THE BATTLES OF "GRAVELLY RUN," "DINWIDDIE COURT-HOUSE," AND "FIVE FORKS," VA., 1865.

ARGUMENT

ON BEHALF OF

LIEUT. GEN. PHILIP H. SHERIDAN, U. S. A.,

RESPONDENT,

BY

ASA BIRD GARDNER, LL. D.,

JUDGE-ADVOCATE, U. S. A.,

OF COUNSEL,

BEFORE THE

COURT OF INQUIRY,

CONVENED BY THE PRESIDENT OF THE UNITED STATES,

(*S. O.* 277, *Ex.* 6, *Army Hd. Qrs., A. G. O.*, 9 *Dec.* 1879,)

IN THE CASE OF

LIEUT. COL. AND BVT. MAJOR-GENERAL GOUVERNEUR K. WARREN,

CORPS OF ENGINEERS,

Formerly Major-General Commanding the 5th Army Corps,

APPLICANT.

DELIVERED JULY 27TH, 28TH AND 30TH, 1881.

CHICAGO, ILLINOIS.

1881.

ARGUMENT

LIEUT.-GEN. PHILIP H. SHERIDAN, U. S. A.,

RESPONDENT

vs.

ASA BIRD GARDNER, LL. D.,

PETITIONER.

COURT OF INQUIRY.

CONVENED BY THE PRESIDENT OF THE UNITED STATES,

(G. O. No. 273, A. G. O., Army Mil. Com., D. C., 9 Dec. 1879.)

ARGUMENT

ON BEHALF OF

LIEUT. GEN. PHILIP H. SHERIDAN, U. S. A.,

RESPONDENT,

BY

ASA BIRD GARDNER,

OF COUNSEL.

After an inquiry which has resulted in the taking of over thirteen hundred printed pages of testimony, you will, gentlemen of the court, on the conclusion of the arguments in this case, be called on to report the facts and also to express an "opinion."

The respondent, Lieutenant-General Sheridan, has, throughout this extraordinary investigation, been placed in an unusual and remarkable position, through the very peculiarly worded orders of the late incumbent of the Presidential chair.

Upwards of sixteen years have elapsed since the battle of "Five Forks," which compelled the immediate evacuation of Petersburg and Richmond, and the hasty retreat of the Confederate army of Northern Virginia to the historic ground of Appomattox Court House, where, eight days after that battle was won, they laid down their arms, and by that act terminated a rebellion against the United States, unprecedented in the history of ancient or modern times.

Since then many of the principal actors in the battle of Five Forks have died, including the three major-generals—Devin and Custer, who commanded the cavalry divisions, and Griffin, who commanded a division of the Fifth Corps.

These officers, as you know, had a large share of the confidence of the Respondent, and, from the positions they occupied during the battle of Five Forks, would, had they lived, have been able to give this court valuable information.

THE LAW GOVERNING THIS INQUIRY.

A commanding general, in the military dispositions he may make on a contested field of battle, is governed generally by many concurrent circumstances, some small and others great.

If he is to be called upon "to explain" (p. 11, Record) why or wherefore he did a certain thing on such a field, common justice requires that he shall be called upon to do so when the circumstances are fresh in the recollection both of witnesses and of himself.

He should not be required, after the lapse of sixteen years, to account for his military conduct or affirmatively prove the declarations made at the time in his official reports, when memory may have become dim and principal witnesses have passed away.

But, on the other hand, the argument can be urged that if any officer has been injured in reputation by the military conduct or official reports of a superior, no time is too late for his vindication, as statutes of limitation do not run against courts of inquiry.

To which I would answer that *public policy* interposes, particularly when there has been neglect to seek vindication on the part of the applicant for an undue period.

In this case the applicant—beyond a request for a court of inquiry more than sixteen years ago, on the 9th of April, 1865, and again on the 1st of May, 1866—appears to have made none during President Johnson's or Grant's administration, and only obtains one in the last year of the term of President Hayes.

Meanwhile he has been carefully preparing a case, publishing and writing and bringing to the notice of witnesses incidents, which in course of time have become interweaved with their own recollection. This is so common in the experience, particularly of lawyers, that I need but advert to it.

Therefore, I say, the late President of the United States, in requiring the respondent herein to prove affirmatively in May, 1880 (p. 29, Record), the allegations in his official report, made in May, 1865, has done that which I believe to be without the contemplation of the 115th Article of War, under which this court is assembled.

The 118th Article of War designates the applicant for a court of inquiry as an "accused;" and ordinarily such a tribunal is in the nature of a grand jury, preliminary to a trial within two years of the commission of an offence. (121st Article of War.)

Many years have elapsed since the applicant herein held the rank of Major-General in the volunteer service of the United States, and under which he alone exercised command over the Fifth Army Corps, but which he subsequently resigned on the 19th May, 1865.

The *basis* of this inquiry, namely, the military action of Lieutenant-General Sheridan, as found described in his official report of the 16th May, 1865, was and has been known to the government since that time—indeed, since 2d April, 1865; which only adds to the gravity of the inception of the order which instituted this tribunal.

Had the order stopped at the point of requiring this honorable court to report the facts, so far as they can be ascertained after such a great lapse of time, simply as to what orders General Warren received on the 31st March and 1st of April, 1865, and as to what he actually did under his orders and in the emergencies which arose, there would be less difficulty, and the issues susceptible of more ready adjustment. A grave constitutional question was, however, presented when President Hayes directed an "opinion" to be given on the facts in the case, because the order has been worded differently (p. 1, Record), and says that this court has been appointed "for the purpose of inquiring into Lieutenant-Colonel Warren's conduct as major-general commanding the Fifth Army Corps at the battle of Five Forks, Virginia, on April 1, 1865, AND *into the operations of his command on that day and the day previous*, as far as they relate to his (Lieutenant-Colonel Warren's) conduct, or to imputations or accusations against him."

Of course, the "operations of his command" on the 1st of April, 1865, were an integral part of the operations of the whole command of General

Sheridan, and an inquiry as to those "operations," in order to report facts, impliedly includes a consideration of their *propriety* in order to give an opinion. As soon as this court assembled the full measure of this direction became apparent in the demand of the applicant that Lieutenant-General Sheridan should come before this court to "explain or confirm" his actions (p. 3, Record), and "to state any and *all* the grounds of complaint, and the reasons that led him to remove me from my command," &c. (p 9, Record.)

As comprising the applicant's "chief grounds of complaint," he introduced Lieutenant-General Sheridan's Report of the 16th May, 1865, "as containing the only reasons known to him to justify the action of relieving him from his command." (pp. 9, 11, 25, and 28, Record.)

Now, this applicant formally states here (p. 974, Record) that the motives of Lieutenant-General Sheridan in relieving him of command of the Fifth Army Corps on April 1, 1865, are assumed to be good, and that he acted with the best intentions, and that "no act of his on that day is to be questioned at all, and that there is no one to be criticised before this court except the applicant."

The court knows that the respondent had lawful authority to do that which he did on the 1st of April, 1865. (p. 901.)

Therefore there is interposed to this order of the President, so far as it requires an opinion, the legal restriction that where an executive officer acts within the sphere of his legitimate authority, and has discretion so to act, and he is not charged with acting from improper motives, his conduct cannot be inquired into.

In other words, any executive officer who exercises discretionary authority is intrusted, *pro tanto*, with quasi judicial power; and although he may even err in judgment, his acts, where malice is not imputed, cannot be questioned.

If it were otherwise there would be an end of all responsibility in the administration of the affairs of government.

The judge on the bench in giving discretionary judgment, the sheriff in ordering the militia to fire on a mob instead of trying milder means after complying with the prerequisites of the law, and others invested with discretionary authority would all decline to act if liable to be haled into court sixteen years later, to prove the grounds of their action and justify their opinions formed at the time.

Therefore, I say, that the applicant, by his admissions as to Lieutenant-General Sheridan's motives, and the nature of the investigation which he pointed out here, has estopped himself from any "opinion" on the merits of this case.

These statements I make on my own responsibility, in the belief that had this constitutional question been considered President Hayes would never have required an opinion on the merits or issued the order in such objectionable form.

The learned counsel for the applicant would say that the opinion required is only as to the applicant's conduct, but as the respondent passed upon that on the 1st April, 1865, under his unquestionable authority, this court would have to give its opinion as to whether that opinion was judicious or not.

I now leave this branch of the case with the remark that I would not have felt justified in not presenting these legal objections to a procedure which strikes at the root of the exercise of discretionary authority by any executive officer in the military service, and renders him liable at any future time, ten, twenty, thirty years afterward to be called on judicially to explain his conduct and prove affirmatively its propriety.

Lieutenant-General Sheridan has never sought to avoid any responsibility for his official action toward the applicant, and had the latter deigned to apply to him in 1865 or 1866, when the circumstances were fresh in every one's recollection, he would, in all probability, have secured the applicant a court to then report the facts.

The inquiry required to be made by you is as to General Warren's conduct as major-general commanding the Fifth Corps at the battle of Five Forks, and on the day previous, and *into the operations of his command on those days* as far as *they relate to his conduct or* to accusations or imputations against him.

Now, the operations of *his* (General Warren's) command on the 31st March and 1st of April, must, for a proper understanding, necessarily be considered in connection with the command which operated on his left and which he was, on the 31st, ordered to support.

His (General Warren's) conduct depended entirely, after supporting orders had been received, on what General Sheridan was expected and ordered to do.

The importance of the results hoped for and apparent, even to the humblest soldier in that army, the urgency of the situation and the character of the movement to be effected, are all elements which the court cannot avoid considering in examining into the operations of his (General Warren's) command, *and in expressing an opinion in the case* as to his conduct.

Had the court not been called upon to express an *opinion*, but merely to report facts found, the inquiry might have been confined merely to evidence as to what General Warren did and what the historic Fifth Corps did, on the 31st March and April 1st.

The operations of the Fifth Corps were intimately associated with and dependent upon the operations of General Sheridan's cavalry divisions.

For General Warren to mass and halt until daylight two divisions of his corps intended for an offensive movement, might have been very proper under certain circumstances and highly improper under others.

To move into position for action in a slow and leisurely way, might be very suitable to one condition of affairs, but involve the destruction of an army in another.

For a corps commander to lead one of his divisions into action on one occasion might be foolhardiness, and on another the highest exhibition of sound military judgment.

In order to express an opinion, *if admissible*, as to General Warren's conduct on the occasions in question, this court must first possess itself of all the surrounding circumstances in the military situation, and of the influences which were operating on the mind of General Sheridan under *his* orders and the situation as *he* saw it, in order to determine as to the *operations of the Fifth Corps*, so far as they relate to General Warren's conduct, or to the specific imputations, and as to the *measure* of General Warren's responsibility.

It therefore has been necessary to show the orders under which General Sheridan set out from below City Point, and which carried him to Five Forks.

This, under the latitude of a cross-examination, would, of itself, be admissible, in order to clear up and explain General Sheridan's movements on the 31st March and 1st April, which have been inquired into, but the propriety of it is also placed on the broad ground that this court cannot express an opinion, if admissible, whether or not the statements made by Lieutenant-General Sheridan in his official report of 16th May, 1865, are

true, until the court knows the standard of conditions under which he came to the conclusions therein expressed; as, for example, whether a march was too slow or not.

At the opening of this inquiry the learned counsel for the applicant (p. 48, Record), stated as the basis of this investigation a paragraph from General Grant's report and three extracts from General Sheridan's.

That from General Grant's report of the operations of these days is as follows:

> On the morning of the 31st General Warren reported favorably to getting possession of the White Oak road, and was directed to do so. To accomplish this he moved with one division instead of his whole corps, which was attacked by the enemy in superior force, and driven back on the second division before it had time to form, and it in turn forced back upon the third division; when the enemy was checked. A division of the Second Corps was immediately sent to his support, the enemy driven back with heavy loss, and possession of the White Oak road gained.

The three extracts from Lieutenant-General Sheridan's report of the 16th May, 1865, are as follows:

> (1) * * * had General Warren moved according to the expectations of the Lieutenant-General, there would appear to have been but little chance for the escape of the enemy's infantry in front of Dinwiddie Court-House.
>
> (2) * * * General Warren did not exert himself to get up his corps as rapidly as he might have done, and his manner gave me the impression that he wished the sun to go down before dispositions for the attack could be completed.
>
> (3) * * * During this attack I again became dissatisfied with General Warren. In the engagement, portions of his line gave way when not exposed to a heavy fire, and simply for want of confidence on the part of the troops, which General Warren did not exert himself to inspire.

PRELIMINARY MOVEMENTS CONSIDERED.

Before I begin to discuss these grounds of complaint, if they may be so termed, of the applicant, it would seem desirable, for a proper understanding of this case, that the preliminary movements leading up to those movements which he was required to perform should be considered.

In the statement submitted by Lieutenant-General Sheridan, the respondent, found on page 1060 of this record, which was duly authenticated by him, under oath—although that authentication does not appear upon the face of this printed record, but is to be discovered in the original manuscript copy—in that statement General Sheridan has discussed somewhat the preliminary movements.

He was an independent army commander, commanding in the Shenandoah Valley, the "Army of the Shenandoah," precisely as Maj. Gen. George G. Meade commanded the "Army of the Potomac," or Maj. Gen. Benjamin F. Butler, the "Army of the James," all, however, under the orders of the then Lieutenant-General, U. S. Grant, General in Chief.

General Sheridan, having driven the enemy out of the Valley of the Shenandoah, in a series of brilliant actions, and effectively closed up the campaign in that direction, moved, of his own volition, with the three cavalry divisions of his Army, down to the James River, with a view of assisting the Army of the Potomac in its movement around Richmond and Petersburg.

In his (Lieutenant-General Sheridan's) statement, page 1060 of the Record, is given an account of his movements.

That statement is as follows:*

> The tendency to subordinate the important events of that battle (Five Forks), and the responsibilities with which I was charged, to the incident of General Warren's

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*The extracts from certain papers and dispatches that follow, together with the numbers of the pages of the Record, where they can be found, are printed exactly as delivered in the argument, without reference by me for verification.

L. L. L., *Recorder.*

removal by me from the command of the Fifth Army Corps, necessitates a reference to the facts in detail which led up to the operations of that day.

Early on the morning of the 29th of March, 1865, I moved out from my camp, near the James River, below City Point, under written instructions from Lieutenant-General Grant, dated the day before. I submit a copy of these instructions herewith, marked A, from which I quote as follows:

"*Passing near to or through Dinwiddie, reach the right and rear of the enemy as soon as you can. It is not the intention to attack the enemy in his intrenched position, but to force him out if possible. Should he come out and attack us, or get himself where he can be attacked, move in with your entire force, in your own way, and with the full reliance that the army will engage or follow the enemy, as circumstances will dictate. I shall be on the field, and will probably be able to communicate with you. Should I not do so, and you find that the enemy keeps within his main intrenched line, you may cut loose and push for the Danville road.*"

It will be seen that from the outset it was impressed on me by Lieut. General Grant that he hoped for an opportunity, by means of the operations of my command, to attack the enemy outside of his intrenchments.

On the 29th of March, Lieut. Gen'l Grant again wrote to me from his headquarters dated on Gravelly Run Creek. I submit a copy of this dispatch herewith, marked B. I was then at Dinwiddie Court-House. General Grant said:

"*I now feel like ending the matter, if it is possible to do so, before going back. I do not want you therefore to cut loose and go after the enemy's roads at present. In the morning push round the enemy, if you can, and get onto his right rear.*"

During the night of the 29th of March, to the disappointment of the whole army, a heavy rain set in, and early the next morning, March 30th, being still in the vicinity of Dinwiddie Court-House, with my command, I received a dispatch of that date from Lieut. General Grant, from his headquarters on Gravelly Run, a copy of which I submit herewith, marked C. General Grant wrote:

"*The heavy rain of to-day will make it impossible for us to do much until it dries up a little, or we get roads round our rear repaired. You may therefore leave what cavalry you deem necessary to protect the left and hold such positions as you deem necessary for that purpose, and send the remainder back to Humphrey's Station, where they can get hay and grain. * * * Could not your cavalry go back by the way of Stony Creek depot and destroy the store of supplies there?*"

On receipt of this dispatch I rode immediately to the headquarters of the Lieut. General to confer with him. Although the rain continued to fall heavily, Lieut. General Grant reconsidered his order to withdraw the main body of my cavalry from Dinwiddie, and the hope being renewed that some good might result from the presence of my troops towards Five Forks, General Merritt, who was near J. Boisseau's, was ordered to reconnoiter in that direction.

He succeeded in gaining temporary possession of the White Oak road, at Five Forks, after a skirmish with the enemy, and on this being reported to Lieut. General Grant he wrote to me on that day, March 30th, from his headquarters on Gravelly Run as follows:

"*Your positions on the White Oak road are so important that they should be held even if it prevents sending back any of your cavalry to Humphrey's Station to be fed. * * * Cannot you push up to Burgess' Mills, on the White Oak road?*"

I submit herewith a copy of this dispatch, marked D.

Again, on March 30th, from the same headquarters, Lieut. General Grant wrote to me as follows:

"*From the information I have previously sent you of Warren's position, you will see that he is in danger of being attacked on his left flank in the morning. If such occurs be prepared to push up with all your force to his assistance. Do not send any of your cavalry to Humphrey's Station to-morrow.*"

I submit herewith a copy of this dispatch, marked E.

Again, on March 30th, from the same headquarters, Lieut. General Grant wrote to me as follows:

"*If your situation in the morning is such as to justify the belief that you can turn the enemy's right with the assistance of a corps of infantry entirely detached from the balance of the army, I will so detach the Fifth Corps, and place the whole under your command for the operations. Let me know as early in the morning as you can your judgment in this matter, and I will make the necessary orders.*"

I have already testified before this court as to my request for the Sixth Army Corps, instead of the Fifth Corps, which was for the reason that while I had not the slightest prejudice against the Fifth Corps, I did not know what I could do with it, nor were my staff officers acquainted with the various officers commanding in it, while on the other hand I knew what I might reasonably expect from the Sixth Corps, which had served with me in the Shenandoah Valley campaign, and borne a distinguished part in the battles of the Opequan, or Winchester, Fisher's Hill, and Cedar Creek.

I submit herewith a copy of the last-mentioned dispatch, marked F.

On March 31st, from his headquarters at Mrs. Butler's house, on the Boydton plank road, Lieut. General Grant wrote to me as follows (but of course he was not then aware that my command near Dinwiddie Court-House and Five Forks had been attacked by the enemy and was then heavily engaged. Lieut. General Grant said: "*Warren and Miles' division of the Second* Corps *are now advancing. I hope your caualry is up where it will be of assistance. Let me know how matters stand now with the cavalry, where they are, what theirorders, &c. I understand that the enemy have some infantry and a brigade of cavalry at Stony Creek Station. I think it possible, too, that Johnson may be brought up that road to attack us in the rear. They will see now that Sherman has halted at Goldsborough, and may think they can leave Raleigh with a small force.*"

I sumit herewith a copy of this dispatch, marked G.

Here terminates what I may describe as the first phase of my instructions from Lieut. General Grant during the campaign in question.

It will be seen that, excəpt where the storm seemed to forbid all military operations, my instructions uniformly looked to a hope, on the Lieut. General's part, of important results from the threatening movement of my command in the direction of Dinwiddie and Five Forks. They evince also but little hope of accomplishing anything definite by direct assaults of the enemy's works by the infantry, and they give evidence of some anxiety lest re-enforcements from the Confederate general, Joseph E. Johnston, should reach General Lee.

The battle of Dinwiddie Court-House on March 31st, fought between my cavalry and the cavalry and infantry of the enemy, inaugurated a new phase of conditions for me and promised to realize to some extent the hope indulged in by Lieut. General Grant in the dispatch to me marked A, already referred to, that the enemy would come out and attack us, or get himself where he could be attacked.

My report to General Grant of the battle of Dinwiddie Court-House and his dispatch to me in reply, dated Dabney's Mills, March 31st, 10.05 p. m., are already before the court of inquiry. The urgency of Lieut. General Grant in supporting me after this battle is apparent in dispatches not addressed to me, but before this court, and also in others which I might produce, but I confine myself to my own instructions from the Lieut. General. In his dispatch to me just referred to he gives *his expectations* as to the prompt movement of the troops ordered to my support, and he requires me to use them to the best of my ability to destroy the force with which I had been engaged at the battle of Dinwiddie Court-House.

The isolation of the enemy's force sent to attack me at Dinwiddie Court-House and Five Forks, on the 31st of March, and the troops dispatched to my support, led me to believe that great results might possibly now be accomplished. The importance of the results hoped for was the measure of my desire to fulfill the expectations of the Lieut. General, and of my impatience to see his orders promptly obeyed by those troops which he had directed to my support on the night of March 31st.

My dissatisfaction with the non-arrival of General Warren's command with promptness was in proportion to the urgency of the occasion, as I regarded it; so it was with the slowness of the formation of his corps before the battle of Five Forks, and so it was with General Warren's part in the battle itself.

I do not pretend that I judged of these things by an ordinary standard. I felt that a great opportunity had arisen, and besides I had to realize as well as I could the expectations of the Lieut. General. I judged by this standard of conditions as well as duty and without prejudice.

General Warren in my opinion fell far short of the occasion and of what it required. This is still my opinion, and I relieved him from the command of the Fifth Corps, and ordered him to report in person to the Lieut. General commanding, under the discretionary authority given me, of which, by the nature of my position and my instructions, as I believed, I was the judge.

There still remains to be considered the military position in which I found myself, and the great responsibilities which devolved on me immediately after the battle of Five Forks.

I was aware that our success on that day had securely established my command in a position from which the enemy would be compelled to drive me or abandon Richmond and Petersburg. My own dispositions made as soon as the battle was over, the countermarching of the Fifth Corps on the White Oak road, and the taking up of a line facing towards the enemy in the direction of Petersburg, will indicate to the court, without other proof and without argument, how strongly I was impressed by the risks of the position I then held. I therefore make no particular reference to the urgency of Lieut. General Grant, of which I might furnish abundant proof in the measures he took for my further re-enforcement and for keeping the enemy from deserting their lines nearer Petersburg and coming to attack me. I confine myself to the influences which directly affəcted me. In view of these and of the possibilities within our grasp if I could hold my position won at the battle of Five Forks, I still further regarded it as my duty to remove from command a corps commander in whom I could no longer feel confidence.

The removal of General Warren was done in the midst of circumstances of great urgency and stress; circumstances similar to those under which I formed the impressions which led to his removal. It was an incident of a campaign fruitful of great results. Surrounded by difficult conditions and urged on by the expectations of the Lieut. General as evidenced in the dispatches referred to, there was no room in my action towards General Warren for anything but a consideration of the perilous situation of my command and of the best interest of the service.

P. H. SHERIDAN,
Lieut. General.

A.

HEADQUARTERS ARMIES OF THE UNITED STATES,
City Point, Va., March 28th, 1865.

To Major-Gen. P. H. SHERIDAN:

The Fifth Army Corps will move by the Vaughn road at 3 a. m. to-morrow morning. The Second moves at about 9 a. m., having but about three miles to march to reach the point designated for it to take on the right of the Fifth Corps after the latter reaches Dinwiddie Court-House.

Move your cavalry at as early an hour as you can and without being confined to any particular road or roads. You may go out by the nearest roads in rear of the Fifth Corps; pass by its left, and passing near to or through Dinwiddie reach the right and rear of the enemy as soon as you can. *It is not the intention to attack the enemy in his intrenched position, but to force him out if possible. Should he come out and attack us or get himself where he can be attacked, move in with your entire force in your own way and with the full reliance that the Army will engage or follow the enemy as circumstances will dictate.* I shall be on the field and will probably be able to communicate with you. Should I not do so, and you find that the enemy keeps within his main intrenched line, you may cut loose and push for the Danville road. If you find it practicable, I would like you to cross the Southside road between Petersburg and Burksville and destroy it to some extent. I would not advise much detention, however, until you reach the Danville road, which I would like you to strike as near to the Appomattox as possible. Make your destruction on that road as complete as possible; you can then pass to the Southside road, west of Burksville, and destroy that in like manner. After having accomplished the destruction of the two railroads, which are now the only avenues of supply to Lee's Army, you may return to this Army, selecting your road further south, or you may go into North Carolina and join General Sherman. Should you select the latter course, get the information to me as early as possible, so that I may send orders to meet you at Goldsboro.

(S'g'd) U. S. GRANT,
Lieut. General.

B.

HEADQUARTERS ARMIES OF THE U. S.,
Gravelly Run Creek, March 29, 1865.

Major-General SHERIDAN:

Our line is now unbroken from the Appomattox to Dinwiddie. We are all ready, however, to give up all from the Jerusalem plank road to Hatcher's Run whenever the force can be used advantageously.

After getting into line south of Hatcher's, we pushed forward to find the enemy's position. General Griffin was attacked near where the Quaker road intersects the Boydton road, but repulsed it easily, capturing about 100 men. Humphreys reached Dabneys Mill, and was pushing on when last heard from.

I now feel like ending the matter, if it is possible to do so, before going back. I do not want you, therefore, to cut loose and go after the enemy's roads at present. In the morning push round the enemy if you can, and get on to his right rear. The movements of the enemy's cavalry may of course modify your action. We will act together as one army here until it is seen what can be done with the enemy. The signal officer at Cobb's Hill reported, at 11.30 a. m., a cavalry column had passed that point, from Richmond towards Petersburg, taking 40 minutes to pass.

(S'g'd) U. S. GRANT,
Lieut. General.

C.

HEADQUARTERS ARMIES OF THE UNITED STATES,
Gravelly Run, March 30, 1865.

Major-General SHERIDAN:

The heavy rain of to-day will make it impossible for us to do much until it dries up a little or we get roads around our rear repaired. You may, therefore, leave what cavalry you deem necessary to protect the left, and hold such positions as you deem necessary for that purpose, and send the remainder back to Humphrey's Station, where they can get hay and grain. Fifty wagons loaded with forage will be sent to you in the morning. Send an officer back to direct the wagons back to where you want them. Report to me the cavalry you will leave back and the position you will occupy. Could not your cavalry go back by the way of Stoney Creek Depot and destroy or capture the store of supplies there?

(S'g'd)

U. S. GRANT,
Lieut. General.

D.

HEADQUARTERS ARMIES OF THE UNITED STATES,
Gravelly Run, March 30th, 1865.

Maj. Gen. P. H. SHERIDAN:

Your positions on the White Oak road are so important that they should be held, even if it prevents sending back any of your cavalry to Humphrey's Station to be fed.

The fifty wagon loads of forage ordered will be increased, if you think it necessary. Let the officer who goes back to conduct it to your cavalry call on General Ingalls at my headquarters.

(S'g'd)

U. S. GRANT,
Lieut. General.

P. S.—Cannot you push up to Burgess' Mills, on the White Oak road?

E.

HEADQUARTERS ARMIES OF THE UNITED STATES,
Gravelly Run, March 30, 1865.

Major-General SHERIDAN:

*From the information I have previously sent you of Warren's position, you will see that he is in danger of being attacked on his left flank in the morning.** If such occurs, be prepared to push up with all your force to his assistance. Do not send any of your cavalry to Humphrey's Station to-morrow.

(S'g'd)

U. S. GRANT,
Lieut. General.

F.

HEADQUARTERS ARMIES OF THE UNITED STATES,
Gravelly Run, March 30, 1865.

Maj. General P. H. SHERIDAN:

If your situation in the morning is such as to justify the belief that you can turn the enemy's right with the assistance of a corps of infantry entirely detached from the bal-

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*In the dispatches quoted in the argument portions have been italicized merely to draw attention to particular expressions. The dispatches quoted are not italicized in the originals. A. B. G.

ance of the Army, I will so detach the 5th corps, and place the whole under your command for the operation. Let me know as early in the morning as you can your judgment in this matter and I will make the necessary orders. Orders have been given Ord. Wright and Parke to be ready to assault at daylight to-morrow morning. They will not make the assault, however, without further directions. The giving of this order will depend upon receiving confirmation of the withdrawal of a part of the enemy's forces in their front. If this attempt is made it will not be advisable to be detaching troops at such a distance from the field of operations. If the assault is not ordered in the morning then it can be directed at such time as to come into co-operation with you on the left. Pickett's entire division cannot be in front of your cavalry; deserters from Stewart's brigade of that division came into Humphrey's front this afternoon.

(S'g'd) U. S. GRANT,
Lieut. General.

G.

HEADQUARTERS ARMIES OF THE UNITED STATES,
Gravelly Run, March 21st, 1865.

Major-General SHERIDAN:

I am now at Mrs. Butler's house, on Boydton plank-road. My headquarters will be at Dabney's saw-mill to-night. Warren and Miles' division of the Second Corps are now advancing. I hope your cavalry is up where it will be of assistance. Let me know how matters stand now with the cavalry, where they are, what their orders, &c. If it had been possible to have had a division or two of them well up on the right-hand road taken by Merritt yesterday they could have fallen on the enemy's rear as they were pursuing Ayres and Crawford. I would like you to get information from the Weldon road. I understand the enemy have some infantry and a brigade of cavalry at Stoney Creek Station. I think it possible, too, that Johnston may be brought up that road to attack us in the rear. They will see now that Sherman has halted at Goldsboro, and may think they can leave Raleigh with a small force. Word has just been brought in that Warren has got possession of the White Oak road.

(S'g'd) U. S. GRANT,
Lieut. General.

From this statement of Lieutenant-General Sheridan it will be perceived that his undertaking around the right of the enemy was in order *to draw them out of their intrenchments, so that they could be attacked with some definite prospect of success, and thus bring about great results to the advantage of the cause of the Union.*

If we study his movements with these three small cavalry divisions, which culminated in the battle of Dinwiddie Court-House, we will see that he fully carried out the expectations of the General-in-Chief of the Army by drawing out the enemy far beyond their intrenchments, so that they could be attacked with some prospect of success.

BATTLE OF DINWIDDIE COURT-HOUSE BRIEFLY SKETCHED.

In looking at the movements of what is commonly known as the battle of Dinwiddie Court-House, of March 31, 1865, fought by a considerable portion of the three cavalry divisions of General Sheridan against a combined force of infantry and cavalry of the enemy, some interesting facts are discovered.

General Sheridan having previously sent a small cavalry force towards the White Oak road, to the neighborhood of Five Forks, the enemy immediately began to send troops to that position, and on the 31st of March, after a preliminary flank attack, they attacked the three brigades of Fitzhugh, Davies, and Stagg, which were south of that position.

These three brigades contested the ground with great determination, gradually falling back; but the enemy being in great force endeavored to come in upon their left flank with Fitzhugh Lee's, William H. F. Lee's, and Rosser's cavalry, and Pickett's and Johnson's divisions of infantry to the south and west.

General Sheridan had not advanced all his three cavalry divisions to the point of this contest, because the object of the movement which he had made was to draw the enemy out of their works into such a position as to enable them to be attacked with a reasonable prospect of complete success.

Therefore, when these three brigades were assailed upon their left flank and rear, the enemy almost interposing between the main body of the cavalry near Dinwiddie Court-House, and these three brigades towards Five Forks, these brigades, under the orders they received from General Sheridan, retired to the eastward, towards the Boydton plank road; and thus, as the enemy pursued to the eastward, their flank and right rear was directly presented to the main force of the U. S. cavalry near Dinwiddie Court-House (pp. 852, 1314).

A movement of Gregg and Gibbs's brigades to the front from Dinwiddie to attack the enemy in flank and rear necessitated that they should let go their hold upon the three brigades of cavalry with which they had been previously contesting and which were retiring towards the Boydton plank, and compelled them to face towards the south, towards Dinwiddie Court-House.

The consequence was that, as Gregg and Gibbs's brigades slowly retired towards Dinwiddie, the entire force of the enemy was brought down in close proximity to Dinwiddie Court-House at the close of the day's operations.

Meanwhile the three brigades of Fitzhugh, Stagg, and Davies, which had begun the contest near Five Forks, having continued their retreat eastwardly toward the Boydton plank, then moved down to the Boydton plank southwesterly and rejoined the main cavalry command of General Sheridan at Dinwiddie.

Consequently, when night set in the entire cavalry command of General Sheridan was placed in position in front of Dinwiddie to make such offensive movement as would afford a prospect of success when the infantry of our Army should be placed in a position to co-operate.

The wishes of the General-in-Chief had been complied with; the enemy in force had been drawn out of their lines at Five Forks $4\frac{1}{4}$ miles (p 484); the Fifth Corps, or a portion of it at least, under Bartlett, by dusk was directly on the rear of their left flank; and the enemy down near Dinwiddie were becoming anxious to get out of the position in which they found themselves.

Thus, this masterly movement of General Sheridan's had, up to this point of time, been completely successful; and one cannot study the operations of the cavalry in that day's action, known as the battle of Dinwiddie Court-House, without being impressed by the remarkably skillful manner in which, with little detachments, the ground had been contested and the enemy finally decoyed to the neighborhood of Dinwiddie Court-House.

ACTION OF GRAVELLY RUN OR WHITE OAK RIDGE.

But, while these operations were being conducted, a very different series of operations of a military nature were taking place on the left of the Army of the Potomac and nearest to the cavalry position of General Sheridan.

The Fifth Corps held the left of the lines of the Army of the Potomac.

In considering the operations that General Warren, its commander, undertook on the same day some curious facts are discoverable.

Whether he ever before that time undertook, of his own volition, any

independent military movement sufficiently extensive to require the co-operation of an entire corps in action I am not prepared to say. I am inclined to believe that the previous movements of the Fifth Corps, while under his command in action, in which any success was obtained, were the result of a positive line of operations laid out by superior authority and conducted under the immediate observation of some superior military commander.

General Grant, with the discernment of true military genius, had foreseen that the position in which General Warren's corps was placed on the afternoon of March 30, was such that General Lee would make vigorous efforts to compel his retirement.

And thus we find in his dispatch to General Sheridan (p. 1063, Record), dated "Headquarters of the Army of the United States, Gravelly Run, March 30, 1865," he said:

> From the information I have previously sent you of Warren's position, you will see that he is in danger of being attacked on his left flank in the morning. If such occurs, be prepared to push up with all your force to his assistance.

And again, on the same day, General Grant wrote to General Meade, and transmitted by telegraph a dispatch, in which he said:

> Warren should get himself strong to-night. (Record, p. 1241.)

And again, at 9.50 p. m. of the same day, General Grant, in a dispatch to General Meade, said:

> From what General Sheridan reports of the enemy on White Oak road, and the position of his cavalry to-night, I do not think an attack on Warren's left in the morning improbable. I have notified Sheridan of this, and directed him to be prepared to push in to his assistance if he is attacked. *Warren, I suppose, will put himself in the best possible position to defend himself, with the notice he has already received, but in adding to this I think it will be well to notify him again* of the position of Sheridan's cavalry, what he reports the enemy's position on White Oak road, and the orders he has received.
>
> If the enemy does attack, I think it will be well to instruct Humphreys *also to help Warren if he is attacked*, either by sending troops to him or by a direct attack on his own front." (Record, p. 1243.)

In reply to this, General Meade, at 9.55 p. m., 30th March, said to General Grant that he told Warren "to put Ayres on his guard, as he might be attacked at daylight, and directed that he should move Crawford up at once to his support, if not already there, and to *move Griffin into supporting distance as soon as relieved.*" That "Warren, by daylight, should have his whole corps in hand ready for the offensive or defensive, and ought to be secure in either contingency, particularly as he can always fall back on Humphreys."

General Meade added, however, that he could not see how the enemy could have a sufficient force to do him any damage, and added (p. 1243):

> I presume you understand Warren *has no orders to advance*, but simply to strengthen and secure his position.
>
> *He will not be allowed to advance unless you so direct.*

Now, as the evidence shows, although the enemy did not have a sufficient force there to do General Warren any damage if properly resisted, they nevertheless did do him considerable damage, and caused an utter and complete repulse and rout of Ayres' and Crawford's divisions.

The battle of "White Oak Ridge," as it is termed by General Warren, or the action of "Gravelly Run," as it is more generally designated (p. 627), fought March 31, 1865, at first between a portion of the Fifth Corps and a detachment of the enemy, and, latterly, between the Second and the Fifth Corps and the enemy, was the result of a movement made by General Warren *on his own responsibility*, although he subsequently received permission from Major-General Meade, on the imperfect report *he* made to continue that which he had undertaken.

It is not necessary for this investigation, so far as General Sheridan is concerned, that much attention should be given to this action of White Oak Ridge.

General Warren complains of an extract already given from General Grant's report (p. 48, Record). For a better understanding of this matter I will repeat that extract, which is as follows :

> On the morning of the 31st General Warren reported favorably to getting possession of the White Oak road, and was directed to do so. To accomplish this he moved with one division instead of his whole corps, which was attacked by the enemy in superior force and driven back on the Second Division before it had time to form, and in turn forced back upon the Third Division, when the enemy was checked; a division of the Second Corps was immediately sent to his support, the enemy driven back with heavy loss, and possession of the White Oak road gained.

General Warren's plea as to this report of General Grant's is that the General-in-Chief must have been misinformed in relation to his (Warren's) reports; and of the orders that he (Warren) received, he urges that the operation proposed by himself and subsequently sanctioned by General Meade *after*, *however*, *they had begun to take place*, were in the nature of a reconnaissance only, the result of which was to determine what should be done, and says that the action of the enemy, however, interfered with the plans, as they often did, and produced the resulting operations.

This, it would seem, is an argument upon technicalities rather than upon the intent of the dispatches which passed and the purpose of the movement.

At 9.40 a. m. on the 31st of March, the applicant sent a dispatch to Bvt. Maj. Gen. A. S. Webb, chief of staff of Major-General Meade, commanding the Army of the Potomac, in which he said :

> I have just received a report from General Ayres that the enemy have their *pickets* still this side of the White Oak road, so that their communication is continuous along it. *I have sent out word to him to try to drive them off*, or to develop with what force the road is held by them (Record, p. 1274).

General Meade undoubtedly understood this dispatch of General Warren's precisely as General Grant did, because he replied at 10.30 a. m. :

> Your dispatch giving Ayres' position is received. General Meade directs that should you determine by your reconnoissance that *you can get possession of and hold the White Oak road you are to do so*, notwithstanding the orders to suspend operations to-day (Record, p. 1275).

If General Warren did not think that General Ayres could drive the enemy off the White Oak road, so that it would have been commanded by his own corps, why did he direct him to make the movement ?

Certainly his dispatch, upon its face, is favorable to the idea that he may be able to get possession of that road.

General Grant, as we have seen, knew the importance of maintaining his position, and felt assured that the Confederate Commanding General, R. E. Lee, would appreciate the necessity of using every exertion to drive him from it.

He had already given every possible warning for the information of General Warren, which the latter did not seem to comprehend or to accept in its fullest significance.

Consequently, in making the movement towards the White Oak road, he acted in a manner to call forth the criticism found in General Grant's report, namely :

> He moved with one division instead of his whole corps, which was attacked by the enemy in superior force and driven back on the Second Division before it had time to form, and it in turn forced back upon the Third Division, when the enemy was checked.

General Grant there assumed that the enemy attacked in *superior* force.

But we have seen from the evidence of the witnesses already produced here by General Warren that the enemy which attacked him was in much inferior force.

One of two conclusions only can be drawn from the first phase of the action of White Oak Ridge or Gravelly Run :

First. That the discipline, efficiency, and gallantry of the Second and Third Divisions of the Fifth Corps were not what they should have been, which conclusion, however, is contradicted by their subsequent conduct when under the immediate command of General Sheridan and led by Griffin.

Second. That the military dispositions made by General Warren of his corps on the morning of March 31, 1865, before the forward movement began, were faulty and the *direct cause* of the unfortunate and otherwise unexplainable repulse of the two divisions which took part in the action in the morning.

General Grant appears to have read the thoughts of the Confederate General-in-Chief, Lee, so far as this day's movements were concerned.

Despite his reiterated warnings for Warren to " make himself strong," to look out for an attack, the latter had but one idea, namely, to drive off the enemy's pickets from the White Oak road or endeavor to develop with what force the road was held by them.

Now, the enemy's works were on the line of the White Oak road a little further to the east, and it was hardly supposable that they held the road itself with more than a line of pickets.

From the evidence of the Confederate general, Eppa Hunton (p. 630, Record), it appears that the Confederate general, Lee, himself, came down there on the morning of March 31, and *superintended in person* on the field the movement which resulted in the rout of the Second and Third Divisions of the Fifth Corps.

The effective strength of the Fifth Corps on that day is admitted to have been as follows :

First Division (Griffin)	5,985
Second Division (Ayres)	3,308
Third Division (Crawford)	4,698

(Record, p. 761.)

Thus, on the morning of March 31, at 10.30, when that movement began to drive the enemy's pickets off the White Oak road, there were 8,000 men on the field in the Second and Third Divisions of the Fifth Corps.

The three brigades which attacked them were Eppa Hunton's, Gracie's and McGowan's.

Subsequently, after they had been successful in their advance and had driven the Second and Third Divisions back across Gravelly Run near the Boydton plank, Wise's brigade was brought out of the works by General Lee's orders, that they might prolong their line, so as to present a face towards the position of the Second Corps, which was on the right of the Fifth Corps.

As to the number of troops which the enemy had, the Confederate general, Hunton, says, at page 630 of the Record, after having discussed the matter with friends and given it considerable reflection :

> I am now satisfied that the aggregate of the three brigades did not reach 5,000 men.

He says that his own brigade, by estimation, was from 1,500 to 1,750 strong.

The Confederate Brigadier-General, McGowan, says that his aide-de-camp, Caldwell, estimated the strength of his brigade at about 1,000 men, which is his own recollection ; and that Gracie's brigade was about the same size, 1,000, and could not have been more ; and in that way there were in the two brigades at the opening of the fight about 2,000 (page 652, Record).

Thus, according to the evidence of these witnesses for the applicant, the *entire strength* of the force which attacked his two divisions, aggregating 8,000 strong on the morning of March 31, was between 3,500 and 3,750 men.

From the Confederate Brigadier-General McGowan's evidence, at page 650 of the Record, Robert E. Lee himself came out of the works and went down with them in the pursuit.

In his pamphlet published on the 10th of December, 1865, in which the applicant, General Warren, undertook to give an account of this movement towards the White Oak road of a portion of his corps, he said :

> General Winthrop, with his brigade of General Ayres's Division, advanced accordingly about *half-past ten* a. m. and was repulsed ; and simultaneously an attack which had been prepared against General Ayres was made by the enemy in heavy force both from the north and west, and General Ayres's Division was forced back.

In his evidence before this court the applicant says that these two divisions got back as far as Gravelly Run and across it by eleven o'clock.

It is true that he has endeavored to qualify his statements as to the length of time after which they came back, but either his statement before this court or his statement in his pamphlet must be erroneous ; or the only conclusion that remains is that the men of the two divisions must have come back on a run.

Capt. Holman S. Melchor, of General Warren's staff, says (p. 461) that when Crawford and Ayres came back "it looked as if they were repulsed ; they were badly broken."

Col. Theodore Lyman, aide-de-camp to General Meade (p. 520, Record), says that General Meade got to Warren's headquarters at eleven o'clock, and learned that the Second and Third Divisions had been attacked and driven back in confusion, but that the First Division in reserve had stopped the retreat.

Brig. Gen. J. L. Chamberlain says (p. 229, Record) that Ayres and Crawford were repulsed.

As showing how little General Warren comprehended the actual military situation on that morning, despite the repeated warnings of General Grant, General Ayres, who commanded the Second Division of the Fifth Corps, says that he received an order from General Warren to make a reconnaissance, "but by no means to bring on a battle" (p. 247, Record). Ayres says :

> I had been up to the skirmish line and I had seen that there was a heavy force of the enemy in front of me.

He says his troops knew very well there was a heavy force there. "They were just preparing to attack me when I made this reconnaissance ;" and he further says (p. 258, Record) that he commenced about 10 o'clock, and by 11 or 11½ o'clock he was back on the Boydton plank and again advanced in the afternoon.

Now, General Warren had placed General Griffin's division, the First Division, to the south of Gravelly Run, and in the neighborhood of the Boydton plank road at daylight (p. 1218). Consequently he was sep-

arated from the advance divisions of Ayres and Crawford, not only by the Gravelly Run Creek, but by a considerable intervening space of ground which General Ayres has testified was rather difficult ground to get over, although apparently on that morning the troops found no such difficulty.

The advance of the enemy when they came out of their works and struck Ayres' and Crawford's divisions necessarily exposed their left flank and rear to any attack which might be made by the Second Corps of the Army of the Potomac.

How much the Confederate General, Lee, in these movements, calculated upon the disposition or peculiarities of mind, in a military sense, of those commanders immediately opposing him on that particular ground we never can know. But it is in evidence that he actually came down with those three brigades close to Gravelly Run, and nothing stopped their movement but Gravelly Run and the position of Griffin's division behind it.

Griffin's division itself was nearly double the size of the three attacking brigades; and to reach his position it would have been necessary for them to have gone across Gravelly Run, which was then almost impassable.

During these movements General Warren says he was back at his quarters, which were south of the Boydton plank road and to the rear of the position of Griffin.

When he came forward and passed to the front of Griffin's division, where it was in position, and reached Gravelly Run, he says that to his "great astonishment" the stream was 60 feet wide and 4 or 5 feet deep, and, as to the two retreating divisions, "the men came back very rapidly without any particular order at all, each man for himself" (pp. 717, 762, Record).

He says he heard firing at 10.30 and the troops got back across the run somewhere about 11 o'clock (p. 762, Record).

He further says that when he reached the run he saw that the "men were coming back in great numbers" (p. 717).

"They crossed the stream in any way they could get over and reformed on the other side" behind Griffin's division.

Both Ayres' and Crawford's divisions reformed behind Griffin (p. 1220).

In his official report, dated 1 p. m., 31 March, to Major-General Meade, he says:

1 *p. m., Mch.* 31, 1865.

Gen'l WEBB,
Ch'f of Staff.

GEN'L: Gen'l Ayres made an advance with a small force at 10 a. m., which the enemy drove back and followed up in heavy force, compelling both Ayres and Crawford to fall back on Griffin, and, *of course, in much confusion.* Griffin's troops held the enemy at the run west of the plank road.

Gen'l Miles' division afterwards attacked the enemy, and were forced back on my right. My skirmish line in front of Griffin, most of it, has advanced on the left.

I am going to send forward a brigade from my left, supported by all I can get of Crawford and Ayres, and attack, swinging on our right.

Arrangements are being made for this, and it will take place about 1.45 p. m., if the enemy does not attack sooner.

Resp'ly,

G. K. WARREN,
Maj. Genl.

A true copy of the original manifold dispatch in General Warren's file.

A copy of this is found in General Webb's file of copies of dispatches received at General Meade's headquarters Army of the Potomac, and with it the following note:

"*Sent to Gen'l Humphreys*, 1.30 *p. m.; to Gen'l Grant*, 1.35."

LOOMIS L. LANGDON,
Brevet Lieutenant-Colonel, U. S. Army.

(Record, p. 1275.)

General Meade then sent the following dispatches to General Grant (Record, p. 1246):

MARCH 31, 1865—12 m.

Lt. Gen. GRANT:

Gens. Crawford and Ayres have been driven back on Griffin. Griffin is about to assume the offensive, supported by an attack on Humphreys' left.

Humphreys will withdraw from his right all he can spare to attack with Miles. Since the enemy are trying to turn our left, I deem it important to attack with Sheridan and to let Ord assume the offensive if practicable.

(S'd) G. G. MEADE, *M. G.*

MARCH 31, 1865.

Lieut.-Gen'l GRANT:

Gen'l Warren reports by staff officer that Ayres' advance on White Oak road was repulsed. Ayres fell back to Crawford, the enemy following and attacking both Ayres and Crawford and compelling both to fall back to Griffin. Here the enemy was checked, the fighting still continuing. Gen'l Warren expresses confidence in his ability to hold his present position. Miles has been ordered to be prepared to support Warren. Humphreys will be ordered to attack as soon as I can communicate with him by telegraph, if the affair is not over by that time.

G. G. MEADE,
Maj.-Gen. Com'd'g.

To which General Grant replied as follows (Record, p. 1247):

Printed: (U. S. Military telegraph.) 1 p. m., M'ch 31, 1865.

Printed: (By telegraph from) Gravelly Run, 31st, 1865.

To Maj. Gen. Meade:

If the enemy has been checked in Warren's front what is to prevent him pushing in with his whole corps—attacking before giving him time to entrench or return in good order to his old line of entrenchments. *I do not understand why Warren permitted his corps to be fought in detail when Ayres was pushed forward. He should have sent other troops to their support.*

U. S. GRANT.

This criticism of the then general-in-chief is a controlling one. He knew all the surrounding circumstances, and had done everything possible to put General Warren on his guard, but without success.

Repeated warnings, however, for that day's work were of no avail.

Even Bvt. Maj.-Gen. R. B. Ayres (Colonel Second United States Artillery), who commanded his Second Division, warned him, but unsuccessfully.

The following is what General Ayres says (Record, p. 1089):

By the COURT:

Q. How far did your brigade advance?—A. As far as their own skirmish line.

Q. How in relation to the White Oak road?—A. About half way from its position on the map to the White Oak road.

By Maj. ASA BIRD GARDNER, counsel for the respondent:

Q. In making that movement did you receive any intimation from General Warren that you might be attacked by the enemy?—A. I knew I should myself. I had seen it for a couple of hours—the enemy in great force along there; I had crawled up to the skirmish line and had inspected them. I was ordered to make a reconnaissance without bringing on a fight.

Q. Did you notify General Warren to that effect?—A. I think so; I think that is the way I came to get this other brigade that General Crawford sent to me. I suppose it was on account of that information.

Q. Do you recollect substantially what the information was that you sent back to General Warren?—A. No; I do not recollect; I think General Warren came over there once to me, if my memory serves me; he was there before I made this reconnaissance; I think he told me General Meade did not want a battle brought on. I was aware very well that it would bring on a battle.

Q. And so reported? A. I presume I so reported.

* * * * * * * *

Q. You are quite positive you received your order to make that reconnaissance after you had given that information to General Warren as to the condition of the enemy's

forces?—A. I am quite certain of it; I am quite sure I must have given the information; and then my getting this brigade from General Crawford confirms me in the belief that I had stated it. And I think General Warren came over there, and we had a discussion that the enemy were in heavy force and that an advance there would bring on a fight. I knew it would myself, and I had made every preparation for it before I started.

Brig. Gen. S. W. Crawford, U. S. A. (retired), then commanding the Third Division, Fifth Corps, says that General Ayres on this morning pointed and said he thought that an attack was going to come from that direction and that he believes it did come from that direction (p. 568).

General Warren does not appear to have communicated to General Meade the positive information General Ayres had of a "great force" and only mentioned, in his 9.40 a. m. dispatch (already quoted), that the enemy had their pickets *still* this side of the White Oak road. General Meade accordingly, at 10.30, by his dispatch (already quoted) sanctioned a movement which General Warren had already blindly begun, and even while General Meade was preparing his reply the rout had begun.

General Meade did not wish to bring on a battle.

General Ayres knew if he advanced there would be a battle.

The consequences have been shown. The aggregate loss on that day of the Fifth Corps was 1,407 (Record, p. 1326).

Bvt. Brig. Gen. J. Tarbell, Colonel Ninety-first New York Volunteers, Kellogg's Brigade, Crawford's Division of the Fifth Corps, says his regiment on that day was about 1,400 strong (Record, p. 996), and that when the enemy attacked he made two stands while retreating with his own regiment.

He has testified as follows (Record, p. 995):

Q. Who was exercising command during this stand that was made?—A. I was.

Q. In those stands that you made did you receive any orders from any of your superior officers; if so, from whom?—A. None whatever; I made two other stands where I thought I had good positions, and finally came to where the line re-formed.

Q. In going back from where you were attacked by the enemy were any of our forces in front of you?—A. Not to my knowledge.

Q. There was one division in front of you?—A. That passed to the rear.

Q. In going to the rear did you notice whether it was in order or not?—A. Some of it in order and some not.

Q. In going back did you cross any stream?—A. A small stream that I think was a branch of the Gravelly Run; stopped just on the other side of that, where the new line was formed.

Q. On the south side?—A. On the south or east or southeast.

Q. Was it a deep stream or shallow?—A. Where I crossed there was no difficulty; but where some of my officers and men crossed it was up to the waist; after I got across I found a new line.

Q. You do not know what division that was?—A. I joined my own division immediately.

Q. How long was it before you made another advance?—A. I should suppose, at this distance of time, an hour or two—perhaps a couple of hours.

Q. Before you made any advance did you hear any firing?—A. There was a good deal of firing; there were perhaps a couple of pieces—a small battery—upon our right that were very busy.

Q. Do you know where the Second Corps was at this time?—A. I do not.

Q. In going forward again, did you meet with any resistance?—A. Nothing serious; met with some, I think, on one of the flanks, perhaps the right flank—but nothing to retard our progress.

* * * * * * * *

Q. On the day, 31st March, when the enemy made this attack upon you, do you know what precautions, if any, had been taken against any surprise?—A. I do not know of any; my impression at the time was, that there were not any proper precautions. It appeared to me that there was nobody there, and that the falling back was a piece of folly, because we were not prepared—it seemed to me that way.

* * * * * * * *

On cross-examination he answered as follows (Record, p. 1005) :

Q. Your words were, as I understood, that your impression at the time was, that that falling back was a "piece of folly"?—A. Yes.

Q. Precisely. What do you mean the court to understand by that?—A. I shall have to explain. I took it for granted, without knowing anything about it, that the body of the enemy was engaged, and they could spare but a small detachment to attack us. My opinion is, that they fooled us. My theory was, that the body of the enemy would be engaged—actually engaged, and that they could not spare a large body to attack us, and that therefore they would spare only a small detachment. I thought then it was only a small detachment of the enemy. I think so now, and that they fooled us—fooled somebody; I thought so then and I think so now. I do not *know;* I tell you what I *thought* then, and what I think now.

* * * * * * *

On the next day while hearing his evidence read for correction, the witness, Bvt. Brig. Gen. J. Tarbell, late United States Volunteers, said (Record, p. 1018):

Referring to the falling back of the Fifth Corps on the 31st March, I used the word "folly," and again the word "fooled." I do not like the phraseology; I think I should not use such words. My idea was, and is now, better expressed, if I say I thought then, and still think, that that attack ought to have been resisted, and successfully resisted. Then, again, as to the action after the new line was formed on March 31—I did not say so yesterday—if it is proper to add this further remark, I would say I thought then, and still think, that that detachment of the enemy that attacked and drove us back ought to have been cut off by the Fifth Corps without any aid from anybody. That is only an opinion, but I like the language better. I did not see any attempt to cut it off and capture it.

There can be no profitable conjecture as to what would have been the result, if those three triumphant brigades, led by R. E. Lee, in person, had not been stopped by the condition of Gravelly Run Creek.

The subsequent advance, later in the day, of the Fifth Corps, was one which probably might have been effected without any special exertion in consequence of the extremely advanced position held by the enemy.

Brig. Gen. Nelson A. Miles, U. S. A., then on duty as a Brevet Major-General of Volunteers, commanding four brigades of the Second Corps, made a movement against the enemy after they had gotten down to Gravelly Run Creek and begun to intrench.

He says he struck the rebel force in flank and partly in rear (Record, p. 643), and that his "movement broke them and drove them back towards their works and toward the White Oak road" (Record, p. 647).

Of course the Fifth Corps followed up.

General Chamberlain says that they got to the north of the White Oak road between 5 and 6 p. m., when firing ceased (pp. 230, 232).

The applicant, General Warren, says that at 3.40 p. m. the enemy had been driven into their works on the White Oak road, because at that hour he sent a dispatch to the chief of staff of General Meade in which he said, "We have driven the enemy, I think, into his breastworks," and that they met with but little opposition in this advance.

As a matter of fact he was not in a position to advance again, even with the Second Corps on the flank and partially on the rear of the enemy, until at a quarter to two, or two o'clock, in the afternoon.

Thus did it take three hours after the repulse of his divisions before he was able to take the offensive.

Therefore, so far as the criticism of the General-in-Chief (Grant) was concerned upon the operations of the applicant on the 31st of March, 1865, I submit that it was not only mild but well grounded, and more lenient to the applicant than the facts warranted, because he thought that the enemy attacked in superior force, which was not the case.

OPERATIONS OF THE NIGHT OF THE 31st MARCH, 1865.

The acts of omission or commission on the night of the 31st March, of General Warren, are intimately connected with and caused the first statement contained in General Sheridan's report, which the applicant complains of, viz :

> That had he moved according to the expectations of the Lieutenant-General (Grant), there would appear to have been but little chance for the escape of the enemy's infantry in front of Dinwiddie Court-House (Record, p. 48).

At 4.30 p. m. on the afternoon of the 31st March, after the enemy had retired into their breastworks, General Meade sent a dispatch to General Warren (LXXXIX, Record, p. 1276), to secure his position and protect as well as possible his left flank; and that word had been sent to Sheridan and it was believed that he was pushing up. Also containing these words :

> * * * You might, if you think it worth while, push a small force down the White Oak road and try to communicate with Sheridan; but they must take care not to fire into his advance.

At this very time General Warren could hear the firing in the battle of Dinwiddie Court-House receding towards that place, thereby showing that General Sheridan was retiring and the enemy advancing southward and away from the White Oak road and to the left and rear of General Warren's position. General Warren accordingly dispatched Bartlett's Brigade of Griffin's Division. He says that it was not in consequence of that 4.30 dispatch from General Meade, but because "of his duty as a soldier to send re-enforcements, if he could, in the direction of a portion of our Army that was evidently hard pressed."

So he says : "I sent him on my own responsibility towards the sound of the firing" (p. 768).

This was about 5 p. m., and soon afterwards he received a dispatch from Major-General Meade's chief of staff, dated 5.15 p. m. (marked as received 5.45 p. m.), as follows :

> The major-general commanding directs that you push a brigade down the White Oak road to open it for General Sheridan, and support the same if necessary (p. 1277).

In a postscript to this dispatch it was intimated that the firing was so near that the command would not have far to go, which was erroneous, as the firing had meanwhile receded.

General Bartlett's brigade was a large one, containing nine regiments and over 3,000 men (Record, p. 406).

At 5.50 p. m. General Warren telegraphed to General Meade, reporting what he had done.

Soon afterwards General Meade sent a dispatch to General Warren that the enemy had penetrated between General Sheridan's main command and his, Warren's, position, and said :

> Let the force order (sic) to move out the White Oak road, move down the Boydton plank road *as promptly as possible* (Record, pp. 1277, 1278).

This could not be literally done, because the force ordered to move out the White Oak road had already gone.

General Warren, therefore, very properly, did not wait until he could withdraw that force under Bartlett, and thus, by the delay, *defeat the spirit and intent of the order*, which required prompt compliance.

He accordingly, at a little before 6.30 p. m., ordered General Pearson,

with three regiments that were then "on the plank road, *right down to Dinwiddie Court-House*," and so reported by telegraph at 6.30 p. m., to Major-General Meade (Record, pp. 1278 and 768), as follows :

6.30 p. m., *M'ch* 31.

Gen'l WEBB: I have ordered Gen. Pearson, with three regiments that are now on the plank road, *right down toward Dinwiddie C. H. I will let Bartlett work and report result*, as it is too late to stop him.

We can see the enemy's breastworks for two miles east, along the White Oak road. If they are well manned they cannot be carried. I am within 200 yards of where they turn off north from the White Oak road.

Resp'y,

G. K. WARREN,
Maj. Genl.

It will be perceived that General Pearson was *quite near* to the point where Gravelly Run Creek crossed the Boydton plank road, because General Warren puts him in the neighborhood of the Wilson House, guarding trains (Record, p. 769).

Nevertheless, General Warren does not know *when* General Pearson started—*in fact, has no positive knowledge whether he moved at all*, but supposes he did.

Of course, if the Gravelly Run bridge was down and the stream *not* fordable, the applicant would have been immediately informed ; but he has testified here he had no information that General Pearson went as far as Gravelly Run.

However, on being jogged in his memory, on cross-examination, that he had stated, in his published pamphlet, dated 10th December, 1865, that General Pearson had been compelled to stop at Gravelly Run on account of the swollen stream and broken bridge, he expressed the supposition that he did have knowledge to that effect.

At 7.30 Major-General Meade sent a dispatch, which was received at 8 p. m. by General Warren, which was as follows :

Rec'd 8 p. m.
Nunan, 7.30.]

U. S. M. T., HD. QRS. A. OF P.,
March 31, 1865.

To Maj. Gen. WARREN:

Dispatch from Gen. Sheridan says he was forced back to Dinwiddie C. H. by a strong force of cavalry supported by infantry. This leaves your rear and that of the 2d Corps, on the Boydton plank [road] open and will require great vigilance on your part. If you have sent the brigade down the Boydton plank it should not go farther [than] Gravelly Run, as I don't think it will render any service but to protect your rear.

(S'd)
(P. 1279.)

GEO. G. MEADE,
Maj. Genl.

Before the receipt of this dispatch at 8 p. m., General Pearson had been in possession of his orders at least an hour, even according to the applicant's own story, and probably an hour and a half or longer.

General Warren did not report to General Meade that the bridge was down, but says he "thought that was a matter of common knowledge at the time" (Record, p. 771).

If so, why did he himself order General Pearson "right down towards Dinwiddie Court-House" without first sending his engineer officer to reconstruct the bridge, unless he knew of his own knowledge that the stream was fordable and could be crossed by infantry with no more difficulty than was experienced by Ayres and Crawford's divisions in fording it that morning at another point?

He says he thought General Meade must know that the bridge was down, although he does not know whether General Meade had been to the bridge (Record, p. 771).

This is but the poorest of excuses, and only convicts him of being in a bewildered condition, to order three regiments, at 6.30 p. m., "right down to Dinwiddie Court-House," and formally report to General Meade that he had done so, which presupposed that they could readily march there, when he knew, as he now pretends, that they could not possibly get there until a bridge was built. As a matter of fact he never sent to ascertain the condition of the bridge until between three and four hours afterwards; possibly not until about 11 o'clock; as in his 1.20 a. m. dispatch (Record, p. 1287) he fixes a time.

At 8.20 p. m. he sent the following report (p. 1279):

MAR. 31ST, 8.20 P. M.

Genl. WEBB, *Chf. of Staff.*

GEN'L: I sent Gen'l Bartlett out on the road running from the White Oak road and left him there; he is nearly down to the crossing of Gravelly Run. This will prevent the enemy communicating by that road to-night. I have about two regiments and the artillery to hold the plank road toward Dinwiddie C. H.

It seems to me the enemy cannot remain between me and Dinwiddie if Sheridan keeps fighting them, and I believe they will have to fall back to the Five Forks. If I have to move to-night, I shall leave a good many men who have lost their way. Does Gen'l Sheridan still hold Dinwiddie C. H.?

Resp'ly,

G. K. WARREN, *M. G.*

Major-General Meade then sent him this dispatch (Record, p. 1279):

Rec'd 8.40 p. m.

[Confidential.]

Nunan, 8.35 p. m.

U. S. M. T., HD. QRS. A. OF P.,
8.30 *p. m., M'ch 31st,* 1865.

To Maj. Gen'l WARREN:

The probability is that we will have to contract our line to-night. You will be required to hold, if possible, the Boydton plank-road and to Gravelly Run. Humphreys and Ord along the run, *be prepared to do this on short notice.*

ALEX. S. WEBB,
Bvt. M. Genl.

Thus, at 8.40 p. m., General Warren had due instructions and warning to be prepared on "short notice" to move back from the White Oak road *in the night-time.*

In the course of this argument it will soon be seen how he neglected *to be prepared.*

At 9.40 p. m., General Warren telegraphed as follows (Record, p. 1280):

8.40 P. M., MCH. 31, 1865.

Genl. WEBB, *Ch'f Staff:*

The line along the plank road is very strong. One division, with my artillery, I think, can hold it. If we are not threatened south of Gravelly River, east of the plank road, Gen'l Humphreys and my batteries, I think, could hold this securely and *let me move down and attack the enemy at Dinwiddie on one side and Sheridan on the other. From Bartlett's position they will have to make a considerable detour to re-enforce their troops at that point from the north.*

Unless Sheridan has been too badly handled I think we have a chance for an open-field fight that should be made use of.

Resp'ly,

G. K. WARREN, *M. G.*

Here he made an offer for a *night attack*, which, if successful, as made on his own motion, would have redounded immensely to his military reputation.

It was, however, a proposition for him to act wholly as an *independent* military commander with his entire corps.

He evidently thought the plan was feasible of attacking the enemy on one side and General Sheridan on the other, or, presumably, he would not have proposed it.

If he expected to cross Gravelly Run in this proposed movement down to Dinwiddie Court-House, he made no efforts even to collect materials to construct a bridge, should it be required.

If he expected to move *across the country* in the *night-time*, two things are plain:

1st. That he believed it feasible;

2d. That he believed he could withdraw from the White Oak road *promptly* and without difficulty.

At 9 p. m., Major-General Meade sent him this dispatch (Record, p. 1280):

Rec. 9.17 p. m. [L.]
Nunan, 9.15 p. m.]

U. S. M. T., Hd. Qrs. A. of P.,
9 *p. m.*, *Mch.* 31, 1865.

To Maj. Gen. Warren:

You will, by the direction of the Maj. Genl. comdg., draw back *at once* to your position within the Boydton plank road and send a division down to Dinwiddie C. H. to report to Genl. Sheridan. This division will go down the Boydton plank road. Send Griffin's division. Genl. Humphreys will hold to Mrs. Butler's.

(S'd) A. S. WEBB,
Bvt. M. G., C. o' S.

This order was apparently a damper to his expectations of an "independent" military command.

Then he received, by the hands of a staff officer, the following order, in almost identically the same language, showing the importance General Meade attached to his receiving it (Record, pp. 725 and 1280):

Headquarters Army of the Potomac,
March 31*st*, 9 *p. m.*, 1865.

Maj. Gen. Warren:

You are to draw back *at once* to your position within the Boydton plank road, and to send a division down to Dinwiddie House to report to Genl. Sheridan. This division will go down Boydton pl'k road. Send Griffin's division. Genl. Humphreys will hold to Mrs. Butler's.

By order Genl. Meade.

ALEX. S. WEBB,
B. M. G., C. o' S.

Immediately after receipt of this telegraphic dispatch from General Meade's headquarters, at 9.17 p. m., General Warren says he "sent a staff officer to report upon the condition of Gravelly Run" (p. 775).

Thus, up to this time, the applicant, although he says he thought it was within common knowledge at the time, did *not know* the condition of Gravelly Run or its bridge three hours after he had been ordered to send a force across it.

Of course he could not send Griffin's whole division down, because Bartlett was away, and he evidently had no fear of *his*, Bartlett's, position, as is evidenced by his 8.40 p. m. dispatch to General Meade.

The apparent importance of the order he had received, discoverable both from its context and the efforts made, by duplication, for its receipt, was sufficient to authorize the exercise of, at least, the same degree of discretion and responsibility as the applicant had been exercising.

Circumstances, however, had now changed, because he was required to place nearly half his effective corps under another.

He, however, issued this order (p. 1281):

General Orders, No. —.]

Hd. Qrs. 5th Army Corps,
9.35 *p. m.*, *Mch.* 31, 1865.

I. General Ayres will immediately withdraw his division back to where it was massed yesterday, near the Boydton plank road.

II. Genl. Crawford will follow Genl. Ayres and mass his troops behind the entrenchments, near Mrs. Butler's.

III. Genl. Griffin will immediately withdraw Genl. Bartlett to his present position, then move back to the plank road and down it to Dinwiddie Court-House, and report to Genl. Sheridan.

IV. Capt. Horrill, with the escort, will remain where Genl. Griffin's hd. qrs. now are till daybreak and then come back to the plank road, bringing in all stragglers.

V. Division commanders in executing this movement, which is ordered by Genl. Meade, to see that none of their pickets or any portion of their troops are left behind.

VI. Genl. Ayres and Gen. Crawford will have their troops under arms at daybreak and the chief of artillery will have all the batteries in readiness to move.

By command of Maj. Gen. Warren.

(S'd) FRED. T. LOCKE,
Bvt. Col., A. A. G.

On the previous occasion he had not withdrawn General Bartlett, but ordered General Pearson "right down to Dinwiddie."

Now, instead of directing what remained of Griffin's division to march at once, and completing its numbers by the addition of the conveniently-placed three regiments of General Pearson and others, he began to retard, although keeping as far as possible within the letter, though not within the spirit and plain intent of his orders.

Although General Meade had at 9 p. m. sent both a dispatch and identical written orders to him, there seems to have been no reply or report of progress in execution.

At 9.20 p. m., General Meade, evidently impatient under this condition of affairs, telegraphed again as follows (p. 1282):

Nunan, 9.45.] U. S. M. T., Hd. Qrs. A. of Potomac,
9.20 *p. m., Mar.* 31, '65.

To Maj. Gen. Warren:

The division to be sent to Sheridan will start *at once.* You are to be held free to act within the Boydton plank road. Genl. Humphreys will hold to the road and the return.

(S'd) ALEX. S. WEBB,
B. M. G., C. of S.

Rec'd 9.50 p. m.

To which General Warren replied and for the *first* time reported the bridge down at Gravelly Run Creek (p. 1282):

11.5 p. m.—Nunan.] Hd. Qrs. 5th A. C., 10 *p. m., March* 31.

Maj. Genl. Webb:

Your dispatch of 9.20 is just rec'd. I had already sent out my orders, of which I send you a copy. You asked Gen. Griffin to be sent to Genl. Sheridan, and at once. It will take so much time to get his command together that I withdraw the other divisions first, they being unengaged; but this will not retard Gen. Griffin. The bridge is broken on the plank road, and will take, I hardly know how long, to make passable for infantry. I sent an officer to examine it as soon as your first order was received. He now reports it not fordable for infantry. It requires a span of 40 feet to complete the bridge, and the stream is too deep to ford. Nevertheless, I will use everything I can get to make it passable by the time Gen. Griffin's division reaches it.

Resp'ly,

G. K. WARREN,
Maj. Genl.

We can imagine General Meade's astonishment when he received, at 11.15 p. m., General Warren's dispatch that the bridge over Gravelly Run was gone and the creek not fordable, when the latter had four and a half hours before (6.30 p. m.) telegraphed that he had ordered General Pearson *right down* the Boydton plank to Dinwiddie Court-House, which information of course carried the presumption that the order could be promptly executed.

Before, however, this 11.15 dispatch was received by General Meade,

the latter, apparently in order to close any further *literal* construction of his orders in the way of delay, sent this order (Record, p. 1282):

Nunan, 10.15 p. m.] U. S. M. T., Hd. Qrs. A. of P.,
9.40, *March* 31*st*, 1865.

To Maj. Gen'l Warren:

Since your dispatch of 8.20 p. m., the Genl. Com'd'g finds that it is impossible for Bartlett to join Griffin *time to move with any promptitude down the Boydton plank;* he therefore directs that you send another good brigade to join Griffin in the place of Bartlett in this movement. Sheridan was attacked by five brigades, one from Gordon's Corps, three from Pickett's, possibly by two from Gordon's, one of them being Hoke's old brigade.

A true copy.
(S'd) ALEX. S. WEBB,
B. M. G., &c.

This was received by General Warren at 10.15 p. m., and is admitted by him (Record, p. 776) to have been an urgent order.

Nevertheless he did not substitute some other brigade for Bartlett's although he acknowledges he was acting on his own responsibility (p. 778), just as he had in the morning when he moved against the enemy on the White Oak road, and in the afternoon when he sent Bartlett out. His excuse is that he thought Bartlett would be back in time to go with Griffin when the bridge was finished (Record, p. 728).

He does not appear to have acknowledged this last quoted dispatch, and General Meade, apparently more and more impatient and anxious for a resolute and prompt compliance with his reiterated instructions, telegraphed again at 10.15 p. m. as follows (Record p. 1283):

Rec'd 10.50 p. m.
Nunan, 10.48.] U. S. M. T., Hd. Qrs. A. of P.,
10.15 *p. m., M'ch* 31, 1865.

To Maj. Gen. Warren:

Send Griffin *promptly* as ordered by the Boydton P. R., *but move the balance of your command by the road Bartlett is on, and strike the enemy in rear who is between him and Dinwiddie.* Genl. Sheridan reported his last position as north of Dinwiddie Court-House, near Dr. Smith's, the enemy holding the cross-roads at that point. Should the enemy turn on you, your line of retreat will be by J. M. Brooks and R. Boisseau's, on Boydton plank road. See one inch maps. *You must be very prompt in this movement,* and get the forks of the road at J. M. Brooks' before the enemy, so as to open to R. Boisseau's. *The enemy will probably retire toward the Five Forks, that being the direction of their main attack this day. Don't encumber yourself with anything that will impede your progress or prevent your moving in any direction across the country. Let me know when Griffin starts and when you start.*

GEO. G. MEADE,
Maj. Genl.

Acknowledge receipt.

General Meade had now got into that condition of mind as to send the dispatch himself and direct the applicant to "*acknowledge receipt*," and to let him know when they started.

This dispatch, as found in the "official" report of General Warren and in the pamphlet written by him 10th December, 1865, (pp. 728, 779), was mutilated by the omission of the important words "*across the country.*"

In his excuses for non-compliance he says that he knew that the enemy held the road to R. Boisseau's which he had learned from his aide-de-camp, Maj. E. B. Cope, who had gone down the Crump road with Bartlett's brigade and then returned to headquarters, and therefore, as there was a misconception on this point, no amount of promptness could get him there before the enemy, who was already there; consequently he *exercised his discretion* (p. 729.)

The applicant has entered into a labored explanation (Record p. 781) as to why he failed to obey this positive order.

He fastens on the remark in the dispatch that if the enemy turned upon him the line of his retreat would be by J. M. Brooks' and R. Boisseau's, which he thinks showed a "good deal of solicitude" on General Meade's part as to his getting to the forks of the road at J. M. Brooks'.

General Meade, however, stated in his dispatch what General Warren perfectly comprehended, viz., that the enemy "would probably retire towards the Five Forks, that being the direction of their main attack."

General Warren himself, at 8.20 p. m., and again as late as forty minutes after midnight (1st April), (which was exactly *two hours* after receipt of this dispatch from General Meade), expressed precisely the same opinion in a dispatch to General Humphreys, who commanded the Second Army Corps, saying:

> I think the enemy that drove General Sheridan to-day *must withdraw to-night.*
> I have a brigade on the road north from J. Boisseau's (p. 1304).

As early as between 8 and 9 p. m. General Warren had been informed by his aide, Major Cope, of the exact position of Bartlett's considerable force (3,000) in rear of the enemy at J. Boisseau's (Record, p. 729).

General Warren meant to say *G.* Boisseau's in his dispatch to General Humphreys, and incorrectly designated a place perfectly well understood, however, just as General Sheridan did in a later dispatch (of 3 a. m., Record, p. 1288) to Warren himself, relative to the same position of Bartlett.

Brevet Major-General Bartlett has testified how, from the position he was in at G. Boisseau's, on the Crump road, he could see the whole cavalry of the enemy in camp across the run, he being directly in their rear. Subsequently he begged to be allowed to attack them. Major Cope was with him, and went back to report to General Warren this gratifying situation (p. 1166).

At 9.17 p. m. Warren had received the order to draw back *at once* from the White Oak road to his position within the Boydton plank road, which he had previously, at 8.40 p. m. (date of receipt), been warned *to be prepared to do on short notice;* consequently when General Meade's order came at 10.50 p. m. (date of receipt) to move across the country by the road Bartlett was on with his remaining two divisions to "*strike the enemy in rear*" between him and Dinwiddie, as he had had an hour and a half to get ready in, he should have been ready to do it at once.

Did he do so? The answer is, he did not even leave the White Oak road with the remaining two divisions until daylight.

In his cross-examination on this subject he answered as follows (p. 779):

> Q. This paragraph, therefore, occurring in that order of General Meade, received by you at 10.50, "Do not encumber yourself with anything that may impede your progress or prevent your moving in any direction across the country"; that, therefore, contemplated that you should go right across the country to a road that Bartlett was on or had been?—A. He did not mean to go the route you marked.
>
> Q. I make no mark; I merely give a general direction.—A. Of course it meant when I moved that I should move in that direction.
>
> Q. And strike the enemy in his rear?—A. It is not in the order, is it?
>
> Q. Yes; you will see it there.—A. Well, that is not in the copy I have.
>
> Q. Will you be good enough to read the beginning of the copy that you have there, the first few words, and see if that expression is not there?—A. Yes; it is in the first part of it.
>
> Q. Did you not, when you received that order, telegraph to General Meade substantially as follows: "I will now take Generals Griffin and Crawford and move against the enemy, as the last dispatch directed I should"?—A. Yes.

Q. You were also directed to be very prompt in that movement?--A. Yes. I have explained that.

Q. What was there to prevent your moving across the country to the road that Bartlett was on at that time?—A. The first thing to do was to make preparation for it.

Q. Had you made any preparations to that end?—A. I think I had to give some instructions to those that we left behind, and attend to matters of that sort, that I was to leave behind.

Q. Did you issue any orders to do that thing which was directed there?—A. I did not. That was my intention when I wrote that order to General Ayres, but circumstances, before I could execute it, caused me to change it; there was a change of condition.

General Warren acknowledged General Meade's peremptory dispatch as follows (Record, p. 1285):

HEADQ'RS 5TH ARMY CORPS,
10.55 *p. m., M'ch* 31, 1865.

Genl. MEADE:

I issued my orders on Genl. Webb's first dispatch to fall back, which made the divisions retire in the order of Ayres, Crawford, and Griffin, which was the order they could most rapidly move in. I cannot change them to-night without producing confusion that will render all my operations nugatory. I will now send Gen. Ayres to Gen. Sheridan, and take Genl. Griffin and Genl. Crawford to move against the enemy, as this last dispatch directs I should. I cannot accomplish the apparent objects of the orders I have received.

Resp'ly,

G. K. WARREN,
Maj. Genl., Comd'g.

(2.12 a. m.--Nunan—line down.)

In this he says, "I cannot accomplish the apparent objects of the orders I have received," but, appreciating the present effect of such a declaration as evidence of intent, he says, although he signed this dispatch himself and must have known its contents, that the word "otherwise" should be interpolated (p. 730).

The *preparations* General Warren made are found in the following orders, the second of which entirely defeated General Meade's last order (received at 10.50 p. m.) to move across the country and strike the enemy in the rear (Record, p. 1284):

HEADQ'RS 5TH ARMY CORPS,
11 *p. m., M'ch* 31, 1865.

General AYRES:

Instead of halting your command, as directed in your last order, you will proceed down the plank road to Dinwiddie Court-House and report to Genl. Sheridan. Send a staff officer to report here at this house when the head of your column gets here.

By command of Maj. Gen. Warren.

(S'd) FRED. T. LOCKE,
Bvt. Col., A. A. G.

H'DQ'RS 5TH A. C.
11 *p. m., M'ch* 31, '65.

ORDER:

Gen. Griffin and Genl. Crawford will mass their divisions at the point at which this order reaches them, and report their positions by the officer that brings it.

A change of plan makes this necessary.

Resp'ly,

G. K. WARREN,
Maj. Genl.

As a matter of fact, Generals Griffin and Crawford were, as late as 1 a. m., April 1, actually in bivouac near the White Oak road, at the point they had reached the previous afternoon (Record, p. 734), and never left it until after 5 a. m. on the 1st of April, although Warren had reported to General Meade at 10.55 p. m. that he would then take them against the enemy.

As showing the inefficiency, or bewilderment, or negligence of this applicant, he did not, he says, receive a report of Griffin's or Crawford's positions under this 11 p. m. order of his until 1 a. m. (p. 731.)

We know that during the morning of the 31st March it took two of his divisions, with such resistance as they made, but little, if any, over half an hour to come back from near the White Oak road to the Boydton plank, and although at 8.40 p. m. he had orders to be prepared to move back his divisions at short notice, and at 9.17 had received positive orders to do so, nevertheless at 1 a. m. the two are still in their original positions on the White Oak road.

In consequence of a break in the telegraph line, of which he was not informed at the time, General Warren did not send his last above quoted dispatch to Major-General Meade of 10.55 p. m. until 12.30 a. m., and then accompanied it with the following dispatch (p. 1285):

H'DQ'RS 5TH CORPS,
11.30 *a. m., April* 1, 1865.

Genl. WEBB,
Chief of Staff:

I find that the dispatch copied on the next leaf has not been sent you because of a break in the telegraph line. I believe it impossible efficiently to change the directions I have given before daybreak.

Resp'y,

G. K. WARREN,
Maj. Gen'l.

Meanwhile he had ordered his remaining two divisions, as we have seen, to be *massed* (which was not, however, done), and deliberately told General Meade, despite the latter's reiterated orders, that he believed it impossible efficiently to change the directions he had given *before daybreak.*

As General Warren never started to go in person to where those two divisions were until after 5.15 a. m., we here perceive, without reference to the additional evidence on this point, to which your attention will be invited, that he had no intention of "moving *across* the country to the road Bartlett was on" during the night-time, although peremptorily ordered to do so.

In his further cross-examination, in the effort to discover some tenable reason for his failure to do what he was so ready to do at 8.40, *provided* he could be *independent* of other commanders, he has testified as follows (p. 780):

Q. The next dispatch you received from General Meade you received at 1 a. m.; is that so?—A. Yes, that is so.

Q. Therefore, there was between the two dispatches of General Meade, the one to strike the enemy's rear and to move across the country—between that dispatch and the next dispatch there were two hours and ten minutes' time?—A. Yes.

Q. So; why didn't you go up, when you received that dispatch from General Meade at 10.50, and take those troops that were there near the White Oak road right across to where Bartlett was, as the order directed?—A. I want again to go into an explanation of the question. When I halted those divisions, a staff officer was to bring me back a report of their position. I was also responsible for seeing that the troops reached General Sheridan by the Boydton plank road. I had not up to 1 o'clock received reports back from those officers where the divisions were halted, I believe, and I had not got word from Major Benyaurd that the bridge was done, or what was going on, and under those circumstances I deemed it important to remain where I was until I could fully understand the condition of things around me, and wait until General Meade understood what I reported to him.

Q. Yet you are of the opinion that the enemy could not have remained between you and Dinwiddie if General Sheridan was re-enforced at that place?—A. That was my opinion.

Q. Was it not your opinion that the enemy could not remain there at all if you held your position where Bartlett was, at Crump's?—A. If he just staid there it would not do them (the enemy) harm—they could have taken Dinwiddie Court-House. If Bart-

lett had just staid at that position—do you mean if I advanced with my corps?—my opinion expressed was, if I advanced with my corps, not with Bartlett's brigade.

Q. It was just as easy for you to have taken the fragment of Griffin's division and Crawford's division out to where Bartlett was as it was for Bartlett to come back from Crump's?—A. Well, it is more difficult to move a large body over an unknown country than it is to bring back a smaller one that has traveled the road before. I do not see why I should be compelled to go into such contingencies.

Q. You were directed in that order not to encumber yourself with anything that would impede your progress or prevent your moving in any direction across the country?—A. Not exactly.

Q. And that you "move the balance of your command by the road Bartlett is on and strike the enemy's rear"?—A. Yes.

Q. I understood that you did not do it.—A. I did not do it at that time, and, as to moving on the road Bartlett was on, or across the country, the line of travel I should have to take might depend somewhat upon where the division would be when I moved with them.

Q. You had not then withdrawn them from the White Oak road vicinity?—A. They had orders a good while before to withdraw, and the officer I had sent out to halt them had not come back.

Q. You did not go up to where they were in order to make this movement?—A. No; I would not have made this movement until I was satisfied that General Meade understood the situation clearly, and I was waiting for that; that was all that kept me waiting, for that and for the knowledge of the condition in which the bridge was.

At 1 a. m., General Warren says he received the following dispatch from General Meade (Record, p. 1286):

HDQR. A. P. 11.45 *p. m.*, *Mar.* 31.

Rec'd 1 a. m., April 1.
G. K. W.

Maj. Gen'l Warren:

A dispatch, partially transmitted, is received, indicating the bridge over Gravelly Run is destroyed, and time will be required to rebuild it. If this is the case, would not time be gained by sending the troops by the Quaker road? *Time is of the utmost importance.* Sheridan cannot maintain himself at Dinwiddie without re-enforcements, and yours are the only ones that can be sent. *Use every exertion to get the troops to him as soon as possible.* If necessary, send troops by both roads and give up the rear attack.

GEO. G. MEADE,
Maj. Genl.

If Sheridan is not re-enforced and compelled to fall back, he will retire by the Vaughn road.
G. G. M.

His explanations as to this urgent dispatch are found in the continuation of his cross-examination, from above, as follows (p. 781):

Q. Then about 1 o'clock in the morning you got that dispatch from General Meade, that "A dispatch, partially transmitted, is received, indicating the bridge over Gravelly Run is destroyed, and that time will be required to rebuild it." You were told that "time is of the utmost importance," and to "use every exertion to get the troops to him (General Sheridan) as soon as possible," and, "if necessary, send troops by both roads and give up the rear attack." You did not send troops by the Quaker road?—A. I did not.

Q. You did not send troops by both roads?—A. I did not.

Q. Nevertheless, you gave up the rear attack?—A. No; I did not give it up. I waited developments and to see what information I would get. I had then to decide this question, but General Meade leaves the question to me—"If necessary," he says, "send troops by both roads and give up the rear attack." I could not tell whether it would be "necessary" until I could get some more definite information from General Ayres, and I had the belief that he (General Sheridan) would get re-enforcements by General Ayres, because the thing to be done by General Meade's dispatch was to re-enforce General Sheridan and not make the rear attack. So I was left responsible in my judgment whether I would send troops by the Quaker road and give up the rear attack or hold on to what I had already done, and not make the rear attack at once—await developments.

Q. Were you not of opinion at that time that the enemy would fall back that night from Dinwiddie to Five Forks?—A. That was my opinion in the early part of the evening, but when I got that dispatch from General Meade—General Meade also in-

formed me so; but when I received this last one I had no longer any right to act upon an opinion of my own except I met the requirements of his, General Meade's, own order, as in it I regarded the re-enforcement of General Sheridan as the most important point.

Q. You were aware that Bartlett's brigade was at Crump's?—A. When?

Q. During that evening of the 31st?—A. Yes. I was aware of it.

Q. And at what time were you informed that Bartlett had come back from Crump's?—A. I don't recollect exactly. I stated in my report, it must have been by information brought by Major Cope, that they had returned. I am not certain now at what time they returned. If I had put it in my papers or memorandums anywhere, that will fix it.

Mr. STICKNEY, counsel for the applicant. It does not appear there.

Q. If General Sheridan was in such a condition there that re-enforcements were necessary to him in order that he might maintain his position, would not a movement by the rear attack, as you had been directed to make by General Meade, have materially assisted him in maintaining his position at Dinwiddie?—A. I certainly think it would. The position of the troops of the Fifth Corps in the rear of the enemy was a powerful inducement for them to let go of Sheridan.

Q. And General Meade said that time was of the utmost importance, in his dispatch received by you at 1 a. m.?—A. Yes; that time there was in reference to getting re-enforcements to General Sheridan.

Q. To succor General Sheridan?—A. Yes, to assist General Sheridan.

Q. And if necessary to do that, to give up the rear attack by going around by the Quaker road?—A. Certainly.

Q. Which I understand you did not do?—A. I did not.

Q. And did not make the "rear attack"?—A. I did not send troops by the Quaker road because that would necessarily have compelled me to give up the rear attack. But trusting to what I had already done to get re-enforcements to him, I kept the rear attack as an open question.

Q. In the morning, you went across country in the very direction that you had been directed to do by the order of General Meade, received by you at 10.50 the night before?—A. Yes.

Q. You had no other orders to do that than this one of General Meade of 10.50 p. m. "Strike the enemy in his rear"?—A. That is an implied order to do it, this last one. "If necessary, send troops by both roads, and give up the rear attack." If I could save sending them by both roads, then I must make the rear attack.

In his excuse here for his delays in executing this order the applicant says he could not tell whether it would be "necessary" to send troops by the Quaker road until he could get more definite information from General Ayres.

Gravelly Run Crossing, however, was near (Record, p. 164) his own headquarters at the Wilson House, and this explanation is deprived of any value by his own dispatch, dated 1.20 a. m., as follows (Record, p. 1287):

HD. QRS. 5TH A. C., 1.20 *a. m.*, *Apr.* 1.

Genl. MEADE: I think we will have an infantry bridge over Gravelly Run sooner than I could send troops around by the Quaker road.

But if I find any failure I will send that way. I have sent Benyaurd 2 hours ago with what he thought necessary to make it practicable in one hour, and I trust to that. I am sending to Genl. Sheridan my most available force.

Resp'ly,

G. K. WARREN,
Maj. Genl.

At 2.05 a. m. he reported to General Meade that the bridge was practicable for infantry and Ayres's division crossing (Record, p. 1287).

It is to be noticed that General Meade only suggested in his latest dispatch to give up the rear attack, provided it was necessary to send troops to General Sheridan by the Quaker road *as well as* by the Boydton plank road. Otherwise, of course, his orders to make the movement in rear of the enemy via the Crump road and G. Boisseau's continued good, and Warren has positively to admit this on cross-examination and also because he finally did make the movement "across country," though so late after daylight the next morning that the object was defeated by the retirement of the enemy.

The plain context of General Meade's latest urgent order, received at 1 a. m., was to get re-enforcements to General Sheridan; time was of the utmost importance."

General Warren, having decided that he could get them quicker by the Boydton plank than to send any by the other (Quaker) road, the next plain duty which devolved upon him, as he is forced to admit, was to make a rear attack, which would have been, under his orders, as effective a way of re-enforcing General Sheridan as could have been devised.

He believed the enemy would not stay long in their dangerous position, liable to be cut off, and promptness was therefore of the utmost importance.

Nevertheless, with General Meade's peremptory order, received at 10.50 p. m., " to strike the enemy in rear," he ordered, at 11 p. m., Griffin's and Crawford's divisions to *halt* and mass where his order should find them.

As a matter of fact the two divisions did not mass or leave their positions (Record, p. 786).

This change of plan was ostensibly to send Ayres instead of Griffin down the Boydton plank to General Sheridan, but why halt Crawford and Griffin where they were ?

The explanation is found in the fact that General Warren had determined in his own mind to ignore the urgency of General Meade's order to move across country by the road Bartlett was on and strike the enemy in rear.

Although he coincided in opinion that they would probably withdraw before dawn towards Five Forks, he determined not to make the movement until daylight *and thus defeat the very object of those orders.* This is clearly exhibited in his dispatch to General Humphreys sent at forty minutes after midnight and *before* receipt at 1 a. m. of General Meade's latest dispatch on which he has, as we have seen, founded his excuses for non-compliance.

The dispatch from General Humphreys and his reply are as follows (Record, pp. 1285, 1286) :

Rec'd 0.40 a. m., Apr. 1.
G. K. W.

MARCH 31, 11½ P. M.

Maj. Gen'l WARREN, *Com'd'g 5th Corps :*

I am directed to resume my position of this morning, &c., &c.
At what time do you propose to move ? I propose to move simultaneously with you.

A. A. HUMPHREYS,
Maj. Gen'l.

0h 40m A. M., APR. 1.

Genl. HUMPHREYS :

I have just received your dispatch, by Capt. Wistar. *Under the order to withdraw at once, I thought we each could do so individually under the cover of darkness, and so ordered. I have since rec'd orders to attack the enemy with two divisions, sending one down the plank road to report to Genl. Sheridan, and do so to-morrow.* My artillery, five 4-gun batteries, under Genl. Wainwright, will remain on the line of the plank road.

I think the enemy that drove General Sheridan to-day must withdraw to-night. I have a brigade on the road north from J. Boisseau's.

I have now orders to move against the force that attacked Sheridan to-day, and shall send all I have to move there, or wherever the firing of a battle near us may indicate.

Resp'ly,

G. K. WARREN, *M. G.*

In his own mind he had given up for that night the rear attack so positively ordered by General Meade but having received orders to at-

tack the enemy with two divisions would "do so to-morrow," "or wherever the firing of a *battle* near us may indicate."

His evidence on this point is peculiar.

Referring to that portion of General Meade's order which had reference to moving across the country, the applicant has testified on cross-examination as follows (p. 784):

Q. How so? What important point is there about it, so material as to make you cease that movement?—A. The darkness which protected General Sheridan from the enemy protected the enemy as well, probably, from the operations of my troops. It is a very rare thing in this country, in all our battles, that a successful fight was made in a dark night through the woods in an unknown country against an enemy.

Q. Didn't you suggest that to General Meade?—A. Yes, but I should have done it next morning. *I never had any idea of doing it in such a night as that.*

Q. Did your dispatch, in which you made that suggestion, indicate that you were not to make the movement at night?—A. It did not say so.

Thus, despite General Meade's reiterated orders for prompt movement to strike the enemy in rear, and to report when he started, General Warren says he "never had any idea of doing it in such a night as that."

No wonder General Grant the next day sent to General Sheridan an unsolicited order to relieve him if necessary—fearing he would probably fail him (Record, p. 1030).

At 3 a. m., General Sheridan, having heard nothing from General Warren, and there being then no prospect of a night attack, sent him by the hands of Bvt. Brig. Genl. George A. Forsyth, U. S. A., the following dispatch (Record, p. 1287):

HEADQUARTERS MIDDLE MILITARY DIVISION (Printed),
Dinwiddie C. H., April 1*st*, 1865, 3 *a. m.*

Major-General WARREN,
Comdg. 5th A. C.:

I am holding in front of Dinwiddie C. H., on the road leading to Five Forks, for three-quarters of a mile, with Genl. Custer's division. The enemy are in his immediate front, lying so as to cover the road just this side of A. Adams's house, which leads out across Chamberlain's *bed* or *run*. I understand you have a division at J. Boisseau's; if so, you are in the *rear* of the enemy's line, and almost on his flank. I will hold on here. Possibly they may attack Custer at daylight; if so, have this division attack instantly and in full force. Attack at daylight anyway, and I will make an effort to get the road this side of Adams's house, and if I do you can capture the whole of them.

Any force moving down the road I am holding, or on the White Oak road, will be in the enemy's rear, and in all probability get any force that may escape you by a flank attack. Do not fear my leaving here; if the enemy remain I shall fight at daylight.

(S'd) P. H. SHERIDAN,
Maj. Genl.

Rec. 4.50 a. m., Apl. 1st.
G. K. W.

The receipt of this by General Warren at his headquarters at the Wilson House, south of the Boydton plank road, is 4.50 a. m.

It showed that direct re-enforcements to join General Sheridan were not necessary (p. 739). At 5.15 *a. m.* General Warren wrote an order to his chief of artillery, in which he said:

General Ayres has gone down to support General Sheridan at Dinwiddie Court-House, and I am going to operate in front, Griffin and Crawford *independently* (p. 1288).

Very soon afterwards he went up to the White Oak road, joined his two divisions, and moved across the country the way Bartlett had previously taken, as originally ordered by General Meade in the dispatch received at 10.50 p. m. He, himself, lingered behind, and did not arrive at the junction of the Crump and Five Forks road until 8 a. m.

Of course an attack *then* in flank or rear was impossible as the enemy had fallen back, and the battle of Five Forks would never have been fought and won but for the new combinations and plans which General

Sheridan was compelled to form and execute in consequence of the failure of this applicant to carry out the one conceived by Generals Grant and Meade.

In these closing days of the great drama acting around Petersburg and Richmond, he seems either to have been bewildered and incapable of sound judgment, or else had an overweening opinion of his own military abilities and a proportionate undervaluation of those senior to himself with whom he was called upon to serve, which made him fail to give efficient support in an emergency.

The deluding reports which he sent to General Meade on this night of the 31st March as to what he should do and as to what he had done, more particularly as to taking the two divisions to move against the enemy (10.55 p. m.), and that he had ordered General Pearson (6.30 p. m.) right down to Dinwiddie; his want of knowledge of his own immediate surroundings, more particularly as to where Crawford's and Griffin's divisions were (between 9.35 p. m. and 1 a. m.), and his assumed ignorance of the condition of Gravelly Run Creek (up to 10 p. m.); his private determination not to move against the enemy as ordered until *after* daylight, thus defeating the object of the order, are all circumstances which bear hard against this applicant and which would not probably have come under the notice of the historian but for his unfortunate application for this court of inquiry.

Some other little subsidiary matters connected with this night's movements and failures of co-operation may here appropriately be considered.

Thus, was Gravelly Run Creek fordable at the Boydton plank road ?

If it was, of course there was no necessity for a bridge, and that long delay would have been avoided.

As, however, General Warren did not propose to operate during the night time with the other two divisions, it made no difference when Ayres' division arrived within supporting distance of General Sheridan.

Maj. W. H. H. Benyaurd, corps of engineers, was the officer sent by General Warren to examine the ford at about 10 p. m. (Record, p. 181) or 11 p. m. (p. 164.) He says :

> I cannot say whether it was fordable at the bridge.
> I got off the causeway and measured it *below* (p. 166).

As he did not ride into the stream himself, or measure its depth where the bridge had been, or apparently above, never having been there before, and did not notice whether or not there were places on either side where persons were in the habit of crossing with horses and wagons, fording and as he was not prepared to say here when asked (Record, p. 165) that he would not have been able to cross there if he had made an effort to do so, it is quite reasonable to assume that the bridge put up below the position of the old structure was built without due consideration.

If, therefore, respectable witnesses positively testify to fording that creek at that place at a concurrent period, it will only add to the measure of responsibility of the applicant for the needless delay; or else he knew, as can be presumed from his order to General Pearson at 6.30 p. m., that the stream was fordable, and that his instruction to Major Benyaurd "to see about building a bridge," to see if it required rebuilding, and report how long it would take (Record, p. 155), was sufficiently misleading to lead him to believe that the duty required of him was to put another bridge there rather than to see if it was possible to get a division of infantry over more expeditiously.

Capt. James W. Wadsworth, aide-de-camp to General Warren, went

down to this stream about 10 p. m., before Major Benyaurd did, and says (Record, p. 186) he does not know positively from any effort of his own how deep it was or whether it was actually fordable, but while there an officer, who had a patrol of cavalry with him, came across, and his recollection is that the horse almost swam, but he is not positive, as it was dark at the time. He was full girth deep or more.

On the afternoon of the 30th March, before dark, Lieutenant-General Sheridan returned from General Grant's headquarters via General Warren's at the Wilson House and crossed Gravelly Run. The bridge was down on the Boydton plank road, and his recollection is that he crossed above the position where the bridge had been and watered his horse in the run.

General Sheridan expressed the opinion that the stream was fordable for infantry.

Now, as those little streams run out quickly after a rain storm it is presumable that it was not as high on the night of the 31st March as when General Sheridan crossed it (Record, pp. 86, 129).

On the afternoon of the 31st March, Bvt. Brig. Gen. Horace Porter—late U. S. A., then major of ordnance and aide-de-camp to the General-in-Chief, was sent from Army Headquarters to General Sheridan at Dinwiddie Court-House.

He says he went down the Boydton plank road and found the bridge gone at Gravelly Run and had to ford the stream, and to do so went up above a hundred or two yards.

This was at nearly 4 p. m., and it was nearly dark when he and his orderly returned and forded Gravelly Run at the same place (Record, pp. 907, 908, 914).

General Porter gave the following evidence:

Q. You think a column of infantry—a division—could have crossed where you crossed in the night-time?—A. They could have crossed.

Q. If there was an emergency requiring a rapid movement?—A. Yes; I have seen infantry cross just such streams and of that depth (Record, p. 210).

On the morning of the 1st April, he went again to General Sheridan the same way, and does not appear to have noticed the bridge constructed further down by Major Benyaurd (Record, pp. 910, 916).

General Sheridan's statement to General Porter for the information of General Grant, at the interview near Dinwiddie, after the close of the battle of Dinwiddie Court-House on the 31st, is quite important.

General Porter says (Record, p. 908):

I found General Sheridan a little north of Dinwiddie on the road. He explained to me the operations of the day, and said that he had had a heavy force of infantry in front of him, and he had contested the ground and fallen back slowly; that he could hold on at Dinwiddie and vicinity; that the enemy were moving easterly and might get possession of the Boydton plank road, but he could communicate and keep his communication open by the Vaughan road. He was very impressive about this, and *he said that a situation had occurred which had been looked forward to in previous conversations with General Grant, in which the enemy had been drawn out of his earthworks and at some distance from them, and there would now be an opportunity of fighting him in the open field, and that he thought that the combined attack of his cavalry and an infantry command sufficiently large—that the enemy could be struck a very decisive blow, taken in front and flank, but that time was of the utmost importance in this movement; that the next morning might change the circumstances entirely; that the enemy's infantry would no doubt discover itself in a dangerous position and naturally fall back or be re-enforced—the circumstances might change.* I hurried back to General Grant, going this time by the Boydton plank road, from Dinwiddie. They had gone into camp, and headquarters had been established for that night at Dabney's Mill, between the Vaughan road and the Boydton plank road. I got back to General Grant a little after dark. I explained somewhat in detail the conference I had had with General Sheridan, and General Grant took a very encouraging view of the situation, and stated that it had always been his desire to draw the enemy out of his earthworks, and he hoped they might be able to strike a

blow against the infantry that had been so withdrawn. A couple of hours after that Capt. M. V. Sheridan came to General Grant's headquarters, and he brought some message, written or verbal, from General Meade. He then explained to General Grant the circumstances pretty much as I had explained to him, though bringing the situation down to a more recent time—probably two hours later. General Grant had been that evening communicating with General Meade, and General Meade sent him messages upon this subject. General Grant expressed a desire, in view of a plan that he had had in mind a few days before, of sending the Sixth Corps—to put it under the command of General Sheridan for this operation. But General Meade had suggested the Fifth Corps; in fact, there were no two courses to be pursued—the Sixth Corps was to the right, time was of importance, and it would have been impracticable to withdraw that corps and move it there in time, and by common consent the Fifth Corps was directed to move to General Sheridan's support, and the necessary messages were sent to General Meade to that effect in the evening.

Bvt. Brig. Gen. George A. Forsyth, U. S. A., who was sent by General Sheridan with the 3 a. m. dispatch of the 1st April, to General Warren, says, that when he got to Gravelly Run on the Boydton plank road, he had a short parley with the picket, who called the corporal of the guard. General Forsyth asked him if he could ford there. The corporal said he could, and remarked that somebody else had been across there.

He crossed just below the old bridge, but did not see the new bridge, which was placed still farther down stream. The reason he did not see the new bridge, hidden as it was by the underbrush and woods and sitting low to the stream, was because Major Benyaurd, the engineer officer, had placed it at least 100 feet *below* the site of the old bridge and off the main Boydton plank, so that a rough side road 100 yards long had to be constructed (pp. 156, 157, 165, 166).

General Forsyth says he had no difficulty, and, returning the same way, watered his horse in the stream (pp. 198, 199).

The curious thing about General Forsyth's evidence, he being so accurate an observer, is, as to what had become of Ayres's division.

Either it did not pass down until after General Forsyth got to General Warren's headquarters, or else it had gone off the road into the Brooke's road. The learned counsel says that General Forsyth met Ayres's division while going up the Boydton plank road, and comments on the remarkable fact that he (Forsyth) does not recollect the circumstance, which the learned counsel says is substantiated by the evidence of Bvt. Maj. Gen. R. B. Ayres and Col. W. W. Swan.

General Ayres says that he thinks "it was George Forsyth. I have been told since that it was not, but still I think it was" (p. 250).

The message, however, which General Ayres says he received from this officer (p. 260), "that he had come from General Sheridan to have him turned off on a road which he had passed so as to come in the rear of the enemy," is not reconcilable with the 3 a. m. dispatch (p. 1317) which General Forsyth was carrying to the applicant.

That General Sheridan sent some one about daylight, or just before, to meet anything coming down the Boydton plank in order to turn them off is quite probable, because he proposed to advance his cavalry at daylight, and such a message to any troops coming down the Boydton plank would save them a useless march to Dinwiddie Court-House, and make them more available by being broken off to the west.

The other witness, Colonel Swan, whom the learned counsel says recognized General Forsyth as the officer whom they met, corrected his evidence when recalled by the applicant as follows (p. 292):

> When I came here the other day I was pretty positive that his name was Forsyth, but now I am convinced that I made a mistake.

Lieut. Col. Frederick C. Newall, of General Sheridan's staff, says that on the night of the 1st April he crossed Gravelly Run at the Boyd-

ton plank, and although he believes there was a bridge there, as it was dark, he preferred the stream to the bridge from choice (p. 152.)

It has now been made plain that Gravelly Run *was* fordable, and the applicant must have known it, else how could officers and men be coming and going by that important line of communication.

General Ayres says that as he came down the Boydton plank, having passed about a mile beyond the junction of the Brooke's road, he, being at the head of the column, met a staff officer of General Sheridan, who said :

> The General wishes you to turn off a road farther back. It was not expected that you would get up as soon as this, or I would have been here sooner to meet you (p. 250).

The column merely faced about, and the left of the column turned to the left into the Brooke's road, and marched a short distance just as the day was breaking.

It is plain from General Sheridan's dispatch of 3 a. m. to Warren, sent by the hands of General Forsyth, that General Ayres must have misunderstood the officer, whoever he may have been who was sent, after General Sheridan had vainly waited all night for the promised force, to turn it at daylight into the Brooke's road and thus save it a useless march to Dinwiddie, whence he was just about to set out and push towards Five Forks.

Even this late and almost useless arrival caused the enemy, in falling back, to oblique to the left and west, away from the Dinwiddie Court House and Five Forks road.

Had General Warren taken the remainder of Griffin's and Crawford's divisions over to where General Bartlett was posted, great and conclusive results might have followed.

Several officers have testified as to the threatening position of General Bartlett's brigade when at G. Boisseau's, on the Crump road, viz.: Col. Ellis Spear, Twentieth Maine Volunteers (Record, p. 401); Capt. Charles F. Sawyer, First Maine Sharpshooters (Record, p. 413), and General Bartlett himself (p. 1166).

The enemy in their advanced position in front of Dinwiddie Court House were anxious, and the Confederate Col. Joseph Mayo, Third Virginia Rebel Infantry, of Terry's Brigade, Pickett's division, says, (Record, p. 496) they began to withdraw at 1 or 2 a. m.

> I was very anxious about it.

An effort has been made to show that General Bartlett did not rejoin Griffin's division until about daylight, but General Bartlett says he got back about 12 or between 12 and 1 a. m. (Record, pp. 1168, 1177), and Colonel Spear thinks they got back "some time before daylight."

As General Warren did not send orders to Bartlett to retire until 9.35 p. m. and at 10.50 p. m. was in receipt of orders to go out across country to where Bartlett was, it is plain that it was just as easy to move 5,000 men out as to bring 3,000 back, had he been disposed to carry out efficiently General Meade's orders.

Quite an effort has been made by the applicant here, through his counsel, to show by Confederate witnesses that much of the rebel forces under Pickett retired towards Five Forks before daylight.

What object there could be in this, unless to attempt to lessen the applicant's responsibility, by showing that even if he *had* obeyed General Meade's orders promptly and earnestly nothing would have been gained by it, is not apparent.

If the enemy could move across country, certainly General Warren also could.

The dispatch of the Confederate cavalry general, W. H. F. Lee, signed by his assistant adjutant-general, and captured by Bvt. Brig. Gen'l J. Irwin Gregg, of General Sheridan's cavalry (Record, pp. 475, 1317), shows conclusively the time fixed for withdrawal to Five Forks. It is as follows :

2 o'clock A. M., *April 1st*, 1865.

To General Beal :

General : General Lee wishes you to withdraw your command to this side of the creek, when General Pickett's infantry is withdrawn at 4 a. m. You will bivouac on this side.

L. TIERNAN BRIEN,
Ass't Adjutant-General.

The resistance which the cavalry divisions met in the advance to Five Forks, as testified to by so many officers, all proves that the enemy contested the movement as much as it was possible.

I now conclude this branch of the case with these remarks.

General Grant had sent to General Sheridan the following dispatch (Record, p. 1316):

Dabney's Mills,
March 31, 1865—10.45 p. m.

Major-General Sheridan :

The 5th Corps has been ordered to your support. Two divisions will go by J. Boisseau's and one down the Boydton road. In addition to this I have sent McKenzie's (Mackenzie's) cavalry, which will reach you by the Vaughan road. *All these forces, except the cavalry, should reach you by* 12 *to-night.*

You will assume command of the whole force sent to operate with you, and use it to the best of your ability to destroy the force which your command has fought so gallantly to-day.

U. S. GRANT,
Lieutenant-General.

General Warren's division did not put in an appearance, *nor did he send General Sheridan any word why he did not come.*

We have seen the reason why no divisions came by J. Boisseau's (intended for G. Boisseau's) was because General Warren, in his own mind, did not intend to make a night attack.

Bvt. Brig. Gen. Horace Porter, when sent again on the 1st April to General Sheridan, has graphically described the latter's feelings, as follows (Record, p. 912):

Q. On the next day, did you carry any orders to General Sheridan from General Grant?—A. Yes. Next morning, April 1, General Grant manifested a great anxiety about the movement upon our left, and directed me to go there in the morning and send him frequent bulletins during the whole day of the progress of the operations. I took about a dozen orderlies with me, showing them the nearest roads, and sent by them during the day communications frequently to General Grant. I went by the way of the Boydton plank road and the Brooke's road again, and found General Sheridan on the road leading to Five Forks, looking to the west of that road, and I think he was with General Merritt's headquarters. I suppose I reached him about ten o'clock; it may have been half an hour earlier or later than that. By General Grant's direction I told him of General Grant's anxiety in regard to the movement and the interest he felt in it, and that he wanted me to impress upon General Sheridan that General Grant was fully alive to the importance of the movement; that General Sheridan on the spot must judge of the circumstances himself; that he would be held responsible for everything that occurred in his front—must assume that responsibility and make everything bend to success. The language was made about as emphatic as it could be. That was the substance of it.

Q. Will you go on and narrate what transpired, what conversation, if any, you had with General Sheridan on the subject, where you went, and what you did at that time? —A. General Sheridan said in response to this that he fully appreciated the importance of the operations, and he expressed some disappointment that the infantry had not reached him. At that time I think General Warren had not reported to him; and

he said he had reason to hope that the infantry would have reached him during the night or the early morning, and expressed some disappointment that they had not reached him; said that the enemy was falling back—this large force of infantry, and they had lost the opportunity of striking them in flank; that they would probably fall back upon their earthworks—he had lost his opportunity. I do not pretend to repeat his language; that was the impression conveyed to me.

Q. Then what did you do, as near as you can recollect?—A. About noon, or a little before noon, General Babcock arrived from General Grant's headquarters—I had some conversation with him—and I was present when he delivered his communication to General Sheridan from General Grant, which I see is in evidence.

Q. Had General Sheridan's force pushed the enemy into their works—the cavalry?—A. About that time the cavalry had gained some advantage in the front; and there was a report that the cavalry had captured Five Forks, but it was some little position near Five Forks; the Forks themselves had not been captured.

Q. Was there firing going on at this time?—A. Yes; firing by the cavalry; I cannot tell at what particular hour.

General Grant, by his dispatch above quoted, expected that General Warren would have been within supporting distance of General Sheridan by midnight.

It was a reasonable and well-grounded anticipation, which, however, was defeated by General Warren in the manner pointed out in this argument.

Lieutenant-General Sheridan therefore adheres to the statement made in his official report, which constitutes the first cause of complaint of General Warren, viz: that—

Had he moved according to the expectations of the Lieutenant-General [Grant], there would appear to have been little chance for the escape of the enemy's infantry in front of Dinwiddie Court-House.

Before considering in detail the operations known as the battle of "Five Forks," of the 1st of April, 1865, it is desirable to give a synoptical statement of it for preliminary comprehension.

This is found in concise language in General Sheridan's examination here as a witness in answer to the question by the court (Record, p. 51);

BATTLE OF FIVE FORKS.

PRELIMINARY SKETCH.

During the 31st of March, my cavalry had been driven back from Five Forks to within a short distance of Dinwiddie Court-House, and about the time of the final attack of the enemy that evening I sent Captain Sheridan, of my staff, to General Grant, to report the condition of affairs. On his way to General Grant's headquarters, I believe Captain Sheridan stopped at General Meade's to ask that some one be sent with him as a guide to General Grant's headquarters, as he did not know where they were located. While Captain Sheridan was waiting for this guide General Meade questioned him as to the situation around Dinwiddie Court-House, and had the position of my lines pointed out to him on his maps by Captain Sheridan.

Shortly after this interview General Meade sent the following dispatch to General Grant:

"HEADQUARTERS ARMY OF THE POTOMAC,
"*March* 31, 1865—7.40 p. m.

"Lieut. General GRANT:

"Captain Sheridan, from Sheridan's cavalry, is here, and is directed to you by a staff officer. He reports that General Sheridan is just north of Dinwiddie Court-House, having been repulsed by the enemy's infantry on the dirt road running northwest from north of Dinwiddie. General Sheridan states that if he is forced to retire it will be on the Vaughan road. The staff officer leaves here to report to you.

"G. G. MEADE, *Maj. General.*"

And later the following:

"HEADQUARTERS ARMY OF THE POTOMAC,
"*March* 31, 1865—9.45 p. m.

"Lieut. General GRANT:

"Would it not be well for Warren to go down with his whole corps and smash up the force in front of Sheridan? Humphreys can hold the line to the Boydton plank

road and the refusal along with it. Bartlett's brigade is now on the road from G. Boisseau's, running north, where it crosses Gravelly Run, he having gone down the White Oak road. Warren could go at once that way, and take the force threatening Sheridan in rear, or he could send one division to support Sheridan at Dinwiddie and move on the enemy's rear with the other two.

"G. G. MEADE, *Maj. General.*"

General Grant replied as follows:

"HEADQUARTERS ARMIES OF THE U. S.,
"*Dabney's Mills, March* 31, 1865—10.45 p. m.

"Maj. Gen. MEADE,
"*Commanding Army of Potomac:*

"Let Warren move in the way you propose, and urge him not to stop for anything. Let Griffin go on as he was first directed.

"U. S. GRANT, *Lieut. General.*"

It will be observed that General Meade said that "*Warren could go at once,*" and it will also be noted that General Grant in reply told Meade to "urge him not to stop for anything."

At 10.50 o'clock p. m., March 31st, Warren received the following order from General Meade, of which I was informed by a staff officer from General Meade's headquarters. The time is not given on the dispatch, but Warren received it at 10.50 p. m.:

"HEADQUARTERS ARMY OF THE POTOMAC,
"*March* 31, 1865.

"Maj. General WARREN, 5th Corps:

"Send Griffin promptly, as ordered, by the Boydton plank-road, but move the balance of your command by the road Bartlett is on, and strike the enemy in rear, who is between him and Dinwiddie. General Sheridan reported his last position as north of Dinwiddie Court-House, near Dr. Smith's, the enemy holding the cross-roads at that point. Should the enemy turn on you, your line of retreat will be by J. M. Brooke's and R. Boisseau's, on Boydton plank-road; see one-inch map. You must be very prompt in this movement, and get the forks of the road at J. M. Brooke's before the enemy, so as to open the road to R. Boisseau's. The enemy will probably retire towards the Five Forks, that being the direction of their main attack this day. Don't encumber yourself with anything that will impede your progress, or prevent your moving in any direction across the country. Let me know when Griffin starts and when you start. Acknowledge receipt.

"G. G. MEADE, *Maj. General.*"

I submit that this order was one that required prompt obedience. General Meade said to Warren, "You must be very prompt in your movements," and again, "Don't encumber yourself with anything that will impede your progress or prevent your moving in any direction across the country." It was not obeyed in this manner; Ayres' division (which had been substituted for Griffin's) was ordered by Warren, at 11 o'clock p. m., to move down the Boydton plank-road to Dinwiddie Court-House, and the same order directed the other two divisions to mass wherever they would be reached by the staff officer bearing the 11 p. m. order. Ayres moved down the Boydton plank road as directed, and, as stated in his report, was met in the morning by one of my staff officers, who conducted him into a road leading from Dinwiddie Court-House to the White Oak road, and thus coming upon the left of the enemy. My object in turning Ayres upon this road was, that having left Dinwiddie Court-House and advanced on the enemy, I wished to save Ayres a fruitless march to the court-house.

Griffin's and Crawford's divisions moved after daylight, as their official reports state, in obedience to orders from General Warren, he having, as regards these two divisions, disregarded the orders of General Meade, which directed him to be very prompt in this movement.

During the night of March 31st I received from General Grant the following dispatch, written at 10.05 o'clock p. m.:

"DABNEY'S MILLS,
"*March* 31, 1865—10.05 p. m.

"Major-General SHERIDAN:

"The Fifth Corps has been ordered to your support. Two divisions will go by J. Boisseau's and one down the Boydton road. In addition to this I have sent Mackenzie's cavalry, which will reach you by the Vaughan road. All these forces, except the cavalry, will reach you by 12 to-night.

"You will assume command of the whole force sent to operate with you, and use it to the best of your ability to destroy the force which your command fought so gallantly to-day.

"U. S. GRANT, *Lieut. General.*"

General Warren's corps not having reached me by 12 o'clock, in accordance with these expectations of General Grant, I did what I thought the next best thing, and I therefore sent by one of my staff officers the following dispatch, requesting him to attack at daylight:

"CAVALRY HEADQUARTERS, DINWIDDIE COURT-HOUSE,
"*April* 1, 1865—3 a. m.

"Major-General WARREN,
"*Commanding 5th Army Corps:*

"I am holding in front of Dinwiddie Court-House, on the road leading to Five Forks, for three-quarters of a mile, with General Custer's division. The enemy are in his immediate front, lying so as to cover the road just this side of A. Adams's house, which leads across Chamberlain's bed or run. I understand you have a division at J. Boisseau's; if so, you are in rear of the enemy's line, and almost on his flank. I will hold on here. Possibly they may attack Custer at daylight; if so, attack instantly and in full force. Attack at daylight anyhow, and I will make an effort to get the road this side of Adams's house, and if I do you can capture the whole of them. Any force moving down the road I am holding, or on the White Oak road, will be in the enemy's rear, and in all probability get any force that may escape you by a flank movement. Do not fear my leaving here. If the enemy remains I shall fight at daylight.

"P. H. SHERIDAN, *Major-General.*"

I began to move against the enemy at daylight, and then discovered his infantry line retiring from my front.

The two divisions of the 5th Corps, that General Grant had informed me would move by J. Boisseau's, did not come on that road the previous night, nor did they appear on the enemy's rear at daylight as requested in my 3 a. m. dispatch. As a matter of fact, they were just about then breaking from the bivouac in which General Warren had placed them the night before and from which they had not moved. The enemy remained in my front during the night; Ayres says he saw him hastily moving off, after his arrival, and the reports of General Merritt, Hayes, and others confirm this. In addition, however, I submit the following dispatch from J. Irwin Gregg, commanding a brigade of the cavalry, inclosing a captured dispatch of General Lee's, which shows that Pickett's infantry was to withdraw at 4 a. m., April 1st:

"HEADQUARTERS 2D BRIGADE, 2D DIVISION CAVALRY CORPS,
"*April* 1, 1865.

"Major-General SHERIDAN:

"GENERAL: I am just in receipt of a report from Lieut. Colonel commanding 8th Pa. Cavalry, which says he has driven the enemy two miles from this point on what I call the Dinwiddie Court-House road. From the firing the resistance seems to be determined. The country is all woods; no enemy has moved in the direction of Stoney Creek, except a picket of fifteen or twenty men.

"I send a dispatch of General Lee's.

"J. IRWIN GREGG,
"*Brevet Brigadier-General.*"

[Enclosure.]

"2 O'CLOCK A. M., *April* 1, 1865.

"To General BEAL:

"GENERAL: General Lee wishes you to withdraw your command to this side of the creek, when General Pickett's infantry is withdrawn at 4 a. m. You will bivouac on this side.

"L. TIERNAN BRIEN,
"*Assistant Adjutant-General.*"

I would in this connection refer the court to the official report of General Pickett of this battle, in which he states that he fell back from my front at daylight, April 1st, to Five Forks, "pressed by the enemy."

As the enemy fell back he was followed by Merritt's two divisions, and I at this time determined to drive him to Five Forks: still hoping that Griffin's and Crawford's divisions would come in at J. Boisseau's in time to effect some results.

He was pushed rapidly back, and at 8 or 9 o'clock, General Bartlett says his brigade joined Ayres' division, which was moving on the right of the cavalry. The point of junction was near J. Boisseau's, and at this point the whole of the 5th Corps was directed to mass for the purpose of refreshing the men, and to await developments.

I may state here that I was in error in my report in saying *J.* Boisseau's house, in my dispatch of 3 a. m. to General Warren; I should have said Dr. *G.* Boisseau's. I

had learned from the reports of my officers who had returned from General Grant and General Meade, the point that Bartlett's command occupied, and understood that a division was there, and although I wrote *J.* Boisseau in the order, *J.* Boisseau's house could not have been in my mind, because my cavalry had had possession of it during the greater part of the afternoon of the 31st, and after they were driven from it the enemy held it.

I was considerably disappointed that we had thus far attained no other result than obliging the retirement of the enemy; but feeling confident he would not give up the Five Forks without a struggle, I pressed him back to that point with the cavalry.

The 10.05 dispatch of the 31st, from General Grant, had informed me that all the support he had ordered, consisting of the whole of the 5th Corps, and Mackenzie's cavalry, should reach me, with the exception of the cavalry, by 12 o'clock that night. The order to Warren to move and the exigencies which Generals Grant and Meade considered that the situation demanded, were of such a nature that they did not admit of anything but prompt and resolute compliance; and I felt that there was no circumstances in existence during the night which should have prevented the movement of these two divisions in obedience to the order, and not enough to justify the delay at the bridge by the other division, as the creek could have been forded. I do not remember at what time General Warren reported to me, but his official report says about 11 a. m. April 1st, and I have no reason to doubt its correctness.

I now quote from my report:

"I directed General Warren to hold fast at J. Boisseau's house, refresh his men, and be ready to move to the front when required; and General Mackenzie was ordered to rest in front of Dinwiddie Court-House until further orders.

"Meantime, General Merritt's command continued to press the enemy, and by impetuous charges drove them from two lines of temporary works, General Custer guiding his advance on the Widow Gilliam's house, and General Devin on the main Five Forks road.

"The courage displayed by the cavalry, officers and men, was superb, and about 2 o'clock the enemy was behind his works on the White Oak road and his skirmish line driven in.

"I then ordered up the 5th Corps on the main road, and sent Bvt. Major Gillespie, of the engineers, to turn the head of the column off on the Gravelly Run Church road, and put the corps in position on this road obliquely to, and at a point but a short distance from, the White Oak road, and about one mile from the Five Forks. Two divisions of the corps were to form the front line, and one division was to be held in reserve in columns of regiments opposite the centre.

"I directed General Merritt to demonstrate as though he was attempting to turn the enemy's right flank, and notified him that the 5th Corps would strike the enemy's left flank, and ordered that the cavalry should assault the enemy's works as soon as the 5th Corps became engaged, and that that would be determined by the volleys of musketry. I then rode over to where the 5th Corps was going into position, and found them coming up very slowly.

"I was exceedingly anxious to attack at once, for the sun was getting low, and we had to fight or go back. It was no place to intrench, and it would have been shameful to have gone back with no results to compensate for the loss of the brave men who had fallen during the day."

At one o'clock p. m., Gen. Warren says in his official report, he received my order to move his corps from the point where it was massed at J. Boisseau's house, and shortly thereafter he reported to me. I think he is correct as to the time.

I explained to him the state of affairs, and what my plans were. I then directed General Merritt, who commanded the cavalry, to make a demonstration as though attempting to turn the enemy's right, and ordered that the cavalry should assault the enemy's works as soon as the 5th Corps became engaged. I had then received the authority from General Grant to relieve General Warren. This authority was verbal and brought by General Babcock. It authorized me to relieve him in case I thought it for the best interests of the service. I cannot now recall the exact wording of the message. It was, however, left to my judgment. I rode over to where the 5th Corps was to go into position and found it slowly coming up. The distance from J. Boisseau's house to Gravelly Run Church is two miles, and the formation of the corps near the latter place was accomplished about 4 p. m. Three hours had elapsed from the time the order was given General Warren, and this time had been consumed in transmitting the order and in marching two miles and forming the corps. Only a few moments should have been lost in transmitting the order from General Warren to his division, they being massed as before stated. While the corps was arriving and forming, I was anxious that it should come up rapidly, expressing to General Warren my fears that the cavalry would expend its ammunition before the attack could be made, and I also feared that part of General Lee's force defending Petersburg and strongly intrenched at the crossing of the Claibornes road, about three miles away, might

move down the White Oak road, and by attacking or even threatening my flank, prevent me from accomplishing my design on Five Forks; and I did not know then, nor do I know now, of any especial effort General Warren made to bring up his corps, nor did I see any indications of solicitude for the active execution of his orders in order that the combined movement might produce the success intended, although I was with him the principal portion of the afternoon, until the battle commenced.

His corps had been divested of all impediment. It even had no artillery, and although the ground was muddy from recent rains it consumed three hours of valuable time in marching two miles and forming in line of battle, with which I was dissatisfied. My directions to General Warren for the formation were, to place two divisions in the front line, and hold one division in reserve in rear of his centre (he says the right in his official report, in which I have since discovered he was correct). I knew that the left flank of the enemy was turned to the rear, so as to make a right angle with the White Oak road. I did not know the extent of that reserve flank, nor its strength, but it was the objective point of the attack that was made by the 5th Corps, and when it was carried the remaining portion of the enemy's works would be taken in rear. I presumed that an extent of front of two divisions was enough to cover the works of the enemy, and supposing that I would meet with a pretty obstinate resistance I put one division in rear as a reserve and for the purpose of turning the extreme left of the enemy's line, after the two front divisions and Merritt's cavalry had become hotly engaged. This was the plan of battle usually followed in most of the engagements I fought during the war; precipitating a turning column close in on the enemy's flank when ascertained, and after I had engaged his whole front; and Griffin had been instructed to this effect by myself in person.

The front of the corps was lying obliquely to the White Oak road, and when that road was reached the corps was to swing around to the left perpendicular to the White Oak road, and keep closed to the left. Ayres obeyed this order, and the movement brought him directly on the enemy's flank and in front of his works, which were thrown to the rear, and which were about one hundred yards in length. Crawford's division, on reaching the White Oak road, did not wheel to the left as ordered; in fact, it deflected to the right and continued to move from the objective point, making its co-operation at the desired moment extremely uncertain, and rendering disaster possible.

It went so far to the right, breaking the line of battle, that his left finally came out near C. Young's house, on the Ford road, where he first encountered the enemy in any considerable force, who was then retreating from his works, having by this movement broken the line of battle and completely isolated his division, and also prevented Mackenzie's cavalry from occupying the position which it had been directed to gain on the Ford road, near where it crossed Hatcher's Run.

It will thus be seen that the diversion of Crawford destroyed the plan I had in my mind on making the attack, and the gap left by him was taken advantage of by the enemy, and he succeeded in throwing the right of Ayres's division into confusion, which I believe would have resulted in disaster but for the exertions of General Ayres and the officers of his command. I do not recollect that General Warren was present anywhere near the line on this occasion, or of any efforts he made to bring Crawford's division into the position contemplated by the orders, and I did not know then, nor do I know now, of any directions which he gave at this portion of the line with a view to remedying the disorder here.

I wish to direct the attention of the court to the fact that the place called Five Forks was not the essential point in this battle; but the angle made by the enemy refusing his left flank was the essential and objective point, and that the point called Five Forks had no more real significance than any other portion of the enemy's line fronting on the White Oak road.

The angle, and that portion of the enemy's works which were perpendicular to the White Oak road, was the point on his line on which I had directed the attack of the 5th Corps, and General Crawford did not conform to the instructions in moving towards the Ford road in an oblique line, instead of wheeling to the left and keeping closed on Ayres.

His exposed left flank, only, encountered the enemy, which would not have been the case had he wheeled to the left. It was not contemplated that he should gain the Ford road by that wide detour, isolating his division from the rest of the Fifth Corps, General Mackenzie having previously received orders to go to that road and capture any force fleeing down it. Crawford's movement displaced Mackenzie, however, and the latter was crowded over towards Hatcher's Run. Crawford's division captured some artillery and a number of prisoners on the Ford road, the order for which was originally given by one of my staff officers, Colonel George A. Forsyth, to Colonel West Funk, of the One hundred and twenty-first Penn. Regiment, who was in command of two regiments. Previous to this, however, the enemy had been driven out of his entire line of works, and Colonel Funk's capture was the result and not a part of the main attack.

After the battle was practically over it became necessary for me to consider the position of my command with reference to the main rebel army. I felt that though my troops were victorious they were isolated from the Army of the Potomac, and the extreme left of that army having been thrown back so as to occupy a position fronting on or parallel to the Boydton plank road, while the enemy held strongly at the intersection of the White Oak road and the Claiborne road, and directly in my rear, and distant from Five Forks not to exceed three and a half miles, I surmised that they might march down the White Oak road that night or early next morning and take my command in rear. It was therefore necessary for me to make new dispositions to meet this new emergency.

General Warren having disappointed me in the movement of his corps and in its management during the battle, in the new emergency that had arisen, and by the new phase that had been given our situation about Richmond by the battle just won, I felt that he was not the man to rely on, and I deemed it, after due deliberation, to be in the best interest of the service to relieve him, which I accordingly did, and I put the corps under the command of General Griffin.

I directed General Griffin, after pursuing the enemy a short distance, to withdraw the Fifth Corps from the pursuit as quickly as possible and form it in line of battle at right angles to the White Oak road near Gravelly Church, facing towards the enemy, who was occupying the position heretofore referred to, at the junction of the White Oak and Claiborne roads.

DID GENERAL WARREN PROPERLY EXERT HIMSELF AT FIVE FORKS?

We now come to the consideration of the second formal complaint by General Warren as to the report of General Sheridan.

General Sheridan says that General Warren—

Did not exert himself to get up his corps as rapidly as he might have done, and his manner gave me the impression that he wished the sun to go down before dispositions for the attack could be completed (Record, p. 48).

There has been an effort on the part of General Warren to show to this court that he sent orders to his officers to hurry up the divisions of his command; and that he, by making diagrams and specially instructing his officers as to his movements, showed a proper degree of zeal in the execution of the orders of his superior.

The evidence of General Sheridan, which I have just read under the previous heading, has graphically depicted, in a condensed form, the movements which culminated in the great victory at Five Forks.

It must not be forgotten that the three divisions of the Fifth Corps were lying on the right or easterly side of the road that ran from Dinwiddie Court House, up to the Gravelly Run Church road.

Two of these divisions were massed at the junction by J. Boisseau's, a distance of two and three sixteenths of a mile from Gravelly Run Church (Record, p. 166), which was a little in advance of the position where the final formation was made; and the third, under Ayres, was not quite three miles from Gravelly Run Church.

These troops were massed by divisions. They had no wagons or artillery with them, and were perfectly free to move in any direction without any impediment in the form of trains or camp and garrison equipage. They had had abundant opportunity for rest from the time of their arrival early in the morning up to the time of the receipt of the order which carried them to Gravelly Run Church.

General Warren says that at forty minutes past twelve he wrote a certain dispatch about getting ammunition, and so forth, aud that he received General Sheridan's order to bring his division up after that; he fixes it as between that and 1 p. m., or about 1 p. m., when he rceeived the order to move forward.

It is worthy of remark, as bearing upon the inclinations and disposition of General Warren, that although he came over across country in the morning to the Dinwiddie and Five Forks road, where the Crump road joins it, where he arrived at about eight o'clock, as he says himself,

and joined Griffin's division halted there (p. 740, Record), yet he never undertook *personally* to communicate with General Sheridan until about 11 a. m. (p. 741, Record). He says :

Then I thought it was best for me to go up the road and find General Sheridan and see what he would require of me. I found him on the west side of the road that leads up to Five Forks, on the southwest side of it, a few steps off from the road. I found his headquarters, I might say (p. 741, Record).

After he had been there an hour with Griffin's division, before he went up to find General Sheridan, and at nine o'clock he received the following dispatch (p. 740, Record) :

HEADQUARTERS ARMY OF THE POTOMAC,
April 1*st*—6 a. m., 1864 (5).

Maj. Gen. WARREN :

Gen'l Meade directs that in the movements following your junction with Gen'l Sheridan, you will be under his orders, and will report to him. Please send a report of progress.

ALEX. S. WEBB,
B. M. G., C. O. S.

Nevertheless, although he thus received a written order from his own army commander directing him to report to General Sheridan an hour after he had joined Griffin's division he permitted two hours more to elapse before attempting personally to communicate with General Sheridan, meanwhile remaining inactive at the Crump road.

His explanation, such as it is, is found in his cross-examination at page 786 :

Q. You received General Meade's written order to report to General Sheridan about nine o'clock in the morning ?—A. Yes.

Q. When you arrived on that Crump road in supporting distance at eight o'clock, why did you not at once report to him ?—A. Because he left word with General Griffin to remain there, and he would send us word.

Q. That was so far as the movement of troops was concerned ?—A. Yes ; well, I concluded that it applied to me, too.

Q. You received from General Meade this order to report at 9 a. m. You did not, however, report in person until 11 ?—A. Yes.

Q. Did you not think it your duty to see General Sheridan ?—A. I had already directed General Griffin to report to him, and General Ayres had reported to him, but as he left word behind to remain there and he would send for me—he did not leave any word for me to find him—I stayed where he told me to stay.

Q. You did not send any staff officer or make any efforts to find him inside of those three hours that you were there ?—A. Yes ; when I came there I considered that I was doing just what he had told us to do.

Q. But he never told you to do that ?—A. I understood that the message was a message to me.

Q. From General Griffin ?—A. A message from General Sheridan through General Griffin to me.

Q. That you were all to remain there ?—A. Yes ; I supposed, and I think it was the truth, that General Griffin told him I was to come on with General Crawford, and that he understood fully all about it and that was the thing he, General Sheridan, expected me to do.

Q. Was not that the order, simply for the divisions to halt there and get their breakfast, that came from General Sheridan ?—A. It did not come to me as to getting their breakfast ; of course they did that.

Q. If you had not received that order, then, you would have considered it your duty to report immediately to General Sheridan ?—A. Yes.

Q. And then you did not go and report to General Sheridan?—A. I went up; I began to be a little anxious, having waited so long under that order.

Q. Then you did not consider that that order absolutely held you, a mandatory communication, there personally ?—A. No.

Q. So that after waiting three hours you then concluded that you had better see General Sheridan and report in person ?—A. Yes ; and I will mention further that during that time I got my breakfast—you said we waited three hours—it was only two hours after I received General Meade's dispatch, and one hour I had waited before. But I regard General Meade's dispatch as not of any weight on me, because I should

have acted the same way without it. General Sheridan was ranking officer; I would report to him as a matter of course.

Q. But, as a matter of fact, you did not report to him until after you had received this order?—A. I considered that I had practically reported to him when I sent word to the head of my column to report to him, and he gave them instructions what to do; that was instructions for me, as I considered.

This comprises the explanation that General Warren gives why he did not report to General Sheridan in person at an earlier hour.

Griffin's division had arrived before he himself did in person, and had been reported to General Sheridan at 7 a. m. (p. 234).

It is for the court to consider, under military practice, whether or not this applicant did his whole duty in permitting that length of time to elapse before he reported in person to General Sheridan.

He says he considered that he had *practically* reported to him when he sent word to the head of his column to report to him.

If he was at all responsible as commanding officer for the movement of the Fifth Corps, orders for this movement should be received through him. He was the next ranking officer to General Sheridan on the field.

He admits that he did not consider the instructions for Griffin's division to remain where it was mandatory upon himself, because he subsequently went to find General Sheridan nearer the front.

The explanation is not a strong one.

Had he been earnest and anxious for the success of the operations, when he first arrived he would have immediately sought the commanding general to let him know that he was there in person, and in order to ascertain exactly what was being done and what was proposed to be done.

But he seems to have resolved upon a line of conduct for himself contrary to the one I have indicated.

Subsequently, after three hours' reflection, he says he began to be a little anxious, and then went to report in person as he ought to have done immediately upon his arrival.

Even on his own assumption that the order to Griffin's division to remain where it was implied an order to him personally to remain there when he came up, although his divisions were scattered along that road, military custom would have required that he should immediately upon his arrival have at least sent a staff officer to General Sheridan, acquainting him with his presence upon the field.

Even this he did not do, and the conclusion must be that he was either indifferent or inattentive.

All this time the cavalry, which had moved out from Dinwiddie at daylight, were gradually pressing the enemy back into their intrenchments, and skirmishing was being carried on.

The concurrent evidence as to this skirmishing is so considerable that it is hardly necessary to allude to it.

Lieut. Col. J. W. Forsyth, U. S. A., says (Record, p. 192): "There was heavy fighting."

Lieut. Col. George A. Forsyth, aide-de-camp, U. S. A., says (Record, p. 201):

"Once or twice there was pretty sharp firing. * * * Our troops kept pressing them more or less."

Bvt. Col. A. C. M. Pennington, Captain Second United States Artillery, then commanding the First Brigade, Third Cavalry Division (Custer's), says that his brigade skirmished all the way up from Dinwiddie (p. 660).

Maj. Gen. Wesley Merritt, United States Volunteers (colonel Fifth United States Cavalry), says (Record, p. 844) that the cavalry in its ad-

vance towards Five Forks met resistance ; that he first saw a picket line as he moved out from Dinwiddie, and then "a stronger force"; and that he saw no led horses over on the Gravelly Run Church road.

Brig. Gen. Francis T. Sherman, United States Volunteers, Inspector-General of the Middle Military Division, says (Record, p. 856), that there was skirmishing in going out, and that the enemy got into their works at noon.

Bvt. Lieut. Col. George L. Gillespie, Major, Corps of Engineers, U. S. A., says (Record, p. 931) that the cavalry met resistance at several points in moving out.

Lieut. Col. C. Durland, Seventeenth Pennsylvania Cavalry, Fitzhugh's brigade, says (Record, p. 955) substantially the same, and that they met two barricades, and at the second "had a right lively time."

Several officers of Pennington's brigade, Bvt. Col. A. M. Randol, Captain First United States Artillery (Colonel Second New York Volunteer Cavalry) (Record, p. 690), and others, have spoken of the fighting in moving up that they had in the "Gilliam field," where the enemy used artillery upon them.

Maj. H. E. Alvord, Second Massachusetts Cavalry, of Gibbs' brigade, then aide-de-camp, says they reached the line of works at 1 p. m. (Record, p. 818).

Capt. H. G. Wood, Twenty-fifth New York Cavalry, on the staff of Stagg's brigade, First Cavalry Division, says (Record, p. 828) that "there was skirmishing all that forenoon."

Maj. E. M. Baker, Second United States Cavalry (Record, p. 841), has described with some degree of particularity the charge of the First Regular Cavalry upon the enemy's temporary works while going up from Dinwiddie Court-House towards Five Forks ; and that they arrived in front of the works on the line of the White Oak road between 12 and 1 p. m., having met a heavy line of the enemy's skirmishers all the way up.

These quotations could be increased from the testimony of other witnesses; but they are sufficient to show that there was a continued firing and skirmishing and pressing back, by the cavalry divisions, of the enemy, until he was finally put into his works, between 12 and 1 p. m.

Meanwhile, up to eleven o'clock, General Warren had done nothing at the temporary bivouac of Griffin's division by the road side, except to get his breakfast (Record, p. 786).

Now, that General Sheridan wished to see General Warren, and expected to see him, is evident from the testimony of Brig. Gen. Chamberlain, of Griffin's division, of the Fifth Corps, who says (Record, p. 279) that at seven o'clock on the morning of the 1st of April, he met General Sheridan at the Five Forks road running from Dinwiddie Court-House up ; his brigade had passed J. Boisseau's house going south, but not as far down as Brookes's house at the angle. He says he had a conversation with General Sheridan in the vicinity of J. Boisseau's, and that he met General Sheridan "in his advance" with the cavalry.

Q. Did he make any inquiries as to why those divisions had not come down sooner? —A. His first inquiry was *where General Warren was*, and I explained to him that he was in the rear of the column. He then wanted to know why the division had not come down before.

Q. Where was the enemy's line at the time that the cavalry were pushing them back towards Five Forks?—A. I cannot tell; there was some little skirmishing in that direction.

Q. Sometimes brisker than at others?—A. Yes; what I would call a skirmish in the woods.

Q. Did you mass your brigade, and was your division massed so as to leave the roads clear?—A. Yes; we massed so as to leave the roads clear for Crawford.

Q. Can you recollect any wagons on that road ?—A. I cannot.

Q. Or any obstacles to prevent the march to Gravelly Run Church ?—A. It may seem strange, but I do not recollect that. I know we were moving with the cavalry, and things were pretty well mixed up there ; but there was no great obstacle.

Q. Crawford's division was massed just to the north of your own ?—A. Across the road, to the north.

Q. What time did you receive your orders to move towards Gravelly Run Church ?

* * * * * * * *

Q. About what time, as near as you can recollect at present ?—A. I cannot recollect much more accurately than that ; I should say afternoon, after twelve o'clock, perhaps it was one o'clock. * * *

Q. Do you recollect how long the distance was from where you were massed, up to Gravelly Run Church ?—A. I call it a short march ; I should think not more than two miles ; it might be something over two miles.

Q. What time did you get into position to move into action ?—A. Just before four o'clock, I should think.

Q. Ayres did not get in position until after that ?—A. The understanding was, that we were to move the moment that he was in position.

Thus, from the evidence of Ex-Governor Chamberlain, it is apparent that General Sheridan was desirous of knowing where the corps commander was; and, next, that he did not understand why those divisions had not come down into a position to be of use at an earlier hour.

The failure of the Fifth Corps to co-operate by a flank and rear movement during the night of the 31st of March, as had originally been suggested, even by Warren himself, after the enemy had been lured so far from their line of works, and their retreat to the White Oak road out of reach of an effective flank and rear attack by the Fifth Corps on the morning of April 1, had made new combinations and an entire new plan of operations necessary.

Consequently General Sheridan was not able to decide definitely upon a plan of battle until he had finally fixed the enemy in their intrenchments on the line of the White Oak road.

He was not able even to say whether they would remain there or whether they would continue to retreat until they had put the more defensible position of Hatcher's Run in front of them, where their left flank would have been protected by their own line of works on the White Oak and Claiborne roads.

Consequently, when General Warren did see the necessity of reporting in person to General Sheridan at eleven o'clock, there was no time to discuss past failures, but the entire attention of the general commanding in chief had to be given to the new combinations necessary under the circumstances.

Finding that the enemy was disposed to stand fast in his line of works along the White Oak road at Five Forks, he was able to determine upon a movement, to be made by the Fifth Corps, as daring as it subsequently proved successful.

But it was one of those movements which required unusual energy, enthusiasm, and rapidity of movement on the part of those who were called upon to execute it.

It was at this juncture that General Warren's lack of appreciation of, or capacity for, the emergency became manifest to his commanding general.

He did not, of course, assume to disobey any positive orders that he might receive ; but he apparently had no faith in their successful execution or in the successful execution of the plan of battle.

It is quite possible that he did not have confidence in the ability of his commanding general to successfully carry out the plan of battle which was conceived about the time he reported to General Sheridan, between eleven and twelve o'clock in the morning ; or that he deemed

it too venturesome and requiring too great risk to be taken by the Fifth Corps; because, as we shall see a little later, he expressed himself apprehensive that they would be put in a "tight place."

At about ten minutes of one o'clock, if not a little before, he received orders for his divisions, then massed by the roadside, to move up to the vicinity of Gravelly Run Church.

The concurrent weight of evidence is that they were not formed in line near the church and ready to move into action until half past four o'clock.

The furthest division, much the smallest division, General Ayres', did not have quite three miles to march; and they were ready to move when they received their orders to come up. Nevertheless, and the fact is patent and undeniable, it took $3\frac{1}{2}$ hours to move on that road, and get into position 12,592 men.

Some witnesses have said, who were called on behalf of the applicant, that they thought they moved up as rapidly as possible.

Bvt. Maj. Gen. R. B. Ayres, Colonel Second United States Artillery, whose division was furthest from the vicinity of Gravelly Run Church, has expressed the opinion (Record, p. 253) that on that road, with all the possible difficulties that had been urged relative to possible obstructions as to marching up and forming—

"It strikes me the thing could probably have been done in a couple of hours."

Now, who was responsible for this delay?

It was the duty of the commanding general of the whole operations to hold the corps commander responsible; and if from any cause the corps was not in a proper condition of discipline and efficiency, he was the one to suffer the consequences, provided he had been long in command of it.

General Sheridan charges that General Warren did not exert himself to get up his corps as rapidly as he might have done.

The sun set upon the 1st day of April at twenty-one minutes past six o'clock (Record, p. 806).

General Sheridan was forced to the necessity of fighting that battle inside of *an hour and a half*, because after dark in the woods it was impossible to move.

At the same time the White Oak road, broad and unobstructed, ran from the point where Gravelly Run Church road met it, eastwardly to the main line of the Confederate works (from whence General R. E. Lee had issued the day before), a distance of but three miles away.

At any moment General Lee might have sent re-enforcements down the line of that White Oak road to Pickett, the Confederate Major-General commanding the enemy at Five Forks, and they would have required the employment of a portion of the Fifth Corps in order to retard them sufficiently long to enable a movement to be made against Pickett.

It was, as I have said, a daring proceeding on the part of General Sheridan, and a masterly movement, showing all the genius of the true soldier, because General Lee appreciated fully and keenly the effect of an onslaught upon Pickett, as testified to by the Confederate Major-General Eppa Hunton (Record, p. 626), and did actually send re-enforcements; but in consequence of the vigorous charge which Mackenzie had made up the Crump road to the White Oak road, and so towards the main line of the works on the Claiborne road, the judgment of General Lee was so imposed upon as to make him believe that an assault would be possibly made on the works there.

Consequently, such re-enforcements as were sent, were sent northwardly inside of their own works, under Hunton, and then westwardly to Hatcher's Run; but, in consequence of the five miles detour they had to make, they did not arrive until too late to be of service (Record, p. 627).

The quick determination of General Sheridan to fight a battle that afternoon at Five Forks, and the interposition of the Fifth Corps between the rebel works there and the main line of works at the junction of the White Oak and Claiborne roads, so that the Fifth Corps would fight with their backs to General Lee's main forces, appears to have been a too rapid conception in its generalization for the formality of General Warren's mind.

He seated himself at Gravelly Run Church and involved himself in a mass of details.

He made a diagram, like a draughtsman, of the position his corps was to take, and wrote underneath the instructions (Record, p. 1222).

He duplicated this, and triplicated it and quintuplicated it for his division and brigade commanders, so that they might have copies of a movement than which nothing could be much simpler.

This seeming peculiarity of mind is further shown in the evidence of Maj. E. B. Cope, aide-de-camp on his staff, who says, in reference to the closing skirmish, at dusk, in the "Gilliam field," of that day's battle, that he was not there, and then explained his movements as follows (Record, p. 331):

"I think I was part of my time on the Ford road, north. I had a man taking sketches an assistant taking in what he could; and I was making some observations myself."

In other words, immediately after the enemy had been driven from a particular piece of ground, the principal confidential staff officer of the applicant was, with the assistance of a draughtsman, making sketches of the country.

This, of course, he never would have done without instructions from his commanding officer, who, it would seem, subsequently suddenly bethought himself of the necessity of endeavoring to reinstate himself in the eyes of his commanding general by personal risks at the last moment of daylight in the "Gilliam field."

The bald fact that the three divisions of the Fifth Corps were not formed in line of battle until at least half past four o'clock, after having received their orders by one o'clock, is sufficient to show, from the distance they had to march, and the absence of any obstruction, that there was great and unexplained delay.

General Warren thinks that it was sufficient if he sent his staff officers to hurry up the divisions.

The mere fact that he did send his staff officers to hasten up the divisions is an evidence that there was delay.

Meanwhile he sat making sketches in matters of detail, instead of going himself, if possible, to hasten their march.

I submit, under the imperative urgency of the occasion, that it was the duty of General Warren to have gone in person, and have endeavored to hasten by his personal encouragement the march of the troops.

At this time Bvt. Brig. Gen. J. W. Forsyth, U. S, A., says (Record, p. 196) that General Sheridan was impatient "about the delay in getting in position, and the loss of time, and the blood that was flowing, before they could be brought up to relieve the cavalry."

Col. R. M. Brinton, aide-de-camp to General Griffin, says (p. 311), "I

cannot recollect any obstructions;" and, as to wagons, "I did not see anything of the sort."

Bvt. Brig. Gen. H. C. Bankhead, U. S. A., says (p. 339) he found Generals Sheridan and Warren sitting on a bench before the advance began:

"About that time General Sheridan seemed to be annoyed at the apparent delays, as he supposed; he said it would probably he night, after dark, before we could get into action; I forget exactly the remark."

Bvt. Brig. Gen. Richard Coulter, commanding Third Brigade of Crawford's division (Record, p. 349), says he rcollects some cavalry horses on the road, but did have to halt on that account.

Bvt. Lieut. Col. W. T. Chester, aide-de-camp to General Crawford, says (Record, p. 382):

"My recollection is, it was rather a slow march; there was some impediment in the road, of one kind or another."

Bvt. Lieut. Col. J. P. Meade, aide-de-camp to Crawford, says (Record, p. 329) he didn't know how quickly the two divisions came on; and (on page 395) he supposes Crawford's division was at Gravelly Run Church an hour or more.

Bvt. Maj. G. McLaughlin, captain One hundred and fifty-fifth Pennsylvania Volunteers, on Griffin's staff, says, at page 544, that he thinks it was perhaps more than two hours that they were at the church before they were formed. Says he:

I recollect distinctly we rested a long time, and I think we laid down and went to sleep.

The Rev. M. Porter Snell, first lieutenant Thirty-ninth United States Colored Troops, aide-de-camp on Crawford's staff, also thinks, on page 549, that it was an hour or two that they were at Gravelly Run Church before they were formed, and says, "I know I went to sleep."

Capt. James W. Wadsworth, aide-de camp to General Warren, now comptroller of the State of New York, says, at page, 184, that he was sent down from near the J. Boisseau house to General Ayres with orders for him to come up about midday, between twelve and one o'clock.

Maj. E. B. Cope, aide-de-camp to General Waren, in an official report which he made at Warren's request, when with him at Petersburg, *April* 13, 1865, after describing accurately where and how the divisions were massed, says, "*About twelve o'clock* the corps was ordered to move in the direction of Five Forks, the first division leading," &c.

From this minute report, which Cope made within a few days of the action, while with General Warren, I assume that the latter is mistaken when he says it was about one o'clock that General Sheridan gave him orders to move up, and that the order to move up must have been given a considerable time before.

Bvt. Brig. Gen. H. C. Bankhead, already referred to, says, at page 338, that he went with General Warren at about eleven o'clock (which coincides with General Warren's statement; to see General Sheridan. They talked some time together, and General Sheridan left General Warren. About fifteen minutes afterwards a cavalry staff officer brought a message, some instructions, for General Warren, and he "immediately told me to go and bring up the divisions."

He speaks of led horses on the road, and that he spoke to Col. James W. Forsyth, he thinks, about it.

He says, at page 338, "The roads were very muddy and blocked up with a good many led cavalry horses, and that might have caused some

delay, but they moved out as fast as possible"; and on page 343, he further said there was no difficulty in moving the led horses off the road.

The learned counsel for the applicant (Mr. Stickney), at page 344 says he does "not attach any importance to that."

General Bankhead thought there was a little delay when he was coming up with the head of Crawford's column, but would not say; General Warren (Record, p. 344) sent him back to hurry them up.

General Warren says he told General Sheridan at Gravelly Run Church that it would take until four o'clock to get the troops up (Record, p. 746).

Meanwhile the cavalry were holding the enemy in their line of works by a continual skirmish fire, and were expending all their ammunition.

Bvt. Capt. William Marks, first lieutenant Pennsylvania Cavalry, Fitzhugh's brigade, was sent back with twenty-five mounted men to bring up ammunition on horseback, and met the Fifth Corps coming up, marching easily, and thought they were taking their time (Record, p. 980).

Capt. A. C. Houghton, Second Ohio Cavalry, aide-de-camp to Pennington, of Pennington's brigade, says (Record, p. 986) their ammunition became exhausted and they had to send for more.

Maj. W. H. H. Benyaurd, Corps of Engineers, U. S. A., then temporarily engineer officer on General Warren's staff, was asked these questions, he having been sent down to hurry up Ayres (Record, p. 175):

Q. You say it was 2 3-16 miles between J. Boisseau's and Gravelly Run Church?—A. Yes.

Q. You saw the infantry march over that road. You know about how fast infantry move over such roads. How long do you suppose it took them to march over that distance, from that point of view?—A. Ordinarily, taking the ordinary march of troops, they should have marched up probably in an hour.

Q. From what you saw, you suppose that was about it?—A. Yes.

No satisfactory explanation appears to have been given for the delay of the divisions of the Fifth Corps in moving up to take position at Gravelly Run Church.

Maj. Charles F. Gillies, of the Twenty-first Pennsylvania Volunteer Cavalry, who was acting provost-marshal to the cavalry corps, on his return from General Meade's headquarters, says (Record, p. 1134), as to the Fifth Corps moving up into position after the order sent them by General Sheridan—

> I saw the Fifth Corps passing up the road before I got there [meaning to Gravelly Run Church].
>
> Q. Did you notice how they marched—the rate?—A. They marched like tired troops—leisurely.

GENERAL WARREN'S MANNER.

General Sheridan says, in the portion of his report of the battle which is complained of, that General Warren's manner gave him the impression that he wished the sun to go down before dispositions for the attack could be completed.

General Sheridan further says that he finally decided to move in with the Fifth Corps into action, instead of going with the Cavalry Corps, because of the necessity that he thought existed for a more energetic leadership.

Bvt. Maj. Gen. R. B. Ayres, one of the Fifth Corps division commanders, says:

> As soon as I formed my division, I went forward and reported to General Warren that my division was ready. General Sheridan was sitting there with General Warren * * * near Gravelly Run Church.

Q. Do you recollect any incident or remark made by any one at the time?—A. General Sheridan says: "I will ride with you."

Q. Was that the end of the remark?—A. Just that; he says, "I will ride with you."

Bvt. Brig. Gen. James W. Forsyth, lieutenant-colonel First Cavalry, U. S. A., has also described this:

Q. Did you hear, later in the day, or see any manifestations of General Sheridan's impatience at General Warren, or at the Fifth Corps?—A. Well, he was impatient about the delay in getting into position and the loss of time and the blood that was flowing before they could be brought up to relieve the cavalry.

Q. Anything else?—A. That was prior to their getting into position. He then moved out and placed himself in front of General Ayres, with his headquarters' staff. He said, "I intend to fight and go with the Fifth Corps; I will go out here; and probably, if we move out and place ourselves in this position, it may hurry matters up."

Q. That was his purpose, as he expressed it?—A. Yes (Record, p. 196).

General Sheridan has testified as follows:

Q. Did you see General Warren draw any diagrams or draw up his instructions to his division commanders for that movement?—A. I cannot say whether I saw him make a drawing; I think I saw the drawing.

Q. Before it was sent out to the division commanders?—A. I only saw it in this way: I think when I saw it it was in the hands of General Warren, and he was sitting at the base of a tree near by; that is my remembrance.

Q. Did you say anything to General Warren at that time about the delay of his troops in getting up?—A. Yes.

Q. Do you recollect what it was?—A. No, sir.

Q. Can you give us the general purport of it?—A. I complained that they were slow in coming up; and my directions to the cavalry had been to hold the enemy in the works. My object was to surprise them, if possible, by the Fifth Corps; hold them in the works by a vigorous fire in front, and threatening the right flank. I was afraid they (my cavalry) would exhaust their ammunition, and I knew it was an important point, and I was pretty anxious about commencing that battle; I didn't have much time to fight it in, and didn't know exactly how long it was going to take; and I knew the enemy held the White Oak road, about three miles to my right and rear. And I had all that anxiety on my mind, and I expressed a great deal of that anxiety to General Warren during the time the troops were coming up.

* * * * * * * *

Q. Was not General Warren somewhat impatient, too?—A. Not to the best of my recollection at present (Record, p. 57).

Bvt. Maj. Vanderbilt Allen, late United States Corps of Engineers, duting the battle of Five Forks on the staff of General Sheridan as engineer officer, testified as to the manner of General Warren while at Gravelly Run Church, as follows:

Q. Was your attention in any way attracted towards General Warren at that time?—A. Yes.

Q. What was it that especially attracted your attention?—A. General Sheridan appeared to be very impatient in regard to the delay by the troops coming up. General Warren, I thought, appeared to be—did not show the energy that we had been in the habit of seeing with other corps commanders in getting his troops up. That was only in his manner—that was all I judged from (Record, p. 836).

Maj. Gen. Wesley Merritt, Colonel Fifth United States Cavalry, commanding the cavalry divisions on that day, says, at page 845:

Q. Do you recollect seeing General Warren and General Sheridan together?—A. Yes; on the field.

Q. Where was that?—A. I am in doubt as to the particular location.

Q. Was it before or after the formation of the Fifth Corps, on that day, April 1?—A. It was very probably, or possibly, while the formation was going on. We had met for the purpose of receiving final instructions, and although I do not know times, to my own knowledge, when the Fifth Corps was formed, yet it was, perhaps, any time from one to three o'clock when the formation was going on; though I cannot be positive as to that.

Q. You saw General Sheridan and General Warren together?—A. Yes.

Q. At that time was your attention in any way directed towards General Warren?—A. Yes; my attention was attracted towards General Warren by his manner, General Sheridan's manner, and possibly by conversation, though I cannot, at this time,

although there are recollections in regard to it—I could not be willing to swear positively to any conversation about it, except as to the general directions in regard to the battle.

Q. Describe General Sheridan's manner.—A. He was impatient, restless, apparently anxious.

Q. General Warren's.—A. General Warren's manner impressed me. It may not have been his manner alone; it may have been something that he said, but I have a firm recollection that he was reluctant, quiet, and uninterested in what was about to go on; did not seem impressed with what might possibly be the results of the day.

Brig. Gen. Francis T. Sherman, United States Volunteers, then Inspector-General of the Middle Military Division, on Sheridan's staff, testifies as follows (Record, p. 856):

Q. Did you see General Warren during that day; if so, at what time did you first see him?—A. I saw General Warren during the day, about four o'clock in the evening.

Q. State the circumstances under which you saw him.—A. General Sheridan, about between 3 and 4 p. m. of April 1, directed me to proceed to General Warren with a message, the purport of which was that he should put his corps in position and attack at once. I found General Warren about four o'clock—it must have been, when I came up to where General Warren was—found General Warren dismounted and sitting at the foot of a tree, with a memorandum or field book in his hand. I rode up, dismounted, saluted General Warren, and delivered the message. General Warren took no notice of my salute nor of the message which I gave him. Thinking he might possibly not have heard, I repeated it. General Warren then failed to recognize me as a staff officer, or the message I bore him. I thought this was very surprising and very singular, and waiting a few moments, I rode up to what was known as Gravelly Run Church, with some officer, either of his staff or some of the division staff; I do not recollect which. From Gravelly Run Church we could see across an open ground, and there was evidently a rebel vidette or picket, mounted.

Q. Could you point on Cotton map, No. 3, about where you saw, as you were at Gravelly Run Church, the rebel vidette or picket?—A. Somewhere up there [indicates northwest of Bass's house, close to the White Oak road]. There was a house down here somewhere [pointing a little west by north of Bass's house].

Q. Then what transpired while you were noticing this vidette or picket?—A. The picket fired his carbine and the party of us, three or four, immediately returned. I went back and found General Warren still in the position that I had left him. Seeing no indication on his part or the troops which he commanded, the Fifth Corps, of any movement, and feeling that the message which I had delivered would not receive that consideration which it demanded, I returned and met General Sheridan on his way towards the Fifth Corps and reported the circumstances of my interview with General Warren. General Sheridan moved rapidly forward. I fell into my position in the staff, and followed General Sheridan, who moved rapidly forward, and found General Warren in the position where I had left him. General Sheridan, I think, dismounted—that is my recollection—and approached General Warren. What took place between General Warren and General Sheridan I have no knowledge of.

Q. What was the next movement that took place; what did General Sheridan do?—A. The next movement I saw—after five or ten minutes' conversation with General Warren—General Sheridan remounted and put the Fifth Army Corps in motion. If my recollection serves me, General Warren was still in the position where I first found him. The Fifth Corps, at all events, was immediately put in motion; the skirmish-line was thrown forward.

Q. Go on and describe the movement as you witnessed it.—A. The skirmish-line moved forward and broke through a fringe of timber which covered them in their formation near Gravelly Run Church, into the open ground, and had probably moved fifty or a hundred yards into that ground when the rebels, evidently surprised that there were any infantry in that position, pushed out a line of skirmishers, prolonging the line of their works and meeting our front nearly, of the skirmishers, and opened a scattering fire.

Q. You saw those skirmishers coming out?—A. I saw them pushed out myself; saw them moving out there on a double quick—the enemy's skirmishers.

Q. Then, what transpired when the enemy's skirmishers opened fire?—A. Our skirmish-line, to my surprise, immediately took to the ground—lay down. General Sheridan and his staff at about that time rode in between the first line of battle and the skirmishers, and rallied them and pushed them forward again; and from that on, until we got nearly two-thirds of the way across the field, we met with no opposition, or scarcely any fire, with the exception of what might be received from the skirmish-line that was thrown out. Afterwards, as we approached the timber showing the "refusal" of that line, the rebels opened out a somewhat sharp musketry fire; but the Fifth Corps were then in full career and moved on there. About this time General

Sheridan gave me another order, to return to General Griffin, who, I understood subsequently, was commanding the division in reserve, with direction to General Griffin to make a left wheel and move his division directly down the White Oak road, forming the left rear of the first division, which immediately preceded him, which I understood was General Ayres's.

Q. What did you then do?—A. I proceeded to find General Griffin. I moved back, supposing I would find him somewhere near upon the line of the White Oak road, but I subsequently found that he had followed the division that was immediately upon the right of General Ayres, which, I believe, was commanded by General Crawford, and that he had deflected from the line to the right, and that I had missed the entire division. Finding my mistake, I proceeded to find General Griffin. General Ayres's division moved up and across the road and moved in here. General Crawford was to the right and deflected here [indicating on map].

Q. Which of those lines would you take as being the line of direction which he took; about where do you recall that you met General Griffin?—A. I did not meet General Griffin personally until the next day. But I met some of his troops up here and I also found some cavalry up in here [indicating on map], which, upon inquiry, I found was of General Mackenzie's command. General Griffin had moved to the right; kept gaining ground to the right and following Crawford's division, until he had gotten off the line I had been ordered to direct him on, at least half a mile.

Maj. and Bvt. Lieut. Col. George L. Gillespie, United States Engineers, (Record, p. 934), says that he left General Warren in the field just south of Gravelly Run Church, sitting down, writing in his note-book; that he went away, and upon returning, after a long interval, he found General Warren in almost identically the same position in which he had last previously seen him.

Maj. Chas. F. Gillies, Twenty-first Pennsylvania Cavalry, acting provost-marshal, Cavalry Corps, saw General Warren and Sheridan at Gravelly Run Church; he noticed General Warren's manner at that time, and says, at page 1134 of the Record, "I thought the general looked moody and oppressed."

Lieut. Col. F. C. Newhall, formerly of General Sheridan's staff, says that General Warren, in his judgment at that time, seemed passive and indifferent (Record, p. 146).

General Warren denies this; he also denies that he said anything which would give such an impression.

Bvt. Brig. Gen. James W. Forsyth (Record, p. 1049) testifies as follows:

Q. Was your attention at that time, or at any time while those troops were forming, in any manner directed towards General Warren?—A. Yes, it was.

Q. What was his manner at the time? * * *

Q. (Repeated.)—A. Gloomy and despondent; seemed to have a lack of confidence in the results which General Sheridan told him he was sure would come if the corps got up rapidly, and he could make the movement as he described it.

Q. Do you recall anything that was said by General Warren in your hearing, to General Sheridan, indicative of, or relative to, this movement that was then about being made?—A. General Sheridan had a number of conversations with General Warren, in all which he tried to enthuse him with his, Sheridan's, spirit.

Mr. STICKNEY, counsel for the applicant. If we are to have conversations, may I ask that the witness may give the words without describing General Sheridan's efforts, and that those words be stricken out of this answer?

A. He told him that he had forced, with his cavalry, the rebel forces inside their line of works; that he held them there, and if he could get this infantry up and make this movement it would crush them out—there was no hope for them—and General Warren replied that he had "*seen things look that way before, and Bobby Lee generally got us in the end.*"

General Warren says he does not believe that he made such a statement (Record, p. 790). But by reference to the testimony of General Sheridan, we find that this evidence of General Forsyth is corroborated.

Relative to his conversation with General Warren, this question was asked of General Sheridan (Record, p. 114):

Q. What were you talking about?—A. *We had a conversation. In the first place, he seemed to be somewhat reluctant, I thought; and just before the battle he commenced talking*

in my presence, and there were a good many officers around (I don't know whether they heard him or not), *after the plan of the battle had been fixed, that "Bobby Lee" was always getting people into difficulties—meaning General Lee, of the Confederate army—that he was getting people into difficulties, and talked in rather a gloomy kind of a way. I recollect I thought it was very strange that a man would talk that way when he knew he had to fight. I thought he ought to talk the other way and encourage those who were about him, and not depress me. It was then I made up my mind to accompany the Fifth Corps. I then accompanied the Fifth Corps generally; then afterwards I accompanied Ayres's division, on account of the conditions.*

From these evidences it is quite manifest that General Warren entered upon that day's action either under great apprehensions for the safety of the Fifth Corps, from the position in which he was placed, and want of confidence in the commanding general successfully to carry out his plan of operations, or else from a reluctance to assist a general from another army in winning a great and conclusive victory, or from a want of comprehension of the true military situation, or because of bewilderment and physical depression.

His entire conduct during that action, as will be seen when I refer a little more in detail to the evidence, was that of a man who was uncertain as to exactly what he should do—first moving towards Ayres, then rushing off after Crawford, then coming back to the open south of the White Oak road, then rushing after Crawford, again, and returning again to the road, then following him up through the woods and finally meeting him by the Ford road, in the Young-Boisseau field, sending his staff hither and thither, and actually taking no part in the serious action of the day, while the battle was raging and before it had been won.

That so many different persons should at the same time have had their attention attracted to General Warren's manner is, I submit, highly significant.

HOW THE "RETURN" OF THE ENEMY'S WORKS WAS TO BE ASSAULTED.

One of the most singular circumstances to be found in the case of this applicant is the effort he has made to put the responsibility for the dispersion of his divisions during the movements of the action upon General Sheridan himself.

It bears the impress largely of the handiwork and afterthought of the learned counsel for the applicant, rather than of the soldier on the field.

General Warren now endeavors to make the point that the reason why his divisions became dispersed was because he expected, and that his diagram so shows, that General Ayres's division would strike the enemy directly in front near the angle, and that the other two divisions would swing around and assault the "return" westwardly.

That when they moved forward it was found that the enemy's work, with this "return," was further to the west than was expected on the line of the White Oak road, and that consequently General Ayres' division had to assault the "return" itself, and not the front of the works, and that the fire from the "return" upon General Ayres' division as he advanced compelled him to take a new direction rapidly, and thus broke the connection with the other two divisions; in consequence of which they, moving to the front northwardly, expecting to find the "return" nearer to them, thus got out of position.

General Warren, or rather his learned counsel, now points triumphantly to his diagram (Record, p. 96) to show that the line of the enemy's works was indicated as approaching almost to the Gravelly Run Church road where it intersected the White Oak road, and that consequently

Ayres' division would have struck the front of the works instead of at the return.

This is a kind of plea that might do for an ignorant jury in a very doubtful case.

It must not, however, be overlooked that Brigadier-General Chamberlain, in describing the formation of the Fifth Corps upon Cotton Map No. 3, which Major Benyaurd says accords with his own recollection, has given the position of that corps correctly in reference to the manner in which it moved to assault the angle of the return.

The diagram had under it these words:

The line will move forward as formed till it reaches the White Oak road, when it will swing round to the left, perpendicular to the White Oak road. General Merritt's and General Custer's cavalry will charge the enemy's line as soon as the infantry get engaged. The cavalry is on the left of the infantry, except Mackenzie's, which is moving up the White Oak road from the right.

From those instructions it is plain that the line could not swing around to the left perpendicular to the White Oak road if it had been intended by General Sheridan that Ayres' division should assault the face of the works, which were on the line of the White Oak road.

General James W. Forsyth, chief of staff to General Sheridan, says that when the diagram and instructions were submitted by General Warren to General Sheridan he expressed to General Sheridan the object of it (Record, p. 1053):

Q. Will you please repeat what he said was the object?—A. He said it was his habit to make sketches of that kind, submitting this one showing the positions of the divisions of his corps, so that the division commanders would know exactly where they had to go, and that there would be no trouble about it hereafter, or during that time; that it was a guard that he used as between himself and his division commanders, or words to that effect. *It was simply for the corps formation, nothing more, nothing less; had no reference to anything else.* And General Sheridan said all right, he had no objection to it.

It is a little singular that General Warren should at this late day endeavor to shift the responsibility for the failure of his right division to connect with Ayres in the wheel to the left from his own shoulders to that of the general, Sheridan, commanding the entire force.

It will be seen from his own language, as given by his own witnesses here, as to the movements of that day at that time, that this idea of shifting responsibility is an afterthought.

General Warren himself says that he went through the little fringe of timber just north of Gravelly Run Church, which screened the formation of his corps, where he could look out into the open.

Bvt. Brig. Gen. James W. Forsyth, on this subject, testifies as follows (Record, p. 744):

Q. Do you recollect the circumstance of General Sheridan's meeting General Warren?—A. Yes.

Q. Where was that?—A. The first meeting was when we were in the rear of the cavalry; the second meeting was after he had gone to the ground in the vicinity of the Gravelly Run Church, with Colonel Gillespie, to locate the position of his, General Warren's corps.

Q. During the time that corps was forming, and before the final advance was made, do you recall whether you made any examination of the ground yourself?—A. No particular examination by myself.

Q. While they were there, did you ride forward at all upon that road—Gravelly Run Church road?--A. I think we could see over the open ground to the White Oak road. We mounted, after we got to General Warren, and moved around in that vicinity.

Q. (By Mr. STICKNEY, counsel for the applicant.) You mean you could see across from the south side?—A. Yes. The south side of the clearing, in front of Gravelly Run Church.

Q. What indications, if any, of an enemy, or their works, did you see there?—A. None.

Q. While General Sheridan was with General Warren, do you recollect any conversation—did you hear any conversation between them on the part of General Sheridan, as to the movement that was to be made?—A. Yes, I did.

Q. Please state what you heard General Sheridan say to General Warren, as to the contemplated movement.—A. He stated to General Warren that the cavalry had driven the enemy inside of their line of works and held them there; and that they would hold them there, and that he was to form his corps, and it would be used as the turning column, to move up, strike the White Oak road, wheel at once to the left, and fall upon the enemy's left and rear and crush them. And that the movement of this corps would be indicated by its firing; and as soon as this firing occurred on the part of the infantry of the Fifth Corps, caused by their meeting the enemy, that the cavalry would charge the enemy's works and carry them. It was a combined movement.

Q, Did General Sheridan say anything to General Warren, at that time, as to exactly where the cavalry were with relation to the enemy's works?—A. He stated to him that the cavalry inclosed the enemy inside of their works; that they were closed in there.

Q. Where did General Sheridan indicate, if at all, that the right of the cavalry rested?—A. I do not recollect of his positively pointing out the right, but it was to the left of a north and south line from where we were to the left of the Fifth Corps.

Q. In relation to the enemy's works, did he indicate at all where the right of the cavalry was in relation to the left of the enemy's works?—A. That they were on their right, encircling them in their works. There was nothing in our front.

General Warren must have seen, when he went through that fringe of timber and looked out into the open that extended to the north of the White Oak road, that there were no works there.

Our own cavalry held that field; in fact, the headquarters of Gibbs' brigade were at Bass's house in that open field.

Bvt. Lieut. Col. Archer N. Martin, formerly of General Sheridan's staff, testifies that while they were waiting near Gravelly Run Church for the Fifth Corps to form, he was sent about four o'clock by General Sheridan with orders to General Mackenzie, and rode off *northeast* towards the White Oak road, and found Mackenzie off on the right and told him—

"To move on the right of the infantry; and that as the infantry attacked he was to move still further forward, so as to capture any prisoners or men who might be driven out of the works (Record, p. 1056)."

He returned the same way, and of course if there had been any enemy's "return" near to the Gravelly Run Church road, he would not only have known it, but been unable to go that way to Mackenzie.

Nevertheless, it is a little interesting to see just what the evidence is upon the subject as produced by the applicant.

General Ayres says (Record, p. 267) he thought one-half of his division would strike the works in front.

It is here to be remarked that General Warren's present contention is that the whole of this division would have struck it in front.

General Chamberlain says (Record, p. 273) that he understood distinctly that Ayres was to strike the works in front.

Col. W. W. Swan, Ayres' acting adjutant-general, says (Record, p. 293) that he expected to strike the enemy in front.

Col. R. M. Brinton, United States Volunteers, formerly aide-de-camp to Griffin, says, however (Record, p. 306), that he saw General Sheridan mark on the ground at Gravelly Run Church, the enemy's position, and adds, "I was rather astonished at the time that he knew so much about the enemy's position."

Bvt. Lieut. Col. J. P. Mead, aide-de-camp to Crawford, says, (Record, p. 391) that his understanding was that "every man to move with the sun over his left shoulder until we struck the road and then go due west."

He saw General Sheridan make a diagram in the sand and give the position of the enemy and of the roads and of the cavalry, and where

the Fifth Corps was to form, "and was to make a grand left wheel and change direction on the White Oak road" (Record, p. 396).

Of course the Fifth Corps could have made a grand left wheel and changed direction on the White Oak road if Ayres' division was to have struck the enemy on the face of the works.

Brig. and Bvt. Maj. Gen. J. J. Bartlett, called by the respondent, says (p. 1168) that while lying by the roadside near the junction of the Gravelly Run Church road with the Five Forks road, and before moving up into position, General Sheridan, *during the morning*, gave them the projected plan of battle.

Q. What was the plan of battle you received from him?—A. General Sheridan called us around him in the road—his plan was very short; he drew his sabre in the dust and says: "There is the White Oak road; the enemy are entrenched behind that; they have refused their left somewhere near an old church; whether it is within their lines or not I do not know." He said: "I will attack their entire front; I will deploy my cavalry, dismounted, and engage their entire front, and with the strong arm I will strike this salient and wheel on to their left and rear." And, as I understood it, the formation of the corps, *en echelon*, by divisions was with that object.

Q. What were your orders as to moving forward?—A. At the moment Ayres become engaged everything wheeled to the left.

I will read in this connection the following extract from the report of Brev. Maj. Gen. Charles Griffin, to be found on page 1186 of the Record, and dated 29th April, 1865:

The 1st division being on the right flank, formed in three lines, with one (1) brigade on its right in echelon; the 3rd division, B'v't Major-General Crawford, in the centre, and the 2nd division, Bvt. Major-General Ayres, on the left. Immediately after, the order to advance against the enemy was given (who was supposed to be entrenched at Five Forks), with instructions to the division that after it had crossed the road it was to change direction to the left, so as to strike the enemy in flank or rear.

After advancing about a mile, and finding nothing in front save a few cavalry videttes, and there being heavy volleys of musketry to the left and rear, the division was halted, and upon a personal examination it was found that the enemy was moving up the White Oak road. Immediately the division was faced by the left flank, and marched some four or five hundred (4 or 500) yards, when its direction as to the line of battle was changed perpendicularly to the left, and moved down at a "double quick" upon the enemy, who was visible some three-quarters of a mile distant, moving up the White Oak road. The enemy's rifle-pits were taken, together with about * * * * * * * fifteen hundred (1,500) prisoners and several battle-flags. Here a little confusion resulted from the troops exchanging shots with the cavalry, who were coming up in front of the enemy's works. After a few minutes' delay, the line of battle was again changed perpendicularly to the White Oak road and the enemy's works. This change brought the 1st division on the left of the 3rd. The command was then pushed forward along the rifle-pits, capturing prisoners and driving the enemy before it until it advanced to the Five Forks, where the cavalry and the infantry met, capturing five (5) guns, several caissons, and the 3rd brigade, 1st division, taking on the Ford road a train of wagons and ambulances belonging to Pickett's division. *About this point Major-General Sheridan, in person, directed me to take command of the 5th Corps, and push the enemy down the White Oak road.* I immediately directed General Ayres and the other commanders to push forward with all possible dispatch, and the pursuit was kept up until after dark, when the command was halted, the cavalry having pushed to the front, out of sight and hearing of the infantry.

The concurrent testimony of the cavalry witnesses is that General Sheridan was along the line a number of times before the advance was finally begun.

The evidence of Brig. Gen. Horace Porter, U. S. A., colonel and aide-de-camp on the staff of the General-in-Chief, Grant, on this subject, is as follows (Record, p. 911):

Q. Prior to the advance of the Fifth Corps from the position indicated on Cotton map No. 3, had you any conversation with General Sheridan as to the movements that were to be made? If so, substantially, what were they?—A. General Sheridan explained his plan of battle during the afternoon: *That it was to deploy the cavalry in*

front of the enemy's main line and to engage their attention, and to use the Fifth Corps —to swing the Fifth Corps around, wheel it to the left and attack this "return" or crotchet and break that and attack the enemy on his left flank. He became exceedingly impatient in regard to time in the afternoon—manifested very many signs of impatience, and used the expression once or twice—certainly more than once—that his great fear was that the sun would go down before the battle could be fought, and the next day might change all the circumstances.

Q. Was anything said upon the subject of the movements of the Fifth Corps, relative to getting into position; do you recollect now?—A. He expressed repeatedly anxiety and annoyance at the delays in the formation.

Q. You saw the Fifth Corps form. Did you see them move as they went forward to go into action?—A. Yes.

Q. Please describe exactly what you witnessed.—A. I was with General Sheridan during most of the time of that attack upon the angle, and consequently with Ayres' command. In moving forward over this open ground there was a line of skirmishers thrown out consisting of the Bucktails, from Pennsylvania—I happen to recollect that as a Pennsylvania regiment—and they moved down over this open ground and at the edge of the woods they met with a very heavy fire; that is, I judge it was a fire of a skirmish-line—heavy skirmish-line. The line of skirmishers was staggered by this fire and halted; a number of them were shot down. Some lay down on the ground, as skirmishers will. General Sheridan manifested some impatience at this, seized his battle-flag, and rushed forward with most of his staff, and by shouting and gesticulating he encouraged the men. The movement was taken up again and the division advanced very handsomely down to the woods. They then went on to make their attack upon the works and met with a very heavy fire from there, which compelled Ayres' division to halt, and they fell back some distance. General Sheridan was then giving his personal supervision and was right with the troops, and he rushed forward again, and by shouting and encouraging the men and directing the officers and making himself very conspicuous there, they moved forward to a second attack and went in very gallantly and carried the works. When the works were captured, and a great many prisoners, at the same time, *General Sheridan turned to me and asked me if I had seen General Warren. I told him I had not seen him since he had seen him with his staff on a little rising ground some distance from us, before the attack commenced. He asked me if I saw General Warren to request him to report to him, General Sheridan, in person.* I then moved off to the right, not feeling myself charged especially with hunting General Warren, but in looking over the operations and in looking out for General Warren so as to deliver this message if I came across him, I moved on to the right and through some swampy ground in this direction [indicating due north], and fell in with General Crawford's division.

At pages 913 and 914:

Q. Was anything said, that you recall, upon the subject of the position of the main body of Lee's army during these movements of the 1st of April, in the afternoon, by General Sheridan or General Warren?—A. I heard General Sheridan express the apprehension that Lee would send a force across in a westerly direction to attack his forces; that he knew that Pickett's command was detached at some distance from Lee's army, and there would, very probably, be some movement made by Lee for its support. He expressed that apprehension.

Incidentally, General Porter also testified as follows (Record, p. 918):

Q. You have spoken of General Sheridan's impatience at the delay. Can you recall anything that he said or did?—A. I can remember his general actions at the time. I recollect his being dismounted, and striking one hand against the palm of the other in a very impatient manner, stating that he was afraid the sun would go down before this battle would be fought.

Again, p. 922 of the Record:

Q. In General Sheridan's conversation with General Warren you heard him express apprehension that General Lee might send a force to attack him?—A. Yes.

Capt. C. Mason Kinney, assistant adjutant-general to the First Cavalry Division, Devins (Record, p. 975), *knew where the left of the enemy's works were;* he rode into the open field where Bass's house was, and could see in the direction of the enemy's works, and saw no works north of the field; *he understood that the infantry were to swing to the left, and the cavalry were to assault in front* (Record, p. 972).

Bvt. Brig. Gen. E. E. LaMotte, division inspector to Ayres's division,

says (p. 378) that his understanding at the time was that *Ayres's division was not expected to attack the enemy's works in front, but that the orders were for the division to "move forward until we struck the White Oak road, and then swing around to the left";* he also says that all three brigades finally went over the return, and that a few cavalrymen galloped past them from the rear while they were re-forming.

Bvt. Lieut. Col. W. T. Chester, aide-de-camp to General Crawford, says:

"Our orders were to keep connection to the left with General Ayres, and to still make a left wheel, as I understand it" (Record, p. 386).

Maj. W. H. H. Benyaurd, engineer officer on General Warren's staff, says, as to the orders for the divisions (Record, p. 1134), "that they were to move forward until they struck the White Oak road, and then to wheel and move to the westward."

Bvt. Brig. Gen. Hollon Richardson says (Record, p. 315) that by the original order he understood they "were to move along the line of the road past the church until we struck the White Oak road, and then there would be a general wheel," and that the general intent of the programme, as he understood it, was to keep connection with Ayres's division (p. 317).

Lieut. Col. F. C. Newhall says (p. 151), that the only unlooked-for thing, so far as he knew, was that the other two divisions did not keep to the left with Ayres, and that it was intended that Ayres should strike the angle fairly himself.

The evidence of Capt. Henry E. Alvord, late Sixth United States Cavalry and acting Aide-de-Camp to Brig. Gen. Alfred Gibbs, who commanded the regular cavalry brigade, is peculiarly interesting and important in showing that *General Sheridan and all the cavalry officers on the right of the cavalry line knew exactly where the angle of the enemy's "return" was* (p. 817) *which was on the cavalry front.* As it will be hereafter cited, when discussing the cavalry operations, it is only necessary to say that, for, a time, Gibbs' headquarters were at Bass' House, in the open field to the right of the cavalry line, and they could see a considerable distance to the north of the White Oak road, which was open and unobstructed.

The infantry of the Fifth Corps could not have been used at all in attacking any portion of the *front* of the enemy's works without first displacing and withdrawing a portion of the dismounted cavalry. The very fact that Captain Alvord was charged with the duty of maintaining the connection between the cavalry right and infantry line when it made its wheel shows that this controlling suggestion in the learned counsel's argument is wholly an afterthought.

The cavalry right extended even beyond the enemy's left—into the open at Bass' House.

In his closing cross-examination, the applicant here made an important admission, which, of itself, would be a complete answer to the theory sought to be raised that General Ayres' division was to strike the enemy on the front of the works.

Q. While your movements were going on, the going up to the White Oak road and crossing, you understood *at the time*, did you not, *that the cavalry would engage the enemy along his whole front, which was facing south?*—A. *Yes.*

* * * * * * * *

Q. *But the cavalry were to occupy the entire front of the enemy and engage them.*—A. *Yes* (Record, p. 1237).

Time when the battle of Five Forks began.

It was not until after half-past 4 o'clock in the afternoon that the Fifth Corps were in a position to move.

Bvt. Lieut. Col. T. W. Bean, of the Seventeenth Pennsylvania Cavalry, says (Record, p. 926) that the return was struck about 5 p. m.

Maj. George L. Gillespie, United States Corps of Engineers, says (Record, p. 935) that it was struck after 4 p. m.

Capt. A. C. Houghton, Second Ohio Cavalry, aide-de-camp Pennington's brigade, says (Record, p. 904) that the first regular assault was about 5 p. m.

Lieut. Col. George G. Briggs, Seventh Michigan Cavalry, Stagg's brigade, says (Record, p. 991) that he saw General Sheridan in advance of the infantry and first inside the works, and that it was about five o'clock when the assault began.

But we have a more definite piece of evidence as to the time when the first firing began in the statement of Maj. A. E. Dana, the assistant adjutant general of the First Cavalry Division, from a letter he wrote on the night following (Record, p. 1013); he says the battle began with infantry firing at 5:15 p. m., and that he looked at his watch and noted the time (Record, p. 1016).

As the sun set on that day, according to the statement of the learned counsel for the applicant (Record, p. 679), at sixteen minutes after six o'clock, or according to the calculations of Prof. P. S. Michie, United States Military Academy, at 6:21 mean time, there was but an hour in which to fight the battle after it had once begun.

The enemy's strength.

Before we proceed to discuss the action itself it might be well to consider the number of troops that the enemy that day had on the field.

The last authentic information to be found from the rebel archives in the War Department at Washington is the field return dated at Petersburg, February 20, 1865, one month and ten days before this action.

That was about the close of the winter season, before active military operations had begun, when many were presumably absent on furlough or absent sick.

From that time to the 1st of April no special movement is known in which the forces which were at Five Forks were engaged.

Consequently it is reasonable to presume that the numbers they had there were greater even than those that were effective for duty on the 20th of February, 1865.

Now, per the field return (p. 1076, Record) of the rebel Army of Northern Virginia of that date, there were for duty as follows (exclusive of Rosser, whose cavalry did not take part in this action, but were north of Hatcher's Run):

ORGANIZATION.	OFFICERS.	MEN.
In Pickett's Division	304	4,761
In Johnson's Division	431	6,505
In Wm. H. F. Lee's Division	185	3,935
In Fitzhugh Lee's Division	96	1,825

Making a total of 18,042; in addition to which there were present sick, of officers and enlisted men, 1,209, and an aggregate present, including sick, in arrest, and extra duty men, 22,050 on the 20th of February, 1865.

Besides this aggregate present of 22,050 in those divisions, there were 14,813 officers and men noted as absent, but within the Confederate

lines, of which it is to be presumed that a large number returned before the spring campaign opened.

At any rate, eliminating the 14,813 men who were actually absent from those divisions on the date of the field return of February 20, 1865, and subtracting from the 22,050 who were actually present, Eppa Hunton's brigade, which did not take part in the battle of Five Forks, there would remain, in round numbers, fully 20,000 men within the Confederate lines at Five Forks on the day of the battle.

Thus, in consideration of the great number absent forty days before (14,813) from the ranks, it is reasonable to assume that the estimate of 20,000 present on the field of Five Forks on the 1st of April is, if anything, less than the number actually there under the rebel colors.

Hardly had the advance begun when the divergence of the several divisions of the Fifth Corps commenced. Of course the applicant appreciates the fact that this was both unfortunate and reprehensible, and he has therefore tried to shift the responsibility from himself to his commanding general.

The confusion in Ayres's division.—How and by whom rallied.

Bvt. Brig. Gen. James W. Forsyth says (Record, p. 192), relative to the advance:

> Our headquarters flag took position in front of General Warren's line of battle, between the skirmish-line, my recollection is, and his line of battle. We took our position there prior to moving out from the church. We then moved out and pushed on up with the command, and the skirmish-line, when they got into the opening close on to the road, fired in the air. Many of the men dropped down on the ground. We then pushed on from there up to the works and over the works and through them.

Bvt. Brig. Gen. George A. Forsyth, Lieutenant-Colonel and Aide-de-Camp, U. S. A., says (p. 202):

> I saw the troops stagger, and thought for a moment they might break. I rushed out, without waiting for orders, and cheered them a little: I thought the men wanted encouragement.

Lieut. Col. M. V. Sheridan says he saw the skirmish-line of the Fifth Corps begin to shoot in the air (Record, p. 215), and "lie down * * * I confess I was much astonished"; no enemy was to be seen. He was then sent by General Sheridan to General Merritt to withhold his attack.

At page 216 he says:

> I went around through the woods to where General Merritt was, probably near the Dinwiddie and Five Forks road; I think his headquarters were somewhere in that neighborhood. I directed him to withhold his attack, as the Fifth Corps were not behaving well, and withhold his attack until the attack was renewed close in on his right.

And at page 217 that when he reached Merritt he was attacking, and he stopped the attack. Merritt was right close in on the works.

General Ayres, who commanded the division in which this confusion took place, says that General Sheridan rode right in where the brigade was unsteady, with his hat in his hand (Record, p. 264).

In his official report, same page, he says, "Portions were very unsteady, but subsequently moved up and bore their part in a handsome manner."

Bvt. Brig. Gen. C. E. La Motte, division inspector of Ayres's division (Record, p. 373), admits seeing "a little confusion upon our right as we were changing direction"; he saw them begin "to shake, and rode over with others to make all straight again."

This was in Gwinn's Third Brigade.

He says they got a fire from the north, and he saw General Sheridan then ride to Ayres, "waving his hat in his hand."

After capturing the return, General La Motte says (Record, p. 374), "after re-forming, the troops were moved straight out on the White Oak road, along their line of works."

Those works he says he examined, and that they were carefully constructed and revetted on the inside with logs, and had a number of traverses.

Bvt. Lieut. Col. Harrison Adreon, Major Fourth Maryland Volunteers, Bowerman's brigade (Record, p. 431), speaks of the line as "somewhat broken," and "Sheridan rode down from the right between our line and the enemy just before the charge, causing a great deal of cheering and drawing a heavy fire"; "he was just riding down with his hat off—the idea was to encourage the men, I presume."

Bvt. Maj. Vanderbilt Allen, late United States Corps of Engineers, says (Record, p. 836), as to General Ayres's division:

A. They moved against the enemy to the left, and as they commenced to advance the troops commenced firing—General Ayres's troops—although there was no response from the enemy at all, and we were rather doubtful as to whether there was any enemy immediately in our front. So General Sheridan, with a number of his staff, rode to the front of Ayres's division—to the front of the skirmish-line, and we found that there were no bullets coming in our direction at all.

Q. What did General Sheridan do?—A. General Sheridan stopped the firing as well as he could.

Q. Then what transpired after that, so far as this division was concerned?—A. There was some little demoralization; some went to the rear.

Q. Did the division advance?—A. The division continued to advance, and shortly afterwards we met with a very heavy fire. Then the division—some of them—commenced to fall to the rear, a little demoralized. General Sheridan took his headquarters flag, rode to the head of the division and took them in.

Q. Did you go over the "return" of the works there?—A. Yes.

Q. Then what were your movements after that?—A. Then we continued to advance. The enemy were in retreat.

Q. Capturing prisoners?—A. Yes.

Lieut. Col. George G. Briggs, Seventh Michigan Cavalry (Record, p. 991), testifies that he saw this confusion in Ayres's division.

Bvt. Lieut. Colonel A. N. Martin, Additional Aide-de-camp to General Sheridan, was sent to General Mackenzie with orders, and describes as follows with reference to Ayres and Crawford, on his return (Record, p. 1057):

Q. When you returned, did you observe as you returned any movement of our troops?—A. I noticed that the infantry were moving off more to the right, more in the direction of where General Mackenzie should have gone, and I rode up to one officer of the Fifth Corps—my recollection is, he was quite gray; I think he was General Gregory—I am not positive about the name, though—and told him that his troops were moving in the wrong direction; that they should swing in more to the left, and that that was the orders, as I understood them, from General Sheridan. He replied that he did not know General Sheridan in the matter at all; that he took his orders from General Warren, and that he did not care to pay any attention to what I said; something to that purport.

Q. At this time was there any action going on?—A. There was considerable firing off to the left, and it was a fact that they were moving away from the firing instead of towards it. That particularly impressed me.

Q. Did you rejoin General Sheridan?—A. Yes.

Q. Describe what you noticed when you rejoined him.—A. I cannot say whether it was immediately upon my rejoining, or some little time afterwards. The Fifth Corps or a portion of it—the left portion, belonging to the left of the Fifth Corps—moved into the woods towards the works, and there was considerable confusion; they seemed to be rather demoralized; and the general took the headquarters flag—the guidons that we had—which had red at the top and white at the bottom, or vice versa, with two stars, and jammed it down in his boot and moved forward some little distance. The men were rallied then, and soon after that a charge was made across the works, the cavalry charging on the left, and we went up through the works at the angle.

Q. When you say the cavalry were charging on the left, do you mean that the infantry were on the front of the works and the cavalry on the front?—A. There was a sort of a "return" there of the works, and the infantry were towards the "return" and the cavalry off on the left.

Q. After you got in the works what did you then do?—A. We swung around down towards the left, following the works down in the rear.

Q. Did you see any of the cavalry at this time?—A. Yes; I saw them come over those works. I recollect one man on a mule jumped over a low place in the works.

Q. Were those cavalry on a line with you or in front of you?—A. They were more to the left, farther down the works.

Q. Do you recollect any special resistance of the enemy after you crossed the angle of the works; if so, where?—A. There was some desultory firing; but I do not recollect any severe resistance after that. We moved a considerable distance down.

Maj. Charles F. Gillies, Twenty-first Pennsylvania Cavalry, who also saw this confusion, testifies as follows:

Q. Did you see any firing when it began?—A. Yes; I saw the left of the Fifth Corps go into action—throw out a line of skirmishers. I saw some skirmishers come out of the rebel works and return the fire.

Q. What did you then observe?—A. I saw, after the first fire, some of the skirmishers throw themselves on the ground.

Q. Our skirmishers or the enemy?—A. Our skirmishers.

Q. Did you see General Sheridan at that time?—A. Yes.

Q. Did you notice what he did, if anything?—A. He rode rapidly in that direction.

Q. Did you see him with General Warren as they moved forward to go into action?—A. Yes.

Q. Were you sufficiently close to hear any conversation between them, if there was any?—A. I was.

Q. Did you hear any conversation?—A. I heard General Sheridan, as the skirmishers advanced and opened fire, say, "There, Warren, I told you I was right. Swing round your right and we have got them."

Q. Did you notice anything else on the part of General Sheridan in giving those instructions?—A. No; only that he rode rapidly away in the direction of that fire. Made a motion of his hand that way, as he spoke, indicating, I think, the direction the right should go.

Q. Did you see the left portion of the Fifth Corps get into action?—A. I did.

Q. Did they swing round or go straight ahead?—A. They moved obliquely to the left in the direction of the angle of the rebel works.

Q. And as to the rest of the corps?—A. The rest of the corps did not move at that time. I thought it moved a little afterwards.

Q. What direction did they take?—A. Directly across the road; passed an opening and went into the timber beyond.

Q. When General Sheridan gave those instructions, or made this remark that you speak of to General Warren, do you know what reply General Warren made, if any?—A. No; I do not recollect any reply.

Q. Did you have any conversation, then, with General Warren?—A. Yes. The general turned round to me and said, "Take that cavalry out of the way, sir."

Q. Did you notice what direction he went after that?—A. Yes; he went to the right, into the timber across the opening.

Q. What then transpired, as far as the left of that division was concerned, after they moved into action?—A. After a volley or two was fired, part of the left broke—a part of the left of the Fifth Corps broke.

Q. What did you do at that time?—A. I threw out a line in rear to stop them, by direction of General Forsyth, or Colonel Newhall, I forget which.

Q. I understood you to say that you threw out a line of your cavalry to stop the break?—A. Yes.

Q. What did they do?—A. They stopped when they were out of the line of fire.

Q. Did you see General Sheridan at that time?—A. No, sir.

Q. After General Sheridan had had this conversation with General Warren, which you speak of, do you know what direction he took?—A. General Sheridan?

Q. Yes.—A. He rode rapidly into the rebel works, into the angle, into the heat of the fire. He rode between two fires; I hardly know how the general escaped.

Q. Where were you when the angle of the works was taken?—A. I was very near them, in an oblique direction—opposite to them.

Q. What duty were you employed upon then?—A. I was acting as provost-marshal of the cavalry corps. The duty I was then doing was stopping the stragglers.

Q Did you see any prisoners come into our lines?—A. Yes.

Q. Had you anything to do with them?—A. Yes; I counted all the prisonersthat came out of the rebel works—the majority of them. Colonel Newhall and I counted them together.

Q. Did you conduct this mass to the rear?—A. Yes. They were anxious to get to the rear, to get out of the line of fire. I conducted them, and he counted them.

Q. How do you know they were anxious to get to the rear?—A. Because they called to me to get them out of the line of fire; get them to the rear, because "The Confederacy was gone up," and they wanted to "Get out of the line of fire." Some of the officers called out that.

Q. Do you know how many prisoners you received that afternoon?—A. Four thousand and six prisoners.

Q. Is that the little item, or receipt, for those prisoners? [Paper handed to witness.]—A. Yes; that officer (referring to Lieutenant Patten's name in the body of the receipt) was under me, Lieut. J. C. Patten. I sent him with an escort. Lieutenant-Colonel Middleton took the prisoners to headquarters, under supervision of Lieutenant Patten.

Q. This note on the back is in your own handwriting?—A. Yes.

Q. The receipt being as follows [reading]:

"HEADQUARTERS, A. OF P.,
"*April* 2, 1865.

"Received of Lieutenant Patten 4,006 prisoners of war.

(Signed) "C. A. RAND,
"*Lieutenant and A. D. C.*"

A true copy.

LOOMIS L. LANGDON,
Brevet Lieutenant-Colonel, U. S. Army.

This is the receipt that you received at that time?—A. Yes.

Q. By the hand of Lieutenant Patten?—A. Yes.

Q. When did you send those prisoners to the headquarters of the Army of the Potomac?—A. That evening, after the battle, a little before dark; they got *en route* a little before dark to Army headquarters.

Q. Did you receive any prisoners from that battle afterwards?—A. The following day I received prisoners, but I got no receipt for them—I turned them over to some officer of the Fifth Corps. I do not recollect whom.

Q. Whom did you receive those prisoners from?—A. Some cavalry officer. I do not know who he was.

Q. How many were there, according to your best recollection?—A. I should judge there were about two thousand prisoners.

Q. Those were in addition to those that were sent off by you a little before dark, on the afternoon of April 1?—A. Yes.

Q. You say you turned them over—the 2,000 that you received the next day—to the Fifth Corps?—A. Yes.

Q. State the reason of that.—A. The reason of that was, that I did not have sufficient men to guard them. My command was cut up for orderlies and other work. They were in the saddle nearly all the time, doing something, and they, the prisoners, became a burden upon my command, and I spoke to General Forsyth to have them taken away. He told me to turn them over to the Fifth Corps—to some officer in the Fifth Corps. I forget who it was.

Q. Going back a little. You say you saw General Warren go into the timber with the right of the Fifth Corps, after they had crossed the open to the north of the White Oak road?—A. Yes.

Q. Did you see him again that afternoon?—A. I did. I saw him after the battle was over.

Q. Where did you see him?—A. I saw him come out very near the same place that I saw him go in.

Q. Did you have any conversation with him?—A. This much: Previous to that General Forsyth came to me and asked me if I had seen General Warren. I said no. "Well, if you see him before I do, give him General Sheridan's compliments and say that he wishes to see him." Shortly after that I saw the general coming and he was advancing towards me. He asked me where he could find General Sheridan, and I pointed in the direction that he was.

Q. Which way?—A. Which was in towards the works, or over the works.

Q. Was this a short time, or a long time after the capture of the angle, or just about that time?—A. It was some time, I think fifteen or twenty minutes, after the capture of the angle (Record, pp. 1135, 1136, 1137).

By the COURT:

Q. When General Warren asked you where General Sheridan was, did you deliver to him the message from Colonel Forsyth, that General Sheridan wished to see him?—A. I think the Colonel asked me first where he could find General Sheridan, and I pointed in the the direction.

Q. *Did you deliver that message to him, that General Sheridan wanted to see him?*—A. *Yes* (Record, p. 1143).

Reference has already been made to the evidence of Brig. Gen. Francis T. Sherman, found on page 857, as to this confusion.

During all this time the inquiry naturally arises, "Where was General Warren, the corps commander?"

Instead of the army commander being under the necessity of going to the front in order to encourage that division, at a critical moment, I submit that it was the duty of the corps commander to do so.

General Warren's reply is substantially that he thought they could get along without him.

Napoleon Bonaparte, by going to the front at the Bridge of Lodi, acquired a great reputation, and even to-day that act is referred to as a brilliant example of an army commander exposing himself in a critical emergency in order to encourage his men to victory.

But I submit that the act of Napoleon was no more commendable and no more brilliant than that of General Sheridan on this occasion, and I doubt if there is any historical instance—there certainly is none within my present recollection—of an *army commander* thus leading his troops in an assault, between the date of Napoleon's action at Lodi in 1796 and Sheridan's action at Five Forks in 1865.

Lieut. Col. Fredk. C. Newhall, then on Lieutenant-General Sheridan's staff, graphically depicts the conduct of the commanding general and of the applicant in his direct examination by the applicant's counsel (Record, p. 146):

Q. Then come along to the time when the advance began. Will you give me your personal movements up to the time that the angle of the works was carried?—A. When the Fifth Corps moved forward from Gravelly Run Church I accompanied General Sheridan and remained with him up to the time when we got sight of General Mackenzie coming up the White Oak road, and I was the officer who was sent to give new directions to General Mackenzie.

Q. They were given through you and not by General Sheridan personally?—A. I was just going on with that. Mackenzie did not seem to be absolutely certain, so I suggested that he should go with me to the general. We rode over together. During that time the corps had advanced some little distance, in fact was almost on the White Oak road. There was some firing. General Sheridan was riding between Warren's skirmish-line and our line of battle when Mackenzie and I reached him. As soon as we crossed the White Oak road the firing became heavy. I was sent by General Sheridan to General Winthrop on the left of Ayres's division.

Q. He was Ayres's reserve, was he not?—A. I do not know; perhaps he was; at any rate he was on the left of Ayres's Division. I took orders to him from General Sheridan to be very careful not to fire on our own cavalry. Then I rode back and rejoined General Sheridan, who was then on the right of Ayres's division, which was in quite serious confusion. I did what I could in helping the general and the other officers to restore order there, and while this was going on I was sent by General Sheridan to General Warren to notify him that the divisions on the right were becoming disjointed and separated from the battle. I found General Warren on the south side of the White Oak road, within perhaps 100 yards of it, in an open field, rather behind Ayres's Division, I should say. I gave him the message I had from General Sheridan, and then I rode back to General Sheridan again, and moved on with Ayres's Division. While that movement was still in progress I was sent to General Warren again to notify him that the troops of Crawford and Griffin were going entirely out of the battle, and "ruining the whole thing," as I recollect the words. I found General Warren at that time at these broken buildings that I believe are now called "The Chimneys," and which I suppose to be those, although I have not any way of locating them except my recollection. [The witness indicates a point a little north of Louis Sidney's house, the point being designated upon the large official map as "Foundation of house."] They were behind the enemy's left in an open field. I see that it is now called "The Chimneys," and I suppose that is the place.

Q. How far apart were those two occasions when you went to General Warren?—A. It would be pure guess-work; I should say fifteen minutes.

* * * * * * * *

(Record, page 148.)

Q. What was your message to General Warren the second time when you found him there by "The Chimneys"?—A. The message I gave him?

Q. Yes.—A. I cannot recollect the exact words in which I received the message; I think I can tell you what I told him.

Q. Yes.—A. I told him that General Sheridan was extremely anxious about the movement of these two divisions. General Warren was sitting on his horse at The Chimneys, facing the White Oak road. I pointed out to him myself that the troops were passing to his left and rear from the White Oak road, as he was facing the White Oak road, toward Hatcher's Run, and that there was a very large interval between them and Ayres.

Q. You mean Crawford and Griffin?—A. No, sir; I mean between them and Ayres; and I urged him as strongly as I thought was proper, in the name of General Sheridan, to get those troops to Ayres' support.

Q. Do you recollect what he said at all?—A. Yes; he said it had been attended to.

Q. Have you given us all the orders and instructions that you took from General Sheridan to General Warren at any time during the engagement?—A. All I can recollect.

Q. Have you given us the only times that you saw General Warren, as far as you recall?—A. Yes.

Q. Have you given us all of General Sheridan's personal movements, as far as you recall them, during the engagement?—A. I placed him as well as I could; I have not attempted to give you his movements.

Q. Did you notice at different times during the afternoon exhibitions of decided anger and impatience on the part of General Sheridan during the engagement?—A. On the two occasions when he sent me to General Warren, I did.

Q. Was he angry?—A. Yes; on the second occasion, I think, he was very angry.

Q. Did he show in his words or manner anger at General Warren particularly?—A. No, sir; I don't think he did.

Q Give us your recollection.—A. I speak of what I thought at the time. I thought his indignation was in regard to the movement of these troops. How far he referred it to General Warren, or how far he referred it to the troops, I have no means of forming an opinion.

Q. Can you give us his words? As accurately as you can; of course you cannot give them with utter accuracy.—A. I cannot recollect anything in regard to the words, except that they were of an urgency which belonged to the whole message; I cannot recall any phrase.

Q. Give the whole of it as accurately as you can.—A. General Sheridan told me in a very emphatic manner to find General Warren at once and tell him that those two divisions were entirely disjointed from the main line, and were ruining the whole thing. I gave General Warren that message in words of my own, and pointed out to him how wide a gap there was where these troops were moving, on his left as he faced the White Oak road, which I thought was the intention of the message (Record, p. 150).

* * * * * * *

Q. Wasn't the enemy on Ayres's left instead of on his front; and didn't he have to flank his men to the left and change direction entirely in order to bring the enemy in his front?—A. No, sir; I don't think there was the slightest confusion resulting from that.

Q. Wasn't that change of front necessary?—A. I dont think there was any change of front; I am not conscious of any having been made.

Q. You do say here, and I suppose you recollect it, that General Ayres "employed a tactical movement which put him in advance of Crawford and opened the gap between them." Do you recollect that?—A. Yes; I recollect that; it is all qualified. The character of the question would lead to the inference, and I think also my replies as given now, that there was a sudden movement made by Ayres's Division which was not in the nature of things as expected; I don't recollect anything of that sort. Ayres's Division kept to the left. The only unexpected or unlooked-for thing that occurred so far as I know was that the other divisions did not, and that the opening gap between Ayres and Crawford at the time it was originally opened, occurred, so far as I understand it and understood it then, not from any peculiar movement on Ayres's part, but from the fact that the other troops didn't wheel and Ayres's troops went into action as nearly as possible on the front, as they had been ordered. The whole of Ayres's Division, or rather the right part of Ayres's Division, had somewhat yielded to the right when the fire broke them; and as they were rallied and brought into condition again they naturally moved a little more to the left than they otherwise would have done; but if Ayres's Division had kept straight on in the line where it was formed it would have struck that angle fair, I think.

* * * * * * *

(Record, page 153.)

Q. I understand you to say that when Ayres's Division became unsteady, you moved in with the Lieutenant-General and his staff, and, with the assistance of General Ayres and his officers, restored confidence, and moved forward with him?—A. Yes.

Q. At the time what sort of firing was there from the enemy upon that division?—A. There was a pretty heavy fire, mostly on the right of the division.

Q. When you were sent up for the second time and met General Warren near the "Chimneys," do you recollect his saying anything to you in response?—A. Nothing, except what I have already recited.

Q. Was there any fire from the enemy in that direction at that time, that you recall?—A. Yes; there was a slight fire across that field over which I rode to get to what I call the "Chimneys." There was no enemy in sight.

Q. Where was Crawford's Division at that time?—A. I could not distinguish between the divisions. Both those divisions—Griffin's and Crawford's—were moving in one body past the "Chimneys" towards Hatcher's Run, to the east of the position where I found General Warren.

Q. How much of those divisions had passed at that time?—A. The bulk of them.

Q. Where was the left of that column so far as General Warren's situation is concerned?—A. Just within the woods.

Q. And the remainder were beyond in the woods?—A. Yes; I should say they were going north.

Q. How long did you remain there with General Warren?—A. Only a moment.

Q. Did you notice that those divisions had been halted before you returned?—A. No, sir; they were moving.

General Sheridan, in his evidence, sums up these matters as follows in his direct examination by the applicant's counsel (Record, p. 99):

Q. Am I correct in understanding your testimony and your statement now, to the effect that the point of complaint that you make against General Warren as to the battle—the actual battle of Five Forks—was that Crawford and Griffin got too far out to the right, and that he didn't do anything towards getting them back or controlling their movements?—A. The general confusion, mismanagement, and risk that resulted from the bad management of his corps.

Q. That is rather vague. I would like you to specify what the bad management was.—A. In the first place, troops were confused by the fire of the enemy's pickets. There was great confusion and timidity on the part of the men; in fact, I began to have some doubts as to whether I was going to be successful or not. Our skirmish-line lay down, and the fire of the enemy was very slight; the line became confused and commenced firing straight in the air. The poor fellows had been fighting behind breastworks for a long period, and when they got out to *attack* breastworks they seemed to have been a little timid. I began to get alarmed. I had accompanied General Warren up to that period; then I rode out in front of the line of battle and helped to remedy the confusion. While I was out in front of the line of battle I saw General Warren in the rear a little distance, about where I left him, I think. I succeeded, with General Ayres and other officers, in remedying this confusion, and it seemed to me that if I had been General Warren I would not have allowed my superior officer to ride out in front of the line of battle of my men in order to remedy serious confusion without making some exertion myself of the same kind.

Q. Do you recollect what my question was—to specify all the points that you made against General Warren as to his conduct during the whole battle. Have you done it?—A. No, sir.

Q. Go on, then, please, and finish.—A. My orders were very particular to have Crawford's Division keep close to the left of Ayres's, so that I could take the enemy's line along the White Oak road, after the reverse portion was captured, in rear. The battle was over, I considered, as soon as we had captured that angle. The first thing I knew I saw Crawford obliquing, instead of making the left wheel as I had expected; and it was not a full left wheel—only a partial one; he was obliquing to the right; he was going away from the objective point and was going in the direction of Hatcher's Run, and leaving Ayres's flank exposed entirely—his right flank. I think I sent for him or sent for Warren. I know I sent for Crawford and tried to get him back; and I sent, I think, to General Warren. I could not find him; I don't know, but to the best of my recollection I sent several times to try and repair this trouble. Griffin, I knew, had to follow Crawford, and it seemed to me they were both marching towards Hatcher's Run, not towards the objective point. I then sent for them, as I say, and they did not come. About that time there was not much left to fight that battle, except Ayres's Division, and they substantially did fight the battle there, according to the best of my judgment.

Q. Is that all?—A. That is, substantially.

Q. Now, then, as far as I understand your answer to my question, it principally singles out General Crawford or General Griffin. Where do you claim that Warren's fault was in relation to that point?—A. General Warren was in command of the corps, with that responsibility on him. He was responsible to me. It was not my business.

Q. And what do you claim was Warren's sin of omission or commission in relation

to that going off to the right?—A. If there was anybody in the wide world that should have made an effort to prevent that, General Warren was the man.

Q. Undoubtedly. Now do you know whether he made any effort or not?—A. I don't know. I did not realize any.

Q. Did you ask him what he had done?—A. I could not find him.

Q. Did you ask him afterwards when you did find him?—A. No, sir.

Q. Did you ask any one at the time you relieved him?—A. No, sir.

Q. Did you try to get any information of any one at the time you relieved him?—A. No, sir; I had all I wanted.

Q. Have you learned, as a matter of fact, that Warren himself went out there after sending his aids and brought Crawford back?—A. Out where?

Q. Out to the right, where he, Crawford, was?—A. What part of the right?

Q. Where Crawford was between the line of the enemy's works and Hatcher's Run. (The original question repeated.)—A. He went there, but so far as the battle of Five Forks was concerned, the battle was over.

Q. No; don't go beyond the question.—A. You ask me, and I tell you candidly my belief, the battle was over.

Q. Then you did not see anything of what he had done at the time, or what he was doing?—A. No, sir.

Q. You say you did not see him after you parted with him in the rear of Ayres's division, just after the advance began?—A. No, sir.

Q. So, of course, you had no personal knowledge of what he did?—A. No, sir.

Q. You have already said that you made no inquiry of him, or anyone else, as to what he had done?—A. No, sir; I may have made inquiry at that time.

Q. You don't recollect that you did so?—A. No, sir.

Q. Then you don't hold him or claim him responsible for Crawford and Griffin going away, and for his not getting them back; is that it?—A. I hold him responsible for their going away. I hold him responsible for the whole condition of things.

Q. You think that is a fair judgment on your part of the conduct of a subordinate; a fair manner of holding your subordinate to his official responsibility; is that it?—A. I will say, yes, as a direct answer; and now I will make my explanation. In the first place, I have stated in my narrative that I was governed by the conditions that I was placed in at the battle of Five Forks. There was no time to swap jackknives. I had to meet this new emergency at once. The new emergency was that I had my back to the enemy as soon as I had gained the battle of Five Forks, and that was not a very agreeable situation to be in; so I had to make a new disposition by which I could get my face to him. And I got to thinking about the occurrences of the battle of Five Forks, and whether in this new emergency I could hold on to General Warren, who had disappointed me. And if that condition had not existed I probably would not have relieved General Warren. I hate to punish a man as much as anybody in the world. I did not relieve him to punish him. I relieved him in order to meet the new emergency.

Q. That is the explanation of your answer?—A. Yes, sir.

Q. After Ayres's Division got engaged at the angle of the Confederate works there, what were your own personal movements?—A. I accompanied Ayres's Division.

Q. You ordered them to halt, did you not, at some stage of the engagement there?—A. Not until after the works were taken.

Q. At some stage of the engagement you ordered them to halt, did you not?—A. I am not clear, but to the best of my recollection, after we had captured the works thrown to the rear, I directed a halt for a few moments because the cavalry were coming over the works on the White Oak road, and I was afraid Ayres's men would kill the cavalry—they had come across the works on the White Oak road—and I think I halted Ayres for a very short time in order to prevent his firing upon the cavalry, because they had gotten across the works and were on his front. I think I halted them; that is my belief.

Q. Can you give us any idea when you halted Ayres's Division—how long after the engagement began?—A. It was substantially after the engagement was over, in my belief.

Q. Was it not just after his troops had captured the return?—A. Yes, it was after that; I cannot say whether it was just after or not, but a very short time afterwards.

Q. And that is what you mean by the "time the engagement was over"?—A. The battle was won, in my opinion, when the angle was taken.

Q. What you mean is that the key to the position was won, as you looked at it; isn't that what you mean?—A. You may put it that way.

Q. Don't *you* put it that way?—A. That was the key of the position.

Q. Isn't that all there was to it; these earthworks, you have already stated, were over a mile long?—A. About a mile long.

Q. They were well manned with Confederates?—A. So far as I know.

Q. What has been the estimate that you put upon the number of Confederate forces

there?—A. I think there were over 10,000 or 12,000 men, cavalry and infantry, including those in the breastworks.

Q. There were 8,000 or 10,000 men left at the west of that "return"?—A. Yes.

Q. How was it after Ayres had captured that "return"; do you call the battle won when there were 8,000 or 10,000 of the enemy in possession of the breastworks?—A. If I have several thousand men right behind their backs, I consider myself pretty well off.

Q. Would you call the battle over?—A. It was essentially over.

Q. Wasn't there an hour or two fighting after that?—A. Principally in catching up those who were trying to get away.

* * * * * * * *

(Record, page 104.)

Q. About what hour, as nearly as you can tell, did you have possession of the whole line of their works?—A. It was before dark. We were in pursuit of the enemy after dark.

Q. Do you recollect seeing the flash of guns at all; did it get dark enough for that?—A. No, sir—yes, I think I was in pursuit.

Q. You mean near by?—A. I mean not in the works, but in the pursuit of the enemy.

Q. You did not go beyond the line of works yourself, did you?—A. Yes.

Q. How far?—A. I went beyond the Ford road.

Q. Well, the works go beyond the Ford road?—A. I went out on that road (the road being from the extreme right of the enemy's intrenchments over to the crossing of Hatcher's Run on the Ford road, northeast, as put down on Gillespie's map). I recollect that, because I met cavalry there.

* * * * * * * *

(Record, page 105.)

Q. As I understand you, the only points as to the afternoon that you claim General Warren to have been deficient in were these: In the first place, that he failed to get his troops up to Gravelly Run Church—there prior to the engagement—with sufficient speed?—A. Yes.

Q. In the second place, that Ayres's Division, as I understand you, broke just after?—A. Confusion occurred.

Q. Put it that way; that confusion occurred just about the time of the assault on the Confederate left, and that Warren did not exert himself sufficiently to encourage the troops?—A. No, sir. There was confusion twice, to the best of my recollection. The first was created by the skirmish-line and then afterwards confusion created by the Confederate line when we got nearer to it.

Q. Put the point that you make against General Warren. You have seen a great many occasions on the battle-field when men broke or when there was confusion?—A. Yes.

Q. But you do not always hold the commanding officer responsible for anything of that sort?—A. It depends upon circumstances.

Q. You do not always?—A. No, sir.

Q. Put the particular point on record here for which you hold General Warren responsible at this particular time; I suppose your own troops at times have broken?—A. I say I was not holding him responsible as a punishment; I didn't relieve him for a punishment; I relieved him from other reasons, but those things made an impression upon my mind.

Q. What do you hold was his fault there with relation to that matter of the confusion of our forces?—A. I think he didn't exert himself sufficiently at that time to restore confidence; he allowed my line of battle to be broken; he destroyed the tactics that I intended to make in the battle, because I intended that column which was put behind Crawford to be a close-turning column on the left of the enemy so I could crush them in their works, and I wanted to hold them close in and not let them get out of their works; and he had to be diverted to another purpose.

Q. Now, will you specify, as I asked you to do, the point as to that confusion in which you held him to be remiss?—A. I think that he ought to have made an effort to restore confidence when the confusion occurred; and I judge that effort by what I did myself.

Q. Then that is all?—A. Yes.

* * * * * * * *

(Record, page 106.)

Q. You say that General Warren destroyed the tactics on which you intended the battle to be fought?—A. Well, I beg your pardon. I don't think I said it that way exactly; if I did I recall it. I meant to say that he allowed them to be destroyed.

By the PRESIDENT OF THE COURT:

Q. I presume you refer to this wandering off of Crawford's and Griffin's divisions when you say your plan was interfered with?—A. Yes, sir.

* * * * * * * *

(Record, page 114.)

Q. What is your estimate of the time necessary for them to march up there and deploy?—A. I think in about an hour. It would probably have taken a little more than an hour to march up and deploy.

Q. Taking the situation of things?—A. Yes; taking the condition of things.

Q. You think, then, an hour is a liberal allowance?—A. Well, a little more than an hour, I said.

* * * * * * * *

(Record, page 115.)

Q. Ordinarily who would have to make those dispositions and attend to those matters, simply bringing up a division and putting it in line of battle, the division commander?—A. The corps commander is responsible for these things.

* * * * * * * *

(Record, page 118.)

Q. How much of the corps was within eyesight, at the time you speak of, when Ayres's men became confused?—A. I think I only saw the left of Crawford's Division, and it was obliquing to the right.

* * * * * * * *

Q. Did they do very much towards winning the battle?—A. Who?

Q. The Fifth Corps.—A. Ayres's Division, as I testified heretofore, and the cavalry, I think, won the battle; the others didn't get in in time; they got in to get a little chance, but virtually, I think, the battle was over.

Q. They didn't do anything until the battle was over?—A. No, sir; I didn't say so; I say, substantially, when I got behind the enemy's works the battle was ended. We had fighting afterwards; you can have a good deal of fighting after a battle is substantially won.

Q. Now, will you come to the break between Crawford's Division and Ayres's?—A. Yes.

Q. How did that happen, as you understood it at the time?—A. I suppose I will have to commence again on this very thing that I have been talking of. You want me to answer the question, do you?

Q. Yes, exactly.—A. I don't know whether I am right or not, but I thought the firing from the enemy made them act that way a little.

(Record, page 125.)

* * * It will be seen that if there were plenty of the enemy up in the direction that General Warren went that it would have been a bad thing to attack them any way; it would have been an error, from the direction that he advanced. Had he kept on the right of Ayres, and they had both pushed on, and they had reached the Ford road, he would have been in the rear of those who were facing him and fighting him, as you say, all day. And that is about the best way of taking works that I know of—taking them in the rear. Now, then, suppose Ayres had been defeated, Crawford would have been captured. The battle would have been lost. Can you see that? There is a good deal of strategy about that.

Q. What I asked you about was the report, and not the battle.—A. Now, there is the battle of Five Forks; I have explained it to you now, and it is pretty hard to get over. I don't know whether there was anything there or not, but he had no business to attack. In any case, if he had obeyed his orders or had not broken my line of battle, and it had gone on as it should have gone on, we would have reached the Ford road long before the enemy got out of the main works, and if there was no holding the front we would have had them in the rear; but if we had been defeated, then salt could not have saved the men who went around on the Ford road or in that direction.

Q. The points I asked you about were these, whether you knew of Warren's bringing the men back.—A. I presume I did at the time. I don't recollect now. You see how hard it is to understand a man; what I say and what I did is founded upon certain things which you never saw before.

Q. You say that Warren broke your line of battle?—A. Well, allowed it to be broken; that is, he was responsible for it.

Q. You say so?—A. He was in command of the Fifth Corps.

Q. Did he order Griffin's and Crawford's Divisions, as far as you know, to go off to

the right where they did?—A. Well, that is none of my business. The line of battle was broken, and the battle was put in jeopardy.

Q. (Question repeated.)—A. No; he did not, so far as I know.

* * * * * * *

(Record, page 133.)

Q. What would have been the effect in consequence of the movement of Crawford's Division off round by the "Chimneys" and Young's house, if Ayres had been defeated in that movement?—A. The battle would have been lost, and the Division would have gone to Libby.

Q. Now, as to General Ayres's Division being—some of it, at least—a little timid at first; they afterwards moved up well?—A. Yes.

Q. Gallantly?—A. I did not want any better troops. They were good troops, anyway.

Q. And that corps in the concluding day's battles, after that, was under your command, was it not?—A. Yes; there was no hesitation in reference to that corps afterwards; not only that, but I marched them 35 miles in one day afterwards, to get out to Jettersville and get ahead of Lee's army.

Q. They fully came up to your expectations?—A. Yes.

Q. In every respect?—A. Yes.

Q. Could you characterize the conduct of General Ayres's Division after they finally moved in against that angle of the works as very gallant and courageous?—A. Yes.

Q. And the subsequent conduct of the corps on subsequent days up to the surrender at Appomattox?—A. Could not be better.

General Ayres says (Record, p. 225) that he took 2,100 prisoners and nine battle flags at the "return" within fifteen minutes after changing front, which itself only took five minutes.

This was the glorious result of the gallant assault of the Second Division, then but a trifle over 2,600 strong, when inspired with the energy and enthusiasm of General Sheridan and led by him over the works.

The attempt made here by the learned counsel for the applicant to make General Sheridan personally responsible for the applicant's failures at Five Forks because he offered no objection to the diagram when shown him, cannot be commented upon too severely.

The "instructions" in it are those conveyed by General Sheridan, but the moment the applicant slides away from the instructions to the line which he designated as the "enemy," he shows what a dazed condition of mind he must have been in, if he actually thought at the time that the line thus indicated as the "enemy" really meant a line of substantial works and not simply men.

Taking the acute present assumption of the learned counsel for the applicant that the Second (Ayres's) Division was to strike the works on the front, and the Third (Crawford's) on the "return," Griffin being in reserve with his (First) Division behind Crawford, as being the correct assumption entertained at the time of the battle by the applicant, one thing is perfectly plain, and that is that the instructions as given by General Sheridan were rendered entirely nugatory by the position of the enemy's works as now assumed.

In other words, the line of the Fifth Corps would almost entirely have struck the *face* of the works and that too on the south side of the White Oak road, so that the instructions could not in any possible way have been complied with, viz., that the line should "move forward as formed till it reaches the White Oak road, when *it will swing round to the left, perpendicular* to the White Oak road."

The evidence, therefore, of Bvt. Brig. Gen. Jas. W. Forsyth, U. S. A., (chief of staff), already quoted, that the applicant submitted his diagram merely to show the formation of the corps, is the only reasonable one.

The "enemy" was found exactly where the applicant indicated, but it was merely a prolongation of his line eastward from the return, by means of skirmishers.

The Court will please notice that the White Oak road, from the junction of the Gravelly Run Church road, in the direction of the "return," runs, for a short distance, northwesterly, so that the right of the Fifth Corps, as formed, in its oblique northwesterly march, would have reached the White Oak road much sooner in relation to the left of the infantry line than if that road at that point had run due west.

Therefore, the movement to be accomplished, as directed by General Sheridan, viz., a change of direction to the left in the nature of a left-half wheel by each brigade, beginning with the right brigade of the right division the moment it reached the White Oak road, *would have been practically accomplished as to all the rest of the corps by the time the left brigade of Ayres's Division had reached the White Oak road.*

General Mackenzie then, with his 1,800 cavalry, whom General Warren had seen on the White Oak road as he, himself, moved forward with his corps (pp. 749, 790), would have been able, without the slightest difficulty, to have dispersed or captured the much inferior rebel cavalry force of Munford's, which, dismounted as skirmishers, was fitfully trying to annoy the infantry advance.

The divergence from the "Return" of the First and Third Divisions, Fifth Corps.

The deflection of Crawford's Division (Third), which was necessarily followed by that of Griffin's (First), is so intimately associated with the question as to what the orders were relative to the assault of the "return" of the enemy's works that one necessarily runs into the other.

The applicant has endeavored to show here how particular he was to explain to all his general officers the movement to be executed.

In fact he involved himself in a mass of details from which, with a seeming constitutional peculiarity of mind which prevented generalization, he could not extricate himself, and it is therefore to be doubted if, even to-day, with so simple a movement for his corps to perform as that ordered by General Sheridan, he comprehends the irresolute and inefficient situation in which he put himself, when the most prompt, vigorous, and comprehensive co-operative action was required.

His efforts to go into unnecessary details of explanation only tended to confuse instead of enlighten, and as a consequence, the simple movement which General Sheridan ordered, filtered through the applicant's diffuse explanations to his own division and brigade commanders, finds here, before this court, contradictory interpretations.

Thus, Bvt. Brig. Gen. Richard Coulter, commanding Third Brigade of Crawford's Division, says the corps was formed obliquely to the White Oak road and directed to move to that road:

> "When we should make a change of front by turning perpendicularly to the road; then we were to move west, keeping *as nearly as we could to the line of the White Oak road*, the intention being that Crawford's division should occupy the north of the White Oak road and Ayres the south, and move to the west after we had changed our direction.
>
> The direction was to make a half wheel. I suppose it was more a change of front. It was by no means a perfect wheel (Record, p. 349)."

Now General Coulter was one of the brigade commanders to whom the applicant undertook to describe the details of the movement, and it is very plain that he did not expect to find the "return" to the enemy's works at the junction of the White Oak and Gravelly Run Church roads, or anywhere else than where it actually was.

The oblique formation, as ordered by General Sheridan, was such that the moment the right or marching flank of Crawford's Division had

struck the White Oak road, it should have begun to swing around to the left in the nature of a left half-wheel, and have nearly completed the change of direction before the right of Ayres's Division, on Crawford's left, had reached the road.

But as the marching flank of the line did not wheel but kept straight to the front, and even deflected away to the right, breaking connection, Ayres's Division was left to bear the whole front of the fire from the angle and face of the "return," and to assault alone.

Bvt. Maj. Richard Esmond, Assistant Adjutant-General of Coulter's brigade, saw the diagram, and says (Record, p. 360):

"I understood that our guide was left."

Col. Ellis Speer, Twentieth Maine Volunteer Infantry (Bartlett's brigade of Crawford's division), says the orders were—

"to keep to the left and to wheel to the left, and, of course, to keep the connection to the left" (Record, p. 402).

First Lieutenant E. G. Sherley, Ninety-first New York Volunteer Infantry, aide-de-camp to Kellogg (First), brigade of Crawford's Division, says (p. 417):

"I understood *as soon as* we got to the White Oak road that we were to wheel to the left, with the division on the left as the pivot. * * *

We immediately got into the woods when we crossed the field [*i. e.* the field on the further or *northerly* side of the White Oak road].

I do not know from what cause, but we lost our connection with the other division (Ayres's)."

Capt. Holman S. Melcher, Twentieth Maine Volunteer Infantry, on Warren's staff, called by the applicant, says (Record, p. 458):

"I had seen General Crawford disappear with General Griffin in the woods, with Griffin on the right [pointing east].

* * * As Ayres became engaged on our left, General Warren rode with his staff in that direction *and was overlooking that movement* when he turned to me and directed me to go to General Crawford with orders. * * *

My orders were simply to tell General Crawford *to push forward*."

This witness says he "found him well over to the *right* of our lines.

Brig. Gen. Saml. W. Crawford, U. S. A. (Retired), admits receiving such an order (Record, p. 593), and the applicant admits having sent it, but says it was a later order (Record, p. 1223). This piece of evidence is peculiarly important from the position General Warren then was in.

He was *overlooking* General Ayres's movement, and saw the confusion and imminent possibility of a disastrous repulse, which the extreme lateness of the day would have given no time to rectify.

He suffered his army commander to put himself in extreme peril of life to rally the line, restore order out of confusion, and lead Ayres's Division to an assault which had become one of critical urgency and problematical certainty in consequence of the division having to make it unsupported, while at the same time Crawford's Division, followed by Griffin's, was marching to the north of the White Oak road and away from the point of contact, even diverging somewhat to the right.

Nevertheless, the applicant here, evidently bewildered, *sends* Crawford an order to *push forward*, which, if promptly complied with, will only make the divergence still more fatal and disastrous in case Ayres fails to carry the "return."

At the same time the applicant, although near Ayres, does nothing to assist General Sheridan in rallying the line.

It was only in the providence of God that General Sheridan, while

riding with his headquarters flag between the enemy's fire and that of our own men, was not riddled with bullets.

Capt. C. Mason Kinne, Assistant Adjutant General to Devin's Cavalry Division (whose right extended even beyond the "return" of the enemy's works in the direction of the Fifth Corps), saw the right and left of Ayres's Division driven back, and personally went to find Warren, and could not (Record, p. 974).

Bvt. Col. A. J. McGonnigle, U. S. A., saw this confusion and says that General Sheridan "rushed to the front of the line" (Record, p. 987).

Major George L. Gillespie, United States Corps of Engineers, saw this confusion (Record, p. 935).

Ayres' division having wheeled to the left and penetrated the woods towards the "return," the witness says:

"It seemed to me but a moment when they came back again. At that time General Sheridan and his staff were almost directly in the road, a little to the right.

General Sheridan then turned to his color-bearer, seized his battle-flag, and rushed close up to the edge of the woods as the men came out. They formed a compact circle around him, commenced to cheer. Sheridan expressed himself to the effect that that was not what they were there to do—to draw around him. * * * In a very short time the line was thrown out again and the troops moved to the front.

They (Ayres' division) had but a moment passed into the woods when they received a volley fire from the "return." This infantry fire was accompanied by three or four shots of artillery; grape and canister was fired a little to our left, and we crowded over a little to the right. It was not a very agreeable companion to have."

As to re-forming the line, he says (Record, p. 936):

I do not think we took ten minutes.

Q. During these movements did you notice where Crawford's and Griffin's Divisions were or where General Warren was?—A. Yes; I recollect seeing General Warren. Just after this line was re-formed I turned my horse to the right to look across the field to see what had become of the other divisions, to see if they had suffered a like experience with ourselves, and I was *particularly struck with the wide interval between* Ayres's Division and the division on the extreme right—Crawford's, * * * and I saw, as I presumed, General Warren—a general officer, with a large staff, behind Crawford's Division, going into the woods away off to the right * * * [p. 947]. I saw him in an open field immediately to my right. * * * It was close enough to recognize who they were. * * * I could see him plainly.

Bvt. Brig. Gen. Geo. A. Forsyth, U. S. A., says, as to Crawford's Division (Record, p. 203):

They seemed to be drifting out of the fight. * * * They could see the fighting of the other division. * * *

The skirmishers (of Crawford) were just entering the woods and this copse.

Bvt. Brig. Gen. H. C. Bankhead, U. S. A., Acting Inspector General to the Fifth Corps, says (Record, p. 339) that just after he had crossed the White Oak road, and in the edge of the woods north of it, Warren told him "to see that Crawford's division kept close up to Ayres' division."

He says they were then moving in a northerly direction.

He went twice to Crawford's Division and saw him personally the second time, and recollects Bvt. Brig. Gen. George A. Forsyth's efforts (under Sheridan's orders) to get them back into supporting distance.

General Bankhead says he staid with Crawford's division "until we got into the woods away to the right" (Record, p. 340).

Bvt. Lieut. Col. J. V. Mead, captain Eighty-eighth Pennsylvania Volunteers, aide-de-camp to General Crawford (Record, p. 396), heard the instructions which General Warren gave to the brigade commanders of Crawford's Division, and heard him tell General Coulter, of Crawford's Division—

"To keep on until he struck that road [White Oak road], *then* change to the left; let every man keep the sun on his left shoulder and go westward."

"We were all given those instructions. Every one so understood it," says Colonel Meade.

Also that when Baxter's Brigade, of Crawford's Division, crossed the White Oak road, it kept right on due north from the Gravelly Run Church across the open north of the White Oak road, and kept on up into the wood some distance.

When he discovered it later it was beyond the "Chimneys," in the woods to the northeast (Record, p. 392) of the Sydnor field (Record, p. 397).

In that field, and just to the north of the "Chimneys," half-way between them and the woods on the east, he found General Warren, who—

"Seemed to be excessively annoyed, as I thought, that the troops of Baxter were getting too far to the right, and that they must keep more to the left and change direction" (Record, p. 392).

The witness says he "did not see anything of Kellogg's Brigade [of Crawford's Division] until late at night (Record, p. 397).

From this it is apparent that there was quite a disintegration of that division at the most critical time.

To this the learned counsel for the applicant answers that Kellogg was taken away by Lieut. Col. George A. Forsyth, of General Sheridan's staff, and that thus, the *pivot* on which the other two brigadiers were to wheel being removed, the connection was necessarily lost.

The reply to such a suggestion is found in Brevet Lieutenant-Colonel Mead's evidence just quoted, viz. that each brigade was, the moment it reached the White Oak road, to change direction to the left in the nature of a left half-wheel—in other words, to swing around.

Consequently Baxter's brigade, as admitted by General Crawford, should have *first* taken up the movement, as it first reached the White Oak road in the oblique march made towards it, and Lieutenant-Colonel Forsyth, under Sheridan's orders, merely rectified, as far as possible, the nearly fatal error of execution.

If anything further was needed to negative the *present* theory set up by the applicant that he expected to discover the enemy's works right in front, it is to be found in the evidence of his own chief of staff, Bvt. Brig. Gen. F. T. Locke, United States volunteers, who, after describing the moving out from Gravelly Run Church and beginning of the action, says (Record, pp. 364, 370):

"Then we [meaning General Warren and himself] rode off together in a *northerly* direction, crossing the White Oak road.

And just above that we received a very heavy fire, coming, I should think, from the direction of that salient of the enemy's works from our left, as *we rode northerly*.

General Warren was very anxious, particularly about Crawford's division, that he should *take that position to which he was assigned;* that is, closing in on Ayres.

He had sent most of his staff in that direction, and finally he told me to go and see that Crawford *went where he told him to go*."

On cross-examination this witness of the applicant said (Record, p. 370) that the latter was afraid Crawford *had not gone where he told him to;* that he had got too far to the right. He did not keep closed on Ayres.

The witness also says:

"In my tour to him [Crawford] I found I was getting to the right."

It is quite plain from this evidence that General Warren knew the position to which Crawford's Division had been assigned by General Sheridan, and that he did not take that position.

Who, however, is to be held responsible by the Army Commander in such a contingency?

Certainly not the division commander, when his corps commander is present on the field within speaking distance, and actually supervising the faulty corps' movement.

General Warren had commanded the Fifth Corps for some time, and was directly responsible for its discipline and efficiency and manner in which it executed the orders of superior authority, when those orders were conveyed through him and supervised by him.

At this late day he may desire to escape the responsibility by unloading it upon General Crawford, but the latter may well plead that when he "pushed forward" north from the White Oak road, and thus made the divergence from Ayres and the enemy's works still more critical, he but obeyed the positive orders (already quoted) sent to him by his corps commander.

It is not a pleasant thing at this late day to be obliged to criticise the unfortunate conduct of General Warren on the 31st of March and 1st of April, but he has brought it upon himself by this inquiry, and although it is painful to a sensitive mind, the criticism must be made in the interest of the truth of history.

He has been trying for sixteen years to invent excuses for a movement executed under his own eye which was the exact reverse of General Sheridan's instructions, and which came near proving fatal to the latter's plan of battle and ruinous in its results to the army.

Suppose, for a moment, that Ayres had been badly repulsed at the "return" when he assaulted and the enemy had followed him out of their works, just as 3,500 did the day before in routing 8,000 of the Fifth Corps, what would have been the consequences?

Crawford's division would have been struck in the left flank when partially disintegrated and crowded up, and that portion of the corps would have been destroyed.

Suppose also that the Confederate General R. E. Lee had sent re-enforcements westerly only three miles from his main works down the unobstructed White Oak road to Pickett, and caught Crawford's division on the right flank when in the condition described or after it got further north?

The Fifth Corps would have been irretrievably destroyed.

General Warren's previous remarks to General Sheridan showed his overwhelming apprehensions in this direction; nevertheless, for some reason or other, *on that particular day* he did not have or exert sufficient energy and military skill to prevent a false move, which, but for the almost superhuman exertions of his commanding general, would have resulted lamentably.

There has been an effort here on the part of the applicant to show that there was severe firing upon Crawford's and Griffin's divisions as they advanced up to and across the White Oak road, so severe that it is almost a wonder that Crawford's division ever swung to the left at any time.

To substantiate this theory, the Confederate Brig. Gen. Thomas T. Munford, who commanded Fitzhugh Lee's small division of cavalry, which was on the left of Pickett's line of works, has been called.

He has put that portion of his cavalry force which he dismounted and used at about 1,200 men (Record, p. 449).

The Confederate Brig. Gen. M. Ransom commanded inside the enemy's works at the "return," where was an infantry force and McGregor's battery, and outside and near the eastern angle was posted the sharpshooters of that command.

Munford covered Ransom's left near the return with his right and extended it along (Record, p. 442). He says:

> Mine was a picket fire (Record, p. 449). * * *
> We had nothing but a sparse skirmish-line; I had no idea of doing more than to annoy them, to give time to our infantry (Record, p. 450).

He also says that he extended his left, and as he did so the Fifth Corps "extended their *right*" (Record, p. 443).

> In wheeling, I could see them all the time endeavoring to turn my left. [Indicates towards the northeast.]

He also says that before the Fifth Corps came out from below Gravelly Run Church, a "small cavalry force came up this road [Gravelly Run Church road] from the church," and that he, from the woods north of the White Oak road, could see our troops all through Bass' field (Record, p. 442).

Now, Bvt. Maj. Gen. Ranald S. Mackenzie, Colonel Fourth United States Cavalry, had in his division, there on the right of the Fifth Corps, between 1,200 and 1,800 men (Record, pp. 809, 810) which General Sheridan had intended to have used as a turning column to close in behind the enemy in their works, and to the north of the position of the Fifth Corps as it swung around to the west, and thus sweep down everything, and at the same time get possession of the fords across Hatcher's Run.

General Warren knew this, but the faulty movements of Crawford's division moving to the north, and extending to the right and east so as to get beyond Munford's rebel cavalry left, *absolutely forced General Mackenzie*, with his fine cavalry command, entirely out of the battle, so that it was not only wholly useless for the purpose intended, but was crowded across Hatcher's Run some distance to the east of the Ford road.

Who was responsible for this?

The learned counsel for General Warren would presumably say, according to the novel theories advanced here, that General Sheridan was responsible because he ordered the attack upon the enemy.

Over 9,900 infantry of the Fifth Corps were deluded and led north and away from the enemy's works from half a mile to a mile, by 1,200 dismounted cavalry skirmishers, leaving about 2,600 in the division under Ayres to assault the infantry and artillery in their works at the "return."

General Crawford says that before he received any order of like character from General Warren, General Sheridan sent him orders "to come to the left and to move forward as rapidly as possible" (Record, p. 583).

We shall see that General Griffin, who commanded the first division Fifth Corps, which followed Crawford's (Third) Division, as soon as he heard the firing and appreciated Ayres's extremity, broke away before orders were received from Warren to that effect, and, with the true genius of a soldier, hastened down to the critical point and largely contributed to the success of the day.

A little more of the history of this whole movement will possibly show even in deeper colors the inability of the then commander of the Fifth Corps on that day, in the open field, to handle and concentrate and efficiently control the movements of so large a body of men.

Bvt. Brig. Gen. Geo. A. Forsyth, Lieutenant-Colonel, U. S. A., called by the applicant, testifies as follows (pp. 202, 203, &c.):

> Q. Do you recollect at what point of the engagement you left him first?—A. Yes.
> Q. Where was that?—A. After our troops, that is the Fifth Corps, commenced to

move in, when they got out the skirmish-line, and got out pretty well, a pretty sharp fire began to develop from the enemy. I think that was before they crossed the White Oak road. But when they got in and got across there, for a moment the troops were staggered. I did not see any effect on the corps but as you may have seen happen to the best ones. I just darted out with the skirmishers, and shouted to the men to come on. I had done that thing before. They hesitated a moment, when Captain Allen, an aide of General Sheridan, said to me, just about the time the fight was getting pretty sharp, and the men were kind of recovering themselves, he said, "General Sheridan wants you to get over," and he pointed, "to these divisions" . . . "and get them into the fight." I looked across, and I could see the other divisions deflecting to the right. There were two divisions there. As near as I know, I think Crawford's division was one of them. I was not intimately acquainted with the officers of the division, so I could not say. I turned and rode down over in the direction of those Divisions.

Q. When Captain Allen spoke to you, where were you; were you in the front of Ayres's Division or just at the rear, or where?—A. I was just on the line of Ayres's Division, right in the skirmishers.

Q. How near the works were they then?—A. I cannot tell, because it was a copse in the woods—thick undergrowth.

Q. How near the edge of the copse were you?—A. Quite close to it.

Q. Had the heavy firing from the works begun then?—A. No, sir.

Q. The troops were advancing then?—A. Yes.

Q. Did they become steady again then?—A. I think for a moment; they were steady then.

Q. This confusion only lasted for a moment?—A. So far as I saw.

Q. You were where you could see the whole of Ayres's line?—A. So far as I could; but I was paying strict attention to what was directly in front of me.

Q. You say this confusion was such as you have seen in the best of troops?—A. Yes.

Q. How long did it last?—A. I cannot tell. The only way I can express it is, just the moment I saw the troops stagger, and thought for a moment they might break, I rushed right out without waiting for orders, and cheered them a little. I thought the men wanted encouragement.

Q. Then they recovered themselves?—A. They seemed to.

Q. Did you know General Winthrop by sight?—A. Yes.

Q. Do you recollect when his brigade came up on the left of Ayres's Division?—A. I just recollect this much, that I was very much pleased with General Winthrop. I saw him ride in just as coolly as we are now.

Q. Then you recollect his brigade moving in?—A. I could just see them.

Q. Then, do you recollect that Ayres's men moved to the left and flanked to the left?—A. No, sir; I do not.

Q. Did you notice a gap between Crawford's Division and Ayres's Division; do you recall being struck with that at all?—A. Yes; because I went back to the rear. My only idea was to swing that brigade in where the fighting was.

Q. The division, you mean?—A. Yes, the division.

Q. Then you went over to Crawford's Division?—A. Yes.

Q. Had they changed direction at all then when you got over to them?—A. Not so far as I recollect; they seemed to be drifting out of the fight.

Q. You cannot recall whether they had changed direction?—A. No, sir; I cannot.

Q. Can you give us any idea of how great an interval there was between the left of Crawford's division and the right of Ayres's Division at that time when you went there?—A. Only in this way; it was not great; they could see the fighting of the other division.

Q. Had any of Crawford's Division then got into the woods?—A. No, sir.

Q. Perhaps you could not be positive that the right of Crawford's Division was not in the woods, could you?—A. The skirmishers were just entering the woods and this copse.

Q. Do you recollect that the front of Crawford's Division was considerably longer than that of Ayres's?—A. No, sir.

Q. Then it is possible that his right may have been in the woods at that time of which you are now speaking?—A. You mean Crawford's right?

Q. Yes.—A. That is possible.

Q. Did they change direction, or begin to change direction, to the left then?—A. No, sir; I think not.

Q. Did you meet General Crawford himself about that time?—A. No, sir; when I got over to the line, naturally the first officer I met was, I think, a lieutenant-colonel, and I shouted. I said, "Swing in to the left here; the fighting is here on the left," and almost immediately I went forward and met a colonel, I think; I am not positive about this, it may have been a brigadier-general, and he said to me, "What are you interfering with my brigade for?" I think these are the words: "Who are you?" I said, "I am Colonel Forsyth, of General Sheridan's staff, and I want you to swing this

brigade in to the left." I am not positive now, looking back at it; we did not exactly agree. He seemed to be very determined to have his own way. He seemed to have his orders; he seemed to understand himself. I was a little—well, not a little, but a great deal—annoyed, but there was one thing certain, he did not know me and I did not know him. He said he must take his orders from people he knew. I then turned to find General Crawford, whom I knew slightly. I rode over some distance and could not see him; then I came back again. Then I came across another officer who was commanding a brigade, and who, I think, was Colonel Kellogg. I struck his left and tried to swing them in. The colonel rode up and was very indignant and wanted to know what I was doing with his brigade. I told him what I wanted to do was to swing that brigade in to the left by order of General Sheridan. He said he had his orders from his own authority, General Crawford or General Warren, and said that he would take orders from either of them; that he did not know me. I was very anxious to get the brigade in, and he was just as determined to follow out his instructions, and there was some conversation. I think the conversation was in italics for a moment or two; then they kept on the road. I saw at once he certainly knew what he was about as regards his orders, and I was simply very much distressed. I then rode again to see if I could not find General Crawford; I could not. As I came back I think I saw Colonel Kellogg again; I will not be so certain about that. Then there seemed to be some sort of a change in the troops to the left of him. I kept moving pretty rapidly and they kept moving always to the right. I spoke to several mounted officers and they seemed to think there was something wrong about it, but that they were following instructions. Finally we came down to the road, which I know now was the Ford road, but which I did not know at that time.

Q. Do you mean that you were with them all the time, with Crawford's troops all the time, from where I understood you to place them, just in the clearing, until they got to the Ford road?—A. I had gone twice over to communicate with General Crawford and could not find him; I did not see him at all. When I got to this road it struck me at once it was a road that I knew and that I had seen on the map. As we got there there began to be a little bit of skirmishing on the left of this line. I rode rapidly over to a house there and met a couple of women there, and I said, "What is the name of this road?" And one of the women was evidently going to answer me when No. 2 promptly said, "Don't you tell him a word." I said to her, "Is this the road to the ford?" And she says, "Don't you tell him a word, not a word;" I saw I could not get any information, and about that time three or four shots came from the woods—the road opened out into the woods. I knew then at once that we had struck the enemy. I saw some of them coming out. I turned around and wheeled, and the officer commanding the brigade—in fact, the men naturally wheeled and faced towards the enemy and came up the road. Then the skirmishers came up pretty rapidly. The skirmishing commenced then and just as we were going into the woods. Our men looked towards the woods where the enemy were and they came out (the enemy) and appeared to look out upon the road and go back; they seemed to be surprised at our being there. Just as we were about getting in there the fire was becoming reasonably sharp, and General Warren rode out of the woods, having evidently come down the road or a little to one side of it. I think I was the first officer he met, and he was excited and evidently angry. He said to me, "What are these troops doing here; what are you doing here?" or "What are you doing with these troops?" I cannot recollect the exact words. I said, "General, I have nothing to do with the troops. I have been trying to get this left in." Then he turned around, and I think he recognized some officer he knew and made the remark, he says, "Where is Crawford?" He had one or two officers and an orderly with him; of that I am not positive; I think they were staff officers. He said something to this officer. Meantime we were getting into this fight. I said to General Warren, "We have been moving to the right and moving out of the fight all the time." He says, "Where is General Crawford?" and somebody pointed in the direction they supposed he was and said he must be out there. Then somebody else made the remark that they had been deflected too much to the right. Then he made the remark either "What I expected," or "What might have been expected," and rode off rapidly, evidently in a direction to find General Crawford, and was followed by the staff officer and orderly, as near as I can make it, going this way [indicating on map]. We drifted, in my opinion, right out here [pointing to the map]. As nearly as I can judge that must have been the house (Boisseau's house, on the Cotton map). You see there is an opening there. General Warren must have come right in here some place. It is possible he went on that back road in there. [Witness points to a spot on the Ford road right abreast of Boisseau's house, known as C. Young's house on the Gillespie map and as C. Young-Boisseau on the skeleton map.] * * * * * * * *

(Record, page 205.)

Q. You say you went over first to the left of Crawford's division and then you tried to find General Crawford?—A. Yes.

Q. Then you came back again to the left of his division?—A. Yes.

Q. Then did you follow on with those men?—A. Yes; we went right in.

Q. Did you continue with them then?—A. Yes.

Q. You continued with them from a place somewhere near the left of the enemy's works?—A. I cannot tell where we struck their works. I am not positive about that, only we got in there at once. We went in and had a pretty sharp fight in two or three minutes. They seemed to be surprised to find us there. We seemed to have struck their flank and they turned around and faced us.

Q. General Crawford's men struck the enemy that way?—A. What I mean to say is, the enemy, as near as I could judge, were evidently coming down that road, the Ford road, and that they saw us and had to go back. They were going towards Hatcher's Run.

Q. How much of a force?—A. I could only see a part of it as it came out there, but it was a substantial force.

Q. Then the part of our forces that you were with there had a sharp fight for a little time upon the Ford road with the Confederates, who were trying to get away to Hatcher's Run?—A. I should judge so.

Q. Was there any firing upon our troops by their artillery about that time and place?—A. I do not think so, but I do not want to be positive about that. There was some artillery in the road, and when we pressed up there I recollect one of the officers came up and said, "I want you to bear witness that my regiment captured these guns." I recollect some dismounted cavalry getting in on the other side, on the south side. They were coming down, and for a moment we had some pretty sharp fighting—four or five minutes. The troops for a moment seemed to hesitate. I know that Captain Martin, of General Sheridan's staff, met me there. That was after I had gone over to find General Crawford. We encouraged the men the best we could, and finally the men broke over. I could not tell whether it was an intrenchment or a ditch that they broke over, and followed the enemy out, and came out into a large deserted cotton-field. The enemy formed a line across that field and opened on us, and we had some pretty sharp firing. I know I lost the best horse I ever had there, blown all to pieces.

Q. What field was that?—A. They forced them back in here westerly, and just as we got in these woods we began to fight. There were two guns in the road captured. [Witness indicates on the map south of Young's field.] After we forced the enemy through here I saw the cavalry coming dashing down the White Oak road—mounted cavalry going west.

Q. Whose cavalry?—A. Our cavalry, the First cavalry. Where my horse was killed there was a sort of rail fence, and after we got out into this field the enemy made a stand. Our people drove them over a field, over there somewhere. It does not appear on the Gillespie map. [Witness indicates southwest of Young's field.]

* * * * * * * *

(Record, page 206.)

Q. Where did you strike the White Oak road, on that map, according to your judgment?—A. My idea is that we struck them right in here—where we struck the enemy first. [Witness indicates near the south edge of Boisseau's field.] My idea is that after we fought them they halted in here and we pressed them out here. [Westerly.] They seemed to be trying to get to Hatcher's Run. About that time the cavalry came down here (I did not see the road), near the intrenchment. I only saw the cavalry come down the road.

* * * * * * * *

(Record, page 208.)

Q. You recollect General Kellogg. Do you recollect his calling attention—when you were giving that order to him to take his troops in—do you recollect his calling your attention to the fact that his was the pivot for Crawford's division to change direction on?—A. *No, sir; I recollect General Kellogg stating emphatically that his orders were to guide on the right;* that is my impression now. He seemed to be perfectly clear about his orders.

* * * * * * * *

(Record, page 209.)

By Maj. Asa Bird Gardner, counsel for respondent:

Q. When you had this conversation with General Kellogg and he "seemed to be clear as to his orders" that he was to guide on the right, what was the effect of the movement of his brigade so far as the right of Ayres's Division was concerned?—A. He was going away from it.

* * * * * * * *

(Record, page 209.)

By the COURT:

Q. What was the expression that General Warren made to you when you first met him on the left of Crawford's division?—A. It is a difficult thing to say; I was much surprised at seeing him; he was evidently very much excited; he evidently had been looking for those troops; and I think for the moment that he perhaps thought I was the officer in command. He said: "What are you doing with those troops; why are they not in here?" or something of that sort. When he first spoke to me I didn't know who he was; I was paying attention to something else, and he darted out of the woods and came at a rapid gait; he had ridden rapidly.

Q. What was the expression he used? He said it was what he "expected," I understand you to say?—A. He turned around to one of his staff officers—it was some officer—and he said something to him; he evidently knew him, and he said either "it is what I might have expected" or "what might have been expected."

Q. What impression did it leave upon your mind as to what he meant?—A. Well, it was very sudden to me; I didn't know much about the Fifth Corps, and it left the impression that it was something he might have looked for—that he should not have depended upon somebody; that was the impression upon my mind.

Q. As he rode immediately off, what impression was left upon your mind as to what he was going to do?—A. That he was going to put these troops into the fight.

Q. Right there?—A. That is my impression.

Q. As you have made a very interesting assertion as to the way these officers of the Fifth Corps met you, the court would like to know in addition as to whether, in giving these gentlemen orders, you used General Sheridan's authority?—A. I said: "I will give you the order by authority of General Sheridan." I did not know the officers and they did not know me.

* * * * * * * *

(Record, page 210.)

Q. What time was it at night when you started to go up the road, when you started to find General Sheridan, when you ended with the Fifth Corps?—A. After leaving the Fifth Corps I went a little ways with the cavalry, and they went straight towards Hatcher's Run.

Q. Did you hear any firing on the right of the enemy's works, or on the extreme left of them (as we were facing the enemy), or on their extreme right westward; did you hear any firing below the works, south of them, on our extreme left in that direction while you were with the cavalry at any time?—A. No, sir.

Q. Did you go south of the White Oak road when you were with the Fifth Corps on that day?—A. No, sir.

Q. Did you see any infantry in *here* [referring to the map] of the Fifth Corps?—A. No, sir.

Q. What time did you leave the Fifth Corps?—A. I cannot tell the time; I left them up *here* in the timber. [The witness indicates near "C. Young."] There is certainly a field in there somewhere; it began to get dark about the time I went back, and the fighting was substantially over.

By Mr. STICKNEY, counsel for applicant:

Q. When you say you were coming up with the cavalry, the cavalry would apparently have been moving up from the west end of the enemy's works somewhere in a northeasterly direction, when you speak of their moving up and your going up with them?—A. The cavalry came down here and were pressing the enemy towards Hatcher's Run.

Q. They were pressing in a northerly direction toward Hatcher's Run?—A. Yes; came, apparently, from White Oak road; I should judge from the west end of the enemy's works. I had nothing to do with the fighting there; my fight was entirely with that portion of the Fifth Corps that struck them near Young's or Boisseau's house.

Q. You were at no time on the south side of the line of works?—A. No, sir.

By the COURT:

Q. You were at no time during the fight on the White Oak road?—A. No, sir.

Q. How far were you at the time you were nearest to it?—A. About half a mile, I should say. [Witness looks at map.]

By Mr. STICKNEY, counsel for applicant:

Q. From half a mile to three-quarters was the nearest which you got to the White Oak road?—A. Until I struck it coming back.

By the COURT:

Q. Is it not possible that you have mistaken the White Oak road for this road [indicating], and that the opening was down there?—A. We had our fight right in here. [Witness indicates near the Boisseau or Young clearing.]

The evidence of this experienced and gallant officer, Bvt. Brig. Gen. George A. Forsyth, U. S. A., Major Ninth U. S. Cavalry, shows, among other things, that while Crawford's division was still in the Young-Boisseau field, it had a little fight with a surprised detachment of the veteran enemy, which was trying to escape by the Ford road and Hatcher's Run.

Also, that General Custer's cavalry, which had completely turned the enemy's right and rear, came charging up from that direction.

In getting as far as the Ford road with Crawford's division, Bvt. Brig. Gen. George A. Forsyth says (Record, p. 207) :

> There was scarcely any skirmishing; they were going right along. The troops did not experience any difficulty, except the natural difficulty of the country.

Col. John A. Kellogg, who commanded the first brigade of Crawford's division, says he received identical orders from his division and corps commander (Record, p. 219).

> My instructions were to move to this road [White Oak road], and change my front to the left, and then that General Baxter would form on my right; *that he was to guide* ON MY RIGHT, and I expected that I should have troops to guide on my left, but they had not then formed; that is, after the change of direction.
>
> * * * * * * *
>
> My command was receiving a very light fire. I judged that there might be, perhaps, a skirmish line or a picket line of the enemy in there.

He, meanwhile, had been moving north of the White Oak road, and now changed direction to the left, and while doing so General Warren came up and reiterated previous instructions.

Baxter's brigade on his right had not yet changed direction.

Colonel Kellogg's evidence continues as follows :

> I lost one man wounded; that I recollect distinctly, but I had my color line out so as to form a skeleton line.
>
> *I ordered my men to lie down to protect them from this fire temporarily until Baxter had formed* [*i. e.*, changed direction to the left].

At *this* time Bvt. Brig. Gen. Geo. A. Forsyth rode up from General Sheridan and ordered him "to move into action."

It is *this* order which the applicant would have you believe, destroyed the alignment and continuity of Crawford's division.

No wonder that Kellogg's brigade drifted out of the fight away from the support of Ayres, while obeying General Warren's orders to guide *on the right* on Baxter.

No wonder General Forsyth ordered them into action when he found them, as Kellogg says, *lying down* to be protected from a trifling skirmish fire, while Ayres was assaulting the "return" with his small division.

Now, where did even *this* order bring them out.

Kellogg says the left of his brigade passed to the *north* of the Louis Sydnor house (p. 220).

He heard firing to his left, where Ayres was, and Bvt. Brig. Gen. G. A. Forsyth's order was "to move further to the left and go in immediately" (p. 227).

This witness speaks of a fight on the Ford road just where Bvt. Brig. Gen. I. Tarbell who commanded the Ninety-first New York Volunteers in that brigade and General Forsyth put it (p. 220), and reiterated it, and then thought it might be in the Gilliam field when the learned counsel pointed to it (p. 221).

Bvt. Maj. Gen. R. B. Ayres, Colonel Second United States Artillery, who commanded the Second Division, Fifth Corps, says he saw Crawford's and Griffin's divisions going off—"they marched straight on, due north."

> Q. Apparently away from the enemy's fire?—A. Well, they did go right away; they marched on (p. 263).

(Page 269.)

By the COURT:

Question. General Griffin commanded one of your divisions of the Fifth Corps?—Answer. Yes.

Q. He is dead?—A. Yes, sir.

Q. He has been dead since 1867, I think?—A. Yes, sir.

Q. You said that before General Chamberlain's brigade came over to you that General Griffin came over to you and had a conversation?—A. Yes.

Q. I would like to know what that conversation was.—A. One of my staff officers had gone over to General Griffin, I think. He came riding through the woods very rapidly, and he says, "Ayres, what is up, what is up?" I said, "There is nothing new, Griffin; Crawford has taken his division away and left me to fight alone. The same old story." That was just after I had changed front and I was preparing to advance on that angle—before I had carried the angle.

Q. What did Griffin do?—A. He immediately disappeared in the woods; went directly back into the woods. I suppose the result was the bringing of his division in, because it came not long after; General Chamberlain's brigade came first.

Q. That is all you saw of that division?—A. Yes.

Q. How many brigades were there that day of that division?—A. I don't know; I just saw that one come in just after I had carried that angle. General Griffin said two or three things before he went back; he said, "Yes, I have told General Warren if he would let your division and mine go together in these cases these things would not happen.

By Maj. ASA BIRD GARDNER:

Q. In your opinion, could that communication have been maintained between Crawford and yourself when you moved into action there with proper diligence?—A. It was natural for me to suppose when I changed my front to engage the enemy, and was engaging a heavy force, as the musketry showed, it was natural to suppose that General Crawford would bring his division around and come in on my right and engage in the battle; that was what I expected at the time.

By Mr. STICKNEY:

Q. That was your supposition from what you saw yourself?—A. Yes.

Q. And from what you knew, yourself, then of the position?—A. Yes, sir.

Q. I suppose you have no personal knowledge as to what General Crawford's precise movements were?—A. Subsequently?

Q. Yes.—A. No.

Q. Or as to when he became engaged?—A. No.

Q. And those points might materially modify your judgment?—A. No; it is my opinion now that he should have come around there and engaged.

Q. On your understanding of the position?—A. Yes.

Q. The conversation with General Griffin was just before you made your assault on the angle of the works?—A. Yes, just as I commenced to be heavily engaged. I had been engaged some little time; that was the time I had the conversation, when he came through himself, with me; I had no other conversation with him until I met him somewhere near Five Forks.

Brig. Gen. J. L. Chamberlain, of Griffin's division, has related how when he heard the sharp firing at the "return," he pulled out what he could of his brigade from the northerly march and went down diagonally through the Sydnor field to the enemy's works (p. 273) and joined Ayres.

Col. R. M. Brinton, United States Volunteers, who was an aide.de-camp to General Griffin, says that after the latter came down and joined General Sheridan and Ayres's division inside of the works, he was sent up to look after Bartlett's brigade (Griffin's division) and found Gregory's brigade of the same in the woods to the northwest of the Sydnor house.

The troops were considerably disorganized there. * * * It was not from the firing, because there was very little firing down in those woods (p. 310).

The aide-de-camp of General Warren, Maj. E. M. Cope, United States Volunteers, says (p. 324):

That probably twenty minutes after the attack of the Second Division (Ayres's) General Sheridan came to General Warren and asked him where General Griffin had gone, as he had sent three or four staff officers after him.

General Warren then sent the witness to tell General Griffin "that he was going too far to the right, and also to tell Crawford the same."

Cope found Griffin almost due north of the "Chimneys," and said:

That he was going in the wrong direction altogether, and that he must come by the left flank back, and take up *his position in the place that Crawford was to have gone.*

Cope then gave the direction to General Bartlett and came back and rejoined Warren, and found him about where the first attack commenced, at the westerly edge of the open field right by the White Oak road.

In Cope's official report, dated Petersburg, Va., 13th April, 1865 (Record, p. 326), when, as the learned counsel for the applicant says, the matters were fresh in his recollection (Record, p. 325), he says that he was sent to—

Griffin with an order to bring his division toward the White Oak road by the left flank, in order to be in better supporting distance of the Second. Also to inform General Crawford that he was going somewhat too far to the right. I found Generals Griffin and Crawford to the *right of the burned Chimneys* and gave them your orders. * * * *You came where General Griffin was, and then returned to the White Oak road*, where I joined you a few minutes after.

Cope says he believes this report to be "accurate and truthful" (p. 331).

When he found Griffin the first time the latter "said he didn't know what way to go."

Cope also says that when he came back to where General Warren was, just north of the White Oak road—

Ayres was fighting in front, near the Five Forks, at that time—*probably past the Five Forks.*

Thus in his indecision was the applicant here induced to go back to the original point of divergence, where he was nearly alone. This was the second time he had done so (p. 1229).

Ayres's Division had gone and was being led by General Sheridan, and was rushing like a torrent westwardly down the line of works. The cooperating cavalry, pouring over the works in every direction, were driving out the demoralized enemy, while over 9,900 men in the other two divisions of the Fifth Corps were in confusion in the woods and disintegrating by brigades.

Griffin, who had been placed in rear to meet any probable attack from the Confederate General, R. E. Lee, from the entrenchments to the east, had to be employed in the position destined for Crawford.

Finally, General Warren again started up through the Sydnor field and came up with Crawford after he had reached the Young-Boisseau field near the Ford road.

Bvt. Lieut. Col. W. T. Chester, aide-de-camp to Crawford, says that when part of Baxter's brigade came out into the Sydnor field, north of the house, "there was a little disorder" (p. 383).

Bvt. Brig. Gen. H. C. Bankhead, United States Army, says as to Crawford's and Griffin's divisions:

I thought they swung off to the right too much (p. 345).

Also that they must have been some distance from Ayres before they stopped to wheel.

He was sent a second time to Crawford, who was "away up on the right." * * *

I didn't hear any firing at all when I went up to Crawford except from Ayres's division. When I left Crawford's division there was no firing, but after I left him before going far I think I heard some light firing (p. 346).

Bvt. Brig. Gen. Richard Coulter, commanding third brigade of Craw-

ford's division, says there was only a picket firing in the woods north of the White Oak road—"no heavy firing."

After passing to the left of the Chimneys he met a severe fire (p. 350). He says:

> I received no orders from anybody beyond those that I received when I started until I got orders on the Ford road. It was then late. It was getting nightfall.

From the position of the guns captured up there, about which so much is said by Bvt. Lieut Col. West Funk, major One hundred and twenty-first Pennsylvania Volunteers (p. 436), in his brigade, Coulter infers and has no doubt that they were trying to get away (pp. 354, 356).

Col. Ellis Spear, Twentieth Maine Volunteers, aide-de-camp to General Bartlett, says he thinks Bartlett's brigade and the other troops with him "were borne off to the right in their march somewhat" *after* Ayres' division became engaged.

The loss was trifling in his brigade (pp, 406, 408).

Bvt. Lieut. Col. Samuel K. Herr, captain One hundred and ninetieth Pennsylvania Volunteers, aide-de-camp to Crawford, and Bvt. Brig. Gen. J. Tarbell, Ninety-first New York Volunteers, both agree in saying that the fire, as they went through those woods toward the Ford road north of the White Oak road, was a scattering fire, not heavy (pp. 408, 554), exclusive of the fight the Ninety-first was in.

Lieut. Col. D. L. Smith, chief commissary of the Fifth Corps, says that when General Crawford was met by General Warren at the Ford road, the latter said:

> Crawford, you are entirely too far to the right. I want you to face to the left directly and charge at once.

Bvt. Maj. Gen. J. J. Bartlett, brigadier-general United States Volunteers, commanding a brigade in General Griffin's division, has testified as follows (p. 1168):

> Q. You say you had the plan of battle from General Sheridan?—A. Yes.
>
> Q. What was the plan of battle you received from him?—A. General Sheridan called us around him in the road—his plan was very short; he drew his sabre in the dust and says: "There is the White Oak road; the enemy are intrenched behind that; they have refused their left somewhere near an old church; whether it is within their lines or not I do not know." He said: "I will attack their entire front; I will deploy my cavalry, dismounted, and engage their entire front, and with the strong arm I will strike this salient and wheel on to their left and rear." And, as I understood it, the formation of the corps, *en echelon*, by divisions was with that object.

(Page 1119.)

> Q. Was this in the morning or afternoon?—A. This was in the morning.
>
> * * * * * * * *
>
> Q. What were your orders as to moving forward?—A. At the moment Ayres became engaged everything wheeled to left.
>
> Q. When you moved out from there, what transpired? State exactly what you recollect.—A. After marching, I think, about a mile—it is difficult to determine a march in line of battle and in woods as to distance, and I have not measured any map—I should think perhaps nearly a mile, or a mile, I heard heavy firing to my left. I knew then that Ayres was engaged, and became restless under it, because we were taking a direction that was at almost right angles from the firing—perhaps quite. I finally rode out to the left, passed the rear of General Crawford's division and saw the fighting. I saw two lines of battle moving out of the woods; I saw that Ayres had carried the salient and had moved well up in the fields. Those two lines of battle came out of the woods. This is the field [witness points to the Sydnor field]. Ayres had carried this and had moved out into the plain [the Sydnor field], and, though his command looked straggling, here it was like an advance through the woods. When I first saw the enemy they had just come out of the woods on the west side of the Sydnor field near the White Oak road, in two lines of battle. We were marching about in that direction [a little north by east], and the fight was here [points to the lower part of the Sydnor field]. I came here and I had a line of vision, when I looked

out of the woods, straight to here [from the middle of the northern boundary of the Sydnor field to the southeast corner of the same field].

Q. Indicate about the point in the woods to the east or north of the Sydnor field where you came and looked out.—A. I suppose about there [points to a position at the edge of the woods a little east of the center of the northern boundary of the Sydnor field—northeast of the chimneys at the edge of the timber].

My formation was in three lines, one regiment of skirmishers, three lines two regiments each, one regiment in reserve. I caught the last line of two regiments and my reserve regiment, and ran them down—this is a ravine here [points to the position between the Sydnor house and the Chimneys]—ran them by the left flank down this ravine, driving them right in front—swung them up in this way [wheeling to the left and south through the Sydnor field], and struck the left flank of these two lines of battle of the enemy to their rear.

Q. On the west side of the Sydnor field, near the White Oak road?—A. They had got down here. I swept them into the hands of Ayres—probably about 2,000 in the two lines. The moment they saw that I had them in that way, they just threw down their arms and ran in among Ayres's men and into the cavalry line. I threw them to the left and rear of Crawford's whole division—I threw my regiments—and I sent word to General Griffin what I had done, and he followed with the whole division.

Q. Then, in moving up from your position where you formed, what general direction did you take, up to the point when you pulled out into the Sydnor field and came down, as you have testified?—A. We were faced, as I understand it, in the direction that we were supposed to march. I think no one was quite positive as to where they would strike this refused left, but it was understood that when we did strike it Ayres would strike it with his division, and that everything then wheeled to the left.

Q. At the time, from the information you received, how did you understand that the salient was to be struck by General Ayres?—A. From the formation entirely. I think General Warren directed the formation and the position of the divisions entirely, and Ayres would naturally strike it if it was anywhere near where General Sheridan supposed it was, and he could tell that it must be on the White Oak road, and therefore that Ayres must strike it.

Q. And strike it in what direction did you understand?—A. I understood he was to strike it—that was supposed to be the general line of advance [northwest], and he would strike it here at the angle. And then the moment he commenced fighting at the angle, the other two divisions were to wheel to the left—touch to the left all the while.

Q. Had you any information at that time of what part of the works the cavalry were to take charge of?—A. Yes; General Sheridan said in the morning that he would deploy the cavalry along their entire front, and that he would use the strong arm of the service in the way I have indicated, and he did so, because when I struck this field here the cavalry exchanged some shots with my troops, and General Sheridan joined me here at the Five Forks opening, because, as soon as these prisoners had thrown down their arms, I wheeled these regiments and took my others that were coming across from here and some little higher up. They all had orders from staff officers to follow right on. They came across here and struck in the woods, and the enemy, as often as they could, would form a line perpendicular to their works to meet us; but the fight from the Sydnor field clear down was just simply a repetition of "busting" their flanks when they formed them there; and from this field, until the fight was over, I do not think I saw one of my regiments as a formation. We would get as many men as we could, sometimes perhaps not over 60 or 100, and strike this line that the enemy were continually attempting to form, and break it, and did that all the way down. I met General Sheridan here at the Five Forks opening.

Q. What works, if any, were there of the enemy, on the west side of that Sydnor field?—A. Not any; if there had been works there it would be refusing their flank twice. They depended upon this [the witness indicates the "return"]. There was no use for works here. There was no barrier inside of their works once we were in them.

Q. How rapidly did you move along?—A. So rapidly that it was not possible to keep any formation through the woods.

Q. When you moved down from the position you have indicated in the northeast part of the Sydnor field, bringing your regiment with you, what orders, if any, had you to make that movement?—A. Not any; on the contrary, I sent word to Griffin what I had seen and what I was going to do, and Griffin followed with his entire division.

Q. Then, at that time, when you came out into the northeast edge of the Sydnor field, what direction were your troops taking, in relation to the fire?—A. They were going directly away from it.

Q. In going up through the northeast part of the Sydnor field, what resistance, if any, did you meet from the enemy?—A. Not any. Just a few skirmish shots; but not what you call a skirmish fire—just occasionally, as though they were videttes.

Q. Was anything upon our right—of our forces?—A. What do you mean?

Q. Any of our forces upon your right as you moved up?—A. The other two brigades of Griffin's division were upon my right.

Q. In going up there, in what direction were you crowded, if at all?—A. Crowded always to the right; so much so that I sent a staff officer to see why it was so.

Q. You sent an officer to ascertain the reason of this?—A. Yes.

Q. Do you know whether there were any other forces of the United States upon your right than the two brigades you have mentioned of your own division?—A. No; only later I know that Mackenzie——

Q. (By Mr. STICKNEY, counsel for the applicant.) No; at that time, as far as your observation went?—A. No.

Q. Did you, during that day, before you got down to the White Oak road, through the Sydnor field, see any other forces than the two brigades of your own division upon your right?—A. No.

Q. Do you recollect passing the Five Forks?—A. Yes.

Q. In moving westward?—A. Yes.

Q. What fighting, if any, do you know of, after passing the Five Forks?—A. The fighting was as I have described, from that point, the west side of the Sydnor field. It was simply little combats; little engagements. They never halted there enough to make us form a line of battle, because it was easy always to strike their flank; they could not get any great number of men out. Where these guns were taken there was no fight. I passed over there without any fight. The cavalry came in immediately after, because the men that supported these guns had been taken to make those two lines of battle that I described there on the westerly side of the Sydnor field, and they had been captured on the north side of the road. All the fighting had been here, and was as I have described it, and in fact you could hardly keep up with them—it was difficult to get men enough together to make a fight.

Q. Where did you meet General Sheridan?—A. In this field, by the Five Forks.

On cross-examination this witness answered as follows relative to his movements before reaching Five Forks:

Q. Your brigade was entirely independent, for the rest of the operations that day, as far as you understood?—A. Entirely. I did not see any other soldiers.

Q. Where did you last see Crawford's division?—A. When I left them there and went to their left and rear, and they were continuing to march to the right.

Q. Had you kept in sight of them all the way up from where you started on the advance?—A. Touched to the left all the way.

Q. Do you mean that during that movement up in the northerly direction Griffin was in connection with Crawford and was upon his left?—A. Griffin was upon Crawford's right. I was crowded to the right all the while.

Q. Were you there in connection with Mackenzie's cavalry?—A. No, sir.

Q. See anything of them?—A. No, sir.

Q. Did you see anything of them or know of their position at that time?—A. I think Colonel Locke mentioned something about it when he rode up. When he stated that General Warren had placed two regiments there. General Sheridan says, "I have covered that road with Mackenzie's cavalry."

Q. Was that all you knew of the movements or position of Mackenzie's cavalry during that day?—A. Yes. The only cavalry I saw were fighting down the road here [indicating on the map near his own position], when I was moving down the woods in connection with the cavalry (pp. 1180, 1181).

Q. You say you sent a staff officer to find out why you were being crowded to the right; who was he?—A. I sent Major Belcher to General Crawford.

Q. You did not send him to Griffin?—A. No, sir; *I sent him to see why I was being crowded to the right.*

Q. You sent him to Crawford?—A. Yes; but without any message to General Crawford.

Bvt. Lieut. Col. Walter T. Chester, United States Volunteers, then aide-de-camp to General Crawford, says that when Baxter's brigade got on to the north of the White Oak road they—

Got the first fire, which was picket firing. * * * The fire amounted to little—well, it hit a few men; it was a good, sharp picket fire—not enough to delay the march (p. 832).

Bvt. Brig. Gen. Horace Porter, aide-de-camp to General Grant, who had been sent to report the movements, says as follows (p. 912):

Q. After the capture of the "return," you went at General Sheridan's request to look after General Warren; you say you met portions of Crawford's division?

Mr. STICKNEY, counsel for the applicant. He fell in with Crawford's division. Those were his words.

A. Yes.

Q. In these woods, north or northeast or northwest of the "return"?—A. It was generally a northerly direction.

Q. Do you recollect crossing an open field before reaching that division or not?—A. I have no recollection of it. There were openings. The country was densely wooded.

Q. Then, as you afterwards went west, did Crawford's division keep along with you, or did you pass them?—A. They were moving on in a westerly or northwesterly direction—farther north than the road I took.

Q. Then, I understand you, they were separating more and more from Ayres's division and the return?—A. My distinct impression is simply that they were moving.

Q. (By Mr. STICKNEY.) Is it knowledge?—A. My knowledge extends to this fact, that they were moving in a northwesterly direction, and I moved on a westerly direction—a little south of west, probably, to General Sheridan.

Q. Then they were moving in a direction away from the return?—A. Yes.

Q. And away from the line of works on the line of the White Oak road?—A. Yes, they were moving from the White Oak road—moving away from it.

It has been indirectly attempted to be shown that after Ayres' division captured the "return," and nearly their own number of prisoners, they halted a considerable time, and that it was because there was a so-called line of works along the west side of the Sydnor field near the White Oak road.

This is absurd. There was no idea on the part of the enemy that the "return" would be assaulted until just when General Sheridan went over.

General Ayres says the—

Enemy *attempted* to form a line to face easterly some distance on * * * [west side Sydnor field] (p. 256), but it was a general breaking up; an effort to get away.

He says he only waited two or three minutes inside the breastworks, and when General Chamberlain came down he went right on and marched a mile *beyond* Five Forks, until it got towards dusk, and then halted.

General Chamberlain says there was some firing after he came down; that General Sheridan—

Was right on the road, and it seemed to me certain that he would be shot; but he did not seem to care much about that; in fact, instead of taking care of himself, *he dashed right along the White Oak road westerly with his staff* (p. 275).

The reason of this was because our cavalry were assaulting and breaking over the works all along down in front of Ayres's column and to the west.

This evidence of Ayres and Chamberlain and of Bartlett completely upsets the theory sought to be raised of a line of works and enemy in good form to the west side of the Sydnor field.

It would have put them between three fires. Ayres to the east, the cavalry to the south, and Bartlett and Chamberlain sweeping down and gathering them in from the northeast.

The only delay was in getting through the prisoners and pushing ahead.

In his pamphlet book published or prepared December 10, 1865, the applicant, in trying to explain the serious deflection to the right of Crawford's division when it crossed the White Oak road, says he *afterwards learned* that the fire which—

Occasioned some unsteadiness in General Ayres' right, also caused the left of General Crawford to oblique to the right *so as to keep* the protection of the ridge and trees (pp. 1224, 1226). (See also Warren's official report.)

As highly indicative of the dazed and bewildered condition of General Warren on the day of this battle of Five Forks, he published a map with this pamphlet, in which he attempts to give, and wrongly, the locations and directions of the divisions of Crawford and Griffin.

In it he describes the movements of General Crawford's entire division followed by two brigades of Griffin's by the right, as being, substantially,

up through the timber, north of the White Oak road, and so on to the north of the Chimneys; then west to the Ford road; then a little circuit nearer to the house in the Young-Boisseau field, and then south on the Ford road, meeting a strong line of the enemy south of and near the southern side of that field (pp. 1225, 1226).

He did not know that any portion of his, Crawford's, command had become separated or have any report as to whether or not they had been fighting until he joined him on the Ford road (p. 754).

There is a suggestive figure in the losses ascribed to Crawford's division, viz. 300.

Of these, Colonel Kellogg says his brigade lost 75 men and 8 officers, killed and wounded, while obeying General Sheridan's orders, as communicated by Bvt. Brig. Gen. George A. Forsyth (p. 221), in trying to push down towards the left to restore the connection lost by the divergence.

With the losses of the day before deducted, the Fifth Corps had for duty April 1, 1865, first division (Griffin's), 5,807, and lost 125; second division (Ayres'), 2,645, and lost 208; third division (Crawford's), 4,140, and lost 300 (p. 1327).

At this point in the argument it becomes desirable to consider what the co-operating cavalry force did at the battle of "Five Forks."

CAVALRY OPERATIONS AT FIVE FORKS.

General Warren has testified that he knew what the cavalry were to do.

It was hardly to be expected that an inferior force of dismounted cavalry, armed only with carbines and sabres, should assault veteran infantry in breastworks, armed with muskets and bayonets, yet this is exactly what was done as soon as the heavy firing from Ayres's division showed he had advanced to the assault of the "return."

In the disposal of the cavalry of the Army of the Shenandoah, on the 1st of April, 1865, Major General George Crook's division (Second) was necessarily left five or six miles to the rear, guarding the trains beyond Dinwiddie Court-House.

The first division, under Brig. Gen. T. C. Devin, and the third division, under Brig. Gen. G. A. Custer, both under Major Gen. Wesley Merritt, together with Brig. Gen. Ranald S. Mackenzie's division, temporarily detached from the Army of the James, comprised the operating force.

On the 27th March the effective cavalry force under General Sheridan was as follows (p. 19):

First and third divisions, under Major-General Merritt	5,700
Second division, under Major-General Crook	3,300
Total	9,000

This force was somewhat reduced by the casualties of the battle of Dinwiddie Court-House, so that at the battle of "Five Forks" the cavalry of the first and third divisions, which covered the entire front of the enemy's works, could not have exceeded 5,250 men, from which, deducting horse holders from dismounted portions, would leave *at the front*, in the dismounted force and in the mounted brigades, about 4,250 or 4,500 effectives to cover the entire line of the enemy's works, one and three-quarter miles in length (p. 241), and hold them there by sufficient tentative movements.

As Brigadier-General Mackenzie had from 1,200 to 1,800 mounted cavalry in his division to the right of the Fifth Corps we can determine

with reasonable certainty exactly how many of that description of force was on the field.

This statement will show how largely General Sheridan relied on the Fifth Corps, whose subsequent distinguished services under his immediate command after this day he has never ceased to extol.

In the formation from right to left, came Stagg's brigade, somewhat refused, then Gibbs', Fitzhugh's, and Pennington's, and on the west of the Gilliam field Wells and Capehart's mounted brigades under Custer in person, threatening the enemy's right flank.

A portion of Custer's command, Pennington and Capehart's, having moved out obliquely and northwesterly from Dinwiddie Court House in the morning, struck the enemy's advanced right in the Gilliam field about noon, and after a sharp affair, in which artillery was used against them, our people retired slightly, and Pennington moved to the right to connect with Devin's division, and placed his right regiment, the First Connecticut Cavalry, so that its right rested on the road running south from Five Forks.

It is a curious fact that the cessation of this cavalry affair induced Pickett, the Confederate commanding general, to conclude that nothing further would be attempted (p. 477).

He accordingly went to the north of Hatcher's Run, and with him the second in command, Fitzhugh Lee.

Here they were rudely awakened from their dream of security, late in the day, by the assault then made.

Fitzhugh Lee describes how Pickett got across Hatcher's Run. They did not know of the firing or hear it until they got there at the Ford on their journey back from a conference with the Confederate Brigadier-General Rosser (p. 472).

It is therefore not possible, except approximately, to determine how long the assault had continued before they knew of it.

Pickett got through to the right of his line by putting spurs to his horse and throwing himself down on his neck (p. 471), but the infantry of the Fifth Corps interposed before Fitzhugh Lee could follow, so that he had to turn back.

This Confederate officer has put their cavalry force under his command on the field at 3,200 sabres, viz.:

Brigadier-General Munford	1,300
Brigadier-General W. H. F. Lee	1,000
Brigadier-General Rosser (who did not get into action)	900

Returning to the cavalry in front of the enemy's works, it becomes necessary to discuss what they did in consideration of the extraordinary claim set up by the applicant that Crawford's division, finally led by himself, drove the enemy out of their works at Five Forks proper, and practically won the victory.

Had this applicant shown the same degree of temerity at the critical time of the assault on the "return" of the enemy's works, General Sheridan might not have felt constrained to relieve him near the close of the pursuit.

That a considerable mounted United States cavalry force came up the Ford road to where the applicant was *before* he came down to the White Oak road, as admitted by him, is of itself a conclusive answer to this theory.

Col. L. H. Hastings, Fifth Michigan Cavalry (Stagg's brigade), says that in going up from Dinwiddie they had skirmishing, and charged

temporary breastworks, and arrived in front of the works about 1 or 2 p. m. (p. 1065).

Maj. A. E. Dana, Assistant Adjutant-General first cavalry division, says, there was in going up more or less skirmishing (p. 1014), and that at about four o'clock General Sheridan came to General Wesley Merritt and—

> Repeated his instructions about holding the position which we held, at all hazards; not under any circumstances to give way, but attack with all force as soon as the infantry had made their attack, to be indicated by the volleys.

Bvt. Lieut. Col. Theodore W. Bean, United States Volunteers, Seventeenth Pennsylvania Cavalry, and acting provost-marshal first cavalry division, says on this same subject (p. 925):

> Q. Were you informed at the time of the object of this order, to have the men fire continuously?—A. Yes. General Merritt, in giving me that order, also stated that a movement was in progress on our right flank, and that we might expect a junction upon our right at any moment. The situation of the division was regarded by myself and other officers that I communicated with as critical.
>
> Q. For what reason?—A. Because we feared we could not successfully resist an attack if made upon us by the enemy, as we were situated, and that our only hope of maintaining the line was in keeping up a constant fire.
>
> Q. How was the division armed?—A. With carbines, sabre, and pistol; no bayonets.

He saw General Sheridan move to the assault in front of Ayres' division, with his flag and staff.

Capt. Henry E. Alvord, late Sixth United States Cavalry, who was acting aide-de-camp to Brig. Gen. Alfred Gibbs, commanding the regular cavalry brigade at Five Forks, gives the following important evidence, which graphically depicts the way in which the Fifth Corps moved into action, and shows that General Sheridan and others on that line knew exactly where the enemy's "return" was:

(Page 817.)

> Q. What time did you set out that morning from Dinwiddie Court-House?—A. Our brigade had been in advance the day before—March the 31st; had been up as far as Five Forks that day. It had been pretty badly used up towards night on March the 31st, and we had been sent back to the rear to reorganize somewhat, and we moved from the rear of General Sheridan's command, near Dinwiddie Court-House, so that we were in the rear as we moved forward from Dinwiddie Court-House. We passed General Sheridan's headquarters a mile or so out from Dinwiddie, and then left the main road to Five Forks; crossing through the woods, and dismounted soon after we left the Five Forks road, left our horses and moved forward. It was then about the middle of the day. Devin's division was direct in our front as we came up, and the line was pressing the enemy back at the time, between twelve and one o'clock—about twelve o'clock, because by one o'clock we were in line on the right of Devin's division. Colonel Stagg, I think, of the Michigan brigade, was in command at that time; was still mounted and on our right. We left our horses in the woods and moved forward through heavy timber fronting the White Oak road, formed in sight of the enemy's works—their outer line of works—before one o'clock.
>
> Q. How near were you to the left of the enemy's works?—A. We were practically in front of the left of the enemy's works. Stagg, as I say, was understood to hold the right of the line, but he was mounted and kept in the rear somewhat. No mounted troops could move where we were. We were really on the right of the dismounted line of cavalry facing the left of the enemy's works—that is the position of my brigade. I was mounted all day, and my company remained mounted most of the time. I was moving between headquarters of the brigade and General Sheridan's headquarters. We reported that day, all day, directly to General Sheridan's headquarters.
>
> Q. How near did your brigade get to the enemy's works about the time you have indicated?—A. At one o'clock we were in sight of the enemy's works. The cavalry line was holding the enemy's line. We had at different times possession of the outer line or a temporary line of the enemy's works. It was disputed—the outer line was—during the middle of the day; firing going on all the time, losing men constantly, and heavy fighting from eleven o'clock that morning.

Q. How were you off for ammunition?—A. I recollect, now that you speak of it, that one of the causes of the reserve brigade going so far to the rear on the night of March 31 was to get a new supply of ammunition. The train of our brigade had gotten off the road. I know we lost our headquarters baggage back near Reams' Station somewhere, and never saw it afterwards, and we had received a partial supply of ammunition that night of March 31 from some other forces. We did not get to our wagons. We moved forward the 1st of April short of both ammunition and rations, particularly short of rations.

Q. How long did your brigade continue there before it made any movement on the enemy's main works?—A. Two or three hours. I should say from one o'clock there was a lull in the active work—from one o'clock until the neighborhood of four o'clock. During that time I was moving back and forth to General Sheridan's headquarters. The infantry were coming up—the infantry of the Fifth Corps. I saw the infantry of the Fifth Corps first as we moved, in the middle of the day, at the junction of the road coming into the road from Dinwiddie to Five Forks, a mile or so from Dinwiddie Court-House. I had been over all that country two days previously, and we left and moved over. Part of the time brigade headquarters was at Bass's house; that, but for the woods, would have been in sight of the enemy's angle, where the enemy's left retired; and the duty which General Sheridan assigned me to that day particularly was, watching the enemy's left, and preventing the enemy from swinging around the left and turning our cavalry right before the infantry got up into place. I was moving constantly back and forth from our own line to General Sheridan's headquarters. General Gibbs was sick, and we took our orders directly from General Sheridan.

Q. Where were General Sheridan's headquarters located at the time?—A. In different places from noon until afternoon, all the way from the junction of the road running up towards Hatcher's Run, running towards Petersburg from Five Forks road out beyond Dinwiddie Court-House.

Q. That would be about J. Boisseau's?—A. Yes. From that place out towards Gravelly Run church; and I recollect there were woods around that church. But out in the neighborhood of Bass's house there was a large open tobacco field, with some buildings and tobacco barns.

Q. [Cotton map No. 3 explained to the witness.]—A. General Sheridan came down to Bass's at one time. That represents but a single building, and there were a number of scattered buildings there. We were at Bass's the day before. Colonel Drummond was killed there. The last road before arriving at Five Forks was the road on which my brigade turned off to take its position along the woods [indicates a wood, south of the return of the enemy's works, on Cotton map No. 3], and then the reserve brigade was on the west of this road, between that and Five Forks, the right resting in the neighborhood of this road. Stagg's brigade passed up this road in advance of us, and was massed upon the right of the road, mounted. We passed it, leaving our horses on either side of the road here in the woods, and there was a lane, as I recollect, to the Bass house, because I know that Stagg moved over in this direction, at times eastward, towards Bass's house. And there were, just west of Bass's house, in the edge of the woods, some large log tobacco-drying houses, and it was at one of these that we established cavalry reserve brigade headquarters. Then I moved out past Bass's house, and back and forth several times, to reach General Sheridan. He came down with his staff to Bass's house once or twice.

Q. When did you first receive information that the infantry were ordered up?—A. I knew at ten or eleven o'clock in the morning. We must have been at Dinwiddie Court-House by ten o'clock in the morning. We got up earlier than that, and held in rear to move forward. We knew that the infantry were coming in, and we simply awaited the arrival of the infantry to take our position.

Q. Do you know where the infantry were at the time you took position in front of the enemy's works?—A. Yes; they were pretty well south of Gravelly Run church, because at one time General Sheridan sent me down, his own staff being scattered about. I went down for him to the infantry. I went down to Ayres's division to ask that they move as rapidly as possible, get up into position; that the cavalry were in position, and were awaiting the arrival of the infantry; and as he moved up, it was pretty late in the afternoon, I went again, sent by General Sheridan to Ayres—it must have been Ayres's headquarters—to ask that an officer be sent to General Sheridan's headquarters who would be acquainted with the infantry upon the left of the line, as it would form and swing around to the left; and to two of us was intrusted the duty of keeping the connection between the infantry left and the cavalry right. That officer, who I thought was not an officer of Ayres's division, but a staff officer of the Fifth Corps—Colonel Bankhead, I think, was the man—my impression is he was lieutenant-colonel and assistant inspector-general of the corps. At any rate, he was with me the latter part of the afternoon. I made several trips, and was present when others made trips, from General Sheridan to the infantry.

Q. Were you present when he gave any orders?—A. Yes.

Q. What were they?—A. His orders were repeated directions to hurry up the

infantry; it was the sum and substance of all the orders, and I should say of a dozen different messages, during three or four hours during the day. The cavalry were carrying a pretty heavy load all through the day and waiting for the infantry to get in place in order to carry out the attack. All through the cavalry line it was understood that we covered the entire enemy's front and that our place was to keep the enemy in its line, hold them there until the infantry should arrive on the ground on the left flank.

Q. About what time do you recall that the infantry got into position to move into action?—A. It must have been after four o'clock in the afternoon; between four and five, I should say.

Q. When did you receive or hear the first order given for the infantry to hurry up?—A. Not later than one o'clock, I should say; before one, in the middle of the day. If I am not mistaken, I went across myself that day from the cavalry, before the brigade got into position, to see how the infantry were coming up. I think we were held back a little while, before drawing the enemy's fire. The enemy's left made two or three attempts to swing around and turn our right flank. That was where Stagg came into action, where my regiment lost quite heavily, where my company was once dismounted to go to the relief of the right of the line. We had a tough time to hold that in position before the infantry made their junction with us and with our troops. The infantry being well to the south, a little to the east, we had to keep somebody moving back and forth to be certain that the ground was open between us in order that the junction might be made.

Q. Did you see any of the Fifth Corps coming up?—A. I saw the left of the Fifth Corps repeatedly during the day as it came up.

Q. Do you recall at what time they got up in position?—A. Not before four o'clock, I should say; perhaps nearer five.

Q. Did you observe the manner in which they came up, that is as to the rate of speed—marching?—A. General Ayres's division, as it came onto the ground, came at an ordinary marching rate.

Q. Did you see General Warren during that time?—A. I saw him once with General Sheridan; I should say it must have been in that opening to the southeast of Bass's; I don't think it was at Gravelly Run church. It was in open ground, I know, because Bankhead and myself were talking at the time, and we were not far from where two general officers were together.

Q. Were you near enough to hear any conversation?—A. Yes; I was.

Q. Will you be good enough to state what you heard?—A. I heard General Sheridan express great displeasure at the length of time it was taking to get the infantry into action, and speak in a more than emphatic way of the length of time that his cavalry had been obliged to wait for it, and the rapidity with which the day was passing, and unless greater haste could be made by the Fifth Corps that the plan of the day would be lost, and that he had been waiting all day for the infantry. That was the substance. And if not in General Warren's presence, certainly in the presence of some of General Warren's officers, because I know it was the subject of conversation between General Bankhead and myself. General Sheridan was somewhat profane on the subject.

Q. You saw the advance of the Fifth Corps?—A. I saw the left of it. It was a very woody country there. The only opportunity to see the infantry come into position was on the Bass plantation, and that was practically occupied by Ayres's division as it made the left wheel.

Q. Had you previously reconnoitered the enemy's works at the "return"?—A. I had. That was my personal duty that day to watch that very point. And I used myself and my lieutenant and my company for that purpose from twelve o'clock all through the afternoon.

Q. Go on and describe the rest of the movements after the Fifth Corps began to advance as you saw them.—A. I think it was between four and five o'clock that Ayres's division of the Fifth Corps struck the White Oak road, then formed perpendicularly—formed, if I recollect, on the edge of the woods in a line perpendicular to the White Oak road, facing the "return" of the enemy's line, and while formed there, and before moving forward, the enemy made a last effort by mounted men to push in between our dismounted cavalry right and the infantry left, which had not then made connection. There was a piece of the White Oak road east of the return which was practically open to them. They pushed south across the White Oak road, and did at one time get in behind us. I recollect a little personal difficulty in getting across from our right toward the Bass house. I had to make a detour to get rid of them. Colonel Stagg was called in there, mounted, and made his way, as best he could, through the woods, and drove them back. After Ayres's division came on the ground I was at the junction of the two when Ayres's men extended their left, and the left of my own regiment under my direction, part of it, extended themselves to the right in order to make the connection as a pivot for Ayres to wheel upon. There we remained until Ayres got around and made the attack. It was pretty nearly five o'clock before the general

attack of Ayres's division occurred. I should say between half-past four and half-past five o'clock. It must have been in the neighborhood of five o'clock, because it was not very light during the latter part of the attack. Ayres moved right along against the "return" and carried it, and as he advanced on the north of the White Oak road westward toward Five Forks—there was, of course, a heavy action going on to the west of it—toward Five Forks—as he came out into an open field, which was a little west of the enemy's line which he had carried, my own brigade broke from cover, carried the enemy's works, and attacked Ayres's left, and there was quite a confusion at that time. There had been a similar occurrence, though not so serious, at the time Ayres first took position around there and began facing the enemy's works. Some of us were over on the left. I think Captain Kinne, of the First Cavalry, acting assistant adjutant-general, and myself rode in between my men, who broke irregularly through the enemy's works there, to let them know who they were. The infantry got a little ahead of the cavalry line as they passed down the north side of the White Oak road; the infantry and cavalry were all mixed; the cavalry, of course, dismounted.

Q. In that movement, you say, just before, there had been a little occurrence of the same kind, of firing at each other?—A. Yes; when Ayres first came into position, they drew quite a heavy fire from the enemy. I recollect there was a temporary line of works near the edge of the woods, on the Bass plantation, at right angles with the White Oak road; and as Ayres wheeled into position to take his place, at right angles to the White Oak road, he met the fire of the enemy at the edge of the woods, on the west of the Bass plantation, north of the White Oak road, and somewhat south of it, because Ayres covered the White Oak road, both sides. He must have had a brigade south of the White Oak road as he formed. At that point Ayres's men broke at one time. There was a good deal of confusion there, and it was during that confusion that the most serious movement of the enemy was made to get in between us, and General Sheridan came on the field in person, I recollect. In fact, I saw General Sheridan and some of his escort come down the road in advance of Ayres's division. We had to get him off the road there just before the final attack was made, when he was getting Ayres's division re-formed. There was a bad break in Ayres's division upon the right and left; both flanks doubled in badly when he first took position; but it did not last long; General Sheridan came up across the Bass plantation and assisted him personally; in fact, he went in front of Ayres's division and moved down the line in front of the division. I was there with him at the time we met him.

Q. In going down along the line of the enemy's works, after your cavalry went over, state what occurred, as near as you can recollect.—A. It was a general break of the enemy and general confusion on our part. There was a mixture of finding our own commands and getting them together, picking up fragments of the enemy and some guns as we approached Five Forks.

Q. Did you keep the line of troops as they swung down the White Oak road?—A. I did; the horses of my brigade, instead of being forward, were carried back to the Dinwiddie and Five Forks road, carried down that road by the leaders of my brigade; it did not mount until it reached Five Forks; there it mounted and pushed along the general line of the White Oak road.

Q. Where was the Fifth Corps at that time?—A. They were coming on; I think the infantry were at Five Forks when we got our horses; by that time it was dusk.

Q. Did you go along to the west of the Gilliam field?—A. Yes.

Q. That night?—A. Yes; some distance out here (indicating).

Q. Do you recollect any fight along there, near the westerly side of the Gilliam field?—A. Towards night?

Q. Yes.—A. No, sir; I do not; Custer was on the west of Five Forks; his division attended to that.

Q. Did you see General Warren during those movements?—A. No, sir; I saw him only once that day; that must have been about two o'clock in the afternoon. I recollect the time from the fact that the mail came up between two and three o'clock that afternoon, and was brought up from Dinwiddie to General Sheridan's headquarters, and I received the mail for my brigade myself. I have a letter in my pocket which I wrote at that time in reply to a letter which I received from my father; it is written on a fly-leaf of a cavalry reserve order-book, dated three o'clock, on the battle-field, April 1, near Five Forks. It was about the time that mail was received—whether immediately before or immediately after I cannot say—that General Sheridan and General Warren had that interview in my presence.

Q. Did you see General Sheridan as he moved down the White Oak road?—A. Yes; General Sheridan moved along with the advance and the infantry, with his headquarters flag and escort.

Q. Did you see Crawford's division anywhere during that afternoon?—A. No, sir; not that I know of. I kept as near to the left of the infantry as I could.

Q. Did you see any troops, infantry or cavalry, come down from the north of the White Oak road and join or meet our people; if so, where?—A. No, sir; I think I knew the troops coming in; of course I knew where General Mackenzie was; I was

present at Sheridan's headquarters when reports came in from Mackenzie; so I had knowledge of his general location, but I do not recollect seeing any troops join; my recollection is that the troops from the north must have come in.

In reference to the operations of the cavalry directly along the front of the line of the enemy's works Maj. Gen. Wesley Merritt says (p. 602):

The enemy commenced giving way after the attack was made. I mounted my horse at once and rode over, and the enemy were then scarcely out of the works.

Lieut. Col. D. L. Smith, chief commissary Fifth Army Corps, who was with General Warren, says (p. 605) that after General Coulter's brigade, in going south on the Ford road, passed over the two guns that were captured, those two which were trying to get away, between 500 and 600 mounted cavalry came between the rear of Coulter and the front of General Warren, who was following him. General Warren stopped the cavalry officer and spoke to him: "They came from the front left, passed from the left to our front and the right. That would be from the line of the enemy's works." They moved to the right of Coulter.

He further says that this cavalry came on at a full gallop out of the woods from the left in front, and prevented General Warren following up Coulter's brigade; "and we had to wait until they passed by; they passed on to our right. We were facing south."

At page 609:

When General Coulter's brigade went over the guns, the enemy had already retreated.

The applicant also admitted on cross-examination that quite a considerable *mounted* cavalry force, which he at first stated was a brigade, came up on the "Ford" road and met him *before* he got down to the "White Oak" road, and that he was "informed by General Sheridan, before the movement began, that a brigade would be kept mounted, when the enemy broke, to pursue them" (p. 1227).

Bvt. Brig. Gen. E. W. Whittaker, First Connecticut Cavalry, acting assistant adjutant-general to General Custer, was with Pennington's brigade; it made two charges on the front of the works, and on the third went over the works midway between Five Forks and the Gilliam field; he saw no infantry; the sun was up high enough to be quite bright, (pp. 635–638); he then mounted, and as there was a body of the enemy at the westerly side of the Gilliam field, he made a circuit to the south and west to avoid their fire. General Custer had previously told him (p. 637) that he was *going around*, mounted, with two brigades, to swing in at the proper time; when Whittaker reached General Custer, he found he had come in on the right of the enemy with his mounted brigades; they had previously been out of his (Whittaker's) sight (p. 634).

Bvt. Col. A. C. M. Pennington, Captain Second United States Artillery, colonel commanding the Third New Jersey Cavalry, and brigade commander of Custer's Third cavalry division, commanding First Brigade, says (p. 659) that General Custer was not on his part of the line at any time; he never saw him after he went off to the left with his mounted brigades.

Colonel Pennington testifies to going over the works at the Forks where the guns were, and that he captured over 500 prisoners.

Q. Had not Crawford's division come down on this Ford road, or in its vicinity, and captured those works before the cavalry crossed?

Mr. STICKNEY, counsel for the applicant. There is nothing of that sort testified to or claimed.

A. I never saw them, or heard of them, or knew anything about them; and I don't believe that they were there at all—that is, in the works; I am satisfied they were not in the works, because I didn't see them (p. 661).

Bvt. Capt. A. F. Schermerhorn, first lieutenant One hundred and eighty-fifth New York Volunteers, aide-de-camp to Griffin (p. 693), speaks of the fighting at Five Forks, and of meeting General Fitzhugh right at the guns.

In other words, the column led by General Sheridan in person, that had assaulted the "return," had swept down the line of the works from the east to the west and arrived at the Five Forks almost simultaneously with the cavalry as they came breaking over the breastworks at that point.

Captain Schermerhorn (p. 694) does not recollect seeing General Crawford's division until the evening, although he went to the west of the Gilliam field.

First Lieut. E. E. Wood, Eighth United States Cavalry, then adjutant Seventeenth Pennsylvania Cavalry, Fitzhugh's brigade, says (p. 831) that during the day they exhausted their ammunition. After going over the works with his command he saw nothing north of Five Forks, but saw General Sheridan riding down the line of the enemy's works in advance of our forces from the east. He says he went north of the Five Forks through the woods (p. 833), and when he came out at the Gilliam field he found infantry there. Of course our forces had passed along while he was in the woods.

Bvt. Col. A. M. Randol, Captain First United States Artillery, then colonel of the Second New York Volunteer Cavalry, of Pennington's brigade (p. 698), did not see our infantry until after the works were captured at Five Forks. He then saw General Griffin coming from the right and spoke to him (p. 701). He did not see any of Crawford's command there.

Capt. H. G. Wood, Twenty-fifth New York Cavalry, on the staff of Stagg's brigade, says (p. 828) they were skirmishing all the forenoon, and that the left of his brigade went right over in front of the infantry at the angle and demoralized the rebels. He saw Sheridan there with his flag.

Bvt. Maj. Vanderbilt Allen, late of the Corps of Engineers (p. 836), told General Mackenzie to push around to his right of the infantry.

Consequently General Mackenzie's command was not on the front at any time, and by reason of being crowded out of position by Crawford's division never got into action at all.

Major E. M. Baker, Second United States Cavalry, (p. 841), testifies as to the charge made by the First United States Cavalry, of Gibbs' brigade, in going up from Dinwiddie Court-House. He says they arrived in front of the works between 12 and 1 p. m., and that there was a heavy line of enemy's skirmishers all the way up.

Maj. Gen. Wesley Merritt, Colonel Fifth United States Cavalry, who commanded the cavalry divisions on the enemy's front, testified as follows (Record, p. 846):

Page 846.

Q. What were the final instructions you received from General Sheridan?—A. My instructions were, my command being in the position that it was, that so soon as I heard the infantry well engaged to charge along the entire line.

Q. Did you hear the infantry engaged?—A. I did; and very hotly engaged, as I thought.

Q. Was that continuous?—A. It was—the firing was.

Q. Then did you make a final charge?—A. I made the attack at that time, according to the direction, and in the midst of it received orders from General Sheridan to suspend it for the time, as the infantry was not coming up to its work.

Q. Who brought those instructions to you at the time?—A. Colonel Sheridan.

Q. Then when did you move again?—A. He repeated the instructions that I had received before. He said they were going to lead the infantry in; that the general had sent for officers, to give them directions as to what they must do, and again that

when I heard firing the cavalry would charge along the line—make an attack, in fact, in front.

Q. Meanwhile had there been a lull in the infantry fire or was it continuous?—A. At the time he was with me the firing had ceased.

Q. About how long after that was it that you heard the infantry fire with any degree of force?—A. I could not be positive as to the time; taking into consideration what possibly occurred, it must have been ten to twenty minutes, possibly longer.

Q. Then you moved forward over the enemy's works?—A. Yes.

Q. In turning to the left and sweeping down the works, or as you went over or at any time during those movements, what force of infantry, if any, of our side did you see to the north of those works?—A. When we went over the works (I went over personally about the Forks) there were two guns there in position that were captured by part of the cavalry command. We saw infantry at time coming in from the right to the east of the Forks, and that was the only infantry that I saw during the entire engagement. I do not know how far it was out to the northward; it may have been a considerable distance. I understand they had a line over to the north and east of Five Forks, but I saw no body of troops coming in from the north. I presume that is what you desire information about.

Q. In passing along to the westward of Five Forks what indications, if any, were there of our infantry on the right and north other than the infantry that came in with General Sheridan from the right?—A. I cannot recall that I ever saw any infantry coming in from the north.

Q. In going up to the west, as you have testified, after taking the works at Five Forks, did you meet with any special resistance from the enemy?—A. None that has impressed itself upon me. There was desultory fighting all the way in this direction westward along the White Oak road, but the enemy were getting away as fast as they possibly could. We gathered prisoners, more behind the works than were taken here afterwards, though there were perhaps a few prisoners taken afterwards. Those men who took position behind any defense and fired for a while gave themselves up when they found they were going to be overpowered.

Q. How long did those guns of the enemy at Five Forks fire before you captured them?—A. They fired in the morning when we first went up there.

Q. Up to the moment of time when they were captured, when was the last discharge?—A. Up to the time they were taken, as the troops went in over the works, and they had been firing during the day. I was impressed with the fact that the heavy force of the enemy was in the front of the cavalry at that time. A reconnoissance to our left had shown that they expected to be attacked rather from their right flank than from the left—rather than that a force should attack with its back towards the enemy in position.

Bvt. Brig. Gen. Charles L. Fitzhugh, late United States Army, then commanding a brigade in Devin's division (p. 875), saw the Fifth Corps sweep down the line of the works from the right and east and the enemy waver and break.

His brigade charged over the works and took about 1,000 prisoners.

This, he says, was not more than fifteen or twenty minutes after he heard the first infantry fire on the right before he saw them sweeping down the line of the works.

Bvt. Brig. Gen. Brayton Ives, Colonel of the First Connecticut Cavalry, Pennington's brigade, says (p. 880), that his brigade made three charges against the works; that in the third charge the enemy's fire did not slacken "until we were close to the breastworks; they kept firing until the last moment." Two guns were taken there. He went, he says, about half a mile north of the works, constantly capturing prisoners.

Private Charles L. Sherman, company B, First Connecticut Cavalry, corroborates General Ives (Record, p. 883), and says the guns "were fired upon us immediately before going over"—meaning the cannon.

He thinks he went beyond the breastworks, perhaps half or three-quarters of a mile, with others, and that some went further. He saw no infantry after the cavalry had gone over the breastworks; he saw the mounted cavalry, as he supposed, and as he thinks, with General Custer at the head coming from our left, from west to east, inside the enemy's works; he knew Custer, and says that he had his staff with him and his flag, and a mounted force was following him.

This, Private Sherman says, was an hour before sundown.

Lieut. Col. N. B. Birdseye, of the Second New York Cavalry, Pennington's brigade, says (p. 889) that the enemy were in their works up to the time he went there.

The First Connecticut was on the right of his regiment, and the two guns that fired upon them at Five Forks were on his right; "a good many prisoners were gathered in."

The enemy, he says, ran back, and there was a scattering fire. He saw General Sheridan to the right, coming with the head of the column sweeping down the line of the works.

Colonel Birdseye himself moved north to the Young-Boisseau field, driving 30 or 40 rebels before him. He says he had about 125 to 140 of his own regiment with him, and met a command of infantry and a general officer moving by the flank westerly, and had a discussion with the officer.

He came back himself through the woods, striking the breastworks west of where he had gone over; before reaching them, some distance north (p. 893) he met General Custer at the head of a mounted command, coming to the east from the west.

He recollects in that command there was the First Vermont Cavalry.

He saw no infantry, except near the Young-Boisseau field, and that was when he first went up.

Maj. W. R. Mattison, of the same regiment (Second New York, Pennington's brigade, p. 896), says that as he went over the works he saw General Sheridan coming up from the right with the infantry; he says he himself went up to the Young-Boisseau field, and found the infantry there firing in a northwesterly direction.

Subsequently, however, this witness thought he must have gone into a field west of the Young-Boisseau field; and, on examination by the court (Record, p. 900) fixes it definitely as the Young-Boisseau field.

He also says he saw Custer's mounted brigade charge in an open field north of the Gilliam field, about half a mile from his own position, and charge from the west to the east.

Bvt. Lieut. Col. Wm. Thompson, Major Seventeenth Pennsylvania Cavalry, Fitzhugh's brigade, says (Record, p. 904) that the enemy kept firing until they went over; that 1,000 prisoners came in; he saw General Sheridan with his corps flag coming from the right in advance of the infantry; and says he pursued the enemy in a northwesterly direction through the woods, and got a few prisoners; he saw no other infantry except that which was with General Sheridan.

Lieut. Col. C. Durland, Seventeenth Pennsylvania Cavalry, Fitzhugh's brigade, says (p. 956) that it was Lieutenant Bonebrake, of his regiment, who got the flag that was flying over the two guns that were captured in the breastworks which General Fitzhugh in his evidence has described as the one he tried himself to get, and that another was too quick for him.

Colonel Durland says (p. 956) that the enemy fired upon his command up to the moment of going over the works.

He says that after going over he halted a short time, and saw infantry to the right; he got his horse and then went northwest, and perhaps in half an hour he saw General Custer on the left front with some troops. This officer has marked with the letter D, northeast of V, Map No. 2, where General Custer was discovered. It was then quite close to sundown.

Capt. A. C. Houghton, Second Ohio Cavalry, aide-de-camp to Pen-

nington, says (p. 985) that the fire continued from those cannons until the works were carried.

He was wounded after he got inside the works, at the northerly side of the opening of the Five Forks, in trying to get the enemy to surrender.

Bvt. Col. Albert Barnitz, Captain U. S. A. (retired), then commanding Second Ohio Cavalry (p. 986), says he saw no infantry until after the cavalry had captured the works there ; he then saw General Sheridan advancing from the east, with his flag, at the head of the column of infantry.

Col. S. H. Hastings, commanding Fifth Michigan Cavalry, in General Stagg's brigade, went over the works and then pursued the enemy mounted through a timber, instead of along the White Oak road (p. 1065).

The cavalry halted and formed a column soon after passing the Ford road ; and in fifteen or twenty minutes he says the infantry came in sight on his right, coming from the Ford road (p. 1067).

From this evidence it is plain that the cavalry of the First and Third Divisions, which held the front of the enemy's works, assaulted, and went over as soon as the assault was made by Ayres's division upon the return.

In order to give importance to a trifling occurrence at the close of the day, in which General Warren participated, when it was so near dusk that the flash of the muskets could be seen distinctly, the learned counsel for the defense has thought it necessary to ignore as much as possible the movement by General Custer with two mounted brigades around the right and rear of the enemy's works.

His first attempt here was to put General Custer's cavalry operations wholly to the south of the White Oak road and in the Gilliam field as a part of this little movement, in which General Warren participated.

Overwhelming evidence brought to show that General Custer actually went around the entire right of the enemy's works, compelled a change of base in the line of evidence here, and an effort was then sought to be made to show that Crawford's division actually got to the very right extremity of the enemy's works, and thus bore a principal part in the acts of the day before General Custer had gotten absolutely to the rear of the enemy.

It is therefore necessary to discuss a little further General Custer's movements.

Custer turning the enemy's right flank.

Bvt. Brig. Gen. George A. Forsyth, when he was with Kellogg's brigade of Crawford's Division, on the Ford road (p. 210), says that the cavalry came apparently from the White Oak road, and he judged from the west end of the enemy's works, pressing the enemy towards Hatcher's Run.

He says that he went a little way with the cavalry and that they went straight towards Hatcher's Run.

This will be found to correspond identically with General Capehart's evidence, who indicated precisely the same route of the mounted brigade of Custer that he commanded, and which was evidently pursuing the fleeing force of veteran rebel infantry which was trying to escape by way of Hatcher's Run. It was this force of the enemy which, after it had been pushed out of its works. encountered Crawford's division, and caused such losses as he met with after they had been pushed out of their works.

Bvt. Maj. Gen. Henry Capehart, who commanded one of the mounted

brigades of General Custer's division (p. 959) has testified how they charged around the right flank of the enemy, and around to the rear of their breastworks in the afternoon, as soon as they found that the infantry were assaulting the "return," and so drove the enemy and came out up to the Young-Boisseau field, where they found the infantry precisely as narrated by General Forsyth, and then off towards Hatcher's Run.

Capt. W. W. Blackmar, at present judge-advocate-general of the State of Massachusetts, then first lieutenant on General Custer's staff (p. 1023) corroborates him in this evidence fully, and says the sun was an hour high when they drove the enemy and turned their works.

Bvt. Maj. Gen. William Wells, formerly commanding second cavalry brigade of Custer's division, which was one of the two mounted brigades that went with Custer around the enemy's works, confirms General Capehart, and says (p. 1068):

We moved around in rear of the enemy's works [witness points to the letter V on Cotton Map No. 2] I should judge somewhere in this vicinity, and faced east, I should judge, or southeast, perhaps, and in this vicinity [witness indicates north of the northwest corner of the Gilliam field] we met the enemy's cavalry mounted in quite strong force. We drove them back some distance, and they rallied and drove us back; and this regiment, the First Vermont, I kept in reserve until I thought they were going to repulse us and drive us back. Then the First Vermont was ordered to charge, and Capehart's brigade and the balance of my brigade rallied on the First Vermont, when the First Vermont charged. Finally they drove the enemy and we followed them for some time.

Q. After you had driven the enemy and followed them for some time, do you recall whether you met any other troops or not?—A. It seems to me that after going some distance we met some infantry—I am sure we saw some infantry—coming in a clearing.

Q. What regiments composed your brigade?—A. The Eighth and Fifteenth New York and First Vermont Cavalry.

This corroborates what has already been testified to by Lieut. Col. Birdseye as to where he met the First Vermont Cavalry.

Bvt. Maj. Gen. Wells, United States Volunteers, also testified as follows:

Q. Then you say, in your last charge you did not meet any resistance until you got around upon their flank or to their rear?—A. We did not meet any serious resistance until we got pretty well around upon their flank. I am speaking of the last charge.

Q. You say the resistance was entirely from their mounted cavalry?—A. The resistance to the two regiments of my brigade was entirely from mounted cavalry. The one regiment that charged directly at the front drew the fire from the works.

Q. Which regiment was that?—A. It was either the Eighth or Fifteenth New York; I do not recollect which. I think it was the Eighth. The Fifteenth was in advance when we made the first charge; and I think the Eighth was in advance when we made the second charge (Record, p. 1071).

On page 1072 of the Record he said as follows:

Q. Then you met some infantry in the clearing. I suppose you mean our own infantry?—A. I supposed they were infantry. Dismounted men came through.

Q. You are not certain whether they were or not?—A. We met infantry afterwards. But after our charging and countercharging and so forth, as we were repulsing the enemy, some force came through the woods; and whether it was infantry or dismounted cavalry I could not tell. But afterwards in going on further we met infantry going north.

* * * * * * * *

By Maj. Asa Bird Gardner, counsel for the respondent:

Q. Do you think that you can locate upon the map about where you met the infantry in the clearing after making that final charge and driving the enemy's cavalry?—A. Do you mean where we first met the dismounted men?

Q. Yes; and also where you met, finally, the infantry. Look at Cotton map No. 3, and see if you can point it out.—A. I should judge we saw dismounted men in this direction [witness indicates north of the centre of the Gilliam field, in the woods]. And we met infantry farther north in the clearing.

Q. In about what direction?—A. I do not know exactly which way we went. I think we must have met infantry in the clearing; it occurs to me it must have have been that clearing [Young-Boisseau field] (Record, p. 1073).

General Custer, in his official report dated Headquarters Third Cavalry division, April 15, 1865, says as follows:

An examination of the ground in front and the enemy's right seemed to favor a movement by a mounted force against the enemy's right and rear. With this object in view, I deployed the 1st Brigade, dismounted, Col. Pennington com'd'g, along the entire line held by my division. The 2d and 3d Brigades, commanded respectively by Colonels Young and Capehart, were mounted, and moved opposite the extreme right of the enemy, and waited the opening of the general assault before advancing to turn the enemy's right flank. As soon as the firing on the line held by the 5th Corps indicated the inauguration of the attack, the 2d and 3d Brigades were moved at a gallop against the right of the enemy's line of battle. To cover the movement and to draw the fire of the enemy's batteries in front, Lieut. Colonel Bliss, of the 8th New York Cavalry, was directed to charge with his regiment upon the enemy's batteries, without a hope of successfully carrying the enemy's position. Lieut. Colonel Bliss gallantly led his regiment up to the very muzzles of the enemy's guns, at the same moment exposed to a terrible cross-fire from the enemy's infantry posted in rifle pits and behind barricades, within easy range. Although suffering a heavy loss in men and horses and compelled to retire, the object of the charge was accomplished.

Before the enemy could shift the position of his batteries, my columns had pushed past the extreme right of his line and were moving rapidly to place themselves directly in rear of his position. Although this movement was almost entirely under the view of the enemy, it was so rapid he was unable to prevent it. W. H. F. Lee's division of cavalry was discovered to be moving upon us. Portions of each command moved simultaneously to the attack, and for some time success was varied and uncertain. My line was then facing in the same direction towards which that of the enemy had faced two (2) hours before, the enemy being between my command and the line of battle of the 5th Corps and the 1st Cavalry division. The gradual nearing of the firing indicated that the enemy's left was being forced back. This fact had its influence on the position of the enemy with whom we were engaged, and aided us in effecting a total rout of the entire force of the enemy.

General Warren himself, on his cross-examination (Record, p. 1228), says that what he saw of the cavalry on his left in the Gilliam field, when he got into that field in person, "was not very strong," and that he did not know where General Custer's mounted brigades were; he says that he afterwards met General Custer himself to the north of the White Oak road, in a field.

Sergeant Henry S. Parmelee, First Connecticut Cavalry, Company B (p. 992), says that after getting in the works he went up the Ford road, following the enemy, and saw mounted cavalry coming charging from the left, and thought they were Custer's brigades, and soon afterwards he ran across the infantry division on his flank, coming from his right, in the Young-Boisseau field.

Two or three witnesses of the Ninety-first New York were brought in rebuttal in an effort to contradict General Custer's official report, and also to contradict the evidence that he was not in the Gilliam field, but was with his mounted brigades in rear of the right of the enemy's works, as testified to positively by Generals Capehart and Wells, Sergeant Parmelee, Brevet General Whittaker, Private Charles L. Sherman, Lieutenant-Colonel Birdseye, Major Mattison, Lieutenant-Colonel Durland, Captain Blackmar, and Bvt. Brig. Gen. George A. Forsyth. One of these rebutting witnesses, Capt. E. G. Shirley, although he had never seen Custer before (p. 1109), was satisfied that the cavalry officer who came from the south of the Gilliam field must have been he.

Shirley says he was thirty or forty feet away when that cavalry officer came up and said, "How are you, General Warren?" and that Major Benyaurd, of the United States Corps of Engineers, was with Warren at that time.

Shirley says (p. 1113) that he heard Custer's appearance described shortly after in Washington, and saw a photograph of him, and it struck him that it was the same man, but he would not be positive. He also admitted that it was so dark that he could see the flashes of the muskets.

Major Benyaurd, United States Corps of Engineers, however, swears (p. 1148) that he knew General Custer "very well," and (p. 1131) did not see him that afternoon or evening.

Private William J. Norwood, Company G, Ninety-first New York, also called in rebuttal, testifies to a cavalry officer being pointed out to him by another soldier as General Custer, and says: "He was in front of us, riding to my right."

This witness pointed to the northern instead of the southern side of the Gilliam field (p. 1118), and says it was then "rather dusk." He did not know Custer; had never seen him; never saw him afterwards, and only saw a photograph some eleven or twelve years after the event (p. 1119) in a gallery in Albany, N. Y.

He was not then familiar even with the field officers of his division.

Bvt. Col. W. J. Denslow, Captain Ninety-first New York Volunteers, the next witness in rebuttal (p. 1120), says he saw a general officer in command of cavalry, who he supposed was General Sheridan, but he says he afterwards learned it was General Custer, coming in near the Gilliam house.

On cross-examination he said it was getting dusk at the time, and he did not see the officer with sufficient distinctness to say positively that it was Custer; he did not know whether it might have been Lieutenant-Colonel Bliss, of the Eighth New York Cavalry, or Colonel Pennington, commanding brigade. He thought he saw the cavalry corps flag, but was not positive—only an impression formed at the time; did not recollect its color, and it was too far away to designate its number.

This is the kind of testimony brought in rebuttal.

In order to make the skirmish in the Gilliam field the closing act of the battle, and, as it were, a final driving of the enemy from the field, and in order to convey the impression that the battle had not been won until that took place, it was of course necessary to show that the enemy had not been shaken in their intrenchments at that point, and that our own forces had not been able to overcome the resistance there, such as it was.

But it is shown by the testimony of so many witnesses that General Custer had, with two mounted brigades, actually turned the enemy's works and driven them out of the line of breastworks and penetrated, pushing them in front of him, as far as the Young-Boisseau field, where Crawford's division had this fight with them, that their retreat destroys the theory attempted to be established as to this last act in the Gilliam field of General Warren.

WHEN AND HOW GENERAL WARREN WAS RELIEVED.

The next point to be considered, although not of special importance, is as to when and how the applicant was relieved of the command of the Fifth Corps.

A good deal of importance seems to have been by him attached to this, as to whether he was relieved before the little affair in the Gilliam field, yet to be discussed, or after it.

Enough has already been stated to show that on that day, as well as on the day before, he had not shown himself, in the field of action, capable of handling efficiently and with promptness so considerable a command as the Fifth Army Corps.

Bvt. Brig. Gen. O. E. Babcock, of the Corps of Engineers, has testified (p. 901) that about ten o'clock in the morning, at Army headquarters,

he received a message from General Grant, general-in-chief, a verbal message, to carry to General Sheridan, substantially as follows:

> Tell General Sheridan that if, in his judgment, the Fifth Corps would do better under one of the division commanders, he is authorized to relieve General Warren, and order him to report to me.

General Babcock thinks he delivered this message to General Sheridan between eleven and twelve o'clock—a little before noon; he found him on the line—at least in rear of his line—and he was going along the line passing from the left to the right, giving instructions to his command.

General U. S. Grant has stated, in course of his examination, why he sent this unsolicited order to General Sheridan.

The learned counsel for the applicant admits (p. 36) that this authority of General Grant to General Sheridan was sent without the latter's solicitation.

General Grant has said (p. 1030):

> I know it was not in consequence of any information at all brought to me or received, or opinion in regard to any of General Warren's movements at that time, that I sent this. It was simply my reflection as to General Warren, in this critical position, which I then expected to make the last battle of the war, that he would probably fail him, and I wanted to warn General Sheridan of the danger he was in. The authority was not sent to General Sheridan in consequence of any report that was brought to me; it was simply that I knew General Warren's defects * * * what I considered his defects. And his was the only corps I could send promptly; that corps would not have been sent if I could have gotten another one as conveniently; and I was just thinking of the consequences of a failure there, and wanted to put General Sheridan upon his guard, and I sent him that authority, so that he might feel no hesitation in removing an officer if it was necessary to his success.

It is pertinent here to remark that in the application of General Warren to the Secretary of War, of November 18, 1879 (Record, p. 13), for this court of inquiry, he stated that he—

> Proceeded at once to General Grant, ten miles distant, reaching there about 10 p. m. He told me that he had given General Sheridan authority to remove me, if necessary; he gave no reason for its use on this occasion.

Nevertheless, he has admitted here (Record, p. 1233) that General Grant did give him certain grounds which General Warren told him he did not think could be sustained, and that they were retrospective and not at all relating to the battle of Five Forks.

He has denied here (p. 1235) deliberately that General Grant informed him or that he himself knew, when at General Grant's headquarters, that General Grant had given General Sheridan authority to relieve him, and denies that General Grant told him while he was at General Grant's headquarters that General Grant had given authority to relieve him.

He now says that that allegation in his application for this court, which states that General Grant told him that he had given General Sheridan authority to relieve him if he thought necessary, is a "mistake."

Colonel R. M. Brinton, aide-de-camp to General Griffin, has testified that after General Sheridan had gotten inside of the enemy's works and the "return" had been successfully assaulted, and they were re-forming and pushing along, and Griffin had come down, he asked where General Warren was (p. 308); there were a number of general officers and others standing there—General Chamberlain, General Griffin, and General Ayres—of the Fifth Corps, and no one could say.

Bvt. Brig. Gen. H. C. Bankhead (pp. 340, 346) heard this inquiry and thinks that General Griffin replied that he did not know.

Bvt. Brig. Gen. Horace Porter has testified also how, after the "return"

was captured, General Sheridan asked him if he had seen General Warren, and if he did see him to request him to report to him (p. 912).

Maj. Charles F. Gillies, Twenty-first Pennsylvania Volunteer Cavalry, then acting provost marshal for the Cavalry Corps, has testified how General Forsyth, when he was down by the White Oak road, came to him (p. 1137) and directed him to give General Sheridan's compliments to General Warren when he should see him, and tell him that General Sheridan wished to see him; and that shortly after General Warren came over and asked him where he could find General Sheridan, and Major Gillies pointed out the direction in which he was; and then (p. 1143), General Warren General Sheridan's message. As a matter of fact, General Warren did not obey this order, but went up through the Sydnor field, and then west to the Young-Boisseau field, and joined Crawford.

General Chamberlain has testified how General Sheridan directed him to gather together the troops of the Fifth Corps on the inside of the breastworks, after the "return" had been captured, and bring them along.

The other witnesses have testified how General Sheridan, after the "return" was captured, directed General Griffin to take command, after vainly inquiring where General Warren was; which, of course was eminently proper, as General Griffin was the ranking officer among the Fifth Corps general officers present at the time.

This was at the southerly side of the Sydnor field.

We now come to the time when Bvt. Brig. Gen. F. T. Locke, the chief of staff to General Warren, came to General Sheridan with a remarkable message.

This witness for the applicant testifies (p. 365) that while on the Ford road, near the Young-Boisseau field, he received instructions or orders from General Warren—

> To ride to General Sheridan and tell him we had gained the enemy's rear and had taken over 1,500 prisoners, and that he was pushing in a division as rapidly as he could.

Locke says he thinks he went south, taking his way through the evergreen timber, and passed General Bartlett, who commanded the Third Brigade of Griffin's division.

After he had gone a little further he met Captain Melchor, of Warren's staff, and asked him if he had seen General Sheridan, and he thinks that the reply was that he had a little while before. He says he thinks he met General Sheridan *after* he crossed the Ford road and passed Five Forks a very short distance.

He gave the message which General Warren had directed him to give, namely, that "we had gained the enemy's rear, and had taken over 1,500 prisoners, and that he was pushing in a division as rapidly as he could." Of course, no 1,500 prisoners had been taken by Crawford's Division, and General Sheridan knew it. General Sheridan turned around on his horse, raised his hand in a manner illustrated by the witness, and replied:

> Tell General Warren, by God, I say he was not at the front. That is all I have got to say to him.

This was about sunset.

If this witness met General Bartlett's brigade in going south to the White Oak road, it must have been *south* of Coulter's and Kellogg's and Baxter's brigades.

We know from the evidence of General Bartlett that he had broken

away with the true instincts of a soldier from the false movement to the north of Crawford's division, and came down, as did Griffin himself, to the neighborhood of the White Oak road, and moved westwardly through the timber.

In his direct evidence, Locke says that after receiving General Sheridan's reply, which he noted in his book, he rode "on a little way back and saw General Warren coming down the road."

Therefore, if he rode *back* he could not be riding forward towards the enemy.

After this, Locke says he rode with General Warren when the latter *passed* General Sheridan, *who had halted and was facing the Gilliam field* (p. 367), and that he (Locke) went into the field with Warren.

For some occult purpose it has seemed desirable on the part of the learned counsel to endeavor to make the point that General Warren got down the Ford road to Five Forks before General Sheridan and the infantry of Ayres and Griffin's divisions arrived there from the eastward.

General Locke was brought back in rebuttal, in order to contradict his former evidence, and *this* time (p. 1102) he said that he met General Sheridan about a quarter of a mile *east* of Five Forks, and that he then rode back westwardly to the Ford road and met General Warren coming down the Ford road, and then rode west with him on the White Oak road to the Gilliam field.

Still later in his rebutting evidence, forgetting this flat contradiction of his previous evidence, he said (p. 1103) that he and Warren, going *west, passed General Sheridan within a few yards; he was halted and looking into the Gilliam field, with his horse's head turned toward the west.*

Locke says he does not know when General Warren was relieved.

Capt. Holman S. Melchor, of Warren's staff, who was with Locke, says that when Locke came down from Warren and met him on the White Oak road he asked him to go to General Sheridan (p. 459); that he, himself, was just a little west of the Sydnor field on the White Oak road; that Locke rode with him westward along the White Oak road.

Says he:

As I arrived at the Five Forks, I noticed that the battery had been captured, and that some of our men had turned the guns and were trying to discharge one of them in a westwardly direction. I think it was Colonel Locke who told them not to fire it, as it might injure some of our own troops; and just beyond that point we discovered General Sheridan riding in a southwest direction through the woods north of White Oak road. We rode to him. Colonel Locke called his attention to the message that he had, and delivered it to him, * * * and he said, as I recollect the words, "All I have to say, General Warren was not at the front where he belonged, and you can tell him so," or "you may tell him so," I think he added.

Captain Melchor, subsequently called in rebuttal, reiterated that he rode *westward* with Locke "along the White Oak road" *past* Five Forks, where the guns were, until he came upon General Sheridan, a little east of the Gilliam field, to the north of the road (p. 1093).

He now says that when he and Locke left General Sheridan they rode *west* to meet General Warren, which, of course, is a manifestly incorrect statement.

General Chamberlain says (p. 277):

Q. Where were you when you learned of Warren's being relieved?—A. I cannot say that I learned it. There was talk of it. Major Brinton, of General Griffin's staff, met me about half way between the easterly edge of the woods and the Ford road, and asked me if I knew that General Griffin was in command of the corps, and said I, "No, sir; I do not."

Q. That was when you were moving toward the Ford road?—A. Yes; the troops were actively engaged at the time moving westward.

Q. When did you next see General Warren, and where?—A. I saw him on the Ford road.

Q. In which direction was he moving then?—A. He was coming up the Ford road towards the White Oak road, southerly towards the forks.

Q. In which direction did you see him go then?—A. He advanced westerly on the White Oak road.

General Chamberlain says (p. 278) that General Sheridan had told him to take command of all the infantry he could find there, and thought likely he had told General Griffin to take command of some of the other divisions, and that he understood it that way.

Bvt. Brig. Gen. J. W. Forsyth, U. S. A., chief of staff, states that when Locke came to General Sheridan the latter was about two-thirds of the distance from Five Forks towards the easterly edge of the Gilliam field (p. 1049).

This, it will be observed, is precisely what Captain Melchor, of Warren's staff, says.

General Forsyth says that Locke told General Sheridan that Warren was 1½ miles in the rear.

Now, Capt. H. S. Melchor, of Warren's staff, answered this question (p. 1095):

Q. Yet you had left General Warren riding with a good deal of speed yourself, over a mile and a half to the rear before you got to the point where General Sheridan was at?—A. Yes.

So that the recollection of General Forsyth as to one of the remarks made by Locke to General Sheridan exactly corresponds to the fact as to the distance that General Warren was away at the time Locke must have started, as stated by Captain Melchor.

General Forsyth says that within two or three minutes after the report, General Sheridan, without any other intermediate conversation, ordered him to write the order relieving General Warren (p. 1050); General Forsyth dismounted and the staff passed him; he wrote and copied a very short order relieving General Warren and rode back and delivered it verbally to General Warren and then handed him the written official order just about sunset, and immediately rode off; and the place where he handed it to him was just west of the Ford road; he also says that Locke previously came from the rear, before sundown, up to the point where he met General Sheridan and delivered Warren's message.

The order was as follows (p. 1291):

[Field Orders No. —]

————————, (186—.) Printed.

CAV'LY HEADQRS., *April* 1*st*, '65.

Maj. Gen. Warren, com'd'g 5th A. C., is relieved from duty, and will report at once for orders to Lt. Genl. Grant, com'd'g armies of the U. States.

By command of Maj. Genl. Sheridan.

JAS. W. FORSYTH,
B. Brig. Genl., Ch'f of Staff.

The applicant has striven to avoid this direct and positive evidence of General Forsyth as to when and where he was relieved, and says it was at 7 p. m.

Bvt. Brig. Gen. H. C. Bankhead, U. S. A., says (p. 341) that he was riding in company with Griffin's troops and that Ayres came up in the rear:

And after riding some distance Colonel Locke rode by and went up to General Sheridan. He came back and asked me what was the matter between Sheridan and Warren. I told him I didn't know, or something to that effect.

* * * * * * * *

Very soon after General Warren came galloping past, just past the line—the column of our troops. I don't know where he came in; *he came in the rear of where I was.* * * *

General Bankhead here corrected himself and said that he thinks he himself was at that time probably with Ayres instead of with Griffin.

General Sheridan, he says, was "in front" with some of his staff and orderlies; and as to Warren galloping towards Sheridan westwardly, Bankhead says (p. 341), in corroboration of Locke and Melchor:

I don't think he stopped to speak to him; in fact, I am satisfied he did not. It seemed to me he just grazed him. I don't know whether it was a yard or a foot from him. That was on the White Oak road, going westerly.

Q. Do you recollect seeing two or three pieces of artillery of the enemy?—A. I recollect passing some place where there was artillery. It was before the point that General Warren passed near General Sheridan.

Q. What did you see of Warren's movements after that?—A. I, in the first place, supposed he was riding up to speak to General Sheridan. He rode in the open field and advanced with some troops which I saw afterwards was a line of mounted cavalry.

From this evidence of General Bankhead, the applicant's own witness, delivered with such particularity, it is perfectly plain that General Sheridan and the head of the infantry on the line of the works which had assaulted the return had passed beyond the junction of the Ford road and the White Oak road, where the guns were, before General Warren came up to General Sheridan.

This, undoubtedly, is the time as testified to by General Forsyth that General Warren was relieved.

Bvt. Maj. Gen. J. J. Bartlett has also described this matter (p. 1171):

Q. When you moved out from there what transpired? State exactly what you recollect.—A. After marching, I think, about a mile—it is difficult to determine a march in line of battle and in woods as to distance, and I have not measured any map—I should think perhaps nearly a mile, or a mile, I heard heavy firing to my left. I knew then that Ayres was engaged, and became restless under it, because we were taking a direction that was at almost right angles from the firing—perhaps quite. I finally rode out to the left, passed the rear of General Crawford's division, and saw the fighting. I saw two lines of battle moving out of the woods; I saw that Ayres had carried the salient and had moved well up in the fields. Those two lines of battle came out of the woods. This is the field [witness points to the Sydnor field]. Ayres had carried this and had moved out into the plain (Sydnor) field and, though his command looked straggling, here it was like an advance through the woods. When I first saw the enemy they had just come out of the woods on the west side of the Sydnor field near the White Oak road, in two lines of battle. We were marching about in that direction (a little north by east), and the fight was here [points to the lower part of the Sydnor field]. I came here and I had a line of vision, when I looked out of the woods, straight to here [from the middle of the northern boundary of the Sydnor field to the southeast corner of the same field].

Q. Indicate about the point in the woods to the east or north of the Sydnor field where you came and looked out.—A. I suppose about there [points to a position at the edge of the woods a little east of the center of the northern boundary of the Sydnor field—northeast of the chimneys, at the edge of the timber].

My formation was in three lines, one regiment of skirmishers, three lines two regiments each, one regiment in reserve. I caught the last line of two regiments and my reserve regiment, and ran them down—this is a ravine here [points to the position between the Sydnor house and the chimneys] ran them by the left flank down this ravine, driving them right in front—swung them up in this way [wheeling to the left and south through the Sydnor field], and struck the left flank of these two lines of battle, of the enemy, to their rear.

Q. On the west side of the Sydnor field, near the White Oak road?—A. They had got down here. I swept them into the hands of Ayres—probably about 2,000 in the two lines. The moment they saw that I had them in that way, they just threw down their arms and ran in among Ayres' men and into the cavalry line. I threw them to the left and rear of Crawford's whole division—I threw my regiments—and I sent word to General Griffin what I had done, and he followed with the whole division.

Q. Then, in moving up from your position where you formed, what general direction did you take, up to the point when you pulled out into the Sydnor field and came down, as you have testified?—A. We were faced, as I understand it, in the direction

that we were supposed to march. I think no one was quite positive as to where they would strike this refused left, but it was understood that when we did strike it Ayres would strike it with his division, and that everything then wheeled to the left.

Q. At the time, from the information you received how did you understand that the salient was to be struck by General Ayres?—A. From the formation entirely. I think General Warren directed the formation and the position of the divisions entirely, and Ayres would naturally strike it if it was anywhere near where General Sheridan supposed it was, and he could tell that it must be on the White Oak road, and therefore that Ayres must strike it.

Q. And strike it in what direction did you understand?—A. I understood he was to strike it—that was supposed to be the general line of advance [northwest], and he would strike it here at the angle. And then the moment he commenced fighting at the angle the other two divisions were to wheel to the left—touch to the left all the while.

Q. Had you any information at that time of what part of the works the cavalry were to take charge?—A. Yes; General Sheridan said, in the morning, that he would deploy the cavalry along their entire front, and that he would use the strong arm of the service in the way I have indicated, and he did so, because when I struck this field here the cavalry exchanged some shots with my troops, and General Sheridan joined me here at the Five Forks opening, because, as soon as these prisoners had thrown down their arms, I wheeled these regiments and took my others that were coming across from here and some little higher up. They all had orders from staff officers to follow right on. They came across here and struck in the woods, and the enemy, as often as they could, would form a line perpendicular to their works to meet us; but the fight from the Sydnor field clear down was just simply a repetition of "busting" their flanks when they formed them there; and from this field, until the fight was over, I do not think I saw one of my regiments as a formation. We would get as many men as we could, sometimes perhaps not over 60 or 100, and strike this line that the enemy were continually attempting to form, and break it, and did that all the way down. I met General Sheridan here at the Five Forks opening.

Q. What works, if any, were there of the enemy, on the west side of that Sydnor field?—A. Not any; if there had been works there it would be refusing their flank twice. They depended upon this [the witness indicates the "return"]. There was no use for works here. There was no barrier inside of their works once we were in them.

Q. How rapidly did you move along?—A. So rapidly that it was not possible to keep any formation through the woods.

Q. When you moved down from the position you have indicated in the northeast part of the Sydnor field, bringing your regiment with you, what orders, if any, had you to make that movement?—

A. Not any. On the contrary, I sent word to Griffin what I had seen and what I was going to do, and Griffin followed with his entire division.

Q. Then, at that time, when you came out into the northeast edge of the Sydnor field, what direction were your troops taking, in relation to the firing?—A. They were going directly away from it.

Q. In going up through the northeast part of the Sydnor field, what resistance, if any, did you meet from the enemy?—A. Not any. Just a few skirmish shots; but not what you call a skirmish fire—just occasionally, as though they were videttes.

Q. Was anything upon your right—of our forces?—A. What do you mean?

Q. Any of our forces upon your right as you moved up?—A. The other two brigades of Griffin's division were upon my right.

Q. In going up there, in what direction were you crowded, if at all?—A. Crowded always to the right; so much so that I sent a staff officer to see why it was so.

Q. You sent an officer to ascertain the cause of this?—A. Yes.

Q. Do you know whether there were any other forces of the United States upon your right than the two brigades you have mentioned of your own division?—A. No; only later I knew that Mackenzie———

Q. (By Mr. STICKNEY, counsel for the applicant.) No; at that time, as far as your observation went?—A. No.

Q. Did you, during that day, before you got down to the White Oak road, through the Sydnor field, see any other forces than the two brigades of your own division upon your right?—A. No.

Q. Do you recollect passing the Five Forks?—A. Yes.

Q. In moving westward?—A. Yes.

Q. What fighting, if any, do you know of, after passing the Five Forks?—A. The fighting was as I have described, from that point, the west side of the Sydnor field. It was simply little combats; little engagements. They never halted there enough to make us form a line of battle, because it was easy always to strike their flank; they could not get any great number of men out. Where these guns were taken there was no fight. I passed over there without any fight. The cavalry came

in immediately after, because the men that supported these guns had been taken to make those two lines of battle that I described there on the western side of the Sydnor field, and they had been captured on the north side of the road. All the fighting had been here, and was as I have described it, and in fact you could hardly keep up with them—it was difficult to get men enough together to make a fight.

Q. Where did you meet General Sheridan?—A. In this field, by the Five Forks.

Q. Did you know Colonel Locke, the chief of staff of the Fifth Corps?—A. Yes.

Q. Did you see him during that day?—A. Yes.

Q. Where did you see him?—A. General Sheridan called me out of the woods, in that opening by the Five Forks; I had a rebel flag, and he was afraid his cavalry would fire upon me from here, and while talking with him Colonel Locke came up,

Q. Was that before or after dark?—A. That was before dark. I suppose it was twenty minutes after this movement here was made, on the west side of the Sydnor field; perhaps less than twenty minutes. It might have been a little more.

Q. Did you at any time upon that day obtain command of your division—Griffin's?—A. Yes.

Q. When was that?—A. At this time that I speak of.

Q. You were the ranking brigade commander in that division?—A. Yes.

Cross-examination by Mr. STICKNEY, counsel for the applicant:

Q. What do you refer to when you say you obtained command of Griffin's division?—A. General Sheridan said to me, "You are now in command of the First Division."

Q. Where was that?—A. That was here.

Q. At Five Forks?—A. Yes; near there; it was about thirty paces from the woods, and about sixty or eighty from those guns.

Q. At what point of the occurrences was that?—A. It was probably twenty minutes or half an hour after I had taken those 2,000 prisoners.

Q. Do you mean that it was when you reached Five Forks, when you were moving west?—A. When I was continuing this movement down here, yes.

Q. Then, in your movement west, from the west edge of the Sydnor field—when you reached about thirty or sixty yards?—A. About thirty yards out of the woods—about sixty yards from the guns at Five Forks.

Q. When you got there, it was, that General Sheridan put you in command of Griffin's division?—A. Constructively. He did not give me the order.

Q. Did not give you a written order?—A. No.

Q. Gave you an oral order?—A. Yes.

Q. What was the wording of it, as you recollect?—A. "Now you are in command of Griffin's division."

Q. Was there anything else?—A. Yes; there was something preceding that which led up to this.

Q. Give us that.—A. Colonel Locke rode up and reported that General Warren "Has sent me to say that he has stationed two regiments back at the run,"—and something else, which I do not recollect—"and General Warren wants to know what he shall do" about some movement. General Sheridan's reply was, "Tell General Warren that I do not consider him in command of the Fifth Army Corps. I do not see him where the fighting is."

Q. Then the rest of it?—A. Then Colonel Locke took his tablets out and his pencil, and repeated the order, very respectfully, to General Sheridan, and said, "What shall I tell General Warren?" Then General Sheridan repeated exactly the same words. Then General Sheridan turned to me and said, "You are in command of Griffin's division; Griffin is in command of the corps."

Q. What did he say as to General Griffin?—A. "Griffin is in command of the corps."

Q. What did he say upon that point?—A. Nothing more.

Q. You mean that is what General Sheridan said?—A. That is what General Sheridan said.

Q. Was General Griffin there?—A. No, sir.

Q. What General Sheridan said to you then there was, in effect, that General Griffin was in command of the Fifth Corps, and you were in command of the first division?—A. Yes.

Q. Then, if the stenographer will please read to you your statement that you have just given of this interview, will you notice and say whether it is correct as he has it down? [The answer of the witness was read to him.] A. It is.

Q. What run did you understand Colonel Locke to refer to?—A. I understood him to refer to a run upon our right. It might have been a run over here, or here [indicates Hatcher's run], and I think Mackenzie was there with his cavalry [at the north of the Sydnor field].

Q. Somewhere on Hatcher's Run, then?—A. I think it was Hatcher's Run.

Q. Do you recollect whether he mentioned Hatcher's Run?—A. I do not.

Q. Was there any run except Hatcher's Run that you then understood him to refer to?—A. No; unless he might have meant any one of the innumerable little branches that run across the road.

Q. Did you then know where Hatcher's Run was?—A. I knew it was upon our right, as we were facing. I did not know the distance from that position to Hatcher's Run.

Q. When you say, as you were then facing, you mean as to your moving along westerly in the direction of the White Oak road?—A. Yes. I knew it was to our right.

Q. Did you then understand Colonel Locke to refer to some one of the crossings of Hatcher's Run?—A. Yes.

Q. Did you know which one?—A. No; because that was the only conversation I had. He was not given any opportunity of making any explanation. It was just what I have stated.

Q. What he reported, as you understood him at that time, was, that General Warren had stationed two regiments at a crossing over Hatcher's Run?—A. Yes.

Q. But what crossing, you did not know?—A. No (Record, pp. 1168, 1169, 1170, 1171, 1172, 1173).

* * * * * * * *

Q. How far west of Five Forks did you go?—A. Following down the road?

Q. Yes.—A. I do not know. I went down until after dark, until after the cavalry got in our front. There is a stream somewhere that this road crosses.

Q. Did you in going west from Five Forks move along the line of the road or through those woods to the north of the road?—A. Always to the north, through the woods entirely.

Q. Then you were not close along on the line of the works?—A. I touched the works where I met General Sheridan, and I touched them also here at different points.

Q. Near the Five Forks, and then again where?—A. Near where those guns were, and then kept in the woods all the way down here; I think nearly all the way. I think I came out of the field (the Gilliam field) here somewhere, and saw Custer making one or two charges with cavalry against the enemy's cavalry.

Q. Then you left the main line of the enemy's works somewhere near where those guns were at Five Forks?—A. Yes.

Q. And did not strike the line of works again, is that it?—A. I struck them two or three times. I will not say how many, but my business was there in the woods, north of the line of works. Every time the enemy could make a stand they would form a line of battle from south to north, and my plan was to strike the left flank and double them up, and we would keep doing so all the way down those works. They would throw a line perpendicular to their works, whenever they could get enough together. We would strike them whenever we could. Sometimes we would only have twenty men; sometimes more men than could be used. The woods sometimes did not admit it—sometimes the rapid rate did not admit of it.

Q. Was nothing of our force there before you?—A. No, sir; not a man of the Fifth Corps.

Q. Then did your command capture the guns at the Forks?—A. They did. There was no fight for the guns—everybody captured those guns. I will tell you why there was no fight; because the support for those guns was taken to form these two lines of battle to recover this angle, and I came in behind these lines of battle and left no support for the guns; the troops just walked over them—just a little straggling fire; then the cavalry came over here and they captured them and every one else captured them.

Q. What was the time the cavalry captured them?—A. Just after I did. They rode in from the front and captured them, right face on.

Q. Then after you and they had successively captured those guns, you moved, in general, to the west through those woods on the north side of the works?—A. Yes; all the time.

Q. You cannot tell us at what point you again struck the line, after leaving those works?—A. No, sir.

Q. Where do you think it was that Colonel Locke came up and met General Sheridan?—A. Close by Five Forks, about sixty paces from those guns, I should think.

By Maj. Asa Bird Gardner, counsel for the respondent:

Q. You referred to Custer's cavalry. Do you know whether or not the cavalry you saw were General Custer's?—A. I was told that they were Custer's. They had a band playing, and they were charging successively with one line.

Q. You did not know what part of his command it was that you saw?—A. No. I did not hold any communication with them at all. That was in an open field on the south side of the road. [Indicates the Gilliam field.] I saw them charging in a westerly direction. The first line of this regiment was broken and sent to the rear, and then the other line of that regiment made a charge (pp. 1182, 1183).

The witness, General Bartlett, here had reference undoubtedly to the Eighth Regiment New York Volunteer Cavalry, which had been left by Custer to make a demonstration in the Gilliam field while he took

the remainder of Wells' and Capehart's mounted brigades *around* the enemy's right and rear.

General Griffin, in his official report dated Headquarters Fifth Army Corps, Nottaway Court-House, Va., April 29, 1865, says, after referring to the meeting of the cavalry and his infantry at Five Forks:

> About this point Major-General Sheridan in person directed me to take command of the Fifth Corps and push the enemy down the White Oak road. I immediately directed General Ayres and the other corps commanders to push forward with all possible dispatch; and the pursuit was kept up until after dark, when the command was halted, the cavalry having pushed to the front out of sight and hearing of the infantry (p. 1186).

If Crawford's division had been anywhere near at that time General Griffin would undoubtedly have mentioned it.

A verbal order was, of course, although suitable for the emergency, not sufficient in the usual course of military procedure for record, because it did not direct any other general officer to take command; and soon after, in the course of the hour, a formal written order assigning General Griffin, who was not the senior division commander, to the command was prepared.

This was sent to him by the hands of Bvt. Maj. Vanderbilt Allen, United States Corps of Engineers.

This was the order which Major Benyaurd, of the Corps of Engineers, of General Warren's staff, has testified (p. 1128) was handed or shown to General Warren, and then Allen went to find Griffin and delivered it to him.

It is in consequence of this second written order which Allen carried that a confusion has arisen in the minds of those witnesses for General Warren who have testified on this point, and who did not see either of the two written orders, as to *when* General Warren was actually relieved; and it is possible that, even without the lapse of sixteen years, if they had been called on to testify at the time, they would have said probably what they have said here, as to their belief.

The second written order, it will be perceived, was necessary as a matter of record, because the first one relieving General Warren did not state who should take command. General Griffin, as already stated, was not the senior division commander.

Bvt. Maj. James Wadsworth, of Warren's staff, says (p. 1099) that he saw General Warren standing in the Gilliam field, about the middle of it, at dusk, and that he had been relieved.

In truth, the position of General Warren was a very peculiar one.

We have seen his indecision and indeterminate movements in the early part of the action, and how at last, instead of complying with the orders of General Sheridan, as conveyed by Major Gillies, that "General Sheridan wished to see him," he had diverged, without following the line of the White Oak road and the enemy's intrenchments, and gone away up through the Sydnor field and joined Crawford.

Consequently, he had not been at any important point where the fighting was going on.

The message of General Sheridan, as conveyed by Colonel Locke, awoke him to the disagreeable fact that a great victory had been won and that he had no especial part in it, except to reiterate the peremptory orders that he had received from General Sheridan.

Consequently, when General J. W. Forsyth handed him the order relieving him near the Five Forks and immediately rode off, he saw that his military reputation, from the position in which he had allowed him-

self to be placed during those two days, might be irretrievably ruined unless he did something that would attract attention.

With those feelings disturbing him, he rode down to the White Oak road to the west, and passed General Sheridan.

Just at that moment of time there was a little body of the enemy cooped in at the westerly side of the Gilliam field.

Gilliam field.

We now come to the consideration of this little skirmish in the Gilliam field, which has been brought so prominently forward by the friends of the applicant, who were not well posted as to the facts of the case, in order to show that General Warren actually closed and won the final contest.

Before discussing the little resistance that was met there, it is as well to ascertain how that little body of the enemy was found in that piece of woods at the westerly side of the Gilliam field.

When General Wm. H. F. Lee moved out to attack General Custer's two mounted brigades which had succeeded in turning their right, a few infantry and cavalry were probably left in that fringe of timber.

There may not have been any left there even; they may have gone in there subsequently, as the only place of refuge left on the field.

By General Custer's going *around* the right flank of the enemy, and driving William H. F. Lee away in the successive charges he made, he prevented the enemy moving off in that particular direction.

Of course the rush of Ayres and Griffin's troops, headed by General Sheridan, down to the line of the enemy's works, and the assault of the cavalry on the front, drove them to the westward.

Their effort was, if possible, to seek the Ford road and to cross Hatcher's Run, or the road leading over to Ford's Station still further to the west, on the South Side Railroad.

The charge of Custer's brigade away up on the right and rear of the enemy's works forced those who were not too near the Ford road to go up through the timber between him and the Young-Boisseau field or else to rush back and endeavor to escape, if possible, from the westerly edge of the breastworks.

We know that Crawford met some of these people in the Young-Boisseau field, as they were trying to escape with two guns; and we know from the evidence of some of them, General Beale and others, that they tried to get off in a northwestern direction.

A few were left, however, in this little fringe of timber to the west of the Gilliam field.

They were veteran troops, but they did not see how to get out of that place. It was nearly night, and with the darkness there was a prospect of escape.

Meanwhile our cavalry that had gone over the works, especially those that were mounted, had swept to the westward along the line of the White Oak road towards Ford's Station and the South Side Railroad, and also directly west along the line of the White Oak road.

Maj. Gen. Wesley Merritt says (p. 599) that his command went out *four or five miles in pursuit in about an hour; and they kept on until it was dark.*

Consequently, when Crawford's people came down to the breastworks, near the Gilliam field, there was no cavalry there of our forces—they had all swept by—had gone to the westward.

Major E. M. Baker, Second United States Cavalry (p. 842) saw only

skirmishing in that field, no regular stand: "They were getting away as fast as they could."

At page 849 Maj. Gen. Wesley Merritt says:

I cannot recollect that any decided stand was made there; I recollect a stand having been made there; but as to that particular location I cannot recall; there was more or less fighting all the way there, such a resistance as troops would offer who had gotten out of works and who were fleeing before a successful enemy; they took advantage of the accidents of the ground; it was not organized and continued resistance.

Capt. J. W. Felthausen, Ninety-first New York, who was one of the applicant's witnesses (p. 1087) says that when they were in the Gilliam field "it was dark enough to distinguish a flash."

Capt. Edward G. Shirley and John Palmer and Private William J. Norwood, of the same regiment, corroborate this (Record, pp. 1112, 1116, 1119).

Bvt. Brig. Gen. C. E. La Motte, inspector to Ayres' division (p. 379) says there was a little firing after they passed Five Forks; "but it did not strike me as being so heavy as to make an impression upon me;" he also says that General Ayres's Division met no resistance along the western edge of the Sydnor field, and had no further fighting after the capture of the line of works; and that no firing at the north made any impression upon him.

Even Colonel Locke himself thinks that they had "a pretty good brigade of troops in the Gilliam field," and has to admit (p. 371) that "that thing was finished up very soon."

Now, it is a fact which is definitely and conclusively shown that General Sheridan was at the northeast corner of the Gilliam field when General Warren came up from the Five Forks and Ford road.

Bvt. Brig. Gen. Hollon Richardson, Colonel Seventh Wisconsin, of Kellogg's brigade (p. 316), says, that *General Sheridan personally ordered the movement which took place across the Gilliam field to rout out* a little detachment of the enemy ensconced in that fringe of timber; and that while he, Richardson, was moving out under these orders, with perhaps 600 or 700 men, or more, and with his colors, General Warren came from the rear, leaped over the breastworks out into the open of the Gilliam field, to the south, and with his own corps flag undertook to lead his detachment across.

General Chamberlain, of *Griffin's* division (p. 277), had seen General Warren on the Ford road coming southerly towards the White Oak road, and then go westerly.

But Chamberlain did not see General Sheridan there, because General Sheridan had moved to the west some time before.

General Bankhead says he saw this enemy on the western side of the Gilliam field, "a line of mounted troops—mounted videttes and pickets;" he says *they immediately fell back and disappeared at the advance of the infantry;* "they kept up firing until the infantry got within striking distance. * * * The whole thing did not last ten minutes—the last part of it" (p. 347).

Bvt. Brig. Gen. Richard Coulter, commanding third brigade of Crawford's division, was asked this question (p. 355):

Q. There was not much firing there in the Gilliam field, was there?—A. No, sir; I don't think there was so much firing. We had come through here without much fire, and I guess the men were more surprised than anything else. They were checked by the fire, but I don't know that it was very bad. They thought it was a walk-over; thought it was about done. I called to these troops on my right to see who they were. When I found out who they were, I took them in with me. I suppose the fire

was considered more severe from the fact that we had been getting along so finely for a short distance before.

Q. Were there more than 300 of the enemy in that westerly line of woods at the Gilliam field?—A. I have no means of ascertaining; it was about nightfall; there was a good deal of confusion; the officers were at the front calling their men on; there was such a mixture of men and horses I would not pretend to say how it was.

This confusion, it will be observed, was in Crawford's division, because the cavalry had swept down that line long before on the line of the White Oak road, and the fragments of the enemy in this fringe of woods had kept very quiet and escaped the notice of the cavalry.

Bvt. Lieut. Col. W. T. Chester, aide-de-camp to General Crawford, says (p. 385) that he captured a prisoner when going down towards the Gilliam field, who mentioned that those in there "were troops of all commands, very much confused and demoralized."

General Crawford then told him to go and tell General Warren, and he then went across the Gilliam field with Warren; and further says (p. 386) they "did not make any special stand there; nothing like volley firing; only an occasional shot."

Bvt. Lieut. Col. J. P. Mead, aide-de-camp to Crawford, (p. 397), says that it was *after dusk* when he got to the Gilliam field, and that General Warren was 200 yards in advance of him; "a very small quantity of our men went across the field—not as many as 500 or 600."

Col. J. A. Kellogg, commanding a brigade in Crawford's division (p. 221), says, "I only saw very few men, myself, * * * it was nearly night at the time."

The Confederate General, W. H. F. Lee, who had been stationed in the westerly side of the Gilliam field during the day, says (p. 538) as to the alleged "charge" across that field, "It must have taken place after we left and moved to the right."

Lieut. Col. D. K. Smith, chief commissary Fifth Corps, says it was then cleverly dusk (p. 605).

General Warren says (p. 752) there were 500 or 600 of the enemy on the west side of the Gilliam field.

General Bankhead says (p. 341) he saw Colonel Richardson in that field: and it must be recollected that General Sheridan had ordered him across it. He adds—

The troops advanced up there, and this line of Confederate cavalry fell back.

He says by that time he got up to General Warren, who had *passed General Sheridan* and moved into the field in person, and General Warren

Said there was nothing but Confederate cavalry, and they had fallen back, and he wanted instructions from General Sheridan what to do.

General Bankhead rode right back, and met General Sheridan, and it was quite dark, for he rode up to General Sheridan without recognizing him; upon calling out for General Sheridan's headquarters he was answered by the General, who had recognized his voice.

As General Sheridan told him (pp. 341, 1098) that he had *already* sent instructions to General Warren, it is to be inferred from the positive evidence of General Forsyth, the chief of staff, that General Warren made that movement across the Gilliam field against that fragment of the enemy after he had been relieved.

I assume that General Warren had some hope or expectation, from his movement across the field, under the eye of General Sheridan, that the latter would reconsider his determination to relieve him.

And this is fortified by the evidence of Bvt. Lieut. Col. Archer N. Martin, aide-de-camp to General Sheridan, who says that after the battle

Warren came up to the general and remonstrated at being relieved, and wished him to reconsider it (p. 1057).

Of course, as it was then dark, and our cavalry under Custer had gone off towards Hatcher's Run, and the rest of the cavalry who had gone over the works had swept to the westward, beyond the works on the White Oak road, there was no difficulty on the part of that little detachment in the fringe of woods west of the Gilliam field escaping to the northwest through the woods.

That which had been impossible to them before then, became possible, and they made good their retreat.

The battle, however, was won when the "return" of the works was assaulted and captured, and 2,100 prisoners taken.

General Sheridan has declared that the battle was then won, and General Ayres has expressed the same opinion (p. 264), General Forsyth has reiterated it, and the manner in which the cavalry came over the works, as Ayres' and Griffin's commands, led by General Sheridan, rushed down through the line from east to west, conclusively shows that the winning of the angle was the key point.

The enemy were surprised, outgeneraled, demoralized.

Their commanding general arrived just at the close of the rout; the second in command never got on the field.

They were doubled and driven out with a degree of rapidity quite unexampled in military movements, for it must not be forgotten that from the moment of the first firing of Ayres' division there was but one hour to sunset.

It was about this time Bvt. Brig. Gen. Horace Porter had the following conversation with General Sheridan (p. 912):

Q. Did General Sheridan say anything to you at the time in relation to the subject of General Warren's removal—the reasons for it?—A. I do not recollect that he said anything to me except that he had been compelled to relieve General Warren and place General Griffin in command. Immediately after that, I sent a bulletin by an orderly to General Grant with that message, and told him to ride fast, and immediately after I went back to report to General Grant in person. I went so rapidly as to arrive there before my orderly. At General Grant's headquarters I found that General Warren had called at General Grant's headquarters just before I reached there, and had reported to him (General Grant).

General Grant, in a dispatch to General Meade from army headquarters, Dabney, 10.30 p. m., 31st March, had instructed, as the latter was sending to General Sheridan, to notify General Sheridan;

To take general direction of the forces sent to him until the *emergency* for which they were sent was over (p. 1253).

Again, General Horace Porter had come from General Grant to General Sheridan with the message that he (Grant)—

Was fully alive to the importance of the movement; that General Sheridan on the spot must judge of the circumstances himself; *that he would be held responsible for everything that* occurred in his front—must assume responsibility and make everything bend to success (p. 910).

Not long afterwards Bvt. Brig. Gen. O. E. Babcock, U. S. A., of General Grant's staff, arrived with the unsolicited authority to relieve the corps commander if he should not prove equal to the "emergency" (p. 917.)

The Confederate General Pickett's command having been routed, and the South Side Railroad, the only remaining line of rebel communication to Richmond and Petersburgh, laid open to destruction—it was expected that the Confederate General-in-Chief Lee would make a deperate effort to drive back General Sheridan, or else the two cities and lines, which had so long resisted our assaults, would have to be evacuated.

The perilous military situation of General Sheridan and the possibility of great and unusual exertions being required, left no room for sentimental feelings.

He was held responsible for the success of the operations to be conducted, and the Fifth Corps, which had shown itself capable of great things when properly led, was necessarily an important factor.

How gloriously and efficiently it co-operated with the cavalry corps in the succeeding day's movements is a matter of history.

General Warren had for the two days just passed failed to meet the emergency, and having deliberately formed that conclusion, General Sheridan's duty was plain.

He accepted the responsibility without a moment's hesitation, and to make assurance doubly sure, he put the gallant Griffin in command.

Thus did General Sheridan fulfill what he believed to be a duty to his country without partiality, favor, or affection, and although he has been cited into this court to explain and render an account of his official actions of sixteen years ago, he can say, after mature consideration and with no feeling of unkindness to any one or a desire to disparage any previous military record, that under precisely the same circumstances as presented to him at sunset of the 1st of April, 1865, he would do precisely what he did then.

SUMMARY.

Exclusive of the operations of General Sheridan which culminated in the battle of "Dinwiddie Court-House," and which, by the position it placed the enemy in, must *necessarily* be taken into consideration in determining the military situation and the urgency and importance of the orders received by General Warren on the 31st March, I submit the following brief merely for the convenience of the court in its deliberations:

As to the action of "Gravelly Run," or "White Oak Ridge," of the 31*st March*, 1865.

These points are substantiated by the evidence:

First. That General Warren had no orders to advance or bring on an action when he did so.

Second. That he was repeatedly warned by General Grant, through General Meade, the afternoon and evening previous, "that he was in danger of being attacked on his left flank in the morning"; that he "should get himself strong to right," and "put himself in the best possible position to defend himself"—to all of which warnings he appears to have given no heed.

Third. That, in order to enable General Warren to give full effect to these warnings, Griffin's Division, which had been on detached duty, was returned to him at daylight, so that he could put him in "*supporting distance* as soon as relieved," and thus have his whole corps well in hand.

Fourth. That Warren *did* report as to being able to get possession of the White Oak road, for he sent a dispatch to Meade that the enemy had

their *pickets* this side, and that he had sent word to Ayres "to try to drive them off," thus misleading Meade to believe that only *pickets* were there, which a *small force* could drive off.

Fifth. That Warren was duly notified in person and warned by his division commander, Ayres, "that there was a heavy force there," and "that an advance there would bring on a fight," and that no reconnaissance could be made without bringing on a fight. Nevertheless, Warren, *on his own responsibility*, ordered Ayres to advance.

Sixth. That, according to the applicant's own witnesses, three rebel brigades, Hunton's, McGowan's and Graves's, between 3,500 and 3,750 strong, came out of the rebel works, under General R. E. Lee in person, and attacked Ayres's Division, and drove it back in the utmost disorder on Crawford's Division, and then routed that in turn, the two divisions that day aggregating 8,000 effectives on the field, and that they retreated with such rapidity that they got as far back as to Gravelly Run Creek at 11 a. m., within about half an hour of the first firing, and forded it and fell back behind Griffin's Division, 5,985 strong, posted on the southern side.

Warren says, to his "great astonishment," the stream was there 60 feet wide and 4 or 5 feet deep. As showing the utter rout of the two divisions he says, "The men came back very rapidly, without any particular order at all, *each* man for himself."

Seventh. That General Warren, after his repeated warnings, was responsible for the disastrous repulse and resulting loss of life.

He should not have made the advance, and he ought to have so disposed of his corps that no such rout should have occurred.

He ought also to have been at the front.

Eighth. That Warren was not able to resume the offensive against the exultant enemy until a quarter to 2 or 2 p. m., and that it was the attack of Brig. Gen. Nelson A. Miles, on their left and rear, with four brigades of the Second Corps, which forced them to stop entrenching at Gravelly Run and to retire back towards their earthworks.

Ninth. That the paragraph in General Grant's official report complained of by Warren is true, except as to the enemy which attacked being in "superior" force, viz.:

"That Warren reported favorably to getting possession of the White Oak road, and to accomplish it he moved with one division instead of his whole corps, which was attacked by the enemy in superior force and driven back on the second division before it had time to form, and in turn forced back on the third division, when the enemy was checked."

As to Warren's movements on the night of the 31*st March against the enemy.*

These points are substantiated by the evidence:

First. That Warren, about 5 p. m. on the 31st March, *after* receipt of General Mead's 4.30 p. m. dispatch, sent Bartlett's Brigade of Griffin's Division, comprising nine regiments and 3,000 men, by the White Oak and Crump roads, "to try and communicate with Sheridan," or demonstrate on enemy's left with whom Sheridan was engaged.

Second. That the position Bartlett reached after dark at G. Boisseau's was on the left rear of the enemy, facing Sheridan at Dinwiddie, and most favorable, provided he was supported by Warren, which he was not, for a moment to crush the enemy between the two opposing fires.

Third. That Warren believed, and so said in several dispatches through the night, that the enemy facing Sheridan would have to retire in the direction of their works at Five Forks. Nevertheless no positive withdrawal was effected until daylight, and then the enemy in retiring contested the ground.

Fourth. That at 5.15 p. m. (received 5.45) Meade directed Warren to send a brigade in the direction Meade had previously ordered a "small force," and to support it if necessary.

That these orders were soon modified, and the brigade ordered *instead* down the Boydton plank to Sheridan.

As, however, Bartlett had already gone and could not quickly be recalled, General Pearson was ordered by Warren, with three regiments conveniently placed, "right down to Dinwiddie" to Sheridan.

Warren, at 6.30, so reported to Meade of this exercise of *discretionary* authority, but *they never went*, nor did he notify Meade that they did not go.

Fifth. That Bartlett's withdrawal from his advanced position in rear of the enemy was due to the *literal* construction put by Warren on Meade's subsequent order, when he found he would not be allowed to make a movement just as he, himself, wished; but that, still later, peremptory orders from Meade were received in *due season* to have stopped Bartlett's return.

Sixth. That none of the orders received by Warren from Meade that night of March 31, for *night* operations, were efficiently, promptly, and earnestly executed, but that some of them were positively disobeyed.

Seventh. That Warren proposed, at 8.40 p. m., to Meade to make a *night* attack by moving down and attacking the enemy on one side while Sheridan attacked on the other, Bartlett being then in suitable position, but that when Meade, at 9 p. m., ordered him *at once* to draw back from the White Oak road to the Boydton plank (of which he had previously been notified at 8.30 to do on *short* notice) and send a division down the Boydton plank to Sheridan, Warren saw he would not be allowed to act "independently."

Eighth. That under Meade's peremptory 9 p. m. order (received 9.17), although eventually Ayres's Division was started towards Dinwiddie, the other two remained as they were, in bivouac on the White Oak road, until *after daylight*, April 1, and until near 6 a. m.

Ninth. That although at 6.30 p. m. Warren reported to Meade that he had ordered General Pearson "*right down to Dinwiddie*," it was not until 10 p. m. that Warren notified Meade that the bridge was gone at Gravelly Run, on the Boydton plank, although that point was but half a mile from his own headquarters.

Tenth. That Meade's peremptory order, signed by himself in person, to Warren, "to move the balance of his (Warren's) command by the road

Bartlett was on and strike the enemy in rear," and to be "very prompt in this movement," and not to encumber himself with anything to impede his progress or prevent his "moving in any direction across the country," was *not* obeyed. That this order directed Warren to acknowledge receipt and *when* he should start.

That at 10.55 p. m. Warren accordingly reported, "I will NOW send General Ayres to General Sheridan, and *take* General Griffin and General Crawford to move against the enemy as this last dispatch directs I should."

That although this was a report of immediate compliance, Warren never moved Griffin and Crawford out of their bivouac until after Bartlett had returned, and after daylight, and never left his own headquarters at Mrs. Wilson's, on the Boydton plank, to go up to the White Oak road to the bivouac of those divisions until *after* 5.15 a. m.

Eleventh. That had Warren made the night movement as ordered it is apparent that Generals Grant, Sheridan, and Meade believed great results to the cause of the Union would have resulted therefrom. The reason why he did not obey is not to be found in the context of the orders.

Twelfth. That Warren did not intend to make the *night* movement against the enemy's rear with two divisions, as ordered, is found in his dispatch of 40 minutes after midnight, April 1, to Humphreys, commanding Second Corps, that he would "do so to-morrow," and in his declaration here on cross-examination: "I never had any idea of doing it in such a night as that."

Thirteenth. That it was *after* this determination had been formed, and at 1 a. m., that Meade's 11.45 p. m. dispatch was received directing Warren to give up the rear attack if it should be necessary to send troops to Sheridan by the Quaker road.

At 2 a. m. the bridge over the *fordable* Gravelly Run being practicable for Ayres's Division, Warren did not have to send troops around by the Quaker road, nevertheless he never made any movement whatever towards complying with the urgent order for the rear attack.

Fourteenth. That Warren, believing the enemy would retire during the night, nevertheless, by his own delay in moving, entirely subverted and defeated the spirit and intent of General Grant's orders, as conveyed through General Meade.

Fifteenth. That there is nothing before this court to show that Meade *was* satisfied, as alleged by the learned counsel in his summary, with Warren's conduct. The latter's report of 10.55 p. m. to Meade of "compliance" was calculated, although there was not compliance, to allay irritation.

The fact, however, is highly significant, that General Meade, the next morning at 6 o'clock, felt it necessary to send General Warren a *written* order that "in the movement following your junction with General Sheridan you will be under his orders and will report to him" is highly significant.

Sixteenth. That General Sheridan was disappointed in Warren's non-arrival in supporting distance is found in his inquiries of General Chamberlain and conversation with General Horace Porter.

Seventeenth. The first item of General Sheridan's report complained of by Warren is true, viz., that "had he moved according to the expectations of the Lieutenant-General (see Grant's 10.45 p. m. dispatch to Sheridan) there would appear to have been little chance for the escape of the enemy's infantry in front of Dinwiddie Court-House."

As to the battle of Five Forks.

These points are substantiated by the evidence:

First. That Warren should have arrived with Griffin's Division when it finally reported to Sheridan at 7 a. m. and was ordered to halt, and should not have remained with the rear of his column.

That having arrived at 8 a. m. where Griffin was, and having at 9 a. m. received Meade's *written* orders to report, he should have sought General Sheridan at once to ascertain his plans and wishes and not have waited idly until 11 a. m. before doing so.

He *at the very least* should have reported his own arrival by a staff officer, but did not.

Second. That although Warren between 12 and 1 p. m. received and dispatched Sheridan's orders to the Fifth Corps to come up, those orders were not executed with vigor and promptitude.

That two divisions (Griffin's and Crawford's), but 2 3-16 miles from Gravelly Run church, and the third (Ayres's), 2,600 strong, not quite three miles distant—each massed by the roadside—without trains or camp and garrison equipage, did not come up so as to be formed before 4.30 p. m., and the firing began at 5.15 p. m., and the sun set at 6.23 p. m.

That when General Sheridan expressed repeatedly his apprehension of the consequences from the delay in coming up, it was General Warren's duty to have ceased making sketches of the proposed movement and to have gone in person to urge the march of his corps to the point of formation.

That, as he claims, he *supervised* this exceedingly dilatory movement, he is properly responsible for it.

Third. That the written orders prepared by Warren from the instructions received from General Sheridan, for the simple movement ordered, were needless and involved the corps commander in an unnecessary mass of details when he should have been personally with his corps.

Fourth. That the explanation of Warren to Sheridan, as heard by General J. W. Forsyth, chief of staff, that it was "simply for the corps *formation*, nothing more, nothing less," was the true one.

That there was no misapprehension where the "return" of the enemy's works was *on* the White Oak road.

That General Warren had been, personally, through the fringe of timber north of Gravelly Run church, and *knew* and could see there were no works in the open on the White Oak road, or north of it even, and that he knew, and has so testified, that the cavalry was to engage the *whole front* of the works.

That the theory set up by way of excuse and avoidance is an afterthought which, if carried out to its legitimate conclusion (by reference to the diagram), would make nearly the entire Fifth Corps strike the works on the face, thus displacing the cavalry, who were in communication, and render entirely nugatory General Sheridan's instructions,

which required the whole infantry line to swing around perpendicular to the White Oak road upon reaching it.

That the contradictory evidence from the officers of the Fifth Corps before this court of the explanations made to them at the time by Warren of the simple movement to be executed, is not explained by the evidence, and can only be left to conjecture.

Fifth. That the cavalry held the enemy close in their line of works and knew exactly their location, and that General Sheridan had been all along the line, and particularly at the angle.

Sixth. That it was intended the Fifth Corps should wheel or change direction, so that Ayres should assault at the angle, but the deflection to the right, under skirmish fire, of Crawford, in order to get out of the fire and keep the protection of the ridge and trees, as admitted by Warren, and failure to wheel as ordered upon reaching the White Oak road, carried Ayres to the right and north beyond the original intention, and compelled him with but 2,600 men to assault the return alone (led in person by Sheridan), where 2,100 prisoners were captured.

Seventh. That Warren did not do all that was possible to remedy the confusion in Ayres's division or serious deflection in Crawford's.

It was General Sheridan who *first* sent orders to the latter to come to the left, which Warren supplemented by ordering him "to push forward" in his serious deflection to the north, thus crowding General Mackenzie's fine cavalry division on Warren's right *entirely* out of the fight.

That this deflection to the right and march of Crawford under a mere picket fire, followed by Griffin, of from a *half* mile to a *mile north* of the White Oak road through the woods and away from the heavy firing of the "return," which was witnessed *before* final disappearance in the woods, cannot, as it was being supervised by Warren, be excused on the plea that probably *some* works might be up in those woods, when the peremptory orders of Sheridan to Warren had been that Crawford should swing around to the left as soon as his division reached the White Oak road.

That had General R. E. Lee attacked down the White Oak road while those two divisions were in such confusion in the woods they would have been destroyed.

Eighth. That the serious confusion which twice took place in Ayres's Division when not exposed to a heavy fire while Warren was at hand, and which came near turning a subsequently great victory into the most disastrous defeat, should have been remedied by Warren.

At the very *least*, when his army commander, Sheridan, was exposing himself between two fires to restore confidence and order, he also should have gone to the front of his own corps and given General Sheridan a helping hand.

Ninth. That Warren displayed great indecision in his movements:

First, following Ayres, *then* going after Crawford, then returning to the open by the White Oak road, *then* going to the "Chimneys" (see Colonel Newhall's evidence), *then* again returning to the White Oak road at the open, and *then*, *after* receiving, by Major Gillies, General Sheridan's message that he wished to see him (the "return" having

been taken), going *again* up through the Sydnor field and so west to the Ford road and joining Crawford's Division instead of obeying the order.

Tenth. That Warren's *manner* on this day, when his divisions were slow in coming up and the day was wearing away, gave General Sheridan the impression that he wished the sun go down before dispositions for the attack could be completed.

It is highly significant that so many officers of rank noticed and considered Warren's manner on this day of "Five Forks."

His gloomy talk to General Sheridan, corroborated by General J. W. Forsyth, about General Lee getting people into difficulties which so surprised them, and induced Sheridan to decide to remain and fight with the Fifth Corps, cannot be overlooked.

Eleventh. That Warren's message, by his chief of staff, Locke, after reaching the Ford road, to General Sheridan as to the number of prisoners taken there, and Locke's reply to the question Sheridan had asked Generals Horace Porter, Griffin, Chamberlain, Ayres, and J. W. Forsyth, "Where Warren was," was the last of a series of unfortunate circumstances which bore the mind of General Sheridan to the conclusion, under the tremendous responsibility put upon him by the General-in-Chief in the new situation as it presented itself when the Confederate General Lee would probably endeavor to crush him, that the strong arm of his command should be under one who could effectively command it and efficiently and appreciatively carry out at once his orders.

Twelfth. That Warren was relieved of his command on the White Oak road just west of the Ford road, and that he then moved west; *passed* General Sheridan, who was at the time looking into the Gilliam field and personally *directing a movement* by Col. Hollon Richardson, of Kellogg's brigade, which had been brought down by Bvt. Brig. Gen. George A. Forsyth, under Sheridan's orders, against some disorganized enemy, few in numbers, on the western edge of the field, and that Warren, having passed Sheridan, moved forward with that detachment, and that the written order received by him from Bvt. Maj. Vanderbilt Allen in the field V, west of the Gilliam field, was the one which assigned General Griffin to the command of the Fifth Corps.

Thirteenth. That *before* Crawford's Division left the Young-Boisseau field General Custer, with two mounted brigades (Capehart's and Wells's, except the Eighth New York Cavalry, which made a diversion in the Gilliam field), had passed around the *right* and *rear* of the enemy's works, and driven them northeasterly towards the Young-Boisseau field, where Crawford's people fired at them, and proceeded as far as that field, Custer's cavalry having been seen by many witnesses up there.

That when Kellogg's Brigade, of Crawford's Division, reached the White Oak road the cavalry, which had assaulted the front of the works, had previously passed over, and had swept westerly, under General Merritt, pursuing either towards Ford's Station or down the line of the White Oak road.

That the enemy found afterwards to the west side of the Gilliam field was an insignificant disorganized detachment of cavalry and infantry, which had sought shelter there while trying to escape.

Lastly. That the extract from General Grant's report and the three extracts from Lieutenant-General Sheridan's report express the conclusions respectively formed by those general officers, and were fully borne out by the facts as presented to them.

In conclusion, I have to thank you, gentlemen of the court, for your considerate attention and unvarying courtesy during this protracted investigation, which have lightened my labors as well as those of the learned counsel for the applicant.

The recorder of this court in the preparation of the voluminous printed record and in the correction of typographical errors, as well as in his laborious and painstaking efforts in revising proofs and supervising the printing of the maps, has performed a service in this investigation which will hereafter be fully appreciated by the student of history who refers to the record of this case for information as to the great battle which closed, practically, the great rebellion.