this statute was widely availed of in trail courts as well as in the Supreme Court of Appeals.

That the foregoing constitutional and legislative provisions adequately served their purposes there can be no doubt. In a number of cases<sup>28</sup> reported in the first volume of West Virginia Reports (August term, 1863 through January term, 1866) it is merely stated that "the cause was brought to this court by virtue of the constitutional provisions removing causes pending in the district courts to this court," or simply "by operation of law the case was removed to this court."

From this point henceforth the story is that of Union Virginia after West Virginia had become a state. We must remember that

<sup>28</sup> Hood v. Maxwell, 1 W. Va. 219 (1866); Hobbs, Taylor & Co. v. The Steamboat Interchange, 1 W. Va. 57 (1865); Douglas v. Feay, 1 W. Va. 26 (1864).

the Restored Government continued to exist in the east, and that Governor Pierpont remained in office. By proclamation<sup>29</sup> he designated Alexandria to be the capital of Virginia, on August 26, 1863,<sup>30</sup> at which time Union Virginia consisted solely of the Potomac River bridgehead, (the perimeter of which passed through or only a few miles beyond Chain Bridge, Falls Church, Fairfax Court House, and Groveton, which lies just a few miles south of Alexandria on what is now U. S. #1 Highway); the "Eastern Shore" counties; and the Hampton-Norfolk area. His first, though temporary residence in Alexandria was the City Hotel, which is a tourist attraction today not because it once accommodated the "Father of West Virginia" but because it had been frequented by the "Father of Our Country".<sup>31</sup> In Washington's time, as now, it was known as "Gadsby's Tavern," on the corner of Cameron and Royal Streets. The capitol building, which also became the official residence of the Governor until his family joined him early in 1865<sup>32</sup> was, and still is, a three and one-half story brick building located at 413-415 Prince Street. In 1960 a plaque was placed thereon by the owner, on a side wall not visible from the street. The structure is now an apartment building, not open to sightseers.

Shortly after his arrival in Alexandria the Governor received a personal note from Colonel John Singleton Mosby, which warned that "I'll get you some night, mighty easy."<sup>33</sup> Although a sub-

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<sup>29</sup> XI CALENDAR OF VA. STATE PAPERS, 415; Alexandria Gazette, August, 27, 1863.

<sup>30</sup> Anticipating the question, "Where was the capital during the period June 20-August 26?", the Governor's daughter quotes Secretary of State Seward as having said "Governor Pierpont is carrying the capital of Virginia around in his pants pocket." SIVITER, RECOLLECTIONS OF WAR AND PEACE 109 (1938). All quotations and incidents from this book are copyright by Putnam's Sons, and are used here by permission.

<sup>31</sup> I estimate that the number of Alexandria residents these days who know that their city was once a capital of Virginia, or who ever heard of Governor Pierpont or his Restored Government, would be just about enough to provide a grand jury. Elsewhere in Virginia they might constitute a petit jury, provided that challenges were used sparingly. The Virginia school history books that I have seen devote but a few paragraphs to this subject; and I was astonished to find, at the Alexandria Library, that the pages were uncut (until I cut them myself) of the chapter relating to Pierpont and the Restored Government in Volume XI of CALENDAR OF VA. STATE PAPERS. (There is one western Virginian, however, to whom all books devote page after page of biography: Stonewall Jackson!)

<sup>32</sup> When the Governor first went to Alexandria his wife and children moved to Laurel, Maryland, further away from the theatre of war. The Alexandria Gazette of January 5, 1865 reported that the Governor's family had joined him in Alexandria, and that the Pierpont's were residing at "Magnolia House," a small hotel at what was then "the upper end of Duke Street." As of November 1, 1963, I have been unable to locate "Magnolia House."

<sup>33</sup> SIVITER, *op. cit.* *supra* note 30, at 128.

sequent attempt by Mosby to capture the Governor failed, he did capture the Governor's aide, Colonel Daniel F. Dulaney, on September 27, 1863, and sent him off to Richmond as a prisoner of war.<sup>34</sup>

Personal safety, however, was not the Governor's primary concern, for he now performed the additional duties of a number of other state officers who had resigned their posts to assume offices under the new state of West Virginia.<sup>35</sup> Whereas the people of Wheeling were overwhelmingly Union in sentiment, the Governor now found himself in the unfavorable environment of a population even more overwhelmingly sympathetic to the Richmond state government and to the Confederacy. Finding Virginians who were at once loyal to the Union and competent to perform the duties of public office was a chore of the first magnitude. He also had a major problem that ought not to have confronted him at all. I refer now to the constant harassment by federal military authorities, particularly during the months during which General "Beast" Butler was the Military District Commander. Butler actually usurped the civil authority in the Norfolk area, confiscated private property having no relationship to the war effort, and set up provost courts for trial of civilians for non-military offenses. As the United States Court was open in Norfolk, it is apparent that the Pierpont courts could have functioned too, had they been given the recognition to which they were entitled. Although both President Lincoln and Attorney General Bates supported Governor Pierpont when he protested this usurpation, they had even larger problems with which to cope, and General Butler's harassment was never completely abated, until his removal from command. Within the Alexandria "bridgehead," however, civil government continued as usual and the *Alexandria Gazette* regularly reported city council meetings, sessions of the county court, elections to various local offices, etc., much as though times were altogether normal.<sup>36</sup> Had

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<sup>34</sup> SCOTT, *PARTISAN LIFE WITH COL. JOHN S. MOSBY* 144 (1867). Colonel Mosby, by the way, was a lawyer.

<sup>35</sup> Lucian A. Hagans, Secretary of the Commonwealth, and Lewis H. Webb, Auditor, were the only holdovers from the Administration who had served in Wheeling.

<sup>36</sup> For example, see the issue for June 1, 1863, in re county court session; and for June 2, 1863, which reported the enactment of the annual revenue bill by the city council. (Real property tax, 60c on the \$100 valuation; "general personalty" tax, 50c on the \$100 valuation.) The issue of June 3, 1863 reported the election of J. H. Russell as Commonwealth's Attorney for Alexandria County.

it not been for Governor Pierpont's presence, I have no doubt at all that civil functions would have been abolished in Alexandria as they were in Norfolk.

But Mr. Pierpont did much more than serve as Governor while in Alexandria. He, in effect, made himself the advocate of all citizens of his tiny state who were unjustly oppressed by officials of the federal government or by the carpetbaggers. Thus, he interceded with President Lincoln and procured the release of a very young country boy of Fairfax or Alexandria County who had been sentenced to twenty years in a federal penitentiary because, while sitting on a fence in front of his home he had seen a Union cavalry detachment gallop by, and a few minutes later had been frightened into telling the commanding officer of a pursuing Confederate troop the direction in which he had seen the Union unit pass.<sup>37</sup> There can be no doubt that Mr. Pierpont meant every word when, in his proclamation<sup>38</sup> to the people at the time of announcing Alexandria as the capital, he said: ". . . my ardent desire to restore peace and security to each county and neighborhood in the commonwealth, assuring all that I have no other object in view than the present welfare and future prosperity of my native State."

The General Assembly of Union Virginia held two sessions at the capitol in Alexandria, from December 7, 1863 to February 6, 1864, and from December 5, 1864 to February 7, 1865. The Senate consisted of six members, under the presidency of Lieut. Gov. Leopold C. P. Cowper. Honorable James Madison Downey, Loudoun County, was Speaker of a House of Delegates which consisted of thirteen members. The number of constituents any legislator actually represented at any given time is difficult to determine. It is even more difficult to determine the number of qualified voters in any election constituency. An *Alexandria Gazette* item of June 1, 1863 sheds some light on this point: "Enoch Haislip is elected to the House of Delegates from Prince William [county], having received 24 votes."

Governor Pierpont's last official act in Alexandria occurred on May 23, 1865, with the issuance of a proclamation<sup>39</sup> declaring that "the seat of government of our said Commonwealth [is] re-established at and restored to the City of Richmond . . . from and after

<sup>37</sup> SIVITER, *op. cit. supra* note 30, at 251.

<sup>38</sup> The *Alexandria Gazette*, Aug. 27, 1863.

<sup>39</sup> XI CALENDAR OF VA. STATE PAPERS 434.

this date." Shortly after moving into the Governor's mansion in Richmond Mr. Pierpont called a special (and last) session of the Alexandria General Assembly, which was now the *only* legislature of Virginia for the purpose of restoring the franchise to most of those who had sided with the Confederacy. His message to the legislators included this passage: "It is folly to suppose that a state can be governed under a republican form of government when in a large portion of the state nineteen-twentieths of the people are disenfranchised and cannot hold office."<sup>40</sup>

That speech, and the assassination of President Lincoln, was the beginning of Governor Pierpont's decline from favor in Washington. Although President Johnson did not disapprove, the President had his own troubles and had little interest in helping the Governor, whose policies of moderation without malice, similar to Lincoln's, were now being torn all to pieces by Congress. Mr. Pierpont strived valiantly, while in Richmond, to return the government of the state to *all* of its citizens, and to protect them from the carpetbaggers, scalawags, "pardon attorneys," and the hordes of others who descended on defeated Virginia, bent only on making fast dollars and attaining political and commercial advantages for themselves. But the politicians of the North who sought only revenge against the South prevailed in the end, and on April 4, 1868 Governor Pierpont was removed from office by the Military District Commander.<sup>41</sup> So ends the saga of the Restored Government of Virginia. A military government then ensued.

Mr. Pierpont's removal from office was genuinely regretted by the large majority of Virginians, who thereby lost a true friend in their time of need. Even General Schofield, who had ousted the Governor, had this to say concerning the courts of the Pierpont administration: "No case arose in Virginia in which it was found necessary, in my opinion, to supersede the civil authorities in the administration of justice. Not a single citizen of that state was tried by military commission."<sup>42</sup> Mr. Franklin Stearns, a prominent Richmond business man highly respected by all, regardless of wartime loyalties, wrote to Mr. Pierpont that his administration as Governor

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<sup>40</sup> SIVITER, *op. cit. supra* note 30, at 174.

<sup>41</sup> XI CALENDAR OF VA. STATE PAPERS 500.

<sup>42</sup> SIVITER, *op. cit. supra* note 30, at 185. The General was referring to the Richmond period following the termination of hostilities. As military governments elsewhere in those days of reconstruction made wide use of military courts for trial of civilians, this is high praise indeed.

had been "unselfish and wise," and that Pierpont had "kept the State out of the hands of thieves as long as [he] controlled."<sup>43</sup> I could quote others, but there is another point which I consider especially worthy of note in this Centennial year of almost universal deficits and spending without limit: Governor Pierpont retired from office leaving a handsome cash balance in the state treasury.<sup>44</sup> And now I leave it to an unbiased Virginia historian<sup>45</sup> to tersely assess the services of Governor Pierpont to Virginia during his tenure in Richmond: "He addressed himself to the tremendous difficulties of the situation, but he clearly had the good of the people at heart, and, by every effort and influence, he struggled, and not in vain, to mitigate the trials of those by whom he was surrounded."<sup>46</sup>

I have endeavored to show that Mr. Pierpont deserves recognition not only as "Father of West Virginia," but as a great Virginian and a great American as well. When West Virginia became a state, he, too, could have remained in Wheeling, and not without honor.<sup>47</sup> Instead, he heeded what he considered to be the call of duty to his native state, and chose to continue as captain of the Union Virginia ship of state on its long and stormy voyage towards reconstruction of the whole state "with malice towards none, with charity to all." It was not due to any inability on his part to navigate that the ship was finally wrecked, but to circumstances beyond his control, including the assassination of President Lincoln. Had Mr. Pierpont resigned his post on June 19 or 20, 1863, there is little room for doubt that what then remained of Union Virginia would have been straightway transformed into military government. No one else was then on the horizon who would, or could, have filled his shoes. In my humble opinion, this is the message that has not been suffi-

<sup>43</sup> SIVITER, *op. cit. supra* note 30, at 357.

<sup>44</sup> MILLER & MAXWELL, *WEST VIRGINIA AND ITS PEOPLE* 363 (1913).

<sup>45</sup> SMITH, *THE GOVERNOR OF VIRGINIA* 382.

<sup>46</sup> The few Virginians with whom I have talked and who are informed concerning the Restored Government all agree that Governor Pierpont served Virginia well while in Alexandria and in Richmond. They do protest, however, that he was something of a rump governor of a rump state. Be that as it may, there can be no doubt that the Restored Government was *de facto*, and that the United States Supreme Court treated it as *de jure* as well. See *Virginia v. West Virginia*, 78 U.S. (11 Wall.) 39 (1870). That case, by the way, should be of special interest to lawyers of Berkley and Jefferson Counties, as it upheld the annexation of these counties to West Virginia.

<sup>47</sup> His daughter has stated that he could have been first Governor of West Virginia, or one of its first United States Senators. I see no reason to doubt her assertion, even though it may be considered as self-serving. See SIVITER, *op. cit. supra* note 30, at 106.



ciently publicized during this Centennial year; and the "Father of our State", therefore, has not received the *complete* honors to which he is entitled.

I was in Fairmont recently, and had to ask some fifteen or twenty denizens of that city before I was told that the Pierpont residence *is* located somewhere at the north end of town, on U.S. #19. My search ended at an unsightly used car lot, where a person in charge informed me that this lot had indeed been the location of the Governor's house. He thought it had been torn down around 1950, but was not sure of that. It is regrettable that this house had not been preserved as a state museum, but that is water over the dam. However, it is not too late to tidy up the place, or to erect a suitable marker there. And I cannot help but wonder whether, each 20th of June, the Governor's grave in Woodlawn Cemetery, Fairmont, is being decorated by some state organization and by private individual citizens other than members of the Governor's family. If West Virginians fail to so honor the "Father of their State;" and if we fail to make a real effort to publicize Pierpont's services as Governor *after* West Virginia's admittance to the Union, we have only ourselves to blame for the ignorance of others, including the editorial staff of a highly respected and (otherwise) authoritative encyclopedia whose title is almost a household word. The encyclopedia to which I refer solemnly informs us in a recent edition that Mr. Pierpont was governor of both Virginia and West Virginia from the fall of Richmond until 1868.