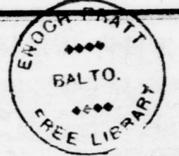


# Port Tobacco Times

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## A LETTER OF JUDGE MARSHALL TO GEN. WASHINGTON.

[COMMUNICATED.]

Mr. Editor:—Enclosed you will receive a letter from Judge Marshall to Washington, and, if convenient, I will thank you to publish it. The difficulties which now so fiercely and perniciously assail our once happy and prosperous country grow out of a departure from the faith and doctrines of our fathers. The Constitution points out the peaceful remedies for our troubles; but that does not seem to comport with the views of some in our day. The letter shows how far men were disposed to go at an earlier period and in another day.

Extract of a Letter from Judge Marshall to Gen. Washington, dated

Richmond, Jan. 8, 1799.

DEAR SIR: I thank you for the charge of Judge Addison. It is certainly well written, and I wish that it, as well as some other publications on the same subject, could be more generally used. I believe that no argument can moderate the leaders of the opposition, but it may be possible to make some impression on the mass of the people. For this purpose the charge of Judge Addison seems well calculated.

However I may regret the passage of one of the acts complained of, I am firmly persuaded that the tempest has not been raised by them. Its causes lie much deeper, and is not easily to be removed. Had they never passed, other measures would have been selected which would have been attacked with equal violence. The misfortune is, that an act operating on the press in any manner affords to its opposers arguments which so captivate the public ear, which so mislead the public mind, that the efforts of reason to correct false impressions will often fail of success.

Two very interesting subjects have, during the present session, particularly engaged the attention of the Legislature. The first was a paper introduced by Col. Taylor, of Caroline, and which you must have seen, containing resolutions which take advantage of the irritation excited by the alien and sedition laws to erminate the whole conduct of our Administration, and charge it with the design of introducing monarchy; the other was a proposition from Mr. George K. Taylor, of Prince George, expressive of sentiments similar to those which have been declared by other Legislatures of the Union on our controversy with France, in the place of which was substituted, by a majority of twenty-nine, a counter proposition termed an amendment, which was offered by Col. Nicholas, of Albemarle, and which seems calculated to evince to France and to the world that Virginia is very far from harmonizing with the American Government or her sister States.

The debates on these subjects were long and animated. In the course of them sentiments were declared and (in my judgment) views were developed of a very serious and alarming extent. To me it seems that there are men who will hold power by any means rather than not hold it, and who would prefer a dissolution of the Union to the continuance of an Administration not of their own party. They will risk all the ills which may result from the most dangerous experiments rather than permit that happiness to be enjoyed which is dispensed by other hands than their own. It is more than ever essential to make great exertions at the next election, and I am persuaded that by making them we obtain a Legislature, if not Federal, so divided as to be moderate.

I feel with increased force the obligations of duty to make sacrifices and exertions for the preservation of American Union and Independence, as I am more convinced of the reality of the danger which threatens them.

With the most respectful attachment, I remain, sir, your obedient,

J. MARSHALL.

## LECTURE ON MARTIAL LAW.

[COMMUNICATED.]

To the Editor: Enclosed you will receive an extract from a letter of Professor Parsons an eminent jurist of Martial Law, and the habeas corpus. I have also the opinion of Mr. Jefferson that it (the habeas corpus) could be suspended under certain circumstances without waiting for the action of Congress. This is a period of war and abuse, and enquiry and everything which may throw light on the subject might well be brought out.

ABSTRACT OF THE LECTURES.

Martial Law is often confounded with military law; and this mistake is made in some works of authority; but they are distinct and very different. A recent English commentator on Blackstone says, "there is a great distinction, often lost sight of, between military law and martial law." So Chancellor Kent, in his commentaries, after defining military law, says "martial law is quite a distinct thing." They do indeed differ in nearly all important particulars.—Military law consists of the "articles of war" and other statutory provisions, and rests on legislative authority; it exists equally in peace and in war; it applies only to military persons and things; and it is perfectly definite in its provisions. In all these respects martial law differs from military law.

Martial law springs from military necessity, and nothing else; or in the words of Kent, "it is founded upon paramount necessity." As it has no origin but war, it exists

only in war, or in a condition of things requiring armies and military action. While it exists it "extends to all the inhabitants of the district where it is in force," whether they are military or non-military. And it is "wholly arbitrary."

As to its origin and authority, it may indeed be said to rest upon universal practice, upon the common consent of the world, as well as upon irresistible necessity. Like war itself, it can be justified only by necessity; but is justified by adequate necessity. We can no more imagine a sovereign State with no power to resort to martial law, when it becomes necessary, than of a State which has no power to carry on war of any kind or use military means in self-defence. And the right of determining when the necessity for martial law exists, and of then declaring it, or enforcing or applying it, either by proclaiming it as in force over a certain district or territory, or in any other way, resides obviously with the governing power of every State.

There is one distinction, however, which should be made. At home, even in actual war, only the supreme power can declare or exercise martial law; and this it can do at once, or conditionally, or by instructing any of its military servants to do it, on such terms as it may choose to prescribe. But an army which leaves home and invades a country, which has placed itself in a hostile attitude, carries with it martial law, which right resides then with the officer in command of the invading force, or of the district invaded.

The principles and extent of operation of martial law are wholly and perhaps necessarily undefined. It may be compared, in this respect, with things utterly different from it in other particulars, and resembling it only in growing out of necessity. For example, the power of a legislative body in England and in this country to judge of and protect its own rights, and the power of a judicial court to punish for contempt, are powers almost incapable of exact definition, but universally acknowledged. The Duke of Wellington defined martial law as "the will of the commander-in-chief;" but there are principles and usages which qualify this in some degree. Thus it is generally, although not universally, exercised through courts martial; and it is sometimes said, and may be a general although certainly not a precisely accurate rule, that martial law only brings all persons within the reach of the "articles of war."

Practically, the very essence and substance of martial law is, in England and the United States, the suspension of the right to the writ of habeas corpus. While any person who is arrested by any authority can have this writ, and be brought by it before a civil tribunal, whose judgment determines conclusively whether he shall be held as a prisoner or go at large, it is obvious that the civil law prevails over either military or martial law. And it is equally obvious that no person can be effectually subjected to martial law, that is to an arrest and trial by military men, and punishment by them, unless the writ of habeas corpus is suspended, for the time at least, and as to this person. On the other hand, when the habeas corpus is previously suspended, there is nothing to interfere with or prevent the exercise of martial law. It may, indeed, be said that, for all practical considerations, martial law and the suspension of the right to habeas corpus are one and the same thing.

How do these general remarks apply to this country? First, the obvious, unquestionable, and universal need of a power somewhere to exercise martial law when an adequate necessity exists, is as certain in this as in all other organized nations. But we have also something in our National Constitution about it. Not under the word and name of martial law, but under that other phrase which we have seen to be its equivalent—the suspension of the right of habeas corpus.

The Constitution of the United States, art. I, sec. 9, n. 2, provides that "the privilege of the writ of habeas corpus shall not be suspended unless when, in cases of rebellion or invasion, the public safety may require it." And many of the State constitutions have similar provisions. A fair inference from this is that the right to habeas corpus may be suspended, or, what is the same thing, martial law may be declared and exercised "in cases of rebellion or invasion, when the public safety may require it." The first and most important question is, who may decide when the exigency occurs, and who may, if it occurs, declare martial law. On this point I have myself no doubt. The clause on this subject is contained in the first article of the Constitution, and this article relates principally to Congress. Nor can there be any doubt that Congress may, when the necessity occurs, suspend the right to the writ of habeas corpus, or, which is the same thing, declare or authorize martial law. The question is has the President this power? The Constitution does not expressly give this power to any department of Government, nor does it expressly reserve it to Congress, although, in the same article, it does make this express reservation as to some of the provisions contained in the article. This may be a mere accidental omission, but it seems to me more reasonable and more consonant with the principles of legal interpretation to infer from it an absence of intention to confer it to Congress. And I am confirmed in this opinion by the nature of the case.

The very instances specified as those in which the right to habeas corpus may be suspended (invasion and rebellion) are precisely those in which the reasons for doing so may come suddenly, the necessity of determination be immediate, and a certainty

exist that the suspension will be useless, and the whole mischief which the suspension might prevent take place if there be any delay. To guard against the suspension by limiting the cases, as is done, seems to me wise; to obstruct it by requiring the delay necessarily arising from legislative action would seem to be unreasonable. It is true that my construction gives to the President, in the two cases of rebellion and invasion, a vast power; but so is all military power. It is a vast power to send into a rebellious district fifteen thousand soldiers, as Washington did, whose duty it would be to meet the rebels, and, if necessary, kill as many as they could. But it was a power which belonged to him, of necessity, as President; and so, I think, did the power of martial law. If it did not, then, when his troops had captured the armed rebels whom they were sent to subdue, the nearest magistrate who could issue a writ of habeas corpus might have summoned the officer having them in charge to bring them before him, and might have liberated them at once to fight again, and this as often as they were captured, until a law could be passed by Congress.

"If the power belongs to the President, he may exercise it at his discretion, when either invasion or rebellion occurs, subject, however, to two qualifications. One, a universal one, applicable to his exercise of every power. He abuses it, or exercises it wrongfully, he is liable to impeachment. The other is more a matter of discretion or propriety. I suppose that he would of course report his doings in such a matter to Congress when he could, and be governed by their action."

"My conclusion is, therefore, that in case of invasion from abroad or rebellion at home, the President may declare, or exercise, or authorize martial law, at his discretion."

## BATTLE AT GREAT BETHEL.

Twelve Miles from Fortress Monroe.

THE FEDERAL TROOPS REPULSED, WITH A SEVERE LOSS IN KILLED AND WOUNDED.

Fortress Monroe, June 10.—This has been an exciting and sorrowful day at Old Point Comfort. General Butler, having learned that the Confederates were forming an entrenched camp, with batteries, at Great Bethel, nine miles from Hampton, on the Yorktown road, deemed it necessary to dislodge them.

Accordingly, movements were made last night from Fortress Monroe and Newport News. About midnight Col. Durea's Zouaves, and Col. Townsend's Albany Regiment crossed the river at Hampton by means of six large batteaux, manned by the Naval Brigade, and took up the line of march. The former some two miles in advance of the latter.

At the same time Col. Benedict's regiment and detachment of the Vermont and Massachusetts regiments at Newport News moved forward to form a junction with the regiment from Fortress Monroe at Little Bethel, at about 4 A. M.

Col. Benedict's regiment arrived next, and took a position at the intersection of the roads. Not understanding the signal, the German regiment, in the darkness of the morning, fired upon Col. Townsend's column, marching in close order, and led by Lieutenant Butler with two pieces of artillery. Other accounts say that Col. Townsend's regiment fired first. At all events, the fire of the Albany regiment was harmless, while that of the Germans was fatal, killing one man, and fatally wounding two others, with several slight casualties.

The Albany regiment having fallen back, the Germans discovered, from the accoutrements left on the field, that the supposed enemy was a friend. They had, in the meantime, fired nine rounds with small arms and a field-piece.

The Zouaves hearing the fire, had returned and fired also upon the Albany boys. At daybreak Colonel Allen's and Colonel Carr's regiments moved from the rear of the Fortress to support the main body. The mistake at Little Bethel having been ascertained, the buildings were burned, and a major, with two prominent secessionists, named Lively and Whiting made prisoners. The troops then advanced upon Great Bethel in the following order, viz: The Zouaves, Col. Benedict, Lieut. Col. Washburn, Col. Allen and Col. Carr. At that point the troops found and successively endeavored to take a large masked battery.

The effort was futile, their three small pieces of artillery not being able to cope with the heavy rifled cannon of the enemy, according to some accounts, numbering thirty. The Confederate battery was so completely masked that no men could be seen, only the flashes of the guns. There was probably not less than one thousand men behind their sand batteries. A well concentrated movement might have secured the position, but Brigadier General Pierce, who commanded the expedition, appears to have lost his presence of mind, and the Troy regiment stood an hour exposed to a galling fire.

An order to retreat was at last given, but at that moment Lieut. Greble, of the United States army, and in command of the artillery, was struck by a cannon ball, and instantly killed. He had spiked his gun, and was gallantly endeavoring to withdraw his command.

Captain George W. Wilson, of the Troy regiment, after the order to retreat, took possession of the gun, with Quarter-Master McArthur, brought it off the field with the body of Lieut. Greble. They brought them to the fortress this evening.

There are probably twenty-five killed and

one hundred wounded. Lieutenant Colonel Butler deserves the greatest credit for bringing off the killed and wounded. Several of the latter are now in the hospital at the Fortress.

I should have stated that Colonel McChester's regiment formed a reserve. Colonel Hawkins' regiment moved from Newport News during the day.

The armed vessels went up to Newport News, excepting the Cumberland. All the regiments are now probably at their former quarters.

Considerable indignation is manifested against Brig. Gen. Pierce.

General Butler has been ubiquitous, doing all in his power to save the men, and for the honor of the cause.

The above is the despatch received by the Associated Press, reported as *officially corrected by General Butler*. Another account gives the following additional particulars:

The whole of the Federal force, it is said, did not exceed four thousand men, while that of the Confederates was about eight hundred, with six pieces of artillery in two batteries, two or three companies of rifle-men, and a fine cavalry corps.

The cavalry, it is said by one of those who participated on the Federal side, attempted to charge upon the Federal troops, but the fire from the latter drove them back, with the loss of one man killed or wounded. He was seen to fall from his horse.

The Federal pickets captured Capt. A. Whiting, of Hampton, one of the Confederate pickets, and he was sent in to Fortress Monroe. Another was pursued but escaped.

The batteries of the Confederates, which are said to have been only temporary affairs consisted of six pieces, all told, one having two and the other four guns.

The location of the battle ground was on the brink of a low, marshy creek, the bridge across which is not more than twenty-five feet long.

The number of killed and wounded is not definitely ascertained, but it was admitted at Fortress Monroe to have been an unusually large percentage of the force. The troops are said to have exhibited great bravery, but were compelled to beat a hasty retreat from the well-directed and devastating fire of the Confederates.

As an instance of the precision of their aim, a cannon ball from the Confederate battery struck the barrel of the musket of one of the Federal troops about its centre, so that the ends nearly came together, and the following ball took off the head of the soldier who had lost his musket.

After the retreat of the Federal troops began the cavalry of the Confederates followed them nearly into Hampton village and then retired.

There was no intention expressed at the Fortress to send out another force to the scene of battle, as it was thought the Confederates would remove their position, and if it should be captured it would require a force of twenty-five hundred to hold it, with five hundred additional to keep open the communication between that and Hampton.

A large number of wounded had been brought in to the hospital at Fortress Monroe, many of whom were fatally injured.—On Tuesday two of the wounded died. A passenger by the Georgianna stated that twenty-five Zouaves, besides those known to have been killed and wounded, were still missing. Two who had separated themselves from the regiment in the retreat came into the fortress on Tuesday afternoon, but could give no account of their missing comrades.

A good deal of depression is said to be exhibited among the Federal troops because of the defeat, but they do not lack the courage to renew the contest as soon as they receive the word of command to march.

Major Winthrop, one of the aids to Gen. Pierce, who was reported missing, is said to have reached Newport-News in safety. He gave the order to charge on the battery, when the fearful havoc of his troops took place.

Comments of the New York Press.

[From the Tribune.]

The Union arms have received a check in lower Virginia, which, though the loss on our side was inconsiderable, and probably fully equalled by that of the traitors, will doubtless be magnified by their organs into an important victory for the rebel cause.—And this circumstance, with the slight coloring of fact to sustain it, gives the affair a consequence which it does not essentially deserve.

By whose fault we cannot say, the Union forces were most wretchedly handled. The collision between two of our regiments, advancing by night from different points to attack a common foe, was the first and most criminal blunder. Whoever planned and provided thoroughly against our own corps mistaking each other for foes, is unfit for his position; if he did give proper directions, and they were disobeyed or unheeded, then whoever is in fault should resign. The case is a very plain one, and Nobody justly refuses to bear the blame.

We do not believe that Gen. Butler ordered an attack by wearied troops, having but two or three guns, on an entrenched or breastwork bristling with artillery. Nor do we believe Gen. Butler ordered an attack such a position in ignorance of its real strength. We presume the officer in command of the expedition was fired by a stern resolve to efface the recollection of his initial disaster in the brilliancy of his ultimate achievement, and was thus impelled to exceed his orders. And the gallantry of our brave volunteers would have wrested victory

from fortune had it been possible to flank the enemy's position. As it was, heavier guns and more of them were indispensable, and the attack necessarily failed.

Let us not lose the lesson.

[From the World.]

Our men, in this their maiden battle, we rejoice to learn, behaved with all the gallantry and determined courage which were expected of them. In so doing they exhibited more than usual fortitude; for they entered upon the unequal contest under very depressing circumstances. To be shot by the enemy is the fortune of war, but for three regiments of the same army, acting as a part of the same expedition, to be killing and wounding each other is frightful; and to men unaccustomed to encounter the casualties of war such an occurrence as that which disgraced the early stage of this movement must have been gloomy and forbidding indeed—its moral effect being not to be measured by the injuries inflicted. Upon our present information we must regard this so-called accident as the consequence of inexcusable neglect or carelessness in some quarter. That three regiments sent out to effect a junction with each other in the dark should not have been provided with signals, which would prevent their mistaking friends for enemies, indicates a looseness of preparation which we fear was characteristic of this expedition from the very beginning.

In the explanation of the disaster to our arms, we hear, it is true, that General Pearce, who was in command, lost his presence of mind, even so much so as to leave one regiment standing helpless under fire. Can it be that this language conveys that dreaded imputation which military self-respect crouches under the circumlocutory phrase, misconduct in the presence of the enemy? We are unwilling to believe that it does; unwilling in fact to believe that there is any real ground for it; and we trust that, at the worst, it has only its literal significance, and that General Pearce has merely shown that he is unfit to be a general—not unfit to be a soldier. Let us, however, withhold judgment, even in this respect, until we have more coherent and authoritative accounts of this unfortunate affair.

But the great mistake, as far as we are now able to judge, appears to have been in the lack of prudent reconnaissance and preparation. The event showed that General Butler sent a boy to a man's work. To pit field howitzers against rifled cannon, and to send out a body of raw troops, prepared only for a sharp hand-to-hand fight when they had formidable intrenchments to attack, is neither "magnificent" nor "war;" it is simply reckless, more or less culpable according as it may be accompanied with circumstances more or less extenuating. Ordinary military prudence would have dictated measures to be taken for acquiring thorough knowledge of the nature of these batteries, even by a feigned attack and a rapid retreat, so as to draw their fire and unmask them before seriously undertaking their capture. As it is, we have lost a gallant officer of artillery, with a number of fine, spirited volunteers, whose lives dearly purchased the lesson taught our too eager Generals by this well-directed but ill-appointed expedition. Let our officers look well to it that that lesson is not lost.

[From the Times.]

The first essays at war of a people addicted to peace end, uniformly, in defeat. Our army has had its first reverse. Ordered to make a night advance upon the enemy's lines to the westward of Fortress Monroe, some three thousand of the National troops marched courageously upon the enemy; and confiding in the presumed knowledge of their officers—accomplished military skill was not expected—marched into the very jaws of death. Their misadventures were not due to any heedlessness on their part, or to any deficiency in the qualities which make good soldiers. They fought, both friends and foes, with equal resolution, and only retired when the exhaustion of ammunition in the presence of a powerful enemy, strongly entrenched, and with every advantage of position, rendered a further contest impossible.

The fact that they retreated without panic or disorder, carrying their wounded and their guns with them, is the best proof of the calm courage and self-control which governed their movement. The loss of life and the number injured presents a painful catalogue, but it is a record of soldierly heroism which must forever set at rest all doubt as the fitness of our people for the most hazardous exposure of the battle-field and for the encounter of danger in its most startling forms. Let us do homage to the discipline and fortitude of our brave fellows who, defenceless for two hours under the enemy's fire, only retreated when their incompetent commander gave the tardy word. Whatever of triumph the affair may afford the enemy, we are taught the gratifying lesson that we have the best possible fighting material to defend the country.

[From the Herald.]

The details of the hot and bloody engagement on Monday morning last, between a detachment of troops from Fortress Monroe and a heavy rebel masked battery near Hampton, are before our readers. We have thus the admissions before us of several unfortunate mistakes in the movements of the Union forces; but, in summing up the results, we find that the admirable bravery and steadiness of our raw volunteers will compare with those qualities in the most thoroughly seasoned regular troops, and that all that our men require in the face of the enemy is wide awake and skilful management. In this instance they appear to have been blindly led into a snare of masked bat-

teries, armed with numerous heavy rifled cannon, against which they had only three light field pieces to bring into play.

The unfortunate collision between the New York Seventh (German) and our Third (Albany) Regiment is explained in the fact that it occurred before daylight. Such mistakes have frequently occurred in the heat of battle in broad daylight. At the storming of Chepultepec one detachment of our troops was somewhat cut up by a co-operating detachment mistaking their friends for the enemy; and a similar misapprehension, if we mistake not, very seriously damaged for a time the unity of the French army at the battle of Magenta. It is certainly a very hazardous business to be moving about in the dark detachments of troops from different points through a forest known to be swarming with enemies. In this instance, no doubt, the collision between our two New York regiments contributed much to the advantage of the enemy, in giving them abundant warning of their approaching assailants, and in retarding the onward movement of our troops.

It strikes us, too, that the prolongation of the fight, with our troops fully exposed before the masked and inaccessible battery of the rebels, after ascertaining its strength, was a culpable sacrifice of brave men and a foolish waste of ammunition. The tried and established bravery of our troops is the great redeeming feature of the expedition; but their lives are too precious to be wasted in headlong enterprises of this sort, and in utter ignorance of the position, the defenses and the strength of the enemy. We have no desire to prejudge General Pierce, the officer in command of this expedition; but it seems to us that, having discovered that three small field pieces were insufficient to cope with a hidden battery of thirty heavy guns, he should have withdrawn from the range of its fire, reported progress to Gen. Butler, and awaited reinforcements or further instructions.

The Virginia Plan of the Campaign.

The New Orleans True Delta has a very interesting letter from its special correspondent at Richmond. Though reaching us in such a round-about way, it is nearly as late as anything from newspaper sources which we have direct from Virginia. It is certainly as important, and reads as though it were reliable.

"I am persuaded that within the six weeks past the strategy of the Confederate Government has undergone a change—or at least that it has been caused to take on the appearance of change.

All eyes are turned at present toward Manassas Junction. The enemy has massed some 20,000 or 25,000 troops at and about Alexandria, and their numbers at last appears to be increasing by constant arrivals by land and river. It is apprehended that they mean to attack us at Manassas Junction, where we had yesterday about 10,000, increased perhaps to 15,000 men, under Gen. Bonham, which were being rapidly reinforced from this city. Civil and military men here differ, however, as to the designs of the enemy in that direction.—Some regard the demonstration at Alexandria as a feint to make important movements elsewhere—perhaps upon Norfolk, or Yorktown, or Aquia Creek, or Harper's Ferry, or some other point.

But Gen. Lee, who is by no means a man to jump hastily to conclusions, appears to put literal construction on it. He proceeded in person to Manassas Junction to-day, pretty fully convinced that, by the act of Lincoln's troops—as our Congress would their war declarations—it was soon to be the scene of a sharp and bloody contest.—But there is no telling. Before this reaches you the telegraph may tell you that the enemy continues to pursue a policy of gradual and almost imperceptible invasion, accompanied by a succession of small losses and irritations inflicted upon the Confederate army, until, to save its prestige at home and abroad, and to save itself from utter disaster, it will be compelled, somehow and somewhere, to force a trial of conclusion in a great and decisive pitched battle.

The massing of Southern troops at various important positions still goes on vigorously. Richmond is the general rendezvous for incoming volunteers, whence, as soon as inspected and properly outfitted for active duty, they are distributed where they seem most needed. According to a rough estimate, I think that there are at this moment in active service in Virginia about fifty thousand Confederate troops, namely: about eight thousand at or near Manassas Junction; about five thousand at Fredericksburg and Aquia Creek; about twelve thousand at Norfolk and its neighborhood; about five thousand at Yorktown and Williamsburg; about fourteen thousand at Harper's Ferry. Of this aggregate, nearly all exclusive of the force at Harper's Ferry, are so posted that they could be concentrated by railroad at any point between Norfolk and Alexandria within twenty-four hours.

About forty thousand, I should think, might be flung almost at once upon the enemy, wherever he might plant himself along that line. But to mass this number at a given point might leave too scant a force along the sea-board and bays constantly menaced by the enemy's ships of war and transports for landing troops. You see, then, where is the difficulty. With his ships on one side, and his numbers on the other, the enemy aims to outflank us and make it hazardous to attempt a combined movement upon its centre. I see nothing for it but to swell our numbers as rapidly as possible, and hold him in check on the right—that is, towards the sea—while we turn his flank on the left and overthrow him in the centre."