

ARGUMENT

OF

CAPT. W. J. STONE

EXAMINER OF CONFEDERATE PENSIONS

BEFORE THE

COURT OF APPEALS

JUNE 3D, 1913

**FRANKFORT. KY.
1913**

Captain W. J. Stone is the first person not a lawyer nor party to a suit ever permitted to address the Court of Appeals on any question. The question of the constitutionality of an Act of the Legislature is the greatest and gravest question the courts are ever called upon to consider. This great honor was conferred on Captain Stone by a unanimous vote of the seven Judges of the Court and consented to by the Attorney General and his assistants, who were the opposing counsel in the case.

May it please the Court:

I am not a lawyer, and therefore want to thank you for your kindness in granting me the privilege of appearing before you to defend the Kentucky Confederate pension law. This suit was not brought in my name, and the personal pecuniary interest I have in the law is a very small part of the consideration that has induced me to ask of you this great privilege. But it is the strong love I have for my comrades and the great concern I have for the welfare of those who are living and the widows of those who are dead and who are now indigent, disabled, and dependent.

During all the years since the war ended I have lost no opportunity to befriend one or all of my comrades in every possible way, in every right ambition or honorable effort. And since the constitutionality of this law has been questioned, I have felt it my duty to do all within my power, to see that the action of the Legislature in passing the law was sustained. I therefore feel honored that I am permitted to stand in this honorable presence and discuss this great question; the question that means so much to the shortening line of heroes that pass with halting step and war-worn, toil-bowed, emaciated frames toward the sunset of life.

I am aware of the fact that it is the sworn duty of the Court to uphold by their decisions the constitution and the law; but when the two conflict, and it is impossible to enforce both, the constitution being the supreme law, the Court must of necessity follow the constitution rather than the statutes, and that the

question of the constitutionality of an Act of the Legislature is the gravest and most delicate duty the judiciary are commanded to perform. My observation has been that the courts are disposed to indulge the presumption that the Legislature has been faithful to its obligations, as all members of a legislative body are sworn to support the constitution, and all acts of the Legislature are presumed to be adopted pursuant to the constitution. And this presumption must stand, unless the contrary be clearly and unmistakably shown. And I am sure that when the Judicial Department is called upon to declare that the Legislature has invaded the constitution that it cannot shrink from the inquiry, but will approach it with caution, and will examine the question from every possible standpoint; and will not declare the legislative act unconstitutional, or that the Legislature has transcended its powers, unless it be clearly proven that the law and the constitution cannot co-exist.

Under our form of government the legislative branch is supposed to exercise its greatest wisdom and best judgment as to the merit and correctness of its acts, and the courts must construe them so as to carry out the intent of the Legislature, provided they can be so construed as to harmonize with the constitution. All doubt on this point must be resolved in favor of the constitutionality of the Act in question. On page 590, of volume 27, of the Encyclopedia of American and English Law, this language is used: "If the question be doubtful or dubious, it is the duty of the trial judge or court to indulge the presumption of constitutionality in favor of the statutes."

In support of his contention that the law is un-

constitutional, the Attorney General quotes a clause in the third section of the Bill of Rights as laid down in the present constitution of this State which says: "No grant of exclusive, separate, public emoluments or privileges shall be made to any man, or set of men, except in consideration of public services." And then proceeds to argue that Confederate soldiers have rendered no public services to Kentucky, and therefore they are not entitled, under the constitution, to receive a pension at the hands of the State. Public service in the present constitution means the same public service named in the old constitution. And the Court of Appeals has decided that public service as used in the old constitution means a service rendered to the public by heroic deeds, inventive genius, or great mental endowments, and a life of public virtue. The person attaining such distinction becoming in the judgment of the Legislature a public benefactor. *Ferguson, &c. vs. Landrum, &c.*, 1 Bush, page 593."

It is claimed that the Confederate soldiers rendered Kentucky no service because Kentucky did not secede from the Union. Grant that Kentucky did not secede. What was the Confederate army fighting for? They were fighting to maintain the principle on which alone it was possible to form the American Union of States. That principle was the right of each State to manage its own local affairs in its own way, and Kentucky was as much interested in the preservation of that fundamental doctrine as any other State in the Union. If the debates in the convention that adopted the present constitution of the United States be carefully read by any one, it will take no further argument to prove the truth of the

assertion made above and in forming the Union these rights were expressly reserved to the states, and without this reservation the constitution could not, and would not, have been adopted. That this was the real question at issue, so far as the Confederates were concerned, has come to be acknowledged by every well informed citizen, both North and South, in this country.

In October, 1912, General Charles H. Grosvener, of Ohio, who was a gallant soldier in the Federal army, and for many years one of the leaders of the Republican party in Congress, in a speech made to his comrades of the Army of the Cumberland at Chattanooga, Tenn., said: "The constitution of the United States is almost the wisdom of the Almighty. The greatest English statesmen have said that the hand that wrote it must have been inspired. Now, if there is a Confederate soldier in the house, I want him to stand up. Figuratively speaking, I am going to defend him. You Confederate soldiers did not believe that you were compelled to stay in the Union. Lee, Jackson, Calhoun, and other great men of the South, believed the same on that question. They did what they believed to be right. They saw the constitution as it was adopted. Who is here to call them criminals? Certainly not I."

I might continue to quote you sayings of other leaders among the men who fought against us in the conflict who now, by open declaration, declare and maintain that the Confederate soldier fought for that great principle of government upon which American liberty is founded, sovereignty of the citizen, and sovereignty of the State.

It is contended that this law makes provision for

a class of citizens unjustly because of the conditions prescribed on which the pension is to be paid. If that contention is good, you must open the doors of the lunatic asylums, the feeble-minded institute, the blind asylum, the deaf and dumb asylum, the State Normal Schools, and cease the appropriation of money to the Children's Home Society, because the State appropriates hundreds of thousands of dollars each year to these institutions, and in each case conditions are prescribed before the individual to be benefitted by these charities, can receive the benefit of the law creating them. It will not do to say that these institutions are open to all the citizens of the State because no one can become an inmate of, or a beneficiary of, the provisions made for these institutions, except upon the conditions prescribed. And an overwhelming majority of the people of the State do not come within these conditions. Beside that, these institutions are provided for the benefit of a special class in each case, that is, separate and distinct from the balance of the people of the State, and they have not, nor are they expected, ever to render any public service.

Furthermore, if it is unconstitutional to grant a special privilege to any man or set of men, and this third section of the Bill of Rights shall be strictly construed, then every lawyer in Kentucky must surrender his license, for that license grants him a privilege for no public service in the world to anybody, but to enable him to practice his profession for personal gain. The same rule would apply to all doctors, pharmacists, school teachers, and in fact, to every citizen of the State who is licensed to do a business to the exclusion of the great mass of the peo-

ple of the State. It will not do to say that all the citizens of Kentucky may have these licenses by applying for them, because there is not one out of every one thousand of the people in the State who are, or can be, in a position to fit themselves with the qualifications that the law requires before one can enter either of these callings or professions, and while they are all supposed to be for the benefit of the public, the real object of the person securing the license is to secure a personal privilege and benefit to himself individually.

In the case of the Normal School, the law requires that before a person can enter one of these schools, he or she must be eighteen years old and a graduate of a district high school, or hold a county certificate to teach school, and then be subject to the choice of the county school superintendent, and that the number who can thus enter is further limited by law, thus prescribing conditions in that case. But I am told that each one of these persons who enter Normal Schools as beneficiaries of the State's bounty agrees to teach in the common schools of the State as many months as they attend the Normal School. But I ask, do they teach these months free of charge to the State? And I am told, No. They are paid the same price for this teaching that the other person is who has paid his way through the Normal School. So that, we find in this case that the State is selecting annually from among its citizens a certain number of young ladies and young gentlemen who are the special beneficiaries of the State's bounty to the exclusion of all others who are equally as well qualified by birth, education, and environment, to receive its bounty.

Therefore, to declare the Confederate pension law unconstitutional, and leave these others to which I have referred in full force and effect, would be a clear discrimination against these maimed and diseased and indigent citizens of the State because they had been Confederate soldiers.

It is further claimed by the learned Attorney General that this law is unconstitutional because it makes a class of a class, of the citizens of the State who are indigent and in needy circumstances, and provides for them this pittance of a pension because they were Confederate soldiers. It is true that this law provides for paying this money to these men, and the widows of those who are dead, who made an honorable record in the Confederate Army, because they were Confederate soldiers. But it was not left for the Legislature to make this distinction in favor of these men, for it is a fact that they do occupy a place distinguished from all other classes of our citizens in the hearts and minds of the people. There is no other class of the citizens of our State who have sacrificed so much in defense of principle; who have have risked so much; who have suffered so much; who have lost so much; and who have done so much to crown with glory and honor the character of our people and establish an honorable place for the State in the history of the times. And whether the law shall classify them or not, they are in a class to themselves, and will be throughout all coming ages. It is not necessary that there be a law to declare their distinction in nobility and courage; that has already been proven on a hundred battle fields and by their conduct as citizens since the close of the war. Their title of nobility has been conferred by the public

sentiment of the State upon the Confederate Veterans, and this fact must be reckoned with in construing whatever laws have been or may be passed by the Legislature relating to them.

It is further claimed that the law is bad because there is no clause in the law levying a tax to pay the pensions, which leaves the money to be paid out of the general expenditure fund in the treasury. While I am sure practically every tax payer in the State would have gladly paid a tax of the necessary amount to pay the pensions, I am surprised at such an argument coming from those who oppose this law. If a special tax should have been imposed to pay pensions, how about, and from what source should come the money to pay the salaries and expenses of the various commissions created by the last Legislature, and the large sums of money appropriated for many other purposes? Why is the pension law singled out from all the other laws to attack on this point?

I have stood by the monument erected to the memory of General John C. Breckenridge, a brave Confederate soldier, with money appropriated out of the State Treasury. I have seen a statue erected largely with the State's money in memory of that gallant, fearless, tender-hearted, and almost invincible, cavalry leader, General John H. Morgan, who laid down his life while engaged in service as a Confederate soldier. I have read the law appropriating money out of the State Treasury of Kentucky to place a memorial at the birth-place of Jefferson Davis, a native Kentuckian, and President of the Southern Confederacy; and I have read the law appropriating money to protect and care for graves of Confederate soldiers, and on last Thursday—the

29th day of May—I stood by a monument and saw the markers placed on the battle field of Chickamauga (where so many Kentuckians laid down their lives) at a cost of \$15,000.00, paid out of the State Treasury of Kentucky, but I have neither seen nor heard of any question of the constitutionality of the laws appropriating these sums of money, nor any complaint because the money was not raised by a special tax. Can it be that it is lawful and constitutional to appropriate money out of the State Treasury to build monuments and erect memorials to dead Confederate soldiers, and unlawful to appropriate money out of the State Treasury to relieve in a small degree the pressing needs of the few of these old heroes who yet live, but who are fast hastening to eternity?

It is further objected that this law proposes to give a charity to those who may be able to prove themselves within its provisions, because they were Confederate soldiers, and leave out others who are in equally needy circumstances. I desire to assert that we are not asking charity for these men at the hands of the State. It is true that this law was passed for the benefit of Confederate soldiers, purely because they had been Confederate soldiers, and while I feel sure that I have shown plainly that this law is not out of harmony with many precedents set by the law-making power of the State, I assert that we have not come to the Legislature of Kentucky asking a charity. We come to you demanding that a contract made by the State with the Confederate soldiers be fulfilled. We have been made to feel, however, that almost the entire body of the people of the State are ready and willing to bestow a charity in the form

of a pension upon these old heroes, and we appreciate the fact that this feeling exists. In the year 1901 a few Kentucky Confederate soldiers, realizing that a number of their comrades were in need, decided in a conference held, to undertake to build a Home for Confederates in Kentucky. They appointed a meeting to be held in October of that year in the city of Louisville, to which they extended a general invitation to persons who felt an interest in the matter to attend. That meeting was held, and a movement was set on foot to raise money by private subscription to buy ground and build a home for indigent and dependent Confederate soldiers. Committees were appointed to solicit funds, and the work was immediately commenced. After a considerable sum had been raised by contribution, from Confederate soldiers and their friends, an opportunity presented itself to buy the splendid property at Pewee Valley, now occupied as a Confederate Home. That property was bought and paid for and became the property of the persons who had contributed the money. A committee was appointed to appear before the State Legislature and propose to deed to the State that property, upon condition that it should be used as a Confederate Home as long as it might be needed for that purpose; the consideration on the part of the State to be that the State care for the inmates of the home. The proposition was accepted by the Legislature, and an Act was passed which was approved by the Governor on the 27th day of March, 1902, in which the State pledged itself to appropriate annually \$125.00 for each inmate of the Home to be used in caring for them. Later that sum was increased to \$175.00. Who were to be the inmates

of that Home? Indigent and disabled Confederate soldiers. How many? There is no limit fixed in the law as to the number, and therefore it means ALL indigent and disabled Confederate soldiers who might be admitted to that Home. Then who were entitled to be admitted? All who are indigent and disabled, and have made an honorable record as Confederate soldiers and who lived in Kentucky.

As time has gone by the number of indigent, and disabled, Confederate soldiers has increased to the extent that the accommodations at the Home would have had to be largely increased in order that they might be provided for there. Then it was that those of us who had the welfare of our comrades at heart, as well as the interests of the tax payers of the State, came to the Legislature and asked the enactment of this pension law. And while it is not written out in words, the meaning of the act is that we proposed to relieve the State of the expense of providing enough house room and equipment to care for all these indigent and disabled soldiers if they would allow them to remain at home and still keep the contract written in the law in the first instance, and furthermore, to reduce the amount allowed for the maintainance of each soldier entitled to enter the Home from \$175.00 to \$120.00, if they would allow \$120.00 each to the widows of deceased Confederate soldiers who had an honorable record. That is the sum and substance of this whole matter, and all we are asking is that the State comply with its contract made with us and our friends who contributed the money in the first place to buy the property at Pewee Valley now known as the Confederate Home. These things being true, and they are true, it does not seem

to me, that any person, who will acquaint himself with them, could entertain the slightest doubt for one single moment that this law is not in full accord with the constitution of the State.

It is claimed as an objection to the law that the Confederate soldier has rendered no public service to the State of Kentucky. Tell me not that these gallant sons of the men who followed Washington at Valley Forge went out as a lawless band and fought and marched, half-clothed and hungry, suffered and endured hardships and privations without parallel in modern war-fare and laid down their lives on the field of battle, and filled the rudest trenches as graves, far away from home and friends, for a cause or a reason entirely removed from every interest of the people and land that gave them birth. Services to Kentucky? Yes, and of the grandest and worthiest sort. Since Daniel Boone stood on the mountain at the point where Kentucky and Virginia joins, and looked down on this wonderful land of Kentucky, to the present hour, Kentucky has produced no body of men who have rendered such noble, patriotic, unselfish, sacrificial, service to the State as have the men who enlisted and served in the Confederate Army. Shall I call the roll? If I could call the roll of all who were soldiers from Kentucky in the Confederate Army, how many hearts would be made sad as they thought of the great sacrifice these men had made, but whose faces would shine with joyful gladness in the next moment because these same names are on the roll of those who were brave enough to do and die for a great principle of human government. Let me call a few names to refresh your memory: Albert Sidney Johnson, John C.

Breckenridge, John H. Morgan, William Preston, "Cero Gorda" Williams, Roger Hanson, Joseph H. Lewis, Basil W. Duke, Simon Boliver Buckner and a host of others of field officers, who won renown on many a battle field, and by distinguished public service as citizens of the State after the war had ended. But far more to be honored than these are the private soldiers who marched, and endured, and suffered hunger and cold, with no hope of reward, except duty well done, in defense of a great principle. What service have they rendered Kentucky since the war? They have made honorable, law-abiding, upright citizens. They have filled with credit, honor, and distinction to the State, every office within the gift of the people, and in no instance has any suspicion of dishonorable action attached to their official conduct. The judicial ermine of the State has been honored by the manner in which Confederate soldiers have presided over the courts, and even the bench upon which you sit has been honored by their presence upon it, witness the renowned services of William Lindsay, Thomas H. Hines, James H. Hazelrigg, and others.

When the last gun had been fired and their shot-riddled flags had been furled, those war-worn veterans turned their faces toward the places where had been their homes. The soldiers of the Federal armies also commenced to return to their homes, but how different the home-coming to the men of the two armies. As the Federal soldiers reached their homes they heard drums beating, bands playing, saw the whole populace out in holiday attire, the buildings covered with bunting, and the people shouting Hosannas of Praise, and the Government standing

with outstretched arms to receive and care for them. And at once the government commenced to build homes at public expense in which to maintain him in ease and luxury, and also commenced to pay him bountiful pension. Not only to the indigent and disabled, but to all who desired to avail themselves of this bounty.

But, oh! it was pathetic to see the return of the Confederate soldier. By twos and threes, and sometimes one alone, bronzed from exposure to heat and cold, and sun and rain; forms emaciated, and faces drawn from hunger, their ragged gray jackets buttoned trimly around them, and the slimest excuses for hats and caps, drawn in military style over their foreheads, they came with military tread to what had once been their home. Often times they found a lonely mound, or two, under which lay the remains of mother or other loved ones, who had died during the absence, with weeds of mourning and blackened chimneys to tell of the sorrow and devastation.

They found a law on the statute books of Kentucky, put there in 1863 by a radical partisan Legislature, declaring them and their friends expatriates, with no rights of citizenship. Did they defy the law? Did they seek revenge for this great wrong done them during the reign of blind passion in the State? Did they commit murder, rapine, or arson? No. They stood for a brief moment contemplating the situation, then like the brave, gallant men they had shown themselves in battle, they turned their faces toward heaven and asked God for his aid, and by his blessing and the application of muscle and brain power to a soil, fertilized by the blood of their com-

rades, they commenced the struggle to re-build the waste places and bring order and quiet and peace and prosperity to the "Old Kentucky Home." So well did they succeed that the Governor of the State, Hon. Thomas E. Bramlette, demanded of the Legislature the repeal of the Expatriation Law, and it was repealed. Immediately thereafter, the people of the State commenced to put Confederate soldiers in places of honor and trust, and they largely dominated public affairs in Kentucky for many years, and during all that time peace, prosperity and contentment reigned among the people. They became leaders in politics, business, manufacturing enterprises, all lines of commerce, agriculture, and industry of every kind. But greatest and best of all, many of them became ministers of the gospel, and thousands of them active followers of, and earnest workers for, the teaching of the lowly Nazarene. And in the recent past when the affairs of the State had been entrusted to other hands, and dissention, and political strife had seemingly brought on chaotic conditions in the State, it was to a Confederate soldier the people turned, as the proper person to bring quiet and order, and happiness to the land, and he now sits in the gubernatorial chair, by the voice of such a majority of the people of the State as has not been given to any man in this State for many long years. The Legislature enacted this pension law and this governor, the Honorable James B. McCreary affixed his signature to it because he knew it was just; knew it to be the desire of practically the whole people of Kentucky. His experience as a soldier, and his long public service, and close contact with the people, and familiarity with law in general, eminently fitted

him to judge whether or not this law came within the lines of the constitution, and his honorable career is a sufficient guarantee that he never would have approved an act for any purpose whatever which contravened the constitution of the State. And since the constitutionality of the law has been questioned, he has been greatly worried because of the delay thus brought about in carrying out its provisions and hindering the worthy objects of the law from receiving the stipend provided therein for them.

This question is being considered on this third day of June, when in every city and town and hamlet of the South, and in many cities of the North, memorial services are being held and addresses delivered in memory of Confederate soldiers; graves being decked with flowers, in honor of the memory of those of this class who are gone and to pay homage to those who remain. Yea, in many places, where one lone soldier, buried by himself, in an out-of-the-way place, loving hands on this day are placing flowers, bedewed with tears, on his grave.

There are more than fifty monuments erected on Kentucky soil in honor of Confederate soldiers by the Daughters of the Confederacy. That organization engaged in the noblest and grandest work ever undertaken by a body of women in purely human affairs since history commenced to be written. Would any man or set of men on earth believe for one moment that these women were engaged in thus honoring a body of men who had rendered no service to their country or State in any of the ways set out by the Court of Appeals in its construction of the term "public service" as used in construing the old constitution? Who are the Daughters of the

Confederacy? As a class, they are the highest type of womanhood; they are the wives and lineal descendants of the men who returned ragged and war-worn from the Confederate army and that brave band of young women who became the wives of these men. They have no superiors in intelligence, energy, business acumen, determination of purpose, high ideals, beauty, and loveliness, anywhere on earth. They are the descendants of the mothers, sisters, and sweet-hearts who, though their hearts were breaking at the parting, sent forth their loved ones to war. Who, figuratively speaking, laid them on the altar of sacrifice for a great principle, and said to each one: "Be a brave soldier. Do your duty; and come back with an honorable record, or not at all." They are descendants of the women who toiled early and late in an effort to provide comfort for the soldier in the field, and who went into the field hospital and out on the battle field and did all that human hands could do toward relieving the suffering of the wounded and dying. Aye, in the silent watches of the night, with tired limbs and aching bodies, soothing as best they could the pain of the soldier as the life was leaving his body, and with tender hands gently wiping the rapidly gathering death dew from his forehead, and with ear held close to his lips to catch the last message of the dying stranger to his loved ones far away. It would be impossible to convince anybody that these noble women, with such patriotic blood in their veins would thus honor an unworthy men or set of men.

The bones of Kentucky Confederate soldiers lie mouldering in every prison cemetery in the country and on or near every battle field where the two armies

met. Their names are honored in every quarter of the civilized world. The United States Government has placed a tombstone to every one of their graves that could be found, who died in prison, and with money appropriated out of the United States treasury has erected monuments in many places in the North to the memory of Confederate soldiers. Every State in the South has now on its pension roll the names of Kentuckians who served in the Confederate army and are now citizens of those States. Then in view of all the history that has been made by the Confederate soldier in the fifty-two years that have passed since the war begun, and in view of the fact that the passions of war have subsided, and all bitterness been wiped out, and all the people of the country have become one in sentiment and in patriotism, shall it be said that Kentucky, grand, brave, magnanimous, old Kentucky, has by decision of her highest court put the seal of condemnation on that portion of her citizens who were Confederate soldiers.

May it please the Court, if I seem to speak with feeling, I hope I may be pardoned because of the subject and the occasion. The first blood shed, the first soldier killed in battle, west of the Allegheny mountains, in that terrible conflict, was a Kentucky soldier, and it was my fortune to be in line touching elbows with him as we faced a storm of leaden hail, when the cruel bullet struck his heart and he fell a sacrifice to the great principle for which he fought. And since this law has been brought into question my mind has many times traversed the route it was my lot to travel during my service in the army. I have watched again the dauntless courage with

which my comrades charged the enemies' line amid the sweep of rifle balls and shot and shell. I have seen again their torn and mangled bodies, and heard the cries of anguish of the wounded, and looked into the faces of the dead as they lay stark and stiff in the embrace of death after the chariot of the "War God" had passed over the battle field. Then I have witnessed the unequalled courage with which those who survived have fought the battle of life, and have seen the line grow shorter, and thinner, as the years have gone by, till now only a few are left to testify for, and tell of the wonderful sacrifice and grand achievements of the Confederate soldier, and each time these things have passed through my mind. I have felt an increased bond of duty, to use all the powers of my being to aid in every way possible. those of my comrades against whom the tide of misfortune has set so strongly that now they find themselves sorely in need of the barest necessities of life.

I know this Honorable Court will decide this question from the standpoint of justice to all concerned, and I assure you that the Confederate soldiers of Kentucky would not have you do otherwise. We want no infringement on the fundamental law of the State for our benefit, but we are looking confidently for this Honorable Court to require the State to keep its contract with us. If you find it within the limits of the constitution to maintain the law. I assure you the gratitude of the 4,000 applications for pension and the tens of thousands of their friends will pray God's blessing on your heads and be grateful to you to the extent that words will not express it, but if you shall decide that the law is in conflict with the constitution, there will be few, if any,

words or thoughts of reproach or fault-finding, but these grand old heroes, though they have lost the military tread, and robust manhood, and are now bowed in form and tottering in their walk, will continue uncomplainingly to make good citizens as they pass along the road toward the dark winter of death, and when the last one has answered the final roll-call,

“And on fame’s eternal camping ground
Their silent tents are spread,
And glory guards with solemn round
The bivouac of the dead.”

they will have left the name of the Confederate soldier written on the scroll of fame by their achievements as soldiers and citizens in letters of such an effulgent brightness that all future generations of Kentuckians will be proud to say: “These were our ancestors.”