THE RENDITION OF BARCLAY COPPOC

[The author's dominant motive in writing this paper, and in conducting the research necessarily connected therewith, has been to inquire into the possible legal and constitutional bases for Governor Kirkwood's refusal to honor the requisition of Governor Letcher of Virginia for Barclay Coppoc. Not only has the purpose been to conduct the inquiry as noted, but also to endeavor to ascertain whether the Iowa executive's refusal was founded upon sound and tenable grounds. Repeated charges have been made that Governor Kirkwood's legal knowledge was sadly at fault and that he committed the gravest of blunders when he refused the demand.— EDITOR.]

JOHN BROWN AT SPRINGDALE

As the twilight shades were falling at the close of a day in the early autumn of 1855 a man emerged from the forest-covered bluffs bordering the western banks of the Mississippi River near what is now the city of Clinton, Iowa.[1] Climbing to the summit of a treeless height near by, he gazed across the country to the westward. His sole companions were a lad of fifteen and a young man not yet thirty years of age. Three sons had already preceded this man to what was then the frontier West. Led on by tales of cruel treatment which had been meted out to these sons by "border ruffians", the father, "Old John Brown", had journeyed thus far from his home in northern New York. He had yet several hundred miles to travel before he would reach the home of his sons. Seemingly satisfied with his hasty survey of the country before him, he directed preparations for the night's encampment.

At the dawning of the day following their arrival on the western bank of the Mississippi, John Brown and his companions arose and were soon threading their way over the prairies to the westward. From Tipton they pressed on,

[1] Gue's *John Brown and his Iowa Friends* in *The Midland Monthly*, Vol. VII, p. 103.

passing through the hamlet of Springdale in Cedar County.[2] Little did Brown then think that this quaint and obscure Quaker village would in a little more than three years become intimately connected with his name and fame, and that here would be brought to maturity the plans for his sadly misdirected and ill-fated blow at American slavery. There is no record that Brown even paused at the scene of his future "city of refuge".

Within two weeks John Brown had reached his destination in Kansas. Here, driven almost to madness by the murder of his relatives by "border ruffians" from Missouri and neighboring slave States, he quickly drew the attention of the nation by a series of border skirmishes, such as "Black Jack" and "Ossawatomie", which won for him the dread of the pro-slavery border warrior and for that particular territory the opprobrious name of "bleeding Kansas".

Iowa, the scene of so much of the later activity of John Brown, saw him no more until October, 1856, when he suddenly appeared at Tabor. After remaining here[3] for some time he hurried eastward to consult William Penn Clarke of Iowa City, who at this time was the Iowa member of the Kansas National Committee.[4] Not daring to stop in Iowa City with the slave refugees who accompanied him, Brown resolved to go on to the Pedee Quaker settlement in Cedar County, about sixteen miles to the eastward, where he had been told he might hope to find shelter for his charges.[5] From this refuge he could return to Iowa City to hold night-

[2] Gue's *John Brown and his Iowa Friends* in *The Midland Monthly,* Vol. VII, p. 106.

[3] Villard's *John Brown — A Biography Fifty Years After,* pp. 267-269.

[4] Lloyd's *John Brown among the Pedee Quakers* in the *Annals of Iowa,* Vol. IV, p. 668.

[5] Brown upon the many trips which he made through Iowa to the eastward was always accompanied by fugitive slaves whom he was hurrying on to Canada

ly conferences with Clarke.[6] Thus it happened that toward the close of an October day in 1856 Brown drew rein before the tavern at West Branch and asked shelter for himself and mule.[7] From the time of his kindly reception at this tavern dates Brown's almost constant connection with Pedee and its life to the day of his death, a little more than three years later.

Remaining for only a few days at the West Branch tavern, Brown resumed his flight toward Canada with his contraband slaves. Following his safe arrival in Canada, he paid a brief visit to the eastern supporters of his cause and by the early months of 1857 he was again in Kansas.[8] Even at this early date Brown seems to have been evolving in his mind a scheme for a sort of armed invasion of slave territory other than Kansas or Missouri, for he reappeared at Tabor in the summer of 1857 accompanied by one Colonel Hugh Forbes,[9] whom he had induced to come from the East

and freedom. Thus encumbered he dared not remain in a town where pro-slavery sentiment was as pronounced as it then was in Iowa City.— See Lloyd's *John Brown among the Pedee Quakers* in the *Annals of Iowa*, Vol. IV, p. 669.

Tabor, Des Moines, Grinnell, and Iowa City were well established stations on the Underground Railway in Iowa from Kansas and Missouri.

[6] Lloyd's *John Brown among the Pedee Quakers* in the *Annals of Iowa*, Vol. IV, p. 669.

[7] As Brown alighted from his mule at West Branch before ''The Traveler's Rest'', a little frame tavern kept by James Townsend, he inquired of the tavern keeper if he had ever heard of ''Old John Brown'' of Kansas. Townsend made no reply other than to mark Brown's hat, saddle, and mule with cross marks of chalk which were the identifying marks granting to the bearer thereof the freedom of the tavern's hospitality. The mule still remained in the possession of John H. Painter of Springdale in 1866; and Frederick Lloyd notes that it then was ''the most prized, petted and pampered mule in that settlement''.— See Lloyd's *John Brown among the Pedee Quakers* in the *Annals of Iowa*, Vol. IV, pp. 669, 670.

[8] Such men as Frederick Douglass, Gerrit Smith, Theodore Parker, Franklin B. Sanborn, Wendell Phillips, and Dr. Samuel G. Howe were secretly furnishing Brown with supplies to carry on his Kansas war.

[9] Hugh Forbes was a soldier of fortune and had fought under the Italian liberator Garibaldi and other revolutionary leaders in Europe previous to coming to America.

to drill his projected anti-slavery army. Tabor,[10] being in free and sympathetic territory, was chosen as the best place for the work of drillmaster Forbes.

Brown's army, however, did not materialize. Forbes spent the whole of the summer and autumn of 1857 in drilling Brown and one or two of his sons in a new manual of arms and in a most original and fantastic system of target practice.[11] As autumn wore away Forbes became dissatisfied, and at last he and his employer violently disagreed upon the subject of compensation. On November 2, 1857, Forbes took passage on a Missouri River steamer for the East,[12] while Brown returned by wagon to Kansas in search of his promised recruits. Ever after Brown thoroughly believed that his former drillmaster was his Nemesis hurrying him onward to the destruction of his plans.

Upon his return to Kansas, Brown was more successful than formerly; and soon he reappeared at Tabor with about eleven men besides himself — the genesis of his famous band.[13] It was at this time that Brown first revealed the fact that his plans were directed elsewhere than against Kansas as their point of execution.[14] Forbes's unhappy defection seemed to make necessary a change of base, and accordingly Brown announced an early departure for Springdale, Iowa. At the beginning of one of the severest

[10] Tabor had been founded in 1848 by a number of Ohioans who were impelled by an ambition to make their Iowa settlement a second Oberlin. At this time (1857) it had about twenty-five houses.— Villard's *John Brown — A Biography Fifty Years After*, p. 267.

[11] Todd's *Early Settlement and Growth of Western Iowa*, pp. 154, 155.

[12] Todd's *Early Settlement and Growth of Western Iowa*, p. 156.

[13] Todd's *Early Settlement and Growth of Western Iowa*, p. 156. Among the little band may be noted Aaron D. Stevens, Charles P. Tidd, Owen Brown, John H. Kagi, and John E. Cook who fought with him at Harper's Ferry or were present at the Kennedy Farm.

[14] See Cook's confession in the *New York Weekly Tribune*, Vol. XIX, No. 951, December 3, 1859.

winters in the history of Iowa the party left Tabor on December 4, 1857.[15] More than three weeks were consumed in the march across the snow-covered prairies two hundred and fifty miles to Springdale, and many were the hardships endured by the men.[16]

Brown had confidently planned upon disposing of his mules and wagons upon reaching Springdale in order to relieve his chronic financial distress, but the full effect of the panic of 1857 was now making itself felt and rendered the sale of his freighting equipment impossible.[17] William Maxson, a Quaker farmer and a strong abolitionist living about three miles northeast of Springdale, however, agreed to care for Brown's men through the winter, taking the mules and wagons in payment. To this arrangement Brown finally yielded his consent.

Brown had originally hoped to make the winter march to Ashtabula,[18] Ohio; but owing to his habitual failure to correctly reckon his financial resources he was, in spite of his reluctance, forced to abandon this plan for the time being. He did not remain long in Springdale, however, for upon completing the disposition of his forces he departed for the East to raise more money and much needed supplies. Upon the eve of his departure for the East, he is thought to have revealed his tentative Virginia plans, with Harper's Ferry as the possible point of attack, to Parsons and Kagi, two members of his band which was then quartered at the Maxson farmhouse near Springdale.[19]

[15] Villard's *John Brown — A Biography Fifty Years After*, p. 311.

[16] Dubois's *John Brown* in the *American Crisis Biographies*, pp. 221, 222; and Villard's *John Brown — A Biography Fifty Years After*, p. 311.

[17] Villard's *John Brown — A Biography Fifty Years After*, p. 312.

[18] Villard's *John Brown — A Biography Fifty Years After*, p. 312.

[19] The band as brought to Springdale at this time comprised Owen Brown, John H. Kagi, Richard Realf, Luke F. Parsons, William H. Leeman, Aaron D. Stevens, John E. Cook, Charles W. Moffat, Charles P. Tidd, and Richard Rich-

The Iowa hamlet whose name has become intimately associated with the memory of "Old John Brown" was at this time composed of people "dwelling in comfortable houses, surrounded by their own teeming fields, and enjoying to the utmost the fruits of virtuous liberty and their own thrift". They were a sympathetic people who "would gladly see all men in possession of the same blessings God has showered upon them."[20] It was a Quaker community, composed of members of that sect who had found their eastern homes too much compassed about by other sects who rendered the living of the simple Quaker life practically impossible. Upon the prairies of eastern Iowa they had sought and found that simplicity of life for which they had so eagerly longed in their Ohio homes. At the time of John Brown's visit the village had a population of about one hundred souls and could boast of but one street, upon which was to be found not only the commercial center of the community, but the unassuming cottages of the villagers as well. Broad-brimmed hats and scuttle-shaped bonnets were much in evidence.

Into this little community John Brown brought his followers late in December, 1857; and here it was that he completed his plans for a final attack upon the institution of slavery.[21] The people of the village received Brown kindly and extended to him the fullness of their Quaker hospitality.[22]

ardson. Richardson was the only colored man of the band.— See Lloyd's *John Brown among the Pedee Quakers* in the *Annals of Iowa,* Vol. IV, p. 712; and Richman's *John Brown Among the Quakers* (Third Edition), p. 23.

20 Lloyd's *John Brown among the Pedee Quakers* in the *Annals of Iowa,* Vol. IV, p. 666.

21 Lloyd's *John Brown among the Pedee Quakers* in the *Annals of Iowa,* Vol. IV, p. 667.

22 Dubois's *John Brown,* p. 222. Mr. Maxson in reckoning the board of Brown's men did so at the rate of one dollar per week. However, Mrs. E. S.

Amid these pleasant surroundings, the band spent the remainder of the winter.[23] Brown had, before his departure on January 15th, appointed Stevens, a member of the band, as drillmaster to fill the place vacated by Forbes. During the winter the men, under the tutelage of the new drillmaster, were trained in the manual of arms, military formations and maneuvers, and gymnastics for three or four hours each day in the field in the rear of the Maxson home.[24] The long evenings were spent in holding sessions of a mock legislature, in which Cook and Kagi starred in debate, and in various other equally enjoyable pastimes.[25] Such splendid entertainers did they prove themselves and so royally were they entertained that when Brown returned to Springdale from the East on April 22, 1858, with the announcement of their near departure for Chatham, Canada West, there was on the part of the members of the band and the people of Springdale mutual regret.[26]

Butler, who resided at Springdale at that time, in a letter to *The Midland Monthly* states that the men were quartered during the winter at various farmhouses wherever they were able to obtain work. This seems probable since Maxson's house, as is evident from its size, could not accommodate all. She states that the headquarters were at the Maxson home. Several of the men were frequently quartered at her home.—*The Midland Monthly,* Vol. X, p. 576.

[23] Among these men were to be found poets, orators, scholars, Kansan War heroes, ''idealists, dreamers, soldiers and avengers, varying from the silent and thoughtful to the quick and impulsive; from the cold and bitter to the ignorant and faithful . . . . It was a veritable band of crusaders . . . . They had been trained mostly in the rough school of frontier life, had faced death many times, and were eager, curious and restless.''—Dubois's *John Brown,* pp. 285-287.

[24] Villard's *John Brown — A Biography Fifty Years After,* p. 316.

[25] Realf was a brilliant man and posed as having at one time been a protegé of Lady Noel Byron. He lectured frequently at the neighboring schoolhouses and was always greeted by well filled houses. Cook was equally talented as an orator and a poet and entertained crowds of people in the country schools many times by his elegantly worded addresses and attractive poems.

[26] Dubois's *John Brown,* p. 252.

JOHN BROWN AND HIS MEN IN CANADA

Brown deemed immediate departure imperative; and so on April 27, 1858, he and his men set out by rail for Chatham, Canada West, going by way of Chicago and Detroit. They departed with the heartiest wishes for future success from the people of Springdale, who considered slavery the greatest curse of the Nation. Before leaving, Brown disclosed his completely matured plans to his three Quaker confidants and advisers — James Townsend, John H. Painter, and Dr. H. C. Gill.[27] These men are believed to have been the first persons to whom he revealed his matured plan of attack upon the institution of slavery.

In leaving Springdale for Canada, Brown had a two-fold purpose in view: first, to give his secret and temporary organization a constitutional form; and second, to gain an impetus for an immediate raid upon the Southland. The first object only was accomplished. Brown fondly hoped that upon giving his enterprise a constitutional footing volunteers and money would generously flow toward it. Accordingly, at Chatham, Canada West, on May 8, 1858, pursuant to a call[28] issued about a week previously, there assembled in an old engine house in that city one of the most strangely composed and organized constitutional conventions that ever met upon the American continent; while the product of its labors was equally strange.[29] Presided over by a negro,[30] its deliberations were largely and at times

[27] Lloyd's *John Brown among the Pedee Quakers* in the *Annals of Iowa*, Vol. IV, p. 712.

[28] See Cook's confession in the *New York Weekly Tribune*, Vol. XIX, No. 951, December 3, 1859.

[29] For a copy of the journal of the Provisional Constitutional Convention on May 8, 1858, see the report of the Mason investigating committee.— *Senate Reports*, 1st Session, 36th Congress, Report No. 278, p. 45.

[30] Its negro presiding officer was a Rev. William C. Munroe, a mulatto from Detroit, Michigan.— *Senate Reports*, 1st Session, 36th Congress, Report No. 278 (Testimony), p. 95.

exclusively participated in by negroes, and its measures were adopted by an overwhelming majority of negro votes.

During his winter's absence in the East, Brown had drafted a constitution, which he now submitted to the Convention for adoption. Much heated controversy arose over the forty-sixth article,[31] but its provisions were finally accepted without amendment. The final result of the Convention's labors, embodied in a document of forty-eight articles, was styled the "Provisional Constitution and Ordinances for the People of the United States."[32] This instrument was at once promulgated by Brown, and on May 10th provisional officers were elected.[33]

The work of the constitutional and nominating convention had not been closed before Brown received word from his eastern friends that his intended move upon the South had been betrayed — presumably by Forbes. This news ren-

[31] It has always been a point of heated controversy whether Brown had in mind the ultimate overthrow of the United States government and Constitution or not. To the last he protested that he had no such object in view. The Forty-sixth Article which aroused so much discussion in the Convention was proposed by Brown — as indeed was the whole Constitution. Brown fought for the retention of the article and finally won. This action ought to settle the above question in his favor. The article is as follows: "The foregoing articles shall not be construed so as in any way to encourage the overthrow of any State government, or of the general government of the United States, and look to no dissolution of the Union, but simply to amendment and repeal. And our flag shall be the same that our fathers fought under in the Revolution."— Provisional Constitution and Ordinances as incorporated in the report of the Mason investigating committee, found in *Senate Reports,* 1st Session, 36th Congress, Report No. 278, pp. 58, 59, *Journal of the Select Committee.*

[32] *Senate Reports,* 1st Session, 36th Congress, Report No. 278, pp. 48-59. Some of the provisions of this Constitution are very unusual. For instance, there was to be a Congress of one house of from five to ten members, and a Supreme Court of five members, each of whom was to hold circuit court. All property was to be held in common. There were to be no salaries. Labor was compulsory, and the carrying of unconcealed arms was encouraged.

[33] Dr. Hermann von Holst, a leading authority on American constitutional history, has referred to this strange instrument of government as being "a piece of insanity in the literal sense of the word. A confused medley of absurd forms."

dered inevitable the immediate disbanding of the members of the proposed expedition, who scattered in many directions wherever promise of work was to be found. With a parting admonition to his men to keep in close touch with him whatever might happen, Brown once more returned to Kansas and resumed his relentless war upon slavery.

BROWN'S LAST VISIT TO THE WEST

While in Kansas for this last time, Brown, with the assistance of Kagi, planned and executed what was without doubt the most notorious of his slave raids into Missouri.[34] During the progress of this raid Kagi's party wantonly killed a slaveholder, besides destroying and stealing much property. As was his custom, Brown, after uniting his forces with those of Kagi, fled across the Missouri River at Nebraska City to Tabor, Iowa.

The news of the raid soon reached Tabor, bearing with it the details of the murder and of the destruction and theft of property. A mass meeting of the citizens of Tabor was held at which a resolution soundly denouncing Brown was passed as voicing the sentiment of the little village.[35] This action so incensed Brown that he at once left Tabor, vowing never to return. He therefore continued his flight to Springdale from whence, with the aid of William Penn Clarke, Hiram Price, Josiah B. Grinnell, and others he was enabled to reach Canada in safety with the slaves he had taken from their masters in Missouri.[36]

This proved to be Brown's farewell visit to Iowa, Kansas, and Missouri, where he had done so much to foment sec-

[34] See Villard's *John Brown — A Biography Fifty Years After*, pp. 367-384.

[35] Todd's *Early Settlement and Growth of Western Iowa*, pp. 158-161; and Villard's *John Brown — A Biography Fifty Years After*, pp. 384-386.

[36] An account of the part these men took in the forwarding of Brown and his slaves to Canada may be found in Lloyd's *John Brown among the Pedee Quakers* in the *Annals of Iowa*, Vol. IV, pp. 716-719.

tional and party strife. The latter State, thoroughly aroused at the murder of the slaveholder, Cruise, had offered aggregate rewards of three thousand dollars for Brown, dead or alive.[37] And so Brown decided to go East for the purpose of conferring with friends in Boston, where he spent the entire spring and early summer. Having to his own satisfaction adjusted all financial and strategic difficulties, Brown decided late in June that the time was most propitious for the launching of his long contemplated raid into eastern slave territory.

PREPARATIONS FOR THE RAID ON HARPER'S FERRY

Having reached a definite conclusion, he moved with characteristic enthusiasm and precipitation to the execution of his plan. Accompanied by two of his sons and Jeremiah Anderson, he hastened into Maryland, and on June 30th appeared at Hagerstown.[38] A few days later (July 3rd) he was on the Maryland side of the Potomac directly opposite Harper's Ferry. Here, it appears that Brown and his two sons pretended that they were seeking lands for purposes of investment.[39] A little later they rented what was known as the Widow Kennedy Farm, about four miles from the Ferry.

The mustering of men and the moving of arms and supplies at once began toward Chambersburg, Pennsylvania, from which place they were hauled across the country to the Kennedy Farm.[40] Brown and his men also began

[37] Villard's *John Brown — A Biography Fifty Years After*, p. 371.

[38] Sanborn's *Life and Letters of John Brown* (Fourth Edition), p. 527.

[39] Sanborn's *Life and Letters of John Brown* (Fourth Edition), pp. 527-529.

[40] It was at this time that John H. Painter shipped to Brown, under the tter's assumed name and directed to Chambersburg, Pennsylvania, the Sharps' fles and revolvers — 196 of each — which, up to this time, had been stored at ringdale. These arms were shipped marked as "Carpenters' tools".— oyd's *John Brown among the Pedee Quakers* in the *Annals of Iowa*, Vol. IV, 760.

reconnoitering the country on both the Virginia and the Maryland sides of the Potomac in the immediate vicinity of the farm and Ferry in preparation for what they expected would "effect a mighty conquest"[41] and destroy the curse of slavery. Believing that he had only "this one opportunity, in a life of nearly sixty years", Brown threw himself unreservedly into what was without doubt one of the most daring, though foolhardy, exploits of modern times.

THE DEPARTURE OF EDWIN AND BARCLAY COPPOC

Thus it happened that on July 15, 1859, Brown despatched a message to two young men, scarcely more than boys, who were at this time living quietly in their home at Springdale. To these young men the message was of great importance, since it bore a request for their immediate presence at the Kennedy Farm.

While Brown's men had been drilling at the Maxson farm in the winter of 1857-1858 the two older Coppoc boys, Barclay and Edwin, had watched them and had become infatuated with the warlike preparations and with the magnetic personalities of certain members of the band. Moreover, they were in thorough sympathy with the cause which Brown and his men had espoused. Having volunteered their services to Brown subject to call, the expected summons found them ready to respond.

Sad indeed must have been that twenty-fifth day of Jul in Springdale, when the two Coppoc boys, responding to call which had no place in Quaker principles, bade farewe to their mother and friends and began a journey whose en ing not even their over-sanguine leader could foresee. Th Quaker mother who, although rebelling against the wildne

[41] Words of John Brown in a letter written to F. B. Sanborn on February 1858.— Sanborn's *Life and Letters of John Brown* (Fourth Edition), p. 444.

of Brown's plan, sacrificed her two sons for the cause of Freedom in which she sincerely believed, furnishes a true example of the heroism of American womanhood during the trying years which followed.

Edwin Coppoc, the older of the two brothers, was destined never again to look upon his Springdale home; for before five months had passed, his mother's prophetic words of parting[42] had been fulfilled and his name had been enrolled as one of the first martyrs in the internecine strife waged for the emancipation of the American negro slave. As the form of the Iowa boy swung clear of the scaffold's platform, the infuriated crowd of Virginians cheered. Later, the same crowd raged about his body as it was slowly lowered from the gibbet as if impatient to tear it to shreds.[43]

Barclay, more fortunate than his older brother, finally returned to Springdale in safety. In the attempt made by him to reach his home and friends, and in the subsequent efforts of those devoted friends to save his life, is found the constitutional question with which this paper will largely deal.

THE COPPOC FAMILY

The Coppoc family had formerly been members of the Quaker settlement at Salem, Ohio, where Barclay was born on January 4, 1839;[44] and so he was only ten months past his twentieth year at the time of the ill-fated assault which

[42] Barclay Coppoc upon receiving Brown's letter said to his mother: "We are going to start for Ohio to-day." "Ohio!" said his mother, "I believe you are going with old Brown. When you get the halters around your necks, will you think of me?"— Villard's *John Brown — A Biography Fifty Years After*, p. 71.

[43] Edwin Coppoc was hanged on December 16, 1859, at Charlestown, Virginia.— Villard's *John Brown — A Biography Fifty Years After*, p. 570.

[44] Villard's *John Brown — A Biography Fifty Years After*, p. 682; and ue's *John Brown and his Iowa Friends* in *The Midland Monthly*, Vol. VII, 272.

ultimately was to claim his life as well as that of his brother. The father died when Barclay was only two years of age; and in the late forties the mother removed with her family to the Pedee settlement in Cedar County, Iowa. Mrs. Coppoc, the mother, was a woman of more than ordinary intelligence, firm and resolute in purpose and conviction, and a strong abolitionist, as were all her sect. To her teachings, instilled into their minds in early life, was due the strong and intense bitterness felt toward slavery by her sons.[45]

As Barclay neared young manhood he showed signs of tuberculosis, and so was sent to Kansas in 1857. While in Kansas he witnessed many of the stirring scenes which were daily being enacted in that Territory and had, we are told, taken part in some of Brown's expeditions. He returned to Iowa thoroughly in sympathy with Brown's cause and needed no urging when the invitation came in July, 1859. August had scarcely begun when he and his brother arrived at Chambersburg, Pennsylvania, and offered their lives and services to Brown to aid in the furtherance of his wildly conceived schemes of slave redemption. Seldom have the annals of our country recorded greater devotion to a cause than is found in the response of Edwin and Barclay Coppoc to the appeal of their magnetic but deluded leader.[46]

THE RAID ON HARPER'S FERRY

With his men gathered around him at Chambersburg, Pennsylvania, early in August, John Brown revealed his definite plans for attacking Harper's Ferry.[47] A few of his

[45] Letter from Mrs. E. S. Butler in *The Midland Monthly*, Vol. X, p. 576.

[46] "Ah, you gentlemen don't know Capt. Brown", said Edwin Coppoc while a prisoner at Harper's Ferry; "when he calls for us we never think of refusing to come."—*New York Weekly Tribune*, Vol. XIX, No. 945, October 22 1859.

[47] As to just when Brown revealed his plans of attack upon slavery with Harper's Ferry as the definite point of assault has aroused much discussion and

men at first demurred to the leader's plans, but later all concurred and began the final preparations for the assault.[48]

On Monday, October 10, 1859, John Brown as Commander-in-chief of the "Provisional Army" issued general orders for the assault.[49] It is of interest in this connection to note that in these orders General Brown detailed Owen Brown, F. J. Merriam, and Barclay Coppoc as a special guard to remain at the Kennedy Farm in charge of the munitions of war stored there. Neither of these men had yet crossed the Potomac and set foot on Virginia soil; nor did they do so at any time during or after the assault.[50]

Sunday, October 16, 1859, witnessed the final calling of the roll at Kennedy Farm. The call revealed the fact that there were then present and ready for aggressive participation in the attack — which all but one[51] of the total number

no little disagreement. Weight of authority seems to favor the time given above. However, see statement of Edwin Coppoc when taken captive, in the *New York Weekly Tribune*, Vol. XIX, No. 945, October 22, 1859. See also Lloyd's *John Brown among the Pedee Quakers* in the *Annals of Iowa*, Vol. IV, p. 668; Dubois's *John Brown*, pp. 222-224, 304; Cook's confession in the *New York Weekly Tribune*, Vol. XIX, No. 951, December 3, 1859; and Realf's testimony before the Mason investigating committee in *Senate Reports*, 1st Session, 36th Congress, Report No. 278 (Testimony), pp. 91-94; and Sanborn's *Life and Letters of John Brown* (Fourth Edition), pp. 438, 450, 541.

48 Brown alone believed in the assault on the property of the United States at Harper's Ferry.— Villard's *John Brown — A Biography Fifty Years After*, p. 427.

49 According to the general orders his men were to be organized into battalions of four companies each, seventy-two men to the company. Each company was to be divided into bands of seven men under a corporal, and two bands made a section of sixteen men under a sergeant.—Sanborn's *Life and Letters of John Brown* (Fourth Edition), p. 546.

50 To substantiate this statement see Cook's confession in the *New York Weekly Tribune*, Vol. XIX, No. 951, December 3, 1859; Villard's *John Brown — A Biography Fifty Years After*, p. 468; and Gue's *John Brown and his Iowa Friends* in *The Midland Monthly*, Vol. VII, p. 112.

51 All but Taylor hoped by some stroke of fortune to come out alive; only a few believed in the plan of campaign, looking upon the arsenal as a death-trap. — Villard's *John Brown — A Biography Fifty Years After*, pp. 424, 425.

of followers regarded as the privilege of a lifetime — a force of twenty-one men, of whom sixteen were white and five colored.[52] And of this number four acknowledged Iowa as their home.[53]

Night came — dark, gloomy, and rainy. All held themselves in readiness for the final marching orders which were issued about eight o'clock, when Brown announced: "We will proceed to the Ferry."[54] Shortly thereafter the band began its silent march, unaccompanied by shrill of fife or roll of drum. Eighteen in all, they assailed and readily captured what their leader believed to be the Thermopylaean Pass to the abolition of slavery in America.[55]

Monday, October 17, 1859, dawned upon an astounded Washington and an all but panic-stricken Richmond. The long feared raid on the South had taken place and slavery, the bulwark of southern institutional life, was threatened with destruction. Such was the hasty conclusion of the South as the telegraph flashed the message of alarm. Troops were at once rushed upon Harper's Ferry from Washington and Richmond, but not for fifty-eight hours did John Brown and his men yield to overwhelmingly superior forces.[56] Of the eighteen members of Brown's band who were either killed or captured three were from Iowa.[57]

[52] Sanborn's *Life and Letters of John Brown* (Fourth Edition), p. 546; and *Senate Reports*, 1st Session, 36th Congress, Report No. 278, p. 3.

[53] These were Edwin and Barclay Coppoc, Stewart Taylor, and Jeremiah Anderson.

[54] Sanborn's *Life and Letters of John Brown* (Fourth Edition), pp. 552, 553; and Villard's *John Brown — A Biography Fifty Years After*, pp. 426-429.

[55] *Senate Reports*, 1st Session, 36th Congress, Report No. 278, p. 3.

[56] As reported by Colonel Robert E. Lee, commander of the U. S. Marines and other national forces present, Brown's band suffered a loss of twelve men by death. John Brown, Edwin Coppoc, Copeland, Stevens, and Green were taken prisoners. All were wounded except Coppoc, who came out of the battle unhurt.— *Senate Reports*, 1st Session, 36th Congress, Report No. 278, p. 44.

[57] These three Iowa boys were: Edwin Coppoc, Stewart Taylor, and Jeremiah Anderson.

Not all of these eighteen men, it should be noted, sacrificed their lives in the assault and later defense of the town. Those who escaped death at this time were taken prisoners upon surrender or were afterwards returned to Virginia by requisition upon the States where they were found. All who were thus taken or returned were hanged in accordance with the legal processes of a much frightened State. It was thus that Brown, Edwin Coppoc, and five others of the band[58] were indicted,[59] tried, and condemned to death by hanging[60]— the charge being first degree murder committed on citizens of Virginia.[61] With an immovable fidelity to an apparently lost cause, they all calmly awaited the day of death, going to their graves confident that their act would usher in a time of universal justice and freedom.[62]

THE ESCAPE OF BARCLAY COPPOC

It will be recalled that Barclay Coppoc, Merriam, and Owen Brown had, pursuant to orders, remained at the Kennedy farm to guard the arms and supplies. Later, during the attack Cook and Tidd were sent back to the farm with captured arms and slaves,[63] and while there word came of

[58] In addition to Brown and Coppoc the following were also hanged: Green, Stevens, Copeland, Cook, and Hazlett.

[59] Of these trials the *Boston Transcript* declared: "Whatever may be his guilt or folly, a man . . . . *executed* after such a trial, will be the most terrible fruit that slavery has ever borne, and will excite the execration of the whole civilized world."— Quoted in Villard's *John Brown — A Biography Fifty Years After*, p. 481.

[60] Brown was hung on December 2; Coppoc, Green, Copeland and Cook on December 16; Hazlett and Stevens were hung early the following year.— Villard's *John Brown — A Biography Fifty Years After*, pp. 557, 569, 580.

[61] The verdict read: "Guilty of treason, advising and conspiring with slaves and others to rebel, and of murder in the first degree."— *The Tipton Advertiser*, Vol. VI, No. 46, November 5, 1859.

[62] See editorial in the *New York Weekly Tribune*, Vol. XIX, No. 951, December 3, 1859.

[63] Gue's *John Brown and his Iowa Friends* in *The Midland Monthly*, Vol. VII, p. 112.

the impending surrender of Brown and the rapid mobilization of troops.[64] Fearing to return to the Ferry, they remained at the farm. On Tuesday came the not unexpected news of Brown's capture through the storming of the engine house by the United States marines.[65] Immediately the five survivors began a retreat.[66] Safety demanded that they keep to the most secluded portions of the mountains, continue their flight mainly by night, and live upon what could be found in the woods and fields.

Owen Brown was, by general consent, chosen leader of the retreat,[67] which he directed through the mountainous regions of Maryland and western Pennsylvania toward Lake Erie and Canada. Cook was soon captured, due to his own carelessness, and was returned to Virginia, where he suffered the same fate as was dealt to all members of the band who were captured at Harper's Ferry. Merriam dropped out later on account of physical exhaustion, but almost miraculously made his escape by railroad. The others, including Barclay Coppoc, continued the flight.

For thirty-six days they wandered through the Pennsylvania mountains, dogged at every turn by bloodhounds and human pursuers, for Governor Wise of Virginia had placed a price on Coppoc's head conditioned solely upon his delivery at the Jefferson County jail. The inclemency of the weather added to the hardships of the men, for the autumn

[64] Governor Wise of Virginia issued a proclamation "but fifteen lines long, and ordered artillery, cavalry, and infantry to the seat of war. . . . The President ordered up three companies from Old Point Comfort, and sent on eighty marines from the Washington Navy Yard, placing Col. R. E. Lee in command."—*New York Weekly Tribune*, Vol. XIX, No. 945, October 22, 1859.

[65] See Villard's *John Brown — A Biography Fifty Years After*, pp. 452-455; see also Dubois's *John Brown*, p. 334.

[66] For Owen Brown's dramatic story of this retreat, see the article by R. Keeler in the *Atlantic Monthly*, Vol. XXXIII, pp. 342 ff.

[67] Gue's *John Brown and his Iowa Friends* in *The Midland Monthly*, Vol. VII, p. 272.

rains had begun and in the mountains it was more frequently snow, sleet or hail, than rain. Their clothing was soon torn to shreds and their shoes were all but gone. Lacking shelter by day, they oftentimes lay upon the ground unprotected against the sleet and hail. Conditions were even worse at night, for to the discomfort of the day was added the chill of the night time and the laceration of feet or body by sharp stones and thorns.

For food the fugitives had nothing but what they could secure without being seen. There was little to be found in the mountains, and at that season of the year but little could be obtained lower down. Corn, picked grain by grain from the ear and eaten unground, formed the main article of diet. Sometimes they were successful in stealing a chicken, which was devoured raw — for they had no means of making a fire and even if they had possessed the means they would not have dared to use them. Under such conditions human endurance was pushed to the limit.

For several days their struggles against the pangs of hunger and the danger of capture by Virginia officers continued with little immediate promise of abatement. At last, driven to desperation by starvation and the pains incident to exposure, the three survivors concluded to seek food and shelter at any cost at a Pennsylvania farmhouse near at hand. Here they found themselves among friends and were given food and shelter. They did not, however, reveal their identity, fearing to trust anyone with their secret.

While partaking of the food, with which they were liberally served, one of the three refugees chanced to pick up a newspaper and there read of the fate of the other members of the band who had survived the assault. While he read the accounts of the hanging of their leader and of the condemnation of Edwin Coppoc and others, all succeeded in concealing their emotions except Barclay Coppoc. As the

details of the trial, condemnation, and approaching execution of his brother were read tears came to his eyes. But thanks to the hospitality of their host no embarrassing inquiries concerning the cause of the apparent grief were made.

Remaining at the farmhouse for only a brief time the fugitives continued their flight greatly refreshed and strengthened. The time had now come for separation; and Barclay Coppoc, successfully concealing his identity, made his way back by railroad to his Iowa home. Here he arrived on December 17, 1859,[68] "worn almost to a skeleton by starvation and exposure." On the previous day his brother Edwin, loaded with chains and shackles, had yielded his life upon a Virginia scaffold at Charlestown.

THE REQUISITION FROM VIRGINIA

Barclay Coppoc's battle for life had but its beginning in the struggle which he had made in the flight through the mountains of western Pennsylvania and thence across the Mississippi Valley to Iowa. Scarcely had he reached his home than his whereabouts were betrayed to the Virginia authorities. Governor Letcher of Virginia, just entering upon his initial term of office as chief magistrate of the Commonwealth,[69] was anxious to prove himself a true defender of the honor and safety of his State. Accordingly, on January 23, 1860, his agent, one Mr. C. Camp, appeared at Des Moines, Iowa, bearing requisition papers directed to the Governor of Iowa for one Barclay Coppoc, reputed to be a fugitive from the justice of Virginia.[70]

[68] Aurner's *Topical History of Cedar County, Iowa,* Vol. I, p. 424.

[69] Governor Letcher had but a few days since succeeded Wise as Governor of Virginia and had thus fallen heir to all the latter's controversies.

[70] See letters from Governor Kirkwood to Governor Letcher dated January 23 and 24, 1860.— Shambaugh's *Messages and Proclamations of the Governors of Iowa,* Vol. II, pp. 394-396.

This attempt of the Governor of Virginia to secure the rendition of Coppoc was received with unfeigned surprise in Iowa and caused no little apprehension upon the part of Coppoc's friends and of the anti-slavery people of the State who were cognizant of the agent's arrival. Since February 12, 1793, there had been upon the United States statute books a law providing for the rendition of fugitives from labor and justice. Courts had reviewed it, but had added nothing to its clearness. It had been modified by a second enactment dating from September, 1850, which only added still further to the uncertainty of its meaning. Difficulties concerning the act of 1793 might not have arisen, however, if it had not contained within it the essence of another question which was later to foment the bitterest sectional and partisan strife of the century.

With the adoption of the Federal Constitution this question had been ushered into our national life by a series of compromises. These compromises, instead of definitely settling the question, had created a controversy which gathered force as the Nation expanded, giving rise to other compromises, until finally the question of slavery and its solution composed the entire background of political, social, and economic life. Lines of demarcation appeared, creating a North and a South, a slave and a non-slave section.

At this time (1859) the partisan and sectional strife had nearly reached its height. National fugitive slave laws, depending upon the statute of 1793 and article IV, section 2, clause 3, of the Federal Constitution, were enacted. The too rigid enforcement of these laws by the South, as well as the same section's desire to see such laws enforced either literally or according to their constructive meaning, had led to intense bitterness of feeling.

The feeling between the North and the South grew notably more bitter whenever a controversy arose concern-

ing the construction to be placed upon legal processes providing for the return of interstate fugitives. It is not to be denied that the officers of the law at the North did illegally assist fugitives from labor at the South to conceal themselves and to remain concealed, thus defeating the end of the fugitive slave laws. On the other hand, as one writer declared, "no requisition from a Northern State is treated with respect when the surrender conflicts with their own laws or with the policy of slavery, which is with them always paramount to all other considerations."[71] Lapse of time instead of healing the misunderstanding only added to its intensity.

Laws for the return of fugitives from labor and of fugitives from justice had been indiscriminately violated or openly interpreted in a manner to suit the occasion until it was nearly impossible to decide upon an authoritative interpretation of the laws for the return of such fugitives. In many instances no distinction had been made between the interpretation and application of the laws providing for the return of fugitive slaves and the, in some respects, radically differing laws for the return of criminals fleeing from justice. If such a distinction was made it often depended upon whether the demanding State was of the North or of the South, free or slave. Such misinterpretations, or lack of just interpretations, were productive of much bitter feeling and no little abuse of the fugitive laws.

The situation had been further intensified by a decision of the United States Supreme Court in 1857[72] which, to the anti-slavery people of the North, seemed to be the last possible insult which could be offered. A little more than two

[71] Editorial from the *New York Evening Post* quoted in *The Tipton Advertiser*, Vol. VII, March 15, 1860.

[72] The famous Dred Scott decision handed down by Chief Justice Taney of the United States Supreme Court.

years later came the John Brown raid upon Harper's Ferry, which seemed to the South a retaliatory blow by the people of the North in return for the iniquitous decision above mentioned. It was evident to all that a crisis was impending.

Such was the inflammatory condition of public sentiment when Mr. Camp, the agent of Virginia, appeared at Des Moines and presented his papers to Governor Kirkwood. Surprised as the people of Iowa were at the requisition, the northern sympathizers of the South were more astonished at the attitude taken by Governor Kirkwood upon the question thus presented to him for consideration and action. The pro-slavery sympathizers took it as a matter of course that the demand would be honored. But the Governor of Iowa thought differently and refused to honor the papers presented, alleging irregularities as the grounds of his refusal.[73] This refusal and the issue growing out of it furnish an interesting sidelight upon the partisan feeling of the time, as well as providing the basis for a constitutional study of the questions involved.

At this point it may be well to trace through to its conclusion the tale of Barclay Coppoc's second flight for life and liberty. This account will furnish the proper historical setting for what is to follow.

Mr. Camp, the emissary of the Governor of Virginia, upon presenting his papers to Governor Kirkwood was courteously requested by the latter to leave the papers with him until after dinner at which time the Governor promised to make his reply.[74] Mr. Camp did as requested, and upon calling for the reply later was met with a refusal to honor the requisition as noted above. The agent, considerably sur-

[73] See letters from Governor Kirkwood to Governor Letcher, dated January 23, 1860.— Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. II, pp. 394, 395.

[74] *The Dubuque Herald*, Vol. XIX, No. 5, February 1, 1860.

prised and no doubt much nettled, undertook by dint of argument to convince the Governor that he was wrong, unjust, and incidentally guilty of perverting the letter of the Federal Constitution and the statutes of Congress.

During the progress of the discussion two members of the legislature, which was then in session, having business with the Governor, chanced to enter the executive office.[75] The excited Virginian loudly continued the discussion in spite of the protest of the Governor, who reminded him that he had supposed he wished to keep the matter quiet. Camp replied that he did not care who knew it now since the request had been refused.[76] The intruders remained only long enough to grasp the situation and then withdrew.

The two individuals who had thus learned of the effort being made to secure Barclay Coppoc and return him to Virginia felt that there was not a moment to lose if they would save Coppoc from his threatened fate. Hastily communicating with several other members of the legislature, it was decided to send word at once to Coppoc to flee from the State.[77] Making up a generous purse among themselves to defray the expenses of the messenger who must be sent with the warning, they commissioned Isaac Brandt to find a man who was willing and physically able to endure a winter's journey to Springdale — a journey which must be made on horseback.[78]

[75] B. F. Gue and Ed. Wright were the two intruders.— Gue's *John Brown and his Iowa Friends* in *The Midland Monthly*, Vol. VII, p. 273.

[76] Gue's *John Brown and his Iowa Friends* in *The Midland Monthly*, Vol. VII, p. 274; and Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. II, p. 391.

[77] Gue's *John Brown and his Iowa Friends* in *The Midland Monthly*, Vol. VII, p. 274. Among the legislators present at the conference were J. W. Cattell, J. B. Grinnell, David Hunt, Amos Hoag, Isaac Brandt, and other well known anti-slavery men.

[78] Gue's *John Brown and his Iowa Friends* in *The Midland Monthly*, Vol. VII, p. 274.

Brandt soon found a former plainsman who was willing to make the trip, without sleep or rest if need be.[79] A message[80] to John H. Painter of Springdale was then prepared; and in less than two hours after the two men had left the room of the Governor the messenger was speeding to the eastward on his one hundred and sixty-five mile ride.[81] His instructions were to reach Springdale as soon as his endurance and that of the horses furnished at the Underground Railway stations would permit. It was confidently expected that Camp, failing to have his papers honored, would take the first stage for Iowa City and then proceed to Springdale, arrest and secure Coppoc before the latter's friends could do anything to save him. The stage traveled day and night, and so it was imperative that the warning should reach Springdale as soon as possible.

On the morning of January 25th the messenger arrived at Painter's, delivered his message, and by so doing warned Coppoc and his friends of the impending danger. Camp, upon reaching Iowa City, heard of the betrayal of his plans and of the preparations for his reception in case he should appear in Springdale. Thinking more of his own personal safety than of duty he prudently passed on to Muscatine to await the coming of corrected papers.[82] It is related that

[79] This man's name was Williams. Nothing concerning his life seems to have been preserved.

[80] The following message was sent to John H. Painter:

"DES MOINES, January 23, 1860.

"JOHN H. PAINTER — There is an application for young Coppoc from the Governor of Virginia, and the Governor here will be compelled to surrender him. If he is in your neighborhood, tell him to make his escape from the United States.

YOUR FRIEND."

— Gue's *John Brown and his Iowa Friends* in *The Midland Monthly*, Vol. VII, p. 274.

[81] Gue's *John Brown and his Iowa Friends* in *The Midland Monthly*, Vol. VII, p. 274.

[82] Gue's *John Brown and his Iowa Friends* in *The Midland Monthly*, Vol. VII, pp. 274, 275.

after a time he became so tantalized by the sarcastic remarks of the good people of Muscatine, on account of his over-scrupulous care for his own safety, that he repaired to Springdale and there actually saw Coppoc, but fearing to attempt the service of the warrant for arrest, he immediately returned to Muscatine.

Upon the return of Coppoc from Virginia about one hundred[83] of his Springdale friends, fearing that such an attempt as this would be made, had organized themselves into an armed association for the purpose of forcibly resisting any attempt to arrest him. This loyal group met and drilled regularly. One Iowa newspaper correspondent in a discussion of the affair facetiously wrote that "such an array of weapons has not been seen since the days of Falstaff's ragged regiment."[84] Relays of these men were constantly on duty to watch over Coppoc in order to prevent surprise. To further insure his safety only a few of Coppoc's most trusted friends knew continually where he was. He was never seen at the same place at night as during the day; and rarely was he seen at all even by the few trusted friends.

These vigilant measures, however, were not adopted as the direct result of the alarming messages from Des Moines. At a previous time a report had come to Springdale that a United States Marshal was on the way to that village to arrest Coppoc.[85] This was the direct cause of the organization of the armed company for his protection. When the message came from Des Moines immediate action was thought to be imperative and vigilance was redoubled.

[83] Gue's *John Brown and his Iowa Friends* in *The Midland Monthly*, Vol. VII, p. 274, says they were seventy-five in number. See also *The Tipton Advertiser*, Vol. VII, No. 9, March 1, 1860.

[84] *The Dubuque Herald*, Vol. XIX, No. 5, February 1, 1860.

[85] *The Dubuque Herald*, Vol. XIX, No. 5, February 1, 1860.

Coppoc was seen less than before, and he was always under heavy guard. Measures were also taken to send him into Canada at a moment's notice.

The corrected rendition papers were received by Mr. Camp at Muscatine on February 10, 1860, and, upon presentation to Governor Kirkwood, being found correct, were promptly honored. Camp, however, instead of hastening at once to Springdale in order to serve the warrant, timidly returned to Muscatine from Des Moines.

THE SECOND FLIGHT OF BARCLAY COPPOC

Upon receipt of the news of the arrival and honoring of the corrected papers, word was again sent to Coppoc and his friends at Springdale. The evening of the day upon which the messenger arrived saw a sleigh hastening toward Mechanicsville, a small town to the north. This sleigh contained John H. Painter as driver, and Barclay Coppoc and Thaddeus Maxson as passengers. The arguments of friends had convinced Coppoc that he must flee, though he strongly objected to a proceeding which to him seemed cowardly. Since he had but lately suffered from a severe attack of asthma as the result of his exposure in the mountains of Pennsylvania, he was barely able to take care of himself.[86] Thaddeus Maxson was therefore selected to accompany and care for Coppoc in his flight.

Boarding the night train at Mechanicsville, Maxson and Coppoc took passage for Chicago. From Chicago they continued to Detroit, intending to cross into Canada as a place of refuge. Upon their arrival at Detroit, however, word was received from John Brown, Jr., asking them to come to his home at Jefferson, Ohio, which they decided to do. Here they found F. J. Merriam and Owen Brown. From

[86] See a letter supposed to have been written by Mrs. Coppoc to Governor Letcher of Virginia in February, 1860, quoted from the *Chicago Tribune* in the *Daily Iowa State Register*, Vol. I, No. 40, February 23, 1860.

Jefferson, Coppoc and Maxson proceeded to Dorset, Ohio, where they remained under heavy guard for more than thirty days, at the end of which time, thinking that the field was clear in Iowa, they returned to Springdale.

Mr. Camp did not go in person to serve his papers, but, it is said, secured a deputy who agreed to take the papers to Springdale and serve them. The deputy went to Springdale, inquired for Coppoc, and not receiving any information concerning the fugitive returned to Muscatine and reported his inability to serve the papers. Upon receiving this report Mr. Camp returned to Virginia, where he doubtless felt more secure.

THE POLITICAL CONTROVERSY OVER THE COPPOC CASE

As has been indicated the refusal of Governor Kirkwood to honor the first set of requisition papers aroused considerable acrimonious discussion. This controversy, due in part to the defective nature of the papers presented, at once assumed two phases: first, a partisan political controversy; and second, a constitutional controversy between the Governors of the States concerned. Political capital was also sought to be made out of the constitutional aspect of the question by the chief executive of Virginia.

One of the most spectacular campaigns in the political history of the United States was now approaching, and faction was already aligning itself against faction in preparation for the struggle. The South as well as the North now realized that the issues of the coming campaign, as foreshadowed in the events of the past two or three years, would be those which must definitely decide the status of the institution which had been slowly but surely forcing itself to the front as the paramount issue. Thus the political factions representing the opposing sides in the approaching battle of ballots were ready to seize upon any incident which gave promise of redounding to their advantage. As a mat-

ter of fact there was more pro-slavery sentiment in Iowa than many leaders in the political contests of the times could well reconcile with conditions in a free State, a great majority of the people of which were unalterably opposed to any further extension of slavery. No opportunity was lost by this vigorous minority faction to capitalize the most insignificant incident for the purpose of inflaming the popular mind and thereby possibly adding to its own numerical strength.

No sooner had the news of the refusal to grant extradition been announced to the general public than the members of the pro-slavery faction busily set to work in an attempt to unearth something which would enable them to cast discredit upon the anti-slavery administration of Governor Kirkwood. The investigators were prepared to go to any length in their efforts to prove that the State administration was in open and avowed sympathy with the raid upon Harper's Ferry.

These opposition Democrats first assailed the Governor through the ever ready medium of the press, and later carried the issue into the General Assembly which was then in session. Through the press it was charged that the chief executive had been guilty of official wrong-doing. The charges were: first, "making public the fact of the serving of the requisition, and thus giving Coppoc a chance to escape"; second, "that he did not comply with the requisition"; and third, that not complying with it, "he did not secure Coppoc till a *legal* requisition came from the Governor of Virginia."[87]

Against these partisan allegations of malfeasance in office, the Republican press of the State took up the gauntlet in the Governor's defense. Of the several charges made by

[87] *Davenport Weekly Gazette,* Vol. XIX, No. 27, March 1, 1860.

the opposition only one need be noticed here, namely, the accusation that the Governor wrongfully gave out information which should have remained secret, thus enabling Coppoc to escape. To this charge Governor Kirkwood replied at length in a special message to the House of Representatives on March 3, 1860; and the answer which he made was not then and has not since been controverted.[88]

It seems that the indiscreet individual in this particular incident was the Virginia emissary, Mr. Camp, and not the Governor of Iowa. The latter clearly states that the ''fact that an agent of Virginia was here, with a requisition for Coppoc, became publicly known in this place, solely through the acts of that agent himself. . . . He sat in my office conversing freely with me on the subject. During our conversation, other persons came in on business with me, and to my surprise he continued the conversation in their presence. . . . In this manner the fact that a requisition had been made for Coppoc became known in this place.''

Nor was this all. The Governor further states: ''I denied myself what I greatly desired, the privilege of consultation with gentlemen in whose opinions I had confidence, touching the legality of the papers submitted to me, lest the matter might thereby, through inadvertence, become known.''[89] Thus it appears that the Iowa executive did his part in maintaining a proper secrecy, and that he spoke the truth when he declared that ''if the Governor of Virginia has cause for complaint against any person on this point, it is against his own agent, and not against me.''[90] Nor was the

88 For the full text of the message see Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. II, pp. 380-393.

89 Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. II, pp. 391, 392. See also the *Davenport Weekly Gazette*, Vol. XIX, No. 27, March 1, 1860.

90 Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. II, p. 390.

Republican press of the State slow to endorse the Governor's statement. "Sam Kirkwood is not the man", said the *Davenport Gazette,* "to tremble at the threats of John Letcher or of the aiders and abettors of slavery who represent the Democracy of Iowa".[91]

On the other hand, the agent of the State of Virginia seems to have sought an opportunity to further the cause of his sympathizers in Iowa — especially in the capital city where their attacks were of more than ordinary violence. He repeatedly manifested an entire willingness to discuss the question of the requisition and its refusal wherever and whenever he could find anyone to listen to his tale of reputed abuse at the hands of the Governor of Iowa. This willingness to talk on the part of Mr. Camp is amply borne out by a quotation from one of the leading newspapers of that day, whose Des Moines correspondent wrote as follows concerning the incident:

> It was Mr. Camp, and not Gov. Kirkwood, who made public that the "requisition" was here. So soon as he learned that an order of arrest would not be granted he spoke of it publicly. In the Governor's office in a long conversation about "John Brown" with Mr. Cooper, of Poweshiek county, the conversation being had on the very day the requisition was presented, Mr. Camp talked about the whole matter, while persons were all the while entering and passing out of the room, this too, after Gov. Kirkwood had intimated to Mr. Camp that he ought to keep the affair secret. So much for the charge that the matter was made public by the Governor or his friends.[92]

By the statement of such uncontrovertible facts Governor Kirkwood's friends met the insinuations of the opposition. The controversy waxed warmer and warmer until the whole matter was brought to a crisis by the delayed publication of

[91] *Davenport Weekly Gazette,* Vol. XIX, March 8, 1860.

[92] Quoted from the *Dubuque Times* in the *Davenport Weekly Gazette,* Vol. XIX, No. 27, March 1, 1860.

a special message upon the affair, communicated by Governor Letcher of Virginia to the Senate and House of Delegates of that State.[93] In this message Governor Letcher recapitulated and enlarged upon the charges against Governor Kirkwood which had earlier been made by his agent, abetted by the opposition press in Iowa. This message, moreover, gave to the charges what they had hitherto lacked — official recognition. In Iowa the message of Governor Letcher immediately removed the controversy from the State press to the General Assembly. Here it assumed a more serious aspect.

THE CONTROVERSY IN THE LEGISLATURE

About the time of the honoring of the second and corrected requisition upon the Governor of Iowa it appears that Governor Letcher submitted to the Virginia Senate and House of Delegates his message concerning the Coppoc affair. In this message he publicly and officially accused Governor Kirkwood of the commission of gross official wrongs, which, if proven, would have justified the latter's removal from office. These accusations by Governor Letcher briefly stated were: that the reasons assigned for refusal were in his judgment "exceedingly frivolous"; that the Iowa executive had knowingly connived at the escape of Coppoc by publishing information concerning the requisition, and by, in all likelihood, either suggesting the sending of a messenger to warn Coppoc of his danger or of taking such action as would effect that result in the end; that the chief executive of Iowa had in fact either knowingly or

[93] This message was sent by Governor Letcher to the Virginia Senate and House of Delegates on February 13, 1860, three days after the corrected requisition had reached Mr. Camp at Muscatine — doubtless before Governor Kirkwood had honored it, since means of communication were not as rapid then as now. For the complete text of Governor Letcher's message see Shambaugh's *Messages and Proclamations of the Governors of Iowa,* Vol. II, pp. 396-402.

ignorantly violated the requisition laws of his own State in his desire to protect a criminal; and, that by refusing to honor the requisition when presented he had committed a serious violation of the comity existing between sister States.[94]

Thus did the Governor of Virginia accuse his brother executive in Iowa of seeking to thwart the execution of Virginia laws by having "disregarded, contemned and trampled upon" them in his desire to aid the escape of one who was "blackened with crime, and whose hands are stained with the blood of innocent and unoffending citizens of the slaveholding states".[95]

It was this message of Governor Letcher which led Senator Wilson of Jefferson County, on February 27th, to introduce in the Iowa Senate a resolution of inquiry directed to Governor Kirkwood and calling upon him for specific information concerning the Coppoc case.[96] The resolution was merely one of friendly inquiry and was designed to forestall any hostile efforts along a similar line upon the part of the Democratic wing of the Senate.[97]

[94] Shambaugh's *Messages and Proclamations of the Governors of Iowa,* Vol. II, pp. 396-402.

[95] The message of Governor Letcher.— Shambaugh's *Messages and Proclamations of the Governors of Iowa,* Vol. II, p. 402.

[96] The resolution of inquiry as originally introduced in the Iowa Senate on February 27, 1860, was as follows:

"WHEREAS, The fact of a requisition from the Executive of Virginia upon the Executive of this State, for the rendition of one Coppic, as a fugitive from justice, and of the refusal of such demand, has become a matter of public notoriety, and

"WHEREAS, It appears from the public papers that the Governor of Virginia has sent a special communication to the Legislature of his State, on the subject; therefore, be it

"*Resolved,* That the Governor of this State be respectfully requested to communicate to this House, the facts touching said demand, and his reasons for the refusal thereof."— *Senate Journal,* 1860, pp. 329, 330. See also the *Davenport Weekly Gazette,* Vol. XIX, No. 28, March 8, 1860.

[97] *Daily Iowa State Register,* Vol. I, No. 46, March 1, 1860.

The Wilson resolution did not at first create any marked stir among either the Republicans or the Democrats. The Republicans feeling sure that their resolution would easily pass without amendment, inadvertently permitted a number of their members to absent themselves from the sessions of the Senate. The Democrats were not slow to see an opportunity and to take advantage of it.[98] Upon discovering the absence from the session of enough Republicans to render it possible for the Democrats to introduce and pass amendments to the Wilson resolution, Senator Neal immediately introduced and rushed through "an offensive and irrelevant amendment", which was passed by a strict party vote amid the indignant protests of the Republicans present.[99] Having successfully accomplished this bit of political strategy, the opposition immediately rushed the amended resolution to its final passage.

The amendment which was added to the original resolution plainly implied that Governor Kirkwood had corresponded with Coppoc concerning the requisition and had also been guiltily cognizant of the sending of the warning word. It was naturally considered by the Governor as an insult, and on the following day he wrote a stinging and caustic reply. Following the reading of this message by the clerk of the Senate, there occurred "a wonderful flutter

[98] *Daily Iowa State Register,* Vol. I, No. 46, March 1, 1860; *Davenport Weekly Gazette,* Vol. XIX, No. 28, March 8, 1860; and *Senate Journal,* 1860, p. 330.

[99] Senator Neal's amendment added the following words to Senator Wilson's resolution: "Including a copy of the requisition and accompanying papers of the Governor of Virginia, and all correspondence with Coppic, or any other person, in reference to said requisition. Also, to inform the Senate by what means Coppic obtained the information that there was a requisition from the Governor of Virginia upon the Governor of Iowa, for his surrender; and if the fact of said requisition being made, was communicated to any person, or made public, before the answer was given by the Governor of Iowa, to the Governor of Virginia."— *Senate Journal,* 1860, p. 330. See also the *Davenport Weekly Gazette,* Vol. XIX, No. 28, March 8, 1860.

among the Democratic Senators'',[100] who now saw that they had unintentionally ''caught a Tartar'' and that they must make an effort to extricate themselves from an unpleasant situation. The response of the Governor ''fell like a crushing avalanche upon the Democracy, utterly annihilating all hopes they may have entertained, of extracting any party comfort or party aid out of that affair.''[101] The opponents of the Governor, therefore, immediately faced about and began filibustering in an effort to shift the blame for the passage of the unlucky resolution.

The Republicans, who were now thoroughly enjoying the discomfiture of their opponents, steadily and successfully resisted all efforts of the Democrats to force through a resolution of apology until they (the Republicans) were ready for its consideration. During this parliamentary war in the Senate, many amusing incidents occurred as the result of the Democratic efforts to allay the righteous indignation of the Governor. Senator Hammer (Democrat) whose seat was next to the middle aisle, asked for and was granted the privilege of addressing the Senate upon the subject of the Governor's message. While delivering his speech he walked up and down the aisle, taking a sip from a glass of water on his desk whenever he chanced to return to that vicinity. This procedure continued until it proved too much for Senator Watson of Iowa County. The latter arose to a point of order, and when recognized inquired ''whether it was competent for a wind-mill to be propelled by water.'' The sally convulsed the Senate and galleries with laughter, while Senator Hammer collapsed, wholly unable or unwilling to continue his speech.[102]

The cause of all this parliamentary disturbance was the

[100] *Davenport Weekly Gazette,* Vol. XIX, No. 28, March 8, 1860.

[101] *The Washington Press* (Iowa), Vol. IV, No. 43, March 14, 1860.

[102] *Davenport Weekly Gazette,* Vol. XIX, No. 28, March 8, 1860.

manner in which the Governor took occasion to express his mind upon the proper form in which a request for information should be made. In a communication to the Senate he declared that he had examined the resolution with much care and had concluded that he ''ought not to answer it.'' He added that it was perfectly proper for the Senate to ask for information and to such a request he would ''communicate all facts within my knowledge, in any way connected therewith, whenever I can do so consistently with my self-respect, and with the respect and consideration which, in my judgment, are due to the department of our government which, for the time being, I have the honor to represent. I cannot, however, do so in response to a resolution which assumes that, in this matter, I have done acts which the common judgment of your body would pronounce to be improper in any person holding my official position.''[103] With this stinging rebuke directly leveled at the minority faction in the Senate, the indignant Governor closed his communication by recommending that the resolution be given further consideration, since he hesitated to believe that such a resolution was the ''well considered intention'' of that body.

As stated above, the Republican majority in the Senate effectually blocked the passage of any resolutions, apologetic in aim, proposed by the now fully repentant Democratic minority. On February 29th Senator Wilson of Jefferson County, the mover of the original resolution which had been so garbled by the Democrats, offered a new resolution which was practically a duplicate of his former resolution.[104] Much acrimonious discussion arose concern-

[103] *Senate Journal,* 1860, p. 340.

[104] The following is the portion substituted by Senator Wilson's resolution: ''*Resolved,* That the Governor be requested to communicate to the Senate, all facts touching said demand, and his reasons for the refusal thereof, including a copy of the requisition and accompanying papers, and all his correspondence in reference thereto, and all facts connected therewith, or in any way growing out of the same.''— *Senate Journal,* 1860, p. 343.

ing the adoption of this substitute resolution, the Democrats again attempting to defeat its object by adding amendments. To defeat this effort the previous question was called for and sustained; and the Democratic members, then out of spirits, placed themselves on record as opposing a call upon the Governor for information which they had expressed a desire to obtain a few days before. The resolution of Mr. Wilson was adopted by a party vote — the vote standing nineteen to eighteen in favor of the adoption of the resolution.[105]

Neither the Republicans nor the Democrats, however, thought that such a resolution made full reparation to the Governor. Senator Wilson's resolution had not gone far enough; and yet the Republicans had steadily and persistently refused to sanction any resolution of apology which came from the Democratic side. Both factions wished to apologize, but neither was willing to approve a resolution of that nature coming from the opposing faction, until Senator Drummond of Benton County offered a resolution which, after some filibustering, was adopted by a vote of twenty-eight to eight.[106]

During the discussion of Senator Drummond's resolution an incident occurred which reveals the feeling of sympathy for Coppoc which pervaded the General Assembly and the State at that time. Senator Williams of Mahaska County made an inquiry of Senator Drummond which elicited from the latter the following reply:

[105] *Senate Journal*, 1860, p. 345.

[106] Senator Drummond was a Republican. The following is the text of the resolution moved by Senator Drummond:

"*Resolved, further,* That by the passage of its original resolution, on the 27th ult., calling for information as to the facts connected with the requisition of the Executive of Virginia, for one Barclay Coppic, the Senate intended nothing discourteous to the Executive, nor any implication of a failure to discharge his constitutional duty, but meant only to call for the facts."— *Senate Journal*, 1860, p. 356.

It is true that I immediately said [upon hearing of the presenting of the requisition] ''I would give five dollars toward paying a messenger to go and apprize Coppic of his danger,'' and I would have done so if I had had the opportunity. I say it, sir, openly and boldly that never with my consent shall the remaining son of that widowed Quaker mother at Springdale, Iowa, be handed over to the tender mercies of Virginia. The hand of God is on him, and he is sinking beneath consumption; and never with my consent shall he be swung off a Virginia gallows, to further appease Virginia slave driving vengeance.[107]

This bold expression of sentiment at once aroused a storm of protest and recriminating replies. But the incident happily closed with the calling of the roll on the adoption of the resolution.

The misunderstanding between the Senate and Governor Kirkwood was thus brought to a happy and satisfactory close, and the previously existing good feeling was restored. The whole incident was occasioned by a too partisan desire upon the part of the pro-slavery members of the upper house to carry out the wishes of the pro-slavery press which had no other end in view than the accumulation of political capital for the approaching presidential campaign. But, having seen their mistakes, they were as anxious as the Republicans to make amends for the insult offered the Governor.

Before the imbroglio in the Senate had been brought to a satisfactory conclusion, the House of Representatives, through its Democratic minority, also became aroused, and Representative Bennett, a bitter Democratic partisan from Marion County, introduced a resolution of inquiry which in effect was but a copy of the offensively amended resolution of the Senate, which had elicited the merited rebuke of the Governor. Immediately upon its introduction Representative Gurley of Scott County offered a substitute which

[107] *Davenport Weekly Gazette,* Vol. XIX, No. 28, March 8, 1860.

sought to remove all danger of offense.[108] After many roll calls upon the original and substitute resolutions, the latter was adopted by a vote of forty-seven to twenty-four.[109] It was this cautiously worded House resolution to which Governor Kirkwood responded in his lengthy message to that chamber on March 3, 1860, dealing with the Coppoc case and including all the papers connected therewith.[110]

This dignified and straightforward response of the Governor, however, was not destined to escape the sarcastic shafts of the disappointed Democrats. Following the receipt and reading of the message in the House, Representative Claggett moved to have it printed for public distribution.[111] Later he moved to have printed "5000 copies of the message of the Governor of Virginia, relating to the requisition for Barclay Coppic, to be distributed among the members of this House, for circulation."[112] To this concealed sarcasm, Representative Gurley of Scott retorted with the following amendment: "Provided this House receives official information that the State of Virginia has not sufficient funds to print the message of her

[108] The substitute resolution moved by Representative W. H. F. Gurley was:

"WHEREAS, There has lately appeared in the public press, a message purporting to have been sent by the Governor of the State of Virginia to the Legislature of that State, in which it is stated that a requisition had been made by the Executive of that State, upon the Executive of this State, for the rendition of one Barclay Coppic, as a fugitive from justice; and that the requisition had been refused, for reasons stated in said message to be 'exceedingly frivolous, and such as have in no previous instance, to my knowledge, influenced the action of any State Executive in its intercourse with this Commonwealth.' Therefore, be it

"*Resolved*, That the Governor of this State is requested to communicate to this House, all the facts, together with a copy of all papers and correspondence connected with or growing out of said requisition, and its refusal."—*House Journal*, 1860, p. 333.

[109] *House Journal*, 1860, p. 337.

[110] *House Journal*, 1860, p. 346.

[111] *House Journal*, 1860, p. 356.

[112] *House Journal*, 1860, p. 356.

Governor.''[113] The resolution and its amendment, after lengthy and humorous discussion, prevailed by a vote of forty-four to twenty-three and the legislative phase of the Coppoc incident closed.[114]

THE LEGAL AND CONSTITUTIONAL ASPECTS OF THE CASE

As a result of the disturbed political conditions of the times considerable discussion arose concerning the legal right of Governor Kirkwood to refuse to honor the demand of Governor Letcher. Some people maintained that the course of action for a State executive in such matters was prescribed by Federal statutes which were mandatory in their nature, defining a purely ministerial duty. Much emphasis was placed upon the matter of comity due the processes and acts of a sister State. Others argued with equal warmth that the Federal statutes in question could not have mandatory effect upon a State executive, since the Federal Congress possessed no power by which it might compel a State executive to honor a demand of this nature. It was held that the duty to honor a requisition is not ministerial but discretionary and judicial, and that comity as to the processes of a sister State was not applicable in this instance.

The manner of exercising the power to extradite is based exclusively upon the United States Constitution[115] and the statutes of Congress — notably upon the act of 1793,[116] which states that ''it shall be the duty'' of a State executive

[113] *House Journal*, 1860, p. 356.

[114] *House Journal*, 1860, p. 357.

[115] Article IV, Sec. 2, Cl. 2 of the United States Constitution states that ''A person charged in any state with treason, felony or other crime, who shall flee from justice and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.''

[116] Ex parte Morgan, 20 Federal Reporter 298.

to surrender a fugitive from the justice of another State when the demand has been properly made by the Governor of the demanding State. Moreover, the duty to surrender has been interpreted by our highest judicial tribunal as being declaratory of a moral duty only and not in any sense mandatory and compulsory.[117]

Chief Justice Taney in rendering the decision in the case of Kentucky *vs.* Dennison contended that the Governor of a State may set the Federal constitutional and statutory provisions on extradition entirely at naught — the power of the State executive in such instances being ''absolute, unlimited, and arbitrary.''[118] If the demand meets with refusal, the State making such demand must submit, there being no alternative[119] since Congress, according to well established precedent, cannot coerce a State officer, as such, to perform any duty. Congress may authorize a State officer to perform a certain duty, but from this it does not necessarily follow that such officer may be coerced by this body.[120] Neither may he be so compelled by any judicial tribunal in our land.[121] The act of surrendering is purely optional upon the part of the Governor of the State upon whom the demand is made.[122] No punishment is provided for refusal to honor requisitions and courts have held that they cannot compel performance.[123]

[117] Kentucky *vs.* Dennison, 24 Howard 66.

[118] In re Voorhees (N. J.), 3 Vroom 141; Kentucky *vs.* Dennison, 24 Howard 66.

[119] Kentucky *vs.* Dennison, 24 Howard 66; In re Voorhees (N. J.), 3 Vroom 141; Taylor *vs.* Taintor, 16 Wallace 366; Ex parte Siebold, 100 United States 391.

[120] Kentucky *vs.* Dennison, 24 Howard 108.

[121] Kentucky *vs.* Dennison, 24 Howard 66; Ex parte Siebold, 100 United States 391; In re Voorhees (N. J.), 3 Vroom 141.

[122] In re Fetter (N. J.), 3 Zabr. 311.

[123] In re Voorhees (N. J.), 3 Vroom 141; Kentucky *vs.* Dennison, 24 Howard 66.

Anti-slavery sentiment in the North at this time had gone far toward crystallizing northern sentiment to the effect that a State executive in considering and acting upon matters of interstate rendition could exercise discretionary power.[124] Pro-slavery southern sentiment was equally vehement in maintaining that ministerial[125] power alone belonged to the executive in such matters — to the exclusion of all judgment and discretion. The decisions of the courts, however, seem neither to justify nor support such a restricted view of the question.

The clause of the Federal Constitution and the statutes of Congress governing interstate rendition give to the State executive the power to determine whether the demand made is a proper one. In so acting his determination partakes of the nature of a judicial act.[126] According to Chief Justice Carter of the District of Columbia the province of the executive is clearly to see that a crime has been substantially charged, and when, after proper consideration of the demand and of the circumstances arising in the demanding State which seemed to render the demand necessary, he is satisfied that a crime is thus properly charged, to grant the request.

This recognition of a requisition cannot exclude all exercise of discretion or judgment; hence it must be a judicial and discretionary act.[127] Upon this particular point the Federal Supreme Court has most lucidly stated that such an act cannot, on account of its nature, exclude all exercise of

124 Moore's *Extradition and Interstate Rendition,* Vol. II, p. 988.

125 ''Ministerial power'' in this sense means that a State executive could do no more upon the presentation of a demand than ''to cause the party to be arrested, and delivered to the agent or authority of the state where the crime was committed.''— Kentucky *vs.* Dennison, 24 Howard 106.

126 In re Cook, 49 Federal Reporter 833.

127 Roberts *vs.* Reilly, 116 United States 80; Moore's *Extradition and Interstate Rendition,* Vol. II, p. 987.

judgment.[128] Further than this, it has been held that in arriving at such a conclusion concerning the propriety of the demand the executive has, of necessity, an ultimate discretion.[129] This position, assumed by our higher courts, would seem to effectually dispose of the contention that an executive has only a ministerial power in matters of this nature.

Concerning the question of comity which was advanced in connection with the Virginia executive's attempt to secure Coppoc's rendition, there is, however, not the same concord of judicial sentiment. Nevertheless, while there is marked disagreement, judicial opinion seems to incline toward the position that interstate rendition is regulated by law and cannot be exercised upon the basis of comity alone.[130] Judicial opinion has even gone so far as to state that "no such power [to extradite] can be exercised by the chief executive of a state on the ground of comity."[131] Moreover, quoting from a Federal decision, "Whether any government is *bound* to make such surrender . . . . upon the principle of the comity of nations, ... is held by some writers of high authority upon the law of nations"[132] not to exist as a duty.

Thus it may be concluded from a careful perusal of the opinions of the courts that Iowa's chief executive acted upon well sustained legal and constitutional grounds.

[128] Roberts *vs.* Reilly, 116 United States 80; Moore's *Extradition and Interstate Rendition*, Vol. II, p. 987.

[129] United States *vs.* Pope, 24 Internal Revenue Record 29; Taylor *vs.* Taintor, 16 Wallace 366; Roberts *vs.* Reilly, 116 United States 80; 14 *Albany Law Journal* 190; Ex parte Reggel, 114 United States 642; In re Jackson, 2 Flippin 183; 13 Federal Cases, No. 7125; In re Kingsbury, 106 Massachusetts 223; Jones *vs.* Leonard, 50 Iowa 106; In re Mitchell, 4 N. Y. Criminal Reports 596.

[130] Ex parte Morgan, 20 Federal Reporter 301; In re Mohr, 73 Alabama 513; In re Voorhees (N. J.), 3 Vroom 146.

[131] Ex parte Morgan, 20 Federal Reporter 299.

[132] In re Fetter (N. J.), 3 Zabr. 315.

But the objections considered above were not those which were mainly responsible for the bitter controversy arising over the affair. In his special message to the House of Representatives on March 3, 1860, Governor Kirkwood very succinctly stated that his reasons for refusing to honor the Virginia demand were:

1st — The affidavit presented, was not made before "a magistrate," but before a Notary Public.

2d — Even had the law recognized an affidavit made before a Notary Public, the affidavit in this case was not authenticated by the Notary's seal.

3d — The affidavit does not show, unless it be inferentially, that Coppoc was in the State of Virginia at the time he "aided and abetted John Brown and others," as stated therein.

4th — It did not legally "charge him" with commission of "treason, felony or other crime."[133]

Immediately upon the publication of the message embodying Governor Kirkwood's reasons for refusal there sprang up intensely acrimonious discussions in Iowa and Virginia as to the justifiable nature of Governor Kirkwood's grounds for refusal. These discussions completely eclipsed all previous controversies concerning the question. Much doubt existed then and still exists as to the absolute justification, from the standpoint of constitutional law, of the grounds assumed by Governor Kirkwood in his statement of reasons for refusal.

As stated above, interstate rendition depends upon the rendition clause of the Federal Constitution and upon Congressional enactments — more especially the statute of 1793.[134] A slight modification of this statute was brought

[133] Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. II, p. 383.

[134] "Whenever the executive authority of any State or Territory demands any person as a fugitive from justice of the executive authority of any State or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory,

about by the Congressional enactment of September 16, 1850, which, however, is not of primary importance in relation to the question of rendition in the Coppoc case.[135]

The statute of 1793 provides unequivocally that the charge upon which the demand for rendition is based may be made in either of two ways — by "the copy of an indictment found, or an affidavit made before a magistrate" in the demanding State or Territory.[136] What could be plainer than this? Yet out of this statement arose a question of much moment in the Coppoc controversy.

The demand for Coppoc made by Governor Letcher of Virginia was supported in the charge by an affidavit which had been sworn to before one S. H. Boykin, a notary public in and for the city of Richmond, Virginia. Upon taking cognizance of the demand, the question immediately arose in the mind of the Iowa executive as to whether a notary public, as such, was a magistrate within the meaning of the Federal statute of 1793. After due consideration his conclusion was that a notary public was not such a magistrate. Upon this conclusion was based the first of the enumerated grounds for refusal.

This, moreover, seems to have been the weak point in Governor Kirkwood's own defense as set forth in his legislative message. It appears that his contention in this instance was the result of a somewhat superficial view or knowledge of Federal legislation relating to interstate

charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, it shall be the duty of the executive authority of the State or Territory to which such person has fled to cause him to be arrested and secured."— *United States Revised Statutes*, Section 5278. See also *United States Statutes at Large*, 2nd Congress, 2nd Session, Vol. I, p. 303, Chap. VII, Sec. 1.

[135] 9 *United States Statutes at Large* 458.

[136] *United States Revised Statutes*, Sec. 5278.

rendition. In reality it was a plain case of splitting hairs. Nevertheless, his point would have been a legitimate one if the later enactment of 1850 had not rendered the argument invalid.

Governor Kirkwood's contention was that the term "magistrate" within the meaning of the statute of 1793 could not, as a legal term, be properly applied to a notary public. In the rigid application of the term "magistrate", the Governor was technically correct — his view being supported by judges as well as by codifiers of our civil and criminal laws who declare that a "magistrate" is "a public civil officer, invested with some part of the legislative, executive, or judicial power, given by the Constitution or the law";[137] or a magistrate is "any justice of the peace, judge of probate court, municipal judge, police judge, mayor of an incorporated city or village, or one who is authorized to issue warrants of arrest, examine and punish those guilty of crime".[138] Again it is said that the term "magistrate" means "an inferior judicial officer, as a justice of the peace, and it does not include a notary public",[139] and can be properly used in application "to justices only".[140]

From the cases cited it is obvious that a notary public could not be considered a magistrate. Indeed, a notary

[137] Martin *vs.* State, 32 Arkansas 124, 127, 128; Childers *vs.* State, 30 Texas Court of Appeals 160; 28 American State Reports 899; 16 Southwestern 903, 905.

[138] *Revised Statutes of Oklahoma,* 1903, Section 2694; Cobbey's *Annotated Statutes of Nebraska,* 1903, Section 2378; *Revised Codes of N. Dak.,* 1899, Section 7885; *Criminal Code of N. Y.,* 1903, Sec. 147, 959; *Penal Code of S. Dak.,* 1903, Sec. 816; *Annotated Codes and Statutes of Oregon,* 1901, Sec. 1582; *Revised Statutes of Utah,* 1898, Sec. 4607; *Code of Criminal Procedure of South Dakota,* 1903, Sec. 90; *Penal Code of California,* 1903, Sec. 807; Ballinger's *Annotated Codes and Statutes of Washington,* 1897, Sec. 4690; *Penal Code of Idaho,* 1901, Sec. 5220.

[139] Cayou *vs.* Dwelling House Insurance Company, 68 Wisconsin 510; 32 Northwestern 540, 542.

[140] Schultz *vs.* Merchants' Insurance Company, 57 Missouri 331, 336.

public is merely "a person authorized to administer oaths; one who attests instruments",[141] and whose power is comparable in no manner to that held by a "magistrate". The latter has very largely judicial and discretionary power; while the former has largely if not wholly ministerial power, the functions of each differing radically.

By the Federal statute of September 16, 1850, it was declared that thereafter notaries were authorized to administer oaths and take acknowledgments in all cases where, under the laws of the United States, justices of the peace were formerly authorized to act.[142] In accordance with this statutory provision, therefore, the notary public had full power to act in the capacity of a magistrate in witnessing the affidavit and attaching his jurat thereto. No other construction has been placed upon this provision. Now in the case of the Coppoc requisition the law had been satisfied; and Governor Kirkwood was plainly in error when he at first refused to recognize the notary public as acting with magisterial power in giving validity to the requisition.

The political enemies of Governor Kirkwood in Iowa united with the Virginia authorities in protesting that the Iowa Governor had consciously and designedly ignored the provisions of the later enactment. This, if true, would have been unpardonable in the chief executive of any State. It

[141] Chandler *vs.* Hanna, 73 Alabama 390, 394; Kirksey *vs.* Bates (Alabama), 7 Porter 529, 531; 31 American Decisions 722; Wheeler *vs.* Burckhardt, 34 Oregon 504; 56 Pacific Reports 644, 645.

[142] "That in all cases in which, under the laws of the United States, oaths, or affirmations, or acknowledgments may now be taken or made before any justice or justices of the peace of any State or Territory, such oaths, affirmations, or acknowledgments may be hereafter also taken or made by or before any notary public duly appointed in any State or Territory, and, when certified under the hand and official seal of such notary, shall have the same force and effect as if taken or made by or before such justice or justices of the peace."— *United States Statutes at Large,* Chap. LII, 1st Session, 31st Congress, Vol. IX, p. 458; see also *United States Revised Statutes,* Sec. 1778.

does not appear, however, that he deliberately ignored the law of 1850, for when his attention was called to it, he quickly called Governor Letcher to task for suppressing the most important portion of the law. Indeed he says: "It is true I had not seen this act [that of 1850] when I refused the warrant for Coppoc's arrest; but if I had seen it, my action would have been the same",[143] since provisions of this same law specify that such an affidavit made before a Notary Public has "force and effect" only when "certified under his hand and official seal."[144]

This last quoted provision of the law of 1850 provides the grounds upon which Governor Kirkwood based his second reason for non-compliance with the Virginia request. Moreover, this premise appears to be altogether tenable since Governor Letcher, while admitting the absence of a seal, maintained that it was rendered valid by possessing a scroll "in precise conformity with established usage and the decisions of our courts, which recognize scrolls as seals."[145] As a matter of fact "established usage and the decisions of our courts" have defined a seal, which was required to be placed upon this instrument, as being "an impression upon wax or wafer, or some other tenacious substance capable of being impressed."[146] Such a definition, it should be borne

[143] Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. II, p. 384.

[144] *United States Revised Statutes*, Sec. 1778; *United States Statutes at Large*, Chap. LII, 1st Session, 31st Congress, Vol. IX, p. 458.

[145] Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. II, p. 397.

[146] Allen *vs.* Sullivan R. Co., 32 New Hampshire 446; Coit *vs.* Millikin (N. Y.), 1 Denio 376; Bank of Rochester *vs.* Gray (N. Y.), 2 Hill 227; Town of Solon *vs.* Williamsburgh Sav. Bk., 114 N. Y. 122; 21 Northeastern 168; State ex rel. West *vs.* Thompson, 49 Missouri 188; Alt *vs.* Stoker, 127 Missouri 466; 30 Southwestern 132; Cochran *vs.* Stewart, 57 Minnesota 499; 59 Northwestern 543; Bradford *vs.* Randall, 22 Massachusetts (5 Pick.) 496; Osborn *vs.* Kistler, 35 Ohio State 99; Cromwell *vs.* Tate's Ex'r. (Va.), 7 Leigh 301; 30 American Decisions 506; Perrine *vs.* Cheeseman, 11 New Jersey Law Reports (6 Halst.)

in mind, was not a creation of a later day by the American judiciary, but had back of it the practice and precedent of both the Civil Law of Rome and the Common Law of England.

The Common Law has from its very inception laid fully as sharp a construction upon what constitutes a seal as has ever been imposed by the United States courts. Lord Coke, one of England's foremost jurists, stated in one of his decisions that this law (the Common Law) absolutely required that a seal, defined as "an impression upon wax", should be used upon or affixed to every important instrument of whatever nature that instrument might be.[147] American jurists have repeatedly recurred to this interpretation of the Common Law meaning of "seal" to substantiate their position that "the seal must be impressed upon wax or wafer" in order to be a seal.[148] They further contend that an actual seal is "not mere words or lines in writing",[149] but is a device stamped upon paper.

When Governor Kirkwood called the attention of the Virginia executive to the fact that the notary's affidavit was not validated by a seal, as required by law and as defined above, the latter official made, as noted, the assertion that the affidavit was rendered valid by a scroll which according to "usage and judicial precedent" was equivalent to a seal. The correctness of such a position has always been gravely questioned and has been the subject of much judicial controversy.

174; 19 American Decisions 588; Tasker *vs.* Bartlett, 59 Massachusetts (5 Cush.) 359; Woodman *vs.* York and C. R. Co., 50 Maine 549; Hopewell Township *vs.* Amwell Township, 6 New Jersey Law Reports (1 Halst.) 169; Bates's *Annotated Statutes of Ohio,* 1904, Sec. 4; Warren *vs.* Lynch (N. Y.), 5 Johns. 239; Beardsley *vs.* Knight, 4 Vermont 471; Code of Iowa, 1851, Sec. 26.

[147] Coke, 3 Institutes 169; Trasher *vs.* Everhart (Maryland), 3 Gill & J. 237.

[148] Bank of Rochester *vs.* Gray (N. Y.), 2 Hill 227.

[149] Ross *vs.* Bedell, 12 N. Y. Superior Court (5 Duer) 462.

Judicially defined, a scroll is "a flourish of or any mark made by a pen, in imitation of a seal, at the end of or under the name. The usual mode is to make a circular, oval, or square mark opposite the name of the signer. This usually encloses the initial letters 'L. S.' "[150]

It has been repeatedly maintained by able jurists, not only of the United States but of England as well, that such a device cannot be deemed as meeting the requirements of a seal.[151] It is true that not a few of our States have, by statutory law, declared its legality as a seal; but calmer judicial construction does not hold such enactments tenable as a legislative practice, but on the contrary as rather precarious.

In almost every instance where suit has been brought upon an instrument attested by a scroll instead of an impressed seal it has been decided that such action must be brought as in "assumpsit"[152] and not as in "covenant".[153] This construction has now been quite generally incorpo-

[150] Trasher *vs.* Everhart (Maryland), 3 Gill & J. 234; Taylor *vs.* Glaser (Pennsylvania), 2 Serg. & R. 502.

[151] Town of Solon *vs.* Williamsburgh Savings Bank, 114 N. Y. 122; 21 Northeastern 168; Gates *vs.* State, 13 Missouri 11; Leroy *vs.* Beard, 49 United States 451; Douglas *vs.* Oldham, 6 New Hampshire 150; Corlies *vs.* Vannote, 16 New Jersey Law Reports (1 Har.) 324; Warren *vs.* Lynch (N. Y.), 5 Johns. 239; McLaughlin *vs.* Randall, 66 Maine 226; Waln *vs.* Waln, 53 New Jersey Law Reports 429; 22 Atlantic 203; Blackwell *vs.* Hamilton, 47 Alabama 470; Providence Telegram Pub. Co. *vs.* Craham Engraving Co., 24 Rhode Island 175; 52 Atlantic 804; Cromwell *vs.* Tate's Ex'r. (Virginia), 7 Leigh 301; 30 American Decisions 506; Goff *vs.* Russell, 3 Kansas 212; Walker *vs.* Keile, 8 Missouri 301; Glasscock *vs.* Glasscock, 8 Missouri 577; Breitling *vs.* Marz, 123 Alabama 222; 26 Southern 203; Richard *vs.* Boller (N. Y.), 6 Daly. 460.

[152] Action brought to recover on an undertaking made orally and not under seal or by matter of record. See Leroy *vs.* Beard, 8 Howard 451.

[153] Action brought to recover upon an undertaking executed under seal. See United States *vs.* Brown, 24 Federal Cases No. 14,670; McLaughlin *vs.* Hutchins, 3 Arkansas (Pike) 207; Stickney *vs.* Stickney, 21 New Hampshire (1 Fost.) 61; Ewins *vs.* Gardner, 49 New Hampshire 444; Leroy *vs.* Beard, 8 Howard 451.

rated in our civil and criminal codes. Some of our codes have provided that a scroll will be accepted as a seal except when made use of by an official of State or county — thus plainly placing the stamp of disapproval upon its use by a person in his official capacity,[154] as was the case with the Virginia notary in question. Indeed, the liberal tendency regarding the value of the scroll is a development of later years and was not in practice in Governor Kirkwood's time. Nevertheless, this liberal tendency would not have legalized this use of the scroll since it was used by a public official in his official capacity and not by a person acting in a private or corporate capacity.

It is true that the Code of Iowa at one time recognized the employment of the scroll as a seal, but with the express provision "that the seal be referred to in the body of the instrument."[155] But the *Code of 1851* abolished private seals altogether,[156] and provided, moreover, that every notary public should have a seal.[157] Hence the affidavit and jurat in this instance had no legalizing quality within the meaning of the Iowa law.

This phase of the question brings us again to the consideration of one form of "comity". Strict constructionists of the Federal Constitution would be inclined to resort to the

[154] *Revised Statutes of Utah*, 1898, Sec. 2495; *Penal Code of Georgia*, 1895, Sec. 2.

[155] "That any instrument of writing to which the maker shall affix a scrawl by way of seal, shall be of the same effect and obligation, to all intents, as if the same was sealed: *Provided*, That the seal be referred to in the body of the instrument."— *Revised Statutes of the Territory of Iowa*, 1842, Chap. 112, Sec. 36.

[156] *Code of Iowa*, 1851, p. 153.

[157] *Code of Iowa*, 1851, p. 17.

Governor Letcher also emphasized the point that even though the affidavit lacked the notarial seal it received much greater authenticity than the notary could give it, since it was stamped by the Governor with the great seal of the State of Virginia.— Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. II, p. 397.

provision which states that "full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state"[158] to support the claim of legality for the scroll used as a seal in this particular affidavit since the laws of Virginia so recognize the scroll. Insistence upon interstate comity in this connection must, however, be made without due and proper regard for two surviving principles of Roman Law which still stand as revered and abiding principles of present day judicial practice — the *lex loci contractus* and the *lex fori*.

It is a general principle of international law that the nature, validity, and effect of an instrument is to be determined by the law of the country where it is made. This is known as the *lex loci contractus*. The manner of its enforcement, however, or the form of action to be taken to make the instrument operative, in other words the remedy, is dependent upon the law of the country in which the remedy or enforcement is sought. This constitutes the principle of the *lex fori*.[159] The term "remedy" as used in this connection is taken to mean whether action should be in "assumpsit" or "covenant".

Now the principles of the *lex loci* and *lex fori* as applied to the Coppoc case meant that the nature and validity of the demand for requisition were wholly dependent upon the laws of Virginia, while the enforcement of the demand depended as fully upon the laws of Iowa where the requisition was sought to be made operative. And so "the sufficiency of the seal of an instrument executed in one state but contemplating performance in another state is to be tested and

[158] *Constitution of the United States*, Article IV, Sec. 1.

[159] Steele *vs.* Curle (Kentucky), 4 Dana 381; Andrews *vs.* Herriot (N. Y.), 4 Cowen 508; Trasher *vs.* Everhart (Maryland), 3 Gill & J. 234; Bank of U. S. *vs.* Donnally, 8 Peters 361; Dorsey *vs.* Hardesty, 9 Missouri 157; Broadhead *vs.* Noyes, 9 Missouri 55; Douglas *vs.* Oldham, 6 New Hampshire 150; Leroy *vs.* Beard, 8 Howard 451.

governed by the laws of the latter state; and where the remedy upon a written instrument depends upon the question whether it is sealed or unsealed, it is well settled that the sufficiency of the seal is to be tested by the *lex fori* and not the *lex loci contractus.*''[160]

Very clearly Governor Kirkwood's action related to the remedy and for that reason was governable by the principle of the *lex fori* — in this instance the laws of Iowa. Since those laws did not recognize such an instrument as being legally drawn, the conclusion must necessarily be that the Iowa executive was fully justified in refusing to recognize the demand made for Coppoc's return.

Such are the facts and arguments in substantiation of Governor Kirkwood's second reason for declining to honor the demand of Governor Letcher. But even stronger grounds than this were relied upon by the Iowa executive in defining and maintaining his third premise that ''the affidavit does not show, unless it be inferentially, that Coppoc was in the State of Virginia at the time he 'aided and abetted John Brown and others', as stated therein.''[161]

Law and precedent demand that, in a matter of so much moment as the case in question, the affidavit ''must be so explicit and certain that if it were laid before a magistrate it would justify him in committing the accused.''[162] Even a glance at the statement in the affidavit to the effect that ''he [the affiant] verily believes that a certain Barclay Coppoc was aiding and abetting a certain John Brown, and others''[163] would readily convince one that his (Andrew

[160] Warren *vs.* Lynch (N. Y.), 5 Johns. 239; see also citations in note 159 above.

[161] Shambaugh's *Messages and Proclamations of the Governors of Iowa,* Vol. II, p. 386.

[162] 6 Pennsylvania Law Journal 414.

[163] The affidavit made by Andrew Hunter was: ''City of Richmond, and State of Virginia, to wit: Andrew Hunter maketh oath and saith, that from

Hunter's) sworn belief was merely an inference as far as it concerned Coppoc and his whereabouts at that particular time. But note further the source of information upon which he founds his verity of belief — "from several of the prisoners recently *condemned* and *executed* at Charleston, Virginia"![164] Certainly, in the light of attendant circumstances, this could hardly be advanced as the most reliable source — at least not one which would permit verification of his "belief".

In accordance with well established precedent, such an affidavit must contain "a positive statement of the commission of the alleged crime and that the party is actually a fugitive from that state"[165] where the crime was committed

information received from several of the prisoners recently condemned and executed at Charleston, Jefferson county, Virginia, and from other facts which have come to his knowledge, he verily believes that a certain Barclay Coppoc was aiding and abetting a certain John Brown, and others, who on the sixteenth and seventeenth days of October, in the year 1859, did feloniously and treasonably rebel and commit treason against the commonwealth of Virginia, at a certain place called Harper's Ferry, in said county of Jefferson, and who did then and there feloniously conspire with and advise certain slaves in the county aforesaid to rebel and make insurrection against their masters and against the authority of the laws of said Commonwealth of Virginia — and who did then and there feloniously kill and murder certain Hayward Sheppard, a free negro, and George W. Turner, Fontaine Beckham, and Thomas Barclay — and affiant further states that from information recently received, he verily believes that said Barclay Coppoc is a fugitive from justice, now escaping in the State of Iowa.

"Sworn to before me a Notary Public in and for the city of Richmond, in the State of Virginia, this ninth day of January, 1860."

"S. H. Boykin, N. P."

— Shambaugh's *Messages and Proclamations of the Governors of Iowa,* Vol. II, p. 382.

164 Shambaugh's *Messages and Proclamations of the Governors of Iowa,* Vol. II, p. 381.

165 Ex parte Smith, 3 McLean 121; 22 Federal Cases p. 373; In re Fetter (N. J.), 3 Zabr. 311; In re Heyward (N. Y.), 1 Sandf. 701; Degant *vs.* Michael, 2 Carter 396; Ex parte Spears, 88 California 640; 26 Pacific 608; 22 American State Reports 341; Ex parte Morgan (D. C.), 20 Federal Reports 298; Smith *vs.* State, 21 Nebraska 552; 32 Northwestern 594.

and not constructively so. Furthermore, "flight is not to be inferred, but proved and established beyond a reasonable doubt";[166] while the "fugitive" is entitled under the act of Congress "to insist upon proof that he was in the demanding state at the time he is alleged to have committed the crime charged, and subsequently withdrew from her jurisdiction, so that he could not be reached by her criminal processes."[167]

Where an affidavit as to flight accompanies a demand for rendition it *must* charge positively and directly the commission of crime.[168] The affidavit under consideration does not state in any positive manner, but only by inference, that Coppoc committed a crime. The instrument does say that there is a belief upon the part of the affiant that Coppoc was "aiding and abetting" in the commission of some crime, as stated, but this is stated as a mere belief and as no positive statement of fact. Hence the affidavit is "fatally defective".[169]

Furthermore, in thus alleging that Coppoc "aided and abetted" in the commission of crime, the affiant is stating a legal conclusion. This is a question of law — a question, therefore, which must be left to a court to decide and not to the allegation of an individual under oath.[170] As such al-

[166] In re Doo Woon (D. C.), 18 Federal 898; In re Jackson, 2 Flippin 183; 13 Federal Cases No. 7125; Ex parte Reggel, 114 U. S. 642, 643, 651, 652; State ex rel. *vs.* Justus, 84 Minnesota 243; Roberts *vs.* Reilly, 116 United States 96.

[167] Ex parte Reggel, 114 United States 642; In re Mohr, 73 Alabama 503; 18 Central Law Journal 252; In re Rogers (Sup.), 15 Miscellaneous Reports 303; 36 N. Y. Supplement 888; In re Heyward, 3 N. Y. Superior Court 701; Ex parte Cubreth, 49 California 436; In re Fetter (N. J.), 3 Zabr. 311; 57 American Decisions 382; In re Voorhees (N. J.), 3 Vroom 141.

[168] Ex parte Smith, 3 McLean 121; 22 Federal Cases No. 12,968. Consult also references in note 167.

[169] Ex parte Rowland, 35 Texas Criminal Records 108; 31 Southwestern 651.

[170] Ex parte Smith, 3 McLean 121; 22 Federal Cases No. 12,968.

legation it is worthless as evidence of the real fact concerning Coppoc's charged criminal relations with Brown and his band. For this reason it would seem that Governor Kirkwood was justified in considering the evidence contained in the affidavit as lacking the proper positive character.

Again, the affidavit only showed evidence of constructive and not of actual flight from Virginia. No statement contained therein can be made to take the meaning of actual presence upon the part of Coppoc in Virginia at any time before, during, or after the raid into Virginia. The fact of his actual presence there should have been positively set forth.[171] Hence, if a crime was committed by him against the laws and citizens of Virginia it was constructively committed. Such crimes do not come "within the class of cases intended to be embraced by the Constitution or Acts of Congress".[172] If such person afterward enters that State's jurisdiction, a rendition demand may then properly issue if he later flees that State's jurisdiction. "No one can in any sense be alleged to have 'fled' from a State, into the domain of whose territorial jurisdiction he has never been corporally present."[173]

The extradition clause[174] of the Federal Constitution and

[171] Ex parte Smith, 3 McLean 121; 22 Federal Cases No. 12,968; Jones *vs.* Leonard, 50 Iowa 106; Wilcox *vs.* Nolze, 34 Ohio State 520; In re Mohr, 73 Alabama 503; Tennessee *vs.* Jackson, 36 Federal Reports 258; Hartman *vs.* Aveline, 63 Indiana 344.

[172] In re Mohr, 73 Alabama 513.

[173] In re Mohr, 73 Alabama 513; Wilcox *vs.* Nolze, 34 Ohio State 520; Ex parte Smith, 3 McLean 121; In re Jackson, 2 Flippin 183; Ex parte Swearingen, 13 South Carolina 82; In re Fetter (N. J.), 3 Zabr. 311; Jones *vs.* Leonard, 50 Iowa 109; In re Heyward (N. Y.), 1 Sandf. 708; In re Cook, 49 Federal Reports 833; Tennessee *vs.* Jackson, 36 Federal Reports 258; Hurd on "*Habeas Corpus*" (2d. Ed.), p. 612.

[174] *Constitution of the United States*, Art. IV, Sec. 2, Cl. 2. For statement of clause cited see note 115 above.

the statutes of Congress[175] enacted to render this clause more effective and applicable do not refer to all classes of criminals, but only to those who have fled from the justice of the State where the crime was committed.[176] Hence their provisions do not apply to crimes not actually committed, but merely constructively committed, within the jurisdiction of the State making the demand.[177]

The question whether a person sought is a fugitive from the justice of another State is a question of fact and not one of law.[178] The decision upon this question rests wholly and solely with the Governor of the State upon whom the demand is made — at least until that decision may be overthrown by contrary proof.[179] The Governor of such State does not fail in the performance of his duty if, before surrendering the accused, he requires that it be shown him by competent and incontestable proof that the accused is actually fleeing from justice.[180] The certified statement of the demanding Governor that such person has fled is not competent evidence that he has done so and hence cannot be accepted as such.[181]

The competency of such proof as offered in evidence of flight is left solely to the discretion of the chief executive of the State upon which demand has been made. "The gov-

[175] *United States Revised Statutes*, Sec. 5278.

[176] Ex parte Smith, 3 McLean 121; 22 Federal Cases No. 12,968; United States *vs.* Smith, Bunner's Collection 87; United States *vs.* Brown, 2 Lowell 267; United States *vs.* O'Brian, 3 Dillon 381; State *vs.* Washburne, 48 Missouri 240; 6 Pennsylvania Law Journal 418; 24 American Jurist 326; Case of Kimpton, 12 American Law Review, 181.

[177] In re Mohr, 73 Alabama 503.

[178] Roberts *vs.* Reilly, 116 United States 80; In re Jackson, 2 Flippin 183; 13 Federal Cases No. 7125.

[179] Roberts *vs.* Reilly, 116 United States 80.

[180] Ex parte Reggel, 114 United States 642; Roberts *vs.* Reilly, 116 United States 80; Cook *vs.* Hart, 146 United States 183.

[181] In re Jackson, 2 Flippin 183; 13 Federal Cases No. 7125.

ernor can insist upon the production of whatever he deems necessary or important properly to inform him on the subject of the accused being a fugitive from justice.''[182] The executive discretion is here practically uncontrolled by Federal restriction since Federal law does not describe the character of the evidence required, nor the precise rules by which the fact of flight may be established.[183] Instead of stating facts which would have formed proper and competent evidence in support of the demand, the affidavit merely stated the bare conclusion of the deponent and, therefore, could not be admitted as competent evidence.

Since the commission of the crime charged and the flight from justice, if such it was, were purely constructive in nature,[184] since the Federal Constitution and statutes do not recognize such constructive acts, and since no competent evidence supporting the demand was offered, but merely the legal conclusion of the affiant as to the commission of the deed charged, no chief executive could legally and justly honor a demand so made and supported.

It does not suffice, however, within the summary provisions of the Federal statutes[185] that the affidavit be executed by a magistrate and attested by his official seal and that the question of flight be positively shown, but there must also be a substantial charging of some crime — ''treason, felony, or other crime'' — made against the person sought to be returned. Upon this last condition Governor Kirkwood took the stand that no crime had been so charged in the demand or accompanying papers.

182 Roberts *vs.* Reilly, 116 United States 96.

183 State ex rel *vs.* Justus, 84 Minnesota 243.

184 Ex parte Morgan (D. C.), 20 Federal Reports 298.

185 If crime had been committed as charged in the affidavit it was purely constructive since at no time during his stay at or near the Kennedy Farm had Barclay Coppoc crossed the river into Virginia, in fact he had not at any time during his life entered that State.

The leading case here is that of Joseph Smith, the "Mormon Prophet", who was sought to be returned to Missouri from the State of Illinois in 1842.[186] In many respects it parallels that of Coppoc in its essential features. The affiant in this case errs in the same manner as does the affiant in the Coppoc case when he states that he "believes" that certain things and conditions are and were existent. No facts are stated in either case upon which anyone could base an action legally justifiable. If either affiant had the facts at his command he should have stated them in order that the Governor of the State making the demands would have been able to justify his official action. In neither affidavit is found incorporated any facts whatever, but merely a statement of belief. Judge Pope in handing down his opinion in the case of Smith declared that the Missouri executive had no possible grounds upon which to base his demand.[187] There was no substantial charging of crime committed against Missouri laws whatever, but merely the expression of a legal conclusion which could not be competent.

This was precisely the situation in the Coppoc case. No facts are stated that could have provided the least possible basis upon which the Virginia executive could found his demand. Such papers could never be received as evidence of crime committed, if such there had been, justifying the tak-

[186] Joseph Smith was charged with being an accessory before the fact in an attempt made upon the life of one L. W. Boggs, in Jackson County, Missouri, on May 6, 1842. The Governor of Missouri issued a demand, for his return to Missouri, upon the Governor of Illinois in which State Smith then was. Smith resisted rendition, carrying the case to the United States Circuit Court for the District of Illinois. The claim was set up that Smith had not been in Missouri between February 10, 1842, and July 1, 1842, inclusive, but during all of this period had been in Nauvoo, Illinois, more than three hundred miles away from the home of Boggs. Judge Pope refused to order the surrender of Smith to the Missouri authorities. This case embodies practically all the essential features of the Coppoc case.

[187] Ex parte Smith, 3 McLean 121; 22 Federal Cases No. 12,968.

ing away from a citizen his right to liberty and the transporting of him to another State, there to be placed on trial for a crime alleged to have been committed within its borders, but the allegation of which was not supported by a single competent fact as evidence.

Coupled with the failure to directly charge that the alleged act was committed in Virginia is the additional defect that no statement is made whether such act as charged was a crime against the Virginia laws. One may infer that it was, but the Constitution and statutes make it mandatory that the charges must be absolute and explicit in statement. These are not so[188] since there is lacking the direct statement that crime has been committed against Virginia laws. This should have been so direct and clear as to justify a magistrate in committing the accused to answer the charge.[189]

The Virginia notary, Boykin, was here at fault — doubtless due to the inadequacy of his knowledge concerning extradition laws. Before issuing the affidavit he should have required the production of incontestable evidence showing distinctly that a crime had been committed against Virginia laws and as explicitly setting forth the place of commission.[190] The spirit of the law will permit of no inference as to where the crime charged was committed.[191]

The almost invariable interpretation of our courts has been that an affidavit in which the deponent swears "that he has reason to believe" or "believes from information received from others" that some one person or persons has or

188 In re Fetter (N. J.), 3 Zabr. 314; In re Heyward, 3 N. Y. Superior Court (1 Sandf.) 701; In re Heyward, 1 Code Reporter (N. Y.) 45.

189 Ex parte Hart, 63 Federal Reports 249; 6 Pennsylvania Law Journal 414; In re Jackson, 2 Flippin 183; 13 Federal Cases No. 7125.

190 In re Fetter (N. J.), 3 Zabr. 314; Ex parte Smith, 3 McLean 121; 22 Federal Cases No. 12,968; Ex parte Swearingen, 13 South Carolina 83.

191 In re Heyward, 3 N. Y. Superior Court (1 Sandf.) 701.

have committed crime is an affidavit issuing upon suspicion and with nothing else as its foundation.[192] The extradition laws of Congress can never be satisfied by such a charge. Now this is identically the nature of the charge made in the affidavit attested by Boykin.

Hearsay or indirect statements offered as evidence or proof can never be accepted in any court as fully substantiating a charge.[193] The affidavit in the Coppoc case was sworn to solely upon such evidence — being based upon information and belief. No chief executive may issue a demand upon "rumor, or the mere representation of a person."[194] In this instance it was issued upon the representation of the deponent and no other basis — a plain violation of the spirit and intent of the law.

Again, no person can be legally charged with the commission of crime when there exists no jurisdiction to try him. If so charged, it can only mean that the authority charging possessed the power of jurisdiction to do so. The right to try means jurisdiction over the place of commission and the person committing the offense, as all precedent tends to maintain.[195] All evidence presented in the Coppoc case tends to show that he had never at any time gone within the jurisdiction of Virginia; and yet the officials of that Commonwealth presumed to possess the power of jurisdiction and actually arrogated it to themselves in charging him with crime and attempting to secure his rendition — a pure legal absurdity. Virginia had no possible hope of securing Coppoc upon such a representation, unless it were possible for that State to maintain successfully that her jurisdiction

[192] Ex parte Morgan, 20 Federal Reports 298; Ex parte Smith, 3 McLean 121; 22 Federal Cases No. 12,968.

[193] In re Rutter, 7 Abbott's *Practice Reports* (New Series) 67.

[194] In re Jackson, 2 Flippin 183; 13 Federal Cases No. 7125.

[195] Ex parte Morgan, 20 Federal Reports 308.

extended to crimes committed in other States — a theory of jurisdiction that is untenable.[196]

No attempt whatever was made to show that the notary issuing the affidavit had made himself familiar with the facts; nor was any evidence presented to prove that the deponent was in any way familiar, other than by hearsay, with the substance of "the belief" concerning Coppoc to which he swore. To authorize the removal of an alleged fugitive from the State where found to another State for trial on a charge of crime something more than the oath of a party, unfamiliar with the facts, that he believes the allegations which he makes in an information to be true should be required and is demanded by law. "To hold otherwise would enable irresponsible and designing parties to make false charges with impunity against those who may be the subjects of their enmity."[197] Thus it would seem that the Virginia executive, in the light of such statements as made in this affidavit, had no right in law to issue a warrant for the rendition of Barclay Coppoc.[198]

The crime alleged to have been committed by Coppoc was committed, if committed at all, in early October of the year 1859, while the charging affidavit was made upon January 9, 1860. It would seem that in nearly three months of time a reasonably energetic person would have had time to either dissipate or confirm his suspicions. He had had at least sufficient time in which to collect facts, if such existed, upon which to swear out an information and with which to legally support himself in deposing to an affidavit rather than to state his belief.[199] What must be the conclusion? That actual, confirmed facts were wanting upon which a legal charge could be based.

196 Ex parte Smith, 3 McLean 121; 22 Federal Cases No. 12,968.

197 Ex parte Hart, 63 Federal Reports 260.

198 Ex parte Smith, 3 McLean 121; 22 Federal Cases No. 12,968.

199 Ex parte Smith, 3 McLean 121; 22 Federal Cases No. 12,968.

According to well established principles of procedure, which have been nearly universally followed in our courts of law, evidence of such a character should have been offered as would have made a *prima facie* case.[200] On the contrary, the papers offered were open to the widest criticism upon the basis of their legal irregularity. Markedly irregular and insufficient were they concerning the properly charging with crime and the statement of necessary facts showing Coppoc to have been a fugitive from the justice of Virginia. As noted, they should have been explicit and regular in these respects, and especially concerning the question of flight since the "fact of fleeing lies at the foundation of the right to issue the warrant of rendition."[201]

A calm review of Governor Kirkwood's action in refusing the demand for rendition made possible through the distance of the years when we are far removed from the period of heated controversy and impending conflict enables us to note the justness and legality of his course. With only one ground for refusal ill-founded — while the remaining three are sustained as points well taken — we may note a clarity of legal perception united with a strength of conviction which did not permit the inflamed sectionalism of the South nor the rabid partisanship of the North to dictate his course of action. One cannot help but commend the judicious stand assumed by Governor Kirkwood in the case of Barclay Coppoc.

SUBSEQUENT LIFE OF BARCLAY COPPOC

Concerning the subsequent life of Barclay Coppoc but little remains to be told. Upon his return to Iowa from Ohio in 1860 he went to Kansas where, on July 24, 1861, he was commissioned lieutenant in the Third Kansas Volun-

[200] In re Jackson, 2 Flippin 183; 13 Federal Cases No. 7125.

[201] In re Jackson, 2 Flippin 183; 13 Federal Cases No. 7125.

teer Infantry. This regiment was commanded by one Col. Montgomery, well known for his prominence in the Kansas war.

Coppoc was authorized by Col. Montgomery to secure recruits for the regiment and with this purpose in view he returned to Springdale where he secured the enlistment of eleven young men who had been his schoolmates and constant companions since early boyhood. While returning to Kansas with these men his life was brought to a close in nearly as tragic a manner as was that of his brother Edwin. While the train which was bearing him and his companions to Kansas was crossing the Platte River near St. Joseph, Missouri, the bridge, which had been partially burned by rebel guerrillas, gave way precipitating it into the river more than eighty feet below.

Coppoc survived until the following day when he succumbed to the injuries received. His remains were buried with fitting military honors in the beautiful Pilot Knob Cemetery at Leavenworth, Kansas. Cedar County, Iowa, has not forgotten the sacrifice made by her valiant and patriotic son, and graven with the names of other Civil War heroes upon a commemorative shaft in Tipton, Iowa, may be read the name of Barclay Coppoc.

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