

Selections.

THE CONDITIONS OF RECONSTRUCTION.

Letter to Hon. Wm. H. Seward, Secretary of State.

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[Concluded.]

The ninth section of an Act of Congress, commonly called the "Confiscation Act," approved July 17, 1862, reads thus:

"That all slaves of persons who shall hereafter be engaged in rebellion against the government of the United States, or who shall give aid or comfort thereto, escaping from such persons and taking refuge within the lines of the army; and all slaves captured from such persons or deserted by them, and coming under the control of the government of the United States; and all slaves of such persons found or being within any place occupied by rebel forces, and afterwards occupied by forces of the United States, shall be deemed captives of war, and shall be forever free of their servitude, and not again held as slaves."

By the decision of the Supreme Court, already cited, all the inhabitants of the insurrectionary States are, in law, persons "engaged in rebellion." Therefore, all refugee slaves from insurrectionary States are, by this statute, declared free.

Further: as all the insurrectionary States have been "occupied by rebel forces," and as we may reasonably conclude that, if we prevail against the South, all these States not already "occupied by forces of the United States" will hereafter be so occupied, it follows that, by the operation of this law, all the slaves in the insurrectionary States, even if no Emancipation proclamation had ever been issued, would, before the end of the war, have probably been entitled to freedom.

Strictly in the spirit of the above statute, and going only so far beyond it as to declare slaves in portions of the insurrectionary States not yet "occupied by forces of the United States," to be free in advance of such occupation, has been the President's action in the premises. Let us glance at that action.

On the 25th of July, 1862, the President, in pursuance of the act just quoted, issued a proclamation warning all insurgents to return to their allegiance within sixty days, on pain of certain forfeitures and seizures.

This warning proved ineffectual; the President, when the sixty days notice had expired, issued a second proclamation declaring that the slaves held within any State which, on the 1st of January then succeeding, should still be in rebellion against the United States, "shall be then, thenceforward and forever free."

On the 1st of January, 1863, "by virtue of the power in him vested as Commander-in-Chief of the Army and Navy of the United States," he declared certain States, namely, Arkansas, Texas, Louisiana, Mississippi, Alabama, Florida, Georgia, South Carolina, North Carolina, Virginia—certain parishes in Louisiana and certain counties in Virginia excepted—to be then in rebellion against the United States; and he further declared that all slaves in the said ten States, with the exceptions aforesaid, "are, and henceforward shall be, free."

Were these proclamations legal? Had the Commander-in-Chief of the Army and Navy of the United States the right to issue them?

Our Supreme Court, in the decision already alluded to, thus endorses a well-known law of war: "The right of one belligerent not only to coerce the other by direct force, but also to cripple his resources by the seizure or destruction of his property, is a necessary result of a state of war." (Cases cited. "Claimants of schooners *Brilliant*," etc.) Or, as Vattel has it: "We have a right to deprive our enemy of his possessions, of everything which may augment his strength and enable him to make war." (Vattel's "Law of Nations," Book iii., sec. 161.)

Such seizure or destruction must, of course, take place through the proper military authority. Nor are we to harm an enemy from malice or revenge, but only so far as is "necessary for self-defence and reasonable security for the time to come." (Work cited. Book iii., sec. 201.)

Humanity bids us respect the private property of non-combatants. It is barbarous to burn or pillage dwellings, to lay waste farms, to destroy public edifices not military. But if property of an enemy be of a dangerous character, so that its existence imperils the success of the war, or if it be such as has been, or may be, used with effect against us, to prolong the war, we violate the clearest dictates of prudence if we neglect any opportunity to deprive the enemy of it. Thus of ammunition, of quartermaster's and commissary stores. Thus, also, of forts, entrenchments, and the like. Let us apply these principles in the present case.

Certain of our public enemies, with the same rights (and no other) as alien enemies have, held on the first day of January last, within the above named insurrectionary States, claims to the service or labor for life of some three million persons.

This class of claims is, beyond all else, such property as imperils military success, such as "augments the enemy's strength," such as "enables him to make war," nay, gives him aid on a scale so vast, that without it the war would already, in all reasonable probability, have been brought to a close. It is not, indeed, quartermaster and commissary stores, but it is that which supplies both. It is not forts or entrenchments, but it serves to build the one and throw up the other. We cannot more effectually "cripple the resources" of the enemy than by destroying it.

Nor is this all. The dangerous character of this property is attested by the enemy himself. He acknowledges that Jefferson prophesied truly when he

predicted that this was the rock on which the old Union would split. The owners of these claims themselves declare them to have been the immediate cause of the war. What chance have we of domestic tranquillity while they exist? There is—in the nature of things there can be—no security for peace or loyalty from a slave State.

Does international law exempt such claims from seizure? Are they not to be reckoned as part of an enemy's property? Vattel expressly tells us: "Among the things belonging to the enemy are likewise incorporeal things—all his rights, claims and debts." (Vattel's "Law of Nations," Book iii., sec. 77.)

Therefore the Confiscation Act, including its ninth section, already quoted, is in strict accordance with the laws of war.

Therefore, too, our Commander-in-Chief was in his right when he took and canceled the claims to service and labor in the insurrectionary States. The law of nations sanctions the Emancipation proclamation. By that instrument three millions of slaves were legally set free. The deed is done; righteously, lawfully done. It is true that many of these people are working as slaves still; but, in the eye of the law, they are freemen. Our own right to freedom is not better than theirs.

This deed, demanded alike by prudence and justice, forms an era in our national history. It severed the past from the future. It substantially changed, of necessity, the policy of the government. In the early stage of the war, Congress proposed, and the majority of the nation expected, as the issue of this contest, a mere rehabilitation, with Southern laws and Southern institutions re-acknowledged in their pristine form. Again and again warning was given, and the return of the insurgents to their loyal duty on these conditions was urged upon them. But their hearts were hardened, and they would not. By their obstinate perversity they closed the door against themselves. They persevered in their conspiracy against public law until Emancipation became an imperative measure of self-defence. Let us not take credit to ourselves for generous philanthropy. The South, reckless and blind, was the unwitting agent of human liberty. And thus, in the providence of God, the very effort, by armed treason, to perpetuate an abuse has been the means of effecting its eradication.

That high might which has been can no longer be. When politicians talk now of reconstruction, with the "peculiar institution" of the South left intact, the words are nothing else but a mischievous mystification. If the South conquer, she may, by superior force, hold as slaves two negroes who shall remain to her, though by our laws they are free. But for us, there is no longer a peculiar institution in any of the insurrectionary States to be left intact. We can build up anew that peculiar institution; not legally, it is very true, for neither the President, nor Congress, nor any judicial tribunal in the land, has any more authority to consign a freeman to slavery than they have to hang him without crime or trial; but we may build it up, if we have power enough, or connive at it, if we are shameless enough; just as a highwayman may seize a purse, or a burglar carry off a basket of silver-ware.

Whether, when we shall have suffered vanquished treason to dictate her own terms; whether, when we shall have stooped to purchase—not peace, for God's best blessing cannot be so purchased—but a worthless truce, as brief as treacherous—by an act of usurpation that assumes to assign away the liberties of three million of free people; whether, when we shall have done this great thing, we shall have any right to set up for more honest or more virtuous than the felon-trader who makes a midnight descent on the Congo coast, and steals thence three or four hundred wretches to crowd the hold of his slave-ship, that will be a question to be settled, at our leisure, with our own consciences.

"The way of the transgressor is hard." It is better to lose fortune than fair fame; and national disgrace is worse than national disaster. A convict, where he is known and remembered as such, may, because of the stain that attaches to him, toil faithfully through half a lifetime, ere men take him again by the hand. And a people, stamped by their own public records as lawless and forsworn, may travel a long and a weary road—a reproach, the while, and a by-word among nations—ere they can take their stand, once more, among the civilized powers of the earth.

Assuming, what seems probable, that we shall remain victors in this war, suffer me, in conclusion, briefly to group together the main positions that have been advanced.

The inhabitants of the insurrectionary States have, at present, no constitutional right to elect a member to Congress.

We, the inhabitants of the non-insurrectionary States, may, by law, restore to them that right; and with us it rests to decide upon what conditions it shall be restored.

The preliminary condition ought to be some sufficient guaranty that the Emancipation proclamation shall never be repudiated, and that the institution of slavery shall never again, in any part of the insurrectionary territory, be revived.

Our own national faith, already pledged before the world to three million of suffering people, demands this. The law of nations permits and enjoins it. We had a right, by that law, to destroy slave-property belonging to a public enemy. It was a national duty to destroy property so dangerous, in order to render that enemy "incapable of doing mischief with the same ease in future."

We offended against no principle of humanity in destroying this property; in other words, in cancelling life-long claims to service or labor. The humanity would have been to refrain from cancelling them.

Nor do we actually harm the slave-claimant by cancelling his claims. In point of fact it is greatly to his advantage, socially and pecuniarily, to be without them. Are we impertinently interfering in his business—arrogantly and improperly assuming to judge what is best for him—when we determine this? Not at all. The business is emphatically our own; for it intimately concerns our national safety. In deciding it as we see fit, there is neither impropriety nor arrogance, but proper precaution and prudent foresight. If he had refrained from levying war against his government, he would have had the undoubted right to judge and to act in this affair. As it is, he has lost it; and we have now the right and the power to decide the matter; not he.

Before the vacant chairs in Congress are filled, let us make the decision. Failing in this high duty, we sacrifice at once the public honor and the public safety.

New York, Aug. 27, 1863.