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Emma Green

The Making of a Southern Identity

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Profile

Emma Green

The Making of a Southern Identity

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Election Day

It was a Thursday in May 1859, the 26th. Another school day for Emma Green, the 16 year-old daughter of the richest man in the city of Alexandria. Her father James had been born in Sheffield, England but in 1817, when a boy of 15, he emigrated with his parents first to Washington DC and then to Alexandria. By 1859 he was a prominent entrepreneur, heavily involved in the hotel business and furniture manufacturing; he topped the city in his declared wealth in the 1860 census and was the third richest by city taxes paid in 1859. Over the next three years, Emma and her English immigrant family, influenced by marriage ties to Southerners and by the events of a war that engulfed them, slowly transferred their loyalty from the Union to the Confederacy.

Opposite

An image of Emma Frances Green, age unknown.

Public Domain

In 1857 Emma had been a day student, with her older sister Lydia, at Mrs. Kingsford's Seminary for Young Ladies at 460 West 9th Street in Washington DC. Mary Kingsford was, like James Green, an immigrant from England. Also attending as day students were the daughters of other prominent Alexandria families including Mary Howell, Mattie Hoff, Nammie Snowden, and Mary Shinn. In September 1858, Emma's brother Stephen commented in his diary that "Emma and Alice" had commenced school in Alexandria. While we do not have conclusive evidence as to which of Alexandria's many female academies Emma and her sister, Alice attended in 1859 it was most likely the Wentworth Seminary for Young Ladies. The principal of Wentworth, Albert E Bassford, was, like the Greens, a member of St. Paul's Episcopal Church, and the school-rented premises were owned by Emma's father, James Green, and situated in the same block as the family's furniture factory. Stephen mentions attending an event just before Christmas, 1858 at Mr. Bassford's and noted in his 1859 diary walking Emma and Alice to school from The Grove, the family country home outside of town, on his way to work at the furniture factory. Wentworth's records no longer exist; it's possible Emma and Alice attended another of Alexandria's female seminaries.

The Setting

A decade earlier (in 1848) James had acquired the grand Carlyle House mansion on North Fairfax Street, which was built in 1753 and had once, before land filling commenced, stood on a bluff overlooking the Potomac. It was the most imposing residence in the city.

At the same time he bought an adjacent three-story building that had once housed the Bank of Alexandria. The bank failed in 1834 and efforts to find a consistent purpose for this well-proportioned building in the hard times that followed also failed: the building alternatively housed medical offices, a US Post Office, and then luxury apartments.

Alexandria's economy improved by the late 1840s and James had bold plan: by 1849 he had transformed the former bank building into an elegant hotel boasting a first-class restaurant in its spacious and naturally-lit basement. So successful was this enterprise that in 1855 James began a massive expansion of the hotel, extending it south along Fairfax Street in front of Carlyle House to the next adjoining commercial building. Green designed an edifice with over 100 rooms, incorporating the former bank building as its northern end. This massive project created what was probably the largest single structure in Alexandria, and a showcase for the Green family's main business: a furniture factory. It was testimony to James Green's vision, business acumen, and energy; his plans were long-term, both for his family and his adopted city.

For white Alexandria, the 1850s were a boom time after years of depressed circumstances, lost opportunities, and many commercial and industrial failures. The Green family helped generate this boom and rose with it. Green's Mansion House Hotel, under James' proprietorship, was easily the largest and most luxurious hotel in town, and one of the notable hotels of the East Coast. But the boom was short-lived.

Opposite, top to bottom

Restored interior of Carlyle House. Second floor office with window overlooking Alexandria's wharves on the Potomac.

Private photograph.

The Mansion House Hotel, c 1861, looking south. The US Army began using the hotel as a hospital in October 1861.

Courtesy of Library of Congress



On May 24, 1861, the day after Virginians ratified the Ordinance of Secession in a special election, Union Army forces entered the town, capturing it without a fight. The Civil War brought freedom for Alexandria's enslaved population (1,237 in 1860, ten percent of the town's population) and a small step toward equality for the equally large free-black population (1,342 in 1860). But in other respects, Alexandria was devastated by the War. Skirmishes and battles were close by, but never directly touched the city. Indirectly, however, Alexandria was deeply affected: for the whole five years of the War Alexandria was a garrison town and a major military rail center.

The Greens paid a high price: the family's grand hotel became a bloody battlefield hospital, the family's furniture factory was confiscated and used as a prison for Union deserters, and the Green country home was within the defenses of Washington. As the War deepened, James and son Stephen were arrested for aiding the enemy and imprisoned in Washington. The US government refused to pay the promised rent for the use of Mansion House Hotel as a military hospital; litigation continued for the entire period of the War and was only paid in 1883, three years after James' death. In the process, the Greens became Southerners.

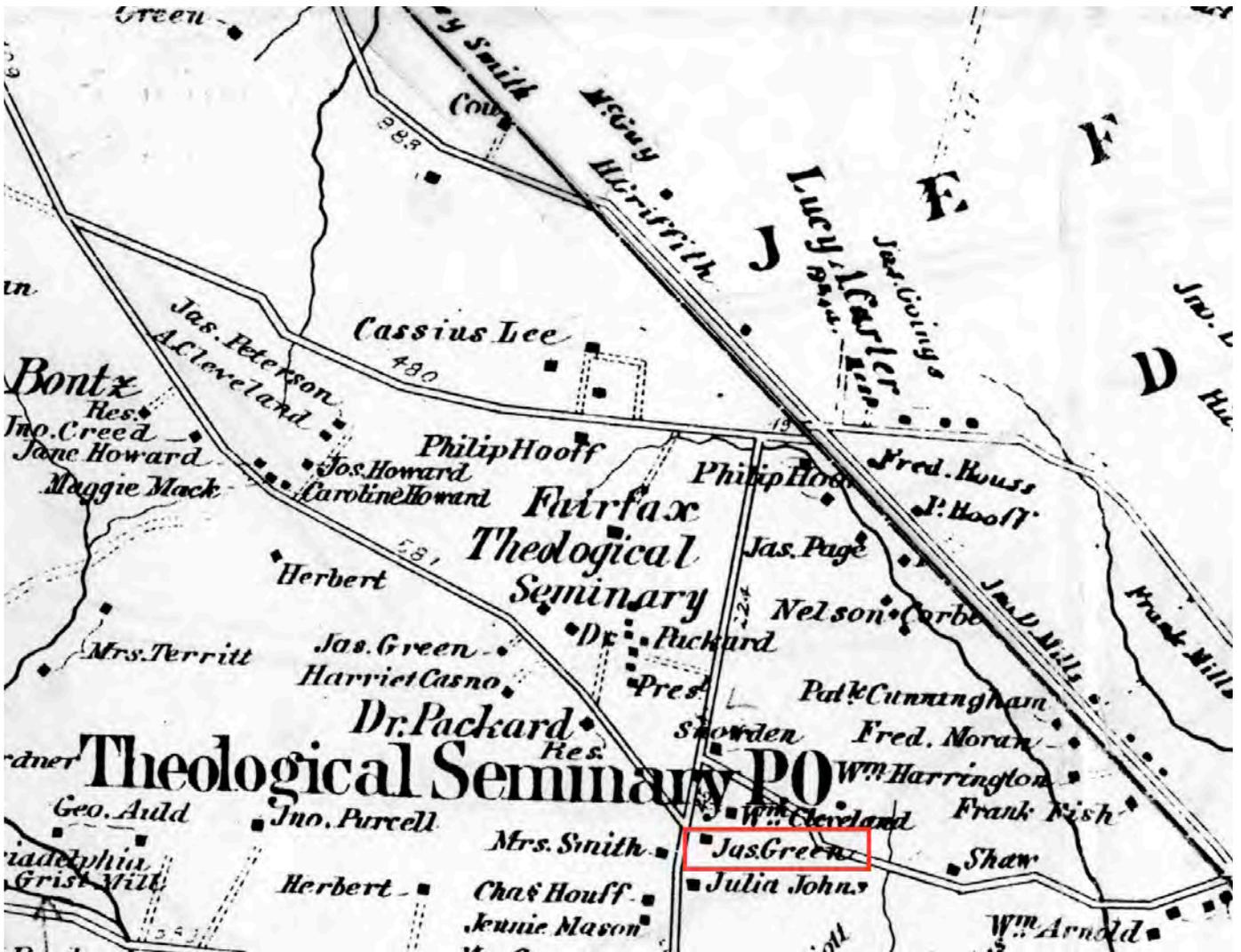
It was not always so. James was an immigrant entrepreneur, fascinated by steam power, who created one of the first steam-powered furniture works on the East Coast. His business reached to New York; Washington and Baltimore were important parts of the family's world. The factory provided furniture for the US government buildings in Washington and for up-market hotels, near and far. In 1859 James Green was in the south, but not yet of the South.

The 1860 census conflates Mansion House Hotel and Carlyle House (for which the hotel was named), listing as Green family residents Emma; her older sister Lydia; as well as her mother Jane, 56; and father James, 57. The family shifted accommodation repeatedly. In the chimera years before the War, Emma had many choices of accommodation: Mansion House, Carlyle House, two family-owned homes near the factory, and The Grove, the family's country retreat outside Alexandria. The Grove was very close to Episcopal High School, sited on wide uplands with a view reaching to the Capitol and surrounded by a grove of magnificent oaks. It was only two and a half miles from town, so within walking distance of Emma's Alexandria school.



Episcopal High School, c1918. The central building was built in 1805. Emma Green's youngest brother James Edwin and her future husband Benjamin Franklin Stringfellow both attended Episcopal High School. In 1861 Union troops occupied the school, using it as a hospital until the end of the war.

Courtesy of Library of Congress



Atlas of the Fifteen Miles Around Washington: Falls Church District, GM Hopkins, 1878. The Grove, a Green family residence, is highlighted in red. Property deeds and historic maps were examined to identify its location. James Green, Emma's father, purchased the property in 1850 and sold it prior to the Civil War. After the War, the Green family repurchased the property.

Courtesy of Alexandria Archaeology

Emma's brother Stephen assiduously kept a diary during these years, sometimes referring to the family house on South Fairfax Street as "home" and other times suggesting home was The Grove.

James Green bought the out-of-town property in 1850, during the same period he was branching out into the hotel business. It had been known less romantically as "Stump Hill," "Oak Hill," for its striking trees, then "Oak Grove," and finally just "The Grove." It had been part of the deceased estate of Frances Peyton, a former mayor of Alexandria. When James bought the property, the modest house was in disrepair, but the site was described as "one of the most pleasant neighborhoods in the County." James built a new and far more elaborate house, which was located near what is now the corner of Quaker and Janney's Lanes.

In June of 1860 as sectional tensions increased, James sold the sixteen-acre property to fellow Alexandrian businessman, Aguila Lockwood; his son John W Green repurchased it following the War.

During the War, The Grove was within the ring of Union fortifications built to defend Washington from an attack that never came. Fort Worth was built to the west, Fort Ellsworth to the east, and eventually Fort Williams, right between. The military headquarters and hospital at Virginia Theological Episcopal Seminary, located across Quaker Lane from The Grove, while not military targets, also stood within this area protected by the forts and batteries surrounding DC.

Archaeological work in areas near The Grove revealed an a mix of domestic remnants and military hardware. While it was surrounded by Union encampments, there is no evidence of Union use of The Grove itself. During the War, Stephen and his father James, and perhaps Emma too, often walked the two miles out of town to the site. What they thought as they looked at their former home is unrecorded: Stephen never mentioned what they saw and never penned a harsh judgment.

Stephen shifted his sense of belonging to his parents' old family home: a three story duplex with dormer windows on Prince Street purchased by James in 1839. It would be to the Prince Street house (now numbered 212 and 214) that Stephen and his parents would move to after the US Army's occupation of Alexandria, including the family's Mansion House Hotel and furniture factory.

The Family

Emma was part of a large and hard-working family: three brothers who lived in town and worked in the family hotel, furniture, and farm businesses and three older sisters who were married to Virginia boys. Stephen recorded in his diary the death of Alice Green, Emma's younger sister, who was the Green family's "first affliction" on March 17, 1860, just two weeks after his own first child was born. "She looks very beautiful and more like one asleep than one dead," said Stephen. James was distraught, losing his youngest child to a seemingly sudden and unexpected illness.

The Greens were hands-on business people, remarkably busy and hard working. Like many English families they lived, if not precisely "above the shop," certainly next door to both the factory and the hotel. It is not clear how permanent the family's occupation of Carlyle House was. The family sometimes resided in Carlyle House in the years leading up to the War. The large portico on the back of Carlyle House, extending the first floor outdoors, would have provided the Greens with a splendid view of the Potomac and a degree of privacy.



Silk glove, early 19th century. This glove may have been similar to those Emma Green and other women in her family would have worn. It was discovered in 1977 by archaeologists for the City of Alexandria during excavations of the 500 block of King Street. The frame-knitted glove with hand-sewn seams was preserved because it was disposed of in a privy, which provided the proper wet and oxygen-lacking environment for the silk fibers to survive. Artifacts deposited in the privy in the same time period as the glove were used to date the archaeological level and the disposal of the glove to between 1830 and 1860.

Courtesy of Alexandria Archaeology.

The extended Green family was also large, close, and rapidly expanding to include cousins, uncles, aunts, grandchildren, and in-laws from both sides. Many of those ties were, initially at least, to fellow British immigrants, rather than native-born Americans. Jane Muir Green, Emma's mother, was the daughter of another local furniture-making family, originally from Scotland. Emma's father and her grandfathers on both sides were British immigrants and scions of highly aspirational families in the furniture manufacturing trade.

The American South impinged through marriage. Emma's two oldest sisters, Mary and Elizabeth Jane, both married into the Stringfellow family of south and central Virginia, as would Emma herself, after the War. Sarah Virginia married into the Episcopalian Jacobs family and Lydia never married. Three of the girls, including Emma, chose husbands who were or became Episcopalian ministers, perhaps a measure or means of this British family fitting into American society.

James Green's relationship to slavery was complex. He is listed as owning three slaves in the Alexandria census of 1850. The 1850 Free Negro Register of Alexandria and the local land records indicate that James Green manumitted Charles Marshall, a mulatto then about 28 years old, on March 25. Green had purchased Marshall from George Brent of Alexandria, perhaps as part of the sale of Brent's estate. In 1860, a Charles Marshall, age 45, and Margaret, also 45 and probably his wife, were listed in the census as free blacks living together in a rented house on South St. Asaph Street, both working as domestic servants. Perhaps Charles was the same Charles Marshall whom James had freed a decade earlier.

The 1860 Alexandria slave schedule indicates that James still owned one slave and "rented in" another 15 enslaved men and women to serve in his enterprises. Other whites owned these men and women and James would have negotiated a contract, usually for a year, with each of the owners for the use of their slave's labor. The slave schedule, which indicates James' ownership of a single slave, was designed to measure the extent of an individual's slave ownership and it was thus a cumulative document. Some of James' rented slaves, perhaps all, were assigned to the bustling Mansion House Hotel. There were also several white domestic white domestic servants. Mansion House's labor force, both free and enslaved, were kept busy cleaning the chambers, serving food, assisting guests, and running the stables.

Ten of James' rented-in slaves came from owners in the adjacent countryside and five from fellow townspeople. Eleven of the slaves were male, and all but three were listed in the census as "mulatto," as were three of the five female slaves. The men were mostly young, 18 to 26; two of the females were children, 8 and 12; the three women were all listed as 40 years of age. The slaves on this schedule likely worked for the Greens at the Mansion House Hotel and their residences. Additional slaves likely worked on the Green's large farm near Centerville, Virginia, but records have not yet been found to verify their presence. The work tasked to the single slave whom James owned is unclear; the other rented-in slaves were subject to annual rental agreements with their owners.

For Emma's three brothers, John William, Stephen Alexander, and James Edwin, May 26, 1859, was Election Day: the day when they would stand among other men, mostly older than they were, and declare out loud their choice of candidates standing for the US Congress and four state offices: member of the Virginia House of Delegates, governor, lieutenant governor, and attorney general. The Green brothers unanimously chose the candidates of the pro-business, pro-development, pro-Union (but not anti-slavery) Opposition Party, office after office, right down the line. As it turned out, this was the last state election before the secession crisis engulfed Virginia and sealed Alexandria's fate.

By 1859 the two older brothers, John and Stephen, together owned Alexandria's largest furniture factory: the three-story Green & Brother factory at the north-east corner of South Fairfax and Prince Streets, with its fine cupola and a clock to chime the time to the workers. Their father James was renowned as a cabinetmaker, manufacturer, and industrial pioneer. For many years James and his father William had manufactured furniture for fine hotels like the Planter's Hotel in St. Louis and for many of Virginia's most eminent families, including the Lees. In 1857, with his flourishing hotel to occupy his attention, James had handed over this manufacturing business, the factory, and its purpose-built machinery to his two older sons. They employed 26 workers

Opposite

1860 Alexandria slave schedule for James Green. James Green owned one slave and rented in fifteen from the surrounding area. These men and women, ranging in age from 8 to 40, probably worked at the Mansion House Hotel; additional slaves may have worked at other Green properties, including the large farm near Centerville, Virginia.

Courtesy of Ancestry.com

Deaf, dumb, insane, or idiotic.	No. of Slave hours	NAMES OF SLAVE OWNERS.	Number of Slave	Age.	Sex.	Color.	Fugitives from State.	Number manum	Deaf & dumb, blind, insane, or idiotic.	No. of Slave ho
8	9	1	2	3	4	5	6	7	8	9
			1	12	F.	B.				
		James Green Empty	1	26	M	M				
		Same	1	25	M	M				
		Lucey G. Tidball Winchester,	1	40	M	B.				
		Same	1	22	M	B.				
		Do Loren Burrell Winchester,	1	19	M	M				
		Same	1	20	M	M				
		Sally Lynpith Alexandria,	1	21	M	B.				
		Same	1	19	M	M				
		Mr. Hunt Alexandria,	1	19	M	M				
		Same	1	19	M	M				
		Mr. Bond Fairfax Va.	1	24	M	M				
		Same	1	23	M	M				
		Mr. Shackelford Fauquier Co,	1	40	F.	B.				
		Same	1	40	F.	M				
		Mr. Dupion Alexandria,	1	8	F.	M				
		Same	1	12	F.	M				
		Same	1	40	F.	B.				
		Do W. Winston Alexandria	1	60	F.	B.				
		C. C. Smith	1	33	F.	B.				
			1	16	F.	B.				

TO BUILD UP THE SOUTH, BUILD UP AND ENCOURAGE HER MANUFACTORIES.

S. A. GREEN.

ESTABLISHED 1823.

J. E. GREEN.

PRICE LIST

OF

GREEN & BROTHER,

HANDRAIL,
NEWELL POST,
BALUSTERS,
BRACKETS,
BED POST,
TABLE LEGS,
AND ALL KIND OF
FANCY TURNING
AND
CARVING.



ASH,
WALNUT,
MAPLE,
MAHOGANY,
OAK,
POPLAR
AND
CHERRY,
LUMBER
AND
VENEERS.
COFFIN STUFF
AND
Upholster's Material.

Manufactory and Office,

CORNER OF PRINCE AND FAIRFAX STREETS,

ALEXANDRIA, VA.

but both were themselves skilled cabinetmakers; the youngest son, James Edwin, was probably learning the trade. After the War, James Edwin would run the business with Stephen, while John embarked on a career in real estate.

Furniture and furniture for hotels ran in the family tradition. James Green had expanded the furniture manufacturing business originally set up by his father William. When William died in 1824, James inherited the shop which stood in the interior of the block bounded by King, Royal, Prince, and Fairfax streets. The business and James gained notoriety in 1827 when the factory caught alight, setting off Alexandria's most destructive fire and destroying more than 50 buildings. Despite the fire, the business—and James's reputation—remained viable. In 1834 he purchased the three-story brick building at the corner of Prince and South Fairfax streets for a new factory, embracing the latest technology with steam power for sawing and turning wood: the transformation from hand to machine manufacturing paved the way for the huge success of his enterprise. James would furnish his own hotel with his own company's furniture and in the 1860 Alexandria census he would say that his occupation was now "hotel keeper."

The Alexandria city tax records of 1859 show that all three brothers and their families shared a large two-story home also on South Fairfax Street, on the west side between Prince and Duke Streets, around the corner from the long-held house on Prince Street, and kitty-corner from the furniture factory. John converted this house to a duplex after the War. This building exists today as 207 and 209 South Fairfax Street. The furniture factory still stands, too, converted to condominiums.

The first generation Greens were young people and their sharing of the South Fairfax Street house marked their transition to independence. John, who was listed as owner of the house, was the oldest at 32 in 1859. His wife Fanny was 26, as was Stephen. Stephen's wife Maggie was 21, as was the youngest brother James Edwin, whose wife Annie was just 19. James Edwin had his 21st birthday on the 14th of April and the May 26 election was the first in which he could vote.

Opposite

Green & Brother Catalogue, c1871. The catalogue shows the Green & Brother factory at Prince and South Fairfax. In 1871 Emma's brothers, James Edwin and Stephen, ran the business. The factory was used by the Green family beginning in 1834 and served as a Union prison during the Civil War.

Courtesy of Library of Virginia, Ephraim Baker Collection, Accession 51052



207 & 209 South Fairfax in Alexandria, Virginia, c1961. The Green brothers' duplex, which still stands today.
Courtesy of Library of Congress

Slavery, Religion, Politics, and Marriage

Unlike their hotelier father, who rented in many enslaved people and owned at least one African-American man, neither the brothers nor their wives were directly involved in slave ownership or renting. The Green children surely could have afforded to buy or rent slaves. But the family seems to have been uncertain about slavery, at least outright slave ownership.

The family also had extensive rural land-holdings, including two farms in Fairfax County. One was a small-scale farm located near The Grove. The other was located in the southeastern corner of Fairfax County, near Centerville and abutting present day Dulles International Airport. This large 1,243-acre farm produced large quantities of corn, oats, rye, and wheat as well as lesser crops of wheat, potatoes, and market garden produce (perhaps for the hotel). It was

a large undertaking, raising sheep (125) and “milch cows” (30); 20 horses and two mules worked the land. The crops and the animals must have required a good deal of labor and it is possible slaves either rented or owned by James labored here, but records of the labor force on the Centerville farm have not yet been located.

To date, no indication has been found in official records or in Stephen’s diary that slave labor was used either in this very large agricultural enterprise or in the furniture factory, one of the largest employers in the city. Stephen made few mentions of the farm in his diary and no mentions of its labor force; his daily references to the factory, of which he was essentially the manager from 1857, never mention slave labor being employed. His pattern of “paying off the hands,” giving workers days off for events and funerals, and his accounts of mingling with them on these occasions suggest that the factory was worked by free labor.

It is possible, too, that the households of married Green children (as well as Emma and Lydia, who lived with their parents) may have benefited from the white and black labor employed and enslaved at the family’s high-class hotel and perhaps deployed in other enterprises. Or they may have hired immigrant or free black domestic servants. But the direct connection of the family, and even James, with slave ownership remains muted, an interesting situation, especially given the social and economic position of the Green family in Alexandria.

A similar pattern of distancing from some social norms appears in the family’s religious membership. Like their father and mother, the three Green brothers were members of St. Paul’s Episcopal Church. Slave ownership was the norm: over half of the 59 men who were members of St. Paul’s owned slaves: some very many slaves. A few of the 67 women who were members of St. Paul’s also owned or rented slaves. Even though he used slaves, it appears from the records we have that James Green was not an enthusiast for slave ownership.

Likewise James did not follow his fellow church members in political terms. Most of St. Paul’s male parishioners voted: a turnout of 73 percent in the 1859 election, was well above the city average. And they too voted for the Opposition Party candidates. But James did not vote at this very critical time.

The national party system of Whigs and Democrats had collapsed in the 1850s with the emergence of a Republican party in the North opposed to the expansion of slavery. Increasingly the Democratic Party, especially in the South, became a militant pro-slavery party and the dominant party in the region.

POLL FOR
Governor, Lieutenant Governor, Attorney General,
Congress, and other Officers, May 26, 1859

Names of Candidates and Offices.

Names of Voters.	Governor	Lieut. Governor	Attorney General	Congress	Other Officers
	W. A. Gregg	John A. Tucker	William J. Willey	P. A. Montague	John P. Tucker
Wm. A. Smith	/	/	/	/	/
Wm. A. Smith	/	/	/	/	/
Wm. A. Smith	/	/	/	/	/
Wm. A. Smith	/	/	/	/	/
Wm. A. Smith	/	/	/	/	/
Wm. A. Smith	/	/	/	/	/
Wm. A. Smith	/	/	/	/	/
Wm. A. Smith	/	/	/	/	/
Wm. A. Smith	/	/	/	/	/

Detail of page of a poll book from the May 26, 1859 gubernatorial election in Alexandria. Courtesy of Library of Virginia, Election Returns

Alexandria had long been a Whig city, befitting its commercial nature. With the collapse of the national Whig party, Alexandria became a stronghold of the Opposition Party, while the Democrats had increased almost everywhere else in Virginia, agitating on the slavery issue and the ominous rise of the Republican Party to the North.

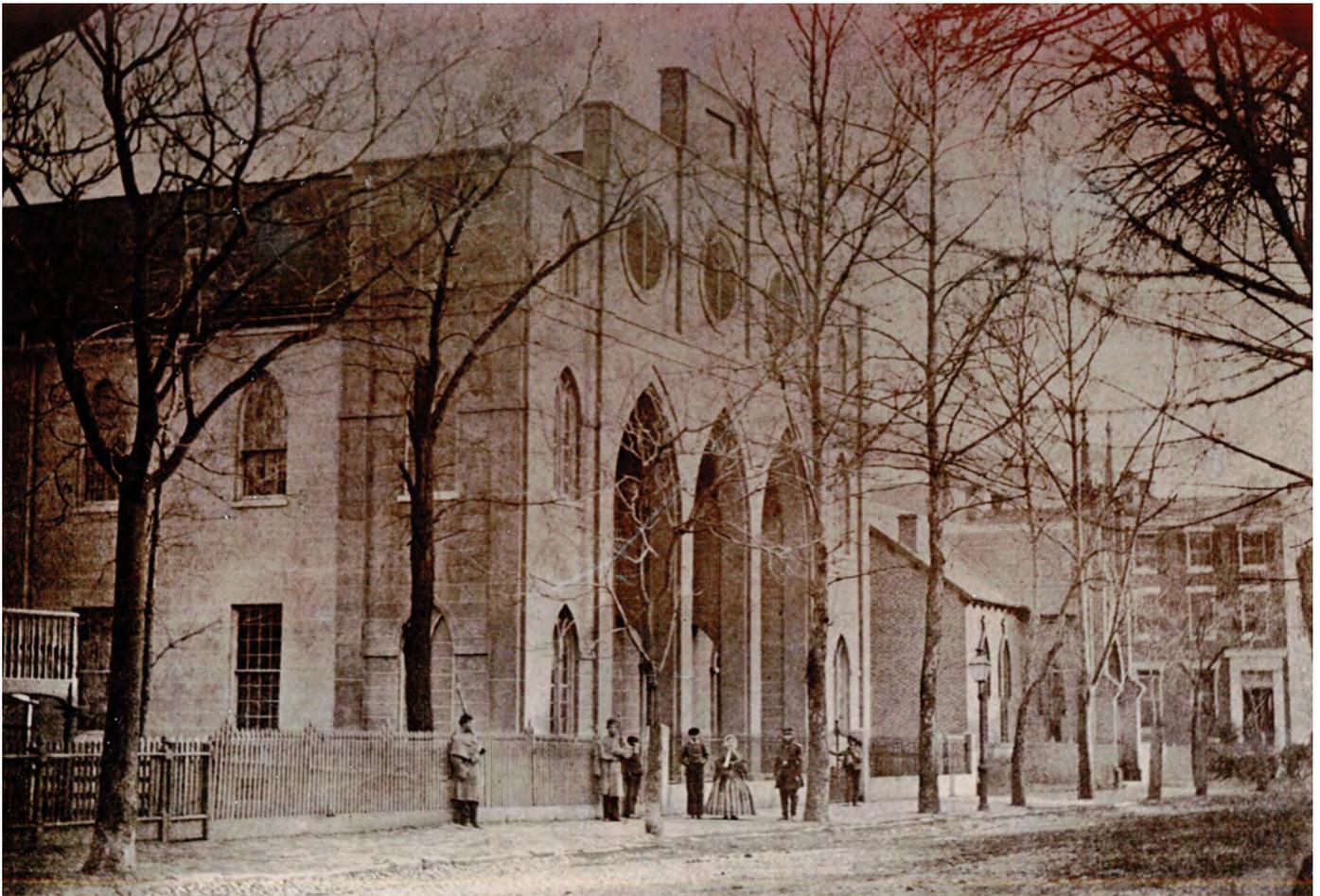
The members of St. Paul’s were politically united: 18 voted a straight Opposition ticket; another 19 voted mostly Opposition. The Democratic Party secured only two straight ticket voters from St. Paul’s parishioners, with another four calling out an Opposition candidate for some of the five offices being elected.

The Green sons joined many other former Whigs in trying to preserve a two-party system in the South, supporting efforts to create the “Opposition Party” to continue many of the pro-business policies of the former Whigs, and voting straight party tickets. They all voted in Ward 2, in front of the City Council Chambers at the corner of Cameron and North Royal, just a block up from the hotel. Two hundred and eighteen men voted at that polling station. The brothers supported the same candidates, but voted separately from one another. John, the eldest, voted first, about halfway through the election, among a group of well-off Opposition voters. James Edwin was next, 43 voters later, participating in his first election, and doing so among a group of less well-off Opposition voters. Thirteen voters after his younger brother came Stephen, first to declare among a group of nine Opposition voters.

But their father did not vote in this important election. About 75 percent of the men of St. Paul’s voted, but others did not vote, fifteen in all, including

St. Paul's minister, George Norton. Non-voting was an unusual decision for an economic pillar of the community like James Green. James was not a political leader, despite his position in his city and in his church.

Religion was important to the Greens in many other ways. As an upwardly mobile immigrant family, the Greens had to create their social context: they were very far from being an old Virginia family with a deep network of established connections. Family connections mattered, and with five surviving daughters and three sons, religious membership was also an excellent way to establish the connections and networks that under-pinned native-born families.



St. Paul's Episcopal Church, c1862. The US Army had already begun their occupation of Alexandria. The Green family attended services at St. Paul's.

Public Domain

At the time belonging to a religious organization, especially a Protestant congregation, was very much a part of being established in a community. Membership was highly skewed to the well-off. The Greens joined in.

Marriage patterns often followed religious membership, but with unforeseen consequences. The boys' marriages brought wives to Alexandria: they strengthened the family's connections within the city. John's wife Fanny was not listed as a member of any church but Maggie and Annie, married to Stephen and James Edwin, were both Episcopalians and both members of the St. Paul's congregation. Stephen and his wife Maggie taught Sunday school and often attended multiple religious services on Sunday. Beyond the obvious religious devotion the Greens felt and exhibited, their church membership and marriages represented deeper emotional and cultural ties to Alexandria.

The girls, however, married out of Alexandria. The two oldest girls, Mary and Elizabeth Jane, married into a single, and very different, set: the pious Stringfellow family, also with connections to the Episcopal church, but with a devotion allied to radical pro-slavery views. Emma would also marry into the Stringfellow family.

Northern Views in a Southern City

The political orientation of James Green gradually shifted. A few years earlier, in 1854, he had been elected to Alexandria's Common Council as a Whig. But he was not a voter in subsequent elections. Indeed, it was the threat of war that seems to have again propelled James into more overt political activities. He attended the polls with Stephen and John in the 1860 and 1861 municipal elections, calling out his support for Opposition candidates, while his sons supported a split Opposition-Democrat ticket.

The Green family of Alexandria was not a quick convert to the Confederate cause. In February 1860, John was one of 90 delegates from Alexandria to the Opposition Party convention in Richmond—a last-ditch effort to create a viable political party to stand against the local Democrats and the national Republicans. Stephen in his diaries left the most indelible trail of partisan engagement including:

- attending the local Whig Convention in February 1859
- engaging in and excited by the March municipal and May state elections, fixing up the wareroom at the factory in preparation for the local conventions and elections.

- attending May ratification meetings for John Bell and Edward Everett, presidential and vice presidential candidates of the Constitutional Union Party, in Alexandria and Baltimore.
- attempting to attend the June 18 adjourned national Democratic convention in Baltimore in expectation that moderate Stephen Douglas would be nominated for president. Turned away as he had no ticket, Stephen attended a rally in Monument Square.
- noting in July the excitement of rallies for the John Breckenridge and Joseph Lane, Southern Democrat candidates for president and vice president.
- attending in September a Bell and Everett meeting; noting meetings of Breckenridge and Lane, and Douglas and Herschel Johnson.
- noting the ratification meetings in May for Bell and Everett in Baltimore and Alexandria, and the ominous loss of the May state election to the Democrats.
- watching local Breckenridge and Lane meetings and writing on Election Day, November 7, 1860 that “Alex has done well for the Union” as the city polled overwhelming for Bell and Everett.

The Green sons were following the political course of other city businessmen who also generally voted either Whig or Opposition: this was the voting choice of the progressive elite who looked to commerce, railroad development, transportation improvements, and manufacturing for their city’s future. While many were slave-owners or, like James Green, both owned and rented-in slaves for their businesses, few indeed voted for the Democrats, the political party agitating the slavery issue.

The family’s employees did not necessarily follow the family political position. The clerk at Mansion House, Samuel F Gregory, 43, did call out a vote for the full slate of Opposition candidates in 1859, but James’s bookkeeper at the Mansion House, George S Stewart, 33, voiced a split ticket, mostly for Democratic candidates.

James Edwin, the youngest of the brothers, led the way to the world of war, joining the local militia, The Old Dominion Rifles as a second corporal, in December 1860; Stephen watched his brother begin drills on the 20th, the day after South Carolina seceded.

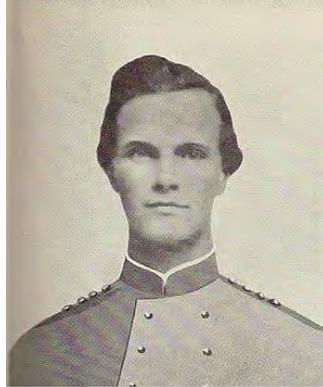
The Southern View

The extended Green family was divided in its political views, with the support for the increasingly assertive Democrats far clearer on the in-law side. James now had joined his three sons in voting by participating in the municipal elections of 1860 and 1861, all four calling out votes for Opposition candidates. If the poll books had survived for Culpeper, they probably would show that James's son-in-law, Robert Stringfellow, and his family, voted Democratic.

The Stringfellow family into which Emma's two older sisters had married, was a far more traditional Southern family than the Greens. The Stringfellows were country people and planters, deeply committed to the retention of slavery; their influence would have been powerful and powerfully profound for the Greens.

The oldest Green daughter, Mary, had married Rev. Horace Stringfellow in 1849 and over the years raised three children. In 1850 Horace and Mary were living with the Green family in Alexandria but would soon move to the country. Elizabeth Jane married Robert Stanton (Stant) Stringfellow, son of a Culpeper plantation owner, five years after Mary's marriage. Elizabeth Jane's uncle by marriage was Benjamin Franklin Stringfellow who was Missouri's attorney general, a "border ruffian," and one of Missouri's most ardent pro-slavery activists. Thornton Stringfellow, another uncle, was a Baptist minister in Culpeper who became known for his liturgical defense of slavery. And then there was another Benjamin Franklin Stringfellow: "Frank," the soon-to-be Confederate spy, and Emma's future husband.

Frank was Robert's brother, and like their border ruffian uncle, was named Benjamin Franklin, but he was known as Frank. He had come to Alexandria's Episcopal High School, as had so many of his family, for his education, arriving in 1858 and graduating in 1860 at the age of 18. Emma would have met Frank years earlier, perhaps in Culpeper when visiting her sister and niece, perhaps in the Mansion House Hotel dining rooms, or perhaps even at The Grove. He was, after all, a brother-in-law, a young student in town, and they were both Episcopalians. Moreover, James Edwin, Emma's youngest brother, had been a student at Episcopal High School too, from 1850 to 1853, just as the school was emerging as a local institution with strong Southern views, a stance that Frank very much espoused.



Benjamin Franklin Stringfellow, date unknown.
Two views of Frank Stringfellow as civilian and as
Confederate officer.
Public Domain

Frank was a charming, enterprising young man—a surprising fellow because, at five-foot-six and slightly built, many people thought him much younger and tended to underestimate him: but not Emma! She and Frank had an understanding. They became sweethearts, and agreed to marry one day. James Green however, was withholding his consent, considering Frank, just a student, too poor to marry. After graduating from Episcopal High School in 1860, Frank went to Mississippi to teach Latin and Greek and to earn money to support a wife. But the world was starting to turn upside down.

Conflicted

Perhaps James Green, unlike his sons, was simply unwilling to announce his political views in 1859, as some businessmen were. As tension mounted he remained firmly on the non-Democratic side, returning to the active electorate. But James must also have felt increasingly conflicted loyalties. He was the son of an immigrant—and an immigrant himself, arriving in the United States with his parents as a 15-year-old. He had come from England, a country that had eliminated the slave trade while he was still there and then abolished slavery itself shortly after the Greens came to America. And yet James was a slave owner, and had long been so: even if now he owned only a single slave, he “rented-in” many more. By going into the hotel business, he had moved from manufacturing, which employed mostly free labor, to the Southern hospitality industry, which was, perhaps like the large Fairfax County farm, much more dependent on slave labor.

His homeland England, whatever its views on slavery, was economically dependent on Southern cotton for its textile mills. The British government supported Southern secession and toyed with recognition of the Confederacy as a separate nation: Robert E Lee’s attack northward to Gettysburg was calculated to produce exactly this political result.

Yet as a leading citizen James Green shared the obsessions and interests of the Industrial Revolution, having experienced the potential of railroads and machinery. The Green family had always been proud to make fine furniture for many customers, some public, some private, but particularly for hotels, including Mansion House, and for the plantation elite. By the 1850s, because of the railway, merchants from the Shenandoah Valley and far beyond made up a large customer base for the furniture company. Stephen's diaries record furniture shipments, which he himself assembled, to be transported by train, by boat, and by wagon: some heading south, but much of it heading north.

James was a mainstay of Alexandria's business ambitions. As a capitalist and entrepreneur he had been a director of the Alexander Canal Company and the Mount Vernon Cotton Factory; he had built a coal wharf for transshipping Appalachian coal coming down the C & O Canal into Alexandria. He was one of the incorporators of the Alexandria Water Company. He dealt in city and country real estate, owned a lumber yard, and sold building supplies. As a philanthropist, he was a director of the Orphan Asylum and each year took in orphans to train as apprentices in his furniture factory. He was a leading force in shaping Alexandria's economic future, as his politics indicated.

The ties to Washington and Baltimore were deep. James had initially resided in Washington with his parents. His father initially set up his furniture business in Washington DC and the family retained very close ties with that city, just eight miles away and so easily reached, by boat, by omnibus, and by railroad cars. Alexandria's commercial rival, Baltimore, was also on the family travel schedule; Stephen's wife was a Baltimore girl and he was a frequent visitor for trade. Hyde Park, New York was another family tie northward, and James's will enumerated his many properties in Brooklyn. And the anti-slavery Midwest, too, was on the family map; several of the Green girls would shelter in Indianapolis during the Civil War.

Canny James was all business, but his business was changing and hotels were now part of the family business model. While we have yet to find documentation of the use of rented-in slave labor on the large Fairfax County farm, it is very likely the rented-in slaves attributed to James on the 1860 Alexandria slave schedule were assigned to the hotel business. Having turned the furniture factory business, which appears to have run on free labor, over to his sons, James, as a hotelier, saloon keeper, restaurant owner, and a significant

agriculturalist, was now more clearly in a slave-labor economy, if only in terms of renting rather than owning. Slavery was central to the maintenance of a large hotel: Samuel Heflebower at Gatsby's Tavern depended on the labor of 20 slaves. Slave ownership did not yet determine politics. Thus Heflebower announced a vote for every one of the Opposition candidates. But a personal stake in the issue of the moment must have troubled a rational business mind.

Conflicted loyalties were not uncommon, but James's case does seem acute if not poignant. Knowing that James Green had family members, customers, and guests in both camps, the Election Day crowd would have been interested to hear whether the wealthiest man in Alexandria, and the owner of the city's preeminent place of lodging, would vote alongside and with his sons, or unexpectedly stand with Virginia's Democrats. But of course he did not vote.

Torn between Frank and her brothers, Democrat and Opposition, Emma, even more than her father, would have felt the full force of the political storm that swirled around her.

Two years later

On May 23, 1861, in an election with a remarkably low turnout, Virginians ratified the secession of their state from the United States. At dawn the following morning, five Union army regiments entered Alexandria across the Long Bridge spanning the Potomac; others came via the C & O Aqueduct, another landed by boat. There was no resistance; there were two needless deaths: President Lincoln's friend Colonel Elmer Ellsworth was killed by James Jackson, proprietor of the Marshall House Hotel on King Street, when Ellsworth and four soldiers removed the large Confederate flag, visible from the White House, flying above the hotel. Ellsworth was shot as he descended the stairs with the flag; his men then shot and killed Jackson.

On October 30, CA Foey, Surgeon General of the US Army, offered to rent from James Green the Mansion House Hotel for use as a hospital at a price of \$750 a month beginning November 11, foreseeing accommodation for 1,000 patients; James agreed and the family had two weeks to empty the hotel of guests and the furniture that the family factory had largely supplied. The Greens remained owners of Carlyle House, but the family dispersed. Stephen along with his parents moved to the Prince Street house of his childhood.

TUESDAY, January 1, 1861.

The commencement of an other New Year A year which promises to be one of great suffering and one in all probability will see the end of this Union of States [N]o one can tell what is before us. God grant that we may all live to see the end of it and may it be peaceable.

WEDNESDAY, January 2, 1861.

Got up early got breakfast read the paper and opened busy engaged takeing [sic] stock and settling up books nothing of interest

Typescript of Stephen A. Green's 1861 Diary produced by Ms. Marilyn Doherty.
Courtesy of Special Collections, Alexandria Library

At the conclusion of his 1861 diary, Stephen Green, now feeling he was trapped in Alexandria, lamented: *"How is it with our once happy family scattered from their homes."* He counted one brother, John William, on the large Fairfax County farm and another, James Edwin, in the army of the South. John, the oldest of the three brothers, was perhaps the most moderate of the three brothers but James Edwin, the youngest of the three, was a founding member of the Old Dominion Virginia Rifles, joining up in December 1860, even before hostilities had begun. Stephen's diary recorded his, his father's, and his family's passage into the Confederate cause.

Stephen's sisters were scattered too: three in Indianapolis, Indiana, likely Mary, whose minister-husband, was rector at that city's St. Paul's Episcopal church, and probably also the two single girls, Lydia and Emma, although Emma would return to Alexandria. Jane Eliza (Jeanie) was in Culpeper and possibly Sarah too.

Stephen summed up:

I am the only one left here with my parents [,] prisoners to submit to any insult [and] not being allowed to move from town. [...] Houses burnt and women turned of doors in the cold winter storms [...] even their beds taken from them meary [sic] because their husbands chose to think for themselves. [...] women ravished, and everyone liable to be taken up

and thrown into a bastille at the option of one man without trial [and] not knowing whom is his accuser or why he is arrested.

He ended with a prayer:

Wilt Thou in thy infinite mercy change the hearts of our enemy [emphasis added] and cause them to see the error of their ways and bring peace once more upon the two countrys [sic].

The Greens, an English immigrant family engaged in transformative trade and technology and part of an expanding national economy, transited first to a divergent extended family with a newly shared interest in slavery and now were an extended family united in support of the Confederacy and the preservation of a slave economy.

Four years later

In 1863 the Civil War raged and Alexandria was essentially a military camp for the defense of Washington. James Green's hotel was now a vast military hospital with beds for 516 sick, wounded and dying soldiers, Union and Confederate; the family furniture factory had been requisitioned by the US Army and became a prison for Union deserters. Emma was once again in Alexandria, in all likelihood living with her parents at their old Prince Street home, around the corner from what had been their factory, now a military prison.

James Edwin had become a Lieutenant in Company H of the 17th Virginia Infantry. John had also joined the armies of the Confederacy, rising from captain to major in the Army of Tennessee and continuing as Quartermaster the logistical skills he had learned and practiced in the Green furniture factory. Stephen remained in Alexandria with his father and mother; on February 25, 1862, father and son were arrested for assisting the families of Confederate soldiers and imprisoned in Washington's Old Capitol Military Prison. They were released on March 19th.

Emma's beau Frank had joined the Confederate Army, becoming a captain in the 4th Virginia Cavalry, a "confidential scout" (as a memorial on his gravestone puts it) for Jeb Stuart, and a spy: he went undercover in Alexandria, posing as a dentist's assistant but in reality gathering information about Union troop movements. As the story goes, Emma, living in the South Fairfax Street house, knew and helped. According to the story told by historian and author Virginia Morton, one day "Stringfellow proceeded to Emma's house alone but

PRISONERS OF WAR, ETC.

List of prisoners confined in the Old Capitol Prison, Washington, D. C., &c.—Continued.

Name.	Date of arrest.	Nature of offense.
Oliver N. Bryan.....	Jan. 31, 1862	Prisoner of state.
Josiah E. Bailey.....	Feb. 1, 1862	Spy; rebel officer found in Washington in citizen's clothes.
R. W. Rasin.....		Prisoner of state.
Francis A. Dickens.....		Spy.
B. H. Jenkins.....		Recommitted.
M. T. Walworth.....		Spy; connected with Mrs. Morris and Wm. T. Smithson.
Mrs. Augusta H. Morris.....		Spy; actively connected with Walworth, Smithson and others. Sent to Washington by General Johnston.
Thomas J. Magruder.....	Feb. 11, 1862	Spy (discharged).
Thomas Haycock.....	Feb. 13, 1862	Spy.
Warren Curtis.....	do	Spy; prowling about Union camps.
William P. Bryan.....	Feb. 21, 1862	Spy and unquestionably employed by rebel Government.
E. Pliny Bryan.....	do	Spy; belonged to rebel signal corps.
William Ogden.....	Feb. 19, 1862	No evidence.
Mrs. A. L. McCarty.....	Feb. 21, 1862	Spy, as shown by the papers found upon her.
Charles W. Adams.....	Feb. 22, 1862	Spy; a bad and desperate man.
J. J. Jarboe.....	Feb. 23, 1862	Treason.
Joseph Widmeyer.....	Feb. 25, 1862	Spy; could not be discharged with safety.
Robert Drane.....		Prisoner of state.
John H. Cusick.....		Do.
James E. Murphy.....		Do.
Jonah Orrison.....		Do.
Arthur Dawson.....		Do.
H. O. Claughton.....		Do.
James Green.....		[No data.]
W. W. Harper.....		Do.
W. B. Price.....		Do.
W. M. Brown.....		Do.
E. S. Hough.....		Do.
John W. Burke.....		Do.
John A. Field.....		Do.
W. Avery.....		Do.
J. E. McGraw.....		Do.
W. H. Marbury.....		Do.
Stephen A. Green.....		Do.
W. H. McKnight.....		Do.
A. J. Fleming.....		Do.
W. Arthur Taylor.....		Do.
J. B. Dangerfield.....		Do.
John L. Smith.....		Do.
W. Cogan.....		Do.
James A. English.....		Do.
Henry Peel.....		Do.
Edgar J. Snowden.....		Do.
H. C. Field.....		Do.
Mrs. William H. Norris.....		Do.
Jackson Benman.....		Spy; arrested in Baltimore.
Charles F. Elgin.....		Spy; has been arrested three times.
Christopher Rochford.....		Spy; might be discharged on taking oath.
T. J. McVeigh.....		[No data.]
Noble B. Means.....		Spy; was chaplain of Second Virginia Volunteers.
Alfred Lee.....		Correspondence with rebels.
John Ball.....		Firing into cars containing Union men.
Joshua Young.....		[No data.]
Tench Schley.....		Carrying supplies to rebel camps.
James Connor.....	Dec. 12, 1861 About Aug. 1, 1861.	Carrying on contraband trade with the rebels. Spy; no evidence.



Marker on Benjamin Franklin Stringfellow's grave, Ivy Hill Cemetery, Alexandria, Virginia.

Private photograph

discovered Union officers occupying the upper levels. Undeterred, he crept into the cellar from the back of the house and asked Emma's maid to fetch her... Emma agreed to call on the informers and returned within a few hours with vital information of Union Gen. Irvin McDowell's planned attack."

Through the year 1863, Emma would sometimes meet with Frank, now based in Alexandria and posing as a store delivery person—cover for trips into Washington DC to visit Southern informers in the War Department. They were extended stays at times; Frank wrote of "[s]ix happy weeks we spent in the city of Alex."

Six years later

In early 1865, at gatherings of Union friends in Washington, Emma rendezvoused with Frank who was under cover, gathering intelligence for Jefferson Davis and courting both Emma and disaster. By the end of the war, Stringfellow was known as the most dangerous man in the Confederacy, with a \$10,000 bounty placed on his head.

Later that year, after the end of the war, General Robert E Lee's wife trusted John W Green to store the Lees' Arlington possessions in his warehouse: many of the Lee's most treasured pieces of furniture, some made in James Green's furniture factory, including Mary and Robert's marriage bed, James' gift to the Lees's.

James fought the US government through the courts for years, seeking the monthly rent of \$750 that he had been promised to turn over his hotel to the Union Army, adding a claim for \$5,000 in damages. He refused to sign the federal loyalty oath for fear, he said, that this would lead to confiscation of his other properties in Virginia; his claims were thus denied “as he was believed disloyal.” Finally on May 5, 1865, the day the Confederate government was dissolved, James Green took a highly qualified oath of loyalty to the Union, declaring that “I have not since the first day of January, 1864, voluntarily in any way, given aid or assistance to those in rebellion against the Government of the United States.” The fight with the US government for rent and damages continued, as follows:

“Upon reference of the case to the asst. qr. master at Alexandria, it has been ascertained that compensation for the use of the property in question has not been paid, because Mr. James Green is believed to be disloyal to the United States, and has refused, and still refuses, to take the oath of allegiance. Under the circumstances no rent can be allowed or paid for the use of the property owned by Mr. Green.

The deed of trust dated July 25, 1863, and Mr. James Green’s letter to you of the 3rd ultimo, received from you on the 5th instant, are herewith returned. Very respectfully, your obedient servant,
M. C. Meigs,
Quartermaster General.

On or about the 5th of May, 1865, the said owner took and subscribed the following oath of allegiance:

STATE or VIRGINIA,

Alexandria County, to wit;

I do solemnly swear (or affirm) that I will support the Constitution of the United States, and the laws made in pursuance thereof, as the supreme law of the land, anything in the constitution and laws of the State of Virginia, or in the ordinance of the convention which assembled at Richmond on the 13th day of February, 1861, to the contrary notwithstanding; and that I will uphold and defend the government of Virginia as vindicated and restored by the convention assembled at Wheeling on the 11th day of June, 1861, and that I have not since the first day of January, 1864, voluntarily given aid or assistance, in any way, to those in rebellion against the Government of the United States for the purpose of promoting the same.

Alexandria, May, 1865.

James Green.”

Cases decided by the Court of Claims and the Term of 1882-83, with Legislation of the 2nd session of the 47th Congress (1882-3) Relating to the Court, Reported by William A. Richardson, One of the Judges of the Court, Volume XVIII (Washington, DC: William H Morrison, Law Bookseller and Publisher, 1883): 98.

Eight years later

In 1867 James Edwin had joined his brother Stephen at Green and Brother, the furniture manufacturer, replacing John. And in 1867 Emma married Frank, who had returned from his flight to Canada. In 1876 he became an Episcopalian minister and a popular speaker, telling the tales of his Civil War exploits. They had five children.

Twenty-one years later

In Alexandria, on August 22, 1880, Jane Muir Green died and was buried at Ivy Hill Cemetery in Alexandria. Eighteen days later, on September 8, James Green died and he, too, was buried at Ivy Hill Cemetery.

Twenty-four years later

On January 29, 1883, the US government awarded the late James Green Senior \$32,750 for 43 months and 20 days rent of Green's Mansion House Hotel, but denied the claim for damages.

Dark and dangerous as these days were they were not without much to make them among the happiest days of the war. I was at that time engaged to a young lady living in Alex. and when she came to see her Union friends in Washington, I laid aside all thought of danger and was happy even while in hourly danger of a terrible death. She has since rewarded me for my constancy by giving me her hand. And five children have heard from her how hard it is to say 'No' to a soldier who will come through such danger to do his courting.

—Frank Stringfellow on his courtship of Emma Green ■



Green Furniture Wooden Heart. City archaeologists discovered this 1.5-inch by 1.5-inch wooden heart behind the Green Furniture building on South Royal, which suffered from a fire in 1827. The heart was likely used as part of a raised decorative design. James Green, Emma's father, was the owner of the business at the time of the fire; having taken over for his father, William Green. Artifacts associated with Green Furniture were identified by burnt and heat damaged materials. Among the artifacts were woodworking tools, wooden furniture legs, and decorative pieces.

Courtesy of Alexandria Archaeology

Addendum

Cases Decided by the Court of Claims

At the Term of 1882–83, Begun December 1882

With legislation of the 2nd session of the 47th Congress (1882–3) relating to the court, and abstracts of the decisions of the Supreme Court of the United States from October 2, 1882 to May 7, 1883, in appealed cases.

Reported by

William A Richardson, one of the Judges of the Court.

Vol. XVIII

William H. Morrison, Law Bookseller and Publisher, Washington, DC, 1883.

John W. Green et al, Excecutors of James Green, Deceased v. The United States.
Pages 93–111

 Syllabus.

plain and unambiguous. We must give it its natural and obvious meaning, and thus interpreted it leaves the appellant no ground to stand on.

In the appeal of the *Swift, Courtney & Beecher Company's Case*, reported in the same volume (105 U. S. R., 691), the Supreme Court say:

The rule which gives determining weight to cotemporaneous construction put upon a statute, by those charged with its execution, applies only in cases of ambiguity and doubt. (*Edwards's Lessee v. Darby*, 12 Wheat., 206; *Smythe v. Fiske*, 23 Wall., 374; *United States v. Moore*, 95 U. S. R., 760; *United States v. Pugh*, 99 *ibid.*, 265.)

The Supreme Court has said of a law parallel in every respect with that which we have now to construe, that it is plain and unambiguous, and leaves the Government resisting it no ground to stand on. This emphatic language leaves no possible excuse for resorting to contemporaneous executive construction.

Judgment will be entered in the claimant's favor for four hundred and sixty-three dollars and forty cents.

NOTE.—In two other cases, involving substantially a similar state of facts, those of *Walton Goodwin* and *William D. Toy v. The United States*, judgment was rendered for the claimants for the amount of their respective claims. No opinions were given, as the foregoing opinion in *Graham's Case* covered the whole ground.

 JOHN W. GREEN ET AL., EXECUTORS OF JAMES GREEN, DECEASED, v. THE UNITED STATES.

No. 12924—JANUARY 29, 1883.

By direction of the Secretary of War in 1861, the Surgeon-General of the Army, through the Quartermaster-General's Office, selected, for immediate occupancy as a hospital for soldiers, the Mansion House, in Alexandria, Va. A subordinate officer was directed to take measures to rent and procure the building at the earliest practicable moment. He reported that he had rented it at a monthly rent of \$750. The agreement to rent was oral.

It does not appear whether or not the transaction was approved by the Quartermaster-General. The only communication from him was one soon after the renting, saying the rent was extravagant and asking whether the owners were loyal, and no reply is found.

The defendants used and occupied the premises, but the owner was not paid because he refused to take the oath of allegiance.

The claimant executors, after his death, brought an action in this court to recover the rent. The court held that it had no jurisdiction, by reason of the statute of limitations (17 C. Cls. R., 174).

Facts of the case

An appeal was taken to the Supreme Court. While that appeal was pending, the Secretary of War transmitted the same claim to this court under Revised Statutes, § 1063. It appears that the claim had been presented to the War Department within the time allowed by the statute of limitations, and was still pending therein when it was thus transferred.

Held :

- I. The *Act of July 4, 1864* (13 Stat. L., 381), excluding this court from jurisdiction of "claims growing out of the destruction or appropriation of or damage to property by the Army or Navy engaged in the suppression of the rebellion," does not apply to claims for rent of property held and used by contract during the rebellion.
- II. Nor do the *Acts of July 4, 1864*, ch. 240, and *February 21, 1867*, ch. 57 (13 Stat. L., 380, and 14 Stat. L., 57), deprive the accounting officers of the Treasury of authority to settle such claims in the Department.
- III. When a claim is presented to a Department within six years after the cause of action accrued, and that Department has jurisdiction to settle the same, it may be transmitted to this court under Revised Statutes, § 1063, at any time after the six years' limitation mentioned in Revised Statutes, § 1069, has expired. It is not yet determined that a claim might not be so transmitted, although it had not been presented to the Department until the expiration of six years after it had accrued.
- IV. When a case is dismissed for want of jurisdiction, that is not such a final judgment upon the merits of the claim sued upon as to "bar any further claim or demand against the United States arising out of the matters involved in the controversy," under Revised Statutes, § 1093.
- V. A judgment of this court appealed from, while the appeal is pending, is not a final judgment within the meaning of section 1093 of the Revised Statutes.
- VI. Where a lease is made by a subordinate officer, upon the previous express directions of his superior, who has authority to direct it and to whom the fact is reported, no subsequent approval is necessary if it be shown that the premises have been occupied in accordance with the terms of the lease, with the knowledge of such superior officer and without objection from him.

The following are the facts found by the court :

I. At the times hereafter referred to, James Green, the testator of the claimants, was the owner of certain real property in Alexandria, Va., and of the hotel thereon situated, known as the Mansion House. He was also a resident of Alexandria. The defendants, under the authority of the War Department, as hereinafter set forth, used said hotel and premises for the purposes of a military hospital from the 11th November, 1861,

Facts of the case.

until the 30th June, 1865, and acquired the use and occupancy of the premises in the manner set forth in the next finding.

II. On the 30th October, 1861, the Surgeon-General of the Army addressed the following communication to the Secretary of War, which was approved by the Secretary, and carried into operation in the manner indicated by the indorsements following it:

SURGEON-GENERAL'S OFFICE,
Oct. 30th, 1861.

SIR: In obedience to instructions from the Secretary of War, dated the 28th inst., I proceeded to Alexandria, and after a careful examination have selected the Mansion House in that city, from its commodious and enlarged accommodations, its perfect ventilation, and proximity to the railroad, as the best adapted site for an hospital for the wounded and sick soldiers.

It will accommodate about one thousand patients, is well supplied with gas and water, and does not require as many medical officers and appliances as smaller and more isolated buildings would render necessary.

I would recommend its immediate occupancy.

Very respectfully, your ob'd't serv't,

C. A. FINLEY,
Surgeon-General.

Hon. S. CAMERON,
Secretary of War.

Endorsed as follows:

Approved:

WAR DEP'T, Oct. 31, '61.
SIMON CAMERON,
Secretary of War.

Respectfully referred to the Quartermaster-General, with a request that the building within named be obtained and turned over to this Department for hospital purposes as soon as practicable.

C. A. FINLEY,
Surg. Gen'l.

S. G. OFFICE, Nov. 1, 1861.

Respectfully referred to Col. R. Ingalls, A. Q'master, U. S. Army, who will take measures to rent the Mansion House at Alexandria, and put it in proper condition for hospital purposes.

By order:

E. J. SIBLEY,
Lt. Col., U. S. A., Dep't Q'r'm'r-Gen'l.

Q'R'M'R-GEN'L OFFICE, Nov. 5, 1861.

OFFICE OF ASS'T Q'R'MASTER,
Arlington Depot, Va., Nov. 8, 1861.

Lieut. Ferguson will take measures to procure and place this building at the disposal of the Medical Department at the earliest moment possible in the manner indicated.

RUFUS INGALLS,
Lt. Col. & A. D. C., A. Q. M.

Facts of the case.

OFFICE ASST. QUARTERMASTER,
Alexandria, Va., Nov. 24th, '61.

Rented Mansion House and transferred it to Asst. Surg. Sheldon, Nov. 11th, at a monthly rental of \$750.

C. B. FERGUSON,
2nd Lt., 19th Inf'y, A. A. Q. M., U. S. Army.

The transaction indicated by the last indorsement was an oral agreement entered into by the owner, James Green, and Lieutenant Ferguson.

Subsequent to this transaction and to the entry of the defendants and their occupancy, the Quartermaster-General addressed the following letter to Col. Rufus Ingalls, who was the officer of the Quartermaster's Department having charge of the business of the Department in Alexandria, and the following correspondence took place between the Quartermaster-General's Office and Colonel Ingalls:

Q'RM'R-GEN'L'S OFFICE,
Washington, November 20th, 1861.

Colonel RUFUS INGALLS,
A. Q. M., U. S. A., Alexandria:

COLONEL: Please return to this office the letter of the Surgeon-General, approved by the Secretary of War and referred to you, recommending that the Mansion House, Alexandria, be taken for hospital purposes, as there is no complete record of the paper, with its endorsements, here.

Also inform this Department upon what terms the building has been secured.

M. C. MEIGS,
Q'rm'r-General.

ASS'T QUARTERMASTER'S OFFICE,
Arlington Depot, Va., November 25th, 1861.

GENERAL: I have the honor to transmit herewith the letter of the Surgeon-General called for in a letter from your office dated 20th instant.

The rent of building is shown in the endorsement of Lieut. Ferguson, A. A. Q. M. at Alexandria.

Col. Ingalls is absent.

Very respectfully, your ob'd't servant,

CHAS. B. WAGNER,
Capt., A. Q. M. Vol's.

Gen'l M. C. MEIGS,
Q'rm'r-Gen'l, U. S. A., Washington, D. C.

Facts of the case.

Q'RM'R-GEN'L'S OFFICE,
November 30, 1861.

Capt. C. B. WAGNER,
A. Q. M., *Vols.*, *Arlington Depot*,
(Through Gen'l McClellan's h'dq'rs):

CAPTAIN: Your letter of the 25th inst., enclosing the letter of the Surgeon-General recommending the Mansion House, in Alexandria, for a hospital, called for by letter to Captain Ingalls, has been received.

The amount fixed for the rent of this house is extravagant. To whom does the property belong? Are the owners known to be loyal?

E. S. SIBLEY,
Dep'ty Q'rm'r-Gen'l.

The reply of Colonel Ingalls to the last communication from General Sibley cannot be found; and it does not appear that this correspondence was communicated or in any way made known to James Green. No further expression of approval or disapproval concerning this transaction was made by the Quartermaster-General.

III. After the defendants had entered into the occupancy of the premises, as set forth in the preceding finding, Lieutenant Ferguson and his successor in charge took up and reported the same to the Quartermaster-General on his monthly report, according to Form No. 2, Quartermaster's Department, Army Regulations 1863, p. 174, at the monthly rent of \$750, and the building was so reported during its entire occupancy, except for the month of November, 1863, when it seems to have been accidentally omitted from the assistant quartermaster's monthly report.

About the time the first monthly rent became due the owner applied to Lieutenant Ferguson for the same. That officer informed him that he was required to take an oath of allegiance to the Government of the United States before the rent could be paid. The owner refused to take the oath, for reasons given by him, and the rent was not paid. Subsequently he applied for the rent to the Quartermaster-General through his brother, Edwin Green, to whom on the 28th of March, 1864, the Quartermaster-General addressed the following letter:

WAR DEPARTMENT,
QUARTERMASTER-GENERAL'S OFFICE,
Washington, D. C., March 28, 1864.

Mr. EDWIN GREEN,
Trustee, No. 504 11th street, Washington City:

SIR: Your letter of the 17th instant, in reference to the claim of James Green for rent of the Mansion House in Alexandria, Virginia, alleged to

13196—7

Facts of the case.

have been used for hospital purposes since November, 1861, has been received.

Upon reference of the case to the asst. qr. master at Alexandria, it has been ascertained that compensation for the use of the property in question has not been paid, because Mr. James Green is believed to be disloyal to the United States, and has refused, and still refuses, to take the oath of allegiance.

Under the circumstances no rent can be allowed or paid for the use of the property owned by Mr. Green.

The deed of trust dated July 28, 1863, and Mr. James Green's letter to you of the 3d ultimo, received from you on the 5th instant, are herewith returned.

Very respectfully, your obedient servant,

M. C. MEIGS,
Quartermaster-General.

On or about the 5th of May, 1865, the said owner took and subscribed the following oath of allegiance:

STATE OF VIRGINIA,
Alexandria County, to wit:

I do solemnly swear (or affirm) that I will support the Constitution of the United States, and the laws made in pursuance thereof, as the supreme law of the land, anything in the constitution and laws of the State of Virginia, or in the ordinance of the convention which assembled at Richmond on the 13th day of February, 1861, to the contrary notwithstanding; and that I will uphold and defend the government of Virginia as vindicated and restored by the convention assembled at Wheeling on the 11th day of June, 1861, and that I have not since the first day of January, 1864, voluntarily given aid or assistance, in any way, to those in rebellion against the Government of the United States for the purpose of promoting the same.

Alexandria, May, 1865.

JAMES GREEN.

No rent whatever has been paid by the defendants for the use and occupation of the Mansion House as before described.

IV. Shortly after the close of the war, and at various times thereafter, the claimant made application at the Quartermaster-General's Office for all papers showing any authority given by the Secretary of War for renting the Mansion House in Alexandria for hospital purposes, and for any paper of the same general purport, and likewise for any paper showing Lieutenant Ferguson's authority from the Quartermaster-General to rent the property. Search was made for the same by the clerks of the Quartermaster-General's Office without any such paper being found; and repeated applications were made by the attorney of James Green for a renewed search during a period extending from the close of the war until December, 1877.

Facts of the case.

In May, 1872, James Green also sent the following application to the Secretary of War, by whom it was referred to the Quartermaster-General, and ultimately to the accounting officers of the Treasury, as shown by the indorsements thereon:

ALEX'A, VA., May 3, 1872.

To Hon. WILLIAM W. BELKNAP,
Secretary of War :

SIR: I beg leave to call your attention to my claim against the United States and ask that you direct the payment thereof.

The Government rented during the war my property, "The Mansion House Hotel," in the city of Alexandria, at seven hundred and fifty dollars per month, from the 11th day of November, 1861, to the 30th day of June, 1865. The property was greatly damaged over and above the ordinary wear and tear, and the Government had the damages appraised. I was never furnished with a statement of the appraisement, but am satisfied that it could not have been less than five thousand dollars.

The rent amounted to	\$32,750
Damages, say	5,000
	\$37,750

I have never received one dollar of this amount, and as it stands to my credit on the books of the Quartermaster-General's Office, and as there is no reason whatever why the same should not be paid to me, I respectfully request that your honor will direct its payment as soon as possible.

Very respectfully, your ob'd't serv't,

JAMES GREEN.

Endorsed as follows:

Respectfully returned to the Hon. Secretary of War. Attention is invited to the enclosed copy of endorsement to Hon. Elliott M. Braxton, M. C., Washin., D. C., on the subject, April 23d, 1872. The claim is a proper one for the consideration of the Southern Claims Commission.

M. C. MEIGS,
Quartermaster-General, Bvt. Maj. Gen'l, U. S. A.

Q. M. G. O., May 18, '72.

WAR DEPARTMENT, July 16, 1872.

Respectfully returned to the Quartermaster-General. The Commissioners of Claims hold that they have no jurisdiction in claims for rent. This claim, unless it arises out of a contract executed on the part of the Government by its authorized officer, is excluded from settlement by the implied prohibition of the act of February 21, 1867, chap. 57. All the papers and evidence as to the lease will be transmitted to the accounting officers of the Treasury.

WM. W. BELKNAP,
Secretary of War.

Respectfully referred to the accounting officers of the Treasury, and attention invited to the foregoing endorsement of the Secretary of War.

There are no other papers in the case here, and records do not show that a lease of the premises was ever formally executed.

By order of the Q. M. General.

M. I. LUDINGTON,
Quartermaster, U. S. A.

Q. M. G. O., July 31, 1872.

Facts of the case.

James Green also applied to Congress for relief, and the chairman of the Committee on War Claims addressed the following communication to the Quartermaster-General:

HOUSE OF REPRESENTATIVES,
Washington, D. C., May 25, 1876.

SIR: A claim of James Green, of Alexandria, Va., is pending before the Committee on War Claims, for the rent of the "Mansion House" hotel, alleged to have been used by the U. S. Government for hospital purposes from Nov. 11, 1861, to June 30, 1865, at a rental of \$750.00 per month.

Claimant alleges that no part of the claim has been paid. Will you please give any information in your Department relative to the validity or invalidity of this claim; also whether any part of the same has been paid.

JOHN R. EDEN,
Chairman.

To the QUARTERMASTER-GENERAL, U. S. A.

The Quartermaster-General replied to this communication on the 27th May, 1876, and again on the 5th June, 1876, giving information concerning the unpaid condition of the rent, but making no mention of or reference to the communication of the Surgeon-General set forth in finding II; nor mention of any other order or authority relating to the validity or invalidity of the claim.

In December, 1877, one of the clerks in the Quartermaster-General's Office, who had previously searched for the papers, while searching among a mass of old papers in the fifth story of the office, unexpectedly found the application of the Surgeon-General with the indorsements thereon set forth in finding II. The existence of the paper and its contents then first became known to James Green or his attorney.

V. This suit is for the same cause of action as that set forth in No. 12416 on the general docket of this court, and the foregoing findings of fact substantially embrace all the facts and findings in that case. The ruling of the court upon the findings in that case was as follows:

On the foregoing findings of fact the court decides, as conclusions of law, that—

The claim accrued on the 3d of April, 1872, and the petition not having been filed until the 14th of March, 1881, the action is barred by the statute of limitations.

Thereupon, April 3, 1882, the following judgment was entered:

The court, on due consideration of the premises, find for the defendants, and do order, adjudge, and decree that the petition be dismissed.

Argument for the claimant.

From this judgment claimants, June 16, 1882, appealed. The appeal was duly allowed by the court, and is still pending.

Mr. H. O. Claughton for the claimant:

The defendant rules upon the ground of defense, 1st, want of jurisdiction; 2d, that the Act of February 21, 1867, prohibits the settlement of this claim by the accounting officers of the Treasury.

Inasmuch as a want of jurisdiction on the part of the accounting officers would inhere to the claim after its transfer to this court, it may be said that the only defense is want of jurisdiction.

The defendant claims that the court has no jurisdiction because the case is *res judicata* within the terms of section 1093 of the Revised Statutes, and because the Act of February 21, 1867 (14 Stat. L., 57), excludes jurisdiction on the part of the accounting officers.

1. Section 1069 of the Revised Statutes was not intended to control the action of this court over cases litigated here, but to prevent the Departments or Congress from paying claims which had been prosecuted before, and decided by this court adversely to the claimants. However this may be, the law is too well settled for controversy, that a judgment dismissing a case for want of jurisdiction is not a final judgment in the sense that it is *res judicata*. (Freeman on Judgments, § 263; Greenleaf's Evidence, §§ 529, 530.) This has repeatedly been held to be the law as to the judgments of this court. (*Spicer v. United States*, 5 C. Cls. R., 34; *Hughes v. United States*, 4 Wall., 232.)

To hold that a judgment declaring that the court has no jurisdiction to consider the merits is a final judgment upon the merits, would be to assert a paradox.

2. The Act of February 21, 1867 (14 Stat. L., 57), does not prohibit the accounting officers from allowing claims like this. That act refers to the same class of cases provided for in the Act of July 4, 1864 (13 Stat. L., 381)—cases arising under contract. The Act of July 4, authorized the payment of claims of loyal citizens residing in loyal States for property appropriated or used by the troops. And the Act of February 21 qualified the former act so as to exclude claims for property taken

Argument for the defendants.

and used in the insurrectionary districts. Neither act has any reference to claims arising under express contract.

This claim does not arise because of the occupation of real estate by the military authorities or troops of the United States, but under an express contract of renting, by which the United States expressly promised to pay \$750 per month rent for the property.

The property was first selected by the Surgeon-General under the direction of the Secretary of War, and when selected was rented by the Secretary of War, through the Quartermaster-General's Department, by an express contract which made it immaterial to the lessor how it was occupied, or whether it was occupied at all or not.

The contract thus expressly authorized and expressly executed antedated the occupation. This claim is for a *debt* under a *contract*, and not for *damages* because of *occupation*.

This was the construction which the late Attorney-General placed upon the act. (12 Opin., 439.)

Mr. John S. Blair (with whom was *Mr. Thomas Simons*, Assistant Attorney-General) for the United States:

1. The present action is barred under section 1093, Revised Statutes, by reason of its dismissal at last term. (17 C. Cls. R., 174.) Congress must have meant more in that law than enacting the principle of *res judicata*, for that would have been unnecessary. The words "forever barred" mean that the bar is removable only by the law-making power.

2. *By the act of 19th February, 1867* (Ch. 57, 14 Stat. L., 397), the settlement of any claims for the *occupation* of real estate by the military authorities of the United States was prohibited where the claim originated during the war in a State or part of a State declared in insurrection. It is plain that the word *occupation* there was used, not in the sense of appropriation, but in its ordinary sense of possession, tenure, or use. The act is one construing the Act of July 4, 1864, in which the word *appropriation* was used, and indeed "appropriation" appears in the Act of 1867 in connection with personal property. Again, the Act of 1867 precludes the settlement of claims for supplies furnished as well as taken, and it is fair to assume that the same purpose animated Congress in the matter of real estate as in supplies and personal property.

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Whether, therefore, the house in question was occupied under a contract or under a seizure or appropriation, it was equally beyond the power of executive officers to pass upon the claim. And it does not appear that the Act of 1867 has ever received any other interpretation by the accounting officers of the Government.

While it might be plausibly urged that Filor would have recovered had he shown a valid contract, it is clear that the Act of 1864 there discussed used language different from the one before us. It was passed immediately after the decision in the *Case of Grant*, March 2, 1864 (1 C. Cls. R., 41), and the first section was intended to prevent the Court of Claims from indemnifying property holders for losses incident to a state of war. The second and third sections meant to localize the claims to be allowed by the executive officers, leaving open the question whether the jurisdiction was to be determined by the locality of the citizen or the *locus* where the supplies and subsistence were furnished or taken.

It was to settle this question (Congressional Globe, Thirty-ninth Congress, second session, pp. 1000, 1001) that the Act of 1867 made the *origin* of the claim the test. As is said by Auditor Keightley, "no one had ever supposed that the accounting officers could entertain a claim resting merely upon a technical trespass upon real estate," and if any effect is to be given to the words "occupation of real estate" it is only by excluding one who claims under a contract from the accounting officers, and relegating him to the Court of Claims, from which he is not excluded by either the Act of 1864 or 1867. If this view be correct the Secretary was without authority to transmit the claim. (*Hart's Case*, 15 C. Cls. R., 427; 16 *Ibid.*, 485.)

OPINION.

SCOFIELD, J., delivered the opinion of the court:

The statement of a very few facts will be sufficient to exhibit all the points in dispute.

In October, 1861, the defendants, by such contract as is presented in the second finding of facts, rented from the claimants' testator, for use as a military hospital, the Mansion House, in Alexandria, Va., and agreed to pay therefor \$750 a month. They took possession under the lease and occupied the premises

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from November 11, 1861, to June 30, 1865. The rent, amounting in all to \$32,750, has never been paid. Claimants' testator, in March, 1864, made formal application to the War Department for payment of the rent, and before and after the surrender of the premises continued to press his claim. The claim was finally referred by the War Department to the accounting officers of the Treasury Department, where it remained until May 10, 1882, when, under the provision of section 1063 of the Revised Statutes, it was transmitted by the Secretary of the Treasury to this court for trial and adjudication.

Here it encounters several objections.

First. It is said the Court of Claims cannot take cognizance of it, both because it does not come within its original jurisdiction as restricted by the first section of the Act of July 4, 1864, and because the Treasury Department, under the second and third sections of said Act of July 4, 1864, ch. 240, and the Act of February 21, 1867, ch. 57, had no authority to entertain it. (13 Stat. L., 381, and 14 Stat. L., 57.)

In considering this objection, we assume for the present that the lease or contract set out in the second finding of facts is valid and binding upon the Government.

It is conceded that no claim transmitted by a Department can be entertained by this court unless it comes within its jurisdiction, otherwise conferred, nor unless the Department by which it is transmitted could itself legally consider and decide it.

It is not denied that this court has general jurisdiction of claims founded upon contract, but it is supposed that this particular claim is taken out of that general jurisdiction by the first section of the *Act of July 4, 1864* (13 Stat. L., 381), which is as follows:

The jurisdiction of the Court of Claims shall not extend to or include any claim against the United States growing out of the destruction or appropriation of or damage to property by the Army or Navy, or any part of the Army or Navy, engaged in the suppression of the rebellion, from the commencement to the close thereof.

It is not easy to see how claims founded upon express contracts made by a Department, and agreeing to pay specific sums of money, can be classed with unliquidated claims for "destruction, appropriation, or damage to property by the Army or Navy," and so brought under the ban of this act. A contract presupposes action and agreement of two parties, but "destruction,

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appropriation, and damage" imply action by one party only and dissent by another. In the *Filor Case* (9 Wall., 45, and 7 C. Cls. R., 119) Justice Field, speaking for the court, says:

If the right to the property or its use is not obtained by valid contract with the Government, the taking or use of it is an appropriation within the meaning of the act of Congress. The learned counsel of the petitioners is correct in stating that leasing and appropriation are different acts.

Assuming as above stated that the lease is valid, we come to the conclusion that this claim is not withdrawn from the jurisdiction of the court by the first section of the Act of July 4, 1864.

Does it also come within the jurisdiction of the Treasury Department?

It is not denied that, prior to the Act of July 4, 1864, the Secretary and accounting officers of the Treasury had power to examine, audit, and pay from any proper appropriation claims against the Government, liquidated in amount and based upon valid contracts. The second and third sections of the Act of 1864 was passed, not to diminish but to enlarge the powers of these officers. The second section is as follows:

All claims of loyal citizens in States not in rebellion for quartermaster's stores actually furnished to the Army of the United States, and receipted for by the proper officer receiving the same, or which may have been taken by such officers without giving such receipt, may be submitted to the Quartermaster-General of the United States, accompanied with such proofs as each claimant can present of the facts in his case; and it shall be the duty of the Quartermaster-General to cause such claim to be examined, and if convinced that it is just, and of the loyalty of the claimant, and that the stores have been actually received or taken for the use of and used by said Army, then to report each case to the Third Auditor of the Treasury, with a recommendation for settlement.

The third section confers similar power upon the Commissary-General. The Act of February 21, 1867, only circumscribes and restrains the power specially conferred by this Act of 1864. It is as follows:

The provisions of chapter two hundred and forty, of the acts of the Thirty-eighth Congress, first session, approved July fourth, eighteen hundred and sixty-four, shall not be construed to authorize the settlement of any claim for supplies or stores taken or furnished for the use of, or used by, the armies of the United States, nor for the occupation of, or injury to, real estate, nor for the consumption, appropriation, or destruction of, or damage to, personal property by the military authorities or troops of the United States, where such claim originated during the war for the suppression of the Southern rebellion, in a State or part of a State declared in insurrection by the proc-

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clamation of the President of the United States, dated July first, eighteen hundred and sixty-two, or in a State which by an ordinance of secession attempted to withdraw from the United States Government.

It will be seen that these two acts do not withdraw, diminish, or in any way affect the authority possessed by the Departments prior to 1864 to settle contract debts of the Government. It cannot be claimed that this act prohibits the settlement of a claim for the occupation of real estate by the military authorities, where such claim originated during the war in an insurrectionary or seceding State, unless the power to settle the same was derived from the Act of 1864. As the power to settle *contract claims* was not conferred by the act of 1864, it was not taken away by the Act of February 21, 1867. This claim, it should always be borne in mind, is not for use and occupation of real estate, but for a specific sum of money alleged to be due upon an expressed contract. To be sure, the consideration of the contract was the right to occupy real estate, but taking and holding by contract excludes the idea of military occupation within the meaning of the Act of 1867.

This view of the law is sustained by Attorney-General Evarts in *Rollings' Case* (12 Opin., 439).

There is nothing in the letter, spirit, or apparent purpose of the Act of 1867 which would absolve the Government from the payment of its contract debts, or deprive citizens of remedies therefor theretofore enjoyed.

Second. The defendants claim that the judgment of dismissal, as set out in the fifth finding of facts, is, under section 1093 of the Revised Statutes, a bar to recovery here. That section reads as follows:

SEC. 1093. Any final judgment against the claimant on any claim prosecuted as provided in this chapter shall forever bar any further claim or demand against the United States arising out of the matters involved in the controversy.

It will be remembered that this court is forbidden to take jurisdiction of a claim more than six years old, and the court having found as a fact that the claim in that case was more than six years old dismissed it for want of jurisdiction.

Was this a "final judgment on the claim"?

The claimants come to the threshold of the court and crave a hearing. They are informed that the court is forbidden by the statute of limitations to listen to their prayer. They are

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turned away. This is not an adjudication of their claim, but a refusal to hear it. Certainly this should not deprive them of a hearing before a tribunal otherwise authorized to entertain their petition. (*Hughes's Case*, 4 Wall., 232; *Spicer's Case*, 5 C. Cls. R., 34.)

Besides, an appeal from this judgment has been taken, and is still pending; and for this reason also the judgment is not final.

The case, as it now comes to us through the Treasury Department, does not encounter the statute of limitations, at least not in the same way nor to the same extent. It is claimed to have been presented to the Department within six years after it accrued, and, if so, it is not affected by the statute. The proceeding here is held to be a continuation of the proceedings in the Department, and, if begun there in time, it can be heard here now. (*Lippitt's Case*, 100 U. S. R., 663.) It appears by the findings that application for the payment of accrued rent was made to the Quartermaster-General as early as March 17, 1864; and that shortly after the close of the war, and at various times thereafter, the pending application for payment was followed, in furtherance of the claim, by applications for papers showing the authority from the War Department to make the contract. In 1872 a second application for payment was made to the Secretary of War. From the War Department the claim was sent before the accounting officers of the Treasury Department, where it had been pending, until transmitted to the Court of Claims, May 10, 1882. From these facts we hold that the claim was presented to the Department within six years from the time it accrued, and is not, therefore, barred by the statute.

But even if the claim had not been presented to the Department within six years after it had accrued, it is not at all clear that that fact would deprive this court of jurisdiction. No court, so far as we know, has so decided, and the statutes are certainly susceptible of a more liberal construction. The general question has been often raised in this court, but in no case in which the facts required a decision specifically upon this point. And in the discussion of the general question in these opinions, no distinction is made between claims presented to the Department before and those presented after the six years

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have expired. (*Winnisimmet & Co.'s Case*, 12 C. Cls. R., 319; *Lippitt's Case*, 14 C. Cls. R., 148). The question is not passed upon by the Supreme Court in *Lippitt's Case* (100 U. S. R., 663), as has been stated. In that case Justice Harlan, delivering the opinion of the court, says:

Whether if a claim be presented at the proper Department, when six years have elapsed after it first accrued, the Government is at liberty, upon its transfer therefrom to the Court of Claims, to plead the limitation of six years, or whether the court in such cases must itself interpose the statute for the protection of the Government, are questions not necessary to be decided in this case.

The only remaining question to be considered is, whether the property was held under a valid contract with the Government or by military occupation only. If by military occupation only, it is conceded that the power to settle the claim was withheld from the Department by the Act of February 21, 1867, and having no jurisdiction itself, it could transfer none to us.

Was there a valid contract?

October 28, 1861, the Surgeon-General, by direction of the Secretary of War, went to Alexandria to select a place for a military hospital. October 30, 1861, he reported to the Secretary as follows:

In obedience to instructions, I proceeded to Alexandria, and, after a careful examination, have selected the Mansion House in that city, from its commodious and enlarged accommodations, its perfect ventilation and proximity to the railroad, as the best adapted site for an hospital for the wounded and sick soldiers. It will accommodate about one thousand patients, is well supplied with gas and water, and does not require as many medical officers and appliances as smaller and more isolated buildings would render necessary.

October 31, 1861, the action of the Surgeon-General was approved by the Secretary of War, and November 1, 1861, it was referred by the Surgeon-General to the Quartermaster-General, "with a request that the building within named be obtained and turned over to this (the Surgeon-General's) Department for hospital purposes as soon as practicable." November 5, 1861, this report, approval, and request was referred by the Quartermaster-General to Colonel Ingalls, assistant quartermaster, with headquarters at Arlington, with instructions to "*take measures to rent the Mansion House, at Alexandria, and put it in proper condition for hospital purposes.*" November 8, 1861, Colonel Ingalls directed his sub-

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ordinate officer, Lieutenant Furguson, acting assistant quartermaster, stationed at Alexandria, to "take measures to procure and place this building at the disposal of the Medical Department at the earliest moment possible, *in the manner indicated*;" that is, by *renting* it in obedience to the order of the Quartermaster-General. November 24, 1861, Lieutenant Furguson reported that he had "*rented* the Mansion House, and transferred it November 11, 1861, to Assistant Surgeon Shelden, at a monthly rental of \$750."

It will be observed that the authority to select a place for the hospital was derived directly from the Secretary of War, and the authority to rent the Mansion House after it had been selected came from the Quartermaster-General. He gave the order to rent, and left the price to the discretion of his subordinates. The premises were rented by his officers and order. The terms were duly reported to him, and the report was finally retained, and filed, without official dissent. Possession was taken in pursuance of the lease, and thereafter the monthly report to the Quartermaster-General by the officer in charge stated the amount of rent falling due upon it from month to month.

In the *Filor Case* (9 Wall., 45) the facts are widely different. In that case the lease was made by a subordinate officer without any authority or pretended authority whatever. It was made, too, after the officer in command had given an order for the seizure and occupancy of the premises. That lease was neither authorized by the Quartermaster-General in advance nor approved by him afterwards. On the contrary, some years after, but during the occupancy of the premises, it was expressly disapproved by him. "The agreement or lease," says Justice Field, "was, so far as the Government is concerned, the work of strangers." In the case at bar, it will be observed, the Quartermaster-General not only authorized but commanded his subordinate officer to *rent* the premises.

But it is objected that the lease was not expressly affirmed by the Quartermaster-General. Did its validity depend upon such express affirmation? Is not a contract made through a subordinate officer, by an express written order of the Quartermaster-General, a contract made by himself? We think it should be so regarded, unless, after officially learning how his order had been executed, he disapproved it. In such a case

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non-action should be held as affirmance. There is nothing in this case to indicate disapproval. His letter to Colonel Ingalls, in which he expresses the opinion that the rent is extravagant, and inquires about the loyalty of the lessor, amounts only to a consultation with his own officers upon the subject. It was not brought to the attention of the lessor. If any presumption is to be drawn from this correspondence it is in favor of the validity of the lease, for it shows that after his attention had been particularly drawn to the subject, and after inquiry, consultation, and consideration, he left on the records of the Department no sign of disapproval.

Upon the trial it was not proved nor even alleged that the rent was in fact extravagant. In the absence of all evidence the court cannot presume that \$9,000 a year for a hotel in the city of Alexandria, "with commodious and enlarged accommodations, perfect ventilation, well supplied with water and gas, and capable of accommodating one thousand patients," was at that time an extravagant rent. It is quite probable that the Quartermaster-General, after his consultation with Colonel Ingalls, came to that conclusion, and for that reason did not disapprove of the report of his subordinate.

It is further said that the disaffirmance of the lease can be presumed from the refusal to pay the rent. But no presumption of that kind can arise, since another reason was distinctly given at the time. When the lessor called upon the assistant quartermaster for his rent he was required, as a condition precedent to payment, to take the oath of allegiance. He declined, and, for this reason and no other, payment was refused. When, in March, 1864, he requested payment at the Quartermaster-General's Office, he was informed by letter, signed by Quartermaster-General Meigs, that he had "not been paid because he was believed to be disloyal to the United States, and had refused to take the oath of allegiance." There is no intimation that the lease was regarded as invalid. However prudent and justifiable this requirement of General Meigs might have been at the time, a failure to comply with it is not now urged as a defense. The reason for the refusal to take the oath does not appear in the findings, but it is stated in the argument by counsel for the Government that he owned property in the Confederate States and was afraid of confiscation. At all

Syllabus.

events, in May, 1865, after the danger was over, he took the required oath.

But if it should be held that a lease made under an express written order of the Quartermaster-General required his subsequent approval, could not such approval, as in the *Case of Speed* (8 Wall., 77, and 7 C. Cls. R., 93), be presumed from the facts stated? In *Speed's Case*, although the contract made by a subordinate officer and by its own terms was void unless approved by the Commissary-General, and although it was never expressly approved by him nor even reported to him for that purpose, yet, from facts no more convincing than those appearing in the findings here, his approval was presumed.

The judgment of the court is that the claimants recover from the defendants the sum of \$32,750.

JOHN THORNLEY v. THE UNITED STATES.

No. 12800—JANUARY 29, 1883.

The claimant, a medical director of the Navy, was retired June 1, 1861, for "physical incapacity to perform sea-service." By the special *Act of April 7, 1882* (22 Stat. L., 41, ch. 72), he was to be considered as having been retired from June 1, 1861, "on account of physical incapacity originating in the line of duty," and was to be paid "the rate of retired pay of the grade in which he was retired, prescribed by Rev. Stat., § 1588," from the passage of the act therein incorporated.

The rate of pay by that act is 75 per cent. of the sea-pay of the grade or rank held at the time of retirement.

The claimant was retired during the second five years of his service, the sea-pay for that grade being \$3,200, 75 per cent. of which he has received. (Rev. Stat., § 1556.)

Having been in service, though on the retired list, more than twenty years, he claims that his retired pay increased each period of five years up to twenty years, as provided for officers on the active list by Rev. Stat., § 1556.

HELD:

- I. Longevity pay for officers of the Navy was first established by law in 1835. It was then allowed only to surgeons. The subsequent acts extending it to other officers stated and reviewed.
- II. Officers of the Navy on the retired list are not entitled to increase of pay by reason of longevity, while on that list. Their retired pay is fixed at 75 per cent. of the sea-pay of the grade or rank held by them at the time of retirement.
- III. The periods of five years' service mentioned in Rev. Stat., § 1556, for increase of pay are "grades" within the meaning of Rev. Stat., § 1588, fixing the pay of retired officers at 75 per cent. of the sea-pay of the grade or rank held at the time of retirement.

Voting Viva Voce

UNLOCKING THE SOCIAL LOGIC OF PAST POLITICS

Voting Viva Voce

Unlocking the Social Logic of Past Politics

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Two mid-nineteenth century cities—Alexandria, Virginia and Newport, Kentucky—shared a common voting arrangement: both states required all votes in all elections to be cast in public by voice (viva voce). The poll books provided an official written record of every voter's spoken declaration. Professor Don DeBats presents and analyses this data on the website.

Public Voting. This project reveals the world of American politics at a time when every citizen's vote was public knowledge, and shows how social identity influenced votes.

Alexandria, Virginia | 1850s. On the Potomac just opposite Washington DC, Alexandria was a thriving commercial city based on slave labor in the late 1850's as the secession crisis loomed.

Newport, Kentucky | 1870. On the Ohio just opposite Cincinnati, Newport was, as the Panic of 1873 crashed down, a thriving industrial city based on immigrant labor.

Colophon

Text | Donald A. DeBats and Margaret-Ann Williams

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