

# THE STAR OF THE NORTH.

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## STAR OF THE NORTH.

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Choice Poetry.

### THE POOR OLD MAN.

BY C. YALFERRIO DILLARD.

I was rambling one morning gay,

Without one care or sigh,

'Twas in the lovely month of May,

The sun was shining high;

The hills were clad in golden rays

The lakes were sparkling white,

The birds were chanting forth their lays

With sweetness and delight;

And throngs were passing to and fro

With smiles on every face;

Methodical never save before

Such charms in any place.

As I went with rapid pace,

Cheer'd with the scenes around,

A man I saw with haggard face,

Low-seated on the ground.

His hair was gray, his beard anshorn,

His eyes were sunken deep,

His hat was old, his clothes were torn;

The picture made me weep.

No word he spoke when near I drew,

But meekly looked around,

And from his cheek a heavy tear

Came slowly rolling down.

I said to him, "Old man, indeed

You seem to be in want,

And if, in truth, you are in need,

Why don't you look for aid?"

"Look at these pallid cheeks," he cries,

"And at this breast so bare;

And see these dim and sunken eyes,

And heavy locks of hair.

"This worn-out robe, this feeble frame,

Now resting on the grave,

This care-worn face, all, all proclaim

That I am past all cure.

"When these aching daily ask

For me a small relief,

I'm only taunted with my rage,

And sent away in grief.

"Those who like me are very poor,

Do often pity show;

But at their humble cottage door,

Is found but little now.

"But from the rich and ample store,

Relief is seldom given,

So to the old, when very poor

The highest hope is Heaven."

Unconstitutionality of the Conscription Act.

### JUDGE WOODWARD'S OPINION.

WOODWARD J.—On the 31 day of March,

1863, the Congress of the United States

passed an Act for "enrolling and calling out

the National forces, and for other purposes,"

which is commonly called the Conscription

Law. The plaintiffs, who are

citizens of Pennsylvania, have set forth the

act fully in their bills, and they claim that

they have been drafted into the military

service of the Government in pursuance

of said enactment, but that the same is un-

constitutional and void, and that the defend-

ants, who are engaged in executing the

act, have violated the rights and are about

to invade the personal liberty of the plain-

tiffs, and thereupon they invoke the equita-

ble interposition of this Court to enjoin the

plaintiff forcing a great public burden on the

poor. Our State legislation, which exempts

men who are not worth more than \$300

from paying their own debts, is in striking

contrast with this Conscription law, which

devolves upon such men the burden which

belongs to the whole "national forces," and

to which "all persons ought willingly to

contribute." This, however, is an objection

to the spirit of the enactment rather than to

its constitutionality.

The description of persons to be enrolled,

able-bodied citizens, between 20 and 45

years of age, is substantially the descrip-

tion of the militia as defined in our Penn-

sylvanian statutes and probably in the sta-

tutes of all the States. The national forces,

then, mean the militia of the States—certainly

include the militia of Pennsylvania. This

expression, "national forces," is modern

language, when so applied. It is not

found in our Constitutions, either State or

Federal, and if used in commentaries on

the Constitution, and in history, it will gen-

erally be found applied to our land and na-

val forces in actual services—to what may

be called our standing army. It is a total

misnomer when applied to the militia, for

the militia is a State institution. The Gen-

eral Government has no militia. The State

militia, always highly esteemed as one of

the bulwarks of our liberties, are recog-

nized in the Federal Constitution, and it is

not in the power of Congress to obliterate

them or to merge them in "national forces."

Unless there is more magic in a name

than has ever been supposed, this conscrip-

tion law was intended to act upon the State

militia, and our question is, therefore, whether

Congress has power to impress or draft

the militia of the State. I cannot perceive

what objection can be taken to this state-

ment of the question, for surely it will not

be argued that calling the militia national

forces makes them something else than the

militia. If Congress did not mean to draft

the militia under this law, where did they

expect to find the national forces? "All

able-bodied white male citizens between

the ages of twenty-one and forty-five years,

residing in this State, and not exempted by

the laws of the United States," with certain

specified exceptions, constitute our State

militia. Will it be said that the conscrip-

tion law was not intended to operate on these?

I think it will not. Then if it does touch

and was framed and designed to draft

this very class of citizens, no possible objec-

tion can be taken to the above statement of

the question we have to decide.

I, therefore, repeat the question with

great confidence in its accuracy, has Con-

gress the constitutional power to impress or

draft into the military service of the United

States the militia of Pennsylvania?

This question has to be answered by the

Constitution of the United States, because

that instrument, framed by deputies of the

people of the States and ratified and put in-

to effect by the States themselves in their

respective corporate capacities, delegates

to Congress all the powers that body can

exercise. These delegations are either ex-

press or such implications as are essential

to the execution of expressly delegated

powers.

There are but three provisions in the

Constitution of the United States that can be

appealed to in support of this legislation.—

In ordinary editions they stand numbered

as clauses 13, 15 and 17 of the VIII section

of Act 1, of the Constitution:

"13. Congress shall have power to raise

and support armies, but no appropriations

of money to that use shall be for a longer

term than two years.

"15. Congress shall have power to pro-

vide for calling forth the militia to execute

the laws of the Union, to suppress insurrec-

tion and repel invasion.

"17. Congress shall have power to pro-

vide for organizing, arming and disciplin-

ing the militia, and for governing such part

of them as may be employed in the service

of the United States, reserving to the States

respectively the appointment of the officers

and the authority of training the militia ac-

cording to the discipline prescribed by Con-

gress."

"To raise armies"—these are large words!

What do they mean? There could be no

limitation upon the number or size of the

armies to be raised, for all possible contin-

gencies could not be foreseen; but our ques-

tion has not reference to numbers or size,

but to the mode of raising armies. The in-

framer of the Constitution, and the States who

adopted it, derived their ideas of govern-

ment principally from the example of Great

Britain—certainly not from any of the more

imperial and despotic governments of the

earth. What they meant to make was a

more free Constitution than that of Great

Britain—taking that as a model in some

things—but enlarging the basis of popular

rights in all respects that would be consist-

ent with order and stability. They knew

that the British army had generally been

recruited by voluntary enlistments, stimu-

lated by wages and bounties, and that the

few instances of impressments and forced

conscriptions of land forces had met with

the disfavor of the English nation and had

led to preventive statutes. In 1704, and again

in 1707, conscription bills were attempted

in Parliament but laid aside as unconstitu-

tional. During the American Revolution a

statute, 19 Geo. III C. 10, permitted the im-

pressment of "idle and disorderly persons

not following any lawful trade, or having

some substance sufficient for their subsist-

ence," and this was as far as English leg-

islation had gone when our Federal Consti-

tution was planned. Assuredly the framers

of our Constitution did not intend to subject

the people of the States to a system of con-

scription which was applied in the mother

country only to paupers and vagabonds. On

the contrary, I infer that the power confer-

red on Congress was the power to raise

armies by the ordinary English mode of

voluntary enlistments.

The people were justly jealous of stand-

ing armies. Hence, they took away most

of the war power from the Executive, where

under monarchical forms, it generally re-

sides, and vested in the legislative depart-

ment, in one branch of which the States

have equal representation, and in the other

branch of which the people of the States

are directly represented according to their

numbers. To these representatives of the

States and the people this power of origin-

ally raising armies was committed, but even

in their hands it was restrained by the limita-

tion of biennial appropriations for the support

of the armies they might raise. Of course, no

army could be raised or supported which

did not command popular approbation, and

it was rightly considered that voluntary

enlistments would never be wanting to re-

cruit the ranks of such an army. The war

power, existing only for the protection of

the people, and left, as far as it was possi-

ble to leave it, in their own hands, was in-

capable of being used without their consent,

and, therefore, could never languish for

enlistments. They would be ready enough

to recruit the ranks of an army they deemed

necessary to their safety. Thus the theory

of the Constitution placed this great power

like other governmental powers, directly

under the above provisions, but for drafting

them into the military service of the United

States. The very case has occurred in

which the Constitution says the militia shall

be called out under State officers, but Con-

gress says they shall be drafted, in contempt

of State authority. General Washington

and the men of his day, did not so read the

Constitution, when suppressing the whisky

insurrection in this State they paid the most

scrupulous regard to the rights and powers

of the State. Under pressure of a foreign

war, a Conscrip Bill was reported in Con-

gress, 1814, but it did not pass, and if it had,

it would have been no precedent for this

law, because we are dealing with an insur-

rection, and insurrections are specially pro-

vided for in the Constitution. If to support

a foreign war Congress may draft the mil-

itia, which I do not admit, the power of draft

to suppress insurrections is not to be implied

since another mode of suppressing insurrec-

tions is expressly provided. When a State

is called on for its quota of militia, it may

determine, by lot, who of the whole num-

ber of its enrolled militia shall answer the

call, and thus State drafts are quite regular,

but a Congressional draft to suppress insur-

rection is an innovation that has no warrant