McPHERSON'S POLITICAL MANUAL

1867

Francis Lieber.

A

POLITICAL MANUAL FOR 1867,

INCLUDING A CLASSIFIED SUMMARY OF THE IMPORTANT

EXECUTIVE, LEGISLATIVE, JUDICIAL,

AND

POLITICO-MILITARY FACTS OF THE PERIOD,

FROM JULY 4, 1866, TO APRIL 1, 1867,

INCLUDING THE

LATE ACTION OF CONGRESS ON RECONSTRUCTION.

BY EDWARD McPHERSON,
Clerk of the House of Representatives of the United States.

WASHINGTON, D. C.
PHILP & SOLOMONS.
1867.

10, 388

Entered according to Act of Congress, in the year 1867, by

EDWARD McPHERSON,

In the Clerk's Office of the Supreme Court of the United States for the District of Columbia.

STEREOTYPED BY
M'GILL & WITHEROW,
WASHINGTON, D. C.

PREFACE.

This Volume takes up the thread dropped at the close of the Manual for 1866, and continues it through the remainder of the First Session of the Thirty-Ninth Congress, the whole of the Second Session, and of the First Session of the Fortieth. It preserves also the more memorable features of the political campaign of the fall of last year.

The controversy between the President and Congress has resulted in most important legislation, eminent among which is the Civil Tenure Act. A copy of it is given in full, with the votes which passed it. The Volume also contains copies of the Freedmen's Bureau Act, the District of Columbia Suffrage Act, the Fourteenth Constitutional Amendment, and each of the Reconstruction Acts—the last two constituting the TEXT OF THE MEASURES WHICH CONSTITUTE THE POLICY OF CONGRESS towards the Insurrectionary States. It also gives the dissenting views of the President, the Opinions of the Judiciary upon points of current or abiding interest, the Orders of the Military enforcing the law, the Votes in Congress and State Legislatures upon various Political Propositions, the Declarations of State Conventions of both parties, and a variety of inferior facts illustrating the general subject.

It has been thought desirable to re-produce an accurate copy of the Kentucky and Virginia resolutions of 1798, on account of the frequency of reference to them in political discussion, and their relation to the story of secession.

In the votes given, the names of Democrats are *italicized.*

If the Manual should prove of service in presenting the precise points of difference between parties, and the exact action of each upon the topics within its scope, the purpose of its preparation will be attained.

EDWARD McPHERSON.

WASHINGTON, D. C., *April* 25, 1867.

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PART II

POLITICAL MANUAL FOR 1867.

XIV.

PRESIDENT JOHNSON'S SPEECHES.

On receiving the Proceedings of the Philadelphia 14th of August Convention.

1866, August 18—A committee of the Convention presented the proceedings through their Chairman, Hon. Reverdy Johnson, who made some remarks in so doing.

President JOHNSON replied:

MR. CHAIRMAN AND GENTLEMEN OF THE COMMITTEE: Language is inadequate to express the emotions and feelings produced by this occasion. Perhaps I could express more by permitting silence to speak and you to infer what I ought to say. I confess that, notwithstanding the experience I have had in public life and the audiences I have addressed, this occasion and this assemblage are calculated to, and do, overwhelm me. As I have said, I have not language to convey adequately my present feelings and emotions.

In listening to the address which your eloquent and distinguished chairman has just delivered, the proceedings of the Convention, as they transpired, recurred to my mind. Seemingly, I partook of the inspiration that prevailed in the Convention when I received a dispatch, sent by two of its distinguished members, conveying in terms the scene which has just been described, of South Carolina and Massachusetts, arm in arm, marching into that vast assemblage, and thus giving evidence that the two extremes had come together again, and that for the future they were united, as they had been in the past, for the preservation of the Union. When I was thus informed that in that vast body of men, distinguished for intellect and wisdom, every eye was suffused with tears on beholding the scene, I could not finish reading the dispatch to one associated with me in the office, for my own feelings overcame me. [Applause.] I think we may justly conclude that we are acting under a proper inspiration, and that we need not be mistaken that the finger of an overruling and unerring Providence is in this great movement.

The nation is in peril. We have just passed through a mighty, a bloody, a momentous ordeal; and yet do not find ourselves free from the difficulties and dangers that at first surrounded us. While our brave soldiers, both officers and men, [turning to General Grant, who stood at his right,] have by their heroism won laurels imperishable, there are still greater and more important duties to perform; and while we have had their co-operation in the field, now that they have returned to civil pursuits, we need their support in our efforts to restore the Government and perpetuate peace. [Applause.] So far as the executive department of the Government is concerned, the effort has been made to restore the Union, to heal the breach, to pour oil into the wounds which were consequent upon the struggle, and (to speak in common phrase) to prepare, as the learned and wise physician would, a plaster healing in character and coextensive with the wound. [Applause.] We thought, and we think, that we had partially succeeded; but as the work progresses, as reconciliation seemed to be taking place, and the country was becoming reunited, we found a disturbing and marring element opposing us. In alluding to that element I shall go no further than your Convention and the distinguished gentleman who has delivered to me the report of its proceedings. I shall make no reference to it that I do not believe the time and the occasion justify.

We have witnessed in one department of the Government every endeavor to prevent the restoration of peace, harmony, and Union. We have seen hanging upon the verge of the Government, as it were, a body called, or which assumes to be, the Congress of the United States, while in fact it is a Congress of only a part of the States. We have seen this Congress pretend to be for the Union, when its every step and act tended to perpetuate disunion and make a disruption of the States inevitable. Instead of promoting reconciliation and harmony, its legislation has partaken of the character of penalties, retaliation, and revenge. This has been the course and the policy of one portion of your Government.

The humble individual who is now addressing you stands the representative of another department of the Government. The manner in which he was called upon to occupy that position I shall not allude to on this occasion. Suffice it to say that he is here under the Constitution of the country, and being here by virtue of its provisions, he takes his stand upon that charter of our liberties as the great rampart of civil and religious liberty. [Prolonged cheering.] Having been taught in my early life to hold it sacred, and having done so during my whole public career, I shall ever continue to reverence the Constitution of my fathers, and to make it my guide. [Hearty applause.]

I know it has been said (and I must be permitted to indulge in the remark) that the executive department of the Government has been despotic and tyrannical. Let me ask this audience of distinguished gentlemen to point to a vote I ever gave, to a speech I ever made, to a single act of my whole public life, that has not been against tyranny and despotism. What position have I ever occupied, what ground have I ever assumed, where it can be truthfully charged that I failed to advocate the amelioration and elevation of the great masses of my countrymen? [Cries of "Never," and great applause.]

So far as charges of this kind are concerned, they are simply intended to delude the public mind into the belief that it is not the designing men who make such accusations, but some one else in power, who is usurping and trampling upon the rights and perverting the principles of the Constitution. It is done by them for the purpose of covering their own acts. ["That's so," and applause.] And I have felt it my duty, in vindication of principle, to call the attention of my countrymen to their proceedings. When we come to examine who has been playing the part of the tyrant, by whom do we find despotism exercised? As to myself, the elements of my nature, the pursuits of my life, have not made me, either in my feelings or in my practice, aggressive. My nature, on the contrary, is rather defensive in its character. But having taken my stand upon the broad principles of liberty and the Constitution, there is not power enough on earth to drive me from it. [Loud and prolonged applause.] Having placed myself upon that broad platform, I have not been awed or dismayed or intimidated by either threats or encroachments, but have stood there, in conjunction with patriotic spirits, sounding the tocsin of alarm when I deemed the citadel of liberty in danger. [Great applause.]

I said on a previous occasion, and repeat now, that all that was necessary in this great contest against tyranny and despotism was that the struggle should be sufficiently audible for the American people to hear and properly understand the issues it involved. They did hear, and looking on and seeing who the contestants were, and what the struggle was about, determined that they would settle this question on the side of the Constitution and of principle. [Cries of "That's so," and applause.] I proclaim here today, as I have on previous occasions, that my faith is in the great mass of the people. In the darkest moment of this struggle, when the clouds seemed to be most lowering, my faith, instead of giving way, loomed up through their gloom; for, beyond, I saw that all would be well in the end. My countrymen, we all know that, in the language of Thomas Jefferson, tyranny and despotism can be exercised and exerted more effectually by the many than the one. We have seen Congress gradually encroach step by step upon constitutional rights, and violate, day after day and month after month, fundamental principles of the Government. [Cries of "That's so," and applause.] We have seen a Congress that seemed to forget that there was a limit to the sphere and scope of legislation. We have seen a Congress in a minority assume to exercise power which, if allowed to be consummated, would result in despotism or monarchy itself. [Enthusiastic applause.] This is truth; and because others, as well as myself, have seen proper to appeal to the patriotism and republican feeling of the country, we have been denounced in the severest terms. Slander upon slander, vituperation upon vituperation, of the most virulent character, has made its way through the press. What, gentlemen, has been your and my sin? What has been the cause of our offending? I will tell you. Daring to stand by the Constitution of our fathers.

Mr. Chairman, I consider the proceedings of this Convention equal to, if not more important than, those of any convention that ever assembled in the United States. [Great applause.] When I look upon that collection of citizens coming together voluntarily, and sitting in council, with ideas, with principles and views commensurate with all the States, and co-extensive with the whole people, and contrast it with a Congress whose policy, if persisted in, will destroy the country, I regard it as more important than any convention that has sat—at least since 1787. [Renewed applause.] I think I may also say that the declarations that were there made are equal to those contained in the Declaration of Independence itself, and I here to-day pronounce them a second Declaration of Independence. [Cries of "Glorious!" and most enthusiastic and prolonged applause.] Your address and declarations are nothing more nor less than a reaffirmation of the Constitution of the United States. [Cries of "Good!" and applause.]

Yes, I will go further, and say that the declarations you have made, that the principles you have enunciated in your address, are a second proclamation of emancipation to the people of the United States. [Renewed applause.] For in proclaiming and reproclaiming these great truths you have laid down a constitutional platform on which all, without reference to party, can make common cause, engage in a common effort to break the tyranny which the dominant party in Congress has so unrelentingly exercised, and stand united together for the restoration of the States and the preservation of the Government. The question only is the salvation of the country; for our country rises above all party consideration or influences. [Cries of "Good!" and applause.] How many are there in the United States that now require to be free? They have the shackles upon their limbs and are bound as rigidly by the behests of party leaders in the National Congress as though they were in fact in slavery. I repeat, then, that your declaration is the second proclamation of emancipation to the people of the United States, and offers a common ground upon which all patriots can stand. [Applause.]

In this connection, Mr. Chairman and gentlemen, let me ask what have I to gain more than the advancement of the public welfare? I am as much opposed to the indulgence of egotism as any one; but here, in a conversational manner, while formally receiving the proceedings of this Convention, I may be permitted again to inquire, what have I to gain, consulting human ambi-

tion, more than I have gained, except one thing —the consummation of the great work of restoration? My race is nearly run. I have been placed in the high office which I occupy by the Constitution of the country, and I may say that I have held, from lowest to highest, almost every station to which a man may attain in our Government. I have passed through every position, from alderman of a village to the Presidency of the United States. And surely, gentlemen, this should be enough to gratify a reasonable ambition.

If I had wanted authority, or if I had wished to perpetuate my own power, how easily could I have held and wielded that which was placed in my hands by the measure called the Freedmen's Bureau bill. [Laughter and applause.] With an army, which it placed at my discretion, I could have remained at the capital of the nation, and with fifty or sixty millions of appropriations at my disposal, with the machinery to be unlocked by my own hands, with my satraps and dependants in every town and village, with the civil rights bill following as an auxiliary, [laughter,] and with the patronage and other appliances of the Government, I could have proclaimed myself dictator. ["That's true!" and applause.]

But, gentlemen, my pride and my ambition have been to occupy that position which retains all power in the hands of the people. [Great cheering.] It is upon them I have always relied; it is upon them I rely now. [A voice: "And the people will not disappoint you."] And I repeat, that neither the taunts nor jeers of Congress, nor of a subsidized, calumniating press, can drive me from my purpose. [Great applause.] I acknowledge no superior except my God, the author of my existence, and the people of the United States. [Prolonged and enthusiastic cheering.] The commands of the one I try to obey as best I can, compatible with poor humanity. As to the other, in a political and representative sense, the high behests of the people have always been, and ever will be, respected and obeyed by me. [Applause.]

Mr. Chairman, I have said more than I had intended to say. For the kind allusion to myself, contained in your address, I thank you. In this crisis, and at the present period of my public life, I hold above all price, and shall ever recur with feelings of profound gratification, to the resolution containing the endorsement of a convention emanating spontaneously from the great mass of the people. With conscientious conviction as my courage, the Constitution as my guide, and my faith in the people, I trust and hope that my future action may be such that you and the Convention you represent may not regret the assurance of confidence you have so generously expressed. ["We are sure of it."]

Before separating, my friends, one and all, please accept my heartfelt thanks for the kind manifestations of regard and respect you have exhibited on this occasion.

In New York, August 29.

GENTLEMEN: The toast which has just been drank, and the kind sentiments which preceded it in the remarks of your distinguished representative, the mayor of this city, are peculiarly, under existing circumstances, gratifying to me; and in saying they are gratifying to me I wish not to indulge in any vanity. If I were to say less I should not speak the truth, and it is always best to speak the truth and to give utterance to our sincere emotions. In being so kindly attended to, and being received as I have been received on this occasion—here to-night, and in your city to-day by such a demonstration—I am free to confess that this overwhelms me. But the mind would be exceedingly dull and the heart almost without an impulse that could not give utterance to something responsive to what has been said and been done. [Cheers.] And believe me on this occasion, warm is the heart that feels and willing is the tongue that speaks, and I would to God it were in my power to reduce to sentences and to language the feelings and emotions that this day and this night have produced. [Cheers.] I shall not attempt, in reference to what has been said and the manifestations that have been made, to go into any speech, or to make any argument before you on this occasion, but merely to give utterance to the sincere sentiments of my heart. I would that I could utter what I do feel in response to this outpouring of the popular heart which has gone forth on this occasion, and which will as a legion spread itself and communicate with every heart throughout the Confederacy. [Cheers.] All that is wanting in the great struggle in which we are engaged is simply to develop the popular heart of the nation. It is like latent fire. All that is necessary is a sufficient amount of friction to develop the popular sentiment of the popular feeling of the American people. [Cheers.] I know, as you know, that we have just passed through a bloody, perilous conflict; that we have gentlemen who are associated with us on this occasion, who have shared their part and participated in these struggles for the preservation of the Union. [Great applause.] Here is the Army, [pointing to the right, where sat General Grant,] and here the Navy [pointing to the left in the direction of Admiral Farragut.] They have performed their part in restoring the Government to its present condition of safety and security; and will it be considered improper in me, on this occasion, to say that the Secretary of State has done his part? [Cheers.] As for the humble individual who now stands before you, and to whom you have so kindly and pleasantly alluded, as to what part he has performed in this great drama, in this struggle for the restoration of the Government and the suppression of rebellion, I will say that I feel, though I may be included in this summing up, that the Government has done its duty. [Cheers.] But though the Government has done its duty, the work is not yet complete. Though we have passed through fields of battle, and at times have almost been constrained and forced to the conclusion that we should be compelled to witness the Goddess of Liberty, as it were, go scourged through fields of carnage and of blood, and make her exit, and that our Government would be a failure, yet we are brought to a period and to a time in which the Government has been successful. While the enemy have been put down in the field there is still a greater and more important task for you

and others to perform. [Cheers.] I must be permitted—and I shall not trespass upon you a moment—I must be permitted to remark in this connection, that the Government commenced the suppression of this rebellion for the express purpose of preserving the union of these States. [Cheers.] That was the declaration that it made, and under that declaration we went into the war and continued in it until we suppressed the rebellion The rebellion has been suppressed, and in the suppression of the rebellion it has declared and announced and established the great fact that these States had not the power, and it denied their right, by forcible or by peaceable means, to separate themselves from the Union. [Cheers. "Good."] That having been determined and settled by the Government of the United States in the field and in one of the departments of Government—the executive department of the Government—there is an open issue; there is another department of your Government which has declared by its officials acts, and by the position of the Government, notwithstanding the rebellion was suppressed, for the purpose of preserving the Union of the States and establishing the doctrine that the States could not secede, yet they have practically assumed and declared, and carried up to the present point, that the Government was dissolved and the States were out of the Union. [Cheers.] We who contend for the opposite doctrine years ago contended that even the States had not the right to peaceably secede; and one of the means and modes of possible secession was that the States of the Union might withdraw their representatives from the Congress of the United States, and that would be practical dissolution. We denied that they had any such right. [Cheers.] And now, when the doctrine is established that they have no right to withdraw, and the rebellion is at an end, and the States again assume their position and renew their relations, as far as in them lies, with the Federal Government, we find that when they present representatives to the Congress of the United States, in violation of the sacred charter of liberty, which declares that you cannot, even by amendment of the Constitution of the United States, deprive any one of them of their representation—we find that in violation of the Constitution, in express terms, as well as in spirit, that these States of the Union have been and still are denied their representation in the Senate and in the House of Representatives. Will we then, in the struggle which is now before us, submit, will the American people submit, to this practical dissolution, a doctrine that we have repudiated, a doctrine that we have declared as having no justice or right? The issue is before you and before the country. Will these States be permitted to continue and remain as they are in practical dissolution and destruction, so far as representation is concerned? It is giving the lie direct—it is subverting every single argument and position we have made and taken since the rebellion commenced. Are we prepared now, after having passed through this rebellion; are we prepared, after the immense amount of blood that has been shed; are we prepared, after having accumulated a debt of over three thousand millions of dollars; are we prepared, after all the injury that has been inflicted upon the people, North and South, of this Confederacy, now to continue this disrupted condition of the country? [Cries, "No, no!" "Never!" Cheers.] Let me ask this intelligent audience here to-night, in the spirit of Christianity and of sound philosophy, are we prepared to renew the scenes through which we have passed? ["No! no! no!"] Are we prepared again to see one portion of this Government arrayed in deadly conflict against another portion? Are we prepared to see the North arrayed against the South, and the South against the North? Are we prepared, in this fair and happy Government of freedom and of liberty, to see man again set upon man, and in the name of God lift his hand against the throat of his fellow? Are we again prepared to see these fair fields of ours, this land that gave a brother birth, again drenched in a brother's blood? ["Never, never." Cheers.] Are we not rather prepared to bring from Gilead the balm that has relief in its character and pour it into the wound? [Loud cheering.] Have not we seen enough to talk practically of this matter? Has not this array of the intelligence, the integrity, the patriotism, and the wealth a right to talk practically? Let us talk about this thing. We have known of feuds among families of the most respectable character, which would separate, and the contest would be angry and severe, yet when the parties would come together and talk it all over, and the differences were understood, they let their quarrel pass to oblivion; and we have seen them approach each other with affection and kindness, and felt gratified that the feud had existed, because they could feel better afterwards. [Laughter and applause.] They are our brethren. [Cheers.] They are part of ourselves. ["Hear! hear!"] They are bone of our bone and flesh of our flesh. [Cheers.] They have lived with us and been part of us from the establishment of the Government to the commencement of the rebellion. They are identified with its history, with all its prosperity, in every sense of the word. We have had a hiatus, as it were, but that has passed by and we have come together again; and now, after having understood what the feud was, and the great apple of discord removed; having lived under the Constitution of the United States in the past, they ask to live under it in the future. May I be permitted to indulge in a single thought here? I will not detain you a moment. ["Go on." "Go on." "Go on." Cheers.] You [turning to Mayor Hoffman] are responsible for having invoked it. [Laughter.] What is now said, gentlemen, after the Philadelphia Convention has met to pronounce upon the condition of the country? What is now said? Why, that these men who met in that Convention were insincere; that their utterances were worthless; that it is all pretense, and they are not to be believed. When you talk about it, and talk about red-handed rebels, and all that, who has fought these traitors and rebels with more constancy and determination than the individual now before you? Who has sacrificed and suffered more? [Cheers.] But because my sacrifices and sufferings have been great, and as an incident growing out of a great civil war, should I become dead or insensible to truth or

principle? ["No, no." Cheers.] But these men, notwithstanding they may profess now loyalty and devotion to the union of the States, are said to be pretenders, not to be believed. What better evidence can you have of devotion to the Government than profession and action? Who dare, at this day of religious and political freedom, to set up an inquisition, and come into the human bosom to inquire what are the sentiments there? [Cheers.] How many men have lived in this Government from its origin to the present time that have been loyal, that have obeyed all its laws, that have paid its taxes, and sustained the Government in the hour of peril, yet in sentiment would have preferred a change, or would have preferred to live under some other form of government? But the best evidence you can have is their practical loyalty, their professions, and their actions. ["Good," "good," and applause.] Then, if these gentlemen in convention, from the North and South, come forward and profess devotion to the Union and the Constitution of these States, when their actions and professions are for loyalty, who dare assume the contrary? [Cheers.] If we have reached that point in our country's history, all confidence is lost in man. If we have reached that point that we are not to trust each other, and our confidence is gone, I tell you your Government is not as strong as a rope of sand. It has no weight; it will crumble to pieces. This Government has no tie, this Government has no binding and adhesive power, beyond the confidence and trust in the people. ["Hear, hear." Loud applause.] But these men who sit in convention, who sit in a city whose professions have been, in times gone by, that they were a peace-loving and war-hating people—they said there, and their professions should not be doubted, that they have reached a point at which they say peace must be made; they have come to a point at which they want peace on earth and good-will to men. [Loud cheers.] And now, what is the argument in excuse? We won't believe you, and therefore this dissolution, this practical dissolution, must be continued to exist. Your attention to a single point. Why is a southern man not to be believed? and I do not speak here to-night because I am a southern man, and because my infant view first saw the light of heaven in a southern State. ["They are to be believed."] Thank God, though I say it myself, I feel that I have attained opinions and notions that are coextensive with all these States, with all the people of them. [Great applause. The whole audience rose and waved their handkerchiefs at this sentiment. Voice—"That's the best thing to-night."] While I am a southern man, I am a northern man; that is to say, I am a citizen of the United States, [cheers,] and I am willing to concede to all other citizens what I claim for myself. ["Sound."] But I was going to bring to your attention, as I am up, and you must not encourage me too much, ["Good! good!"] for some of those men who have been engaged in this thing, and pretty well broken down, require sometimes a little effort to get them warmed. [Laughter.] I was going to call your attention to a point. The southern States or their leaders proposed a separation. Now, what was the reason that they offered for that separation? Your attention. The time has come to think; the time has come to consult our brain, and not the impulses and passions of the heart. The time has come when reason should bear sway, and feeling and impulse should be subdued. [Cheers.] What was the reason, or one of the reasons at least, that the South gave for separation? It was that the Constitution was encroached upon, and that they were not secured in their rights under it. That was one of the reasons; whether it was true or false, that was the reason assumed. We will separate from this Government, they said, because we cannot have the Constitution executed; and, therefore, we will separate and set up the same Constitution, and enforce it under a government of our own. But it was separation. I fought then against those who proposed this. I took my position in the Senate of the United States, and assumed then, as I have since, that this Union was perpetual, that it was a great magic circle never to be broken. [Cheers.] But the reason the South gave was that the Constitution could not be enforced in the present condition of the country, and hence they would separate. They attempted to separate, but they failed. But while the question was pending, they established a form of government; and what form of government was it? What kind of Constitution did they adopt? Was it not the same, with a few variations, as the Constitution of the United States, [Cheers, and "That's so!"] the Constitution of the United States, under which they had lived from the origin of the Government up to the time of their attempt at separation? They made the experiment of an attempted separation under the plea that they desired to live under that Constitution in a government where it would be enforced. We said "You shall not separate, you shall remain with us, and the Constitution shall be preserved and enforced." [Cheers.] The rebellion has ceased. And when their arms were put down by the Army and Navy of the United States, they accepted the terms of the Government. We said to them, before the termination of the rebellion, "Disband your armies, return to your original position in the Government, and we will receive you with open arms." The time came when their armies were disbanded under the leadership of my distinguished friend on the right, [General Grant.] ["Three cheers for General Grant."] The Army and the Navy dispersed their forces. What were the terms of capitulation? They accepted the proposition of the Government, and said, "We have been mistaken; we selected the arbitrament of the sword, and that arbiter has decided against us; and that being so, as honorable and manly men, we accept the terms you offer us." The query comes up, will they be accepted? Do we want to humiliate them and degrade them, and tread them in the dust? ["No, no!" Cheers.] I say this, and I repeat it here to-night, I do not want them to come back into this Union a degraded and debased people. [Loud cheers.] They are not fit to be a part of this great American family if they are degraded and treated with ignominy and contempt. I want them when they come back to become a part of this great coun-

try, an honored portion of the American people. I want them to come back with all their manhood; then they are fit, and not without that, to be a part of these United States. [Cheers. "Three cheers for Andrew Johnson."] I have not, however, approached the point that I intended to mention, and I know I am talking too long. ["Go on," "go on," "go on."] Why should we distrust the southern people and say they are not to be believed? I have just called your attention to the Constitution under which they were desirous to live, and that was the Constitution of their fathers, yet they wanted it in a separate condition. Having been defeated in bringing about that separation, and having lost the institution of slavery, the great apple of discord, they now, in returning, take up that Constitution, under which they always lived, and which they established for themselves, even in a separate government. Where, then, is the cause for distrust? Where, then, is the cause for the want of confidence? Is there any? ["No, no."] I do not come here to-night to apologize for persons who have tried to destroy this Government; and if every act of my life, either in speeches or in practice, does not disprove the charge that I want to apologize for them, then there is no use in a man's having a public record. [Cheers.] But I am one of those who take the southern people, with all their heresies and errors, admitting that in rebellion they did wrong. The leaders coerced thousands and thousands of honest men into the rebellion who saw the old flag flap in the breeze for the last time with unfeigned sorrow, and welcomed it again with joy and thanksgiving. The leaders betrayed and led the southern people astray upon this great doctrine of secession. We have in the West a game called hammer and anvil, and anvil and hammer, and while Davis and others were talking about separation in the South, there was another class, Phillips, Garrison, and men of that kind, who were talking about dissolution in the North; and of these extremes one was the hammer and the other was the anvil; and when the rebellion broke out one extreme was carrying it out, and now that it is suppressed the other class are still trying to give it life and effect. I fought those in the South who commenced the rebellion, and now I oppose those in the North who are trying to break up the Union. [Cheers.] I am for the Union. I am against all those who are opposed to the Union. [Great applause.] I am for the Union, the whole Union, and nothing but the Union. [Renewed cheering.] I have helped my distinguished friend on my right, General Grant, to fight the rebels South, and I must not forget a peculiar phrase, that he was going to fight it out on that line. [Applause and laughter.] I was with him, and I did all that I could; and when we whipped them at one end of the line, I want to say to you that I am for whipping them at the other end of the line. [Great laughter and applause.] I thank God that if he is not in the field, militarily speaking, thank God! he is civilly in the field on the other side. [Cheers for Grant.] This is a contest and struggle for the Union, for the union of these States. [Applause.] The North can't get along without the South, and the South can't get along without the North. ["That's so," and applause.] I have heard an idea advanced, that if we let the southern members of Congress in they will control the Government. Do you want to be governed by rebels? [Cries of "Never," "No, no."] We want to let loyal men in, ["Hear, hear."] and none but loyal men. ["Good, good."] But, I ask here to-night, in the face of this intelligent audience, upon what does the face of the observation rest, that men coming in from the South will control the country to its destruction? Taking the entire delegation of the South, fifty-eight members, what is it compared with the two hundred and forty-two members of the rest of the Union? ["Good boy!"] Is it complimentary to the North to say we are afraid of them? Would the free States let in fifty-eight members from the South that we doubt, that we distrust, that we have no confidence in? If we bring them into the Government, these fifty-eight representatives, are they to control the two hundred and forty-two? There is no argument that the influence and talent and the principles they can bring to bear against us, placing them in the worst possible light [A voice, "The Sumner argument"] can be a cause for alarm. We are represented as afraid of these fifty-eight men, afraid that they will repudiate our public debt; that they can go into the Congress of the United States under the most favorable conditions they could require, the most offensive conditions to us, and could overwhelm a majority of a hundred and fifty to a hundred and eighty, [a voice, "Ridiculous"]—that these men are going to take charge of the country. Why, it is croaking; it is to excite your fears, to appeal to your prejudice. Consider the immense sums of money that have been expended, the great number of lives that have been lost, and the blood that has been shed; that our bleeding arteries have been staved and tied up; that commerce, and mechanical industry, and agriculture, and all the pursuits of peace restored, and we are represented as cowards enough to clamor that if these fifty-eight men are admitted as the representatives of the South the Government is lost. We are told that our people are afraid of the people of the South; that we are cowards. [Cries of "We are not."] Did they control you before the rebellion commenced? Have they any more power now than they had then? Let me say to this intelligent audience here to-night, I am no prophet, but I predicted at different times, in the beginning of the late rebellion, what has been literally fulfilled. [Cries of "That's so."] I told the southern people years ago, that whenever they attempted to break up this Union, whenever they attempted to do that, even if they succeeded, that the institution of slavery would be gone. ["Good, good."] Yes, sir, [turning to Mr. Seward,] you know that I made that argument to Jeff Davis. You will bear witness to the position I then occupied.

Mr. SEWARD. I guess so. [Applause.]

Mr. JOHNSON. Yes, and you were among the few that gave me encouragement. [Applause.] I told them then that the institution of slavery could not survive an attempt to break up this Union. They thought differently. They put up a stake: what was it? It was four millions of

slaves, in which they had invested their capital. Their investment in the institution of slavery amounted to $3,000,000,000. This they put up at stake, and said they could maintain it by separating these States That was the experiment; what are the facts of the result? The Constitution still exists. [Great cheering.] The Union is still preserved. [Cheers.] They have not succeeded in going out, and the institution of slavery is gone. ["Hear, hear."] Since it has been gone they have come up manfully and acknowledged the fact in their State conventions and organizations, and they ratify its fall now and forever. [Cheers.] I have got one other idea to put right alongside of this. [Applause and laughter.] You have got a debt of about $3,000,000,000. ["That's so."] How are you going to preserve the credit of that? Will you tell me. [Voices, "You tell us."] How are you to preserve the credit of this $3,000,000,000? Yes, perhaps when the account is made up your debt will be found $3,000,000,000 or $4,000,000,000. Will you tell me how you are to secure it, how the ultimate payment o· the principal and interest of this sum is to be secured? Is it by having this Government disrupted? [Mr. Seward and others, "No, no."] Is it by the division of these States? ["No."] Is it by separating this Union into petty States? ["No."] Let me tell you here to-night, my New York friends, I tell you that there is no way by which these bonds can be ultimately paid, by which the interest can be paid, by which the national debt can be sustained, but by the continuity and perpetuity and by the complete union of these States. [Applause.] Let me tell you who fall into this fallacy, and into this great heresy, you will reap a more bitter reward than the southern brethren have reaped in putting their capital into slavery.

Mr. SEWARD, *sotto voce*. The *argumentum ad hominem*. ["Good."]

Mr. JOHNSON. Pardon me, I do not exaggerate. I understand this question. You who play a false part, now the great issue is past, you who play into the hands of those who wish to dissolve the Government, to continue the disreputable conditions to impair and destroy the public credit, let us unite the Government and you will have more credit than you need. [Applause.] Let the South come back with its great mineral resources; give them a chance to come back and bear a part, and I say they will increase the national resources and the national capacity for meeting these national obligations. I am proud to say on this occasion, not by way of flattery, to the people of New York, but I am proud to find a liberal and comprehensive and patriotic view of this whole question on the part of the people of New York. I am proud to find, too, that here you don't believe that your existence depends upon aggression and destruction; that while you are willing to live, you are willing to let others live. [Applause.] You don't desire to live by the destruction of others. Some have grown fat, some have grown rich by the aggression and destruction of others. It is for you to make the application, and not me. These men talk about this thing, and ask what is before you? What is before you? New York, this great State, this great commercial emporium—I was asking your mayor to-day the amount of your taxation, and he informs me it is $18,000,000! Where did your Government start from but the other day? Do you remember that when General Washington was inaugurated President, that your annual bill was $2,500,000 for the entire General Government. Yet to-day I am told that my distinguished friend on my left controls the destinies of a city whose taxes amount to $18,000,000, and whose population numbers four millions—double what the entire nation had at the time when it commenced its existence.

General SANDFORD. Our taxation by the General Government is $50,000,000.

Mr. JOHNSON. I am simply trying to get at the amount collected to sustain your municipal establishment. Thus may we advance, entertaining the principles which are coextensive with the States of this Union, feeling, like you, that our system of Government comprehends the whole people, not merely a part. [Applause.] New York has a great work to perform in the restoration of this great Union. As I have told you, they who talk about destroying the great elements that bind this Government together deny the power, the inherent power, of the Government, which will, when its capacities are put to the test, re-establish and readjust its position, and the Government be restored. [Applause.] I tell you that we shall be sustained in this effort to preserve the Union. It would be just about as futile to attempt the resistance of the ocean wave, or to check the wind, as to prevent the result I predict. You might as well attempt to turn the Mississippi back upon its source as to resist this great law of gravitation that is bringing these States back and be united with us as strong as ever. I have been called a demagogue, and would to God that there were more demagogues in the land to save it! [Applause.] The demonstration here to-day is the result of some of these demagogical ideas; that the great mass of the people, when called to take care of the people, will do right.

A voice. Sure as you are born. [Laughter.]

Mr. JOHNSON. I tell you, you have commenced the grand process now. I tell those present who are croaking and talking about individual aggrandizement and perpetuation of party, I tell them that they had better stand from under [laughter and cheers,] they had better get out of the way [cheers;] the Government is coming together, and they cannot resist it. Sometimes, when my confidence gives out, when my reason fails me, my faith comes to my rescue, and tells me that this Government will be perpetuated and this Union preserved. [Cheers.] I tell you here to-night, and I have not turned philanthropist and fanatic, that men sometimes err, and can again do right; that sometimes the fact that men have erred is the cause of making them better men. [Applause.] I am not for destroying all men, or condemning to total destruction all men who have erred once in their lives. I believe in the memorable example of Him who came with peace and healing on his wings; and when he descended and found men condemned unto the law, instead of executing it, instead of shedding the blood of the world, he placed him-

self upon the cross, and died, that man might be saved. If I have pardoned many, I trust in God that I have erred on the right side. If I have pardoned many, I believe it is all for the best interests of the country; and so believing, and convinced that our southern brethren were giving evidence by their practice and profession that they were repentant, in imitation of Him of old who died for the preservation of men, I exercised that mercy which I believed to be my duty. I have never made a prepared speech in my life, and only treat these topics as they occur to me. The country, gentlemen, is in your hands. The issue is before you. I stand here to-night, not in the first sense in the character of the Chief Magistrate of the nation, but as a citizen, defending the restoration of the Union and the perpetuation of the Constitution of my country. Since becoming the Chief Magistrate I have tried to fulfill my duty—to bring about reconciliation and harmony; my record is before you. You know how politicians will talk; and if you people will get right, don't trouble yourselves about the politicians, for when the people get right the politicians are very accommodating. [Cheers.] But let me ask this audience here to-night, What am I to gain by taking the course I am taking if it was not patriotic and for my country? Pardon me; I talk to you in plain parlance. I have filled every office in this Government. You may talk to me as you will, and slander—that foul whelp of sin—may subsidize, a mercenary press may traduce and vilify, mendacious and unprincipled writers may write and talk, but all of them cannot drive me from my purpose. ["Bravo!" and cheers.] What have I to gain? I repeat. From the position of the lowest alderman in your city to President of the United States, I have filled every office to the country. Who can do more? Ought not men of reasonable ambition to be satisfied with this? And ought not I to be willing to quit right here, so far as I am concerned? [Applause.] I tell this audience here to-night, that the cup of my ambition has been filled to overflowing, with the exception of one thing. Will you hear what that is? [Cries of "Yes," and "What is it?"] At this particular crisis and period of our country's history I find the Union of these States in peril. If I can now be instrumental in keeping the possession of it in your hands, in the hands of the people; in restoring prosperity and advancement in all that makes a nation great, I will be willing to exclaim, as Simeon did of old—[Three cheers]—as Simeon did of old, of him who had been born in a manger, that I have seen the glory of thy salvation, let thy servant depart in peace. [Applause.] That being done, my ambition is complete. I would rather live in history, in the affections of my countrymen, as having consummated this great end, than to be President of the United States forty times. [General Sandford called for "Three cheers for Andrew Johnson, the restorer of the Union." The cheers were given.] In conclusion, gentlemen, let me tender to you my sincere thanks on this occasion. So long as reason continues to occupy her empire, so long as my heart shall beat with one kind emotion, so long as my memory shall contain or be capable of recurring to one event, so long will I remember the kindnesses, so long will I feel the good that has been done on this occasion, and so long will I cherish in my heart the kindness which has been manifested towards me by the citizens of New York. [Immense applause.]

The band played "The Star Spangled Banner," the audience enthusiastically joining in the chorus. President Johnson, having seated himself, again arose and said: "Gentlemen, in conclusion, after having consumed more of your time than I intended, I fear unprofitably, let me propose, in sincerity, 'The Union, the perpetual Union of these States.'" The toast was drunk with cheers.

In Cleveland, September 3.

FELLOW-CITIZENS: It is not for the purpose of making a speech that I now appear before you. I am aware of the great curiosity which prevails to see strangers who have notoriety and distinction in all countries. I know a large number of you desire to see General Grant and to hear what he has to say. [A voice, "Three cheers for General Grant."] But you cannot see him to-night. He is extremely ill. I repeat, I am not before you now to make a speech, but simply to make your acquaintance, to say, "How are you?" and to bid you "Good-by." We are now on our way to Chicago, to participate in or witness the laying of the corner-stone of a monument to the memory of a distinguished fellow-citizen who is no more. It is not necessary for me to mention the name of Stephen A. Douglas to the people of Ohio. [Applause.] I am free to say that I am flattered by the demonstrations I have witnessed, and being flattered, I don't mean to think it personal, but an evidence of what is pervading the public mind. And this demonstration is nothing more nor less than an indication of the latent sentiment of feeling of the great masses of the people with regard to the proper settlement of this great question.

I come before you as an American citizen simply, and not as the Chief Magistrate, clothed in the insignia and paraphernalia of state. Being an inhabitant of a State of this Union, I know it has been said that I am an alien [laughter] and that I did not reside in one of the States of the Union, and therefore could not be the Chief Magistrate, though the Constitution declares that I must be a citizen to occupy that office; therefore, all that was necessary was to declare the office vacant, or, under a pretext, to prefer articles of impeachment, and thus the individual who occupies the Chief Magistracy was to be disposed of and driven from power. But a short time since you had a ticket before you for the Presidency. I was placed upon that ticket, with a distinguished fellow-citizen who is now no more. I know there are some who complain. [A voice, "Unfortunately."] Yes, unfortunate for some that God rules on high and deals in right. [Cheers.] Yes, unfortunately, the ways of Providence are mysterious and incomprehensible, controlling all those who exclaim "Unfortunate." ["Bully for you!"]

I was going to say, my countrymen, a short time since I was selected and placed upon the ticket. There was a platform proclaimed and adopted by those who placed me upon it. Not-

withstanding the subsidized gang of hirelings and traducers, I have discharged all my duties and fulfilled all my pledges, and I say here to-night that if my predecessor had lived the vials of wrath would have been poured out upon him. [Cries of "Never." "Three cheers for the Congress of the United States!"] I came here as I was passing along, and have been called upon for the purpose of exchanging views, and ascertaining, if we could, who was wrong. [Cries of "It's you."] That was my object in appearing before you to-night, and I want to say this, that I have lived among the American people, and have represented them in some public capacity for the last twenty-five years, and where is the man or woman who can place his finger upon one single act of mine deviating from any pledge of mine or in violation of the Constitution of the country? [Cheers.] Who is he? What language does he speak? What religion does he profess? Who can come and place his finger on one pledge I ever violated, or one principle I ever proved false to? [A voice, "How about New Orleans?" Another voice, "Hang Jeff Davis."] Hang Jeff Davis, he says. [Cries of "No," and "Down with him!"] Hang Jeff Davis, he says. [A voice, "Hang Thad. Stevens and Wendell Phillips."] Hang Jeff Davis. Why don't you hang him? [Cries of "Give us the opportunity."] Have not you got the court? Have not you got the Attorney General? [A voice, "Who is your Chief Justice who has refused to sit upon the trial?" Cheers.] I am not the Chief Justice. I am not the prosecuting attorney. [Cheers.] I am not the jury.

I will tell you what I did do. I called upon your Congress that is trying to break up the Government. [Cries, "You be d—d!" and cheers mingled with hisses. Great confusion "Don't get mad, Andy."] Well, I will tell you who is mad. "Whom the Gods wish to destroy, they first make mad." Did your Congress order any of them to be tried? [Three cheers for Congress.] Then, fellow-citizens, we might as well allay our passions, and permit reason to resume her empire and prevail. [Cheers.] In presenting the few remarks that I designed to make, my intention was to address myself to your common sense, your judgment, and your better feeling, not to the passion and malignancy in your hearts. [Cheers.] This was my object in presenting myself on this occasion, and to tell you "How do you do," and at the same time to bid you "Good-by." In this assembly here to-night the remark has been made, "Traitor! traitor!" My countrymen, will you hear me? [Shouts of "Yes."] And will you hear me for my cause and for the Constitution of my country? [Applause.] I want to know when or where, or under what circumstances, Andrew Johnson, not as Chief Executive, but in any capacity, ever deserted any principle or violated the Constitution of his country. [Cries of "Never."] Let me ask this large and intelligent audience if your Secretary of State, who served four years under Mr. Lincoln, and who was placed upon the butcher's block, as it were, and hacked to pieces and scarred by the assassin's knife, when he turned traitor? [Cries of "Never."] If I were disposed to play the orator and deal in declamation to-night, I would imitate one of the ancient tragedies, and would take William H. Seward, and bring him before you, and point you to the hacks and scars upon his person. [A voice, "God bless him!"] I would exhibit the bloody garments, saturated with gore from his gushing wounds. Then I would ask you, Why not hang Thad. Stevens and Wendell Phillips? I tell you, my countrymen, I have been fighting the South, and they have been whipped and crushed, and they acknowledge their defeat and accept the terms of the Constitution; and now, as I go around the circle, having fought traitors at the South, I am prepared to fight traitors at the North. [Cheers.] God willing, with your help we will do it. [Cries of "We won't."] It will be crushed North and South, and this glorious Union of ours will be preserved. [Cheers.] I do not come here as the Chief Magistrate of twenty-five States out of thirty-six. [Cheers.] I came here to-night with the flag of my country and the Constitution of thirty-six States untarnished. Are you for dividing this country? [Cries of "No."] Then I am President, and I am President of the whole United States. [Cheers.] I will tell you one other thing. I understand the discordant notes in this crowd to-night. He who is opposed to the restoration of this Government and the reunion of the States is as great a traitor as Jeff Davis or Wendell Phillips. [Loud cheers.] I am against both. [Cries of "Give it to them!"] Some of you talk about traitors in the South who have not courage to get away from your homes to fight them. [Laughter and cheers.] The courageous men, Grant, Sherman, Farragut, and the long list of the distinguished sons of the Union, were in the field and led on their gallant hosts to conquest and to victory, while you remained cowardly at home. [Applause, "Bully!"] Now, when these brave men have returned home, many of whom have left an arm, or a leg, or their blood, upon many a battle-field, they find you at home speculating and committing frauds on the Government. [Laughter and cheers.]

You pretend now to have great respect and sympathy for the poor brave fellow who has left an arm on the battle-field. [Cries, "Is this dignified?"] I understand you. You may talk about the dignity of the President. [Cries, "How was it about his making a speech on the 22d of February?"] I have been with you in the battles of this country, and I can tell you furthermore, to-night, who have to pay these brave men who shed their blood. You speculated, and now the great mass of the people have to work it out. [Cheers.] It is time that the great mass of the people should understand what your designs are. What did General Butler say? [Hisses.] What did General Grant say? [Cheers.] And what does General Grant say about General Butler? [Laughter and cheers.] What does General Sherman say? [A voice, "What does General Sheridan say?"] General Sheridan says that he is for the restoration of the Government that Sheridan fought for. ["Bully!" and renewed cries of "New Orleans," and confusion.] I care not for dignity. There is a portion of your countrymen who will always respect their fellow-citizens when they are entitled to respect, and there is a portion of them who have no re-

spect for themselves, and consequently have no respect for others. [A voice, "Traitor!"] I wish I could see that man. I would bet you now, that if the light fell on your face, cowardice and treachery would be seen in it. Show yourself. Come out here where I can see you. [Shouts of laughter.] If you ever shoot a man you will do it in the dark, and pull the trigger when no one is by to see you. [Cheers.] I understand traitors. I have been fighting them at the south end of the line, and we are now fighting them in the other direction. [Laughter and cheers.] I come here neither to criminate or recriminate, but when attacked, my plan is to defend myself. [Cheers.] When encroached upon, I care not from what quarter it comes, it is entitled to resistance. As Chief Magistrate I felt so after taking the oath to support the Constitution, and when I saw encroachments upon your Constitution and rights, as an honest man I dared to sound the tocsin of alarm. [Three cheers for Andrew Johnson.] Then, if this be right, the head and front of my offending is in telling when the Constitution of your country has been trampled upon. Let me say to those who thirst for more blood, who are still willing to sacrifice human life, if you want a victory, and my country requires it, erect your altar and lay me upon it to give the last libation to human freedom. [Loud applause.] I love my country. Every public act of my life testifies that is so. Where is the man that can put his finger upon any one act of mine that goes to prove the contrary? And what is my offending? [A voice, "Because you are not a radical," and cry of "Veto."] Somebody says veto. Veto of what? What is called the Freedmen's Bureau bill? I can tell you what it is. Before the rebellion commenced there were four millions of slaves and about three hundred and forty thousand white people living in the South. These latter paid the expenses, bought the land and cultivated it, and after the crops were gathered pocketed the profits That's the way the thing stood up to the rebellion. The rebellion commenced, the slaves were liberated, and then came up the Freedmen's Bureau bill. This provides for the appointment of agents and sub-agents in all States, counties, and school districts, who have power to make contracts for the freedmen, and hire them out, and to use the military power to carry them into execution. The cost of this to the people was $12,000,000 at the beginning. The further expense would be greater, and you are to be taxed for it. That's why I vetoed it. I might refer to the civil rights bill, the results of which are very similar. I tell you, my countrymen, that though the powers of hell and Thad. Stevens and his gang were by, they could not turn me from my purpose. There is no power that could turn me except you and the God who spoke me into existence.

In conclusion, beside that, Congress had taken much pains to poison their constituents against him. But what had Congress done? Have they done anything to restore the Union of these States? No; on the contrary they had done everything to prevent it; and because he stood now where he did when the rebellion commenced, he had been denounced as a traitor. Who had run greater risks or made greater sacrifices than himself? But Congress, factious and domineering, had taken to poison the minds of the American people. It was with them a question of power. Those who held an office—as assessor, collector, postmaster—wanted to retain their places. Rotation in office used to be thought a good doctrine by Washington, Jefferson, and Adams; and Andrew Jackson, God bless him! thought so. [Applause.] This gang of office-holders, these blood-suckers and cormorants, had got fat on the country. You have got them over your district. Hence you see a system of legislation proposed so that these men shall not be turned out; and the President, the only channel through which they can be reached, is called a tyrant. He thought the time had come when those who had enjoyed fat offices for four years should give way for those who had fought for the country. Hence it was seen why he was assailed and traduced. He had invited them in the field, and God willing, he would stand by them. He had turned aside from the thread of his remarks to notice the insult sought to be given him. When an insult was offered he would resent it in a proper manner. But he was free to say he had no revengeful or resentful feelings. All he wanted, when war was over and peace had come, was for patriotic and Christian men to rally round the flag of the country in a fraternal hug, and resolve that all shall perish rather than that the Union shall not be restored.

While referring to the question of suffrage some one in the crowd asked him "How about Louisiana?" To which he replied, "Let the negroes vote in Ohio before you talk about their voting in Louisiana." [Laughter, and cries of "Good."] Take the beam out of your own eye before you seek the mote in your brother's. [Renewed laughter.] In conclusion, after some further remarks, he invoked God's best blessing on his hearers. [Applause.] The interruptions were few.

At St. Louis, September 8.

FELLOW-CITIZENS: In being introduced to you to-night, it is not for the purpose of making a speech. It is true I am proud to meet so many of my fellow-citizens here on this occasion, and under the favorable circumstances that I do. [Cries, "How about our British subjects?"] We will attend to John Bull after awhile, so far as that is concerned.

I have just stated that I am not here for the purpose of making a speech; but, after being introduced, I wish simply to tender my cordial thanks for the welcome that you have given to me in your midst. [A voice, "Ten thousand welcomes."] Thank you, sir! I wish it was in my power to address you under favorable circumstances upon some of the questions that agitate and distract the public mind at this time—questions that have grown out of the fiery ordeal that we have passed through, and which I think as important as that we have just passed by, though the time has come when it seems to me that all ought to be prepared for peace. The rebellion being suppressed, and the shedding of blood being stopped, the sacrifice of life being suspended and stayed, it seems that the time has arrived when you should be at peace, when the bleeding ar-

teries should be tied up. [A voice, "New Orleans."] Go on; perhaps if you had a word or two on the subject of New Orleans you might understand more about it than you do. [Laughter.] And if you will go back—if you will go back and ascertain the cause of the riot at New Orleans, perhaps you would not be so prompt in calling out "New Orleans." If you will take up the riot at New Orleans, and trace it back to its source or its immediate cause, you will find out who was responsible for the blood that was shed there. If you will take up the riot at New Orleans and trace it back to the radical Congress, [cheers and cries of "Bully!"] you will find that the riot at New Orleans was substantially planned. If you will take up the proceedings in their caucuses you will understand that they there knew [cheers] that a Convention was to be called, which was extinct by its power having expired; that it was said that the intention was that a new government was to be organized, and on the organization of that government the intention was to enfranchise one portion of the population, called the colored population, who had just been emancipated, and at the same time disfranchise white men. When you design to talk about New Orleans [confusion] you ought to understand what you are talking about. When you read the speeches that were made, and take up the facts on the Friday and Saturday before that Convention sat, you will there find that speeches were there made incendiary in their character, exciting that portion of the population, the black population, to arm themselves and prepare for the shedding of blood. [A voice, "That's so," and cheers.] You will also find that that Convention did assemble in violation of law, and the intention of that Convention was to supersede the reorganized authorities in the State government of Louisiana, which had been recognized by the Government of the United States; and every man engaged in that rebellion in that Convention, with the intention of superseding and upturning the civil government which had been recognized by the Government of the United States, I say that he was a traitor to the Constitution of the United States, [cheers;] and hence you find that another rebellion was commenced, having its origin in the radical Congress. These men were to go there, a government was to be organized, and the one in existence in Louisiana was to be superseded, set aside, and overthrown. You talk to me about New Orleans. And there the question was to come up, when they had established their government—a question of political powers—which of the two governments was to be recognized, a new government, inaugurated under this defunct Convention, set up in violation of law and without the will of the people. Then when they had established their government and extended universal and impartial franchise, as they called it, to the colored population, then this radical Congress was to determine that a government established on negro votes was to be the government of Louisiana. [Voices, "Never!" Cheers and cries of "Hurrah for Andy!"]

So much for the New Orleans riot. And there was the cause and the origin of the blood that was shed; and every drop of blood that was shed is upon their skirts, and they are responsible for it. I could test this thing a little closer, but will not do it here to-night. But when you talk about the causes and consequences that resulted from proceedings of that kind, perhaps as I have been introduced here, and you have provoked questions of this kind, though it does not provoke me, I will tell you a few wholesome things that have been done by this radical Congress [cheers] in connection with New Orleans and the extension of the elective franchise.

I know that I have been traduced and abused. I know it has come in advance of me here as elsewhere—that I have attempted to exercise an arbitrary power in resisting laws that were intended to be forced upon the Government, [cheers;] that I had exercised that power, [cries, "Bully for you!"] that I had abandoned the party that elected me, and that I was a traitor, [cheers,] because I exercised the veto power in attempting and did arrest for a time a bill that was called a "Freedmen's Bureau bill;" yes, that I was a traitor. And I have been traduced, I have been slandered, I have been maligned, I have been called Judas Iscariot and all that. Now, my countrymen here to-night, it is very easy to indulge in epithets; it is easy to call a man Judas, and cry out traitor; but when he is called upon to give arguments and facts he is very often found wanting. Judas Iscariot—Judas. There was a Judas, and he was one of the twelve apostles. Oh! yes, the twelve apostles had a Christ. [A voice, "And a Moses, too;" laughter.] The twelve apostles had a Christ, and he never could have had a Judas unless he had had twelve apostles. If I have played the Judas, who has been my Christ that I have played the Judas with? Was it Thad. Stevens? Was it Wendell Phillips? Was it Charles Sumner? [Hisses and cheers.] These are the men that stop and compare themselves with the Saviour; and everybody that differs with them in opinion, and to try to stay and arrest their diabolical and nefarious policy, is to be denounced as a Judas. ["Hurrah for Andy!" and cheers.]

In the days when there was a Christ, while there was a Judas, were there unbelievers? Yes, while there were Judases there were unbelievers. [Voices heard, "Three groans for Fletcher."] Yes, oh yes; unbelievers in Christ, men who persecuted and slandered, and brought Him before Pontius Pilate, and preferred charges, and condemned and put Him to death on the cross to satisfy unbelievers; and this same persecuting, diabolical, and nefarious clan to-day would persecute and shed the blood of innocent men to carry out their purposes. [Cheers.]

But let me tell you; let me give you a few words here to-night. But a short time since I heard some one say in the crowd that we had a Moses. [Laughter.] Yes, there is a Moses; and I know sometimes it has been said that I have said that I would be the Moses of the colored man. [Cries of "Never!" and cheers.] Why, I have labored as much in the cause of emancipation as any other mortal man living; but, while I have striven to emancipate the colored man, I have felt and now feel that we have a great many white men that want emancipation. There

is a set amongst you that have got shackles on their limbs, and are as much under the heel and control of their masters as the colored man that was emancipated.

I call upon you here to-night, as freemen, as men, to favor the emancipation of the white men as well as the colored ones. I have been in favor of emancipation. I have nothing to disguise about that. I have tried to do as much, and have done as much—and when they talk about Moses, and the colored man being led into the promised land, where is the land that this clan proposes to lead them into? When we talk about taking them out from among the white population and sending them to other climes, what is it they propose? Why, it is to give us a Freedmen's Bureau. And after giving us a Freedmen's Bureau, what then? Why, here in the South it is not necessary for me to talk to you, where I have lived and you have lived, and understand the whole system and how it operates. We know how the slaves have been worked heretofore. Their original owners bought the land and raised the negroes, or purchased them, as the case might be, paid all the expense of carrying on the farm; and after producing tobacco, cotton, hemp, flax, and all the various products of the South, bringing them into the market without any profit on them, while their owners put it all into their pockets. This was their condition before the emancipation; this was their condition before we talked about their Moses. [Laughter.] I ask your attention. Come, as we have got to talking on this subject give me your attention for a few minutes. I am addressing myself to your brains and not to your prejudices, to your reason and not to your passions; and when reason and argument again resume their empire, this mist, this prejudice, that has been incrusted upon the public mind, must give way and reason become triumphant. Now, my countrymen, let me call your attention to a single fact, the Freedmen's Bureau. [Laughter and hisses.]

Slavery was an accursed institution until emancipation took place. It was an accursed institution while one set of men worked them and got the profits. But after emancipation took place they gave us the Freedmen's Bureau; they gave us these agents to go into every county, every township, and into every school district throughout the United States, and especially the southern States; they gave us commissioners; they gave us $12,000,000, and placed the power in the hands of the Executive, who was to work this machinery, with the army brought to his aid and to sustain it. They let us run it with $12,000,000 as a beginning, and in the end receive fifty or sixty millions, and let us work the four millions of slaves. In fine, the Freedmen's Bureau was a simple proposition to transfer four millions of slaves in the United States from their original owners to a new sew set of tasksmasters. [A voice, "Never!" and cheers.] I have been laboring for years to emancipate them; and then I was opposed to seeing them transferred to a new set of taskmasters, to be worked with more rigor than they had been worked heretofore. [Cheers.] Yes, under this new system they would work the slaves, and call on the Government to bear all the expenses, and if there were any profits left why they would pocket them. [Laughter and cheers.] Thus, you, the people, must pay the expense of running the machine out of your own pockets while they get the profits of it.

I simply intended to-night to tender you my sincere thanks; but as I go along, as we are talking about this Congress, and these respectable gentlemen who contend that the President is wrong because he vetoed the Freedmen's Bureau bill, and all this; because he chose to exercise the veto power, he committed a high offence, and therefore ought to be impeached. [Voice, "Never."] Yes, yes; they are ready to impeach him. [Voice, "Let them try it."] And if they were satisfied they had the next Congress by a decided majority, as this, upon some pretext or other—violating the Constitution, neglect of duty, or omitting to enforce some act of law—upon some pretext or other, they would vacate the executive department of the United States. [A voice, "Too bad, they don't impeach him."] Now, as we talk about this Congress, let me call the soldiers' attention to this immaculate Congress. Let me call your attention to—oh! yes; this Congress that could make war upon the Executive because he stands upon the Constitution and vindicates the rights of the people, exercising the veto power in their behalf. Because he dared to do this they can clamor and talk about impeachment; and by way of stimulating this increasing confidence with the soldiers throughout the country, they talk about impeachments. So far as offenses are concerned, upon this subject of offenses let me ask you [voice, "Plenty here to-night"] to go back into my history of legislation, and even when Governor of a State. Let me ask if there is a man here to-night who in the dark days of Know-Nothingism stood and battled more for their rights. [Voice, "Good," and cheers.]

It has been my peculiar misfortune to have fierce opposition because I have always struck my blows direct, and fought with right and the Constitution on my side. [Cheers.] Yes, I will come back to the soldiers again in a moment. Yes; here was a neutrality law. I was sworn, in support of the Constitution, to see that the law was faithfully executed. ["Why didn't you do it?"] The law was executed; and because it was executed, then they raised a clamor, and tried to make an appeal to the foreigners, and especially the Fenians. And what did they do? They introduced a bill to tickle and play with the fancy, pretending to repeal the law, and at the same time making it worse, and then left the law just where it is. [Voice, "That's so!]

They knew that whenever a law was presented to me, proper in its provisions, ameliorating and softening the rigors of the present law, it would meet my hearty approbation. But as they were pretty well broken down and losing public confidence, at the heel of the session they found they must do something; and hence, what did they do? They pretended to do something for the soldiers. Who has done more for the soldiers than I have? Who has perilled more in this struggle than I have? [Cheers.] But then, to make them their peculiar friends and favorites of the soldier, they

come forward with a proposition to do what? Why we will give the soldier $50 bounty—your attention to this—if he has served two years, and $100 if he has served three years. Now, mark you, the colored man that served two years can get his $100 bounty, but the white man must serve three years before he can get his. [Cheers.] But that is not the point. While they were tickling and attempting to please the soldiers, by giving them $300 for two years' service, they took it into their heads to give somebody else about [laughter], and they voted themselves not fifty dollars, two years' service. Your attention: I want to make a lodgment in your minds of the facts, because I want to put the nail in; and having put it in, I want to clinch it on the other side. [Cheers.] The brave boys, the patriotic young man who followed his gallant officers, slept in the tented field, and perilled his life and shed his blood, and left his limbs behind him, and came home mangled and maimed, he can get fifty dollars bounty, if he has served two years; but the members of Congress, who never smelt gunpowder, can get $4,000 extra pay. [Great cheering.] This is a faint picture, my countrymen, of what has transpired. [A voice, "Stick to that question."]

Fellow-citizens, you are all familiar with the work of restoration. You know that since the rebellion collapsed, since the armies were suppressed in the field, that everything that could be done has been done by the executive department of the Government for the restoration of the Government; everything has been done with the exception of one thing, and that is the admission of members from eleven States that went into the rebellion; and after having accepted the terms of the Government—having abolished slavery, having repudiated their debt and sent loyal representatives—everything has been done excepting the admission of representatives, to which all the States are entitled. [Cheers.]

When you turn and examine the Constitution of the United States, you find that you cannot even amend that Constitution so as to deprive any State of its equal suffrage in the Senate. [A voice, "They have never been out."] It is said before me they have never been out. I say so too. That is what I have always said. They have never been out, and they cannot go out. [Cheers.] That being the fact, under the Constitution they are entitled to equal representation in the Congress of the United States without violating the Constitution, [cheers;] and the same argument applies to the House of Representatives.

How, then, does the matter stand? It used to be one of the arguments, that if the States withdraw their Representatives and Senators, that was secession—a peaceable breaking up of the Government. Now the radical power in this Government turn round and assume that the States are out of the Union, that they are not entitled to representation in Congress. [Cheers.] That is to say, they are dissolutionists, and their position now is to perpetrate a disruption of the Government; and that, too, while they are denying the States the right of representation, they impose taxation upon them, a principle upon which, in the Revolution, you resisted the power of Great Britain. We deny the right of taxation without representation; that is one of our great principles.

Let the Government be restored; let peace be restored among this people. I have labored for it; I am for it now. I deny this doctrine of secession, come from what quarter it may, whether from the North or from the South. I am opposed to it, and am for the union of the States. [Voices, "That's right," and cheers.] I am for the thirty-six States, representing thirty-six States, remaining where they are under the Constitution as your fathers made it and handed it down to you; and if it is altered or amended, let it be done in the mode and manner pointed out by that instrument itself, and in no other. [Cheers.] I am for the restoration of peace. Let me ask the people here to-night if we have not shed enough of blood. Let me ask, Are you prepared to go into another civil war? Let me ask this people here to-night, Are they prepared to set man upon man, and in the name of God lift his hand against the throat of his fellow? [Voice, "Never!"] Are you prepared to see our fields laid waste again, our business and our commerce suspended, and our trade stopped? Are you prepared to see this land again drenched in our brothers' blood? Heaven avert it! is my prayer. [Cheers.] I am one of those who believe that man does sin, and having sinned, I believe he must repent, and, sometimes, having repented makes him a better man than he was before. [Cheers.]

I know it has been said that I have exercised my pardoning power. Yes, I have. [Cheers, and "What about Drake's constitution?"] Yes I have; and don't you think it is to prevail? I reckon I have pardoned more men, turned more men loose, and set them at liberty that were imprisoned, I imagine, than any other living man on God's habitable globe. [Voice, "Bully for you!" cheers.] I turned forty-seven thousand of our men loose who engaged in this struggle, with the arms we captured with them, and who were then in prison. I turned them loose. [Voice, "Bully for you!" and laughter.] Large numbers have applied for pardon, and I have granted them pardon; yet there are some who condemn, and hold me responsible for doing wrong. Yes, there are some who staid at home, who did not go into the field, that can talk about others being traitorous and being treacherous. There are some who can talk about blood and vengeance and crime and everything to make treason odious, and all that, who never smelt gunpowder on either side. [Cheers.] Yes, they can condemn others, and recommend hanging and torture, and all that. If I have erred, I have erred on the side of mercy. Some of these croakers have dared to assume they are better than was the Saviour of men himself—a kind of over-righteous—better than anybody else; and, although wanting to do Deity's work, thinking He cannot do it as well as they can. [Laughter and cheers.]

Yes, the Saviour of men came on earth and found the human race condemned and sentenced under the law; but when they repented and believed, He said Let them live. Instead of executing and putting the whole world to death, He went upon the cross, and there was nailed by

unbelievers, there shed his blood that you might live. [Cheers.] Think of it; to execute and hang and put to death eight millions of people. Never! It is an absurdity. Such a thing is impracticable, even if it were right; but it is the violation of all law, human and divine. [Voice, "Hang Jeff Davis. You call on Judge Chase to hang Jeff Davis, will you?" Great cheering.] I am not the court, I am not the jury, nor the judge. Before the case comes to me, and all other cases, it would have to come on application as a case for pardon. That is the only way the case can get to me. Why don't Judge Chase, the Chief Justice of the United States, in whose district he is—why don't he try him? [Loud cheers.] But perhaps I could answer the question, as sometimes persons want to be facetious and indulge in repartee. I might ask you a question, Why don't you hang Thad Stevens and Wendell Phillips? [Great cheering.] A traitor at one end of the line is as bad as a traitor at the other. I know that there are some who have got up their little pieces and sayings to repeat on public occasions—talking parrots that have been placed in their mouths by their superiors—who have not the courage and the manhood to come forward and tell them themselves, but have their understrappers to do their work for them. [Cheers.] I know there are some that talk about this universal elective franchise, upon which they wanted to upturn the Government of Louisiana and institute another, who contended that we must send men there to control, govern, and manage their slave population because they are incompetent to do it themselves. And yet they turn round, when they get there, and say they are competent to go to Congress and manage all the affairs of State. [Cheers.] Before you commence throwing your stones you ought to be sure you don't live in a glass house. Then why all this clamor? Don't you see, my countrymen, it is a question of power; and being in power, as they are, their object is to perpetuate their power, since, when you talk about turning any of them out of office, oh, they talk about bread and butter. [Laughter.] Yes, these men are the most perfect and complete bread and butter party that has ever appeared in this Government. [Great cheering.] When you make an effort or struggle to take the nipple out of their mouths, how they clamor. They have stayed at home here five or six years, held the offices, grown fat, and enjoyed all the emoluments of position; and now, when you talk about turning one of them out, oh, it is proscription; and hence they come forward and propose, in Congress, to do what? To pass laws to prevent the Executive from turning anybody out. [Voice, "Put 'em out.] Hence, don't you see what the policy was to be? I believe in the good old doctrine—advocated by Washington, Jefferson, and Madison—of rotation in office. These people who have been enjoying these offices seem to have lost sight of this doctrine. I believe that one set of men have enjoyed the emoluments of office long enough. They should let another portion of the people have a chance. [Cheers.] How are these men to be got out—[Voice, "Kick 'em out!" Cheers and laughter.]—unless your Executive can put them out, unless you can teach them through the President? Congress says he shall not turn them out, and they are trying to pass laws to prevent it being done. Well, let me say to you, if you will stand by me in this action, [cheers,] if you will stand by me in trying to give the people a fair chance—soldiers and citizens—to participate in these offices, God being willing, I will kick them out. I will kick them out just as fast as I can. Let me say to you, in concluding, that what I have said I intended to say. I was provoked into this, and I care not for their menaces, the taunts and the jeers. I care not for threats. I do not intend to be bullied by my enemies nor overawed by my friends. But, God willing, with your help, I will veto their measures whenever any of them come to me. I place myself upon the ramparts of the Constitution when I see the enemy approaching; so long as I have eyes to see, or ears to hear, or a tongue to sound the alarm, so help me God, I will do it, and call on the people to be my judges. [Cheers.]

I tell you here to-night that the Constitution of this country is being encroached upon. I tell you here to-night that the citadel of liberty is being endangered. [A voice, "Go it, Andy!"] Say to them, "Go to work; take the Constitution as your palladium of civil and religious liberty; take it as your chief ark of safety." Just let me ask you here to-night to cling to the Constitution, in this great struggle for freedom and for its preservation, as the shipwrecked mariner clings to the mast when the midnight tempest closes around him.

So far as my humble life has been advanced, the people of Missouri, as well as other States, know that all my efforts have been devoted in that direction. Why, where is the speech, where is the vote to be got of mine but which has always had a tendency to elevate the great working classes of this people? When they talk about tyranny and despotism, where is one act of Andy Johnson's that ever encroached upon the rights of a freeman in this land? But because I have stood, as a faithful sentinel, upon the watch-tower of freedom to sound the alarm, hence all this traducing and detraction that has been heaped upon me. [Cries of "Bully for Andy Johnson!"]

I now, in conclusion, my countrymen, hand over to you the flag of your country with thirty-six stars upon it. I hand over to you your Constitution, with the charge and responsibility of preserving it intact. I hand over to you to-day the Union of these States, the great magic circle which embraces them all. I hand them all over to you, the people, in whom I have always trusted in all great emergencies. I hand them over to you, men who can rise above party, who can stand around the altar of a common country with their faces uplifted to heaven, swearing by Him who lives forever and ever, that the altar and all shall sink in the dust, but that the Constitution of the Union shall be preserved.

Let us stand by the Union of these States; let us fight the enemies of the Government, come from what quarter they may. My stand has been taken. You understand what my position is. And parting with you now, I leave the Government in your hands, with the confidence I

have always had, that the people will ultimately redress all wrongs and set the Government right. Then, gentlemen, in conclusion, for the cordial welcome you have shown me in this great city of the South, whose destiny none can foretell, now, in bidding you good night, I leave all in your charge and thank you for the cordial welcome you have given in this spontaneous outpouring of the people of your city.

Interview with Chas. G. Halpine, March 5, 1867.

And now, apart from the directly political, [continued the President,] what is the main issue looming up in the immediate future? What issue is clearly foreshadowed to be the Aaron's rod which must swallow up all minor questions? It is the great financial issue, the issue of the national debt; whether it shall be paid or repudiated. This issue has fibres extending into the pockets of every citizen; for wherever a man has a dollar, or can earn a dollar, the Government is now compelled to go for its portion of his substance; and with the vast machinery under its control, the money is fetched.

There were four millions of slaves in the southern States before the rebellion, representing a capital of three, or possibly four billions of dollars; but let us call it three billions, or three thousand millions, as you may please. These slaves represented that amount of property, men put their savings into purchasing or raising them, and they represented as property whatever were the surplus profits of their labor, after due allowance for food, clothing, medicine, and interest on the capital invested.

On this property in slaves gradually grew up that slave oligarchy or aristocracy, against which the leaders of the anti-slavery party so successfully thundered during the twelve years preceding the rebellion; and after the first mad plunge into rebellion, the fate of that aristocracy was sealed. It is now a thing of the past. With its virtues—for it had virtues, courage, and hospitality eminently—and with its crimes of pride and lawless revolution, it has entered into history, and is a thing of the past.

But what do we find? The aristocracy based on $3,000,000,000 of property in slaves south of Mason and Dixon's line has disappeared; but an aristocracy, based on over $2,500,000,000 of national securities, has arisen in the northern States, to assume that political control which the consolidation of great financial with political interests formerly gave to the slave oligarchy of the late rebel States. The aristocracy based on negro property disappears at the southern end of the line, but only to reappear in an oligarchy of bonds and national securities in the States which suppressed the rebellion.

We have all read history, and is it not certain that of all aristocracies, that of mere wealth is the most odious, rapacious, and tyrannical? It goes for the last dollar the poor and helpless have got; and with such a vast machine as this Government under its control, that dollar will be fetched. It is an aristocracy that can see in the people only a prey for extortion. It has no political or military relations with them, such as the old feudal system created between liege lord and vassal; it has no intimate social and domestic ties, and no such strong bond of self-interest with the people as existed of necessity between the extinct slaveholders of our country and their slaves. To an aristocracy existing on the annual interest of a national debt, the people are only of value in proportion to their docility and power of patiently bleeding golden blood under the tax-gatherer's thumb-screw.

To the people the national debt is a thing of debt to be paid; but to the aristocracy of bonds and national securities it is a property of more than $2,500,000,000, from which a revenue of $180,000,000 a year is to be received into their pockets. So we now find that an aristocracy of the South, based on $3,000,000,000 in negroes, who were a productive class, has disappeared, and their place in political control of the country is assumed by an aristocracy based on nearly $3,000,000,000 of national debt—a thing which is not producing anything, but which goes on steadily every year, and must go on for all time until the debt is paid, absorbing and taxing at the rate of six or seven per cent. a year for every $100 bond that is represented in its aggregation.

Now, I am not speaking of this to do anything but deprecate the fearful issue which the madness of partisan hatred and the blindness of our new national-debt aristocracy to their own true interests is fast forcing upon the country. But is it not clear that the people, who have to pay $180,000,000 a year to this consolidated moneyed oligarchy, must, sooner or later, commence asking each other "How much was actually loaned to our Government during the civil war by these bondholders, who now claim that we owe them nearly $3,000,000,000?" You know what the popular answer must be—I do not say the right answer—"Less than half the amount they claim, for gold ranged at an average of one hundred premium while this debt was being incurred."

Just think of the annual tax of $180,000,000 for payment of interest on our national debt! This Government we have, with its enormous machinery, is a pretty hefty business in itself, costing more *per capita* to the people than the Government of England, which we always heretofore regarded as the most tax-devouring on earth. But over and beyond the expenses of the Government proper, as it should stand in the scale of peace at about $60,000,000 a year, we have, in the $180,000,000 of interest paid yearly on our national debt, enough to support three such Governments as this, with all their vast machinery and disbursements! We have not only, under the present system, one Government for the people to support, but, over and beyond this, we have to raise by taxation from the people sufficient to support three similar establishments every year!

All property is based upon and can only be sustained by law; and it is for a return to law and the guide of fixed constitutional principles that my whole course has been contending. But so short-sighted is this aristocracy of bonds and paper currency, this Plutocracy of the national debt, that my efforts in behalf of their true interests (which are certainly involved in the maintenance of law and the Constitution) have been everywhere encountered, and almost everywhere

overwhelmed, by the preponderating influence which they have acquired from the natural force of capital and the agency of our national banks.

And what has been the course of that Congress which has just ended, and which this blind aristocracy of national debt sustained in overriding my efforts for a return to sound principles of internal government? Look at the bill giving from $480,000,000 to $600,000,000, nominally for back bounty, or as an equalization of bounties to the soldiers, but really, as all intelligent men must be aware, to be parcelled out as a prey among the bounty sharks and claim agents, who are the most reckless and clamorous adherents of the dominant majority in Congress. Then look at appropriations amounting to another $100,000,000, for internal improvements, which should properly be left to the laws governing private industry and the progress of our national development. Look also at the increase of all salaries with a prodigal hand, this virtuous Congress first setting an example against retrenchment by voting to themselves an increase of salaries. Everywhere, and in an ever-increasing ratio, the motto seems to be, "Always spend and never spare," a fresh issue from the paper-mill over yonder [slightly pointing his pencil to the Treasury Department] being the panacea prescribed for every evil of our present situation.

Every effort to increase our annual taxation is resisted, for increased taxes might help to awaken the people from their false dream of prosperity under the sway of revolutionary and radical ideas; but no addition to the national debt can be proposed, no further inflation of our inflated currency, which the preponderating votes of the western States will not be certain to favor. The war of finance is the next war we have to fight; and every blow struck against my efforts to uphold a strict construction of the laws and the Constitution is in reality a blow in favor of repudiating the national debt. The manufacturers and men of capital in the eastern States and the States along the Atlantic seaboard —a mere strip or fringe on the broad mantle of our country, if you will examine the map—these are in favor of high protective, and, in fact, prohibitory tariffs, and also favor a contraction of the currency. But against both measures the interests and votes of the great producing and non-manufacturing States of the West stand irrevocably arrayed, and a glance at the map and the census statistics of the last twenty years will tell every one who is open to conviction how that war must end.

The history of the world gives no example of a war debt that has ever been paid; but we have an exceptional country, and present an exceptional case. Our debt might easily be paid, provided the brakes against excessive expenditures could be turned on quickly enough; but now is the appointed time, and now or never the work must be commenced. If that debt is ever to be paid we need economy in every branch of the public service—the reduction, not an increase of salaries to Congressmen and other officials; the systematic reduction of our national debt; and not its increase by such monstrous bills as this last demagogue measure for the pretended equalization of bounties. The Congress, forsooth, is so patriotic, so loyal, that it "can refuse our gallant soldiers nothing." But you must have seen how promptly it rejected the names of nearly every gallant veteran sent in by me for confirmation to any civil office, a majority of our extremely "loyal Senators" using their guillotine without remorse in nearly every instance.

And whither is all this drifting? To intelligent men there can be but one answer. We are drifting towards repudiation, and the moneyed aristocracy of the national debt, the very men whose interests are most jeopardized, are so blind that they are practically helping to accelerate, not check our course in this downward direction. We need the industry and enormous possible products of the lately revolted States to help us in bearing our heavy burden; we need confidence and calm; we need internal harmony; and above all, we need a return to the unquestioned supremacy of the civil laws and constitutional restraints, if our debt is not to be repudiated within the next half score of years.

Financial prosperity was secured up to within a recent period; but already the delicate fabric of public credit—a house of cards at best—begins to totter under the concussion of the various revolutionary ideas which have been recently exploited on the floors of Congress. Who now talks of the Constitution with respect? Who is not now made a laughing-stock in the papers and speeches of the violent revolutionary party, if he shall be so hardy as to claim that, being again at peace, the sway of civil over military law should be immediately resumed, if we desire to maintain our liberties? "The Constitution is played out," we hear on every hand; and every effort to advocate the just ascendency of the civil law only furnishes fresh food for ridicule.

No party as yet, and possibly no party for some years, will openly hoist the banner of repudiation. But a majority of those who shaped the legislation of this last Congress must know, unless they deceive themselves, or are too ignorant to appreciate their own acts, that we are drifting in that direction, and that it is by their votes we have been swung out into the downward stream. Doubtless, some of them would either be, or affect to feel, horrified if to-day branded as repudiationists, just as, in the infancy of the free-soil agitation, it was considered a bitter slander if the "freesoiler" should be styled an "abolitionist." There are steps in everything, and the term of reproach to-day will be worn as a feather in the cap some years from now, unless the true conservative wisdom of the country can be awakened, and rapidly, from its asphyxiating dream that our "national debt is a national blessing."

And look at the effect of the reconstruction bill just passed over my unavailing veto. I mean its peculiar effect as a step in the direction of repudiation, and not its general effect as a high-handed measure of congressional usurpation, striking out of existence so many States, and establishing a military despotism over more than one-third of our geographical Union. This bill suddenly adds four millions of ignorant and penniless negroes to the voting force of the country, an accession of just so much strength to the

party whose interest it is, and must increasingly become, to favor repudiation as a policy. To secure the public creditor, our efforts should be, if that were possible, to restrict rather than to extend the right of suffrage; for money rapidly aggregates in a few hands; and whenever the men who have an interest in seeing that our national debt is paid shall have become out of all proportion few, compared with those who have an interest in its repudiation, the votes of the many will carry it, and the debt of $3,000,000,000 will be struck out of existence by ballots, just as rapidly and utterly as the similar amount invested in southern negroes has been abolished during the recent war under showers of bullets. At least, this is possible.

That we are to have a great financial crash this year I hold to be inevitable, though deprecating it, and having used every effort for its avoidance. To say that it can be staved off by any legislation, if the violated laws of trade and public economy call for it, is to assert that water can be made to run up hill, or shall cease to seek its own level under the compulsion of a congressional enactment. Perhaps, for so violent a disease, this violent cure may be the only remedy. It is like a man sustaining his strength on brandy; so long as he can increase the dose daily, he may get along in high good humor, just as we have been prospering on an irredeemable paper currency and fresh issues of public securities. But sooner or later, the day will come in which brandy no longer can stimulate; nor can irredeemable promises to pay pass current as a circulating medium forever. To the man will come a severe fit of sickness, teaching him that the laws of temperance can only be violated under fearful penalties, and to the nation will come a financial crash, teaching it that paper is only a representative of value, not value itself; and that the only true securities for our public credit must be looked for in a system of rigidly exacted obedience to all constitutional restraints, and a thorough system of economy in all branches of the public service.

For the slights and indignities, the unconstitutional curtailments and dishonors which the recent Congress has attempted to cast upon me for my unflinching and unalterable devotion to my constitutional oath, and to the best interests of the whole country, according to my best judgment and experience, I am only sorry as regards the indignities sought to be imposed on my high office, but unmoved as regards myself. Conscious of only having executed my duty, conscious of being denounced for "usurpation" only because refusing to accept unconstitutional powers and patronage, and satisfied that the day of wiser thought and sounder estimate cannot now be far distant, I look with perfect confidence for my vindication to the justice of that future which I am convinced cannot long be delayed. Unless all the senses are deceptive, unless all truth be a lie, unless God has ceased to live, I tell you that the folly and fraud now dominating the councils of this distracted country in Congress cannot endure forever.

It is, perhaps, but right to add that the foregoing is a report from memory of remarks made by Mr. Johnson in an extended conversation yesterday afternoon, and that the original did not take the form of a set speech, here unavoidably given to it. It should also be added that a few points embraced in the report, and attributed exclusively to the President, may have been, more or less, suggested by interjectional remarks of the person to whom he was speaking; but nothing has been here set down to which the full assent of Mr. Johnson was not given, always provided, of course, that his listener understood him, and remembers correctly.

XV.

PRESIDENT JOHNSON'S MESSAGES.

The Annual Message, December 4, 1866.

The following portions relate to reconstruction, and kindred subjects:

Fellow-citizens of the Senate and House of Representatives:

After a brief interval the Congress of the United States resumes its annual legislative labors. An all-wise and merciful Providence has abated the pestilence which visited our shores, leaving its calamitous traces upon some portions of our country. Peace, order, tranquillity, and civil authority have been formally declared to exist throughout the whole of the United States. In all of the States civil authority has superseded the coercion of arms, and the people, by their voluntary action, are maintaining their governments in full activity and complete operation. The enforcement of the laws is no longer "obstructed in any State by combinations too powerful to be suppressed by the ordinary course of judicial proceedings;" and the animosities engendered by the war are rapidly yielding to the beneficent influences of our free institutions, and to the kindly effects of unrestricted social and commercial intercourse. An entire restoration of fraternal feeling must be the earnest wish of every patriotic heart; and we will have accomplished our grandest national achievement when, forgetting the sad events of the past, and remembering only their instructive lessons, we resume our onward career as a free, prosperous, and united people.

In my message of the 4th of December, 1865, Congress was informed of the measures which had been instituted by the Executive with a view to the gradual restoration of the States in which the insurrection occurred to their relations with the General Government. Provisional Governors had been appointed, conventions called, Governors elected, Legislatures assembled, and Senators and Representatives chosen to the Congress of the United States. Courts had been opened for the enforcement of laws long in abeyance. The blockade had been removed, custom-houses re-established, and the internal revenue laws put in force, in order that the people might contribute to the national income. Postal operations had been renewed, and efforts were being made to restore them to their former condition of efficiency. The States themselves had been asked to take part in the high function of amending the Constitution, and of thus sanctioning the extinction of African slavery as one of the legitimate results of our internecine struggle.

Having progressed thus far, the executive department found that it had accomplished nearly all that was within the scope of its constitutional authority. One thing, however, yet remained to be done before the work of restoration could be completed, and that was the admission to Congress of loyal Senators and Representatives from the States whose people had rebelled against the lawful authority of the General Government. This question devolved upon the respective Houses, which, by the Constitution, are made the judges of the elections, returns, and qualifications of their own members; and its consideration at once engaged the attention of Congress.

In the mean time, the executive department —no other plan having been proposed by Congress—continued its efforts to perfect, as far as was practicable, the restoration of the proper relations between the citizens of the respective States, the States, and the Federal Government, extending, from time to time, as the public interests seemed to require, the judicial, revenue, and postal systems of the country. With the advice and consent of the Senate, the necessary officers were appointed, and appropriations made by Congress for the payment of their salaries. The proposition to amend the Federal Constitution so as to prevent the existence of slavery within the United States or any place subject to their jurisdiction, was ratified by the requisite number of States, and, on the 18th day of December, 1865, it was officially declared to have become valid as a part of the Constitution of the United States. All of the States in which the insurrection had existed promptly amended their constitutions so as to make them conform to the great change thus effected in the organic law of the land; declared null and void all ordinances and laws of secession; repudiated all pretended debts and obligations created for the revolutionary purposes of the insurrection; and proceeded, in good faith, to the enactment of measures for the protection and amelioration of the condition of the colored race. Congress, however, yet hesitated to admit any of these States to representation; and it was not until towards the close of the eighth month of the session that an exception was made in favor of Tennessee by the admission of her Senators and Representatives.

I deem it a subject of profound regret that Congress has thus far failed to admit to seats loyal Senators and Representatives from the other States whose inhabitants, with those of Tennessee, had engaged in the rebellion. Ten States—more than one-fourth of the whole number—remain without representation! The seats of fifty members in the House of Representatives and of twenty members in the Senate are yet vacant—not by their own consent, not by a failure of election, but by the refusal of Congress to accept their credentials. Their admission, it is believed, would have accomplished much towards the renewal and strengthening of our relations as one people, and removed serious cause for discontent on the part of the inhabitants of those States. It would have accorded with the great principle enunciated in the Declaration of American Independence, that no people ought to bear the burden of taxation and yet be denied the right of representation. It would have been in consonance with the express provisions of the Constitution, that "each State shall have at least one Representative," and "that no State, without its consent, shall be deprived of its equal suffrage in the Senate." These provisions were intended to secure to every State, and to the people of every State, the right of representation in each House of Congress; and so important was it deemed by the framers of the Constitution that the equality of the States in the Senate should be preserved, that not even by an amendment of the Constitution can any State, without its consent, be denied a voice in that branch of the national Legislature.

It is true, it has been assumed that the existence of the States was terminated by the rebellious acts of their inhabitants, and that the insurrection having been suppressed, they were thenceforward to be considered merely as conquered territories. The legislative, executive, and judicial departments of the Government have, however, with great distinctness and uniform consistency, refused to sanction an assumption so incompatible with the nature of our republican system and with the professed objects of the war. Throughout the recent legislation of Congress, the undeniable fact makes itself apparent, that these ten political communities are nothing less than States of this Union. At the very commencement of the rebellion each House declared, with a unanimity as remarkable as it was significant, that the war was not "waged, upon our part, in any spirit of oppression, nor for any purpose of conquest or subjugation, nor purpose of overthrowing or interfering with the rights or established institutions of those States, but to defend and maintain the supremacy of the Constitution and all laws made in pursuance thereof, and to preserve the Union with all the dignity, equality, and rights of the several States unimpaired; and that as soon as these objects" were "accomplished the war ought to cease." In some instances Senators were permitted to continue their legislative functions, while in other instances Representatives were elected and admitted to seats after their States had formally declared their right to withdraw from the Union, and were endeavoring to maintain that right by force of arms. All of the States whose people were in insurrection, as States, were included in the apportionment of

the direct tax of $20,000,000 annually, laid upon the United States by the act approved 5th August, 1861. Congress, by the act of March 4, 1862, and by the apportionment of representation thereunder, also recognized their presence as States in the Union; and they have, for judicial purposes, been divided into districts, as States alone can be divided. The same recognition appears in the recent legislation in reference to Tennessee, which evidently rests upon the fact that the functions of the State were not destroyed by the rebellion, but merely suspended; and that principle is of course applicable to those States which, like Tennessee, attempted to renounce their place in the Union.

The action of the executive department of the Government upon this subject has been equally definite and uniform, and the purpose of the war was specifically stated in the proclamation issued by my predecessor on the 22d day of September, 1862. It was then solemnly proclaimed and declared that "hereafter, as heretofore, the war will be prosecuted for the object of practically restoring the constitutional relation between the United States and each of the States and the people thereof, in which States that relation is or may be suspended or disturbed."

The recognition of the States by the judicial department of the Government has also been clear and conclusive in all proceedings affecting them as States, had in the Supreme, Circuit, and District Courts.

In the admission of Senators and Representatives from any and all of the States, there can be no just ground of apprehension that persons who are disloyal will be clothed with the powers of legislation; for this could not happen when the Constitution and the laws are enforced by a vigilant and faithful Congress. Each House is made the "judge of the elections, returns, and qualifications of its own members," and may, "with the concurrence of two-thirds, expel a member." When a Senator or Representative presents his certificate of election, he may at once be admitted or rejected; or, should there be any question as to his eligibility, his credentials may be referred for investigation to the appropriate committee. If admitted to a seat, it must be upon evidence satisfactory to the House of which he thus becomes a member, that he possesses the requisite constitutional and legal qualifications. If refused admission as a member, for want of due allegiance to the Government, and returned to his constituents, they are admonished that none but persons loyal to the United States will be allowed a voice in the legislative councils of the nation, and the political power and moral influence of Congress are thus effectively exerted in the interests of loyalty to the Government and fidelity to the Union. Upon this question, so vitally affecting the restoration of the Union and the permanency of our present form of government, my convictions, heretofore expressed, have undergone no change; but, on the contrary, their correctness has been confirmed by reflection and time. If the admission of loyal members to seats in the respective Houses of Congress was wise and expedient a year ago, it is no less wise and expedient now. If this anomalous condition is right now—if, in the exact condition of these States at the present time, it is lawful to exclude them from representation, I do not see that the question will be changed by the efflux of time. Ten years hence, if these States remain as they are, the right of representation will be no stronger, the right of exclusion will be no weaker.

The Constitution of the United States makes it the duty of the President to recommend to the consideration of Congress "such measures as he shall judge necessary or expedient." I know of no measure more imperatively demanded by every consideration of national interest, sound policy, and equal justice, than the admission of loyal members from the now unrepresented States. This would consummate the work of restoration, and exert a most salutary influence in the re-establishment of peace, harmony, and fraternal feeling. It would tend greatly to renew the confidence of the American people in the vigor and stability of their institutions. It would bind us more closely together as a nation, and enable us to show to the world the inherent and recuperative power of a Government founded upon the will of the people, and established upon the principles of liberty, justice, and intelligence. Our increased strength and enhanced prosperity would irrefragably demonstrate the fallacy of the arguments against free institutions drawn from our recent national disorders by the enemies of republican government. The admission of loyal members from the States now excluded from Congress, by allaying doubt and apprehension, would turn capital, now awaiting an opportunity for investment, into the channels of trade and industry. It would alleviate the present troubled condition of those States, and, by inducing emigration, aid in the settlement of fertile regions now uncultivated, and lead to an increased production of those staples which have added so greatly to the wealth of the nation and the commerce of the world. New fields of enterprise would be opened to our progressive people, and soon the devastations of war would be repaired, and all traces of our domestic differences effaced from the minds of our countrymen.

In our efforts to preserve "the unity of government," which constitutes us one people, by restoring the States to the condition which they held prior to the rebellion, we should be cautious, lest, having rescued our nation from perils of threatened disintegration, we resort to consolidation, and in the end absolute despotism, as a remedy for the recurrence of similar troubles. The war having terminated, and with it all occasion for the exercise of powers of doubtful constitutionality, we should hasten to bring legislation within the boundaries prescribed by the Constitution, and to return to the ancient landmarks established by our fathers for the guidance of succeeding generations. "The Constitution which at any time exists, until changed by an explicit and authentic act of the whole people, is sacredly obligatory upon all." "If, in the opinion of the people, the distribution or modification of the constitutional powers be, in any particular, wrong, let it be corrected by an amendment in the way in which the Constitution designates. But let there be no change by usurpation; for" "it is the customary weapon by which free Governments are destroyed." Washington spoke these words to his countrymen when, followed by

their love and gratitude, he voluntarily retired from the cares of public life. "To keep in all things within the pale of our constitutional powers, and cherish the Federal Union as the only rock of safety," were prescribed by Jefferson as rules of action to endear to his "countrymen the true principles of their Constitution, and promote a union of sentiment and action equally auspicious to their happiness and safety." Jackson held that the action of the General Government should always be strictly confined to the sphere of its appropriate duties, and justly and forcibly urged that our Government is not to be maintained nor our Union preserved "by invasions of the rights and powers of the several States. In thus attempting to make our General Government strong, we make it weak. Its true strength consists in leaving individuals and States as much as possible to themselves; in making itself felt, not in its power, but in its beneficence; not in its control, but in its protection; not in binding the States more closely to the centre, but leaving each to move unobstructed in its proper constitutional orbit." These are the teachings of men whose deeds and services have made them illustrious, and who, long since withdrawn from the scenes of life, have left to their country the rich legacy of their example, their wisdom, and their patriotism. Drawing fresh inspiration from their lessons, let us emulate them in love of country and respect for the Constitution and the laws.

The report of the Secretary of the Treasury affords much information respecting the revenue and commerce of the country. His views upon the currency, and with reference to a proper adjustment of our revenue system, internal as well as impost, are commended to the careful consideration of Congress. In my last annual message I expressed my general views upon these subjects. * * * * *

The report presents a much more satisfactory condition of our finances than one year ago the most sanguine could have anticipated. During the fiscal year ending the 30th June, 1865, the last year of the war, the public debt was increased $941,902,537, and on the 31st of October, 1865, it amounted to $2,740,854,750. On the 31st day of October, 1866, it had been reduced to $2,551,310,006, the diminution, during a period of fourteen months, commencing September 1, 1865, and ending October 31, 1866, having been $206,379,565. In the last annual report on the state of the finances, it was estimated that during the three-quarters of the fiscal year ending the 30th of June last, the debt would be increased $112,194,947. During that period, however, it was reduced $31,196,387, the receipts of the year having been $89,905,905 more, and the expenditures $200,529,235 less than the estimates. Nothing could more clearly indicate than these statements the extent and availability of the national resources, and the rapidity and safety with which, under our form of government, great military and naval establishments can be disbanded, and expenses reduced from a war to a peace footing.

During the fiscal year ending the 30th of June, 1866, the receipts were $558,032,620, and the expenditures $520,750,940, leaving an available surplus of $37,281,680. It is estimated that the receipts for the fiscal year ending the 30th June 1867, will be $475,061,386 and that the expenditures will reach the sum of $316,428,078, leaving in the Treasury a surplus of $158,633,308. For the fiscal year ending June 30, 1868, it is estimated that the receipts will amount to $436,000,000, and that the expenditures will be $350,247,641—showing an excess of $85,752,359 in favor of the Government. These estimated receipts may be diminished by a reduction of excise and import duties; but after all necessary reductions shall have been made, the revenue of the present and of following years will doubtless be sufficient to cover all legitimate charges upon the Treasury, and leave a large annual surplus to be applied to the payment of the principal of the debt. There seems now to be no good reason why taxes may not be reduced as the country advances in population and wealth, and yet the debt be extinguished within the next quarter of a century * * *

In the month of April last, as Congress is aware, a friendly arrangement was made between the Emperor of France and the President of the United States for the withdrawal from Mexico of the French expeditionary military forces. This withdrawal was to be effected in three detachments, the first of which, it was understood, would leave Mexico in November, now past, the second in March next, and the third and last in November, 1867. Immediately upon the completion of the evacuation, the French Government was to assume the same attitude of non-intervention, in regard to Mexico, as is held by the Government of the United States. Repeated assurances have been given by the Emperor, since that agreement, that he would complete the promised evacuation within the period mentioned, or sooner.

It was reasonably expected that the proceedings thus contemplated would produce a crisis of great political interest in the Republic of Mexico. The newly appointed Minister of the United States, Mr. Campbell, was therefore sent forward, on the 9th day of November last, to assume his proper functions as Minister Plenipotentiary of the United States to that Republic. It was also thought expedient that he should be attended in the vicinity of Mexico by the Lieutenant General of the Army of the United States, with the view of obtaining such information as might be important to determine the course to be pursued by the United States in re-establishing and maintaining necessary and proper intercourse with the Republic of Mexico. Deeply interested in the cause of liberty and humanity, it seemed an obvious duty on our part to exercise whatever influence we possessed for the restoration and permanent establishment in that country of a domestic and republican form of government.

Such was the condition of affairs in regard to Mexico, when, on the 22d of November last, official information was received from Paris that the Emperor of France had some time before decided not to withdraw a detachment of his forces in the month of November past, according to engagement, but that this decision was made with the purpose of withdrawing the whole of those forces in the ensuing spring. Of this determination, however, the United States had not received any

notice or intimation; and, so soon as the information was received by the Government, care was taken to make known its dissent to the Emperor of France.

I cannot forego the hope that France will reconsider the subject, and adopt some resolution in regard to the evacuation of Mexico which will conform as nearly as practicable with the existing engagement, and thus meet the just expectations of the United States. The papers relating to the subject will be laid before you. It is believed that, with the evacuation of Mexico by the expeditionary forces, no subject for serious differences between France and the United States would remain. The expressions of the Emperor and people of France warrant a hope that the traditionary friendship between the two countries might, in that case, be renewed and permanently restored.

A claim of a citizen of the United States for indemnity for spoliations committed on the high seas by the French authorities, in the exercise of a belligerent power against Mexico, has been met by the Government of France with a proposition to defer settlement until a mutual convention for the adjustment of all claims of citizens and subjects of both countries, arising out of the recent wars on this Continent, shall be agreed upon by the two countries. The suggestion is not deemed unreasonable, but it belongs to Congress to direct the manner in which claims for indemnity by foreigners, as well as by citizens of the United States, arising out of the late civil war, shall be adjudicated and determined. I have no doubt that the subject of all such claims will engage your attention at a convenient and proper time. * * * * *

In the performance of a duty imposed upon me by the Constitution, I have thus submitted to the representatives of the States and of the people such information of our domestic and foreign affairs as the public interests seem to require. Our Government is now undergoing its most trying ordeal, and my earnest prayer is that the peril may be successfully and finally passed, without impairing its original strength and symmetry. The interests of the nation are best to be promoted by the revival of fraternal relations, the complete obliteration of our past differences, and the reinauguration of all the pursuits of peace. Directing our efforts to the early accomplishment of these great ends, let us endeavor to preserve harmony between the co-ordinate Departments of the Government, that each in its proper sphere may cordially co-operate with the other in securing the maintenance of the Constitution, the preservation of the Union, and the perpetuity of our free institutions.

ANDREW JOHNSON.

WASHINGTON, *December* 3, 1866.

Veto of the Second Freedmen's Bureau Bill, July 16, 1866.*

To the House of Representatives:

A careful examination of the bill passed by the two Houses of Congress, entitled "An act to continue in force and to amend 'An act to establish a Bureau for the relief of Freedmen and Refugees,' and for other purposes," has convinced me that the legislation which it proposes would not be consistent with the welfare of the country, and that it falls clearly within the reasons assigned in my message of the 19th of February last, returning, without my signature, a similar measure which originated in the Senate. It is not my purpose to repeat the objections which I then urged. They are yet fresh in your recollection, and can be readily examined as a part of the records of one branch of the national Legislature. Adhering to the principles set forth in that message, I now reaffirm them and the line of policy therein indicated.

The only ground upon which this kind of legislation can be justified is that of the war-making power. The act of which this bill is intended as amendatory was passed during the existence of the war. By its own provisions, it is to terminate within one year from the cessation of hostilities and the declaration of peace. It is therefore yet in existence, and it is likely that it will continue in force as long as the freedmen may require the benefit of its provisions. It will certainly remain in operation, as a law, until some months subsequent to the meeting of the next session of Congress, when, if experience shall make evident the necessity of additional legislation, the two Houses will have ample time to mature and pass the requisite measures. In the mean time the questions arise, why should this war measure be continued beyond the period designated in the original act; and why, in time of peace, should military tribunals be created to continue until each "State shall be fully restored in its constitutional relations to the Government, and shall be duly represented in the Congress of the United States?"

It was manifest, with respect to the act approved March 3, 1865, that prudence and wisdom alike required that jurisdiction over all cases concerning the free enjoyment of the immunities and rights of citizenship, as well as the protection of person and property, should be conferred upon some tribunal in every State or district where the ordinary course of judicial proceedings was interrupted by the rebellion, and until the same should be fully restored. At that time, therefore, an urgent necessity existed for the passage of some such law. Now, however, war has substantially ceased; the ordinary course of judicial proceedings is no longer interrupted; the courts, both State and Federal, are in full, complete, and successful operation, and through them every person, regardless of race and color, is entitled to and can be heard. The protection granted to the white citizen is already conferred by law upon the freedman; strong and stringent guards, by way of penalties and punishments, are thrown around his person and property, and it is believed that ample protection will be afforded him by due process of law, without resort to the dangerous expedient of "military tribunals," now that the war has been brought to a close. The necessity no longer existing for such tribunals, which had their origin in the war, grave objections to their continuance must present themselves to the minds of all reflecting and dispassionate men. Independently of the danger, in representative republics, of conferring upon the military, in time of peace,

* For veto of freedmen's bill of February 29, 1866, see pages 68–74 of Political Manual for 1866.

extraordinary powers—so carefully guarded against by the patriots and statesmen of the earlier days of the Republic, so frequently the ruin of Governments founded upon the same free principles, and subversive of the rights and liberties of the citizen—the question of practical economy earnestly commends itself to the consideration of the law-making power. With an immense debt already burdening the incomes of the industrial and laboring classes, a due regard for their interests, so inseparably connected with the welfare of the country, should prompt us to rigid economy and retrenchment, and influence us to abstain from all legislation that would unnecessarily increase the public indebtedness. Tested by this rule of sound political wisdom, I can see no reason for the establishment of the "military jurisdiction" conferred upon the officials of the bureau by the fourteenth section of the bill.

By the laws of the United States and of the different States, competent courts, Federal and State, have been established, and are now in full practical operation. By means of these civil tribunals ample redress is afforded for all private wrongs, whether to the person or the property of the citizen, without denial or unnecessary delay. They are open to all, without regard to color or race. I feel well assured that it will be better to trust the rights, privileges, and immunities of the citizen to tribunals thus established, and presided over by competent and impartial judges, bound by fixed rules of law and evidence, and where the right of trial by jury is guarantied and secured, than to the caprice or judgment of an officer of the bureau, who, it is possible, may be entirely ignorant of the principles that underlie the just administration of the law. There is danger, too, that conflict of jurisdiction will frequently arise between the civil courts and these military tribunals, each having concurrent jurisdiction over the person and the cause of action, the one judicature administered and controlled by civil law, the other by the military. How is the conflict to be settled, and who is to determine between the two tribunals when it arises? In my opinion, it is wise to guard against such conflict by leaving to the courts and juries the protection of all civil rights and the redress of all civil grievances.

The fact cannot be denied that, since the actual cessation of hostilities, many acts of violence—such, perhaps, as had never been witnessed in their previous history—have occurred in the States involved in the recent rebellion. I believe, however, that public sentiment will sustain me in the assertion that such deeds of wrong are not confined to any particular State or section, but are manifested over the entire country, demonstrating that the cause that produced them does not depend upon any particular locality, but is the result of the agitation and derangement incident to a long and bloody civil war. While the prevalence of such disorders must be greatly deplored, their occasional and temporary occurrence would seem to furnish no necessity for the extension of the bureau beyond the period fixed in the original act.

Besides the objections which I have thus briefly stated, I may urge upon your consideration the additional reason, that recent developments in regard to the practical operations of the bureau in many of the States show that in numerous instances it is used by its agents as a means of promoting their individual advantage, and that the freedmen are employed for the advancement of the personal ends of the officers instead of their own improvement and welfare, thus confirming the fears originally entertained by many, that the continuation of such a bureau for any unnecessary length of time would inevitably result in fraud, corruption, and oppression. It is proper to state that in cases of this character investigations have been promptly ordered, and the offender punished whenever his guilt has been satisfactorily established.

As another reason against the necessity of the legislation contemplated by this measure, reference may be had to the "civil rights bill," now a law of the land, and which will be faithfully executed so long as it shall remain unrepealed and may not be declared unconstitutional by courts of competent jurisdiction. By that act it is enacted "that all persons born in the United States, and not subject to any foreign Power, excluding Indians not taxed, are hereby declared to be citizens of the United States; and such citizens, of every race and color, without regard to any previous condition of slavery or involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall have the same right, in every State and Territory in the United States, to make and enforce contracts, to sue, be parties, and give evidence, to inherit, purchase, lease, sell, hold, and convey real and personal property, and to full and equal benefit of all laws and proceedings for the security of person and property, as is enjoyed by white citizens, and shall be subject to like punishment, pains, and penalties, and to none other, any law, statute, ordinance, regulation, or custom to the contrary notwithstanding."

By the provisions of the act full protection is afforded, through the district courts of the United States, to all persons injured, and whose privileges, as thus declared, are in any way impaired; and heavy penalties are denounced against the person who wilfully violates the law. I need not state that that law did not receive my approval; yet its remedies are far more preferable than those proposed in the present bill, the one being civil and the other military.

By the sixth section of the bill herewith returned, certain proceedings by which the lands in the "parishes of St. Helena and St. Luke, South Carolina," were sold and bid in, and afterwards disposed of by the tax commissioners, are ratified and confirmed. By the seventh, eighth, ninth, tenth, and eleventh sections provisions by law are made for the disposal of the lands thus acquired to a particular class of citizens. While the quieting of titles is deemed very important and desirable, the discrimination made in the bill seems objectionable, as does also the attempt to confer upon the commissioners judicial powers, by which citizens of the United States are to be deprived of their property in a mode contrary to that provision of the Constitution which declares that no person "shall be deprived of life, liberty, or property without due process of law." As a general principle, such legislation is unsafe,

unwise, partial, and unconstitutional. It may deprive persons of their property who are equally deserving objects of the nation's bounty as those whom, by this legislation, Congress seeks to benefit. The title to the land thus to be portioned out to a favored class of citizens must depend upon the regularity of the tax sales, under the law as it existed at the time of the sale, and no subsequent legislation can give validity to the rights thus acquired, as against the original claimants. The attention of Congress is therefore invited to a more mature consideration of the measures proposed in these sections of the bill.

In conclusion, I again urge upon Congress the danger of class legislation, so well calculated to keep the public mind in a state of uncertain expectation, disquiet, and restlessness, and to encourage interested hopes and fears that the national Government will continue to furnish to classes of citizens in the several States means for support and maintenance, regardless of whether they pursue a life of indolence or of labor, and regardless also of the constitutional limitations of the national authority in times of peace and tranquillity.

The bill is herewith returned to the House of Representatives, in which it originated, for its final action. ANDREW JOHNSON.

WASHINGTON, D. C., *July* 16, 1866.

Copy of the Vetoed Bill.

AN ACT to continue in force and to amend "An act to establish a Bureau for the relief of Freedmen and Refugees," and for other purposes.

Be it enacted, &c., That the act to establish a Bureau for the relief of Freedmen and Refugees, approved March third, eighteen hundred and sixty-five, shall continue in force for the term of two years from and after the passage of this act.

SEC. 2. That the supervision and care of said bureau shall extend to all loyal refugees and freedmen, so far as the same shall be necessary to enable them as speedily as practicable to become self-supporting citizens of the United States, and to aid them in making the freedom conferred by proclamation of the Commander-in-Chief, by emancipation under the laws of States, and by constitutional amendment, available to them and beneficial to the Republic.

SEC. 3. That the President shall, by and with the advice and consent of the Senate, appoint two assistant commissioners, in addition to those authorized by the act to which this is an amendment, who shall give like bonds and receive the same annual salaries provided in said act; and each of the assistant commissioners of the bureau shall have charge of one district containing such refugees or freedmen, to be assigned him by the Commissioner, with the approval of the President. And the Commissioner shall, under the direction of the President, and so far as the same shall be, in his judgment, necessary for the efficient and economical administration of the affairs of the bureau, appoint such agents, clerks, and assistants as may be required for the proper conduct of the bureau. Military officers or enlisted men may be detailed for service and assigned to duty under this act; and the President may, if in his judgment safe and judicious so to do, detail from the Army all the officers and agents of this bureau; but no officer so assigned shall have increase of pay or allowances. Each agent or clerk, not heretofore authorized by law, not being a military officer, shall have an annual salary of not less than $500, nor more than $1,200, according to the service required of him. And it shall be the duty of the Commissioner, when it can be done consistently with public interest, to appoint, as assistant commissioners, agents, and clerks, such men as have proved their loyalty by faithful service in the armies of the Union during the rebellion. And all persons appointed to service under this act and the act to which this is an amendment, shall be so far deemed in the military service of the United States as to be under the military jurisdiction and entitled to the military protection of the Government while in discharge of the duties of their office.

SEC. 4. That officers of the Veteran Reserve Corps or of the volunteer service, now on duty in the Freedmen's Bureau as assistant commissioners, agents, medical officers, or in other capacities, whose regiments or corps have been or may hereafter be mustered out of service, may be retained upon such duty as officers of said bureau, with the same compensation as is now provided by law for their respective grades; and the Secretary of War shall have power to fill vacancies until other officers can be detailed in their places without detriment to the public service.

SEC. 5. That the second section of the act to which this is an amendment shall be deemed to authorize the Secretary of War to issue such medical stores or other supplies and transportation, and afford such medical or other aid as may be needful for the purposes named in said section: *Provided*, That no person shall be deemed "destitute," "suffering," or "dependent upon the Government for support," within the meaning of this act, who is able to find employment, and could, by proper industry or exertion, avoid such destitution, suffering, or dependence.

SEC. 6. Whereas, by the provisions of an act approved February sixth, eighteen hundred and sixty-three, entitled "An act to amend an act entitled 'An act for the collection of direct taxes in insurrectionary districts within the United States, and for other purposes,' approved June seventh, eighteen hundred and sixty-two," certain lands in the parishes of St. Helena and St. Luke, South Carolina, were bid in by the United States at public tax sales, and by the limitation of said act the time of redemption of said lands has expired; and whereas, in accordance with instructions issued by President Lincoln on the sixteenth day of September, eighteen hundred and sixty-three, to the United States direct tax commissioners for South Carolina, certain lands bid in by the United States in the parish of St. Helena, in said State, were in part sold by the said tax commissioners to "heads of families of the African race," in parcels of not more than twenty acres to each purchaser; and whereas, under the said instructions, the said tax commissioners did also set apart as "school farms" certain parcels of land in said parish, numbered on their plats from one to thirty-three, inclusive,

making an aggregate of six thousand acres, more or less: Therefore, *be it further enacted*, That the sales made to "heads of families of the African race," under the instructions of President Lincoln to the United States direct tax commissioners for South Carolina, of date of September sixteenth, eighteen hundred and sixty-three, are hereby confirmed and established; and all leases which have been made to such "heads of families" by said direct tax commissioners, shall be changed into certificates of sale in all cases wherein the lease provides for such substitution; and all the lands now remaining unsold, which come within the same designation, being eight thousand acres, more or less, shall be disposed of according to said instructions.

SEC. 7. That all other lands bid in by the United States at tax sales, being thirty-eight thousand acres, more or less, and now in the hands of the said tax commissioners as the property of the United States, in the parishes of St. Helena and St. Luke, excepting the "school farms," as specified in the preceding section, and so much as may be necessary for military and naval purposes at Hilton Head, Bay Point, and Land's End, and excepting also the city of Port Royal, on St. Helena island, and the town of Beaufort, shall be disposed of in parcels of twenty acres, at one dollar and fifty cents per acre, to such persons, and to such only, as have acquired and are now occupying lands under and agreeably to the provisions of General Sherman's special field order, dated at Savannah, Georgia, January sixteen, eighteen hundred and sixty-five, and the remaining lands, if any, shall be disposed of in like manner to such persons as had acquired lands agreeably to the said order of General Sherman but who have been dispossessed by the restoration of the same to former owners: *Provided*, That the lands sold in compliance with the provisions of this and the preceding section shall not be alienated by their purchasers within six years from and after the passage of this act.

SEC. 8. That the "school farms" in the parish of St. Helena, South Carolina, shall be sold, subject to any leases of the same, by the said tax commissioners, at public auction, on or before the first day of January, eighteen hundred and sixty-seven, at not less than ten dollars per acre; and the lots in the city of Port Royal, as laid down by the said tax commissioners, and the lots and houses in the town of Beaufort, which are still held in like manner, shall be sold at public auction; and the proceeds of said sales, after paying expenses of the surveys and sales, shall be invested in United States bonds, the interest of which shall be appropriated, under the direction of the Commissioner, to the support of schools, without distinction of color or race, on the islands in the parishes of St. Helena and St. Luke.

SEC 9. That the assistant commissioners for South Carolina and Georgia are hereby authorized to examine all claims to lands in their respective States which are claimed under the provisions of General Sherman's special field order, and to give each person having a valid claim a warrant upon the direct tax commissioners for South Carolina for twenty acres of land; and the said direct tax commissioners shall issue to every person, or to his or her heirs, but in no case to any assigns, presenting such warrant, a lease of twenty acres of land, as provided for in section seven, for the term of six years; but at any time thereafter, upon the payment of a sum not exceeding one dollar and fifty cents per acre, the person holding such lease shall be entitled to a certificate of sale of said tract of twenty acres from the direct tax commissioner or such officer as may be authorized to issue the same; but no warrant shall be held valid longer than two years after the issue of the same.

SEC. 10. That the direct tax commissioners for South Carolina are hereby authorized and required, at the earliest day practicable, to survey the lands designated in section seven into lots of twenty acres each, with proper metes and bounds distinctly marked, so that the several tracts shall be convenient in form, and as near as practicable have an average of fertility and woodland; and the expense of such surveys shall be paid from the proceeds of sales of said lands, or, if sooner required, out of any moneys received for other lands on these islands, sold by the United States for taxes, and now in the hands of the direct tax commissioners.

SEC. 11. That restoration of lands occupied by freedmen under General Sherman's field order dated at Savannah, Georgia, January sixteenth, eighteen hundred and sixty-five, shall not be made until after the crops of the present year shall have been gathered by the occupants of said lands, nor until a fair compensation shall have been made to them by the former owners of such lands, or their legal representatives, for all improvements or betterments erected or constructed thereon, and after due notice of the same being done shall have been given by the assistant commissioner.

SEC. 12. That the Commissioner shall have power to seize, hold, use, lease, or sell all buildings, and tenements, and any lands appertaining to the same, or otherwise, formerly held under color of title by the late so-called Confederate States, and not heretofore disposed of by the United States, and any buildings or lands held in trust for the same by any person or persons, and to use the same or appropriate the proceeds derived therefrom to the education of the freed people; and whenever the bureau shall cease to exist, such of said so-called Confederate States as shall have made provision for the education of their citizens without distinction of color shall receive the sum remaining unexpended of such sales or rentals, which shall be distributed among said States for educational purposes in proportion to their population.

SEC. 13. That the Commissioner of this bureau shall at all times co-operate with private benevolent associations of citizens in aid of freedmen, and with agents and teachers, duly accredited and appointed by them, and shall hire or provide by lease, buildings for purposes of education whenever such associations shall, without cost to the Government, provide suitable teachers and means of instruction; and he shall furnish such protection as may be required for the safe conduct of such schools.

SEC. 14. That in every State or district where

the ordinary course of judicial proceedings has been interrupted by the rebellion, and until the same shall be fully restored, and in every State or district whose constitutional relations to the Government have been practically discontinued by the rebellion, and until such State shall have been restored in such relations, and shall be duly represented in the Congress of the United States, the right to make and enforce contracts, to sue, be parties, and give evidence, to inherit, purchase, lease, sell, hold, and convey real and personal property, and to have full and equal benefit of all laws and proceedings concerning personal liberty, personal security, and the acquisition, enjoyment, and disposition of estate, real and personal, including the constitutional right to bear arms, shall be secured to and enjoyed by all the citizens of such State or district without respect to race or color, or previous condition of slavery. And whenever in either of said States or districts the ordinary course of judicial proceedings has been interrupted by the rebellion, and until the same shall be fully restored, and until such State shall have been restored in its constitutional relations to the Government, and shall be duly represented in the Congress of the United States, the President shall, through the Commissioner and the officers of the bureau, and under such rules and regulations as the President, through the Secretary of War, shall prescribe, extend military protection and have military jurisdiction over all cases and questions concerning the free enjoyment of such immunities and rights; and no penalty or punishment for any violation of law shall be imposed or permitted because of race or color, or previous condition of slavery, other or greater than the penalty or punishment to which white persons may be liable by law for the like offense. But the jurisdiction conferred by this section upon the officers of the bureau shall not exist in any State where the ordinary course of judicial proceedings has not been interrupted by the rebellion, and shall cease in every State when the courts of the State and the United States are not disturbed in the peaceable course of justice, and after such State shall be fully restored in its constitutional relations to the Government, and shall be duly represented in the Congress of the United States.

SEC 15. That all officers, agents, and employees of this bureau, before entering upon the duties of their office, shall take the oath prescribed in the first section of the act to which this is an amendment; and all acts or parts of acts inconsistent with the provisions of this act are hereby repealed.

The votes on this bill were:

May 29—The HOUSE passed its bill, differing in some details from the above—yeas 96, nays 32, as follow:

YEAS—Messrs. Allison, Ames, Anderson, Delos R. Ashley, James M. Ashley, Baker, Baldwin, Banks, Baxter, Beaman, Bidwell, Blaine, Bromwell, Buckland, Reader W. Clarke, Sidney Clarke, Cobb, Cook, Cullom, Dawes, Defrees, Deming, Dixon, Dodge, Donnelly, Dumont, Eckley, Eggleston, Eliot, Farquhar, Ferry, Garfield, Abner C. Harding, Hart, Henderson, Higby, Holmes, Hooper, Asahel W. Hubbard, Chester D. Hubbard, Demas Hubbard, jr., John H. Hubbard, James R. Hubbell, Ingersoll, Jenckes, Julian, Kelley, Latham, George V. Lawrence, William Lawrence, Loan, Longyear, Lynch, Marston, McClurg, McKee, McRuer, Mercur, Moorhead, Morrill, Morris, Myers, O'Neill, Orth, Paine, Patterson, Perham, Pike, Plants, Price, Alexander H. Rice, John H. Rice, Rollins, Sawyer, Schenck, Scofield, Shellabarger, Sloan, Starr, Stevens, Stillwell, Thayer, Francis Thomas, Trowbridge, Upson, Van Aernam, Burt Van Horn, Ward, Henry D. Washburn, William B. Washburn, Welker, Whaley, Williams, James F. Wilson, Stephen F. Wilson, Woodbridge—96.

NAYS—Messrs. *Ancona, Bergen, Chanler*, Darling, Davis, *Dawson, Eldridge, Glossbrenner, Goodyear, Grider*, Hale, *Aaron Harding, Hogan, Edwin N. Hubbell, James M. Humphrey*, Kuydendall, *Le Blond, Marshall*, Marvin, *McCullough, Niblack, Nicholson, Radford, S. J. Randall*, Raymond, *Ritter, Ross, Sitgreaves, Strouse, Taylor, Trimble, Wright*—32.

June 26—SENATE amended and passed it, there being no division on the final vote. A motion to postpone it till the next December was lost—yeas 6, (Messrs. *Buckalew, Davis, Doolittle, Guthrie, Hendricks, Riddle*,) nays 27.

July 2—In SENATE, the report of the Committee of Conference, being the above law, was agreed to, without a division.

July 3—IN HOUSE, a motion to table the report was lost—yeas 25, nays 102. The yeas were:

YEAS—Messrs. *Ancona, Boyer, Coffroth, Dawson, Eldridge, Finck, Glossbrenner, Aaron Harding, Johnson, Kerr, Le Blond, Marshall, Niblack, Noell, Ritter, Rogers, Ross*, Rousseau, *Shanklin, Sitgreaves, Strouse, Taber, Taylor, Thornton, Trimble.*

It was then agreed to.

July 16—The bill was vetoed.

Same day—The HOUSE re-passed the bill—yeas 103, nays 33, as follow:

YEAS—Messrs. Alley, Allison, Ames, Anderson, Delos R. Ashley, James M. Ashley, Baker, Banks, Barker, Baxter, Benjamin, Bidwell, Bingham, Boutwell, Bromwell, Buckland, Bundy, Reader W. Clarke, Sidney Clarke, Cobb, Conkling Cook, Dawes, Defrees, Delano, Deming, Donnelly, Driggs, Eckley, Eggleston, Eliot, Ferry, Garfield, Grinnell, Griswold, Hale, Hart, Henderson, Higby, Holmes, Hooper, Hotchkiss, Asahel W. Hubbard, Chester D. Hubbard, John H. Hubbard, James R. Hubbell, Hulburd, Julian, Kasson, Kelley, Ketcham, Laflin, Latham, George V. Lawrence, William Lawrence, Loan, Longyear, Lynch, Marston, Marvin, McClurg, McKee, McRuer, Mercur, Miller, Moorhead, Morrill, Morris, Moulton, Myers, Newell, O'Neill, Orth, Perham, Pike, Plants, Price, William H. Randall, Alexander H. Rice, Rollins, Sawyer, Scofield, Shellabarger, Spalding, Stevens, Thayer, John L. Thomas, jr., Trowbridge, Van Aernam, Burt Van Horn, Robert T. Van Horn, Ward, Warner, Ellihu B. Washburne, William B. Washburn, Welker, Wentworth, Whaley, Williams, James F. Wilson, Stephen F. Wilson, Windom, Woodbridge—103.

NAYS—Messrs. *Ancona, Boyer, Dawson, Eldridge, Finck, Glossbrenner, Grider, Aaron Harding, Hogan, J. M. Humphrey, Johnson, Kerr*, Kuykendall, *Le Blond, Marshall, Niblack, Nicholson, Noell*, Phelps, *Samuel J. Randall*, Raymond, *Ritter, Rogers, Ross*, Rousseau, *Shanklin, Sitgreaves, Taber, Taylor, Thornton, Trimble*, Henry D. Washburn, *Wright*—33.

Same day—The SENATE re-passed it—yeas 33, nays 12, as follow:

YEAS—Messrs. Anthony, Brown, Chandler, Clark, Conness, Cragin, Creswell, Edmunds, Fessenden, Foster, Grimes, Harris, Henderson, Howard, Howe, Kirkwood, Lane of Indiana, Morgan, Morrill, Nye, Poland, Pomeroy, Ramsey, Sherman, Sprague, Stewart, Sumner, Trumbull, Wade, Willey, Williams, Wilson, Yates—33.

NAYS—Messrs. *Buckalew, Davis, Doolittle, Guthrie, Hendricks, Johnson, McDougall, Nesmith, Norton, Riddle, Saulsbury*, Van Winkle—12.

Whereupon the PRESIDENT of the Senate declared the bill a law.

Restoring Tennessee to her Relations to the Union.

1866, March 5—Mr. BINGHAM reported from the Select Joint Committee on Reconstruction a joint resolution concerning the State of Tennessee, (for which see Political Manual for 1866, p. 105, 106.) No vote was taken upon it.

1866, July 20—The HOUSE passed the resolution in these words:

Joint Resolution declaring Tennessee again entitled to Senators and Representatives in Congress.

Whereas the State of Tennessee has in good faith ratified the article of amendment to the Constitution of the United States, proposed by the Thirty-Ninth Congress to the Legislatures of the several States, and has also shown to the satisfaction of Congress, by a proper spirit of obedience in the body of her people, her return to her due allegiance to the Government, laws, and authority of the United States: Therefore,

Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the State of Tennessee is hereby restored to her former proper, practical relations to the Union, and is again entitled to be represented by Senators and Representatives in Congress, duly elected and qualified, upon their taking the oaths of office required by existing laws.

The preamble was agreed to—yeas 86, nays 48; and the resolution passed—yeas 126, nays 12, as follow:

YEAS—Messrs. Allison, Ames, *Ancona*, George W. Anderson, Delos R. Ashley, James M. Ashley, Baker, Banks, Baxter, Bidwell, Bingham, *Boyer*, Bromwell, Buckland, Bundy, Reader W. Clarke, Sidney Clarke, Cobb, Colfax, Conkling, Davis, Dawes, *Dawson*, Defrees, Delano, Deming, Donnelly, Driggs, Eckley, Eggleston, *Eldridge*, Farnsworth, Farquhar, Ferry, *Finck*, Garfield, *Glossbrenner*, *Aaron Harding*, Abner C. Harding, Hart, *Hogan*, Holmes, Hooper, Hotchkiss, Asahel W. Hubbard, Chester D Hubbard, John H. Hubbard, James R. Hubbell, Hulburd, *James M. Humphrey*, Ingersoll, *Johnson*, Kasson, *Kerr*, Ketcham, Koontz, Kuykendall, Laflin, Latham, George V. Lawrence, William Lawrence, Lynch, Marston, *McCullough*, McRuer, Mercur, Miller, Moorhead, Morrill, Morris, Moulton, Myers, Newell, *Niblack*, *Nicholson*, *Noell*, O'Neill, Orth, Patterson, Perham, Phelps, Pike, Plants, Price, *Radford*, *Samuel J. Randall*, William H. Randall, Raymond, Alexander H. Rice, John H. Rice, *Ritter*, *Rogers*, Rollins, *Ross*, Rousseau, Sawyer, Schenck, Scofield, Shellabarger, *Sitgreaves*, Spalding, Stevens, *Strouse*, Taber, Taylor, Thayer, Francis Thomas, John L. Thomas, jr., *Thornton*, *Trimble*, Trowbridge, Van Aernam, Burt Van Horn, Robert T. Van Horn, Ward, Warner, Henry D. Washburn, William B. Washburn, Welker, Wentworth, Whaley, James F. Wilson, Stephen F. Wilson, Windom, Woodbridge, *Wright*—126.

NAYS—Messrs. Alley, Benjamin, Boutwell, Eliot, Higby, Jenckes, Julian, Kelley, Loan, McClurg, Paine, Williams—12.

July 23, 1866—The SENATE amended and passed it in these words:

Joint Resolution restoring Tennessee to her relations to the Union.

Whereas, in the year eighteen hundred and sixty-one, the government of the State of Tennessee was seized upon and taken possession of by persons in hostility to the United States, and the inhabitants of said State, in pursuance of an act of Congress, were declared to be in a state of insurrection against the United States; and whereas said State government can only be restored to its former political relations in the Union by the consent of the law-making power of the United States; and whereas the people of said State did, on the twenty-second day of February, eighteen hundred and sixty-five, by a large popular vote, adopt and ratify a constitution of government whereby slavery was abolished and all ordinances and laws of secession, and debts contracted under the same, were declared void; and whereas a State government has been organized under said constitution which has ratified the amendment to the Constitution of the United States abolishing slavery, also the amendment proposed by the Thirty-Ninth Congress, and has done other acts proclaiming and denoting loyalty; Therefore,

Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the State of Tennessee is hereby restored to her former proper, practical relations to the Union, and is again entitled to be represented by Senators and Representatives in Congress.

The vote was—yeas 28, nays 4, as follow:

YEAS—Messrs. Anthony, Chandler, Clark, Conness, *Cowan*, Creswell, *Doolittle*, Edmunds, Foster, *Hendricks*, Howard, Howe, Lane, Morgan, Morrill, *Nesmith*, Nye, Poland, Pomeroy, Sprague, Stewart, Trumbull, Van Winkle, Wade, Willey, Williams, Wilson, Yates—28.

NAYS—Messrs. Brown, *Buckalew*, *McDougall*, Sumner—4.

July 23—The HOUSE agreed to the Senate amendments, yeas 93, nays 26, as follow:

YEAS—Messrs. Allison, Ames, Anderson, Delos R. Ashley, Baker, Banks, Barker, Baxter, Benjamin, Bidwell, Bingham, Boutwell, Bromwell, Broomall, Buckland, Reader W. Clarke, Cobb, Conkling, Defrees, Dixon, Donnelly, Driggs, Eckley, Eggleston, Eliot, Farnsworth, Farquhar, Ferry, Garfield, Abner C. Harding, Hart, Hayes, Higby, Holmes, Hooper, Hotchkiss, Asahel W. Hubbard, Chester D. Hubbard, John H. Hubbard, James R. Hubbell, Hulburd, Ingersoll, Julian, Kelley, Ketcham, Koontz, Kuykendall, Laflin, George V Lawrence, William Lawrence, Loan, Lynch, Marston, McClurg, McRuer, Mercur, Miller, Moorhead, Morrill, Morris, Moulton, Myers, Newell, O'Neill, Orth, Paine, Perham, Plants, Price, William H. Randall, Alexander H. Rice, John H. Rice, Rollins, Sawyer, Schenck, Scofield, Shellabarger, Spalding, Stevens, John L. Thomas, jr., Trowbridge, Van Aernam, Burt Van Horn, Robert T. Van Horn, Ward, Welker, Wentworth, Whaley, Williams, James F. Wilson, Stephen F. Wilson, Windom, Woodbridge—93.

NAYS—Messrs. *Ancona*, *Bergen*, *Boyer*, *Dawson*, *Eldridge*, *Finck*, *Glossbrenner*, *Aaron Harding*, Jenckes, *Johnson*, Latham, *Le Blond*, *Marshall*, *Niblack*, *Nicholson*, *Radford*, *Samuel J. Randall*, Raymond, *Ritter*, *Ross*, *Shanklin*, *Strouse*, *Taber*, *Taylor*, *Thornton*, *Trimble*—26.

July 24—The PRESIDENT approved the bill, sending to the House this message:

To the House of Representatives:

The following "joint resolution, restoring Tennessee to her relations to the Union," was last evening presented for my approval:

"Whereas, in the year eighteen hundred and sixty-one, the government of the State of Tennessee was seized upon and taken possession of by persons in hostility to the United States, and the inhabitants of said State, in pursuance of an act of Congress, were declared to be in a state of insurrection against the United States; and whereas said State government can only be restored to its former political relations in the Union by the consent of the law-making power of the United States; and whereas the people of said State did, on the twenty-second day of February, eighteen hundred and sixty-five, by a large popular vote, adopt and ratify a constitution of government whereby slavery was abolished and all ordinances and laws of secession, and debts contracted under the same, were declared void; and whereas a State government has been organized under said constitution, which has ratified the amendment to the Constitution of the United States abolishing slavery, also the amendment proposed by the Thirty-Ninth Congress, and has done other acts proclaiming and denoting loyalty; Therefore,

"*Be it resolved by the Senate and House of Representatives of the United States in Congress assembled,* That the State of Tennessee is hereby

restored to her former practical relations to the Union, and is again entitled to be represented by Senators and Representatives in Congress."

The preamble simply consists of statements, some of which are assumed, while the resolution is merely a declaration of opinion. It comprises no legislation, nor does it confer any power which is binding upon the respective Houses, the Executive, or the States. It does not admit to their seats in Congress the Senators and Representatives from the State of Tennessee; for, notwithstanding the passage of the resolution, each House, in the exercise of the constitutional right to judge for itself of the elections, returns, and qualifications of its members, may, at its discretion, admit them, or continue to exclude them. If a joint resolution of this character were necessary and binding as a condition precedent to the admission of members of Congress, it would happen, in the event of a veto by the Executive, that Senators and Representatives could only be admitted to the halls of legislation by a two-thirds vote of each of the two Houses.

Among other reasons recited in the preamble for the declarations contained in the resolution is the ratification, by the State government of Tennessee, of "the amendment to the Constitution of the United States abolishing slavery, and also the amendment proposed by the Thirty-Ninth Congress." If, as is also declared in the preamble, "said State government can only be restored to its former political relations in the Union by the consent of the law-making power of the United States," it would really seem to follow that the joint resolution which, at this late day, has received the sanction of Congress, should have been passed, approved, and placed on the statute books before any amendment to the Constitution was submitted to the Legislature of Tennessee for ratification. Otherwise, the inference is plainly deducible that while, in the opinion of Congress, the people of a State may be too strongly disloyal to be entitled to representation, they may, nevertheless, during the suspension of their "former proper practical relations to the Union," have an equally potent voice with other and loyal States in propositions to amend the Constitution, upon which so essentially depend the stability, prosperity, and very existence of the nation.

A brief reference to my annual message of the 4th of December last will show the steps taken by the Executive for the restoration to their constitutional relations to the Union of the States that had been affected by the rebellion.

Upon the cessation of active hostilities, provisional governors were appointed, conventions called, Governors elected by the people, Legislatures assembled, and Senators and Representatives chosen to the Congress of the United States. At the same time the courts of the United States were reopened, the blockade removed, the custom-houses re-established, and postal operations resumed. The amendment to the Constitution abolishing slavery forever within the limits of the country was also submitted to the States, and they were thus invited to, and did participate in its ratification, thus exercising the highest functions pertaining to a State. In addition, nearly all of these States, through their conventions and Legislatures, had adopted and ratified constitutions "of government, whereby slavery was abolished, and all ordinances and laws of secession, and debts contracted under the same, were declared void."

So far, then, the political existence of the States and their relations to the Federal Government had been fully and completely recognized and acknowledged by the executive department of the Government; and the completion of the work of restoration, which had progressed so favorably, was submitted to Congress, upon which devolved all questions pertaining to the admission to their seats of the Senators and Representatives chosen from the States whose people had engaged in the rebellion.

All these steps had been taken, when, on the fourth day of December, eighteen hundred and sixty-five, the Thirty-Ninth Congress assembled. Nearly eight months have elapsed since that time; and no other plan of restoration having been proposed by Congress for the measures instituted by the Executive, it is now declared in the joint resolution submitted for my approval, "that the State of Tennessee is hereby restored to her former proper practical relations to the Union, and is again entitled to be represented by Senators and Representatives in Congress." Thus, after the lapse of nearly eight months, Congress proposes to pave the way to the admission to representation of one of the eleven States whose people arrayed themselves in rebellion against the constitutional authority of the Federal Government.

Earnestly desiring to remove every cause of further delay, whether real or imaginary, on the part of Congress to the admission to seats of loyal Senators and Representatives from the State of Tennessee, I have, notwithstanding the anomalous character of this proceeding, affixed my signature to the resolution. My approval, however, is not to be construed as an acknowledgment of the right of Congress to pass laws preliminary to the admission of duly qualified representatives from any of the States. Neither is it to be considered as committing me to all the statements made in the preamble, some of which are, in my opinion, without foundation in fact, especially the assertion that the State of Tennessee has ratified the amendment to the Constitution of the United States proposed by the Thirty-Ninth Congress. No official notice of such ratification has been received by the Executive, or filed in the Department of State; on the contrary, unofficial information from most reliable sources induces the belief that the amendment has not yet been constitutionally sanctioned by the Legislature of Tennessee. The right of each House, under the Constitution, to judge of the elections, returns, and qualifications of its own members is undoubted, and my approval or disapproval of the resolution could not in the slightest degree increase or diminish the authority in this respect conferred upon the two branches of Congress.

In conclusion, I cannot too earnestly repeat my recommendation for the admission of Tennessee, and all other States, to a fair and equal participation in national legislation, when they present themselves in the persons of loyal Sena-

tors and Representatives, who can comply with all the requirements of the Constitution and the laws. By this means, harmony and reconciliation will be effected, the practical relations of all the States to the Federal Government re-established, and the work of restoration, inaugurated upon the termination of the war, successfully completed. ANDREW JOHNSON.

WASHINGTON, D. C., *July* 24, 1866.

Veto of the District of Columbia Suffrage Bill, January 7, 1867.

To the Senate of the United States:

I have received and considered a bill entitled "An act to regulate the elective franchise in the District of Columbia," passed by the Senate on the 13th of December, and by the House of Representatives on the succeeding day. It was presented for my approval on the 26th ultimo, six days after the adjournment of Congress, and is now returned with my objections to the Senate, in which House it originated.

Measures having been introduced, at the commencement of the first session of the present Congress, for the extension of the elective franchise to persons of color in the District of Columbia, steps were taken by the corporate authorities of Washington and Georgetown to ascertain and make known the opinion of the people of the two cities upon a subject so immediately affecting their welfare as a community. The question was submitted to the people at special elections, held in the month of December, 1865, when the qualified voters of Washington and Georgetown, with great unanimity of sentiment, expressed themselves opposed to the contemplated legislation. In Washington, in a vote of 6,556—the largest, with but two exceptions, ever polled in that city—only thirty-five ballots were cast for negro suffrage; while in Georgetown, in an aggregate of 813 votes—a number considerably in excess of the average vote at the four preceding annual elections—but one was given in favor of the proposed extension of the elective franchise. As these elections seem to have been conducted with entire fairness, the result must be accepted as a truthful expression of the opinion of the people of the District upon the question which evoked it. Possessing, as an organized community, the same popular rights as the inhabitants of a State or Territory to make known their will upon matters which affect their social and political condition, they could have selected no more appropriate mode of memorializing Congress upon the subject of this bill than through the suffrages of their qualified voters.

Entirely disregarding the wishes of the people of the District of Columbia, Congress has deemed it right and expedient to pass the measure now submitted for my signature. It therefore becomes the duty of the Executive, standing between the legislation of the one and the will of the other, fairly expressed, to determine whether he should approve the bill, and thus aid in placing upon the statute-books of the nation a law against which the people to whom it is to apply have solemnly and with such unanimity protested, or whether he should return it with his objections, in the hope that, upon reconsideration, Congress, acting as the representatives of the inhabitants of the seat of Government, will permit them to regulate a purely local question as to them may seem best suited to their interests and condition.

The District of Columbia was ceded to the United States by Maryland and Virginia, in order that it might become the permanent seat of Government of the United States. Accepted by Congress, it at once became subject to the "exclusive legislation" for which provision is made in the Federal Constitution. It should be borne in mind, however, that in exercising its functions as the law-making power of the District of Columbia, the authority of the National Legislature is not without limit, but that Congress is bound to observe the letter and spirit of the Constitution, as well in the enactment of local laws for the seat of Government as in legislation common to the entire Union. Were it to be admitted that the right "to exercise exclusive legislation in all cases whatsoever" conferred upon Congress unlimited power within the District of Columbia, bills of attainder and *ex post facto* laws might be passed, and titles of nobility granted within its boundaries. Laws might be made "respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble and to petition the Government for a redress of grievances." "The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures" might with impunity be violated. The right of trial by jury might be denied, excessive bail required, excessive fines imposed, and cruel and unusual punishments inflicted. Despotism would thus reign at the seat of government of a free republic, and, as a place of permanent residence, it would be avoided by all who prefer the blessings of liberty to the mere emoluments of official position.

It should also be remembered that in legislating for the District of Columbia, under the Federal Constitution, the relation of Congress to its inhabitants is analogous to that of a Legislature to the people of a State, under their own local constitution. It does not, therefore, seem to be asking too much that, in matters pertaining to the District, Congress should have a like respect for the will and interest of its inhabitants as is entertained by a State Legislature for the wishes and prosperity of those for whom they legislate. The spirit of our Constitution and the genius of our Government require that, in regard to any law which is to affect and have a permanent bearing upon a people, their will should exert at least a reasonable influence upon those who are acting in the capacity of their legislators. Would, for instance, the Legislature of the State of New York, or of Pennsylvania, or of Indiana, or of any State in the Union, in opposition to the expressed will of a large majority of the people whom they were chosen to represent, arbitrarily force upon them, as voters, all persons of the African or negro race, and make them eligible for office without any other qualification than a certain term of residence within the State? In neither of the States named

would the colored population, when acting together, be able to produce any great social or political result. Yet, in New York, before he can vote, the man of color must fulfill conditions that are not required of the white citizen; in Pennsylvania the elective franchise is restricted to white freemen; while in Indiana negroes and mulattoes are expressly excluded from the right of suffrage. It hardly seems consistent with the principles of right and justice that representatives of States where suffrage is either denied the colored man, or granted to him on qualifications requiring intelligence or property, should compel the people of the District of Columbia to try an experiment which their own constituents have thus far shown an unwillingness to test for themselves. Nor does it accord with our republican ideas that the principle of self government should lose its force when applied to the residents of the District, merely because their legislators are not, like those of the States, responsible, through the ballot, to the people for whom they are the law making power.

The great object of placing the seat of Government under the exclusive legislation of Congress was to secure the entire independence of the General Government from undue State influence, and to enable it to discharge, without danger of interruption or infringement of its authority, the high functions for which it was created by the people. For this important purpose it was ceded to the United States by Maryland and Virginia, and it certainly never could have been contemplated, as one of the objects to be attained by placing it under the exclusive jurisdiction of Congress, that it would afford to propagandists or political parties a place for an experimental test of their principles and theories. While, indeed, the residents of the seat of Government are not citizens of any State, and are not therefore allowed a voice in the Electoral College, or representation in the councils of the nation, they are, nevertheless, American citizens, entitled as such to every guaranty of the Constitution, to every benefit of the laws, and to every right which pertains to citizens of our common country. In all matters, then, affecting their domestic affairs, the spirit of our democratic form of government demands that their wishes should be consulted and respected, and they taught to feel that, although not permitted practically to participate in national concerns, they are nevertheless under a paternal Government, regardful of their rights, mindful of their wants, and solicitous for their prosperity. It was evidently contemplated that all local questions would be left to their decision, at least to an extent that would not be incompatible with the object for which Congress was granted exclusive legislation over the seat of Government. When the Constitution was yet under consideration, it was assumed by Mr. Madison that its inhabitants would be allowed "a municipal legislature for local purposes, derived from their own suffrages." When, for the first time, Congress, in the year 1800, assembled at Washington, President Adams, in his speech at its opening, reminded the two Houses that it was for them to consider whether the local powers over the District of Columbia, vested by the Constitution in the Congress of the United States, should be immediately exercised, and he asked them to "consider it as the capital of a great nation, advancing with unexampled rapidity in arts, in commerce, in wealth, and in population, and possessing within itself those resources which, if not thrown away or lamentably misdirected, would secure to it a long course of prosperity and self-government." Three years had not elapsed when Congress was called upon to determine the propriety of retroceding to Maryland and Virginia the jurisdiction of the territory which they had respectively relinquished to the Government of the United States. It was urged on the one hand that exclusive jurisdiction was not necessary or useful to the Government; that it deprived the inhabitants of the District of their political rights; that much of the time of Congress was consumed in legislation pertaining to it; that its government was expensive; that Congress was not competent to legislate for the District, because the members were strangers to its local concerns; and that it was an example of a government without representation—an experiment dangerous to the liberties of the States. On the other hand, it was held, among other reasons, and successfully, that the Constitution, the acts of cession of Virginia and Maryland, and the act of Congress accepting the grant, all contemplated the exercise of exclusive legislation by Congress, and that its usefulness, if not its necessity, was inferred from the inconvenience which was felt for want of it by the Congress of the Confederation; that the people themselves, who, it was said, had been deprived of their political rights, had not complained, and did not desire a retrocession; that the evil might be remedied by giving them a representation in Congress when the District should become sufficiently populous, and, in the mean time, a local legislature; that, if the inhabitants had not political rights, they had great political influence; that the trouble and expense of legislating for the District would not be great, but would diminish, and might, in a great measure, be avoided by a local legislature; and that Congress could not retrocede the inhabitants without their consent. Continuing to live substantially under the laws that existed at the time of the cession, and such changes only having been made as were suggested by themselves, the people of the District have not sought, by a local legislature, that which has generally been willingly conceded by the Congress of the nation.

As a general rule, sound policy requires that the Legislature should yield to the wishes of a people, when not inconsistent with the Constitution and the laws. The measures suited to one community might not be well adapted to the condition of another; and the persons best qualified to determine such questions are those whose interests are to be directly affected by any proposed law. In Massachusetts, for instance, male persons are allowed to vote without regard to color, provided they possess a certain degree of intelligence. In a population in that State of 1,231,066, there were, by the census of 1860, only 9,602 persons of color; and of the males over twenty years of age, there were 339,086 white to 2,602 colored. By the same

official enumeration, there were in the District of Columbia 60,764 whites to 14,316 persons of the colored race. Since then, however, the population of the District has largely increased, and it is estimated that at the present time there are nearly a hundred thousand whites to thirty thousand negroes. The cause of the augmented numbers of the latter class needs no explanation. Contiguous to Maryland and Virginia, the District, during the war, became a place of refuge for those who escaped from servitude, and it is yet the abiding place of a considerable proportion of those who sought within its limits a shelter from bondage. Until then held in slavery, and denied all opportunities for mental culture, their first knowledge of the Government was acquired when, by conferring upon them freedom, it became the benefactor of their race; the test of their capability for improvement began when, for the first time, the career of free industry and the avenues to intelligence were opened to them. Possessing these advantages but a limited time—the greater number perhaps having entered the District of Columbia during the later years of the war, or since its termination, we may well pause to inquire whether, after so brief a probation, they are as a class capable of an intelligent exercise of the right of suffrage, and qualified to discharge the duties of official position. The people who are daily witnesses of their mode of living, and who have become familiar with their habits of thought, have expressed the conviction that they are not yet competent to serve as electors, and thus become eligible for office in the local governments under which they live. Clothed with the elective franchise, their numbers, already largely in excess of the demand for labor, would be soon increased by an influx from the adjoining States. Drawn from fields where employment is abundant, they would in vain seek it here, and so add to the embarrassments already experienced from the large class of idle persons congregated in the District. Hardly yet capable of forming correct judgments upon the important questions that often make the issues of a political contest, they could readily be made subservient to the purposes of designing persons. While in Massachusetts, under the census of 1860, the proportion of white to colored males over twenty years of age was one hundred and thirty to one, here the black race constitutes nearly one-third of the entire population, whilst the same class surrounds the District on all sides, ready to change their residence at a moment's notice, and with all the facility of a nomadic people, in order to enjoy here, after a short residence, a privilege they find nowhere else. It is within their power in one year to come into the District in such numbers as to have the supreme control of the white race, and to govern them by their own officers, and by the exercise of all the municipal authority, among the rest, of the power of taxation over property in which they have no interest. In Massachusetts, where they have enjoyed the benefits of a thorough educational system, a qualification of intelligence is required, while here suffrage is extended to all, without discrimination, as well to the most incapable, who can prove a residence in the District of one year, as to those persons of color who, comparatively few in number, are permanent inhabitants, and having given evidence of merit and qualification, are recognized as useful and responsible members of the community. Imposed upon an unwilling people, placed, by the Constitution, under the exclusive legislation of Congress, it would be viewed as an arbitrary exercise of power, and as an indication by the country of the purpose of Congress to compel the acceptance of negro suffrage by the States. It would engender a feeling of opposition and hatred between the two races, which, becoming deep-rooted and ineradicable, would prevent them from living together in a state of mutual friendliness. Carefully avoiding every measure that might tend to produce such a result, and following the clear and well-ascertained popular will, we should assiduously endeavor to promote kindly relations between them, and thus, when that popular will leads the way, prepare for the gradual and harmonious introduction of this new element into the political power of the country.

It cannot be urged that the proposed extension of suffrage in the District of Columbia is necessary to enable persons of color to protect either their interests or their rights. They stand here precisely as they stand in Pennsylvania, Ohio, and Indiana. Here, as elsewhere, in all that pertains to civil rights, there is nothing to distinguish this class of persons from citizens of the United States; for they possess the "full and equal benefit of all laws and proceedings for the security of person and property as is enjoyed by white citizens," and are made "subject to like punishment, pains, and penalties, and to none other, any law, statute, ordinance, regulation, or custom to the contrary notwithstanding." Nor, as has been assumed, are their suffrages necessary to aid a loyal sentiment here; for local governments already exist of undoubted fealty to the Government, and are sustained by communities which were among the first to testify their devotion to the Union, and which, during the struggle, furnished their full quotas of men to the military service of the country.

The exercise of the elective franchise is the highest attribute of an American citizen, and, when guided by virtue, intelligence, patriotism, and a proper appreciation of our institutions, constitutes the true basis of a democratic form of government, in which the sovereign power is lodged in the body of the people. Its influence for good necessarily depends upon the elevated character and patriotism of the elector; for if exercised by persons who do not justly estimate its value, and who are indifferent as to its results, it will only serve as a means of placing power in the hands of the unprincipled and ambitious, and must eventuate in the complete destruction of that liberty of which it should be the most powerful conservator. Great danger is, therefore, to be apprehended from an untimely extension of the elective franchise to any new class in our country, especially when the large majority of that class, in wielding the power thus placed in their hands, cannot be expected correctly to comprehend the duties and responsibilities which pertain to suffrage. Yesterday,

as it were, four millions of persons were held in a condition of slavery that had existed for generations; to-day they are freemen, and are assumed by law to be citizens. It cannot be presumed, from their previous condition of servitude, that as a class they are as well informed as to the nature of our Government as the intelligent foreigner who makes our land the home of his choice. In the case of the latter, neither a residence of five years, and the knowledge of our institutions which it gives, nor attachment to the principles of the Constitution, are the only conditions upon which he can be admitted to citizenship. He must prove, in addition, a good moral character, and thus give reasonable ground for the belief that he will be faithful to the obligations which he assumes as a citizen of the Republic. Where a people—the source of all political power—speak, by their suffrages, through the instrumentality of the ballot-box, it must be carefully guarded against the control of those who are corrupt in principle and enemies of free institutions, for it can only become to our political and social system a safe conductor of healthy popular sentiment when kept free from demoralizing influences. Controlled, through fraud and usurpation, by the designing, anarchy and despotism must inevitably follow. In the hands of the patriotic and worthy, our Government will be preserved upon the principles of the Constitution inherited from our fathers. It follows, therefore, that in admitting to the ballot-box a new class of voters not qualified for the exercise of the elective franchise, we weaken our system of government instead of adding to its strength and durability.

In returning this bill to the Senate, I deeply regret that there should be any conflict of opinion between the legislative and executive departments of the Government in regard to measures that vitally affect the prosperity and peace of the country. Sincerely desiring to reconcile the States with one another, and the whole people to the Government of the United States, it has been my earnest wish to co-operate with Congress in all measures having for their object a proper and complete adjustment of the questions resulting from our late civil war. Harmony between the co-ordinate branches of the Government, always necessary for the public welfare, was never more demanded than at the present time, and it will therefore be my constant aim to promote, as far as possible, concert of action between them. The differences of opinion that have already occurred have rendered me only the more cautious, lest the Executive should encroach upon any of the prerogatives of Congress, or, by exceeding in any manner the constitutional limit of his duties, destroy the equilibrium which should exist between the several co-ordinate departments, and which is so essential to the harmonious working of the Government. I know it has been urged that the executive department is more likely to enlarge the sphere of its action than either of the other two branches of the Government, and especially in the exercise of the veto power conferred upon it by the Constitution. It should be remembered, however, that this power is wholly negative and conservative in its character, and was intended to operate as a check upon unconstitutional, hasty, and improvident legislation, and as a means of protection against invasions of the just powers of the executive and judicial departments. It is remarked by Chancellor Kent that "to enact laws is a transcendent power; and, if the body that possesses it be a full and equal representation of the people, there is danger of its pressing with destructive weight upon all the other parts of the machinery of government. It has, therefore, been thought necessary, by the most skillful and most experienced artists in the science of civil polity, that strong barriers should be erected for the protection and security of the other necessary powers of the Government. Nothing has been deemed more fit and expedient for the purpose than the provision that the head of the executive department should be so constituted as to secure a requisite share of independence, and that he should have a negative upon the passing of laws; and that the judiciary power, resting on a still more permanent basis, should have the right of determining upon the validity of laws by the standard of the Constitution."

The necessity of some such check in the hands of the Executive is shown by reference to the most eminent writers upon our system of government, who seem to concur in the opinion that encroachments are most to be apprehended from the department in which all legislative powers are vested by the Constitution. Mr. Madison, in referring to the difficulty of providing some practical security for each against the invasion of the others, remarks that "the legislative department is everywhere extending the sphere of its activity, and drawing all power into its impetuous vortex." "The founders of our republics * * * seem never to have recollected the danger from legislative usurpations, which, by assembling all power in the same hands, must lead to the same tyranny as is threatened by executive usurpations." "In a representative republic, where the executive magistracy is carefully limited, both in the extent and the duration of its power, and where the legislative power is exercised by an assembly which is inspired by a supposed influence over the people with an intrepid confidence in its own strength; which is sufficiently numerous to feel all the passions which actuate a multitude, yet not so numerous as to be incapable of pursuing the objects of its passions by means which reason prescribes—it is against the enterprising ambition of this department that the people ought to indulge all their jealousy and exhaust all their precautions." "The legislative department derives a superiority in our governments from other circumstances. Its constitutional powers being at once more extensive and less susceptible of precise limits, it can with the greater facility mask, under complicated and indirect measures, the encroachments which it makes on the co-ordinate departments." "On the other side, the executive power being restrained within a narrower compass, and being more simple in its nature, and the judiciary being described by landmarks still less uncertain, projects of usurpation by either of these departments would immediately betray and defeat themselves. Nor is this all. As the legislative

department alone has access to the pockets of the people, and has, in some constitutions, full discretion, and in all a prevailing influence over the pecuniary rewards of those who fill the other departments, a dependence is thus created in the latter which gives still greater facility to encroachments of the former." "We have seen that the tendency of republican governments is to an aggrandizement of the legislative, at the expense of the other departments."

Mr. Jefferson, in referring to the early constitution of Virginia, objected that by its provisions all the powers of government, legislative, executive, and judicial, resulted to the legislative body, holding that "the concentrating these in the same hands is precisely the definition of despotic government. It will be no alleviation that these powers will be exercised by a plurality of hands, and not by a single one. One hundred and seventy-three despots would surely be as oppressive as one." "As little will it avail us that they are chosen by ourselves. An elective despotism was not the government we fought for, but one which should not only be founded on free principles, but in which the powers of government should be so divided and balanced among several bodies of magistracy as that no one could transcend their legal limits without being effectually checked and restrained by the others. For this reason, that Convention which passed the ordinance of government laid its foundation on this basis, that the legislative, executive, and judiciary departments should be separate and distinct, so that no person should exercise the powers of more than one of them at the same time. But no barrier was provided between these several powers. The judiciary and executive members were left dependent on the legislative for their subsistence in office, and some of them for their continuance in it. If, therefore, the legislature assumes executive and judiciary powers, no opposition is likely to be made, nor, if made, can be effectual; because in that case they may put their proceedings into the form of an act of assembly, which will render them obligatory on the other branches. They have accordingly, in many instances, decided rights which should have been left to judiciary controversy; and the direction of the executive, during the whole time of their session, is becoming habitual and familiar."

Mr. Justice Story, in his Commentaries on the Constitution, reviews the same subject, and says:

"The truth is, that the legislative power is the great and overruling power in every free government." "The representatives of the people will watch with jealousy every encroachment of the executive magistrate, for it trenches upon their own authority. But who shall watch the encroachment of these representatives themselves? Will they be as jealous of the exercise of power by themselves as by others?" "There are many reasons which may be assigned for the engrossing influence of the legislative department. In the first place, its constitutional powers are more extensive, and less capable of being brought within precise limits than those of either of the other departments. The bounds of the executive authority are easily marked out and defined. It reaches few objects, and those are known. It cannot transcend them without being brought in contact with the other departments. Laws may check and restrain and bound its exercise. The same remarks apply with still greater force to the judiciary. The jurisdiction is, or may be, bounded to a few objects or persons; or, however general and unlimited, its operations are necessarily confined to the mere administration of private and public justice. It cannot punish without law. It cannot create controversies to act upon. It can decide only upon rights and cases as they are brought by others before it. It can do nothing for itself. It must do everything for others. It must obey the laws; and if it corruptly administers them, it is subjected to the power of impeachment. On the other hand, the legislative power, except in the few cases of constitutional prohibition, is unlimited. It is forever varying its means and its ends. It governs the institutions and laws and public policy of the country. It regulates all its vast interests. It disposes of all its property. Look but at the exercise of two or three branches of its ordinary powers. It levies all taxes; it directs and appropriates all supplies; it gives the rules for the descent, distribution, and devises of all property held by individuals. It controls the sources and the resources of wealth. It changes at its will the whole fabric of the laws. It moulds at its pleasure almost all the institutions which give strength and comfort and dignity to society. In the next place, it is the direct, visible representative of the will of the people in all the changes of times and circumstances. It has the pride as well as the power of numbers. It is easily moved and steadily moved by the strong impulses of popular feeling and popular odium. It obeys, without reluctance, the wishes and the will of the majority for the time being. The path to public favor lies open by such obedience; and it finds not only support, but impunity, in whatever measures the majority advises, even though they transcend the constitutional limits. It has no motive, therefore, to be jealous or scrupulous in its own use of power; and it finds its ambition stimulated and its arm strengthened by the countenance and the courage of numbers. These views are not alone those of men who look with apprehension upon the fate of republics; but they are also freely admitted by some of the strongest advocates for popular rights and the permanency of republican institutions." "Each department should have a will of its own." "Each should have its own independence secured beyond the power of being taken away by either or both of the others. But at the same time the relations of each to the other should be so strong that there should be a mutual interest to sustain and protect each other. There should not only be constitutional means, but personal motives to resist encroachments of one on either of the others. Thus, ambition would be made to counteract ambition; the desire of power to check power; and the pressure of interest to balance an opposing interest." "The judiciary is naturally and almost necessarily, (as has been already said,) the weakest department. It can have no means of influence by patronage. Its powers can never be wielded for itself. It has no command over the purse or the sword of the nation. It can neither lay taxes, nor appropriate money, nor command armies, nor appoint to office. It is never brought into contact with the people by constant appeals and solicitations, and private intercourse, which belong to all the other departments of Government. It is seen only in controversies, or in trials and punishments. Its rigid justice and impartiality give it no claims to favor, however they may to respect. It stands solitary and unsupported except by that portion of public opinion which is interested only in the strict administration of justice. It can rarely secure the sympathy or zealous support either of the executive or the legislature. If they are not (as is not unfrequently the case) jealous of its prerogatives, the constant necessity of scrutinizing the acts of each, upon the application of any private person, and the painful duty of pronouncing judgment that these acts are a departure from the law or Constitution, can have no tendency to conciliate kindness or nourish influence. It would seem, therefore, that some additional guards would, under the circumstances, be necessary to protect this department from the absolute dominion of the others. Yet rarely have any such guards been applied; and every attempt to introduce them has been resisted with a pertinacity which demonstrates how slow popular leaders are to introduce checks upon their own power, and how slow the people are to believe that the judiciary is the real bulwark of their liberties." "If any department of the Government has undue influence or absorbing power, it certainly has not been the executive or judiciary."

In addition to what has been said by these distinguished writers, it may also be urged that the dominant party in each House may, by the expulsion of a sufficient number of members, or by the exclusion from representation of a requisite number of States, reduce the minority to less than one-third. Congress, by these means, might be enabled to pass a law, the objections of the President to the contrary notwithstanding, which would render impotent the other two departments of the Government, and make inoperative the wholesome and restraining power which it was

intended by the framers of the Constitution should be exerted by them. This would be a practical concentration of all power in the Congress of the United States; this, in the language of the author of the Declaration of Independence, would be "precisely the definition of despotic government."

I have preferred to reproduce these teachings of the great statesmen and constitutional lawyers of the early and later days of the Republic rather than to rely simply upon an expression of my own opinions. We cannot too often recur to them, especially at a conjuncture like the present. Their application to our actual condition is so apparent that they now come to us a living voice, to be listened to with more attention than at any previous period of our history. We have been and are yet in the midst of popular commotion. The passions aroused by a great civil war are still dominant. It is not a time favorable to that calm and deliberate judgment which is the only safe guide when radical changes in our institutions are to be made. The measure now before me is one of those changes. It initiates an untried experiment for a people who have said, with one voice, that it is not for their good. This alone should make us pause; but it is not all. The experiment has not been tried, or so much as demanded, by the people of the several States for themselves. In but few of the States has such an innovation been allowed as giving the ballot to the colored population without any other qualification than a residence of one year, and in most of them the denial of the ballot to this race is absolute, and by fundamental law placed beyond the domain of ordinary legislation. In most of those States the evil of such suffrage would be partial; but, small as it would be, it is guarded by constitutional barriers. Here the innovation assumes formidable proportions, which may easily grow to such an extent as to make the white population a subordinate element in the body politic.

After full deliberation upon this measure, I cannot bring myself to approve it, even upon local considerations, nor yet as the beginning of an experiment on a larger scale. I yield to no one in attachment to that rule of general suffrage which distinguishes our policy as a nation. But there is a limit, wisely observed hitherto, which makes the ballot a privilege and a trust, and which requires of some classes a time suitable for probation and preparation. To give it indiscriminately to a new class, wholly unprepared by previous habits and opportunities to perform the trust which it demands, is to degrade it, and finally to destroy its power; for it may be safely assumed that no political truth is better established than that such indiscriminate and all-embracing extension of popular suffrage must end at last in its destruction.

ANDREW JOHNSON.

WASHINGTON, *January* 5, 1867.

Copy of the Bill Vetoed.

AN ACT to regulate the elective franchise in the District of Columbia.

Be it enacted, &c., That from and after the passage of this act each and every male person, excepting paupers and persons under guardianship, of the age of twenty-one years and upwards, who has not been convicted of any infamous crime or offense, and excepting persons who may have voluntarily given aid and comfort to the rebels in the late rebellion, and who shall have been born or naturalized in the United States, and who shall have resided in the said District for the period of one year, and three months in the ward or election precinct in which he shall offer to vote, next preceding any election therein, shall be entitled to the elective franchise, and shall be deemed an elector and entitled to vote at any election in said District, without any distinction on account of color or race.

SEC. 2. That any person whose duty it shall be to receive votes at any election within the District of Columbia, who shall wilfully refuse to receive, or who shall wilfully reject, the vote of any person entitled to such right under this act, shall be liable to an action of tort by the person injured, and shall be liable, on indictment and conviction, if such act was done knowingly, to a fine not exceeding five thousand dollars, or to imprisonment for a term not exceeding one year, in the jail of said District, or to both.

SEC. 3. That if any person or persons shall wilfully interrupt or disturb any such elector in the exercise of such franchise, he or they shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined in any sum not to exceed one thousand dollars, or be imprisoned in the jail in said District for a period not to exceed thirty days, or both, at the discretion of the court.

SEC. 4. That it shall be the duty of the several courts having criminal jurisdiction in said District to give this act in special charge to the grand jury at the commencement of each term of the court next preceding the holding of any general or city election in said District.

SEC. 5. That the mayors and aldermen of the cities of Washington and Georgetown, respectively, on or before the first day of March in each year, shall prepare a list of the persons they judge to be qualified to vote in the several wards of said cities in any election; and said mayors and aldermen shall be in open session to receive evidence of the qualification of persons claiming the right to vote in any election therein, and for correcting said list, on two days in each year, not exceeding five days prior to the annual election for the choice of city officers, giving previous notice of the time and place of each session in some newspaper printed in said District.

SEC. 6. That on or before the first day of March the mayors and aldermen of said cities shall post up a list of voters thus prepared in one or more public places in said cities, respectively, at least ten days prior to said annual election.

SEC. 7. That the officers presiding at any election shall keep and use the check-list herein required at the polls during the election of all officers, and no vote shall be received unless delivered by the voter in person, and not until the presiding officer has had opportunity to be satisfied of his identity, and shall find his name on the list, and mark it, and ascertain that his vote is single.

SEC. 8. That it is hereby declared unlawful

for any person, directly or indirectly, to promise, offer, or give, or procure or cause to be promised, offered, or given, any money, goods, right in action, bribe, present, or reward, or any promise, understanding, obligation, or security for the payment or delivery of any money, goods, right in action, bribe, present, or reward, or any other valuable thing whatever, to any person, with intent to influence his vote to be given at any election hereafter to be held within the District of Columbia; and every person so offending shall, on conviction thereof, be fined in any sum not exceeding two thousand dollars, or imprisoned not exceeding two years, or both, at the discretion of the court.

SEC. 9. That any person who shall accept, directly or indirectly, any money, goods, right in action, bribe, present, or reward, or any promise, understanding, obligation, or security for the payment or delivery of any money, goods, right in action, bribe, present, or reward, or any other valuable thing whatever, to influence his vote at any election hereafter to be held in the District of Columbia, shall, on conviction, be imprisoned not less than one year and be forever disfranchised.

SEC. 10. That all acts and parts of acts inconsistent with this act be, and the same are hereby, repealed.

The votes on this bill were:

1866, December 14—The SENATE passed it—yeas 32, nays 13, as follow:

YEAS—Messrs. Anthony, Brown, Cattell, Chandler, Conness, Creswell, Edmunds, Fessenden, Fogg, Frelinghuysen, Grimes, Harris, Henderson, Howard, Howe, Kirkwood, Lane, Morgan, Morrill, Poland, Pomeroy, Ramsey, Ross, Sherman, Sprague, Stewart, Sumner, Trumbull, Wade, Willey, Williams, Wilson—32.

NAYS—Messrs. *Buckalew, Cowan, Davis, Dixon, Doolittle,* Foster, *Hendricks, Nesmith, Norton, Patterson, Riddle, Saulsbury,* Van Winkle—13.

1866, December 14—The HOUSE passed it—yeas 128, nays 46, as follow:

YEAS—Messrs. Alley, Allison, Ames, Anderson, Arnell, Delos R. Ashley, James M. Ashley, Baker, Baldwin, Banks, Barker, Baxter, Beaman, Bidwell, Bingham, Blaine, Blow, Boutwell, Brandegee, Bromwell, Broomall, Buckland, Bundy, Reader W. Clarke, Sidney Clarke, Cobb, Conkling, Cook, Culver, Dawes, Defrees, Delano, Deming, Dixon, Dodge, Donnelly, Driggs, Eckley, Eggleston, Eliot, Farnsworth, Ferry, Garfield, Grinnell, Griswold, Hale, Abner C. Harding, Hart, Hawkins, Hayes, Henderson, Higby, Hill, Holmes, Hooper, Hotchkiss, Demas Hubbard, jr., John H. Hubbard, James R. Hubbell, Hulburd, Ingersoll, Jenckes, Julian, Kasson, Kelley, Kelso, Ketcham, Koontz, Laflin, George V. Lawrence, William Lawrence, Loan, Longyear, Lynch, Marston, Marvin, Maynard, McClurg, McIndoe, McRuer, Mercur, Miller, Moorhead, Morrill, Morris, Moulton, Myers, Newell, O'Neill, Orth, Paine, Patterson, Perham, Pike, Pomeroy, Price, Raymond, Alexander H. Rice, John H. Rice, Rollins, Sawyer, Schenck, Scofield, Shellabarger, Sloan, Spalding, Starr, Stevens, Stokes, Thayer, Francis Thomas, Trowbridge, Upson, Van Aerman, Burt Van Horn, Robert T. Van Horn, Hamilton Ward, Warner, Ellihu B. Washburne, William B. Washburn, Welker, Wentworth, Williams, James F. Wilson, Stephen F. Wilson, Windom, Woodbridge, and SPEAKER COLFAX—128.

NAYS—Messrs. *Ancona, Bergen, Boyer, Campbell, Chanler, Cooper, Dawson, Denison, Eldridge, Finck, Glossbrenner, Goodyear, Aaron Harding, Harris, Hise, Hogan.* Chester D. Hubbard, *Edwin N. Hubbell, Hunter, Kerr,* Kuykendall, Latham, *LeBlond, Leftwich, Marshall,* McKee, *Niblack, Nicholson, Noell,* Phelps, *Samuel J. Randall,* William H. Randall, *Ritter, Rogers, Ross,* Rousseau, *Shanklin, Sitgreaves,* Stillwell, *Strouse, Taber, Nathaniel G. Taylor, Nelson Taylor, Thornton, Andrew H. Ward,* Whaley—46.

1867, January 7—The bill was vetoed.

Same day, the SENATE passed it, notwithstanding the President's objections, by a two-thirds vote—yeas 29, nays 10, as follow:

YEAS—Messrs. Anthony, Cattell, Chandler, Conness, Cragin, Creswell, Edmunds, Fessenden, Fogg, Fowler, Frelinghuysen, Grimes, Henderson, Howard, Howe, Kirkwood, Lane, Morgan, Morrill, Poland, Ramsey, Ross, Sherman, Stewart, Sumner, Trumbull, Wade, Willey, Williams—29.

NAYS—Messrs. *Cowan, Dixon, Doolittle,* Foster, *Hendricks, Johnson, Nesmith, Norton, Patterson,* Van Winkle—10.

January 8—The House passed it—yeas 113, nays 38, as follow:

YEAS—Messrs. Alley, Allison, Ames, Arnell, Delos R. Ashley, James M. Ashley, Baker, Baldwin, Banks, Barker, Baxter, Beaman, Benjamin, Bidwell, Bingham, Blaine, Boutwell, Brandegee, Bromwell, Broomall, Buckland, Bundy, Reader W. Clarke, Sidney Clarke, Cobb, Cook, Cullom, Culver, Darling, Dawes, Defrees, Delano, Deming, Dixon, Dodge, Donnelly, Driggs, Eckley, Eggleston, Farnsworth, Ferquhar, Ferry, Garfield, Grinnell, Abner C. Harding, Hart, Hawkins, Hayes, Henderson, Higby, Hill, Holmes, Hooper, John H. Hubbard, James R. Hubbell, Ingersoll, Jenckes, Julian, Kasson, Kelley, Kelso, Ketcham, Koontz, George V. Lawrence, William Lawrence, Loan, Longyear, Lynch, Marston, Marvin, Maynard, McClurg, McRuer, Mercur, Miller, Morrill, Moulton, Myers, Newell O'Neill, Orth, Paine, Patterson, Perham, Pike, Plants, Price, Raymond, Alexander H. Rice, John H. Rice, Sawyer, Schenck, Scofield, Spalding, Starr, Stokes, Thayer, Francis Thomas, John L. Thomas, jr., Trowbridge, Upson, Van Aernam, Burt Van Horn, Hamilton Ward, Warner, Ellihu B. Washburne, Welker, Wentworth, Williams, James F. Wilson, Stephen F. Wilson, Windom, and SPEAKER COLFAX—113.

NAYS—Messrs. *Ancona, Bergen, Campbell, Chanler, Cooper, Dawson, Eldridge, Finck, Glossbrenner, Aaron Harding, Hise, Hogan.* Chester D. Hubbard, *Humphrey, Hunter, Kerr,* Kuykendall, Latham, *Leftwich, McCullough, Niblack, Nicholson, Noell,* Phelps, *Radford, Samuel J. Randall,* William H. Randall, *Ritter, Rogers, Ross, Shanklin, Strouse, Taber, Nathaniel G. Taylor, Nelson Taylor, Trimble, Andrew H. Ward, Winfield*—38

Whereupon the SPEAKER of the House declared the bill a law.

Veto of the Colorado Bill, January 29, 1867.

To the Senate of the United States:

I return to the Senate, in which House it originated, a bill entitled "An act to admit the State of Colorado into the Union," to which I cannot, consistently with my sense of duty, give my approval. With the exception of an additional section, containing new provisions, it is substantially the same as the bill of a similar title passed by Congress during the last session, submitted to the President for his approval, returned with the objections contained in a message bearing date the 15th of May last, and yet awaiting the reconsideration of the Senate.

A second bill, having in view the same purpose, has now passed both Houses of Congress, and been presented for my signature. Having again carefully considered the subject, I have been unable to perceive any reason for changing the opinions which have already been communicated to Congress. I find, on the contrary, that there are many objections to the proposed legislation, of which I was not at that time aware; and that while several of those which I then assigned have, in the interval, gained in strength, yet others have been created by the altered character of the measure now submitted.

The constitution under which this State government is proposed to be formed very properly contains a provision that all laws in force at the time of its adoption, and the admission of the State into the Union, shall continue as if the constitution had not been adopted. Among those laws is one absolutely prohibiting negroes and mulattoes from voting. At the recent session of the Territorial Legislature a bill for the repeal of this law, introduced into the council, was

almost unanimously rejected; and at the very time when Congress was engaged in enacting the bill now under consideration, the Legislature passed an act excluding negroes and mulattoes from the right to sit as jurors. This bill was vetoed by the Governor of the Territory, who held that by the laws of the United States negroes and mulattoes are citizens, and subject to the duties, as well as entitled to the rights of citizenship. The bill, however, was passed, the objections of the Governor to the contrary notwithstanding, and is now a law of the Territory. Yet in the bill now before me, by which it is proposed to admit the Territory as a State, it is provided that "there shall be no denial of the elective franchise, or any other rights, to any person, by reason of race or color, excepting Indians not taxed."

The incongruity thus exhibited between the legislation of Congress and that of the Territory, taken in connection with the protest against the admission of the State hereinafter referred to, would seem clearly to indicate the impolicy and injustice of the proposed enactment.

It might indeed be a subject of grave inquiry, and doubtless will result in such inquiry if this bill become a law, whether it does not attempt to exercise a power not conferred upon Congress by the Federal Constitution. That instrument simply declares that Congress may admit new States into the Union. It nowhere says that Congress may make new States for the purpose of admitting them into the Union, or for any other purpose; and yet this bill is as clear an attempt to make the institutions as any in which the people themselves could engage.

In view of this action of Congress, the House of Representatives of the Territory have earnestly protested against being forced into the Union without first having the question submitted to the people. Nothing could be more reasonable than the position which they thus assume; and it certainly cannot be the purpose of Congress to force upon a community, against their will, a government which they do not believe themselves capable of sustaining.

The following is a copy of the protest alluded to, as officially transmitted to me:

"Whereas it is announced in the public prints that it is the intention of Congress to admit Colorado as a State into the Union: Therefore,

"*Resolved by the House of Representatives of this Territory*, That, representing as we do the last and only legal expression of public opinion on this question, we earnestly protest against the passage of a law admitting the State, without first having the question submitted to a vote of the people, for the reasons, first, that we have a right to a voice in the selection of the character of our government; second, that we have not a sufficient population to support the expenses of a State government. For these reasons we trust Congress will not force upon us a government against our will."

Upon information which I considered reliable, I assumed in my message of the 15th of May last that the population of Colorado was not more than thirty thousand, and expressed the opinion that this number was entirely too small either to assume the responsibilities or to enjoy the privileges of a State.

It appears that previous to that time the Legislature, with a view to ascertain the exact condition of the Territory, had passed a law authorizing a census of the population to be taken. The law made it the duty of the assessors in the several counties to take the census in connection with the annual assessments, and, in order to secure a correct enumeration of the population, allowed them a liberal compensation for the service by paying them for every name returned, and added to their previous oath of office an oath to perform this duty with fidelity.

From the accompanying official report it appears that returns have been received from fifteen of the eighteen counties into which the State is divided, and that their population amounts in the aggregate to twenty-four thousand nine hundred and nine. The three remaining counties are estimated to contain three thousand, making a total population of twenty-seven thousand nine hundred and nine, (27,909.)

This census was taken in the summer season, when it is claimed that the population is much larger than at any other period, as in the autumn miners, in large numbers, leave their work and return to the East, with the results of their summer enterprise.

The population, it will be observed, is but slightly in excess of one-fifth of the number required as the basis of representation for a single congressional district in any of the States, that number being one hundred and twenty-seven thousand.

I am unable to perceive any good reason for such great disparity in the right of representation, giving, as it would, to the people of Colorado, not only this vast advantage in the House of Representatives, but an equality in the Senate, where the other States are represented by millions. With perhaps a single exception, no such inequality as this has ever before been attempted. I know that it is claimed that the population of the different States at the time of their admission has varied at different periods, but it has not varied much more than the population of each decade and the corresponding basis of representation for the different periods.

The obvious intent of the Constitution was, that no State should be admitted with a less population than the ratio for a Representative at the time of application. The limitation in the second section of the first article of the Constitution, declaring that "each State shall have at least one Representative," was manifestly designed to protect the States which originally composed the Union from being deprived, in the event of a waning population, of a voice in the popular branch of Congress, and was never intended as a warrant to force a new State into the Union with a representative population far below that which might at the time be required of sister members of the Confederacy. This bill, in view of the prohibition of the same section, which declares that "the number of Representatives shall not exceed one for every thirty thousand," is at least a violation of the spirit, if not the letter of the Constitution.

It is respectfully submitted that however Congress, under the pressure of circumstances, may have admitted two or three States with less than a representative population at the time, there has been no instance in which an application for admission has even been entertained when

the population, as officially ascertained, was below thirty thousand.

Were there any doubt of this being the true construction of the Constitution, it would be dispelled by the early and long-continued practice of the Federal Government. For nearly sixty years after the adoption of the Constitution no State was admitted with a population believed at the time to be less than the current ratio for a Representative, and the first instance in which there appears to have been a departure from the principle was in 1845, in the case of Florida. Obviously the result of sectional strife, we would do well to regard it as a warning of evil rather than as an example for imitation, and I think candid men of all parties will agree that the inspiring cause of the violation of this wholesome principle of restraint is to be found in a vain attempt to balance those antagonisms which refused to be reconciled except through the bloody arbitrament of arms. The plain facts of our history will attest that the great and leading States admitted since 1845, viz., Iowa, Wisconsin, California, Minnesota, and Kansas, including Texas, which was admitted that year, have all come with an ample population for one Representative, and some of them with nearly or quite enough for two.

To demonstrate the correctness of my views on this question, I subjoin a table containing a list of the States admitted since the adoption of the Federal Constitution, with the date of admission, the ratio of representation, and the representative population when admitted, deduced from the United States census tables, the calculation being made for the period of the decade corresponding with the date of admission:

States.	*Admitted.*	*Ratio.*	*Population.*
Vermont	1791	33,000	92,320
Kentucky	1792	33,000	95,638
Tennessee	1796	33,000	73,864
Ohio	1802	33,000	82,443
Louisiana	1812	35,000	75,212
Indiana	1816	35,000	98,110
Mississippi	1817	35,000	53,677
Illinois	1818	35,000	46,374
Alabama	1819	35,000	111,[illegible]50
Maine	1820	35,000	298,335
Missouri	1821	35,000	69,260
Arkansas	1836	47,700	65,175
Michigan	1837	47,700	158,072
Florida	1845	70,680	57,951
Texas	1845	70,680	*189,327
Iowa	1846	70,680	132,572
Wisconsin	1848	70,680	250,497
California	1850	70,680	92 597
Oregon	1858	93,492	44,630
Minnesota	1858	93,492	138,909
Kansas	1861	93,492	107,206
West Virginia	1862	93,492	349,628
Nevada	1864	127,000	Not known.

Colorado, which it is now proposed to admit as a State, contains, as has already been stated, a population less than twenty-eight thousand, while the present ratio of representation is one hundred and twenty-seven thousand.

There can be no reason, that I can perceive, for the admission of Colorado that would not apply with equal force to nearly every other Territory now organized; and I submit whether, if this bill become a law, it will be possible to resist the logical conclusion that such Territories as Dakota, Montana, and Idaho, must be received as States whenever they present themselves, without regard to the number of inhabitants they may respectively contain. Eight or ten new Senators, and four or five new members of the House of Representatives would thus be admitted to represent a population scarcely exceeding that which, in any other portion of the nation, is entitled to but a single member of the House of Representatives, while the average for two Senators in the Union, as now constituted, is at least one million of people. It would surely be unjust to all other sections of the Union to enter upon a policy with regard to admission of new States which might result in conferring such a disproportionate share of influence in the national Legislature upon communities which, in pursuance of the wise policy of our fathers, should for some years to come be retained under the fostering care and protection of the national Government. If it is deemed just and expedient now to depart from the settled policy of the nation during all its history, and to admit all the Territories to the rights and privileges of States, irrespective of their population or fitness for such government, it is submitted whether it would not be well to devise such measures as will bring the subject before the country for consideration and decision. This would seem to be evidently wise, because, as has already been stated, if it is right to admit Colorado now, there is no reason for the exclusion of the other Territories.

It is no answer to these suggestions that an enabling act was passed authorizing the people of Colorado to take action on this subject. It is well known that that act was passed in consequence of representations that the population reached, according to some statements, as high as eighty thousand, and to none less than fifty thousand, and was growing with a rapidity which by the time the admission could be consummated would secure a population of over a hundred thousand. These representations prove to have been wholly fallacious, and in addition, the people of the Territory, by a deliberate vote, decided that they would not assume the responsibilities of a State government. By that decision they utterly exhausted all power that was conferred by the enabling act, and there has been no step taken since in relation to the admission that has had the slightest sanction or warrant of law.

The proceeding upon which the present application is based was in the utter absence of all law in relation to it, and there is no evidence that the votes on the question of the formation of a State government bear any relation whatever to the sentiment of the Territory. The protest of the House of Representatives, previously quoted, is conclusive evidence to the contrary.

But if none of these reasons existed against this proposed enactment, the bill itself, besides being inconsistent in its provisions in conferring power upon a person unknown to the laws, and who may never have a legal existence, is so framed as to render its execution almost impossible. It is, indeed, a question whether it is not in itself a nullity. To say the least, it is of exceedingly doubtful propriety to confer the power proposed in the bill upon the "Governor elect;" for, as by its own terms the constitution is not to take effect until after the admission of

* In 1830.

the State, he, in the mean time, has no more authority than any other private citizen. But, even supposing him to be clothed with sufficient authority to convene the Legislature, what constitutes the "State Legislature," to which is to be referred the question of submission to the conditions imposed by Congress? Is it a new body, to be elected and convened by proclamation of the "Governor elect," or is it that body which met more than a year ago, under the provisions of the State constitution? By reference to the second section of the schedule, and to the eighteenth section of the fourth article of the State constitution, it will be seen that the term of the members of the House of Representatives, and that of one-half of the members of the Sen ate, expired on the first Monday of the present month. It is clear that if there were no intrinsic objections to the bill itself in relation to the purposes to be accomplished, this objection would be fatal; as it is apparent that the provisions of the third section of the bill to admit Colorado have reference to a period and a state of facts entirely different from the present, and affairs as they now exist, and, if carried into effect, must necessarily lead to confusion.

Even if it were settled that the old and not a new body were to act, it would be found impracticable to execute the law, because a considerable number of the members, as I am informed, have ceased to be residents of the Territory, and in the sixty days within which the Legislature is to be convened after the passage of the act there would not be sufficient time to fill the vacancies by new elections, were there any authority under which they could be held. It may not be improper to add that if these proceedings were all regular, and the result to be attained were desirable, simple justice to the people of the Territory would require a longer period than sixty days within which to obtain action on the conditions proposed by the third section of the bill. There are, as is well known, large portions of the Territory with which there is and can be no general communication, there being several counties which, from November to May, can only be reached by persons travelling on foot, while with other regions of the Territory, occupied by a large portion of the population, there is very little more freedom of access. Thus, if this bill should become a law, it would be impracticable to obtain any expression of public sentiment in reference to its provisions, with a view to enlighten the Legislature, if the old body were called together; and, of course, equally impracticable to procure the election of a new body. This defect might have been remedied by an extension of the time, and a submission of the question to the people, with a fair opportunity to enable them to express their sentiments.

The admission of a new State has generally been regarded as an epoch in our history, marking the onward progress of the nation; but, after the most careful and anxious inquiry on the subject, I cannot perceive that the proposed proceeding is in conformity with the policy which, from the origin of the Government, has uniformly prevailed in the admission of new States. I therefore return the bill to the Senate without my signature. ANDREW JOHNSON.

WASHINGTON, *January* 28, 1867.

Copy of the Bill Vetoed.

AN ACT to admit the State of Colorado into the Union.

Whereas, on the twenty-first day of March, anno Domini eighteen hundred and sixty-four, Congress passed an act to enable the people of Colorado to form a constitution and State Government, and offered to admit said State ,when so formed, into the Union upon compliance with certain conditions therein specified; and whereas it appears by message of the President of the United States, dated January , eighteen hundred and sixty-six, that the said people have adopted a constitution, which, upon due examination, is found to conform to the provisions and comply with the conditions of said act, and to be republican in its form of government, and that they now ask for admission into the Union:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the constitution and State government which the people of Colorado have formed for themselves be, and the same is hereby, accepted, ratified, and confirmed; and that the said State of Colorado shall be, and hereby is declared to be, one of the United States of America, and is hereby admitted into the Union upon an equal footing with the original States in all respects whatsoever.

SEC. 2. *And be it further enacted,* That the said State of Colorado shall be, and is hereby declared to be, entitled to all the rights privileges, grants, and immunities, and to be subject to all the conditions and restrictions, of an act entitled "An act to enable the people of Colorado to form a constitution and State government, and for the admission of such State into the Union on an equal footing with the original States," approved March twenty-first, eighteen hundred and sixty-four.

SEC. 3. *And be it further enacted,* That this act shall not take effect except upon the fundamental condition that within the State of Colorado there shall be no denial of the elective franchise, or any other rights, to any person by reason of race or color, excepting Indians not taxed; and upon the further fundamental condition that the Legislature elected under said State constitution, by a solemn public act, shall declare the assent of said State to the said fundamental condition, and shall transmit to the President of the United States an authentic copy of said act; upon receipt whereof the President, by proclamation, shall forthwith announce the fact, whereupon said fundamental condition shall be held as a part of the organic law of the State; and thereupon, and without any further proceeding on the part of Congress, the admission of said State into the Union shall be considered as complete. Said State Legislature shall be convened by the Governor elect of said State within sixty days after the passage of this act, to act upon the condition submitted herein.

The votes on this bill were:

1867, January 9—The bill passed the SENATE, yeas 23, nays 11, with the third section in these words:

That this act shall take effect with the fundamental and perpetual condition that within said State of Colorado there shall be no abridgment or denial of the exercise of the elective franchise, or of any other right, to any person by reason of race or color, (excepting Indians not taxed.)

YEAS—Messrs. Anthony, Cattell, Chandler, Conness, Cragin, Creswell, Edmunds, Fowler, Henderson, Howard, Kirkwood, Lane, Morrill, Poland, Ramsey, Ross, Sherman, Stewart, Sumner, Van Winkle, Wade, Willey, Williams—23.

NAYS—Messrs. *Buckalew, Doolittle*, Foster, Grimes, *Hendricks, Johnson*, Morgan, *Nesmith, Norton, Patterson, Riddle*—11.

January 16—The SENATE agreed to the bill with the third section as it stands—yeas 27, nays 12, as follows:

YEAS—Messrs. Anthony, Cattell, Chandler, Conness, Cragin, Fessenden, Fowler, Frelinghuysen, Grimes, Harris, Henderson, Howard, Kirkwood, Lane, Morrill, Poland, Ramsey, Sherman, Sprague, Stewart, Sumner, Van Winkle, Wade, Willey, Williams, Wilson, Yates—27.

NAYS—Messrs. *Buckalew, Dixon, Doolittle*, Edmunds, Foster, *Hendricks, Johnson, Nesmith, Norton, Patterson, Riddle, Saulsbury*—12.

IN HOUSE.

1867, January 15—The bill passed—yeas 90, nays 60, as follow:

YEAS—Messrs. Alley, Allison, Ames, Anderson, Delos R. Ashley, James M. Ashley, Baldwin, Banks, Baxter, Benjamin, Boutwell, Brandegee, Bromwell, Broomall, Bundy, Reader W. Clarke, Cobb, Cook, Cullom, Culver, Dawes, Delano, Deming, Dixon, Dodge, Donnelly, Driggs, Eckley, Eliot, Farquhar, Ferry, Garfield, Grinnell, Griswold, Henderson, Higby, Hill, Holmes, Hooper, Demas Hubbard, jr., John H. Hubbard, J. R. Hubbell, Ingersoll, Jenckes, Julian, Kelley, Koontz, George V. Lawrence, Longyear, Marston, Marvin, McClurg, McIndoe, McRuer, Mercur, Miller, Moorhead, Morris, Moulton, Newell, O'Neill, Orth, Paine, Perham, Plants, Price, Alexander H. Rice, John H. Rice, Rollins, Sawyer, Schenck, Shellabarger, Spalding, Stokes, Thayer, Francis Thomas, John L. Thomas, jr., Trowbridge, Upson, Van Aernam, Burt Van Horn, Warner, Henry D. Washburn, William B. Washburn, Welker, Wentworth, Williams, James F. Wilson, Stephen F. Wilson, Windom—90.

NAYS—Messrs. *Ancona*, Baker, *Bergen*, Bingham, Blaine, *Boyer*, Buckland, *Campbell, Cooper*, Davis, Defrees, *Denison, Eldridge, Finck, Glossbrenner, Goodyear*, Hale, *Aaron Harding*, Abner C. Harding, Hart, Hawkins, *Hise, Hogan*, Chester D. Hubbard, *Edwin N. Hubbell, Humphrey, Hunter, Johnson*, Kelso, *Kerr*, Kuykendall, Latham, *Le Blond, Leftwich*, Lynch, *Marshall*, Maynard, McKee, Morrill, *Niblack, Nicholson*, Pike, *Radford, Samuel J. Randall*, Raymond, *Ritter, Rogers, Ross, Shanklin, Sitgreaves*, Stillwell, *Strouse, Taber, Nathaniel G. Taylor, Nelson Taylor, Thornton, Andrew H. Ward*, Hamilton Ward, Ellihu B. Washburne, Whaley—60.

The vote on substituting the third section as it stands for that of the Senate, taken previously to the above vote, was yeas 84, nays 65, being substantially the same as on the Nebraska bill, below.

January 29—The bill was vetoed, and no votes were subsequently taken on it.

Veto of the Nebraska Bill, January 30, 1867.

To the Senate of the United States:

I return, for reconsideration, a bill entitled "An act for the admission of the State of Nebraska into the Union," which originated in the Senate, and has received the assent of both Houses of Congress. A bill having in view the same object was presented for my approval a few hours prior to the adjournment of the last session; but, submitted at a time when there was no opportunity for a proper consideration of the subject, I withheld my signature, and the measure failed to become a law.

It appears, by the preamble of this bill, that the people of Nebraska, availing themselves of the authority conferred upon them by the act passed on the 19th day of April, 1864, "have adopted a constitution which, upon due examination, is found to conform to the provisions and comply with the conditions of said act, and to be republican in its form of government, and that they now ask for admission into the Union." This proposed law would, therefore, seem to be based upon the declaration contained in the enabling act, that, upon compliance with its terms, the people of Nebraska should be admitted into the Union upon an equal footing with the original States. Reference to the bill, however, shows that while, by the first section, Congress distinctly accepts, ratifies, and confirms the constitution and State government which the people of the Territory have formed for themselves, declares Nebraska to be one of the United States of America, and admits her into the Union upon an equal footing with the original States in all respects whatsoever, the third section provides that this measure "shall not take effect except upon the fundamental condition that within the State of Nebraska there shall be no denial of the elective franchise, or of any other right, to any person, by reason of race or color, excepting Indians not taxed; and upon the further fundamental condition that the Legislature of said State, by a solemn public act, shall declare the assent of said State to the said fundamental condition, and shall transmit to the President of the United States an authentic copy of said act, upon receipt whereof the President, by proclamation, shall forthwith announce the fact, whereupon said fundamental condition shall be held as a part of the organic law of the State; and thereupon, and without any further proceeding on the part of Congress, the admission of said State into the Union shall be considered as complete." This condition is not mentioned in the original enabling act; was not contemplated at the time of its passage; was not sought by the people themselves; has not heretofore been applied to the inhabitants of any State asking admission, and is in direct conflict with the constitution adopted by the people, and declared in the preamble "to be republican in its form of government," for in that instrument the exercise of the elective franchise, and the right to hold office, are expressly limited to white citizens of the United States. Congress thus undertakes to authorize and compel the Legislature to change a constitution which it is declared in the preamble has received the sanction of the people, and which by this bill is "accepted, ratified, and confirmed" by the Congress of the nation.

The first and third sections of the bill exhibit yet further incongruity. By the one Nebraska is "admitted into the Union upon an equal footing with the original States, in all respects whatsoever," while by the other Congress demands, as a condition precedent to her admission, requirements which in our history have never been asked of any people when presenting a constitution and State government for the acceptance of the law-making power. It is expressly declared by the third section that the bill "shall not take effect except upon the fundamental condition that within the State of Nebraska there shall be no denial of the elective franchise, or of any other right, to any person, by reason of race or color, except Indians not taxed." Neither more nor less than the assertion of the right of Congress to regulate the elective franchise of any State hereafter to be admitted, this condition is in clear violation of the Federal Constitution, under the provisions of

which, from the very foundation of the Government, each State has been left free to determine for itself the qualifications necessary for the exercise of suffrage within its limits. Without precedent in our legislation, it is in marked contrast with those limitations which, imposed upon States that, from time to time, have become members of the Union, had for their object the single purpose of preventing any infringement of the Constitution of the country.

If Congress is satisfied that Nebraska, at the present time, possesses sufficient population to entitle her to full representation in the councils of the nation, and that her people desire an exchange of a territorial for a State government, good faith would seem to demand that she should be admitted without further requirements than those expressed in the enabling act, with all of which, it is asserted in the preamble, her inhabitants have complied. Congress may, under the Constitution, admit new States or reject them, but the people of a State can alone make or change their organic law and prescribe the qualifications requisite for electors. Congress, however, in passing the bill in the shape in which it has been submitted for my approval, does not merely reject the application of the people of Nebraska for present admission as a State into the Union, on the ground that the constitution which they have submitted restricts the exercise of the elective franchise to the white population, but imposes conditions which, if accepted by the Legislature, may, without the consent of the people, so change the organic law as to make electors of all persons within the State, without distinction of race or color. In view of this fact, I suggest for the consideration of Congress, whether it would not be just, expedient, and in accordance with the principles of our government, to allow the people, by popular vote, or through a convention chosen by themselves for that purpose, to declare whether or not they will accept the terms upon which it is now proposed to admit them into the Union. This course will not occasion much greater delay than that which the bill contemplates when it requires that the Legislature shall be convened within thirty days after this measure shall have become a law, for the purpose of considering and deciding the conditions which it imposes, and gains additional force when we consider that the proceedings attending the formation of the State constitution were not in conformity with the provisions of the enabling act, that in an aggregate vote of seven thousand, seven hundred and seventy-six, the majority in favor of the constitution did not exceed one hundred; and that it is alleged that, in consequence of frauds, even this result cannot be received as a fair expression of the wishes of the people. As upon them must fall the burdens of a State organization, it is but just that they should be permitted to determine for themselves a question which so materially affects their interests. Possessing a soil and a climate admirably adapted to those industrial pursuits which bring prosperity and greatness to a people, with the advantage of a central position on the great highway that will soon connect the Atlantic and Pacific States, Nebraska is rapidly gaining in numbers and wealth, and may within a very brief period claim admission on grounds which will challenge and secure universal assent. She can therefore wisely and patiently afford to wait. Her population is said to be steadily and even rapidly increasing, being now generally conceded as high as forty thousand, and estimated by some, whose judgment is entitled to respect, at a still greater number. At her present rate of growth, she will, in a very short time, have the requisite population for a Representative in Congress, and, what is far more important to her own citizens, will have realized such an advance in material wealth as will enable the expenses of a State government to be borne without oppression to the tax-payer. Of new communities it may be said with special force—and it is true of old ones—that the inducement to emigrants, other things being equal, is in almost the precise ratio of the rate of taxation. The great States of the Northwest owe their marvellous prosperity largely to the fact that they were continued as Territories until they had grown to be wealthy and populous communities.

ANDREW JOHNSON.

WASHINGTON, *January* 29, 1867.

Copy of the Bill Vetoed.

AN ACT for the admission of the State of Nebraska into the Union.

Whereas, on the twenty-first day of March, anno Domini eighteen hundred and sixty-four, Congress passed an act to enable the people of Nebraska to form a constitution and State government, and offered to admit said State, when so formed, into the Union upon compliance with certain conditions therein specified; and whereas it appears that the said people have adopted a constitution which, upon due examination, is found to conform to the provisions and comply with the conditions of said act, and to be republican in its form of government, and that they now ask for admission into the Union: Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the constitution and State government which the people of Nebraska have formed for themselves be, and the same is hereby, accepted, ratified, and confirmed, and that the said State of Nebraska shall be, and is hereby declared to be, one of the United States of America, and is hereby admitted into the Union upon an equal footing with the original States in all respects whatsoever.

SEC. 2. *And be it further enacted*, That the said State of Nebraska shall be, and is hereby declared to be, entitled to all the rights, privileges, grants, and immunities, and to be subject to all the conditions and restrictions of an act entitled "An act to enable the people of Nebraska to form a constitution and State government, and for the admission of such State into the Union on an equal footing with the original States."

SEC. 3. *And be it further enacted*, That this act shall not take effect except upon the fundamental condition that within the State of Nebraska there shall be no denial of the elective franchise, or of any other right, to any person by reason of race or color, except Indians not

taxed, and upon the further fundamental condition that the Legislature of said State, by a solemn public act, shall declare the assent of said State to the said fundamental condition, and shall transmit to the President of the United States an authentic copy of said act. Upon receipt whereof the President, by proclamation, shall forthwith announce the fact; whereupon said fundamental condition shall be held as a part of the organic law of the State; and thereupon, and without any further proceeding on the part of Congress, the admission of said State into the Union shall be considered as complete. Said State Legislature shall be convened by the Territorial Governor within thirty days after the passage of this act, to act upon the condition submitted herein.

The votes on this bill were:

1867, January 9—A bill passed in SENATE—yeas 24, nays 15, with the third section in these words:

"That this act shall take effect with the fundamental and perpetual condition that within said State of Nebraska there shall be no abridgment or denial of the exercise of the elective franchise, or of any other right, to any person by reason of race or color, excepting Indians not taxed."

YEAS—Messrs. Anthony, Cattell, Chandler, Conness, Cragin, Creswell, Edmunds, Fogg, Fowler, Henderson, Howard, Kirkwood, Lane, Morrill, Poland, Ramsey, Ross, Sherman, Stewart, Sumner, Van Winkle, Wade, Willey, Williams—24.

NAYS—Messrs. *Buckalew, Cowan, Dixon, Doolittle*, Foster, Grimes, *Hendricks*, Howe, *Johnson*, Morgan, *Nesmith, Norton, Patterson, Riddle, Saulsbury*—15.

January 16—The SENATE agreed to the third section as it stands—yeas 28, nays 14, as follow:

YEAS—Messrs. Anthony, Cattell, Chandler, Conness, Cragin, Fessenden, Fogg, Fowler, Frelinghuysen, Grimes, Henderson, Howard, Kirkwood, Lane, Morgan, Morrill, Poland, Ramsey, Sherman, Sprague, Stewart, Sumner, Van Winkle, Wade, Willey, Williams, Wilson, Yates—28.

NAYS—Messrs. *Buckalew, Cowan, Dixon, Doolittle*, Edmunds, Foster, Harris, *Hendricks, Johnson, Nesmith, Norton, Patterson, Riddle, Saulsbury*—14.

IN HOUSE.

January 15—The third section, as it stands, was substituted for that adopted above by the Senate—yeas 88, nays 70, as follow:

YEAS—Messrs. Alley, Allison, Ames, Anderson, James M. Ashley, Baldwin, Banks, Baxter, Blaine, Boutwell, Brandegee, Broomall, Cobb, Cook, Cullom, Culver, Dawes, Deming, Dixon, Dodge, Donnelly, Driggs, Eckley, Eliot, Ferry, Garfield, Grinnell, Griswold, Hart, Higby, Holmes, Hooper, Demas Hubbard, jr., John H. Hubbard, Ingersoll, Jenckes, Julian, Kelley, Kelso, Ketcham, Koontz, Kuykendall, Loan, Longyear, Lynch, Marston, Marvin, Maynard, McClurg, McIndoe, McRuer, Mercur, Moorhead, Morrill, Morris, Moulton, Newell, O'Neill, Orth, Paine, Patterson, Perham, Pike, Price, Raymond, Alexander H. Rice, John H. Rice, Rollins, Sawyer, Schenck, Scofield, Spalding, Stevens, Thayer, Trowbridge, Upson, Van Aernam, Burt Van Horn, Hamilton Ward, Warner, Ellihu B. Washburne, William B. Washburn, Welker, Wentworth, Williams, James F. Wilson, Windom—88.

NAYS—Messrs. *Ancona*, Delos R. Ashley, Baker, Benjamin, *Bergen*, Bingham, *Boyer*, Bromwell, Buckland, Bundy, *Campbell, Chanler*, Reader W. Clarke, *Cooper*, Davis, *Dawson*, Defrees, Delano, *Denison, Eldridge*, Farnsworth, Farquhar, *Finck, Glossbrenner, Goodyear*, Hale, *Aaron Harding*, Abner C. Harding, Hawkins, Henderson, Hill, *Hise, Hogan*, Chester D. Hubbard, *Edwin N. Hubbell*, J. R. Hubbell, *Humphrey, Hunter, Johnson, Kerr*, Latham, George V. Lawrence, *Le Blond, Leftwich, Marshall*, McKee, Miller, *Niblack, Nicholson*, Plants, *Radford, Samuel J. Randall*, William H. Randall, *Ritter, Rogers, Shanklin*, Shellabarger, *Sitgreaves*, Stillwell, Stokes, *Strouse, Taber, Nathaniel G. Taylor, Nelson Taylor*, Francis Thomas, John L. Thomas, jr., *Thornton, Andrew H. Ward*, Henry D. Washburn, Whaley—70.

Same day—The bill passed—yeas 103, nays 55, as follow:

YEAS—Messrs. Alley, Allison, Ames, Anderson, Delos R. Ashley, James M. Ashley, Baldwin, Banks, Baxter, Benjamin, Blaine, Boutwell, Brandegee, Bromwell, Broomall, Bundy, Reader W. Clarke, Cobb, Cook, Cullom, Culver, Dawes, Delano, Deming, Dixon, Dodge, Donnelly, Driggs, Eckley, Eliot, Farnsworth, Farquhar, Ferry, Garfield, Grinnell, Griswold, Hart, Henderson, Higby, Hill, Holmes, Hooper, Demas Hubbard, jr., John H. Hubbard, James R. Hubbell, Ingersoll, Jenckes, Julian, Kelley, Ketcham, Koontz, George V. Lawrence, Loan, Longyear, Lynch, Marston, Marvin, Maynard, McClurg, McIndoe, McRuer, Mercur, Miller, Moorhead, Morrill, Morris, Moulton, Newell, O'Neill, Orth, Paine, Patterson, Perham, Plants, Price, Alexander H. Rice, John H. Rice, Rollins, Sawyer, Schenck, Scofield, Shellabarger, Spalding, Stevens, Stokes, Thayer, Francis Thomas, John L. Thomas, jr., Trowbridge, Upson, Van Aernam, Burt Van Horn, Hamilton Ward, Warner, Ellihu B. Washburne, Henry D. Washburn, William B. Washburn, Welker, Wentworth, Williams, James F. Wilson, Stephen F. Wilson, Windom—103.

NAYS—Messrs. *Ancona*, Baker, *Bergen*, Bingham, *Boyer*, Buckland, *Campbell, Chanler, Cooper*, Davis, *Dawson*, Defrees, *Denison, Eldridge, Finck, Glossbrenner, Goodyear*, Hale, *Aaron Harding*, Abner C. Harding, Hawkins, *Hise, Hogan*, Chester D. Hubbard, *Edwin N. Hubbell, Humphrey, Hunter, Johnson*, Kelso, *Kerr*, Kuykendall, Latham, *Le Blond, Leftwich, Marshall*, McKee, *Niblack, Nicholson, Radford, Samuel J. Randall*, William H. Randall, Raymond, *Ritter, Rogers, Ross, Shanklin, Sitgreaves*, Stillwell, *Strouse, Taber, Nathaniel G. Taylor, Nelson Taylor, Thornton, Andrew H. Ward*, Whaley—55.

The bill then passed, as above.

January 30—The bill was vetoed.

February 8—The SENATE passed it over the veto—yeas 30, nays 9, as follow:

YEAS—Messrs. Anthony, Brown, Chandler, Cragin, Creswell, Fogg, Fowler, Frelinghuysen, Grimes, Harris, Henderson, Howard, Howe, Kirkwood, Lane, Morrill, Poland, Pomeroy, Ramsey, Ross, Sherman, Sprague, Stewart, Sumner, Trumbull, Van Winkle, Wade, Willey Wilson, Yates—30.

NAYS—Messrs. *Buckalew, Davis, Doolittle*, Foster, *Hendricks*, Morgan, *Norton, Patterson, Saulsbury*—9.

February 9—The HOUSE passed the bill—yeas 120, nays 44, as follow:

YEAS—Messrs. Allison, Anderson, James M. Ashley, Banks, Barker, Baxter, Beaman, Bidwell, Blaine, Blow, Boutwell, Brandegee, Bromwell, Broomall, Buckland, Reader W. Clarke, Sidney Clarke, Cobb, Cook, Cullom, Darling, Dawes, Delano, Deming, Dixon, Dodge, Donnelly, Driggs, Dumont, Eckley, Eggleston, Eliot, Farnsworth, Farquhar, Ferry, Garfield, Grinnell, Griswold, Abner C. Harding, Hart, Hayes, Henderson, Higby, Hill, Holmes, Hooper, Hotchkiss, John H. Hubbard, James R. Hubbell, Hulburd, Ingersoll, Jenckes, Julian, Kasson, Kelley, Kelso, Ketcham, Koontz, Laflin, George V. Lawrence, William Lawrence, Loan, Longyear, Marston, Marvin, Maynard, McClurg, McIndoe, McKee, McRuer, Mercur, Miller, Moorhead, Morrill, Morris, Moulton, Myers, Newell, O'Neill, Orth, Paine, Patterson, Perham, Pike, Plants, Pomeroy, Price, William H. Randall, Alexander H. Rice, John H. Rice, Rollins, Sawyer, Schenck, Scofield, Shellabarger, Sloan, Spalding, Starr, Stevens, Stokes, Thayer, Francis Thomas, Trowbridge, Upson, Van Aernam, Burt Van Horn, Robert T. Van Horn, Hamilton Ward, Warner, Henry D. Washburn, William B. Washburn, Welker, Wentworth. Whaley. Williams, James F. Wilson, Stephen F. Wilson, Windom, Woodbridge, and SPEAKER COLFAX—120.

NAYS—Messrs. *Campbell, Chanler, Cooper*, Davis, *Dawson, Denison, Eldridge, Finck, Glossbrenner, Goodyear, Aaron Harding, Harris*, Hawkins, *Hise, Edwin N. Hubbell, Humphrey, Hunter, Kerr*, Kuykendall, *Le Blond, Leftwich, Marshall, McCullough, Niblack, Nicholson, Noell, Radford, Samuel J. Randall*, Raymond, *Ritter, Rogers, Ross*, Rousseau, *Shanklin, Sitgreaves*, Stillwell, *Strouse, Taber, Nathaniel G. Taylor, Nelson Taylor, Thornton, Trimble, Andrew H. Ward, Winfield*—44.

Whereupon the SPEAKER of the House declared the bill to be a law.

Veto of the Reconstruction Bill, March 2, 1867.*

To the House of Representatives:

I have examined the bill "to provide for the more efficient government of the rebel States" with the care and anxiety which its transcendant importance is calculated to awaken. I am

* For copy of the bill vetoed, see chap. xviii.

unable to give it my assent for reasons so grave, that I hope a statement of them may have some influence on the minds of the patriotic and enlightened men with whom the decision must ultimately rest.

The bill places all the people of the ten States therein named under the absolute domination of military rulers; and the preamble undertakes to give the reason upon which the measure is based, and the ground upon which it is justified. It declares that there exists in those States no legal governments, and no adequate protection for life or property, and asserts the necessity of enforcing peace and good order within their limits. Is this true as matter of fact?

It is not denied that the States in question have each of them an actual Government, with all the powers, executive, judicial, and legislative, which properly belong to a free State. They are organized like the other States of the Union, and, like them, they make, administer, and execute the laws which concern their domestic affairs. An existing *de facto* government, exercising such functions as these, is itself the law of the State upon all matters within its jurisdiction. To pronounce the supreme law-making power of an established State illegal is to say that law itself is unlawful.

The provisions which these Governments have made for the preservation of order, the suppression of crime, and the redress of private injuries, are in substance and principle the same as those which prevail in the northern States and in other civilized countries. They certainly have not succeeded in preventing the commission of all crime, nor has this been accomplished anywhere in the world. There, as well as elsewhere, offenders sometimes escape for want of vigorous prosecution, and occasionally, perhaps, by the inefficiency of courts or the prejudice of jurors. It is undoubtedly true that these evils have been much increased and aggravated, North and South, by the demoralizing influences of civil war, and by the rancorous passions which the contest has engendered. But that these people are maintaining local governments for themselves which habitually defeat the object of all government and render their own lives and property insecure, is in itself utterly improbable, and the averment of the bill to that effect is not supported by any evidence which has come to my knowledge. All the information I have on the subject convinces me that the masses of the southern people and those who control their public acts, while they entertain diverse opinions on questions of Federal policy, are completely united in the effort to reorganize their society on the basis of peace, and to restore their mutual prosperity as rapidly and as completely as their circumstances will permit.

The bill, however, would seem to show upon its face that the establishment of peace and good order is not its real object. The fifth section declares that the preceding sections shall cease to operate in any State where certain events shall have happened. These events are—First, the selection of delegates to a State Convention by an election at which negroes shall be allowed to vote. Second, the formation of a State Constitution by the Convention so chosen. Third, the insertion into the State Constitution of a provision which will secure the right of voting at all elections to negroes, and to such white men as may not be disfranchised for rebellion or felony. Fourth, the submission of the Constitution for ratification to negroes and white men not disfranchised, and its actual ratification by their vote. Fifth, the submission of the State Constitution to Congress for examination and approval, and the actual approval of it by that body. Sixth, the adoption of a certain amendment to the Federal Constitution by a vote of the Legislature elected under the new Constitution. Seventh, the adoption of said amendment by a sufficient number of other States to make it a part of the Constitution of the United States. All these conditions must be fulfilled before the people of any of these States can be relieved from the bondage of military domination; but when they are fulfilled, then immediately the pains and penalties of the bill are to cease, no matter whether there be peace and order or not, and without any reference to the security of life or property. The excuse given for the bill in the preamble is admitted by the bill itself not to be real. The military rule which it establishes is plainly to be used, not for any purpose of order or for the prevention of crime, but solely as a means of coercing the people into the adoption of principles and measures to which it is known that they are opposed, and upon which they have an undeniable right to exercise their own judgment.

I submit to Congress whether this measure is not, in its whole character, scope, and object, without precedent and without authority, in palpable conflict with the plainest provisions of the Constitution, and utterly destructive to those great principles of liberty and humanity for which our ancestors on both sides of the Atlantic have shed so much blood and expended so much treasure.

The ten States named in the bill are divided into five districts. For each district an officer of the Army, not below the rank of brigadier general, is to be appointed to rule over the people; and he is to be supported with an efficient military force to enable him to perform his duties and enforce his authority. Those duties and that authority, as defined by the third section of the bill, are, "to protect all persons in their rights of person and property, to suppress insurrection, disorder, and violence, and to punish, or cause to be punished, all disturbers of the public peace or criminals." The power thus given to the commanding officer over all the people of each district is that of an absolute monarch. His mere will is to take the place of all law. The law of the States is now the only rule applicable to the subjects placed under his control, and that is completely displaced by the clause which declares all interference of State authority to be null and void. He alone is permitted to determine what are rights of person or property, and he may protect them in such way as in his discretion may seem proper. It places at his free disposal all the lands and goods in his district, and he may distribute them without let or hindrance to whom he pleases. Being bound by no State law, and there being no other law to regulate the subject, he may make a criminal

code of his own; and he can make it as bloody as any recorded in history, or he can reserve the privilege of acting upon the impulse of his private passions in each case that arises. He is bound by no rules of evidence; there is indeed no provision by which he is authorized or required to take any evidence at all. Everything is a crime which he chooses to call so, and all persons are condemed whom he pronounces to be guilty. He is not bound to keep any record, or make any report of his proceedings. He may arrest his victims wherever he finds them, without warrant, accusation, or proof of probable cause. If he gives them a trial before he inflicts the punishment, he gives it of his grace and mercy, not because he is commanded so to do.

To a casual reader of the bill, it might seem that some kind of trial was secured by it to persons accused of crime; but such is not the case. The officer "may allow local civil tribunals to try offenders," but of course this does not require that he shall do so. If any State or Federal court presumes to exercise its legal jurisdiction by the trial of a malefactor without his special permission, he can break it up, and punish the judges and jurors as being themselves malefactors. He can save his friends from justice, and despoil his enemies contrary to justice.

It is also provided that "he shall have power to organize military commissions or tribunals;" but this power he is not commanded to exercise. It is merely permissive, and is to be used only "when in his judgment it may be necessary for the trial of offenders." Even if the sentence of a commission were made a prerequisite to the punishment of a party, it would be scarcely the slightest check upon the officer, who has authority to organize it as he pleases, prescribe its mode of proceeding, appoint its members from among his own subordinates, and revise all its decisions. Instead of mitigating the harshness of his single rule, such a tribunal would be used much more probably to divide the responsibility of making it more cruel and unjust.

Several provisions, dictated by the humanity of Congress, have been inserted in the bill, apparently to restrain the power of the commanding officer; but it seems to me that they are of no avail for that purpose. The fourth section provides—First. That trials shall not be unnecessarily delayed; but I think I have shown that the power is given to punish without trial, and if so, this provision is practically inoperative. Second. Cruel or unusual punishment is not to be inflicted; but who is to decide what is cruel and what is unusual? The words have acquired a legal meaning by long use in the courts. Can it be expected that military officers will understand or follow a rule expressed in language so purely technical, and not pertaining in the least degree to their profession? If not, then each officer may define cruelty according to his own temper, and if it is not usual, he will make it usual. Corporal punishment, imprisonment, the gag, the ball and chain, and the almost insupportable forms of torture invented for military punishment, lie within the range of choice. Third. The sentence of a commission is not to be executed without being approved by the commander, if it affects life or liberty, and a sentence of death must be approved by the President. This applies to cases in which there has been a trial and sentence. I take it to be clear, under this bill, that the military commander may condemn to death without even the form of a trial by a military commission, so that the life of the condemned may depend upon the will of two men instead of one.

It is plain that the authority here given to the military officer amounts to absolute despotism. But, to make it still more unendurable, the bill provides that it may be delegated to as many subordinates as he chooses to appoint; for it declares that he shall "punish or cause to be punished." Such a power has not been wielded by any monarch in England for more than five hundred years. In all that time no people who speak the English language have borne such servitude. It reduces the whole population of the ten States—all persons, of every color, sex, and condition, and every stranger within their limits—to the most abject and degrading slavery. No master ever had a control so absolute over his slaves as this bill gives to the military officers over both white and colored persons.

It may be answered to this that the officers of the Army are too magnanimous, just, and humane to oppress and trample upon a subjugated people. I do not doubt that Army officers are as well entitled to this kind of confidence as any other class of men. But the history of the world has been written in vain, if it does not teach us that unrestrained authority can never be safely trusted in human hands. It is almost sure to be more or less abused under any circumstances, and it has always resulted in gross tyranny where the rulers who exercise it are strangers to their subjects, and come among them as the representatives of a distant power, and more especially when the power that sends them is unfriendly. Governments closely resembling that here proposed have been fairly tried in Hungary and Poland, and the suffering endured by those people roused the sympathies of the entire world. It was tried in Ireland, and, though tempered at first by principles of English law, it gave birth to cruelties so atrocious that they are never recounted without just indignation. The French Convention armed its deputies with this power, and sent them to the southern departments of the republic. The massacres, murders, and other atrocities which they committed show what the passions of the ablest men in the most civilized society will tempt them to do when wholly unrestrained by law.

The men of our race in every age have struggled to tie up the hands of their Governments and keep them within the law, because their own experience of all mankind taught them that rulers could not be relied on to concede those rights which they were not legally bound to respect. The head of a great empire has sometimes governed it with a mild and paternal sway; but the kindness of an irresponsible deputy never yields what the law does not extort from him. Between such a master and the people subjected to his domination there can be nothing but enmity; he punishes them if they resist his authority, and, if they submit to it, he hates them for their servility.

I come now to a question which is, if possible, still more important. Have we the power to establish and carry into execution a measure like this? I answer, certainly not, if we derive our authority from the Constitution, and if we are bound by the limitations which it imposes.

This proposition is perfectly clear—that no branch of the Federal Government, executive, legislative, or judicial, can have any just powers except those which it derives through and exercises under the organic law of the Union. Outside of the Constitution we have no legal authority more than private citizens, and within it we have only so much as that instrument gives us. This broad principle limits all our functions, and applies to all subjects. It protects not only the citizens of States which are within the Union, but it shields every human being who comes or is brought under our jurisdiction. We have no right to do in one place, more than in another, that which the Constitution says we shall not do at all. If, therefore, the southern States were in truth out of the Union, we could not treat their people in a way which the fundamental law forbids.

Some persons assume that the success of our arms in crushing the opposition which was made in some of the States to the execution of the Federal laws reduced those States and all their people—the innocent as well as the guilty—to the condition of vassalage, and gave us a power over them which the Constitution does not bestow or define or limit. No fallacy can be more transparent than this. Our victories subjected the insurgents to legal obedience, not to the yoke of an arbitrary despotism. When an absolute sovereign reduces his rebellious subjects, he may deal with them according to his pleasure, because he had that power before. But when a limited monarch puts down an insurrection, he must still govern according to law. If an insurrection should take place in one of our States against the authority of the State government, and end in the overthrow of those who planned it, would that take away the rights of all the people of the counties where it was favored by a part or a majority of the population? Could they, for such a reason, be wholly outlawed and deprived of their representation in the Legislature? I have always contended that the Government of the United States was sovereign within its constitutional sphere; that it executed its laws, like the States themselves, by applying its coercive power directly to individuals; and that it could put down insurrection with the same effect as a State, and no other. The opposite doctrine is the worst heresy of those who advocated secession, and cannot be agreed to without admitting that heresy to be right.

Invasion, insurrection, rebellion, and domestic violence were anticipated when the Government was framed, and the means of repelling and suppressing them were wisely provided for in the Constitution; but it was not thought necessary to declare that the States in which they might occur should be expelled from the Union. Rebellions, which were invariably suppressed, occurred prior to that out of which these questions grow; but the States continued to exist and the Union remained unbroken. In Massachusetts, in Pennsylvania, in Rhode Island, and in New York, at different periods in our history, violent and armed opposition to the United States was carried on; but the relations of those States with the Federal Government were not supposed to be interrupted or changed thereby, after the rebellious portions of their population were defeated and put down. It is true that in these earlier cases there was no formal expression of a determination to withdraw from the Union, but it is also true that in the southern States the ordinances of secession were treated by all the friends of the Union as mere nullities, and are now acknowledged to be so by the States themselves. If we admit that they had any force or validity, or that they did in fact take the States in which they were passed out of the Union, we sweep from under our feet all the grounds upon which we stand in justifying the use of Federal force to maintain the integrity of the Government.

This is a bill passed by Congress in time of peace. There is not in any one of the States brought under its operation either war or insurrection. The laws of the States and of the Federal Government are all in undisturbed and harmonious operation. The courts, State and Federal, are open, and in the full exercise of their proper authority. Over every State comprised in these five military districts life, liberty, and property are secured by State laws and Federal laws, and the national Constitution is everywhere in force and everywhere obeyed. What, then, is the ground on which this bill proceeds? The title of the bill announces that it is intended "for the more efficient government" of these ten States. It is recited by way of preamble that no legal State governments "nor adequate protection for life or property," exist in those States, and that peace and good order should be thus enforced. The first thing which arrests attention upon these recitals, which prepare the way for martial law, is this: that the only foundation upon which martial law can exist under our form of government is not stated or so much as pretended. Actual war, foreign invasion, domestic insurrection—none of these appear; and none of these in fact exist. It is not even recited that any sort of war or insurrection is threatened. Let us pause here to consider, upon this question of constitutional law and the power of Congress, a recent decision of the Supreme Court of the United States in *ex parte* Milligan.

I will first quote from the opinion of the majority of the Court: "Martial law cannot arise from a threatened invasion. The necessity must be actual and present, the invasion real, such as effectually closes the courts and deposes the civil administration." We see that martial law comes in only when actual war closes the courts and deposes the civil authority; but this bill, in time of peace, makes martial law operate as though we were in actual war, and become the *cause*, instead of the *consequence* of the abrogation of civil authority. One more quotation: "It follows from what has been said on this subject that there are occasions when martial law can be properly applied. If, in foreign invasion or civil war, the courts are actually closed, and

it is impossible to administer criminal justice according to law, then, on the theatre of active military operations, where war really prevails, there is a necessity to furnish a substitute for the civil authority thus overthrown, to preserve the safety of the Army and society; and as no power is left but the military, it is allowed to govern by martial rule until the laws can have their free course."

I now quote from the opinion of the minority of the Court, delivered by Chief Justice Chase: "We by no means assert that Congress can establish and apply the laws of war where no war has been declared or exists. Where peace exists, the laws of peace must prevail." This is sufficiently explicit. Peace exists in all the territory to which this bill applies. It asserts a power in Congress, in time of peace, to set aside the laws of peace and to substitute the laws of war. The minority, concurring with the majority, declares that Congress does not possess that power. Again, and, if possible, more emphatically, the Chief Justice, with remarkable clearness and condensation, sums up the whole matter as follows:

"There are under the Constitution three kinds of military jurisdiction—one to be exercised both in peace and war; another to be exercised in time of foreign war without the boundaries of the United States, or in time of rebellion and civil war within States or districts occupied by rebels treated as belligerents; and a third to be exercised in time of invasion or insurrection within the limits of the United States, or during rebellion within the limits of the States maintaining adhesion to the national Government, when the public danger requires its exercise. The first of these may be called jurisdiction under MILITARY LAW, and is found in acts of Congress prescribing rules and articles of war, or otherwise providing for the government of the national forces; the second may be distinguished as MILITARY GOVERNMENT, superseding, as far as may be deemed expedient, the local law, and exercised by the military commander, under the direction of the President, with the express or implied sanction of Congress; while the third may be denominated MARTIAL LAW PROPER, and is called into action by Congress, or temporarily, when the action of Congress cannot be invited, and in the case of justifying or excusing peril, by the President, in times of insurrection or invasion, or of civil or foreign war, within districts or localities where ordinary law no longer adequately secures public safety and private rights."

It will be observed that of the three kinds of military jurisdiction which can be exercised or created under our Constitution, there is but one that can prevail in time of peace, and that is the code of laws enacted by Congress for the government of the national forces. That body of military law has no application to the citizen, nor even to the citizen soldier enrolled in the militia in time of peace. But this bill is not a part of that sort of military law, for that applies only to the soldier, and not to the citizen, whilst, contrariwise, the military law provided by this bill applies only to the citizen and not to the soldier.

I need not say to the Representatives of the American people that their Constitution forbids the exercise of judicial power in any way but one; that is, by the ordained and established courts. It is equally well known that in all criminal cases a trial by jury is made indispensable by the express words of that instrument. I will not enlarge on the inestimable value of the right thus secured to every freeman, or speak of the danger to public liberty in all parts of the country which must ensue from a denial of it anywhere or upon any pretense. A very recent decision of the Supreme Court has traced the history, vindicated the dignity, and made known the value of this great privilege so clearly that nothing more is needed. To what extent a violation of it might be excused in time of war or public danger may admit of discussion; but we are providing now for a time of profound peace, where there is not an armed soldier within our borders except those who are in the service of the Government It is in such a condition of things that an act of Congress is proposed which, if carried out, would deny a trial by the lawful courts and juries to nine millions of American citizens, and to their posterity for an indefinite period. It seems to be scarcely possible that any one should seriously believe this consistent with a Constitution which declares, in simple, plain, and unambiguous language, that all persons shall have that right, and that no person shall ever in any case be deprived of it. The Constitution also forbids the arrest of the citizen without judicial warrant, founded on probable cause. This bill authorizes an arrest without warrant, at the pleasure of a military commander. The Constitution declares that "no person shall be held to answer for a capital or otherwise infamous crime unless on presentment by a grand jury." This bill holds every person, not a soldier, answerable for all crimes and all charges without any presentment. The Constitution declares that "no person shall be deprived of life, liberty, or property without due process of law." This bill sets aside all process of law, and makes the citizen answerable in his person and property to the will of one man, and as to his life to the will of two. Finally, the Constitution declares that "the privilege of the writ of *habeas corpus* shall not be suspended unless when, in case of rebellion or invasion, the public safety may require it;" whereas this bill declares martial law (which of itself suspends this great writ) in time of peace, and authorizes the military to make the arrest, and gives to the prisoner only one privilege, and that is a trial "without unnecessary delay." He has no hope of release from custody, except the hope, such as it is, of release by acquittal before a military commission.

The United States are bound to guarantee to each State a republican form of government. Can it be pretended that this obligation is not palpably broken if we carry out a measure like this, which wipes away every vestige of republican government in ten States, and puts the life, property, liberty, and honor of all the people in each of them under the domination of a single person clothed with unlimited authority?

The Parliament of England, exercising the omnipotent power which it claimed, was accustomed to pass bills of attainder; that is to say, it would convict men of treason and other crimes by legislative enactment. The person accused had a hearing, sometimes a patient and fair one; but generally party prejudice prevailed, instead of justice. It often became necessary for Parliament to acknowledge its error and reverse its own action. The fathers of our country determined that no such thing should occur here. They withheld the power from Congress, and thus forbade its exercise by that body; and they pro-

vided in the Constitution that no State should pass any bill of attainder. It is, therefore, impossible for any person in this country to be constitutionally convicted or punished for any crime by a legislative proceeding of any sort. Nevertheless, here is a bill of attainder against nine millions of people at once. It is based upon an accusation so vague as to be scarcely intelligible, and found to be true upon no credible evidence. Not one of the nine millions was heard in his own defense. The representatives of the doomed parties were excluded from all participation in the trial. The conviction is to be followed by the most ignominious punishment ever inflicted on large masses of men. It disfranchises them by hundreds of thousands, and degrades them all, even those who are admitted to be guiltless, from the rank of freemen to the condition of slaves.

The purpose and object of the bill, the general intent which pervades it from beginning to end, is to change the entire structure and character of the State governments, and to compel them by force to the adoption of organic laws and regulations which they are unwilling to accept if left to themselves. The negroes have not asked for the privilege of voting; the vast majority of them have no idea what it means. This bill not only thrusts it into their hands, but compels them, as well as the whites, to use it in a particular way. If they do not form a Constitution with prescribed articles in it, and afterwards elect a Legislature which will act upon certain measures in a prescribed way, neither blacks nor whites can be relieved from the slavery which the bill imposes upon them. Without pausing here to consider the policy or impolicy of Africanizing the southern part of our territory, I would simply ask the attention of Congress to that manifest, well-known, and universally acknowledged rule of constitutional law which declares that the Federal Government has no jurisdiction, authority, or power to regulate such subjects for any State. To force the right of suffrage out of the hands of the white people and into the hands of the negroes is an arbitrary violation of this principle.

This bill imposes martial law at once, and its operations will begin so soon as the general and his troops can be put in place. The dread alternative between its harsh rule and compliance with the terms of this measure is not suspended, nor are the people afforded any time for free deliberation. The bill says to them, take martial law first, *then* deliberate. And when they have done all that this measure requires them to do, other conditions and contingencies, over which they have no control, yet remain to be fulfilled before they can be relieved from martial law. Another Congress must first approve the constitutions made in conformity with the will of this Congress, and must declare these States entitled to representation in both Houses. The whole question thus remains open and unsettled, and must again occupy the attention of Congress, and in the meantime the agitation which now prevails will continue to disturb all portions of the people.

The bill also denies the legality of the governments of ten of the States which participated in the ratification of the amendment to the Federal Constitution abolishing slavery forever within the jurisdiction of the United States, and practically excludes them from the Union. If this assumption of the bill be correct, their concurrence cannot be considered as having been legally given, and the important fact is made to appear that the consent of three-fourths of the States—the requisite number—has not been constitutionally obtained to the ratification of that amendment, thus leaving the question of slavery where it stood before the amendment was officially declared to have become a part of the Constitution.

That the measure proposed by this bill does violate the Constitution in the particulars mentioned, and in many other ways which I forbear to enumerate, is too clear to admit of the least doubt. It only remains to consider whether the injunctions of that instrument ought to be obeyed or not. I think they ought to be obeyed, for reasons which I will proceed to give as briefly as possible.

In the first place, it is the only system of free government which we can hope to have as a nation. When it ceases to be the rule of our conduct, we may perhaps take our choice between complete anarchy, a consolidated despotism, and a total dissolution of the Union; but national liberty, regulated by law will have passed beyond our reach.

It is the best frame of government the world ever saw. No other is or can be so well adapted to the genius, habits, or wants of the American people. Combining the strength of a great empire with unspeakable blessings of local self-government, having a central power to defend the general interests, and recognizing the authority of the States as the guardians of industrial rights, it is "the sheet-anchor of our safety abroad and our peace at home." It was ordained "to form a more perfect union, establish justice, insure domestic tranquillity, promote the general welfare, provide for the common defense, and secure the blessings of liberty to ourselves and to our posterity." These great ends have been attained heretofore, and will be again, by faithful obedience to it; but they are certain to be lost if we treat with disregard its sacred obligations.

It was to punish the gross crime of defying the Constitution, and to vindicate its supreme authority, that we carried on a bloody war of four years' duration. Shall we now acknowledge that we sacrificed a million of lives and expended billions of treasure to enforce a Constitution which is not worthy of respect and preservation?

Those who advocated the right of secession alleged in their own justification that we had no regard for law, and that their rights of property, life, and liberty would not be safe under the Constitution, as administered by us. If we now verify their assertion, we prove that they were in truth and in fact fighting for their liberty, and instead of branding their leaders with the dishonoring name of traitors against a righteous and legal Government, we elevate them in history to the rank of self-sacrificing patriots, consecrate them to the admiration of the world, and place them by the side of Washington, Hamp-

den, and Sydney. No; let us leave them to the infamy they deserve, punish them as they should be punished, according to law, and take upon ourselves no share of the odium which they should bear alone.

It is a part of our public history, which can never be forgotten, that both Houses of Congress, in July, 1861, declared, in the form of a solemn resolution, that the war was and should be carried on for no purpose of subjugation, but solely to enforce the Constitution and laws; and that when this was yielded by the parties in rebellion, the contest should cease, with the constitutional rights of the States and of individuals unimpaired. This resolution was adopted and sent forth to the world unanimously by the Senate,* and with only two dissenting voices in the House. It was accepted by the friends of the Union in the South, as well as in the North, as expressing honestly and truly the object of the war. On the faith of it, many thousands of persons in both sections gave their lives and their fortunes to the cause. To repudiate it now by refusing to the States and to the individuals within them the rights which the Constitution and laws of the Union would secure to them, is a breach of our plighted honor for which I can imagine no excuse, and to which I cannot voluntarily become a party.

The evils which spring from the unsettled state of our Government will be acknowledged by all. Commercial intercourse is impeded, capital is in constant peril, public securities fluctuate in value, peace itself is not secure, and the sense of moral and political duty is impaired. To avert these calamities from our country, it is imperatively required that we should immediately decide upon some course of administration which can be steadfastly adhered to. I am thoroughly convinced that any settlement, or compromise, or plan of action which is inconsistent with the principles of the Constitution will not only be unavailing, but mischievous; that it will but multiply the present evils, instead of removing them. The Constitution, in its whole integrity and vigor, throughout the length and breadth of the land, is the best of all compromises. Besides, our duty does not, in my judgment, leave us a choice between that and any other. I believe that it contains the remedy that is so much needed, and that if the co-ordinate branches of the Government would unite upon its provisions, they would be found broad enough and strong enough to sustain in time of peace the nation which they bore safely through the ordeal of a protracted civil war. Among the most sacred guaranties of that instrument are those which declare that "each State shall have at least one Representative," and that "no State, without its consent, shall be deprived of its equal suffrage in the Senate." Each House is made the "judge of the elections, returns, and qualifications of its own members," and may, "with the concurrence of two-thirds, expel a member." Thus, as heretofore urged, "in the admission of Senators and Representatives from any and all of the States, there can be no just ground of apprehension that persons who are disloyal will be clothed with the powers of legislation; for this could not happen when the Constitution and the laws are enforced by a vigilant and faithful Congress." "When a Senator or Representative presents his certificate of election, he may at once be admitted or rejected; or, should there be any question as to his eligibility, his credentials may be referred for investigation to the appropriate committee. If admitted to a seat, it must be upon evidence satisfactory to the House of which he thus becomes a member, that he possesses the requisite constitutional and legal qualifications. If refused admission as a member for want of due allegiance to the Government, and returned to his constituents, they are admonished that none but persons loyal to the United States will be allowed a voice in the legislative councils of the nation, and the political power and moral influence of Congress are thus effectively exerted in the interests of loyalty to the Government and fidelity to the Union." And is it not far better that the work of restoration should be accomplished by simple compliance with the plain requirements of the Constitution, than by a recourse to measures which in effect destroy the States, and threaten the subversion of the General Government? All that is necessary to settle this simple but important question, without further agitation or delay, is a willingness on the part of all to sustain the Constitution and carry its provisions into practical operation. If to-morrow either branch of Congress would declare that, upon the presentation of their credentials, members constitutionally elected and loyal to the General Government would be admitted to seats in Congress, while all others would be excluded, and their places remain vacant until the selection by the people of loyal and qualified persons; and if, at the same time, assurance were given that this policy would be continued until all the States were represented in Congress, it would send a thrill of joy throughout the entire land, as indicating the inauguration of a system which must speedily bring tranquillity to the public mind.

While we are legislating upon subjects which are of great importance to the whole people, and which must affect all parts of the country, not only during the life of the present generation, but for ages to come, we should remember that all men are entitled at least to a hearing in the councils which decide upon the destiny of themselves and their children. At present ten States are denied representation, and when the Fortieth Congress assembles on the fourth day of the present month, sixteen States will be without a voice in the House of Representatives. This grave fact, with the important questions before us, should induce us to pause in the course of legislation which, looking solely to the attainment of political ends, fails to consider the rights it transgresses, the law which it violates, or the institutions which it imperils.

ANDREW JOHNSON.

WASHINGTON, *March* 2, 1867.

The votes on this bill were as follow:

IN HOUSE.

1867, February 20—The bill passed finally, as above—yeas 128, nays 46, as follow:

* This is not quite accurate. There were five negative votes in the Senate. (See Senate Journal, 1st Sess. 39th Congress, page 92.)

YEAS—Messrs. Alley, Allison, Ames, Anderson, Arnell, Delos R. Ashley, James M. Ashley, Baker, Baldwin, Banks, Barker, Baxter, Beaman, Benjamin, Bidwell, Bingham, Blaine, Blow, Boutwell, Brandegee, Bromwell, Broomall, Buckland, Bundy, Reader W. Clarke, Sidney Clarke, Cobb, Cook, Cullom, Darling, Davis, Dawes, Defrees, Delano, Deming, Dixon, Dodge, Donnelly, Dumont, Eggleston, Eliot, Farnsworth, Farquhar, Ferry, Garfield, Grinnell, Griswold, Abner C. Harding, Hart, Hayes, Henderson, Higby, Hill, Holmes, Hooper, Hotchkiss, Chester D. Hubbard, Demas Hubbard, jr., John H. Hubbard, Hulburd, Ingersoll, Julian, Kasson, Kelley, Kelso, Ketcham, Koontz, Laffin, George V. Lawrence, William Lawrence, Loan, Longyear, Lynch, Marvin, Maynard, McClurg, McIndoe, McKee, McRuer, Mercur, Miller, Moorhead, Morris, Moulton, Myers, Newell, O'Neil, Orth, Paine, Patterson, Perham, Pike, Plants, Pomeroy, Price, Raymond, Alexander H. Rice, John H. Rice, Rollins, Sawyer, Schenck, Scofield, Shellabarger, Sloan, Spalding, Starr, Stevens, Stokes, Thayer, Francis Thomas, John L. Thomas, jr., Trowbridge, Upson, Van Aernam, Burt Van Horn, Robert T. Van Horn, Hamilton Ward, Warner, Henry D. Washburn, William B. Washburn, Welker, Wentworth, Whaley, Williams, James F. Wilson, Stephen F. Wilson, Windom, Woodbridge—128.

NAYS—Messrs. *Ancona, Bergen, Boyer, Campbell, Chanler, Cooper, Dawson, Denison, Eldridge, Finck, Glossbrenner, Goodyear, Aaron Harding,* Hawkins, *Hise, Edwin N. Hubbell,* James R. Hubbell, *Humphrey, Hunter, Kerr,* Kuykendall, *LeBlond, Leftwich, Marshall, McCullough, Niblack, Nicholson, Noell,* Phelps, *Radford, Samuel J. Randall, Ritter, Rogers, Ross,* Rousseau, *Shanklin, Sitgreaves, Strouse, Taber, Nathaniel G. Taylor, Nelson Taylor, Thornton, Trimble, Andrew H. Ward, Winfield, Wright*—46.

Same day—The SENATE passed the bill—yeas 35, nays 7, as follow:

YEAS—Messrs. Brown, Cattell, Chandler, Conness, Cragin, Creswell, Edmunds, Fessenden, Fogg, Foster, Fowler, Frelinghuysen, Harris, Henderson, Howard, Howe, *Johnson,* Kirkwood, Lane, Morgan, Morrill, Poland, Pomeroy, Ramsey, Ross, Sherman, Stewart, Sumner, Trumbull, Van Winkle, Wade, Willey, Williams, Wilson, Yates—35.

NAYS—Messrs. *Buckalew, Cowan, Davis, Hendricks, Nesmith, Patterson, Saulsbury*—7.

March 2—The bill was vetoed.

Same day—The HOUSE re-passed the bill—yeas 138, nays 51, as follow:

YEAS—Messrs. Alley, Allison, Ames, Anderson, Arnell, Delos R. Ashley, James M. Ashley, Baker, Baldwin, Banks, Barker, Baxter, Beaman, Benjamin, Bidwell, Bingham, Blaine, Blow, Boutwell, Brandegee, Bromwell, Broomall, Buckland, Bundy, Reader W. Clarke, Sidney Clarke, Cobb, Conkling, Cook, Cullom, Darling, Davis, Dawes, Defrees, Delano, Deming, Dixon, Dodge, Donnelly, Driggs, Dumont, Eckley, Eggleston, Eliot, Farnsworth, Farquhar, Ferry, Garfield, Grinnell, Griswold, Abner C. Harding, Hart, Hayes, Henderson, Higby, Hill, Holmes, Hooper, Hotchkiss, Asahel W. Hubbard, Chester D. Hubbard, Demas Hubbard, jr., John H. Hubbard, James R. Hubbell, Hulburd, Ingersoll, Jenckes, Julian, Kasson, Kelley, Kelso, Ketcham, Koontz, Laffin, George V. Lawrence, William Lawrence, Loan, Longyear, Lynch, Marquette, Marston, Marvin, Maynard, McClurg, McIndoe, McKee, McRuer, Mercur, Miller, Moorhead, Morrill, Morris, Moulton, Myers, Newell, O'Neill, Orth, Paine, Patterson, Perham, Pike, Plants, Pomeroy, Price, Raymond, Alexander H. Rice, John H. Rice, Rollins, Sawyer, Schenck, Scofield, Shellabarger, Sloan, Spalding, Starr, Stevens, Stokes, Thayer, Francis Thomas, John L. Thomas, jr., Trowbridge, Upson, Van Aernam, Burt Van Horn, Robert T. Van Horn, Hamilton Ward, Warner, Henry D. Washburn, William B. Washburn, Welker, Wentworth, Whaley, Williams, James F. Wilson, Stephen F. Wilson, Windom, Woodbridge, and SPEAKER COLFAX—138.

NAYS—Messrs. *Ancona, Bergen, Boyer, Campbell, Chanler, Cooper, Dawson, Denison, Eldridge, Finck, Glossbrenner, Goodyear,* Hale, *Aaron Harding, Harris,* Hawkins, *Hise, Hogan, Edwin N. Hubbell, Humphrey, Hunter, Jones, Kerr,* Kuydendall, Latham, *Le Blond, Leftwich, Marshall, McCullough, Niblack, Nicholson, Noell,* Phelps, *Radford, Samuel J. Randall, Ritter, Rogers, Ross,* Rousseau, *Shanklin, Sitgreaves,* Stillwell, *Strouse, Taber, Nathaniel G. Taylor, Nelson Taylor, Thornton, Trimble, Andrew H. Ward, Winfield, Wright*—51.

Same day—The SENATE re-passed it—yeas 38, nays 10, as follow:

YEAS—Messrs. Anthony, Cattell, Chandler, Conness, Cragin, Creswell, Edmunds, Fessenden, Fogg, Foster, Fowler, Frelinghuysen, Grimes, Harris, Henderson, Howard, Howe, *Johnson,* Kirkwood, Lane, Morgan, Morrill, Nye, Poland, Pomeroy, Ramsey, Ross, Sherman, Sprague, Stewart, Sumner, Trumbull, Van Winkle, Wade, Willey, Williams, Wilson, Yates—38.

NAYS—Messrs. *Buckalew, Cowan, Davis, Dixon, Doolittle, Hendricks, Nesmith, Norton, Patterson, Saulsbury*—10.

Whereupon the PRESIDENT of the Senate declared the bill to be a law.

Veto of the Civil Tenure Bill, March 2, 1867.

To the Senate of the United States:

I have carefully examined the bill "to regulate the tenure of certain civil offices." The material portion of the bill is contained in the first section, and is of the effect following, namely: "That every person holding any civil office to which he has been appointed by and with the advice and consent of the Senate, and every person who shall hereafter be appointed to any such office and shall become duly qualified to act therein, is and shall be entitled to hold such office until a successor shall have been appointed by the President, with the advice and consent of the Senate, and duly qualified; and that the Secretaries of State, of the Treasury, of War, of the Navy, and of the Interior, the Postmaster General, and the Attorney General, shall hold their offices respectively for and during the term of the President by whom they may have been appointed, and for one month thereafter, subject to removal by and with the advice and consent of the Senate."

These provisions are qualified by a reservation in the fourth section, "that nothing contained in the bill shall be construed to extend the term of any office the duration of which is limited by law." In effect the bill provides that the President shall not remove from their places any of the civil officers whose terms of service are not limited by law, without the advice and consent of the Senate of the United States. The bill in this respect conflicts, in my judgment, with the Constitution of the United States. The question, as Congress is well aware, is by no means a new one. That the power of removal is constitutionally vested in the President of the United States is a principle which has been not more distinctly declared by judicial authority and judicial commentators than it has been uniformly practiced upon by the legislative and executive departments of the Government. The question arose in the House of Representatives so early as the 16th of June, 1789, on the bill for establishing an executive department denominated "The Department of Foreign Affairs." The first clause of the bill, after recapitulating the functions of that officer and defining his duties, had these words: "to be removable from office by the President of the United States." It was moved to strike out these words, and the motion was sustained with great ability and vigor. It was insisted that the President could not constitutionally exercise the power of removal exclusively of the Senate; that the Federalist so interpreted the Constitution when arguing for its adoption by the several States; that the Constitution had nowhere given the President power of removal, either expressly or by strong implication, but, on the contrary, had distinctly provided for removals from office by impeachment only.

A construction which denied the power of removal by the President was further maintained by arguments drawn from the danger of the

abuse of the power; from the supposed tendency of an exposure of public officers to capricious removal to impair the efficiency of the civil service; from the alleged injustice and hardship of displacing incumbents dependent upon their official stations, without sufficient consideration; from a supposed want of responsibility on the part of the President; and from an imagined defect of guaranties against a vicious President who might incline to abuse the power. On the other hand, an exclusive power of removal by the President was defended as a true exposition of the text of the Constitution. It was maintained that there are certain causes for which persons ought to be removed from office without being guilty of treason, bribery, or malfeasance, and that the nature of things demands that it should be so. "Suppose," it was said, "a man becomes insane by the visitation of God, and is likely to ruin our affairs, are the hands of the Government to be confined from warding off the evil? Suppose a person in office, not possessing the talents he was judged to have at the time of the appointment, is the error not to be corrected? Suppose he acquires vicious habits and incurable indolence, or total neglect of the duties of his office, which shall work mischief to the public welfare, is there no way to arrest the threatened danger? Suppose he becomes odious and unpopular, by reason of the measures he pursues—and this he may do without committing any positive offense against the law—must he preserve his office in despite of the popular will? Suppose him grasping for his own aggrandizement and the elevation of his connections by every means short of the treason defined by the Constitution, hurrying your affairs to the precipice of destruction, endangering your domestic tranquillity, plundering you of the means of defense, alienating the affection of your allies, and promoting the spirit of discord; must the tardy, tedious, desultory road by way of impeachment be travelled to overtake the man who, barely confining himself within the letter of the law, is employed in drawing off the vital principle of the Government? The nature of things, the great objects of society, the express objects of the Constitution itself, require that this thing should be otherwise. To unite the Senate with the President in the exercise of the power," it was said, "would involve us in the most serious difficulty. Suppose a discovery of any of those events should take place when the Senate is not in session, how is the remedy to be applied? The evil could be avoided in no other way than by the Senate sitting always." In regard to the danger of the power being abused if exercised by one man, it was said "that the danger is as great with respect to the Senate, who are assembled from various parts of the continent, with different impressions and opinions;" "that such a body is more likely to misuse the power of removal than the man whom the united voice of America calls to the presidential chair. As the nature of government requires the power of removal," it was maintained "that it should be exercised in this way by the hand capable of exerting itself with effect; and the power must be conferred on the President by the Constitution, as the executive officer of the Government."

Mr. Madison, whose adverse opinion in the Federalist had been relied upon by those who denied the exclusive power, now participated in the debate. He declared that he had reviewed his former opinions, and he summed up the whole case as follows:

"The Constitution affirms that the executive power is vested in the President. Are there exceptions to this proposition? Yes, there are. The Constitution says that in appointing to office the Senate shall be associated with the President, unless in the case of inferior officers, when the law shall otherwise direct. Have we (that is, Congress) a right to extend this exception? I believe not. If the Constitution has invested all executive power in the President, I venture to assert that the legislature has no right to diminish or modify his executive authority. The question now resolves itself into this: Is the power of displacing an executive power? I conceive that if any power whatsoever is in the Executive it is the power of appointing, overseeing, and controlling those who execute the laws. If the Constitution had not qualified the power of the President in appointing to office by associating the Senate with him in that business, would it not be clear that he would have the right, by virtue of his executive power, to make such appointment? Should we be authorized, in defiance of that clause in the Constitution—'The executive power shall be vested in the President'—to unite the Senate with the President in the appointment to office? I conceive not. If it is admitted that we should not be authorized to do this, I think it may be disputed whether we have a right to associate them in removing persons from office, the one power being as much of an executive nature as the other; and the first one is authorized by being excepted out of the general rule established by the Constitution in these words: 'The executive power shall be vested in the President.'"

The question thus ably and exhaustively argued was decided by the House of Representatives, by a vote of thirty-four to twenty, in favor of the principle that the executive power of removal is vested by the Constitution in the Executive, and in the Senate by the casting vote of the Vice President.

The question has often been raised in subsequent times of high excitement, and the practice of the Government has nevertheless conformed in all cases to the decision thus early made.

The question was revived during the administration of President Jackson, who made, as is well recollected, a very large number of removals, which were made an occasion of close and rigorous scrutiny and remonstrance. The subject was long and earnestly debated in the Senate, and the early construction of the Constitution was nevertheless freely accepted as binding and conclusive upon Congress.

The question came before the Supreme Court of the United States in January, 1839, *ex parte Hennen*. It was declared by the Court on that occasion, that the power of removal from office was a subject much disputed, and upon which a great diversity of opinion was entertained in the early history of the Government. This related, however, to the power of the President to remove officers appointed with the concurrence of the Senate; and the great question was whether the removal was to be by the President alone, or with the concurrence of the Senate, both constituting the appointing power. No one denied the power of the President and Senate jointly to remove where the tenure of the office was not fixed by the Constitution, which was a full recognition of the principle that the power of removal was incident to the power of appointment; but it was very early adopted as a practical construction of the Constitution, that this power was vested in the President alone; and such would appear to have been the legislative con-

struction of the Constitution, for in the organization of the three great Departments of State, War, and Treasury, in the year 1789, provision was made for the appointment of a subordinate officer by the head of the Department, who should have charge of the records, books, and papers appertaining to the office when the head of the Department should be removed from office by the President of the United States. When the Navy Department was established, in the year 1798, provision was made for the charge and custody of the books, records, and documents of the Department in case of vacancy in the office of Secretary by removal or otherwise. It is not here said "by removal of the President," as is done with respect to the heads of the other Departments, yet there can be no doubt that he holds his office with the same tenure as the other Secretaries, and is removable by the President. The change of phraseology arose, probably, from its having become the settled and well-understood construction of the Constitution that the power of removal was vested in the President alone in such cases, although the appointment of the officer is by the President and Senate. (13 Peters, page 139.)

Our most distinguished and accepted commentators upon the Constitution concur in the construction thus early given by Congress, and thus sanctioned by the Supreme Court. After a full analysis of the congressional debate to which I have referred, Mr. Justice Story comes to this conclusion: "After a most animated discussion, the vote finally taken in the House of Representatives was affirmative of the power of removal in the President, without any co-operation of the Senate, by the vote of thirty-four members against twenty. In the Senate, the clause in the bill affirming the power was carried by the casting vote of the Vice President. That the final decision of this question so made was greatly influenced by the exalted character of the President then in office, was asserted at the time, and has always been believed, yet the doctrine was opposed as well as supported by the highest talents and patriotism of the country. The public have acquiesced in this decision, and it constitutes, perhaps, the most extraordinary case in the history of the Government of a power conferred by implication on the Executive by the assent of a bare majority of Congress, which has not been questioned on many other occasions." The commentator adds: "Nor is this general acquiescence and silence without a satisfactory explanation."

Chancellor Kent's remarks on the subject are as follows:

"On the first organization of the Government it was made a question whether the power of removal in case of officers appointed to hold at pleasure resided nowhere but in the body which appointed, and, of course, whether the consent of the Senate was not requisite to remove. This was the construction given to the Constitution while it was pending for ratification before the State conventions, by the author of the Federalist. But the construction which was given to the Constitution by Congress, after great consideration and discussion, was different. The words of the act (establishing the Treasury Department) are: 'And whenever the same shall be removed from office by the President of the United States, or in any other case of vacancy in the office, the assistant shall act.' This amounted to a legislative construction of the Constitution, and it has ever since been acquiesced in and acted upon as a decisive authority in the case. It applies equally to every other officer of the Government appointed by the President, whose term of duration is not specially declared. It is supported by the weighty reason that the subordinate officers in the executive department ought to hold at the pleasure of the head of the department, because he is invested generally with the executive authority, and the participation in that authority by the Senate was an exception to a general principle and ought to be taken strictly. The President is the great responsible officer for the faithful execution of the law, and the power of removal was incidental to that duty, and might often be requisite to fulfill it."

Thus has the important question presented by this bill been settled, in the language of the late Daniel Webster, (who, while dissenting from it, admitted that it was settled,) by construction, settled by precedent, settled by the practice of the Government, and settled by statute. The events of the last war furnished a practical confirmation of the wisdom of the Constitution as it has hitherto been maintained, in many of its parts, including that which is now the subject of consideration. When the war broke out, rebel enemies, traitors, abettors, and sympathizers, were found in every Department of the Government, as well in the civil service as in the land and naval military service. They were found in Congress and among the keepers of the Capitol; in foreign missions; in each and all of the executive Departments; in the judicial service; in the post office, and among the agents for conducting Indian affairs. Upon probable suspicion they were promptly displaced by my predecessor, so far as they held their offices under executive authority, and their duties were confided to new and loyal successors. No complaints against that power or doubts of its wisdom were entertained in any quarter. I sincerely trust and believe that no such civil war is likely to occur again. I cannot doubt, however, that in whatever form, and on whatever occasion, sedition can raise an effort to hinder, or embarrass, or defeat, the legitimate action of this Government, whether by preventing the collection of revenue, or disturbing the public peace, or separating the States, or betraying the country to a foreign enemy, the power of removal from office by the Executive, as it has heretofore existed and been practiced, will be found indispensable.

Under these circumstances, as a depository of the executive authority of the nation, I do not feel at liberty to unite with Congress in reversing it by giving my approval to the bill. At the early day when this question was settled, and, indeed, at the several periods when it has subsequently been agitated, the success of the Constitution of the United States, as a new and peculiar system of free representative government, was held doubtful in other countries, and was even a subject of patriotic apprehension among the American people themselves. A trial of nearly eighty years, through the vicissitudes of foreign conflicts and of civil war, is confidently regarded as having extinguished all such doubts and apprehensions for the future. During that eighty years the people of the United States have enjoyed a measure of security, peace, prosperity, and happiness never surpassed by any nation. It cannot be doubted that the triumphant success of the Constitution is due to the wonderful wisdom with which the functions of government were distributed between the three principal Departments—the legislative, the executive, and the judicial—and to the fidelity with which each

has confined itself or been confined by the general voice of the nation within its peculiar and proper sphere. While a just, proper, and watchful jealousy of executive power constantly prevails as it ought ever to prevail, yet it is equally true that an efficient Executive, capable, in the language of the oath prescribed to the President, of executing the laws, and, within the sphere of executive action, of preserving, protecting, and defending the Constitution of the United States, is an indispensable security for tranquility at home, and peace, honor, and safety abroad. Governments have been erected in many countries upon our model. If one or many of them have thus far failed in fully securing to their people the benefits which we have derived from our system, it may be confidently asserted that their misfortune has resulted from their unfortunate failure to maintain the integrity of each of the three great departments while preserving harmony among them all.

Having at an early period accepted the Constitution in regard to the executive office in the sense in which it was interpreted with the concurrence of its founders, I have found no sufficient grounds in the arguments now opposed to that construction or in any assumed necessity of the times for changing those opinions. For these reasons I return the bill to the Senate, in which house it originated, for the further consideration of Congress which the Constitution prescribes. Insomuch as the several parts of the bill which I have not considered are matters chiefly of detail, and are based altogether upon the theory of the Constitution from which I am obliged to dissent, I have not thought it necessary to examine them with a view to make them an occasion of distinct and special objections.

Experience, I think, has shown that it is the easiest, as it is also the most attractive of studies to frame constitutions for the self-government of free States and nations. But I think experience has equally shown that it is the most difficult of all political labors to preserve and maintain such free constitutions of self-government when once happily established. I know no other way in which they can be preserved and maintained, except by a constant adherence to them through the various vicissitudes of national existence, with such adaptations as may become necessary, always to be effected, however, through the agencies and in the forms prescribed in the original constitutions themselves.

Whenever administration fails, or seems to fail, in securing any of the great ends for which republican government is established, the proper course seems to be to renew the original spirit and forms of the Constitution itself.

ANDREW JOHNSON.

WASHINGTON, *March* 2, 1867.

Copy of the Bill Vetoed.

AN ACT regulating the tenure of certain civil offices.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That every person holding any civil office to which he has been appointed by and with the advice and consent of the Senate, and every person who shall hereafter be appointed to any such office, and shall become duly qualified to act therein, is, and shall be, entitled to hold such office until a successor shall have been in like manner appointed and duly qualified, except as herein otherwise provided: *Provided*, That the Secretaries of State, of the Treasury, of War, of the Navy, and of the Interior, the Postmaster General, and the Attorney General shall hold their offices respectively for and during the term of the President by whom they may have been appointed, and for one month thereafter, subject to removal by and with the advice and consent of the Senate.

SEC. 2. That when any officer appointed as aforesaid, excepting judges of the United States courts, shall, during the recess of the Senate, be shown, by evidence satisfactory to the President, to be guilty of misconduct in office, or crime, or for any reason shall become incapable or legally disqualified to perform its duties, in such case, and in no other, the President may suspend such officer, and designate some suitable person to perform temporarily the duties of such office until the next meeting of the Senate, and until the case shall be acted upon by the Senate; and such person, so designated, shall take the oaths and give the bonds required by law to be taken and given by the person duly appointed to fill such office; and in such case it shall be the duty of the President, within twenty days after the first day of such next meeting of the Senate, to report to the Senate such suspension, with the evidence and reasons for his action in the case and the name of the person so designated to perform the duties of such office. And if the Senate shall concur in such suspension, and advise and consent to the removal of such officer, they shall so certify to the President, who may thereupon remove such officer, and, by and with the advice and consent of the Senate, appoint another person to such office. But if the Senate shall refuse to concur in such suspension, such officer so suspended shall forthwith resume the functions of his office, and the powers of the person so performing its duties in his stead shall cease, and the official salary and emoluments of such officer shall, during such suspension, belong to the person so performing the duties thereof, and not to the officer so suspended: *Provided, however*, That the President, in case he shall become satisfied that such suspension was made on insufficient grounds, shall be authorized, at any time before reporting such suspension to the Senate as above provided, to revoke such suspension and reinstate such officer in the performance of the duties of his office.

SEC. 3. That the President shall have power to fill all vacancies which may happen during the recess of the Senate, by reason of death or resignation, by granting commissions which shall expire at the end of their next session thereafter. And if no appointment, by and with the advice and consent of the Senate, shall be made to such office so vacant or temporarily filled as aforesaid during such next session of the Senate, such office shall remain in abeyance without any salary, fees, or emoluments attached thereto, until the same shall be filled by appointment thereto, by and with the advice and consent of the Senate; and during such time all the powers

and duties belonging to such office shall be exercised by such other officer as may by law exercise such powers and duties in case of a vacancy in such office.

SEC. 4. That nothing in this act contained shall be construed to extend the term of any office the duration of which is limited by law.

SEC. 5. That if any person shall, contrary to the provisions of this act, accept any appointment to or employment in any office, or shall hold or exercise, or attempt to hold or exercise, any such office or employment, he shall be deemed, and is hereby declared to be, guilty of a high misdemeanor, and, upon trial and conviction thereof, he shall be punished therefor by a fine not exceeding ten thousand dollars, or by imprisonment not exceeding five years, or both said punishments, in the discretion of the court.

SEC. 6. That every removal, appointment, or employment made, had, or exercised, contrary to the provisions of this act, and the making, signing, sealing, countersigning, or issuing of any commission or letter of authority for or in respect to any such appointment or employment, shall be deemed, and are hereby declared to be, high misdemeanors, and, upon trial and conviction thereof, every person guilty thereof shall be punished by a fine not exceeding ten thousand dollars, or by imprisonment not exceeding five years, or both said punishments, in the discretion of the court: *Provided*, That the President shall have power to make out and deliver, after the adjournment of the Senate, commissions for all officers whose appointment shall have been advised and consented to by the Senate.

SEC. 7. That it shall be the duty of the Secretary of the Senate, at the close of each session thereof, to deliver to the Secretary of the Treasury, and to each of his assistants, and to each of the Auditors, and to each of the Comptrollers in the Treasury, and to the Treasurer, and to the Register of the Treasury, a full and complete list, duly certified, of all persons who shall have been nominated to and rejected by the Senate during such session, and a like list of all the offices to which nominations shall have been made and not confirmed and filled at such session.

SEC. 8. That whenever the President shall, without the advice and consent of the Senate, designate, authorize, or employ any person to perform the duties of any office, he shall forthwith notify the Secretary of the Treasury thereof, and it shall be the duty of the Secretary of the Treasury thereupon to communicate such notice to all the proper accounting and disbursing officers of his Department.

SEC. 9. That no money shall be paid or received from the Treasury, or paid or received from or retained out of any public moneys or funds of the United States, whether in the Treasury or not, to or by or for the benefit of any person appointed to or authorized to act in or holding or exercising the duties or functions of any office contrary to the provisions of this act; nor shall any claim, account, voucher, order, certificate, warrant, or other instrument providing for or relating to such payment, receipt, or retention, be presented, passed, allowed, approved, certified, or paid by any officer of the United States, or by any person exercising the functions or performing the duties of any office or place of trust under the United States, for or in respect to such office, or the exercising or performing the functions or duties thereof; and every person who shall violate any of the provisions of this section shall be deemed guilty of a high misdemeanor, and, upon trial and conviction thereof, shall be punished therefor by a fine not exceeding ten thousand dollars, or by imprisonment not exceeding ten years, or both said punishments, in the discretion of the court.

The votes on this bill were:

February 18—The SENATE passed it, as agreed upon by a committee of conference—yeas 22, nays 10, as follow:

YEAS—Messrs. Anthony, Brown, Chandler, Conness, Fogg, Fowler, Henderson, Howard, Howe, Lane, Morgan, Morrill, Ramsey, Ross, Sherman, Stewart, Sumner, Trumbull, Wade, Williams, Wilson, Yates—22.

NAYS—Messrs. *Buckalew, Davis, Dixon, Doolittle, Hendricks, Johnson, McDougall, Patterson*, Van Winkle, Willey—10.

February 19—The HOUSE passed it—yeas 112, nays 41, as follow:

YEAS—Messrs. Alley, Allison, Ames, Anderson, Arnell, Delos R. Ashley, James M. Ashley, Baker, Baldwin, Banks, Baxter, Beaman, Benjamin, Bidwell, Blaine, Blow, Boutwell, Brandegee, Bromwell, Broomall, Buckland, Reader W. Clarke, Sidney Clarke, Cobb, Cook, Cullom, Darling, Deming, Dodge, Donnelly, Driggs, Dumont, Eggleston, Eliot, Farnsworth, Farquhar, Ferry, Grinnell, Abner C. Harding, Hart, Hayes, Henderson, Higby, Hill, Holmes, Hooper, Hotchkiss, Demas Hubbard, jr., John H. Hubbard, Hulburd, Ingersoll, Julian, Kasson, Kelley, Kelso, Ketcham, Koontz, Knykendall, Laflin, George V. Lawrence, William Lawrence, Loan, Longyear, Lynch, Marvin, Maynard, McIndoe, McKee, McRuer, Mercur, Miller, Myers, Newell, Orth, Paine, Patterson, Perham, Pike, Plants, Pomeroy, Price, William H. Randall, Raymond, Alexander H. Rice, John H. Rice, Rollins, Sawyer, Schenck, Scofield, Shellabarger, Sloan, Spalding, Starr, Stevens, Stokes, Thayer, John L. Thomas, jr., Trowbridge, Upson, Van Aernam, Burt Van Horn, Robert T. Van Horn, Hamilton Ward, Warner, William B. Washburn, Welker, Wentworth, Williams, James F. Wilson, Stephen F. Wilson, Windom, Woodbridge—112.

NAYS—Messrs. *Ancona, Bergen, Boyer, Campbell, Chanler, Cooper, Dawson, Denison, Eldridge, Finck, Glossbrenner, Aaron Harding, Harris*, Hawkins, *Hise, Humphrey, Hunter, Kerr*, Latham, *Le Blond, Leftwich, McCullough, Niblack, Nicholson, Radford, Samuel J. Randall, Ritter, Rogers, Ross*, Rousseau, *Shanklin, Sitgreaves, Stillwell, Taber, Nathaniel G. Taylor, Nelson Taylor, Thornton, Trimble, Andrew H. Ward*, Whaley, *Wright*—41.

March 2—The bill was vetoed.

Same day—The SENATE re-passed it—yeas 35, nays 11, as follow:

YEAS—Messrs. Anthony, Cattell, Chandler, Conness, Cragin, Edmunds, Fessenden, Fogg, Foster, Fowler, Frelinghuysen, Grimes, Harris, Henderson, Howard, Kirkwood, Lane, Morgan, Morrill, Nye, Poland, Pomeroy, Ramsey, Ross, Sherman, Sprague, Stewart, Sumner, Trumbull, Van Winkle, Wade, Willey, Williams, Wilson, Yates—35.

NAYS—Messrs. *Buckalew, Cowan, Davis, Dixon, Doolittle, Hendricks, Johnson, Nesmith, Norton, Patterson, Saulsbury*—11.

Same day—The HOUSE re-passed it—yeas 138, nays 40, as follow:

YEAS—Messrs. Alley, Allison, Ames, Anderson, Arnell, Delos R. Ashley, James M. Ashley, Baker, Baldwin, Banks, Barker, Baxter, Beaman, Benjamin, Bidwell, Bingham, Blaine, Blow, Boutwell, Brandegee, Bromwell, Broomall, Buckland, Bundy, Reader W. Clarke, Sidney Clarke, Cobb, Conkling, Cook, Cullom, Darling, Davis, Dawes, Defrees, Delano, Deming, Dixon, Dodge, Donnelly, Driggs, Dumont, Eckley, Eggleston, Eliot, Farnsworth, Farquhar, Ferry, Garfield, Grinnell, Griswold, Hale, Abner C. Harding, Hart, Hawkins, Hayes, Henderson, Higby, Hill, Holmes, Hooper, Hotchkiss, Asahel W. Hubbard, Chester D. Hubbard, John H. Hubbard, James R. Hubbell, Hulburd, Ingersoll, Jenckes, Julian, Kasson, Kelley, Kelso, Ketcham, Koontz, Laflin, George V. Lawrence, William Lawrence, Loan, Longyear, Lynch, Marquette, Marston, Marvin, Maynard, McClurg, McIndoe, McKee, McRuer, Mercur, Miller, Moorhead, Morrill, Morris, Moulton, Myers, Newell, O'Neill, Orth, Paine,

Patterson, Perham, Pike, Plants, Pomeroy, Price, William H. Randall, Raymond, Alexander H. Rice, John H. Rice, Rollins, Sawyer, Schenck, Scofield, Shellabarger, Sloan, Spalding, Starr, Stokes, Thayer, Francis Thomas, Trowbridge, Upson, Van Aernam, Burt Van Horn, Robert T. Van Horn, Hamilton Ward, Warner, Henry D. Washburn, William B. Washburn, Welker, Wentworth, Whaley, Williams, James F. Wilson, Stephen F. Wilson, Windom, Woodbridge, and SPEAKER COLFAX—138.

NAYS—Messrs. *Ancona, Bergen, Boyer, Campbell, Chanler,* Cooper, *Dawson, Eldridge, Finck, Glossbrenner, Goodyear, Aaron Harding, Hise, Hogan, Edwin N. Hubbell, Humphrey, Hunter, Jones,* Latham, *Le Blond, Leftwich, Marshall, McCullough, Niblack, Nicholson, Radford, Samuel J. Randall, Ritter, Rogers, Ross, Shanklin, Sitgreaves, Strouse, Taber, Nelson Taylor, Thornton, Trimble, Andrew H. Ward, Winfield, Wright*—40.

Whereupon the SPEAKER of the House declared the bill to be a law.

Message Accompanying the Approval of the Army Appropriation Bill, March 2, 1867.

To the House of Representatives:

The act entitled "An act making appropriations for the support of the Army for the year ending June 30, 1868, and for other purposes," contains provisions to which I must call attention.

These provisions are contained in the second section, which in certain cases virtually deprives the President of his constitutional functions as Commander-in-Chief of the Army, and in the sixth section, which denies to ten States of the Union their constitutional right to protect themselves, in any emergency, by means of their own militia. These provisions are out of place in an appropriation act. I am compelled to defeat these necessary appropriations if I withhold my signature from the act. Pressed by these considerations, I feel constrained to return the bill with my signature, but to accompany it with my protest against the sections which I have indicated. ANDREW JOHNSON.

WASHINGTON, *March* 2, 1867.

The sections complained of are these:

SEC. 2. That the headquarters of the General of the Army of the United States shall be at the city of Washington; and all orders and instructions relating to military operations, issued by the President or Secretary of War, shall be issued through the General of the Army, and, in case of his inability, through the next in rank. The General of the Army shall not be removed, suspended, or relieved from command, or assigned to duty elsewhere than at said headquarters, except at his own request, without the previous approval of the Senate; and any orders or instructions relating to military operations issued contrary to the requirements of this section shall be null and void; and any officer who shall issue orders or instructions contrary to the provisions of this section shall be deemed guilty of a misdemeanor in office; and any officer of the Army who shall transmit, convey, or obey any orders or instructions so issued, contrary to the provisions of this section, knowing that such orders were so issued, shall be liable to imprisonment for not less than two nor more than twenty years, upon conviction thereof in any court of competent jurisdiction.

SEC. 6. That all militia forces now organized or in service in either of the States of Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Louisiana, Mississippi, and Texas, be forthwith disbanded, and that the further organization, arming, or calling into service of the said militia forces, or any part thereof, is hereby prohibited under any circumstances whatever, until the same shall be authorized by Congress.

IN HOUSE.

Pending this bill,

February 20—Mr. BINGHAM moved to strike out from the second section the words in the second sentence, prohibiting the removal, suspension, &c., of the General without the previous approval of the Senate; which was disagreed to—yeas 62, nays 69, as follow:

YEAS—Messrs. *Ancona, Bergen,* Bingham, Buckland, *Campbell, Cooper,* Darling, Davis, Dawes, *Dawson, Denison, Eldridge,* Farquhar, *Finck, Glossbrenner, Goodyear, Aaron Harding,* Hawkins, *Hise, Hogan, Edwin N. Hubbell,* James R. Hubbell, *Humphrey, Hunter,* Ketcham, Kuykendall, Laflin, George V. Lawrence, *Le Blond, Leftwich,* Loan, *Marshall,* Marvin, *McCullough,* McRuer, Moorhead, *Niblack, Nicholson, Noell,* Phelps, Pike, Pomeroy, *Radford, Samuel J. Randall,* Raymond, *Ritter, Rogers, Ross,* Rousseau, Schenck, *Shanklin, Sitgreaves, Taber, Nathaniel G Taylor,* Thayer, *Thornton, Trimble, Andrew H. Ward,* William B. Washburn, Whaley, *Winfield, Wright*—62.

NAYS—Messrs. Alley, Allison, Ames, Arnell, James M. Ashley, Baker, Baldwin, Barker, Beaman, Benjamin, Bidwell, Blaine, Blow, Boutwell, Brandegee, Bromwell, Broomall, Bundy, Reader W. Clarke, Sidney Clarke, Cullom, Dodge, Donnelly, Eggleston, Eliot, Abner C. Harding, Hart, Henderson, Higby, Hill, Holmes, Hooper, Hotchkiss, Demas Hubbard, jr., John H. Hubbard, Hulburd, Ingersoll, Julian, Kelley, Koontz, William Lawrence, Longyear, Maynard, McClurg, Mercur, Miller, Moulton, Myers, O'Neill, Orth, Paine, Perham, Price, Rollins, Scofield, Shellabarger, Spalding, Starr, Stevens, Stokes, Upson, Hamilton Ward, Warner, Henry D. Washburn, Welker, Wentworth, Williams, Stephen F. Wilson, Windom—69.

Same day—Mr. LEBLOND moved to strike out the second section; which was disagreed to—yeas 41, nays 88, as follow:

YEAS—Messrs. *Ancona, Bergen,* Bingham, *Campbell, Cooper,* Davis, *Dawson, Denison, Eldridge, Finck, Glossbrenner, Goodyear, Aaron Harding, Hise, Hogan, Humphrey, Hunter,* Kuykendall, *LeBlond, Leftwich,* Loan, *Marshall,* Marvin, *Niblack, Nicholson, Noell,* Phelps, *Radford, Samuel J. Randall,* Raymond, *Ritter,* Rousseau, *Sitgreaves, Nathaniel G. Taylor, Nelson Taylor, Thornton, Trimble, Andrew H. Ward,* Whaley, *Winfield, Wright.*—41.

NAYS—Messrs. Alley, Allison, Ames, Arnell, Delos R. Ashley, James M. Ashley, Baker, Barker, Baxter, Beaman, Benjamin, Bidwell, Blaine, Boutwell, Brandegee, Bromwell, Broomall, Bundy, Reader W. Clarke, Sidney Clarke, Cook, William A. Darling, Dodge, Donnelly, Eggleston, Eliot, Farnsworth, Farquhar, Abner C. Harding, Hart, Henderson, Higby, Hill, Holmes, Hooper, Hotchkiss, Demas Hubbard, jr., John H. Hubbard, James R. Hubbell, Ingersoll, Julian, Kelley, Kelso, Koontz, Laflin, George V. Lawrence, William Lawrence, Longyear, Lynch, Marston, Maynard, McClurg, McIndoe, McRuer, Mercur, Miller, Moorhead, Moulton, Myers, Newell, O'Neill, Orth, Paine, Patterson, Perham, Pike, Plants, Pomeroy, Price, John H. Rice, Rollins, Scofield, Shellabarger, Sloan, Spalding, Starr, Stevens, Stokes, John L. Thomas, jr., Trowbridge, Upson, Burt Van Horn, Hamilton Ward, Warner, Welker, Wentworth, Williams, Windom—88.

February 26—In SENATE, a motion to strike out the second section was lost—yeas 8, nays 28, as follow:

YEAS—Messrs. *Buckalew, Dixon, Doolittle,* Henderson, *Hendricks, Johnson, Norton, Patterson*—8.

NAYS—Messrs. Anthony, Chandler, Conness, Cragin, Creswell, Edmunds, Fessenden, Fogg, Foster, Frelinghuysen, Kirkwood, Morgan, Nye, Poland, Pomeroy, Ramsey, Ross, Sherman, Sprague, Stewart, Sumner, Trumbull, Van Winkle, Wade, Willey, Williams, Wilson, Yates—28.

Veto of the Supplemental Reconstruction Bill, March 23, 1867.

To the House of Representatives:

I have considered the bill entitled "An act supplementary to an act entitled 'An act to pro-

vide for the more efficient government of the rebel States,' passed March 2, 1867, and to facilitate restoration," and now return it to the House of Representatives, with my objections.*

This bill provides for elections in the ten States brought under the operation of the original act to which it is supplementary. Its details are principally directed to the elections for the formation of the State constitutions, but by the sixth section of the bill "all elections" in these States occurring while the original act remains in force are brought within its purview. Referring to the details, it will be found that, first of all, there is to be a registration of the voters. No one whose name has not been admitted on the list is to be allowed to vote at any of these elections. To ascertain who is entitled to registration, reference is made necessary, by the express language of the supplement, to the original act and to the pending bill. The fifth section of the original act provides, as to voters, that they shall be "male citizens of the State, twenty-one years old and upward, of whatever race, color, or previous condition, who have been resident of said State for one year." This is the general qualification, followed, however, by many exceptions. No one can be registered, according to the original act, "who may be disfranchised for participation in the rebellion," a provision which left undetermined the question as to what amounted to disfranchisement, and whether, without a judicial sentence, the act itself produced that effect. This supplemental bill superadds an oath, to be taken by every person before his name can be admitted upon the registration, that he has "not been disfranchised for participation in any rebellion or civil war against the United States." It thus imposes upon every person the necessity and responsibility of deciding for himself, under the peril of punishment by a military commission, if he makes a mistake, what works disfranchisement by participation in rebellion, and what amounts to such participation. Almost every man—the negro as well as the white—above twenty-one years of age, who was resident in these ten States, during the rebellion, voluntarily or involuntarily, at some time and in some way, did participate in resistance to the lawful authority of the General Government. The question with the citizen to whom this oath is to be proposed must be a fearful one; for while the bill does not declare that perjury may be assigned for such false swearing, nor fix any penalty for the offense, we must not forget that martial law prevails; that every person is answerable to a military commission, without previous presentment by a grand jury for any charge that may be made against him; and that the supreme authority of the military commander determines the question as to what is an offense, and what is to be the measure of punishment.

The fourth section of the bill provides "that the commanding general of each district shall appoint as many boards of registration as may be necessary, consisting of three loyal officers or persons." The only qualification stated for these officers is that they must be "loyal" They may be persons in the military service or civilians, residents of the State or strangers. Yet these persons are to exercise most important duties, and are vested with unlimited discretion. They are to decide what names shall be placed upon the register, and from their decision there is to be no appeal. They are to superintend the elections, and to decide all questions which may arise. They are to have the custody of the ballots, and to make returns of the persons elected. Whatever frauds or errors they may commit must pass without redress. All that is left for the commanding general is to receive the returns of the elections, open the same, and ascertain who are chosen "according to the returns of the officers who conducted said elections." By such means, and with this sort of agency, are the conventions of delegates to be constituted.

As the delegates are to speak for the people, common justice would seem to require that they should have authority from the people themselves. No convention so constituted will in any sense represent the wishes of the inhabitants of these States; for, under the all-embracing exceptions of these laws, by a construction which the uncertainty of the clause as to disfranchisement leaves open to the board of officers, the great body of the people may be excluded from the polls, and from all opportunity of expressing their own wishes, or voting for delegates who will faithfully reflect their sentiments.

I do not deem it necessary further to investigate the details of this bill. No consideration could induce me to give my approval to such an election law for any purpose, and especially for the great purpose of framing the constitution of a State. If ever the American citizen should be left to the free exercise of his own judgment, it is when he is engaged in the work of forming the fundamental law under which he is to live. That work is his work, and it cannot properly be taken out of his hands. All this legislation proceeds upon the contrary assumption that the people of each of these States shall have no constitution, except such as may be arbitrarily dictated by Congress and formed under the restraint of military rule. A plain statement of facts makes this evident.

In all these States there are existing constitutions, formed in the accustomed way by the people. Congress, however, declares that these constitutions are not "loyal and republican," and requires the people to form them anew. What then, in the opinion of Congress, is necessary to make the constitution of a State "loyal and republican?" The original act answers the question. It is universal negro suffrage—a question which the Federal Constitution leaves to the States themselves. All this legislative machinery of martial law, military coercion, and political disfranchisement is avowedly for that purpose, and none other. The existing constitutions of the ten States conform to the acknowledged standards of loyalty and republicanism. Indeed, if there are degrees in republican forms of government, their constitutions are more republican now than when these States—four of which were members of the original thirteen—first became members of the Union.

Congress does not now demand that a single provision of their constitutions be changed, ex-

* For copy of the bill vetoed, see chap. xviii.

cept such as confine suffrage to the white population. It is apparent, therefore, that these provisions do not conform to the standard of republicanism which Congress seeks to establish. That there may be no mistake, it is only necessary that reference should be made to the original act, which declares "such constitution shall provide that the elective franchise shall be enjoyed by all such persons as have the qualifications herein stated for electors of delegates." What class of persons is here meant clearly appears in the same section. That is to say, "the male citizens of said State, twenty-one years old and upward, of whatever race, color, or previous condition, who have been resident in said State for one year previous to the day of such election."

Without these provisions no constitution which can be framed in any one of the ten States will be of any avail with Congress. This, then, is the test of what the constitution of a State of this Union must contain to make it republican. Measured by such a standard, how few of the States now composing the Union have republican constitutions! If, in the exercise of the constitutional guaranty that Congress shall secure to every State a republican form of government, universal suffrage for blacks as well as whites is a *sine qua non*, the work of reconstruction may as well begin in Ohio as in Virginia, in Pennsylvania as in North Carolina.

When I contemplate the millions of our fellow-citizens of the South, with no alternative left but to impose upon themselves this fearful and untried experiment of complete negro enfranchisement, and white disfranchisement it may be almost as complete, or submit indefinitely to the rigor of martial law, without a single attribute of freemen, deprived of all the sacred guaranties of our Federal Constitution, and threatened with even worse wrongs, if any worse are possible, it seems to me their condition is the most deplorable to which any people can be reduced. It is true that they have been engaged in rebellion, and that, their object being a separation of the States and a dissolution of the Union, there was an obligation resting upon every loyal citizen to treat them as enemies, and to wage war against their cause.

Inflexibly opposed to any movement imperiling the integrity of the Government, I did not hesitate to urge the adoption of all measures necessary for the suppression of the insurrection. After a long and terrible struggle, the efforts of the Government were triumphantly successful, and the people of the South, submitting to the stern arbitrament, yielded forever the issues of the contest. Hostilities terminated soon after it became my duty to assume the responsibilities of the Chief Executive officer of the Republic, and I at once endeavored to repress and control the passions which our civil strife had engendered, and no longer regarding these erring millions as enemies, again acknowledged them as our friends and our countrymen The war had accomplished its objects. The nation was saved, and that seminal principle of mischief which, from the birth of the Government, had gradually but inevitably brought on the rebellion, was totally eradicated. Then, it seemed to me, was the auspicious time to commence the work of reconciliation; then, when the people sought once more our friendship and protection, I considered it our duty generously to meet them in the spirit of charity and forgiveness, and to conquer them even more effectually by the magnanimity of the nation than by the force of its arms. I yet believe that if the policy of reconciliation then inaugurated, and which contemplated an early restoration of these people to all their political rights, had received the support of Congress, every one of these ten States, and all their people, would at this moment be fast anchored in the Union, and the great work which gave the war all its sanction, and made it just and holy, would have been accomplished. Then, over all the vast and fruitful regions of the South peace and its blessing would have prevailed, while now millions are deprived of rights guarantied by the Constitution to every citizen, and, after nearly two years of legislation, find themselves placed under an absolute military despotism. "A military republic—a Government formed on mock elections and supported daily by the sword," was nearly a quarter of a century since pronounced by Daniel Webster, when speaking of the South American States, as a "movement indeed, but a retrograde and disastrous movement from the regular and old-fashioned monarchical systems," and he added:

"If men would enjoy the blessings of republican government, they must govern themselves by reason, by mutual counsel and consultation, by a sense and feeling of general interest, and by the acquiescence of the minority in the will of the majority, properly expressed; and, above all, the military must be kept, according to the language of our bill of rights, in strict subordination to the civil authority. Wherever this lesson is not both learned and practised, there can be no political freedom. Absurd, preposterous is it, a scoff and a satire on free forms of constitutional liberty, for forms of government to be prescribed by military leaders, and the right of suffrage to be exercised at the point of the sword."

I confidently believe that a time will come when these States will again occupy their true positions in the Union. The barriers which now seem so obstinate must yield to the force of an enlightened and just public opinion, and sooner or later unconstitutional and oppressive legislation will be effaced from our statute-books. When this shall have been consummated, I pray God that the errors of the past may be forgotten, and that once more we shall be a happy, united and prosperous people, and that at last, after the bitter and eventful experience through which the nation has passed, we shall all come to know that our only safety is in the preservation of our Federal Constitution, and in according to every American citizen and to every State the rights which that Constitution secures.

ANDREW JOHNSON.

WASHINGTON, *March*, 23, 1867.

The votes on this bill were:

IN HOUSE.

March 19—The test vote was on Mr. ELDRIDGE's motion to table the report; which was disagreed to—yeas 26, nays 101, as follow:

YEAS—Messrs. *Archer, Barnes, Boyer, Brooks, Burr, Eldridge, Fox, Getz, Glossbrenner, Haight, Holman, Humphrey, Kerr, Marshall, Morrissey, Mungen, Niblack, Nicholson, Noell, Pruyn, Randall, Robinson, Ross, Taber, Van Auken, Wood*—26.

NAYS—Messrs. Allison, Ames, Anderson, Delos R. Ashley, James M. Ashley, Baker, Baldwin, Banks, Beaman, Bingham, Blaine, Blair, Boutwell, Broomall, Buckland, Butler,

Cake, Churchill, Reader W. Clarke, Sidney Clarke, Cobb, Coburn, Cook, Cornell, Covode, Cullom, Dodge, Donnelly, Driggs, Eckley, Eggleston, Ela, Farnsworth, Ferriss, Ferry, Fields, Gravely, Halsey, Hamilton, Hooper, Hopkins, Asahel W. Hubbard, Chester D. Hubbard, Hunter, Ingersoll, Judd, Julian, Kelley, Ketcham, Kitchen, Koontz, Laflin, William Lawrence, Lincoln, Loan, Logan, Loughridge, Mallory, Marvin, McClurg, Mercur, Miller, Moore, Morrell, Myers, Newcomb, O'Neill, Orth, Paine, Perham, Pile, Polsley, Robertson, Sawyer, Schenck, Scofield, Shanks, Shellabarger, Spalding, Aaron F. Stevens, Stewart, Taffe, Thomas, Trowbridge, Twichell, Upson, Van Aernam, Burt Van Horn, Robert T. Van Horn, Van Wyck, Ward, Cadwalader C. Washburn, Henry D. Washburn, Welker, Thomas Williams, William Williams, James F. Wilson, John T. Wilson, Stephen F. Wilson, Windom, Woodbridge—101.

IN SENATE.

March 19—It passed without division.

March 23—The bill was vetoed.

Same day—The HOUSE re-passed it—yeas 114, nays 25, as follow:

YEAS—Messrs. Allison, Ames, Anderson, Delos R. Ashley, James M. Ashley, Baker, Baldwin, Banks, Beaman, Benjamin, Benton, Blaine, Blair, Boutwell, Broomall, Buckland, Butler, Cake, Churchill, Reader W. Clarke, Sidney Clarke, Cobb, Coburn, Cook, Cornell, Covode, Cullom, Dodge, Donnelly, Driggs, Eckley, Eggleston, Ela, Farnsworth, Ferriss, Ferry, Fields, Finney, Garfield, Gravely, Halsey, Hamilton, Hayes, Hill, Hooper, Hopkins, Chester D. Hubbard, Hulburd, Hunter, Ingersoll, Judd, Julian, Kelley, Kelsey, Ketcham, Kitchen, Koontz, Laflin, William Lawrence, Lincoln, Loan, Logan, Loughridge, Mallory, Marvin, McCarthy, McClurg, Mercur, Miller, Moore, Morrell, Myers, Newcomb, O'Neill, Orth, Paine, Perham, Peters, Pile, Plants, Poland, Polsley, Robertson, Sawyer, Schenck, Scofield, Selye, Shanks, Shellabarger, Smith, Spalding, Aaron F. Stevens, Thaddeus Stevens, Stewart, Taffe, Thomas, Trowbridge, Twichell, Upson, Van Aernam, Burt Van Horn, Robert T. Van Horn, Van Wyck, Ward, Cadwalader C. Washburn, Henry D. Washburn, Welker, Thomas Williams, William Williams, James F. Wilson, John T. Wilson, Stephen F. Wilson, Windom, Woodbridge—114.

NAYS—Messrs *Barnes, Boyer, Brooks, Burr, Chanler, Eldridge, Fox, Getz, Glossbrenner, Haight, Holman, Humphrey, Marshall, Morrissey, Mungen, Niblack, Nicholson, Noell, Pruyn, Randall, Robinson, Ross, Taber, Van Auken, Van Trump*—25.

Same day—The SENATE re-passed it—yeas 40, nays 7, as follow:

YEAS—Messrs. Anthony, Cameron, Chandler, Cattell, Cole, Conkling, Conness, Corbett, Cragin, Drake, Edmunds, Fessenden, Fowler, Frelinghuysen, Harlan, Howard, Howe, *Johnson*, Morgan, Lot M. Morrill, Justin S. Morrill, Morton, Nye, Jas. W. Patterson, Pomeroy, Ramsey, Ross, Sherman, Sprague, Stewart, Sumner, Thayer, Tipton, Trumbull, Van Winkle, Wade, Willey, Williams, Wilson, Yates—40.

NAYS—Messrs. *Buckalew, Davis, Dixon, Doolittle, Norton, David T. Patterson, Saulsbury*—7.

Whereupon the PRESIDENT of the Senate declared the bill to be a law.

Message accompanying the Approval of a Bill relating to Reconstruction, March 30, 1867.

To the House of Representatives:

In giving my approval to the "Joint resolution providing for the expenses of carrying into full effect an act entitled 'An act to provide for the more efficient government of the rebel States,'" I am moved to do so for the following reason: The seventh section of the act supplementary to the act "for the more efficient government of the rebel States" provides that all expenses incurred under or by virtue of that act shall be paid out of any moneys in the Treasury not otherwise appropriated. This provision is wholly unlimited as to the amount to be expended, whereas the resolution now before me limits the appropriation to $500,000. I consider this limitation as a very necessary check against unlimited expenditures and liabilities. Yielding to that consideration, I feel bound to approve this resolution, without modifying in any manner my objections heretofore stated against the original and supplementary acts. ANDREW JOHNSON.

WASHINGTON, *March* 30, 1867.

XVI.

MEMBERS OF THE CABINET OF PRESIDENT JOHNSON,

AND OF THE

THIRTY-NINTH AND FORTIETH CONGRESSES.

PRESIDENT JOHNSON'S CABINET.

Secretary of State—WILLIAM H. SEWARD, of New York.

Secretary of the Treasury—HUGH MCCULLOCH, of Indiana.

Secretary of War—EDWIN M. STANTON, of Ohio.

Secretary of the Navy—GIDEON WELLES, of Connecticut.

Postmaster General—ALEXANDER W. RANDALL, of Wisconsin, *vice* WILLIAM DENNISON, of Ohio, resigned July 11, 1866.

Secretary of the Interior—ORVILLE H. BROWNING, of Illinois, *vice* JAMES HARLAN, of Iowa, resigned September 30, 1866.

Attorney General—HENRY STANBERY, of Kentucky, *vice* JAMES SPEED, of Kentucky, resigned July 16, 1866.

THIRTY-NINTH CONGRESS.

Second Session, December 3, 1866–March 2, 1867.

The following changes took place from the list at the First Session, as printed on pages 107 and 108 of the Manual for 1866:

SENATE.

New Hampshire—George G. Fogg, *vice* Daniel Clark, resigned August 9, 1866.

New Jersey—Frederick T. Frelinghuysen, *vice* William Wright, deceased; Alexander G. Cattell, *vice* John P. Stockton, seat vacated.

Tennessee—David T. Patterson (admitted July 28, 1866;) Joseph S. Fowler (admitted July 25, 1866.)

Kansas—Edmund G. Ross, (qualified July 25, 1866, as successor to James H. Lane.)

HOUSE OF REPRESENTATIVES.

New York—John W. Hunter, *vice* James Humphrey, deceased.

Pennsylvania—Philip Johnson, died January 31, 1867.

Kentucky—Elijah Hise, *vice* Henry Grider, deceased; Lovell H. Rousseau elected to fill the vacancy caused by his resignation July 20, 1866; Andrew H. Ward, *vice* Green Clay Smith, resigned.

Tennessee—Nathaniel G. Taylor, Horace Maynard, William B. Stokes, Edmund Cooper, William B. Campbell, Samuel M. Arnell, Isaac R. Hawkins, John W. Leftwich. (Messrs. Campbell, Arnell, and Hawkins qualified December 3, 1866, the others July 24 and 25, 1866.)

Nebraska—Thomas M. Marquette, (qualified March 2, 1867.)

CLAIMANTS FROM THE INSURRECTIONARY STATES —THIRTY-NINTH CONGRESS.

In SENATE, same as at first session, except James B. Campbell, of South Carolina, *vice* John L. Manning, resigned; and David G. Burnett and O. M. Roberts, of Texas, recently chosen.

In HOUSE, J. McCaleb Wiley, of Alabama, *vice* George C. Freeman, deceased; and James P. Hambleton, of Georgia, *vice* W. T. Wofford; TEXAS—George W. Chilton, Benj. H. Epperson, A. M. Branch, C. Herbert. (Mr. Branch and Mr. Herbert were Representatives in the Rebel Congress.)

FORTIETH CONGRESS.

First Session, March 4-30, 1867.

SENATE.

BENJAMIN F. WADE, of Ohio, *President of the Senate, and acting Vice President.*

John W. Forney, of Pennsylvania, *Secretary.*

Maine—Lot M. Morrill, William Pitt Fessenden.

New Hampshire—Aaron H. Cragin, James W. Patterson.

Vermont—George F. Edmunds, Justin S. Morrill.

Massachusetts—Charles Sumner, Henry Wilson.

Rhode Island—William Sprague, Henry B. Anthony.

Connecticut—James Dixon, Orris S. Ferry.

New York—Edwin D. Morgan, Roscoe Conkling.

New Jersey—Frederick T. Frelinghuysen, Alexander G. Cattell.

Pennsylvania—Charles R. Buckalew, Simon Cameron.

Delaware—George Read Riddle,* Willard Saulsbury.

Maryland—Reverdy Johnson, Philip Francis Thomas.†

Ohio—Benjamin F. Wade, John Sherman.

Kentucky—Garrett Davis, James Guthrie.

Tennessee—David T. Patterson, Joseph S. Fowler.

Indiana—Thomas A. Hendricks, Oliver P. Morton.

Illinois—Richard Yates, Lyman Trumbull.

Missouri—John B. Henderson, Charles D. Drake.

Michigan — Zachariah Chandler, Jacob M. Howard.

Iowa—James W. Grimes, James Harlan.

Wisconsin—James R. Doolittle, Timothy O. Howe.

California—John Conness, Cornelius Cole.

Minnesota—Alexander Ramsey, Daniel S. Norton.

Oregon—George H. Williams, Henry W. Corbett.

Kansas—Edmund G. Ross, Samuel C. Pomeroy.

West Virginia—Peter G. Van Winkle, Waitman T. Willey.

Nevada—William M. Stewart, James W. Nye.

Nebraska—T. W. Tipton, John M. Thayer.

HOUSE OF REPRESENTATIVES.

SCHUYLER COLFAX, of Indiana, *Speaker.*

Edward McPherson, of Pennsylvania, *Clerk.*

Maine—John Lynch, Sidney Perham, James G. Blaine, John A. Peters, Frederick A. Pike.

*New Hampshire**—Jacob H. Ela, Aaron F. Stevens, Jacob Benton.

Vermont—Frederick E. Woodbridge, Luke P. Poland, Worthington C. Smith.

Massachusetts—Thomas D. Eliot, Oakes Ames, Ginery Twichell, Samuel Hooper, Benjamin F. Butler, Nathaniel P. Banks, George S. Boutwell, John D. Baldwin, William B. Washburn, Henry L. Dawes.

Rhode Island—(Not elected.)

Connecticut—(Not elected.)

New York—Stephen Taber, Demas Barnes, William E. Robinson, John Fox, John Morrissey, Thomas E. Stewart, John W. Chanler, James Brooks, Fernando Wood, William H. Robertson, Charles H. Van Wyck, John H. Ketcham, Thomas Cornell, John V. L. Pruyn, John A. Griswold, Orange Ferriss, Calvin T. Hulburd, James M. Marvin, William C. Fields, Addison H. Laflin, John C. Churchill, Dennis McCarthy, Theodore M. Pomeroy, William H. Kelsey, William S. Lincoln, Hamilton Ward, Lewis Selye, Burt Van Horn, James M. Humphrey, Henry Van Aernam, one vacancy.

New Jersey—William Moore, Charles Haight, Charles Sitgreaves, John Hill, George A. Halsey.

Pennsylvania—Samuel J. Randall, Charles O'Neill, Leonard Myers, William D. Kelley, Caleb N. Taylor, Benjamin M. Boyer, John M. Broomall, J. Lawrence Getz, Thaddeus Stevens, Henry L. Cake, Daniel M. Van Auken, Charles Denison, Ulysses Mercur, George F. Miller, Adam J. Glossbrenner, William H. Koontz, Daniel J. Morrell, Stephen F. Wilson, Glenni W. Scofield, Darwin A. Finney, John Covode, James K. Moorhead, Thomas Williams, George V. Lawrence.

Delaware—John A. Nicholson.

Maryland—Hiram McCullough, Stevenson Archer, Charles E. Phelps, Francis Thomas, Frederick Stone.

Ohio—Benjamin Eggleston, Rutherford B. Hayes, Robert C. Schenck, William Lawrence,

*Died March 30, 1867.

†Not admitted to a seat, his credentials having been referred to the Committee on the Judiciary.

*Members qualified—the first two, March 18, 1867, the last, March 20.

William Mungen, Reader W. Clarke, Samuel Shellabarger, Cornelius S. Hamilton, Ralph P. Buckland, James M. Ashley, John T. Wilson, Philadelph Van Trump, George W. Morgan, Martin Welker, Tobias A. Plants, John A. Bingham, Ephraim R. Eckley, Rufus P. Spalding, James A. Garfield.

Kentucky—(Not elected.)

Tennessee—(Not elected.)

Indiana—William E. Niblack, Michael C. Kerr, Morton C. Hunter, William S. Holman, George W. Julian, John Coburn, Henry D. Washburn, Godlove S Orth, Schuyler Colfax, William Williams, John P. C Shanks.

Illinois—Norman B. Judd, John F. Farnsworth, Ellihu B. Washburne, Abner C. Harding, Ebon C. Ingersoll, Burton C. Cook, Henry P. H. Bromwell, Shelby M. Cullom, Lewis W. Ross, Albert G. Burr, Samuel S. Marshall, Jehu Baker, Green B. Raum, John A. Logan.

Missouri—William A. Pile, Carman A. Newcomb, Thomas E. Noell, Joseph J. Gravely, Joseph W. McClurg, Robert T. Van Horn, Benjamin F. Loan, John F. Benjamin, George W. Anderson.

Michigan—Fernando C. Beaman, Charles Upson, Austin Blair, Thomas W. Ferry, Rowland E. Trowbridge, John F. Driggs.

Iowa—James F. Wilson, Hiram Price, William B. Allison, William Loughridge, Grenville M Dodge, Asahel W. Hubbard.

Wisconsin—Halbert E. Paine, Benjamin F. Hopkins, Amasa Cobb, Charles A. Eldridge, Philetus Sawyer, Cadwalader C. Washburn.

California—(Not elected.)

Minnesota—William Windom, Ignatius Donnelly.

Oregon—Rufus Mallory.

Kansas—Sidney Clarke.

West Virginia—Chester D. Hubbard, Bethuel M. Kitchen, Daniel Polsley.

Nevada—Delos R. Ashley.

Nebraska—John Taffe.

CLAIMANTS FROM INSURRECTIONARY STATES—FORTIETH CONGRESS.

IN SENATE—John A. Winston, of Alabama, *vice* George S. Houston; John T. Jones, and Augustus H. Garland, of Arkansas, *vice* William D. Snow,* and Elisha Baxter; G. Williamson, of Louisiana, *vice* Henry Boyce; Mathias A. Manley, of North Carolina, *vice* John Pool. (Of these, Mr. Winston and Mr. Williamson served in the rebel army, the former as colonel of a regiment, the latter as major on General Polk's staff; Mr. Garland was in all the Rebel Congresses.)

*Seat declared vacant by the Legislature.

XVII.

VOTES ON POLITICAL BILLS AND RESOLUTIONS.

Repeal of Pardon by Proclamation.

IN HOUSE.

1866, December 3—Mr. ELIOT introduced a bill, under a suspension of the rules, to repeal the thirteenth section of the act of July 17, 1862, which thirteenth section is in these words: "That the President is hereby authorized, at any time hereafter, by proclamation, to extend to persons who may have participated in the existing rebellion, in any State or part thereof, pardon and amnesty, with such exceptions, and at such time, and on such conditions, as he may deem expedient for the public welfare."

The bill passed—yeas 112, nays 29. The NAYS were:

Messrs. *Ancona, Boyer, Campbell, Chanler, Dawson, Eldridge, Glossbrenner,* Hale, *Aaron Harding, Hise, Kerr, Le Blond, Leftwich, Marshall, Niblack, Nicholson, Noell,* Phelps, *Samuel J. Randall. Ritter, Rogers,* Rousseau, *Shanklin, Sitgreaves,* Stillwell, *Nathaniel G. Taylor, Nelson Taylor, Trimble, Andrew H. Ward.*

1867, January 7—The SENATE passed it—yeas 27, nays 7, as follow:

YEAS—Messrs. Cattell, Chandler, Conness, Cragin, Creswell, Edmunds, Fessenden, Foster, Fowler, Henderson, Howard, Howe, Kirkwood, Lane, Morgan, Morrill, Poland, Ramsey, Ross, Sherman, Stewart, Sumner, Trumbull, Wade, Willey, Williams, Wilson—27.

NAYS—Messrs. *Dixon. Doolittle, Hendricks, Johnson, Norton, Patterson, Saulsbury*—7.

NOTE.—This bill became a law by reason of the failure of the President to sign, or return it with his objections, within ten days after presentation to him.

Representation of Rebel States.

IN HOUSE.

1866, December 11—A bill passed, of which this is the chief section:

"That before the first meeting of the next Congress, and of every subsequent Congress, the Clerk of the next preceding House of Representatives shall make a roll of the representatives elect, and place thereon the names of all persons claiming seats as representatives elect from States which were represented in the next preceding Congress, and of such persons only, and whose credentials show that they were regularly elected in accordance with the laws of their States respectively, or the laws of the United States."

The vote was—yeas 124, nays 31, as follow:

YEAS—Messrs. Alley, Allison, Anderson, Arnell, Delos R. Ashley, James M. Ashley, Baker, Baldwin, Barker, Baxter, Beaman, Benjamin, Bidwell, Bingham, Blaine, Blow, Boutwell, Brandegee, Bromwell, Broomall, Buckland, Bundy, Reader W. Clarke, Sidney Clarke, Cobb, Conkling, Cook, Cullom, Darling, Dawes, Defrees, Delano, Deming, Dixon, Donnelly, Eckley, Eggleston, Eliot, Farnsworth, Farquhar, Ferry, Garfield, Grinnell, Hale, Abner C. Harding, Hart, Hayes, Henderson, Higby, Hill, Holmes, Hooper, Chester D. Hubbard, John H. Hubbard, James R. Hubbell, Hulburd, Ingersoll, Jenckes, Julian, Kasson, Kelley, Kelso, Ketcham, Koontz, Kuydendall, Laflin, Latham, George V. Lawrence, William Lawrence, Longyear, Lynch, Marston, Marvin, Maynard, McClurg, McIndoe, McKee, McRuer, Mercur, Miller, Moorhead, Morrill, Morris, Moulton, O'Neill, Orth, Paine, Patterson, Perham, Pike, Plants, Pomeroy, Price, William H. Randall, Raymond, Alexander H. Rice, John H. Rice, Rollins, Sawyer, Schenck, Scofield, Shellabarger, Sloan, Spalding, Starr, Stevens, Stokes, Thayer, Francis Thomas,

John L. Thomas, jr., Trowbridge, Upson, Van Aernam, Burt Van Horn, Hamilton Ward, Ellihu B. Washburne, William B. Washburn, Welker, Wentworth, Williams James F. Wilson, Stephen F. Wilson, Windom, Woodbridge—104.

NAYS—Messrs. *Ancona, Bergen, Boyer, Campbell, Cooper, Dawson, Eldridge, Finck, Glossbrenner, Goodyear, Aaron Harding, Hise, Edwin N. Hubbell, Hunter, Le Blond, Marshall, Niblack, Nicholson, Samuel J. Randall, Ritter, Rogers, Ross,* Rousseau, *Shanklin, Sitgreaves,* Stillwell, *Taber, Nathaniel G. Taylor, Nelson Taylor, Trimble, Andrew H. Ward*—51.

IN SENATE.

1867, February 1—The bill passed—yeas 31, nays 6, as follow:

YEAS—Messrs. Cattell, Chandler, Conness, Cragin, Edmunds, Fessenden, Fogg, Foster, Fowler, Grimes, Harris, Henderson, Howe, *Johnson,* Kirkwood, Lane, Morgan, Morrill, *Norton,* Poland, Ramsey, Ross, Sherman, Sprague, Stewart, Sumner, Trumbull, Van Winkle, Williams, Wilson, Yates—31.

NAYS—Messrs. *Buckalew, Davis, Hendricks, Nesmith, Patterson, Saulsbury*—6.

NOTE.—This bill became a law by reason of the failure of the President to sign or return it with his objection, within ten days after presentation to him.

Elective Franchise in the Territories.

IN SENATE.

1867, January 10—Pending the bill to amend the organic acts of the Territories,

This substitute was adopted:

That from and after the passage of this act there shall be no denial of the elective franchise in any of the Territories of the United States, now or hereafter to be organized, to any citizen thereof, on account of race, color, or previous condition of servitude, and all acts or parts of acts, either of Congress or the legislative assemblies of said Territories, inconsistent with the provisions of this act, are hereby declared null and void.

The vote was—yeas 24, nays 8, as follow:

YEAS—Messrs. Anthony, Conness, Cragin, Creswell, Edmunds, Fessenden, Fogg, Foster, Fowler, Grimes, Henderson, Howard, Howe, Kirkwood, Lane, Morgan, Morrill, Poland, Sherman, Stewart, Sumner, Wade, Willey, Williams—24.

NAYS—Messrs. *Buckalew, Hendricks, Johnson, Norton, Patterson, Riddle, Saulsbury,* Van Winkle—8.

Same day—The HOUSE concurred—yeas 104, nays 38, as follow:

YEAS—Messrs. Alley, Allison, Ames, Arnell, James M. Ashley, Baker, Baldwin, Banks, Barker, Baxter, Beaman, Benjamin, Bidwell, Bingham, Blaine, Boutwell, Bromwell, Broomall, Buckland, Bundy, Reader W. Clarke, Sidney Clarke, Cobb, Cook, Cullom, Culver, Davis, Defrees, Delano, Deming, Dixon, Dodge, Donnelly, Driggs, Eckley, Eggleston, Farnsworth, Farquhar, Ferry, Garfield, Grinnell, Abner C. Harding, Hart, Hawkins, Higby, Hill, Holmes, Hooper, Demas Hubbard, jr., John H. Hubbard, James R. Hubbell, Ingersoll, Jenckes, Julian, Kasson, Kelso, Ketcham, Koontz, George V. Lawrence, William Lawrence, Loan, Longyear, Lynch, Marston, Marvin, Maynard, McClurg, McRuer, Mercur, Miller, Morrill, Moulton, Myers, O'Neill, Orth, Paine, Perham, Plants, Price, Raymond, John H. Rice, Rollins, Sawyer, Schenck, Scofield, Spalding, Stokes, Thayer, John L. Thomas, jr., Trowbridge, Upson, Van Aernam, Burt Van Horn, Hamilton Ward, Warner, Ellihu B. Washburne, Henry D. Washburn, William B. Washburn, Welker, Wentworth, Williams, James F. Wilson, Stephen F. Wilson, Windom—104.

NAYS—Messrs. *Ancona, Bergen, Boyer, Campbell, Chanler, Cooper, Dawson, Denison, Eldridge, Finck, Glossbrenner, Aaron Harding, Hise, Hogan,* Chester D. Hubbard, *Edwin N. Hubbell, Humphrey, Johnson,* Latham, *Le Blond, Leftwich, Niblack, Nicholson, Noell, Samuel J. Randall,* William H. Randall, *Ritter, Rogers, Ross, Shanklin, Sitgreaves, Taber, Nathaniel G. Taylor, Thornton, Trimble, Andrew H. Ward,* Whaley, *Winfield*—38.

NOTE.—This bill became a law by reason of the failure of the President to sign, or return it with his objections, within ten days after presentation to him.

Female Suffrage and Intelligence Suffrage.

Pending the District of Columbia Suffrage bill in the SENATE—

1866, December 12—Mr. COWAN moved to strike from it the word "male," which was lost—yeas 9, nays 37, as follow:

YEAS—Messrs. Anthony, Brown, *Buckalew, Cowan,* Foster, *Nesmith, Patterson, Riddle,* Wade—9.

NAYS—Messrs. Cattell, Chandler, Conness, Creswell, *Davis, Dixon, Doolittle,* Edmunds, Fessenden, Fogg, Frelinghuysen, Grimes, Harris, Henderson, *Hendricks,* Howard, Howe, Kirkwood, Lane, Morgan, Morrill, *Norton,* Poland, Pomeroy, Ramsey, Ross, *Saulsbury,* Sherman, Sprague, Stewart, Sumner, Trumbull, Van Winkle, Willey, Williams, Wilson, Yates—37.

Mr. DIXON moved to add to first section this proviso:

"That no person who has not heretofore voted in this District shall be permitted to vote, unless he shall be able at the time of offering to vote, to read, and also to write his own name."

Which, December 13, was lost—yeas 11, nays 34, as follow:

YEAS—Messrs. Anthony, *Buckalew, Dixon, Doolittle,* Fogg, Foster, *Hendricks, Nesmith, Patterson, Riddle,* Willey—11.

NAYS—Messrs Brown, Cattell, Chandler, Conness, *Cowan,* Creswell, *Davis,* Edmunds, Fessenden, Frelinghuysen, Grimes, Harris, Henderson, Howard, Howe, Kirkwood, Lane, Morgan, Morrill, *Norton,* Poland, Pomeroy, Ramsey, Ross, *Saulsbury,* Sherman, Sprague, Stewart, Sumner, Trumbull, Van Winkle, Wade, Williams, Wilson—34.

IN HOUSE.

January 28—Mr. NOELL introduced a bill to abolish all disqualification from voting in the District of Columbia, on account of sex, and moved it be referred to a select committee, which was lost—yeas 49, nays 74, as follow:

YEAS—Messrs. *Ancona,* Baker, Barker, Baxter, Benjamin, *Boyer,* Broomall, Bundy, *Campbell, Cooper,* Defrees, *Denison, Eldridge,* Farnsworth, Ferry, *Finck,* Garfield, Hale, Hawkins, *Hise,* Chester D. Hubbard, *Edwin N. Hubbell, Humphrey,* Julian, Kasson, Kelley, Kelso, *Le Blond,* Loan, McClurg, McKee, Miller, Newell, *Niblack, Noell,* Orth, *Ritter, Rogers, Ross, Sitgreaves,* Starr, Stevens, *Strouse, Taber, Nathaniel G. Taylor, Trimble, Andrew H. Ward,* Henry D. Washburn, *Winfield*—49.

NAYS—Messrs. Allison, Anderson, James M. Ashley, Baldwin, Beaman, Bidwell, Bingham, Blaine, Boutwell, Brandegee, Buckland, Reader W. Clarke, Conkling, Cook, Cullom, Darling, Dawes, Deming, Donnelly, Dumont, Eckley, Eggleston, Eliot, Farquhar, Grinnell, Higby, Holmes, Hooper, John H. Hubbard, Ingersoll, Jenckes, Koontz, Laflin, Lynch, Marvin, McIndoe, McRuer, Mercur, Moorhead, Morrill, Myers, O'Neill, Paine, Patterson, Perham, Phelps, Pike, Plants, Price, *Samuel J. Randall,* Raymond, Rollins, Sawyer, Schenck, Scofield, Shellabarger, Sloan, Spalding, Stokes, Francis Thomas, John L. Thomas, jr., Trowbridge, Upson, Van Aernam, Burt Van Horn, Hamilton Ward, Warner, William B. Washburn, Welker, Wentworth, Williams, James F. Wilson, Windom, Woodbridge—74.

Test Oath of Attorneys.

IN HOUSE.

1867, January 22—Mr. BOUTWELL reported this bill:

Be it enacted, &c., That no person shall be permitted to act as an attorney or counsellor in any court of the United States who has been guilty of treason, bribery, murder, or other felony, or who has been engaged in any rebellion against the Government of the United States, or who has given aid, comfort, or encouragement to the enemies of the United States in armed hostility thereto.

SEC. 2. That the first section of this act is hereby declared to be a rule of every court of the United States.

SEC. 3. That it shall be the duty of the judge or judges of any such court, when the sugges-

tion is made in open court that any person acting as an attorney or counsellor of said court, or offering or proposing to so act, is barred by the provisions of this act, or whenever said judge or judges shall believe that such person is so barred, to inquire and ascertain whether such person has been guilty of treason, bribery, murder, or other felony, or whether he has been engaged in any rebellion against the Government of the United States, or whether he has given aid, comfort, or encouragement to the enemies of the United States in armed hostility thereto; and if the court shall be of opinion that such person has been guilty of treason, bribery, murder, or other felony, or that he has been engaged in any rebellion against the Government of the United States, or that he has given aid, comfort, or encouragement to the enemies of the United States in armed hostility thereto, to exclude and debar such person from the office of attorney or counsellor of said court. And any person who shall testify falsely in any examination made by any court, as aforesaid, shall be guilty of perjury, and liable to the pains and penalties of perjury.

January 23—The bill passed—yeas 119, nays 43, as follow:

YEAS—Messrs. Anderson, Delos R. Ashley, James M. Ashley, Baker, Baldwin, Banks, Barker, Baxter, Beaman, Benjamin, Bidwell, Bingham, Blaine, Boutwell, Brandegee, Bromwell, Broomall, Buckland, Bundy, Reader W. Clarke, Cobb, Conkling, Cook, Cullom, Darling, Dawes, Defrees, Delano, Deming, Dixon, Donnelly, Driggs, Dumont, Eckley, Eggleston, Eliot, Farnsworth, Farquhar, Ferry, Garfield, Grinnell, Griswold, Abner C. Harding, Hart, Hayes, Higby, Hill, Holmes, Hooper, Hotchkiss, Chester D. Hubbard, Demas Hubbard, jr., John H. Hubbard, Ingersoll, Jenckes, Julian, Kasson, Kelley, Kelso, Ketcham, Koontz, Kuykendall, Laflin, George V. Lawrence, William Lawrence, Loan, Longyear, Lynch, Marston, Marvin, Maynard, McClurg, McIndoe, McKee, Mercur, Miller, Moorhead, Morrill, Morris, Moulton, Myers, Newell, O'Neill, Orth, Paine, Patterson, Perham, Pike, Plants, Price, William H. Randall, Raymond, Alexander H. Rice, John H. Rice, Rollins, Sawyer, Scofield, Shellabarger, Sloan, Spalding, Starr, Stokes, Francis Thomas, John L. Thomas, jr., Trowbridge, Upson, Van Aernam, Burt Van Horn, Hamilton Ward, Warner, Henry D. Washburn, William B. Washburn, Welker, Wentworth, Williams, James F. Wilson, Stephen F. Wilson, Windom, Woodbridge—119.

NAYS—Messrs. *Ancona, Bergen, Boyer, Campbell, Chanler, Cooper, Dawson, Denison, Eldridge, Finck, Glossbrenner, Goodyear,* Hale, *Aaron Harding, Hogan, Edwin N. Hubbell, Humphrey, Hunter, Kerr,* Latham, *Le Blond, Leftwich, Marshall, McCullough,* McRuer, *Niblack, Nicholson,* Phelps, *Radford, Samuel J. Randall, Ritter, Rogers, Ross, Shanklin, Sitgreaves,* Stillwell, *Taber, Nathaniel G. Taylor, Nelson Taylor, Thornton, Trimble, Andrew H. Ward, Winfield*—43.

The bill was not acted upon in the Senate.

Validating Certain Proclamations and Acts of the President, and Others.

IN HOUSE.

1867, January 22—Pending this bill, introduced by Mr. BINGHAM, and reported from the Judiciary Committee, with amendments, by Mr. JAMES F. WILSON,

AN ACT to declare valid and conclusive certain proclamations of the President, and acts done in pursuance thereof, or of his orders, in the suppression of the late rebellion against the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all acts, proclamations, and orders of the President of the United States, or acts done by his authority or approval after the fourth of March, anno Domini eighteen hundred and sixty-one, and before the first day of July, anno Domini eighteen hundred and sixty-six, respecting martial law, military trials by courts-martial or military commissions, or the arrest, imprisonment, and trial of persons charged with participation in the late rebellion against the United States, or as aiders or abettors thereof, or as guilty of any disloyal practice in aid thereof, or of any violation of the laws or usages of war, or of affording aid and comfort to rebels against the authority of the United States, and all proceedings and acts done or had by courts-martial or military commissions, or arrests and imprisonments made in the premises by any person by the authority of the orders or proclamations of the President, made as aforesaid, or in aid thereof, are hereby approved in all respects, legalized and made valid, to the same extent and with the same effect as if said orders and proclamations had been issued and made, and said arrests, imprisonments, proceedings, and acts had been done under the previous express authority and direction of the Congress of the United States, and in pursuance of a law thereof previously enacted and expressly authorizing and directing the same to be done. And no civil court of the United States, or of any State, or of the District of Columbia, or of any district or Territory of the United States, shall have or take jurisdiction of, or in any manner reverse any of the proceedings had or acts done as aforesaid, nor shall any person be held to answer in any of said courts for any act done or omitted to be done in pursuance or in aid of any of said proclamations or orders, or by authority or with the approval of the President within the period aforesaid, and respecting any of the matters aforesaid; and all officers or other persons in the service of the United States, or who acted in aid thereof, acting in the premises, shall be held *prima facie* to have been authorized by the President; and all acts and parts of acts heretofore passed, inconsistent with the provisions of this act, are hereby repealed.

On the motion to insert the clause beginning "and all officers and other persons," the yeas were 109, the nays 37, (Messrs. *Ancona, Bergen, Boyer, Campbell, Chanler, Cooper, Dawson, Denison, Eldridge, Finck, Glossbrenner, Goodyear, Aaron Harding, Hise, Edwin N. Hubbell, Humphrey, Hunter, Johnson, Kerr, Le Blond, Leftwich, Marshall, Niblack, Nicholson, Noell, Radford, Samuel J. Randall, Ritter, Rogers, Ross, Shanklin, Sitgreaves, Strouse, Taber, Nelson Taylor, Thornton, Trimble.*)

February 23—The bill passed—yeas 112, nays 32, as follow:

YEAS—Messrs. Allison, Ames, Anderson, Arnell, Delos R Ashley, James M. Ashley, Baker, Baldwin, Baxter, Beaman, Bidwell, Bingham, Blaine, Brandegee, Bromwell, Broomall, Buckland, Bundy, Reader W. Clarke, Sidney Clarke, Cobb, Conkling, Cook, Cullom, Davis, Dawes, Delano, Deming, Dixon, Dodge, Donnelly, Eggleston, Eliot, Farnsworth, Farquhar, Garfield, Grinnell, Abner C. Harding, Hawkins, Hayes, Henderson, Higby, Hill, Holmes, Hooper, Chester D. Hubbard, Demas Hubbard, jr., John H. Hubbard, James R. Hubbell, Hulburd, Ingersoll, Jenckes, Julian, Kasson, Kelley, Ketcham, Koontz, Kuykendall, Laflin, George V. Lawrence, William Lawrence, Loan, Longyear, Lynch, Marvin, Maynard, McClurg, McIndoe, McKee, McRuer, Mercur, Miller, Moorhead, Morris, Moulton, Myers, Newell, O'Neill, Orth, Paine, Perham, Plants, Price, William H. Randall, John H. Rice, Rollins, Sawyer, Scofield, Shellabarger, Sloan, Spalding, Starr, Stevens, Stillwell, Stokes, Thayer, Trowbridge, Upson,

Van Aernam, Burt Van Horn, Hamilton Ward, Warner, Henry D. Washburn, William B. Washburn, Welker, Wentworth, Whaley, Williams, James F. Wilson, Stephen F. Wilson, Windom, Woodbridge—112.

NAYS—Messrs. *Ancona, Bergen, Boyer, Campbell, Chanler, Cooper, Dawson, Eldridge, Finck, Glossbrenner, Aaron Harding, Harris, Hise, Edwin N. Hubbell, Humphrey, Hunter, Kerr, LeBlond, Marshall, McCullough, Niblack, Nicholson, Samuel J. Randall, Ritter, Shanklin, Sitgreaves, Strouse, Taber, Thornton, Trimble, Andrew H. Ward, Wright*—32.

IN SENATE.

March 2—The bill passed—yeas 36, nays 8, as follow:

YEAS—Messrs. Anthony, Cattell, Chandler, Conness, Cragin, *Dixon, Doolittle*, Edmunds, Fessenden, Fogg, Foster, Fowler, Frelinghuysen, Grimes, Harris, Howard, Howe, Kirkwood, Lane, Morgan, Morrill, Nye, *Patterson*, Pomeroy, Ramsey, Ross, Sherman, Sprague, Stewart, Sumner, Trumbull, Van Winkle, Wade, Willey, Williams, Wilson, Yates—36.

NAYS—Messrs. *Buckalew, Cowan, Davis, Hendricks, Johnson, McDougall, Norton, Saulsbury*—8.

Homesteads in Southern States.

1867, February 28—Mr. JULIAN reported a bill amending the act of June 21, 1866, respecting homesteads in Alabama, Mississippi, Louisiana, Arkansas, and Florida, so that any person applying for the benefit of said act shall be required to make oath that he has not voluntarily borne arms against the United States or given aid or comfort to its enemies; *Provided*, That said oath shall not be required of any person who during the late war enlisted in the military or naval service of the United States, and who shall have been honorably discharged therefrom, and not thereafter rendered any aid or comfort to the rebellion.

The bill was passed—yeas 97, nays 30, as follow:

YEAS—Messrs. Alley, Allison, Ames, Arnell, James M. Ashley, Baker, Banks, Baxter, Beaman, Bingham, Blaine, Brandegee, Bromwell, Broomall, Buckland, Reader W. Clarke, Cobb, Conkling, Cook, Cullom, Darling, Davis, Dawes, Defrees, Delano, Dixon, Dodge, Dumont, Eliot, Farquhar, Griswold, Hawkins, Hayes, Higby, Hill, Holmes, Hooper, Chester D. Hubbard, Demas Hubbard, jr., John H. Hubbard, Hulburd, Jenckes, Julian, Kelley, Kelso, Koontz, George V. Lawrence, William Lawrence, Loan, Longyear, Lynch, Marvin, Maynard, McClurg, McIndoe, McKee, McRuer, Mercur, Miller, Morrill, Morris, Moulton, Myers, Newell, O'Neill, Orth, Paine, Perham, Pike, Plants, Pomeroy, Price, W. H. Randall, Rollins, Sawyer, Schenck, Scofield, Shellabarger, Sloan, Spalding, Starr, Stokes, Thayer, Francis Thomas, John L. Thomas, jr., Trowbridge, Upson, Van Aernam, Burt Van Horn, Hamilton Ward, Warner, Henry D. Washburn, William B. Washburn, Welker, Wentworth, Whaley, Stephen F. Wilson, Windom—97.

NAYS—Messrs. *Ancona, Bergen, Campbell, Chanler, Cooper, Dawson, Finck, Glossbrenner, Goodyear, Aaron Harding, Hise, Hogan, Edwin N. Hubbell, Humphrey, Kerr, Kuydendall, Latham, Le Blond, Leftwich, Marshall, Niblack, Nicholson, Ritter, Shanklin, Sitgreaves, Taber, Trimble, Andrew H. Ward, Winfield, Wright*—30.

The bill was not acted upon in the Senate.

To Suspend the Paymont of Bounty to former Owners of Colored Volunteers.

IN HOUSE.

1867, January 14—Mr. COOK reported, under a suspension of the rules, from the Judiciary Committee this bill:

That so much of section twenty-four of an act approved February twenty-fourth, eighteen hundred and sixty-four, entitled "An act to amend an act entitled 'An act for enrolling and calling out the national forces, and for other purposes,'" approved March third, eighteen hundred and sixty-three, as provides that the Secretary of War should appoint a commission in each of the slave States then represented in Congress, charged to award to each loyal person to whom a colored volunteer might owe service a just compensation, not exceeding three hundred dollars for such colored volunteer, be suspended until otherwise provided by law, and that the duties and compensation of the commissioners heretofore appointed under said section, shall cease from the date of the passage of this resolution.

Which was passed—yeas 107, nays 36, as follow:

YEAS—Messrs. Alley, Allison, Ames, Anderson, Delos R. Ashley, James M. Ashley, Baker, Baldwin, Banks, Baxter, Benjamin, Bidwell, Bingham, Blaine, Boutwell, Bromwell, Broomall, Buckland, Bundy, Reader W. Clarke, Cobb, Cook, Cullom, Culver, Davis, Dawes, Defrees, Delano, Deming, Dixon, Donnelly, Driggs, Eckley, Eliot, Farnsworth, Farquhar, Ferry, Griswold, Abner C. Harding, Henderson, Higby, Hill, Holmes, Hooper, Chester D. Hubbard, Demas Hubbard, jr., John H. Hubbard, James R. Hubbell, Ingersoll, Jenckes, Julian, Kasson, Kelso, Ketcham, Koontz, Kuykendall, George V. Lawrence, Loan, Longyear, Lynch, Marston, Marvin, Maynard, McClurg, McKee, McRuer, Mercur, Morrill, Morris, Moulton, O'Neill, Orth, Paine, Patterson, Perham, Pike, Plants, Pomeroy, Price, Raymond, John H. Rice, Rollins, *Ross*, Sawyer, Schenck, Scofield, Shellabarger, Spalding, Stevens, Stokes, Thayer, Trowbridge, Upson, Van Aernam, Burt Van Horn, Hamilton Ward, Warner, Elihu B. Washburne, Henry D. Washburn, William B. Washburn, Welker, Wentworth, Whaley, Williams, James F. Wilson, Stephen F. Wilson, Windom—107.

NAYS—Messrs. *Ancona, Bergen, Boyer, Campbell, Chanler, Dawson, Denison, Finck, Glossbrenner, Aaron Harding*, Hawkins, *Hise, Hogan, Edwin N Hubbell, Humphrey, Johnson*, Latham, *Le Blond, Leftwich, Marshall, Niblack, Nicholson, Noell, Radford, Samuel J. Randall*, William H. Randall, *Ritter, Rogers, Shanklin, Sitgreaves, Strouse, Taber, Nathaniel G. Taylor, Nelson Taylor, Thornton, Andrew H. Ward*—36.

The bill was not acted upon in the Senate.

To Suspend all Proceedings in relation to the Payment for Slaves drafted or received as Volunteers in the Military Service.

IN HOUSE.

1867, March 18—The bill passed, providing that all further proceedings under the twenty-fourth section of the act of Congress approved February twenty-fourth, eighteen hundred and sixty-four, "to award compensation to the masters of slaves drafted into the military service of the United States, and award compensation to persons to whom colored volunteers may owe service," and under the second section of the act approved July twenty-eighth, eighteen hundred and sixty-six, "making appropriation for payment to persons claiming service or labor from colored volunteers or drafted men," be, and the same is hereby suspended. And the Secretary of War is directed to dissolve the commissions appointed under the said sections, and make payment to the commissioners and clerks for the services rendered, upon their making report of their proceedings to the War Department.

March 18—The vote on Mr. SCHENCK's motion to suspend the rules to allow the consideration of the bill, was the only vote taken—and was yeas 92, nays 24, as follow:

YEAS—Messrs. Ames, Anderson, Delos R. Ashley, James M. Ashley, Baker, Baldwin, Beaman, Benjamin, Bingham, Blaine, Blair, Boutwell, Bromwell, Broomall, Buckland, Butler, Churchill, Reader W. Clarke, Sidney Clarke, Cobb, Cook, Cornell, Covode, Cullom, Dodge, Donnelly, Driggs, Eckley, Eliot, Farnsworth, Ferriss, Ferry, Fields, Garfield, Gravely, Hamilton, Hayes, Hooper, Hopkins, Asahel W. Hubbard, Chester D. Hubbard, Hulburd, Hunter, Judd, Julian, Kelley, Kitchen, Koontz, Laflin, William Lawrence, Logan, Marvin, McClurg, Miller, Moore, Myers, Newcomb, O'Neill, Orth, Paine, Perham, Peters, Pile, Plants, Poland, Polsley, Pomeroy, Robertson, *Ross*, Sawyer, Schenck, Sco-

field, Shanks, Shellabarger, Smith, Spalding, Taylor, Twichell, Upson, Van Aernam, Burt Van Horn, Robert T. Van Horn, Van Wyck, Ward, Cadwalader C. Washburn, Henry D. Washburn, Welker, Thomas Williams, William Williams, James F Wilson, John T. Wilson, Windom—92.

NAYS—Messrs. *Boyer, Brooks, Burr, Eldridge, Fox, Getz, Glossbrenner, Holman, Kerr, Marshall, Morgan, Morrissey, Mungen, Niblack, Nicholson, Noell, Pruyn, Randall, Robinson, Sitgreaves, Taber, Van Auken, Van Trump, Wood*—24.

IN SENATE.

March 21—The resolution passed—yeas 32, nays 7, as follow:

YEAS—Messrs. Anthony, Cameron, Cattell, Chandler, Cole, Conkling, Conness, Corbett, Cragin, Drake, Edmunds, Fowler, Harlan, Henderson, Howe, Morgan, Morrill of Vt., Morton, Nye, Patterson of N. H., Pomeroy, Ramsey, Ross, *Saulsbury*, Sherman, Sumner, Thayer, Tipton, Trumbull, Wade, Williams, Wilson—32.

NAYS—Messrs. *Buckalew, Davis, Doolittle, Johnson, Patterson* of Tenn., Van Winkle, Willey—7.

A Bill to Restore the Possession of Lands Confiscated by the Authorities of the States lately in Rebellion.

IN HOUSE.

1866, July 24—Mr. WILLIAMS reported from the Committee on the Judiciary the following bill:

That in all cases where any loyal citizen of the United States may have been disseized or dispossessed of any lands or tenements belonging to him or her, within any of the States lately in rebellion, by any order, proceeding, or decree, under the pretended authority of the so-called Confederate government, or of any of the States comprising the same, on the ground of his or her adherence to the cause of the Union, or his or her absence, or failure or refusal to give support to the said rebellion, it shall be the duty of the President of the United States, or the commanding officer of the military forces stationed within the particular State or District, on complaint made to either of them in writing, by the party or parties so disseized or dispossessed, their heirs or assigns, accompanied by satisfactory evidence that the title or possession of any such property is claimed by the person or persons occupying the same under or by virtue of any such order, proceeding, or decree, to restore the person or persons so interested and aggrieved to the possession and rights of which they have been thus unjustly deprived, and to protect them in the enjoyment of said rights by the application of so much force as may be necessary for that purpose.

Mr. TRIMBLE moved that it be laid on the table, which was disagreed to—yeas 24, nays 81, as follow:

YEAS—Messrs. *Ancona, Bergen, Boyer, Cooper, Eldridge, Finck, Glossbrenner, Aaron Harding, Hogan, Johnson, Kerr, Le Blond, McCullough, Niblack, Nicholson, Radford, Samuel J. Randall, Ritter, Ross, Strouse, Taber, Thornton, Trimble, Winfield*—24.

NAYS—Messrs. Allison, Baker, Banks, Barker, Baxter, Benjamin, Bidwell, Bingham, Buckland, Sidney Clarke, Cobb, Conkling, Cullom, Davis, Dawes, Defrees, Dixon, Driggs, Eckley, Eggleston, Eliot, Farnsworth, Farquhar, Ferry, Abner C. Harding, Hart, Hayes, Higby, Holmes, Hooper, Hotchkiss, Chester D. Hubbard, John H. Hubbard, James R. Hubbell, Hulburd, Jenckes, Julian, Kelley, Ketcham, Koontz, Laflin, George V Lawrence, William Lawrence, Loan, Lynch, Maynard. McClurg, McRuer, Mercur, Miller, Moorhead, Morris, Myers, Newell, O'Neill, Orth, Paine, Perham, Plants, Price, Raymond, Rollins, Sawyer, Scofield, Shellabarger, Spalding, Stevens, Stokes, *Nathaniel G. Taylor*, John L. Thomas, jr., Burt Van Horn, Robert T. Van Horn, Hamilton Ward, Welker, Wentworth, Whaley, Williams, James F. Wilson, Stephen F. Wilson, Windom, Woodbridge—81.

The bill was then passed.

IN SENATE.

1867, February 21—Mr. FRELINGHUYSEN reported it from the Committee on the Judiciary, with an amendment as to the form of proceeding, but it was not reached before adjournment.

PROPOSED IMPEACHMENT OF PRESIDENT JOHNSON.

In Thirty-Ninth Congress.

1866, December 17—Mr. JAMES M. ASHLEY moved a suspension of the rules to enable him to report, from the Committee on Territories, this resolution:

Resolved, That a select committee to consist of seven members of this House be appointed by the Speaker, whose duty it shall be to inquire whether any acts have been done by any officer of the Government of the United States which in contemplation of the Constitution are high crimes or misdemeanors, and whether said acts were designed or calculated to overthrow, subvert, or corrupt the Government of the United States, or any department thereof, and that said committee have power to send for persons and papers and to administer the customary oath to witnesses, and that they have leave to report by bill or otherwise.

Which was not agreed to, (two-thirds being necessary,) yeas 90, nays 49, as follow:

YEAS—Messrs. Alley, Allison, Anderson, Arnell, Delos R. Ashley, James M. Ashley, Baker, Baldwin, Banks, Barker, Baxter, Benjamin, Bidwell, Bingham, Blow, Boutwell, Brandegee, Bromwell, Buckland, Bundy, Reader W. Clarke, Sidney Clarke, Cobb, Conkling, Cullom, Dixon, Driggs, Eckley, Farnsworth, Farquhar, Ferry, Garfield, Grinnell, Abner C. Harding, Hart, Hawkins, Hayes, Henderson, Hill, Holmes, Hotchkiss, Demas Hubbard, jr., John H. Hubbard, Ingersoll, Julian, Kelley, Kelso, Koontz, Kuykendall, Laflin, William Lawrence, Loan, Longyear, Lynch, Marston, Marvin, McClurg, McIndoe, McKee, McRuer, Mercer, Morrill, Moulton, Myers, O'Neill, Orth, Paine, Patterson, Perham, Pike, Pomeroy, Price, William H. Randall, Schenck, Scofield, Sloan, Stevens, Thayer, Francis Thomas, Trowbridge, Upson, Van Aernam, Burt Van Horn, Robert T. Van Horn, Ellihu B. Washburne Welker, Wentworth, Williams, James F. Wilson, Windom—90.

NAYS—Messrs. Ames, *Ancona, Bergen, Boyer, Campbell, Chanler, Cooper*, Dawes, Defrees, Deming, *Denison, Dodge, Eldridge, Finck, Glossbrenner*, Hale, *Aaron Harding, Hise*, Hogan, Chester D. Hubbard, *E. N. Hubbell, Hunter*, Jenckes, *Kerr*, Latham, *LeBlond, Leftwich, Marshall*, Maynard, *Niblack, Nicholson, Noell, Samuel J. Randall*, Raymond, *Ritter, Rogers, Ross, Shanklin, Sitgreaves*, Spalding, Stokes, *Strouse, Taber, Nathaniel G. Taylor, Nelson Taylor, Thornton, Andrew H. Ward*, Warner, Whaley—49.

1867, January 7—Mr. LOAN offered this resolution, which was referred to the Committee on Reconstruction:

Resolved, That for the purpose of securing the fruits of the victories gained on the part of the Republic during the late war, waged by rebels and traitors against the life of the nation, and of giving effect to the will of the people as expressed at the polls during the recent elections by a majority numbering in the aggregate more than four hundred thousand votes, it is the imperative duty of the Thirty-Ninth Congress to take without delay such action as will accomplish the following objects:

1. The impeachment of the officer now exercising the functions pertaining to the office of President of the United States of America, and his removal from said office upon his conviction, in due form of law, of the high crimes and misdemeanors of which he is manifestly and notori-

ously guilty, and which render it unsafe longer to permit him to exercise the powers he has unlawfully assumed.

2. To provide for the faithful and efficient administration of the executive department of the Government within the limits prescribed by law.

3. To provide effective means for immediately reorganizing civil governments in those States lately in rebellion, excepting Tennessee, and for restoring them to their practical relations with the Government upon a basis of loyalty and justice; and to this end,

4. To secure, by the direct intervention of Federal authority, the right of franchise alike, without regard to color, to all classes of loyal citizens residing within those sections of the Republic which were lately in rebellion.

Same day—Mr. KELSO offered this resolution:

Resolved, That for the purpose of securing the fruits of the victories gained on the part of the Republic during the late war, waged by rebels and traitors against the life of the nation, and of giving effect to the will of the people, as expressed at the polls during the late elections by majorities numbering in the aggregate more than four hundred thousand votes, it is the imperative duty of the Thirty-Ninth Congress to take, without delay, such action as will accomplish the following objects:

1. The impeachment of the officer now exercising the functions pertaining to the office of the President of the United States of America, and his removal from office, upon his conviction, in due form, of the crimes and high misdemeanors of which he is manifestly and notoriously guilty, and which render it unsafe longer to permit him to exercise the powers he has unlawfully assumed.

2. To provide for the faithful and efficient administration of the executive department within the limits prescribed by law.

Mr. DAVIS moved it be tabled; which was disagreed to—yeas 40, nays, 104. The YEAS were:

Messrs. *Ancona*, Delos R. Ashley, Baldwin, *Bergen*, *Campbell*, *Chanler*, *Cooper*, Davis, *Dawson*, *Eldridge*, *Finck*, *Glossbrenner*, *Aaron Harding*, Hawkins, *Hise*, *Hogan*, *Humphrey*, *Hunter*, *Kerr*, Kuykendall, Latham, *Leftwich*, *McCullough*, *Niblack*, *Nicholson*, *Noell*, Phelps, *Samuel J. Randall*, William H. Randall, *Ritter*, *Ross*, *Shanklin*, *Strouse*, *Taber*, *Nathaniel G. Taylor*, *Nelson Taylor*, *Trimble*, *Ward*, Whaley, *Winfield*—40.

They were subsequently referred to the Committee on the Judiciary.

Same day—Mr. JAMES M. ASHLEY, as a question of privilege, submitted the following:

I do impeach Andrew Johnson, Vice-President and acting President of the United States, of high crimes and misdemeanors.

I charge him with a usurpation of power and violation of law:

In that he has corruptly used the appointing power;

In that he has corruptly used the pardoning power;

In that he has corruptly used the veto power;

In that he has corruptly disposed of public property of the United States;

In that he has corruptly interfered in elections, and committed acts which, in contemplation of the Constitution, are high crimes and misdemeanors: Therefore,

Be it resolved, That the Committee on the Judiciary be, and they are hereby, authorized to inquire into the official conduct of Andrew Johnson, Vice-President of the United States, discharging the powers and duties of the office of President of the United States, and to report to this house whether, in their opinion, the said Andrew Johnson, while in said office, has been guilty of acts which were designed or calculated to overthrow, subvert, or corrupt the Government of the United States, or any department or officer thereof; and whether the said Andrew Johnson has been guilty of any act, or has conspired with others to do acts, which, in contemplation of the Constitution, are high crimes or misdemeanors, requiring the interposition of the constitutional power of this house; and that said committee have power to send for persons and papers, and to administer the customary oath to witnesses.

Mr. SPALDING moved to lay the subject on the table; which was disagreed to—yeas 39, nays 106.

The proposition of Mr. ASHLEY was then agreed to—yeas 108, nays 39, as follow:

YEAS—Messrs. Alley, Allison, Ames, Arnell, Delos R. Ashley, James M. Ashley, Baker, Baldwin, Banks, Barker, Baxter, Beaman, Benjamin, Bidwell, Bingham, Blaine, Boutwell, Brandegee, Bromwell, Broomall, Buckland, Bundy, Chanler, Reader W. Clarke, Sidney Clarke, Cobb, Cook, Cullom, Culver, Darling, Defrees, Delano, Deming, Dixon, Donnelly, Driggs, Eckley, Farnsworth, Farquhar, Ferry, Garfield, Grinnell, Abner C. Harding, Hart, Hayes, Henderson, Higby, Hill, Holmes, Hooper, Chester D. Hubbard, John H. Hubbard, Ingersoll, Jenckes, Julian, Kasson, Kelley, Kelso, Ketcham, Kuykendall, George V. Lawrence, William Lawrence, Loan, Longyear, Lynch, Marston, Marvin, Maynard, McClurg, McKee, McRuer, Mercur, Miller, Moorhead, Morrill, Morton, Myers, O'Neill, Orth, Paine, Patterson, Perham, Pike, Price, William H. Randall, Alexander H. Rice, John H. Rice, Sawyer, Schenck, Scofield, Starr, Stevens, Stokes, Thayer, John L. Thomas, jr., Trowbridge, Upson, Van Aernam, Hamilton Ward, Warner, Elihu B. Washburne, Henry D. Washburn, Welker, Wentworth, Williams, James F. Wilson, Stephen F. Wilson, Windom—108.

NAYS—Messrs. *Ancona*, *Bergen*, *Campbell*, *Cooper*, Davis, *Dawson*, Dodge, *Eldridge*, *Finck*, *Glossbrenner*, *Aaron Harding*, Hawkins, *Hise*, *Hogan*, James R. Hubbell, *Humphrey*, *Hunter*, *Kerr*, Latham, *Leftwich*, *McCullough*, *Niblack*, *Nicholson*, *Noell*, Phelps, *Samuel J. Randall*, Raymond, *Ritter*, *Ross*, *Shanklin*, Spalding, *Strouse*, *Taber*, *Nathaniel G. Taylor*, *Nelson Taylor*, *Trimble*, *Andrew H. Ward*, Whaley, *Winfield*—39.

Report of the Committee, February 28, 1867.

The Committee on the Judiciary, charged by the House with the examination of certain allegations of high crimes and misdemeanors against the President of the United States, submit the following report:

On the seventh day of January, 1867, the House, on motion of Hon. James M. Ashley, a representative from the State of Ohio, adopted the following preamble and resolution, to wit:

"I do impeach Andrew Johnson, Vice President and acting President of the United States, of high crimes and misdemeanors.

"I charge him with a usurpation of power and violation of law: in that he has corruptly used the appointing power; in that he has corruptly used the pardoning power; in that he has corruptly used the veto power; in that he has corruptly disposed of public property of the United States: in that he has corruptly interfered in elections, and committed acts, and conspired with others to commit acts, which, in contemplation of the Constitution, are high crimes and misdemeanors.

"*Therefore, be it resolved*, That the Committee on the Judiciary be, and they are hereby, authorized to inquire into the official conduct of Andrew Johnson, Vice President of

the United States, discharging the powers and duties of the office of President of the United States, and to report to this House whether, in their opinion, the said Andrew Johnson, while in said office, has been guilty of acts which were designed or calculated to overthrow, subvert, or corrupt the Government of the United States, or any department or officer thereof; and whether the said Andrew Johnson has been guilty of any act, or has conspired with others to do acts, which, in contemplation of the Constitution, are high crimes or misdemeanors, requiring the interposition of the constitutional powers of this House; and that said committee have power to send for persons and papers and to administer the customary oath to witnesses."

The duty imposed on the committee, by this action of the House, was of the highest and gravest character. No committee during the entire history of the Government had ever been charged with a more important trust. The responsibility which it imposed was of oppressive weight, and of most unpleasant nature. Gladly would the committee have escaped from the arduous labors imposed on it by the resolution of the House; but, once imposed, prompt, deliberate, and faithful action, with a view to correct results, became its duty, and to this end it has directed its efforts.

Soon after the adoption of the resolution by the House, the Hon. James M. Ashley communicated to the committee, in support of his charges against the President of the United States, such facts as were in his possession, and the investigation was proceeded with, and has been continued almost without a day's interruption. A large number of witnesses has been examined, many documents collected, and everything done which could be done to reach a conclusion of the case. But the investigation covers a broad field, embraces many novel and interesting and important questions, and involves a multitude of facts; while most of the witnesses are distant from the capital; owing to which, the committee, in view of the magnitude of the interests involved in this action, has not been able to conclude its labors, and is not, therefore, prepared to submit a definite and final report.

If the investigation had even approached completeness, the committee would not feel authorized to present the result to the House at this late period of the session, unless the charges had been so entirely negatived as to admit of no discussion, which, in the opinion of the committee, is not the case. Certainly, no affirmative report could be properly considered in the expiring hours of this Congress.

The committee not having fully investigated all the charges preferred against the President of the United States, it is deemed inexpedient to submit any conclusion, beyond the statement that sufficient testimony has been brought to its notice to justify and demand a further prosecution of the investigation.

The testimony which the committee has taken will pass into the custody of the Clerk of the House, and can go into the hands of such committee as may be charged with the duty of bringing this investigation to a close, so that the labor expended upon it may not have been in vain.

The committee regrets its inability definitely to dispose of the important subject committed to its charge, and presents this report for its own justification, and for the additional purpose of notifying the succeeding Congress of the incompleteness of its labors, and that they should be completed.

JAMES F. WILSON, *Chairman*.
G. S. BOUTWELL,
THOS. WILLIAMS,
BURTON C. COOK,
WM. LAWRENCE,
FRANCIS THOMAS,
D. MORRIS,
F. E. WOODBRIDGE.

MINORITY REPORT.

Mr. ROGERS, the minority of the committee, submits the following as his views:

The subscriber, one of the Judiciary Committee, to whom was referred by the House the inquiry to inquire into the official conduct of his Excellency the President of the United States, with a view to his impeachment upon certain charges made by the Hon. James M. Ashley, begs leave to submit the following report:

The committee refuse to allow a report to be made giving the evidence to the House at this time, upon grounds which are no doubt satisfactory to themselves. Therefore, I cannot report the evidence upon which my conclusion is based, which I would gladly do, did the committee deem it expedient. The examination of witnesses and the records was commenced, as appears by the majority report, about the time of the reference, to wit, on the 7th of January, 1867, and continued daily. A large number of witnesses has been examined, and everything done that could be to bring the case to a close, as appears by the majority report; and the majority came to the conclusion "that sufficient testimony has been brought to its notice to justify and demand a further prosecution of the investigation." I have carefully examined all the evidence in the case, and do report that there is not one particle of evidence to sustain any of the charges which the House charged the committee to investigate, and that the case is wholly without a particle of evidence upon which an impeachment could be founded, and that with all the effort that has been made, and the mass of evidence that has been taken, the case is entirely bald of proof. I furthermore report that the most of the testimony that has been taken is of a secondary character, and such as would not be admitted in a court of justice. In view of this conclusion, I can see no good in a continuation of the investigation. I am convinced that all the proof that can be produced has been before the committee, as no pains have been spared to give the case a full investigation. Why, then, keep the country in a feverish state of excitement upon this question any longer, as it is sure to end, in my opinion, in a complete vindication of the President, if justice be done him by the committee, of which I have no doubt.

A. J. ROGERS.

Impeachment in Fortieth Congress.

IN HOUSE.

1867, March 7—Mr. JAMES M. ASHLEY rose to a question of privilege, and submitted these resolutions:

Whereas the House of Representatives of the Thirty-Ninth Congress adopted, on the 7th of January, 1867, a resolution authorizing an in-

quiry into certain charges preferred against the President of the United States; and whereas the Judiciary Committee, to whom said resolution and charges were referred, with authority to investigate the same, were unable for want of time to complete said investigation before the expiration of the Thirty-Ninth Congress; and whereas in the report submitted by said Judiciary Committee on the 2d of March they declare that the evidence taken is of such a character as to justify and demand a continuation of the investigation by this Congress: Therefore,

Be it resolved by the House of Representatives, That the Judiciary Committee, when appointed, be, and they are hereby, instructed to continue the investigation authorized in said resolution of January 7, 1867, and that they have power to send for persons and papers, and to administer the customary oath to witnesses; and that the committee have authority to sit during the sessions of the House and during any recess which Congress or this House may take.

Resolved, That the Speaker of the House be requested to appoint the Committee on the Judiciary forthwith, and that the committee so appointed be directed to take charge of the testimony taken by the committee of the last Congress; and that said committee have power to appoint a clerk at a compensation not to exceed six dollars per day, and employ the necessary stenographer.

Resolved, That the Clerk of the House of Representatives be directed to pay out of the contingent fund of the House, on the order of the Committee of the Judiciary, such sum or sums of money as may be required to enable the said committee to prosecute the investigation above directed, and such other investigations as it may be ordered to make.

Mr. HOLMAN moved to table the resolutions, which was disagreed to—yeas 32, nays 119, as follow:

YEAS—Messrs. *Archer*, *Barnes*, *Boyer*, *Brooks*, *Burr*, *Chanler*, *Denison*, *Eldridge*, *Fox*, *Getz*, *Haight*, *Holman*, *Humphrey*, *Kerr*, *Marshall*, *McCullough*, *Morgan*, *Morrissey*, *Mungen*, *Niblack*, *Nicholson*, Phelps, *Pruyn*, *Randall*, *Robinson*, *Ross*, *Sitgreaves*, Stewart, *Stone*, *Taber*, *Van Auken*, *Van Trump*, *Wood*—32.

NAYS—Messrs. Allison, Ames, Anderson, Delos R. Ashley, James M. Ashley, Baker, Baldwin, Banks, Beaman, Benjamin, Bingham, Blaine, Blair, Boutwell, Bromwell, Broomall, Buckland, Butler, Cake, Churchill, Reader W. Clarke, Sidney Clarke, Cobb, Coburn, Cook, Cornell, Covode, Cullom, Dawes, Dodge, Donnelly, Driggs, Eckley, Eggleston, Eliot, Farnsworth, Ferriss, Ferry, Fields, Finney, Garfield, Gravely, Halsey, Hamilton, Harding, Hayes, Hill, Hooper, Hopkins, Chester D. Hubbard, Hulburd, Hunter, Ingersoll, Judd, Julian, Kelley, Ketcham, Kitchen, Koontz, Laflin, George V. Lawrence, William Lawrence, Lincoln, Loan, Logan, Loughridge, Lynch, Marvin, McCarthy, McClurg, Mercur, Miller, Moore, Moorhead, Morrell, Myers, Newcomb, Noell, O'Neill, Orth, Paine, Perham, Peters, Pile, Plants, Poland, Polsley, Pomeroy, Price, Raum, Robertson, Sawyer, Schenck, Scofield, Shanks, Shellabarger, Smith, Stevens, Taffe, Taylor, Thomas, Trowbridge, Twichell, Upson, Van Aernam, Burt Van Horn, Robert T. Van Horn, Van Wyck, Ward, Cadwalader C. Washburn, William B. Washburn, Welker, Thomas Williams, William Williams, James F. Wilson, John T. Wilson, Stephen F. Wilson, Windom, Woodbridge—119.

March 29—Mr. SIDNEY CLARKE offered this preamble and resolution:

Whereas upon charges preferred in the House of Representatives of the Thirty-Ninth Congress against the President of the United States of high crimes and misdemeanors, alleged to have been committed by him in the execution of his official trust, the Committee on the Judiciary of the said House, to which the same was referred, did report that for want of sufficient time they were unable to conclude their investigation, but that upon the facts disclosed it was in their judgment required and demanded that the inquiry should be prosecuted to a conclusion by the present Congress; and whereas in accordance with the said opinion this House did commit the said subject anew to its Committee on the Judiciary, which is now diligently engaged in the examination thereof; and whereas, in view of the report and recommendation of the Judiciary Committee of the last House, it would be dangerous to the public interest and failure of duty on the part of the present Congress, to adjourn and abdicate its practical control over the administration of the Government by surrendering its destinies, in the present critical condition of affairs, into the hands of an officer thus impeached before the nation, and well known not only to be hostile to the policy of its Congress, and to entertain the opinion that all the acts of that Congress looking to a restoration of the Union are unconstitutional: Therefore,

Resolved, That the Committee on the Judiciary be requested to report on the charges preferred against the President, as aforesaid, on the first day of the meeting of the House after the recess hereafter to be determined.

Mr. ROBINSON moved to table the resolution; which was disagreed to—yeas 38, nays 63, as follow:

YEAS—Messrs. *Archer*, Bingham, Blair, *Brooks*, Buckland, *Burr*, *Chanler*, Reader W. Clarke, Cornell, *Denison*, *Eldridge*, Ferriss, Fields, *Getz*, *Glossbrenner*, Grisweld, *Holman*, Chester D. Hubbard, *Humphrey*, *Kerr*, Ketcham, Laflin, *Marshall*, Marvin, *Morrissey*, *Mungen*, *Niblack*, *Nicholson*, Phelps, Plants, *Robinson*, *Ross*, *Sitgreaves*, Stewart, *Taber*, *Van Auken*, *Van Trump*, *Wood*—38.

NAYS—Messrs. Allison, James M. Ashley, Baker, Benton, Boutwell, Broomall, Butler, Cake, Churchill, Sidney Clarke, Coburn, Cook, Covode, Cullom, Donnelly, Driggs, Eckley, Eggleston, Ela, Farnsworth, Garfield, Gravely, Halsey, Hamilton, Hayes, Hooper, Hopkins, Hulburd, Ingersoll, Judd, Kelley, Koontz, William Lawrence, Loan, Logan, Loughridge, Mallory, McClurg, Mercur, Miller, Morrell, Myers, O'Neill, Perham, Pile, Polsley, Robertson, Sawyer, Schenck, Scofield, Shanks, Thaddeus Stevens, Taylor, Trowbridge, Upson, Robert T. Van Horn, Ward, Welker, Thomas Williams, William Williams, John T. Wilson, Windom, Woodbridge—63.

The preamble was laid on the table, on a division by tellers—ayes 54, noes 32. The resolution was then adopted.

The committee, it is understood, will make a report upon the 3d of July, on the reassembling of Congress.

XVIII.

TEXT OF THE RECONSTRUCTION MEASURES.

14th Constitutional Amendment.

Joint Resolution proposing an Amendment to the Constitution of the United States.

Be it resolved by the Senate and House of Representatives of the United States of America, in Congress assembled, (two-thirds of both Houses concurring,) That the following article be proposed to the Legislatures of the several States as an amendment to the Constitution of the United States, which, when ratified by three-fourths of said Legislatures, shall be valid as part of the Constitution, namely:

ARTICLE XIV.

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

SEC. 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, representatives in Congress, the executive and judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

SEC. 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath as a member of Congress, or as an officer of the United States, or as a member of any State Legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each House, remove such disability.

SEC. 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

SEC. 5. That Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Passed June 13, 1866.

Reconstruction Act of Thirty-Ninth Congress.

AN ACT to provide for the more efficient government of the rebel States.

Whereas no legal State governments or adequate protection for life or property now exists in the rebel States of Virginia, North Carolina, South Carolina, Georgia, Mississippi, Alabama, Louisiana, Florida, Texas, and Arkansas; and whereas it is necessary that peace and good order should be enforced in said States until loyal and republican State governments can be legally established: Therefore

Be it enacted, &c., That said rebel States shall be divided into military districts and made subject to the military authority of the United States, as hereinafter prescribed, and for that purpose Virginia shall constitute the first district; North Carolina and South Carolina the second district; Georgia, Alabama, and Florida the third district; Mississippi and Arkansas the fourth district; and Louisiana and Texas the fifth district.

SEC. 2. That it shall be the duty of the President to assign to the command of each of said districts an officer of the army, not below the rank of brigadier general, and to detail a sufficient military force to enable such officer to perform his duties and enforce his authority within the district to which he is assigned.

SEC. 3. That it shall be the duty of each officer assigned as aforesaid to protect all persons in their rights of person and property, to suppress insurrection, disorder, and violence, and to punish, or cause to be punished, all disturbers of the public peace and criminals, and to this end he may allow local civil tribunals to take jurisdiction of and to try offenders, or, when in his judgment it may be necessary for the trial of offenders, he shall have power to organize military commissions or tribunals for that purpose; and all interference under color of State authority with the exercise of military authority under this act shall be null and void.

SEC. 4. That all persons put under military arrest by virtue of this act shall be tried without unnecessary delay, and no cruel or unusual punishment shall be inflicted; and no sentence of any military commission or tribunal hereby authorized, affecting the life or liberty of any person, shall be executed until it is approved by the officer in command of the district, and the laws and regulations for the government of the army shall not be affected by this act, except in so far as they conflict with its provisions: *Pro-*

vided, That no sentence of death under the provisions of this act shall be carried into effect without the approval of the President.

SEC. 5. That when the people of any one of said rebel States shall have formed a constitution of government in conformity with the Constitution of the United States in all respects, framed by a convention of delegates elected by the male citizens of said State twenty-one years old and upward, of whatever race, color, or previous condition, who have been resident in said State for one year previous to the day of such election, except such as may be disfranchised for participation in the rebellion, or for felony at common law, and when such constitution shall provide that the elective franchise shall be enjoyed by all such persons as have the qualifications herein stated for electors of delegates, and when such constitution shall be ratified by a majority of the persons voting on the question of ratification who are qualified as electors for delegates, and when such constitution shall have been submitted to Congress for examination and approval, and Congress shall have approved the same, and when said State, by a vote of its legislature elected under said constitution, shall have adopted the amendment to the Constitution of the United States, proposed by the Thirty-ninth Congress, and known as article fourteen, and when said article shall have become a part of the Constitution of the United States, said State shall be declared entitled to representation in Congress, and Senators and Representatives shall be admitted therefrom on their taking the oaths prescribed by law, and then and thereafter the preceding sections of this act shall be inoperative in said State: *Provided*, That no person excluded from the privilege of holding office by said proposed amendment to the Constitution of the United States shall be eligible to election as a member of the convention to frame a constitution for any of said rebel States, nor shall any such person vote for members of such convention.

SEC. 6. That until the people of said rebel States shall be by law admitted to representation in the Congress of the United States, any civil governments which may exist therein shall be deemed provisional only, and in all respects subject to the paramount authority of the United States at any time to abolish, modify, control, or supersede the same; and in all elections to any office under such provisional governments all persons shall be entitled to vote, and none others, who are entitled to vote under the provisions of the fifth section of this act; and no person shall be eligible to any office under any such provisional governments who would be disqualified from holding office under the provisions of the third article of said constitutional amendment.

Passed March 2, 1867.

Supplemental Reconstruction Act of Fortieth Congress.

AN ACT supplementary to an act entitled "An act to provide for the more efficient government of the rebel States," passed March second, eighteen hundred and sixty-seven, and to facilitate restoration.

Be it enacted, &c., That before the first day of September, eighteen hundred and sixty-seven, the commanding general in each district defined by an act entitled "An act to provide for the more efficient government of the rebel States," passed March second, eighteen hundred and sixty-seven, shall cause a registration to be made of the male citizens of the United States, twenty-one years of age and upwards, resident in each county or parish in the State or States included in his district, which registration shall include only those persons who are qualified to vote for delegates by the act aforesaid, and who shall have taken and subscribed the following oath or affirmation: "I, ———, do solemnly swear, (or affirm,) in the presence of Almighty God, that I am a citizen of the State of ———; that I have resided in said State for ——— months next preceding this day, and now reside in the county of ———, or the parish of ———, in said State, (as the case may be;) that I am twenty-one years old; that I have not been disfranchised for participation in any rebellion or civil war against the United States, nor for felony committed against the laws of any State or of the United States; that I have never been a member of any State legislature, nor held any executive or judicial office in any State and afterwards engaged in insurrection or rebellion against the United States, or given aid or comfort to the enemies thereof; that I have never taken an oath as a member of Congress of the United States, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, and afterwards engaged in insurrection or rebellion against the United States or given aid or comfort to the enemies thereof; that I will faithfully support the Constitution and obey the laws of the United States, and will, to the best of my ability, encourage others so to do, so help me God;" which oath or affirmation may be administered by any registering officer.

SEC. 2. That after the completion of the registration hereby provided for in any State, at such time and places therein as the commanding general shall appoint and direct, of which at least thirty days' public notice shall be given, an election shall be held of delegates to a convention for the purpose of establishing a constitution and civil government for such State loyal to the Union, said convention in each State, except Virginia, to consist of the same number of members as the most numerous branch of the State legislature of such State in the year eighteen hundred and sixty, to be apportioned among the several districts, counties, or parishes of such State by the commanding general, giving to each representation in the ratio of voters registered as aforesaid, as nearly as may be. The convention in Virginia shall consist of the same number of members as represented the territory now constituting Virginia in the most numerous branch of the legislature of said State in the year eighteen hundred and sixty, to be apportioned as aforesaid.

SEC. 3. That at said election the registered voters of each State shall vote for or against a convention to form a constitution therefor under

this act Those voting in favor of such a convention shall have written or printed on the ballots by which they vote for delegates, as aforesaid, the words "For a convention," and those voting against such a convention shall have written or printed on such ballots the words "Against a convention." The person appointed to superintend said election, and to make return of the votes given thereat, as herein provided, shall count and make return of the votes given for and against a convention; and the commanding general to whom the same shall have been returned shall ascertain and declare the total vote in each State for and against a convention. If a majority of the votes given on that question shall be for a convention, then such convention shall be held as hereinafter provided; but if a majority of said votes shall be against a convention, then no such convention shall be held under this act: *Provided*, That such convention shall not be held unless a majority of all such registered voters shall have voted on the question of holding such convention.

SEC. 4. That the commanding general of each district shall appoint as many boards of registration as may be necessary, consisting of three loyal officers or persons, to make and complete the registration, superintend the election, and make return to him of the votes, lists of voters, and of the persons elected as delegates by a plurality of the votes cast at said election; and upon receiving said returns he shall open the same, ascertain the persons elected as delegates according to the returns of the officers who conducted said election, and make proclamation thereof; and if a majority of the votes given on that question shall be for a convention, the commanding general, within sixty days from the date of election, shall notify the delegates to assemble in convention, at a time and place to be mentioned in the notification, and said convention, when organized, shall proceed to frame a constitution and civil government according to the provisions of this act and the act to which it is supplementary; and when the same shall have been so framed, said constitution shall be submitted by the convention for ratification to the persons registered under the provisions of this act at an election to be conducted by the officers or persons appointed or to be appointed by the commanding general, as hereinbefore provided, and to be held after the expiration of thirty days from the date of notice thereof, to be given by said convention; and the returns thereof shall be made to the commanding general of the district.

SEC. 5. That if, according to said returns, the constitution shall be ratified by a majority of the votes of the registered electors qualified as herein specified, cast at said election, (at least one half of all the registered voters voting upon the question of such ratification,) the president of the convention shall transmit a copy of the same, duly certified, to the President of the United States, who shall forthwith transmit the same to Congress, if then in session, and if not in session, then immediately upon its next assembling; and if it shall, moreover, appear to Congress that the election was one at which all the registered and qualified electors in the State had an opportunity to vote freely and without restraint, fear, or the influence of fraud, and if the Congress shall be satisfied that such constitution meets the approval of a majority of all the qualified electors in the State, and if the said constitution shall be declared by Congress to be in conformity with the provisions of the act to which this is supplementary, and the other provisions of said act shall have been complied with, and the said constitution shall be approved by Congress, the State shall be declared entitled to representation, and Senators and Representatives shall be admitted therefrom as therein provided.

SEC. 6 That all elections in the States mentioned in the said "Act to provide for the more efficient government of the rebel States," shall, during the operation of said act, be by ballot; and all officers making the said registration of voters and conducting said elections shall, before entering upon the discharge of their duties, take and subscribe the oath prescribed by the act approved July second, eighteen hundred and sixty-two, entitled "An act to prescribe an oath of office:"* *Provided*, That if any person shall knowingly and falsely take and subscribe any oath in this act prescribed, such person so offending and being thereof duly convicted, shall be subject to the pains, penalties, and disabilities which by law are provided for the punishment of the crime of wilful and corrupt perjury.

SEC. 7. That all expenses incurred by the several commanding generals, or by virtue of any orders issued, or appointments made, by them, under or by virtue of this act, shall be paid out of any moneys in the treasury not otherwise appropriated.

SEC. 8. That the convention for each State shall prescribe the fees, salary, and compensation to be paid to all delegates and other officers and agents herein authorized or necessary to carry into effect the purposes of this act not herein otherwise provided for, and shall provide for the levy and collection of such taxes on the property

* This act is in these words:

Be it enacted, &c., That hereafter every person elected or appointed to any office of honor or profit under the Government of the United States either in the civil, military, or naval departments of the public service, excepting the President of the United States, shall, before entering upon the duties of such office, and before being entitled to any of the salary or other emoluments thereof, take and subscribe the following oath or affirmation: "I, A B, do solemnly swear (or affirm) that I have never voluntarily borne arms against the United States since I have been a citizen thereof; that I have voluntarily given no aid, countenance, counsel, or encouragement to persons engaged in armed hostility thereto; that I have never sought nor accepted nor attempted to exercise the functions of any office whatever, under any authority or pretended authority, in hostility to the United States: that I have not yielded a voluntary support to any pretended government, authority, power, or constitution within the United States, hostile or inimical thereto; and I do further swear (or affirm) that, to the best of my knowledge and ability, I will support and defend the Constitution of the United States, against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of the office on which I am about to enter; so help me God;" which said oath, so taken and signed, shall be preserved among the files of the Court, House of Congress, or Department to which the said office may appertain. And any person who shall falsely take the said oath shall be guilty of perjury, and on conviction, in addition to the penalties now prescribed for that offense, shall be deprived of his office, and rendered incapable forever after, of holding any office or place under the United States.

in such State as may be necessary to pay the same.

SEC. 9. That the word article, in the sixth section of the act to which this is supplementary, shall be construed to mean section.

Passed March 23, 1867.

Votes of State Legislatures on the Fourteenth Constitutional Amendment.

LOYAL STATES.

RATIFIED—TWENTY-ONE STATES.

Maine—
SENATE, January 16, 1867, yeas 31, nays 0.
HOUSE, January 11, 1867, yeas 126, nays 12.

New Hampshire—
SENATE, July 6, 1866, yeas 9, nays 3.
HOUSE, June 28, 1866, yeas 207, nays 112.

Vermont—
SENATE, October 23, 1866, yeas 28, nays 0.
HOUSE, October 30, 1866, yeas 199, nays 11.

Massachusetts—
SENATE, March 20, 1867, yeas 27, nays 6.
HOUSE, March 14, 1867, yeas 120, nays 20.

Rhode Island—
SENATE, February 5, 1867, yeas 26, nays 2.
HOUSE, February 7, 1867, yeas 60, nays 9.

Connecticut—
SENATE, June 25, 1866, yeas 11, nays 6.
HOUSE, June 29, 1866, yeas 131, nays 92.

New York—
SENATE, January 3, 1867, yeas 23, nays 3.
HOUSE, January 10, 1867, yeas 76, nays 40.

New Jersey—
SENATE, September 11, 1866, yeas 11, nays 10.
HOUSE, September 11, 1866, yeas 34, nays 24.

Pennsylvania—
SENATE, January 17, 1867, yeas 20, nays 9.
HOUSE, February 6, 1867, yeas 58, nays 29.

West Virginia—
SENATE, January 15, 1867, yeas 15, nays 3.
HOUSE, January 16, 1867, yeas 43, nays 11.

Ohio—
SENATE, January 3, 1867, yeas 21, nays 12.
HOUSE, January 4, 1867, yeas 54, nays 25.

Tennessee—
SENATE, July 11, 1866, yeas 15, nays 6.
HOUSE, July 12, 1866, yeas 43, nays 11.

Indiana—
SENATE, January 16, 1867, yeas 29, nays 18.
HOUSE, January 23, 1867, yeas —, nays —.

Illinois—
SENATE, January 10, 1867, yeas 17, nays 7.
HOUSE, January 15, 1867, yeas 59, nays 25.

Michigan—
SENATE, —— 1867, yeas 25, nays 1.
HOUSE, —— 1867, yeas 77 nays 15.

Missouri—
SENATE, January 5, 1867, yeas 26, nays 6.
HOUSE, January 8, 1867, yeas 85, nays 34.

Minnesota—
SENATE, January 16, 1867, yeas 16 nays 5.
HOUSE, January 15, 1867, yeas 40, nays 6.

Kansas—
SENATE, January 11, 1867, unanimously.
HOUSE, January 10, 1867, yeas 75, nays 7.

Wisconsin—
SENATE, January 23, 1867, yeas 22, nays 10.
HOUSE, February 7, 1867, yeas 72, nays 12.

Oregon—
*SENATE, ——, 1866, yeas 13, nays 7.
HOUSE, September 19, 1866, yeas 25, nays 22.

Nevada—
*SENATE, January 22, 1867, yeas 14, nays 2.
HOUSE, January 11, 1867, yeas 34, nays 4.

*Unofficial.

REJECTED—THREE STATES.

Delaware—
SENATE.
HOUSE, February 6, 1867, yeas 6, nays 15.

Maryland—
SENATE, March 23, 1867, yeas 4, nays 13.
HOUSE, March 23, 1867, yeas 12, nays 45.

Kentucky—
SENATE, January 8, 1867, yeas 7, nays 24.
HOUSE, January 8, 1867, yeas 26, nays 62.

NOT ACTED—THREE STATES.

Iowa, California, Nebraska.

INSURRECTIONARY STATES.

REJECTED—TEN STATES.

Virginia—
SENATE, January 9, 1867, unanimously.
HOUSE, January 9, 1867, 1 for amendment.

North Carolina—
SENATE, December 13, 1866, yeas 1, nays 44.
HOUSE, December 13, 1866, yeas 10, nays 93.

South Carolina—
SENATE, ——— ———.
HOUSE, December 20, 1866, yeas 1, nays 95.

Georgia—
SENATE, November 9, 1866, yeas 0, nays 36.
HOUSE, November 9, 1866, yeas 2, nays 131.

Florida—
SENATE, December 3, 1866, yeas 0, nays 20.
HOUSE, December 1, 1866, yeas 0, nays 49.

Alabama—
SENATE, December 7, 1866, yeas 2, nays 27.
HOUSE, December 7, 1866, yeas 8, nays 69.

Mississippi—
SENATE, January 30, 1867, yeas 0, nays 27.
HOUSE, January 25, 1867, yeas 0, nays 88.

Louisiana—
SENATE, February 5, 1867, unanimously.
HOUSE, February 6, 1867, unanimously.

Texas—
SENATE, ——— ———.
HOUSE, October 13, 1866, yeas 5, nays 67.

Arkansas—
SENATE, December 15, 1866, yeas 1, nays 24.
HOUSE, December 17, 1866, yeas 2, nays 68.

XIX.

PROCLAMATIONS AND ORDERS.

PRESIDENT JOHNSON'S PROCLAMATIONS, ORDERS, AND TELEGRAMS ON RECONSTRUCTION.

Declaring the Insurrection at an End in Texas, and Civil Authority existing throughout the whole of the United States, August 20, 1866.

Whereas, by proclamation of the fifteenth and nineteenth of April, eighteen hundred and sixty-one, the President of the United States, in virtue of the power vested in him by the Constitution and the laws, declared that the laws of the United States were opposed and the execution thereof obstructed in the States of South Carolina, Georgia, Alabama, Florida, Mississippi, Louisiana, and Texas, by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by the powers vested in the marshals by law;

And whereas, by another proclamation, made on the sixteenth day of August, in the same year, in pursuance of an act of Congress approved July thirteen, one thousand eight hundred and sixty-one, the inhabitants of the States of Georgia, South Carolina, Virginia, North Carolina, Tennessee, Alabama, Louisiana, Texas,

Arkansas, Mississippi, and Florida, (except the inhabitants of that part of the State of Virginia lying west of the Alleghany mountains, and except also the inhabitants of such other parts of that State, and the other States before named, as might maintain a loyal adhesion to the Union and the Constitution, or might be, from time to time, occupied and controlled by forces of the United States engaged in the dispersion of insurgents,) were declared to be in a state of insurrection against the United States;

And whereas, by another proclamation, of the first day of July, one thousand eight hundred and sixty-two, issued in pursuance of an act of Congress approved June seventh, in the same year, the insurrection was declared to be still existing in the States aforesaid, with the exception of certain specified counties in the State of Virginia;

And whereas, by another proclamation made on the second day of April, one thousand eight hundred and sixty-three, in pursuance of the act of Congress of July thirteen, one thousand eight hundred and sixty-one, the exceptions named in the proclamation of August sixteen, one thousand eight hundred and sixty-one, were revoked, and the inhabitants of the States of Georgia, South Carolina, North Carolina, Tennessee, Alabama, Louisiana, Texas, Arkansas, Mississippi, Florida, and Virginia (except the forty-eight counties of Virginia designated as West Virginia, and the ports of New Orleans, Key West, Port Royal, and Beaufort, in North Carolina) were declared to be still in a state of insurrection against the United States;

And whereas, by another proclamation of the fifteenth day of September, one thousand eight hundred and sixty-three, made in pursuance of the act of Congress approved March third, one thousand eight hundred and sixty-three, the rebellion was declared to be still existing, and the privilege of the writ of *habeas corpus* was in certain specified cases suspended throughout the United States, said suspension to continue throughout the duration of the rebellion, or until said proclamation should, by a subsequent one to be issued by the President of the United States, be modified or revoked;

And whereas the House of Representatives, on the twenty-second day of July, one thousand eight hundred and sixty-one, adopted a resolution in the words following, namely:

Resolved by the House of Representatives of the Congress of the United States, That the present deplorable civil war has been forced upon the country by the disunionists of the southern States, now in revolt against the constitutional Government, and in arms around the capital; that in this national emergency, Congress, banishing all feelings of mere passion or resentment, will recollect only its duty to the whole country; that this war is not waged upon our part in any spirit of oppression, nor for any purpose of conquest or subjugation, nor purpose of overthrowing or interfering with the rights or established institutions of those States, but to defend and maintain the supremacy of the Constitution, and to preserve the Union with all the dignity, equality, and rights of the several States unimpaired, and that as soon as these objects are accomplished, the war ought to cease.

And whereas the Senate of the United States on the twenty-fifth day of July, one thousand eight hundred and sixty-one, adopted a resolution in the words following, to wit:

Resolved, That the present deplorable civil war has been forced upon the country by the disunionists of the southern States, now in revolt against the constitutional Government, and in arms around the capital; that in this national emergency, Congress, banishing all feeling of mere passion or resentment, will recollect only its duty to the whole country; that this war is not prosecuted upon our part in any spirit of oppression, nor for any purpose of conquest or subjugation, nor purpose of overthrowing or interfering with the rights or established institutions of those States, but to defend and maintain the supremacy of the Constitution, and all laws made in pursuance thereof, and to preserve the Union with all the dignity, equality, and rights of the several States unimpaired; that as soon as these objects are accomplished the war ought to cease.

And whereas these resolutions though not joint or concurrent in form, are substantially identical, and as such have hitherto been and yet are regarded as having expressed the sense of Congress upon the subject to which they relate;

And whereas the President of the United States, by proclamation of the thirteenth of June, eighteen hundred and sixty-five, declared that the insurrection in the State of Tennessee had been suppressed, and that the authority of the United States therein was undisputed, and that such United States officers as had been duly commissioned were in the undisturbed exercise of their official functions;

And whereas the President of the United States, by further proclamation issued on the second day of April, one thousand eight hundred and sixty-six, did promulgate and declare that there no longer existed any armed resistance of misguided citizens or others to the authority of the United States in any or in all the States before mentioned, excepting only the State of Texas, and did further promulgate and declare that the laws could be sustained and enforced in the several States before mentioned, except Texas, by the proper civil authorities, State or Federal, and that the people of the said States, except Texas, are well and loyally disposed, and have conformed or will conform in their legislation to the condition of affairs growing out of the amendment to the Constitution of the United States prohibiting slavery within the limits and jurisdiction of the United States;

And did further declare in the same proclamation that it is the manifest determination of the American people that no State, of its own will, has a right or power to go out of, or separate itself from, or be separated from the American Union; and that, therefore, each State ought to remain and constitute an integral part of the United States;

And did further declare in the same last mentioned proclamation that the several afore-mentioned States, excepting Texas, had, in the manner aforesaid, given satisfactory evidence that they acquiesce in this sovereign and important resolution of national unity;

And whereas the President of the United States, in the same proclamation, did further declare that it is believed to be a fundamental principle of government that the people who have revolted, and who have been overcome and subdued, must either be dealt with so as to induce them voluntarily to become friends, or else they must be held by absolute military power, or devastated, so as to prevent them from ever again doing harm as enemies, which last named policy is abhorrent to humanity and to freedom;

And whereas the President did, in the same proclamation, further declare that the Constitu-

tion of the United States provides for constituent communities only as States, and not as Territories, dependencies, provinces, or protectorates;

And further, that such constituent States must necessarily be, and by the Constitution and laws of the United States are made equals, and placed upon a like footing as to political rights, immunities, dignity, and power with the several States with which they are united;

And did further declare that the observance of political equality as a principle of right and justice is well calculated to encourage the people of the before-named States, except Texas, to be and to become more and more constant and persevering in their renewed allegiance;

And whereas the President did further declare, that standing armies, military occupation, martial law, military tribunals, and the suspension of the writ of *habeas corpus* are, in time of peace, dangerous to public liberty, incompatible with the individual rights of the citizen, contrary to the genius and spirit of our free institutions, and exhaustive of the national resources, and ought not, therefore, to be sanctioned or allowed, except in cases of actual necessity, for repelling invasion or suppressing insurrection or rebellion;

And the President did further, in the same proclamation, declare that the policy of the Government of the United States, from the beginning of the insurrection to its overthrow and final suppression, had been conducted in conformity with the principles in the last-named proclamation recited;

And whereas the President, in the said proclamation of the thirteenth of June, one thousand eight hundred and sixty-five, upon the grounds therein stated and hereinbefore recited, did then and there proclaim and declare that the insurrection which heretofore existed in the several States before named, except in Texas, was at an end, and was henceforth to be so regarded;

And whereas, subsequently to the said second day of April, one thousand eight hundred and sixty-six, the insurrection in the State of Texas has been completely and everywhere suppressed and ended, and the authority of the United States has been successfully and completely established in the said State of Texas, and now remains therein unrestricted and undisputed, and such of the proper United States officers as have been duly commissioned within the limits of the said State are now in the undisturbed exercise of their official functions;

And whereas the laws can now be sustained and enforced in the said State of Texas by the proper civil authority, State or Federal, and the people of the said State of Texas, like the people of other States before named, are well and loyally disposed, and have conformed or will conform in their legislation to the condition of affairs growing out of the amendment of the Constitution of the United States prohibiting slavery within the limits and jurisdiction of the United States;

And whereas all the reasons and conclusions set forth in regard to several States therein specially named now apply equally and in all respects to the State of Texas, as well as to the other States which had been involved in insurrection;

And whereas adequate provision has been made by military orders to enforce the execution of the acts of Congress and the civil authorities, and secure obedience to the Constitution and laws of the United States within the State of Texas, if a resort to military force for such purpose should at any time become necessary;

Now, therefore, I, Andrew Johnson, President of the United States, do hereby proclaim and declare that the insurrection which heretofore existed in the State of Texas is at an end, and is to be henceforth so regarded in that State, as in the other States before named, in which the said insurrection was proclaimed to be at an end by the aforesaid proclamation of the second day of April, one thousand eight hundred and sixty-six.

And I do further proclaim that the said insurrection is at an end, and that peace, order tranquillity, and civil authority now exist in and throughout the whole of the United States of America.

In testimony whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington, this twentieth day of August, in the year of our Lord one thousand eight hundred and sixty-six, and of the independence of the United States of America the ninety-first. [L. S.]

ANDREW JOHNSON.

By the President:

WM. H. SEWARD, *Secretary of State.*

Respecting American Merchant Vessels Stopping or Anchoring in Certain Ports of Japan, January 12, 1867.

Whereas in virtue of the power conferred by the act of Congress approved June 22, 1860, sections 15 and 24 of which act were designed by proper provisions to secure the strict neutrality of citizens of the United States residing in or visiting the empires of China and Japan, a notification was issued on the 4th of August last by the Legation of the United States in Japan, through the consulates of the open ports of that empire, requesting American shipmasters not to approach the coasts of Lucoa and Nagato pending the then contemplated hostilities between the Tycoon of Japan and the Daimio of the said provinces;

And whereas authentic information having been received by the said Legation that such hostilities had actually commenced, a regulation, in furtherance of the aforesaid notification and pursuant to the act referred to, was issued by the Minister Resident of the United States in Japan forbidding American merchant vessels from stopping or anchoring at any port or roadstead in that country except the three open ports, viz: Kanagawha, (Yokohama,) Nagasaki, and Hakodate, unless in distress or forced by stress of weather, as provided by treaty, and giving notice that masters of vessels committing a breach of the regulation would thereby render themselves liable to prosecution and punishment, and also to forfeiture of the protection of the United States if the visit to such non-opened port or roadstead should either involve a breach of treaty or be construed as an act in aid of insurrection or rebellion:

Now, therefore, be it known that I, Andrew Johson, President of the United States of America, with a view to prevent acts which might injuriously affect the relations existing between the Government of the United States and that of Japan, do hereby call public attention to the aforesaid notification and regulation, which are hereby sanctioned and confirmed.

In testimony whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington, this twelfth day of January, in the year of our Lord [SEAL.] one thousand eight hundred and sixty-seven, and of the independence of the United States the ninety-first.

ANDREW JOHNSON,

By the President:

WILLIAM H. SEWARD, *Secretary of State.*

Respecting Decree of Maximilian, August 17, 1866.

Whereas a war is existing in the Republic of Mexico, aggravated by foreign military intervention;

And whereas the United States, in accordance with their settled habits and policy, are a neutral Power in regard to the war which thus afflicts the Republic of Mexico;

And whereas it has become known that one of the belligerents in the said war—namely, the Prince Maximilian—who asserts himself to be Emperor in Mexico, has issued a decree in regard to the port of Matamoros, and other Mexican ports which are in the occupation and possession of another of the said belligerents—namely, the United States of Mexico—which decree is in the following words:

"The port of Matamoros, and all those of the northern frontier which have withdrawn from their obedience to the Government, are closed to foreign and coasting traffic during such time as the empire of the law shall not be therein reinstated.

"ART. 2. Merchandise proceeding from the said ports, on arriving at any other where the excise of the empire is collected, shall pay the duties on importation, introduction, and consumption, and, on satisfactory proof of contravention, shall be irremissibly confiscated. Our Minister of the Treasury is charged with the punctual execution of this decree.

"Given at Mexico, the 9th of July, 1866."

And whereas the decree thus recited, by declaring a belligerent blockade unsupported by competent military or naval force, is in violation of the neutral rights of the United States, as defined by the law of nations, as well as of the treaties existing between the United States of America and the aforesaid United States of Mexico:

Now, therefore, I, Andrew Johnson, President of the United States, do hereby proclaim and declare, that the aforesaid decree is held, and will be held, by the United States, to be absolutely null and void, as against the Government and citizens of the United States; and that any attempt which shall be made to enforce the same against the Government or citizens of the United States will be disallowed.

In witness whereof I have hereunto set my hand, and caused the seal of the United States to be affixed.

Done at the city of Washington, the seventeenth day of August, in the year of our [L. S.] Lord one thousand eight hundred and sixty-six, and of the independence of the United States of America the ninety-first.

ANDREW JOHNSON.

By the President:

WILLIAM H. SEWARD, *Secretary of State.*

Declaring the Suspension of Tonnage and Impost Duties, as respects the Vessels of the Hawaiian Islands, January 29, 1867.

Whereas by an act of the Congress of the United States of the twenty-fourth day of May, one thousand eight hundred and twenty-eight, entitled "An act in addition to an act, entitled 'An act concerning discriminating duties of tonnage and impost,' and to equalize the duties on Prussian vessels and their cargoes," it is provided that upon satisfactory evidence being given to the President of the United States by the government of any foreign nation that no discriminating duties of tonnage or impost are imposed or levied in the ports of said nation upon vessels wholly belonging to citizens of the United States, or upon the produce, manufactures, or merchandise imported to the same from the United States or from any foreign country, the President is thereby authorized to issue his proclamation, declaring that the foreign discriminating duties of tonnage and imposts within the United States are and shall be suspended and discontinued, so far as respects the vessels of the said foreign nation, and the produce, manufactures, or merchandise imported into the United States in the same from the said foreign nation, or from any other foreign country, the said suspension to take effect from the time of such notification being given to the President of the United States, and to continue so long as the reciprocal exemption of vessels belonging to citizens of the United States and their cargoes, as aforesaid, shall be continued, and no longer;

And whereas satisfactory evidence has lately been received by me from his Majesty the King of the Hawaiian Islands, through an official communication of his Majesty's Minister of Foreign Relations, under date of the 10th of December, 1866, that no other or higher duties of tonnage and impost are imposed or levied in the ports of the Hawaiian Islands upon vessels wholly belonging to citizens of the United States, and upon the produce, manufactures, or merchandise imported in the same from the United States, and from any foreign country whatever, than are levied on Hawaiian ships and their cargoes in the same ports under like circumstances;

Now, therefore, I, Andrew Johnson, President of the United States of America, do hereby declare and proclaim that so much of the several acts imposing discriminating duties of tonnage and impost within the United States are, and shall be, suspended and discontinued, so far as respects the vessels of the Hawaiian Islands, and the produce, manufactures, and merchandise imported into the United States in the same, from the dominions of the Hawaiian Islands, and from any other foreign country whatever, the said suspension to take effect from the said 10th day of December, and to continue thenceforward, so long as the reciprocal exemption of

the vessels of the United States, and the produce, manufactures, and merchandise imported into the Hawaiian Islands in the same, as aforesaid, shall be continued on the part of the Government of his Majesty the King of the Hawaiian Islands.

In testimony whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington, the twenty-ninth day of January, in the year of our Lord one thousand eight hundred and [L. S.] sixty-seven, and of the independence of the United States of America, the ninety-first. ANDREW JOHNSON.

By the President:
WM. H. SEWARD, *Secretary of State.*

Declaring Nebraska a State in the Union, March 1, 1867.

Whereas the Congress of the United States did, by an act approved on the nineteenth day of April, one thousand eight hundred and sixty-four, authorize the people of the Territory of Nebraska to form a constitution and State government, and for the admission of such State into the Union on an equal footing with the original States, upon certain conditions in said act specified; and whereas said people did adopt a constitution conforming to the provisions and conditions of said act, and ask admission into the Union; and whereas the Congress of the United States did, on the eighth and ninth days of February, one thousand eight hundred and sixty-seven, in mode prescribed by the Constitution, pass a further act for the admission of the State of Nebraska into the Union, in which last-named act it was provided that it should not take effect except upon the fundamental condition that within the State of Nebraska there should be no denial of the elective franchise or of any other right to any person by reason of race or color, excepting Indians not taxed, and upon the further fundamental condition that the Legislature of said State, by a solemn public act, should declare the assent of said State to the said fundamental condition, and should transmit to the President of the United States an authenticated copy of said act of the Legislature of said State, upon receipt whereof the President, by proclamation, should forthwith announce the fact, whereupon said fundamental condition should be held as a part of the organic law of the State, and thereupon, and without any further proceeding on the part of Congress, the admission of said State into the Union should be considered as complete; and whereas within the time prescribed by said act of Congress of the eighth and ninth of February, one thousand eight hundred and sixty-seven, the Legislature of the State of Nebraska did pass an act ratifying the said act of Congress of the eighth and ninth of February, one thousand eight hundred and sixty-seven, and declaring that the aforenamed provisions of the third section of said last-named act of Congress should be a part of the organic law of the State of Nebraska; and whereas a duly authenticated copy of said act of the Legislature of Nebraska has been received by me:

Now, therefore, I, Andrew Johnson, President of the United States of America, do, in accordance with the provisions of the act of Congress last herein named, declare and proclaim the fact that the fundamental conditions imposed by Congress on the State of Nebraska to entitle that State to admission to the Union have been ratified and accepted, and that the admission of the said State into the Union is now complete.

In testimony whereof I have hereto set my hand, and have caused the seal of the United States to be affixed.

Done at the city of Washington, this first day of March, in the year of our Lord one [SEAL.] thousand eight hundred and sixty-seven, and of the independence of the United States of America the ninety-first. ANDREW JOHNSON.

By the President:
WILLIAM H. SEWARD, *Secretary of State.*

Withdrawing reward for John H. Surratt, and others.*

WAR DEPARTMENT,
ADJUTANT GENERAL'S OFFICE,
WASHINGTON, *November* 24, 1865.

General Orders, No. 164.

Ordered, That—I. All persons claiming reward for the apprehension of John Wilkes Booth, Lewis Payne, G. A. Atzerodt, and David E. Herold, and Jefferson Davis, or either of them, are notified to file their claims and their proofs with the Adjutant General for final adjudication by the special commission appointed to award and determine upon the validity of such claims, before the first day of January next, after which time no claims will be received.

II. The rewards offered for the arrest of Jacob Thompson, Beverley Tucker, George N. Sanders, William G. Cleary, and John H. Surratt are revoked.

By order of the President of the United States:
E. D. TOWNSEND,
Assistant Adjutant General.

Release of Convicts.

WAR DEPARTMENT,
ADJUTANT GENERAL'S OFFICE,
WASHINGTON, *July* 13, 1866.

General Orders, No 46.

Ordered: That all persons who are undergoing sentence by military courts, and have been imprisoned six months, except those who are under sentence for the crimes of murder, arson, or rape, and excepting those who are under sentence at the Tortugas, be discharged from imprisonment and the residue of their sentence remitted.

* Respecting this order, Secretary Stanton testified before a Congressional Committee, January 10, 1867, as follow:

Q. What was the reason for revoking the order offering a reward for the arrest of Surratt?

A. The reasons that influenced my mind, were in the first place, that many months had elapsed without accomplishing the arrest of these parties. I was entirely satisfied that they were not in the United States, and that if any arrest was made it would have to be by government officials, who ought not to have any pretence of claiming the reward; besides, I thought that if the proclamation was withdrawn it would probably induce these parties to believe that pursuit was over, and they might return to the United States and be arrested. For these reasons I thought it expedient to revoke the order. It was done on my own responsibility, the President left it at my discretion to do as I thought best in the matter.

Those who belong to the military service, and their term unexpired, will be returned to their command, if it is still in service, and their release is conditional upon their serving their full term and being of good behavior.

By order of the President of the United States:

E. D. TOWNSEND,
Assistant Adjutant General.

Reconstruction in Texas.

STATE DEPARTMENT,
AUSTIN, TEXAS, *July* 26, 1866.

HON. W. H. SEWARD:

Please inform me by telegram whether or not it is the will of the President that the Legislature of Texas shall meet on the 6th day of August, and General Throckmorton be inaugurated on the 9th? Will the Legislature be permitted to assemble without the inauguration of the Governor-elect? If so, what am I expected to do? You will perceive by reference to your dispatch of July 17 that my instructions are not definite. My solicitude increases as the time for the meeting of the Legislature approaches.

Your obedient servant,

JAMES H. BELL,
Secretary of State of Texas.

WAR DEPARTMENT,
WASHINGTON, *July* 28, 1866.

TO JAMES H. BELL:

Your telegrams of the 21st and 26th of July, received. The President directs me to say that the Legislature of Texas will assemble and organize on the 6th of August without hindrance. The Governor-elect, Mr. Throckmorton, will be inaugurated on the 9th without hindrance. When you have reported the organization and inauguration to this Department, by telegraph or otherwise, the provisional governor will be relieved, and the government will be transferred to the elected authorities of Texas. Until the receipt of such notice by yourself, or by the Governor-elect, the condition of affairs will remain in the provisional government, as heretofore, except the organization and inauguration aforestated.

WM. H. SEWARD,
Secretary of State.

WASHINGTON, D. C., *October* 30, 1866.

Governor THROCKMORTON:

Your telegram of the 29th instant just received. I have nothing further to suggest than urging upon the Legislature to make all laws involving civil rights as complete as possible, so as to extend equal and exact justice to all persons, without regard to color, if it has not been done. We should not despair of the Republic. My faith is strong. My confidence is unlimited in the wisdom, prudence, virtue, intelligence, and magnanimity of the great mass of the people; and that their ultimate decision will be uninfluenced by passion and prejudice, engendered by the recent civil war, for the complete restoration of the Union by the admission of loyal Representatives and Senators from all the States to the respective Houses of the Congress of the United States.

ANDREW JOHNSON.

To Gov. Brownlow, of Tennessee.*

WASHINGTON, *July* 20, 1865.

Hon. W. G. BROWNLOW:

I hope and have no doubt you will see that the recent amendments to the Constitution of the State, as adopted by the people, and all laws passed by the last Legislature in pursuance thereof, are faithfully and fairly executed, and that all illegal votes in the approaching election be excluded from the polls, and the election for members of Congress be legally and fairly conducted. When and wherever it becomes necessary to employ force for the execution of the laws and the protection of the ballot-box from violence and fraud, you are authorized to call upon Major General Thomas for sufficient force to sustain the civil authorities of the State. I have received your recent address to the people, and think it well-timed, and hope it will do much good in reconciling the opposition to the amendment of the constitution and the laws passed by the last Legislature. The law must be executed and the civil authority sustained. In your efforts to do this, if necessary, General Thomas will afford a sufficient military force. You are at liberty to make what use you think proper of this dispatch.

ANDREW JOHNSON.

To Montgomery Blair, Postmaster General.

NASHVILLE, *November* 24, 1863.

To Hon. M. BLAIR, *Postmaster General:*

I hope that the President will not be committed to the proposition of States relapsing into territories and held as such. If he steers clear of this extreme, his election to the next Presidency is without a reasonable doubt. I expected to have been in Washington before this time, when I could have conversed freely and fully in reference to the policy to be adopted by the Government; but it has been impossible for me to leave Nashville. I will be there soon. The institution of slavery is gone, and there is no good reason now for destroying the States to bring about the destruction of slavery.

ANDREW JOHNSON.

General Grant's Revocation of Order Respecting Disloyal Newspapers.†

HEADQUARTERS ARMIES OF THE UNITED STATES,
WASHINGTON, *July* 24, 1866.

The order of February 17, 1866, from these headquarters directing department commanders to forward copies of such newspapers published within their respective commands, as contained sentiments of disloyalty, &c., is hereby revoked.

By command of Lieut. Gen. Grant,

GEO. K. LEET,
Assistant Adjutant General.

Assigning Commanders to Military Districts, March 11, 12, and 15, 1867.

HEADQUARTERS OF THE ARMY,
ADJUTANT GENERAL'S OFFICE,
WASHINGTON, *March* 11, 1867.

General Orders No. 10.

* * * * *

II. In pursuance of the act of Congress en-

*An incomplete copy of this telegram is printed on page 27 of the Political Manual for 1866.

†For original order see Manual for 1866, p. 123.

titled "An act to provide for the more efficient government of the rebel States," the President directs the following assignments to be made:

First District, State of Virginia, to be commanded by Brevet Major General J. M. Schofield. Headquarters, Richmond, Va.

Second District, consisting of North Carolina and South Carolina, to be commanded by Major General D. E. Sickles. Headquarters, Columbia, S. C.

Third District, consisting of the States of Georgia, Florida, and Alabama, to be commanded by Major General G. H. Thomas. Headquarters, Montgomery, Ala.

Fourth District, consisting of the States of Mississippi and Arkansas, to be commanded by Brevet Major General E. O. C. Ord. Headquarters, Vicksburg, Miss.

Fifth District, consisting of the States of Louisiana and Texas, to be commanded by Major General P. H. Sheridan. Headquarters, New Orleans, La.

The powers of departmental commanders are hereby delegated to the above-named district commanders.

By command of General Grant.

E. D. TOWNSEND,
Assistant Adjutant General.

HEADQUARTERS OF THE ARMY,
ADJUTANT GENERAL'S OFFICE,
WASHINGTON, *March* 12, 1867.

General Orders No. 14.

By direction of the President, the following changes are made in Geographical Departments as now constituted.

1. The States of West Virginia, Tennessee, and Kentucky to constitute the Department of the Cumberland, Brigadier and Brevet Major General John Pope to command. Headquarters, Louisville, Ky.

2. The counties of Alexandria and Fairfax, Virginia, are annexed to the command of the First District.

3. Indian Territory is attached to the Department of the Missouri.

By command of General Grant.

E. D. TOWNSEND,
Assistant Adjutant General.

HEADQUARTERS OF THE ARMY,
ADJUTANT GENERAL'S OFFICE,
WASHINGTON, *March* 15, 1867.

The President directs that the following changes be made, at the request of Major General Thomas, in the assignment announced in General Orders No. 10, of March 11, 1867, of commanders of districts under the act of Congress entitled "An act to provide for the more efficient government of the rebel States," and of the Department of the Cumberland created in General Orders No. 14, of March 12, 1867: Brevet Major General John Pope to command the Third District, consisting of the States of Georgia, Florida, and Alabama, and Major General George H. Thomas to command the Department of the Cumberland.

By command of General Grant.

E. D. TOWNSEND,
Assistant Adjutant General.

Orders in First Military District.

HEADQUARTERS FIRST DISTRICT,
STATE OF VIRGINIA,
RICHMOND, *March* 13, 1867.

General Orders No. 1:

1. In compliance with the order of the President, the undersigned hereby assumes command of the First District, State of Virginia, under the act of Congress of March 2, 1867.

2. All officers under the existing provisional government of the State of Virginia will continue to perform the duties of their respective offices, according to law, unless otherwise hereafter ordered in individual cases, until their successors shall be duly elected and qualified, in accordance with the above-named act of Congress.

3. It is desirable that the military power conferred by the before-mentioned act be exercised only so far as may be necessary to accomplish the objects for which that power was conferred, and the undersigned appeals to the people of Virginia, and especially to magistrates and other civil officers, to render the necessity for the exercise of this power as slight as possible, by strict obedience to the laws, and by impartial administration of justice to all classes.

4. The staff officers now on duty at headquarters Department of the Potomac are assigned to corresponding duties at headquarters First District, State of Virginia. J. M. SCHOFIELD,
Brevet Major General, U. S. A.

HEADQUARTERS FIRST DISTRICT,
STATE OF VIRGINIA,
RICHMOND, VA., *March* 15, 1867.

General Orders No. 2.

I. The following extract of an act of Congress is re-published for the information and government of all concerned:

[Public—No. 85.]

An Act making appropriations for the support of the army for the year ending June thirtieth, eighteen hundred and sixty-eight, and for other purposes. * * * * *

SEC. 5. *And be it further enacted*, That it shall be the duty of the officers of the army and navy and of the Freedmen's Bureau to prohibit and prevent whipping or maiming of the person, as a punishment for any crime, misdemeanor, or offence, by any pretended civil or military authority, in any State lately in rebellion, until the civil government in such State shall have been restored, and shall have been recognized by the Congress of the United States. * * *

Approved March 2, 1867.

II. In pursuance of the provisions of the 5th section of the act, as above cited, whipping or maiming of the person, as a punishment of any crime, misdemeanor, or offence, is hereby prohibited in this district.

By Command of Brig. and Bvt. Maj. Gen. J. M. Schofield, U. S. A.

S. F. CHALFIN, *A. A. G.*

HEADQUARTERS FIRST DISTRICT,
STATE OF VIRGINIA,
RICHMOND, VA., *March* 15, 1867.

I. The following extract of an act of Congress is re-published for the information and government of all concerned:

[Public—No. 85.]

An Act making appropriations for the support of the army for the year ending June thirtieth, eighteen hundred and sixty-eight, and for other purposes. * * * *

SEC. 6. *And be it further enacted*, That all militia forces now organized or in service in either of the States of Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Louisiana, Mississippi, and Texas, be forthwith disbanded, and that the further organization, arming, or calling into service of the said militia forces, or any part thereof, is hereby prohibited under any circumstances whatever, until the same shall be authorized by Congress. * * *

Approved March 2, 1867.

By command of Brig. and Bvt. Maj. Gen. J. M. Schofield, U. S. A. S. F. CHALFIN, *A. A. G.*

HEADQUARTERS FIRST DISTRICT,
STATE OF VIRGINIA,
RICHMOND, VA., *April* 2, 1867.

Special Orders, No. 16.

[Extract.]

1. A board of officers is hereby appointed to select and recommend to the commanding general for appointment persons to form boards of registration throughout the district, as required by the act of March 23, 1867.

The persons required will be one registering officer for each magisterial district of a county, or ward of a city at large, and two, four, or six for the county or city at large, according to the size of the county or city, so as to form with the registering officers of the several districts or wards, one, two, or three boards of registration for the county or city.

An officer of the army or Freedmen's Bureau will, if possible, be selected as a member of each board; and the other two will be selected from the following classes of persons, viz: 1st, Officers of the United States army, or of volunteers who have been honorably discharged after meritorious services during the late war. 2d, Loyal citizens of the county or city, for which they are selected. 3d, Any other loyal citizens having the proper qualifications.

These boards must be composed of men who not only are now, but always have been, loyal to the Government of the United States; men of high character, and sound, impartial judgment, and, as far as possible, men who have the confidence of all classes of citizens.

No registering officer shall be a candidate for any elective office while holding the office of registering officer.

With their recommendations for appointment, the board will report to the commanding general a brief of the testimonials and other evidence upon which their selections are based.

The board will appoint from time to time their selections for particular counties or cities, without waiting to complete the list.

DETAIL FOR THE BOARD.

Brevet Lieutenant Colonel George Gibson, jr., Captain 11th U. S. Infantry; Brevet Major C. R. Layton, Captain 11th U. S. Infantry; Brevet Major D. M. Vance, Captain 11th U. S. Infantry; Captain Garrick Mallery, 43d U. S. Infantry; Captain J. A. Bates, 43d U. S. Infantry.

By command of Brigadier and Brevet Major General J. M. Schofield, U. S. A.

S. F. CHALFIN, *A. A. G.*

HEADQUARTERS FIRST DISTRICT,
STATE OF VIRGINIA,
RICHMOND, VA., *April* 2, 1867.

General Orders, No. 8.

All elections, whether State, county, or municipal, under the provisional government of Virginia, are hereby ordered to be suspended until the registration provided for by the act of Congress of March 23, 1867, shall be completed.

Vacancies which may occur in the meantime will be filled by temporary appointments, to be made by the Commanding General.

By command of Brigadier and Brevet Major General J. M Schofield, U. S. A.

S. F. CHALFIN, *A. A. G.*

HEADQUARTERS FIRST DISTRICT,
STATE OF VIRGINIA,
RICHMOND, VA., *April* 5, 1867.

General Orders, No. 9.

In pursuance of the acts of Congress of March 2 and 23, 1867, all officers hereafter to be elected or appointed under the provisional government of Virginia will, in addition to the oath of office prescribed by the laws of the State, be required to take and subscribe the following oath:

"I, ——, do solemnly ——, in the presence of Almighty God, that I have not been disfranchised for participation in any rebellion or civil war against the United States, nor for felony committed against the laws of any State, or of the United States; that I have never been a member of any State Legislature, nor held any executive or judicial office in any State, and afterward engaged in insurrection or rebellion against the United States, or given aid or comfort to the enemies thereof; that I have never taken an oath as a member of Congress of the United States, or as an officer of the United States, or as a member of any State Legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, and afterward engaged in insurrection or rebellion against the United States, or given aid or comfort to the enemies thereof; that I will faithfully support the Constitution and obey the laws of the United States, and will, to the best of my ability, encourage others so to do; so help me God."

By order of Brigadier and Brevet Major General J. M. Schofield, U. S. A.

S. F. CHALFIN, *A. A. G.*

Orders in Second Military District.

HEADQUARTERS DEP'T OF THE SOUTH,
CHARLESTON, S. C., *March* 8, 1867.

General Orders, No. 26.

Whipping or maiming of the person, as a punishment for any crime, misdemeanor, or offence, being now prohibited by the laws of the United States, all officers of the army and Freedmen's Bureau on duty in this Department, are hereby directed to prevent the infliction of such punishment by any authority whatever.

By command of Brevet Maj. Gen. Robinson.

JNO. R. MYRICK, *A. A. A. G.*

A like order was issued in each of the other Districts.

HEADQUARTERS DEP'T OF THE SOUTH,
CHARLESTON, S. C., *March* 13, 1867.

General Orders, No. 27.

An official copy of the law, entitled "An act to provide for the more efficient government of the rebel States," having been received at these headquarters, it is hereby announced, for the information and government of all concerned, that the said law is in force within the military district composed of North Carolina and South Carolina, from this date.

By command of Brevet Maj. Gen. J. C. Robinson.

JNO. R. MYRICK, *A. A. A. G.*

HEADQUARTERS SECOND MILITARY DISTRICT,
(NORTH CAROLINA AND SOUTH CAROLINA,)
COLUMBIA, S. C., *March* 21, 1867.

General Orders, No. 1.

I. In compliance with General Orders No. 10, Headquarters of the Army, March 11, 1867, the undersigned hereby assumes command of the Second Military District, constituted by the act of Congress, Public No. 68, 2d March, 1867, entitled "An act for the more efficient government of the rebel States."

II. In the execution of the duty of the commanding general to maintain the security of the inhabitants in their persons and property, to suppress insurrection, disorder, and violence, and to punish or cause to be punished all disturbers of the public peace and criminals, the local and civil tribunals will be permitted to take jurisdiction of and try offenders, excepting only such cases as may, by the order of the commanding general, be referred to a commission or other military tribunal for trial.

III. The civil government now existing in North Carolina and South Carolina is provisional only, and in all respects subject to the paramount authority of the United States, at any time to abolish, modify, control, or supersede the same. Local laws and municipal regulations not inconsistent with the Constitution and laws of the United States, or the proclamations of the President, or with such regulations as are or may be prescribed in the orders of the commanding general, are hereby declared to be in force; and in conformity therewith, civil officers are hereby authorized to continue the exercise of their proper functions, and will be respected and obeyed by the inhabitants.

IV. Whenever any civil officer, magistrate, or court neglects or refuses to perform an official act properly required of such tribunal or officer, whereby due and rightful security to person or property shall be denied, the case will be reported by the post commander to these headquarters.

V. Post commanders will cause to be arrested persons charged with the commission of crimes and offenses when the civil authorities fail to arrest and bring such offenders to trial, and will hold the accused in custody for trial by military commission, provost court, or other tribunal organized pursuant to orders from these headquarters. Arrests by military authority will be reported promptly. The charges preferred will be accompanied by the evidence on which they are founded.

VI. The commanding general desiring to preserve tranquillity and order by means and agencies most congenial to the people, solicits the zealous and cordial co-operation of civil officers in the discharge of their duties, and the aid of all good citizens in preventing conduct tending to disturb the peace; and to the end that occasion may seldom arise for the exercise of military authority in matters of ordinary civil administration, the commanding general respectfully and earnestly commends to the people and authorities of North and South Carolina unreserved obedience to the authority now established, and the diligent, considerate, and impartial execution of the laws enacted for their government.

VII. All orders heretofore published to the Department of the South are hereby continued in force.

VIII. The following-named officers are announced as the staff of the major general commanding: * * * *

D. E. SICKLES,
Major General Commanding.

HEADQUARTERS SECOND MILITARY DISTRICT,
(NORTH CAROLINA AND SOUTH CAROLINA,)
CHARLESTON, S. C., *April* 1, 1867.

General Orders, No. 5.

When an election for district, county, municipal, or town officers is required to take place, in accordance with the provisions of the local law, within the limits of any post in this command, command officers will promptly report to these headquarters the time and place of such election and the designation of the offices to be filled.

If the present incumbents be ineligible to hold office, or any objection exists, arising out of their misconduct in office, to the continuance of their functions, the facts will be reported by the post commander with his suggestions, having in view the interests of the service and the welfare of the locality immediately concerned.

By command of Major General D. E. Sickles.

J. W. CLOUS, *A. A. A. G.*

[By Telegraph.]
CHARLESTON, S. C., *April* 1, 1867.

Brvt. Brig. Gen. GREEN, *Commanding Richland District:*

The election [for sheriff] will not be held. When will the term of the present incumbent expire? A successor will be appointed.

By command of Gen. Sickles.

J. W. CLOUS, *A. A. A. G.*

HEADQUARTERS SECOND MILITARY DISTRICT,
CHARLESTON, S. C., *April* 11, 1867.

General Orders, No. 10.

The general destitution prevailing among the population of this military district cannot be relieved without affording means for the development of their industrial resources. The nature and extent of the destitution demand extraordinary measures. The people are borne down by a heavy burden of debt, the crops of grain and garden produce failed last year, many families have been deprived of shelter, many more need food and clothing, needful implements and auxiliaries of husbandry are very scarce; the laboring population in numerous localities are threatened with starvation unless supplied with food by the Government of the United States; the inability of a large portion of the people to pay taxes

leaves the local authorities without adequate means of relief, and the gravity of the situation is increased by the general disposition shown by creditors to enforce upon an impoverished people the immediate collection of all claims. To suffer all this to go on without restraint or remedy is to sacrifice the general good. The rights of creditors shall be respected, but the appeal of want and suffering must be heeded. Moved by these considerations, the following regulations are announced. They will continue in force with such modification as the occasion may require until the civil government of the respective States shall be established in accordance with the requirements of the Government of the United States. The commanding general earnestly desires and confidently believes that the observance of these regulations and the co-operation of all persons concerned in employing fairly and justly the advantages still remaining to them, will mitigate the distress now existing, and that the avenues of industry, enterprise, and organization thus opened will contribute to the permanent welfare and future happiness of the people.

I. Imprisonment for debt is prohibited, unless the defendant in execution shall be convicted of a fraudulent concealment or disposition of his property with intent to hinder, delay, and prevent the creditor in the recovery of his debt or demand, and the proceedings now established in North and South Carolina respectively, for the trial and determination of such questions, may be adopted.

II. Judgments or decrees for the payment of money on causes of action arising between the 19th of December, 1860, and the 15th of May, 1865, shall not be enforced by execution against the property or the person of the defendant. Proceedings in such causes of action now pending shall be stayed, and no suit or process shall be hereafter instituted or commenced for any such causes of action.

III. Sheriffs, coroners, and constables are hereby directed to suspend for twelve calendar months the sale of all property upon execution or process on liabilities contracted prior to the 19th of December, 1860, unless upon the written consent of the defendants, except in cases where the plaintiff, or in his absence his agent or attorney, shall upon oath, with corroborative testimony, allege and prove that the defendant is removing or intends fraudulently to remove his property beyond the territorial jurisdiction of the court. The sale of real or personal property by foreclosure of mortgage is likewise suspended for twelve calendar months, except in cases where the payment of interest money accruing since the 15th day of May, 1865, shall not have been made before the day of sale.

IV. Judgments or decrees entered or enrolled on causes of action arising subsequent to the 15th of May, 1865, may be enforced by execution against the property of the defendant, and in the application of the money arising under such executions, regard shall be had to the priority of liens, unless in cases where the good faith of any lien shall be drawn in question. In such cases the usual mode of proceeding adopted in North and South Carolina respectively to determine that question shall be adopted.

V. All proceedings for the recovery of money under contracts, whether under seal or by parole, the consideration for which was the purchase of negroes, are suspended. Judgments or decrees entered or enrolled for such causes of action shall not be enforced.

VI. All advances of moneys, subsistence, implements, and fertilizers, loaned, used, employed, or required for the purpose of aiding the agricultural pursuits of the people, shall be protected, and the existing laws which have provided the most efficient remedies in such cases for the lender will be supported and enforced; wages for labor performed in the production of the crops shall be a lien on the crop, and payment of the amount due for such wages shall be enforced by the like remedies provided to secure advances of money and other means for the cultivation of the soil.

VII. In all sales of property under execution or by order of any court there shall be reserved out of the property of any defendant who has a family dependent upon his or her labor a dwelling-house and appurtenances and twenty acres of land for the use and occupation of the family of the defendant, and necessary articles of furniture, apparel, subsistence, implements of trade, husbandry or other employment of the value of $500. The homestead exemption shall inure only to the benefit of families—that is to say, to parent or parents and child or children—in other cases the exemption shall extend only to clothing, implements of trade or other employment usually followed by the defendant, of the value of $100. The exemption hereby made shall not be waived or defeated by the act of the defendant. The exempted property of the defendant shall be ascertained by the sheriff or other officer enforcing the execution, who shall specifically describe the same, and make a report thereof in each case to the court.

VIII. The currency of the United States declared by the Congress of the United State to be a legal tender in the payment of all debts, dues, and demands, shall be so recognized in North and South Carolina, and all cases in which the same shall be tendered in payment and refused by any public officer will be at once reported to these headquarters or to the commanding officer of the post within which such officer resides.

IX. Property of an absent debtor or one charged as such without fraud, whether consisting of money advanced for the purposes of agriculture or appliances for the cultivation of the soil, shall not be taken under the process known as foreign attachment; but the lien created by any existing law shall not be disturbed, nor shall the possession or the use of the same be in any wise interfered with, except in the execution of a judgment or final decree, in cases where they are authorized to be enforced.

X. In suits brought to recover ordinary debts known as actions *ex contractu*, bail, as heretofore authorized, shall not be demanded by the suitor nor taken by the sheriff or other officer serving the process; in suits for trespass, libel, wrongful conversion of property, and other cases, known as actions *ex delicto*, bail, as heretofore authorized, may be demanded and taken. The prohibition of bail in cases *ex contractu* shall not extend to persons about to leave the State, but

the fact of intention must be clearly established by proof.

XI. In criminal proceedings the usual recognizances shall be required and taken by the proper civil officers heretofore authorized by law to take the same, provided that upon complaint being made to any magistrate or other person authorized by law to issue a warrant for breach of the peace or any criminal offense it shall be the duty of such magistrate or officer to issue his warrant upon the recognizance of the complainant to prosecute, without requiring him to give security on such recognizance.

XII. The practice of carrying deadly weapons, except by officers and soldiers in the military service of the United States, is prohibited. The concealment of such weapons on the person will be deemed an aggravation of the offence. A violation of this order will render the offender amenable to trial and punishment by military commission. Whenever wounding or killing shall result from the use of such weapons, proof that the party carried or concealed a deadly weapon shall be deemed evidence of a felonious attempt to take the life of the injured person.

XIII. The orders heretofore issued in this military department prohibiting the punishment of crimes and offenses by whipping, maiming, branding, stocks, pillory, or other corporal punishment is in force and will be obeyed by all persons.

XIV. The punishment of death in certain cases of burglary and larceny imposed by the existing laws of the provisional governments in this military district is abolished. Any person convicted of burglary or of larceny, when the property stolen is of the value of $25, of assault and battery with intent to kill, or of any assault with a deadly weapon, shall be deemed guilty of felony, and shall be punished by imprisonment at hard labor for a term not exceeding ten years nor less than two years, in the discretion of the court having jurisdiction thereof. Larceny, when the value of the property stolen is less than $25, shall be punished by imprisonment at hard labor for a term not exceeding one year, in the discretion of the court.

XV. The Governors of North and South Carolina shall have authority within their jurisdictions respectively to reprieve or pardon any person convicted and sentenced by a civil court, and to remit fines and penalties.

XVI. Nothing in this order shall be construed to restrain or prevent the operation of proceedings in bankruptcy in accordance with the acts of Congress in such cases made and provided, nor with the collection of any tax, impost, excise, or charge levied by authority of the United States, or of the provisional governments of North and South Carolina; but no imprisonment for over due taxes shall be allowed, nor shall this order or any law of the provisional governments of North and South Carolina operate to deny to minor children or children coming of age, or their legal representatives, nor to suspend as to them any right of action, remedy, or proceeding against executors, administrators, trustees, guardians, masters, or clerks of equity courts, or other officers or persons holding a fiduciary relation to the parties or the subject matter of the action or proceeding.

XVII. Any law or ordinance heretofore in force in North or South Carolina inconsistent with the provisions of this general order is hereby suspended and declared inoperative.

By command of Major Gen. D. E. Sickles.

J. W. Clous, *A. A. A. G.*

Orders in Third Military District.

Headq'rs Sub-Dist. of Alabama,
Montgomery, Ala., *March* 28, 1867.

General Orders, No. 1.

I. By direction of General Grant, all State and local elections in this State are disallowed, pending the arrival of the district commander appointed for this district, and his order in the premises.

II. In default of certain information that municipal or other corporate elections have not occurred since the passage of "An act to provide for the more efficient government of the rebel States," all persons chosen to public office in this State during this month will report the fact by letter to these headquarters, for the action of the district commander.

Wager Swayne, *Major General.*

Headq'rs Third Military District,
Montgomery, Ala., *April* 1, 1867.

Orders No. 1.

In compliance with General Orders No. 18, dated Headquarters of the Army, March 15, 1867, the undersigned assumes command of the Third Military District, which comprises the States of Alabama, Georgia, and Florida.

I. The districts of Georgia and Alabama will remain as at present constituted, and with their present commanders, except that the headquarters of the district of Georgia will be forthwith removed to Milledgeville.

The district of Key West is hereby merged into the District of Florida, which will be commanded by Colonel John T. Sprague, Seventh United States Infantry. The headquarters of the District of Florida are removed to Tallahassee, to which place the district commander will transfer his headquarters without delay.

II. The civil officers at present in office in Georgia, Florida, and Alabama will retain their offices until the expiration of their terms of service, unless otherwise directed in special cases, so long as justice is impartially and faithfully administered. It is hoped that no necessity may arise for the interposition of the military authorities in the civil administration, and such necessity can only arise from the failure of the civil tribunals to protect the people, without distinction, in their rights of person and property.

III. It is to be clearly understood, however, that the civil officers thus retained in office shall confine themselves strictly to the performance of their official duties, and whilst holding their offices they shall not use any influence whatever to deter or dissuade the people from taking an active part in reconstructing their State government, under the act of Congress to provide for the more efficient government of the rebel States and the act supplementary thereto.

IV. No elections will be held in any of the States comprised in this military district, except such as are provided for in the act of Congress,

and in the manner therein established; but all vacancies in civil offices which now exist, or which may occur by expiration of the terms of office of the present incumbents, before the prescribed registration of voters is completed, will be filled by appointment of the general commanding the district. JOHN POPE,

Major General Commanding.

HEADQ'RS THIRD MILITARY DISTRICT,
MONTGOMERY, ALA., *April* 8, 1867.

General Orders, No. 5.

I. The following extract from the recent acts of Congress in relation to reconstruction in the Southern States is published for the information of all concerned:

[PUBLIC—No. 6.]

An act supplementary to an act entitled "An act to provide for the more efficient government of the rebel States," passed March 2, 1867, and to facilitate restoration.

Be it enacted, &c., That before the first day of September, 1867, the commanding general in each district (defined by an act entitled "An act to provide for the more efficient government of the rebel States," passed March 2, 1867) shall cause a registration to be made of the male citizens of the United States, twenty-one years of age and upwards, resident in each county or parish in the State or States included in his district, which registration shall include only those persons who are qualified to vote for delegates by the act aforesaid, and who shall have taken and subscribed the following oath or affirmation:

"I, ——— do solemnly swear or affirm, in the presence of Almighty God, that I am a citizen of the State of ———; that I have resided in the State for———next preceding this day, and now reside in the county of———, or the parish of———, in said State, as the case may be; that I am twenty-one years old; that I have not been disfranchised for participation in any rebellion or civil war against the United States, nor for felony committed against the laws of any State or the United States; that I have never been a member of any State legislature, nor held any executive or judicial office in any State, and afterward engaged in insurrection or rebellion against the United States, or given aid or comfort to the enemies thereof; that I have never taken an oath as a member of Congress of the United States, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States and afterward engaged in insurrection or rebellion against the United States, or given aid or comfort to the enemies thereof; that I will faithfully support the Constitution and obey the laws of the United States, and will to the best of my ability encourage others so to do. So help me God"—which oath or affimation may be administered by any registering officer.

SEC. 4. That the commanding general of each district shall appoint as many boards of registration as may be necessary, consisting of three loyal officers or persons, to make and complete the registration, superintend the election, and make return to him of the votes, list of voters, and of the persons elected as delegates by a plurality of the votes cast at said election. * *

II. In order to execute this provision of the the act referred to with as little delay as possible, the commanding officers of the districts of Alabama, Georgia, and Florida will proceed immediately to divide those States into convenient districts for registration, aided by such information on the subject as they have or can obtain. It is suggested that the election districts in each State which in 1860 sent a member to the most numerous branch of the State legislature will be found a convenient division for registration.

It is desirable that in all cases the registers shall be civilians where it is possible to obtain such as come within the provisions of the act, and are otherwise suitable persons; and that military officers shall not be used for the purpose except in case of actual necessity. The compensation for registers will be fixed hereafter, but the general rule will be observed of graduating the compensation by the number of recorded voters. To each list of voters shall be appended the oath of the register or registers that the names have been faithfully recorded and represent actual legal voters, and that the same man does not appear under different names. The registers are specifically instructed to see that all information concerning their political rights is given to all persons entitled to vote under the act of Congress; and they are made responsible that every such legal voter has the opportunity to record his name.

III. As speedily as possible, the names of persons chosen for registers shall be communicated to these headquarters for the approval of the commanding general.

IV. The district commanders in each of the States comprised in this military district is authorized to appoint one or more general supervisors of registration, whose business it shall be to visit the various points where registration is being carried on, to inspect the operations of the registers, and to assure themselves that every man entitled to vote has the necessary information concerning his political rights, and the opportunity to record his name.

V. A general inspector, either an officer of the army or a civilian, will be appointed at these headquarters, to see that the provisions of these orders are fully and carefully executed.

VI. District commanders may, at their discretion, appoint civil officers of the United States as registers, with such additional compensation as may seem reasonable and sufficient.

VII. The commanding officer of each district will give public notice when and where the registers will commence the registration, which notice will be kept public by the registers in each district during the whole time occupied in registration.

VIII. Interference by violence, or threats of violence, or other oppressive means to prevent the registration of any voter, is positively prohibited; and any person guilty of such interference shall be arrested and tried by the military authorities.

By command of Brevet Major General Pope.

J. F. CONYNGHAM, *A. A. A. G.*

HEADQUARTERS DISTRICT OF ALABAMA,
MONTGOMERY, ALA., *April* 2, 1867.

General Orders, No. 1.

By direction of General Pope, the undersigned is charged with the administration of the military reconstruction bill of this State.

The principles which will control its execution have already been announced.

A literal compliance with the requirements of the civil rights bill will be exacted.

All payments on account of services rendered during the war to the pretended State organization, or any of its branches, are peremptorily forbidden.

WAGER SWAYNE,
Major General.

HEADQUARTERS POST OF AUGUSTA,
AUGUSTA, GA., *April* 9, 1867.

General Orders, No. 28.

It having been reported to me that the mayor and city council of this city construe General Order No. 1, issued from Headquarters Third Military District, dated Montgomery, Ala., April 1, 1867, to mean that their duties as public officers shall cease on the expiration of their term of service, and believing that it was not contemplated by the commanding general of this military district that the city should be left without a civil government, I, therefore, by the power vested in me as commanding officer of this post, do hereby order said civil authorities to continue to perform their civil duties until such time as the appointments referred to in section 4 of said General Order No. 1 be received and duly promulgated at this post.

T. W. SWEENY,
Brevet Col. U. S. A. Com'g.

Orders in Fourth Military District.

HEADQUARTERS FOURTH MILITARY DISTRICT,
MISSISSIPPI AND ARKANSAS,
VICKSBURG, *March* 26, 1867.

General Orders, No. 1.

1. The undersigned having been appointed by the President to command the Fourth Military District, consisting of the States of Mississippi and Arkansas, hereby assumes command thereof.

2. Competent civil officers in this District are expected to arrest and punish all offenders against the law, so as to obviate as far as possible, necessity for the exercise of military authority under the law of Congress, passed March 2, 1867, creating military districts.

3. Such other orders as may become necessary to carry out the above-named act, and an act supplemental thereto, will be duly published.

E. O. C. ORD,
Brev. Major and Brig. Gen. U. S. A.

Orders in Fifth Military District.

HEADQUARTERS FIFTH MILITARY DISTRICT,
NEW ORLEANS, LA., *March* 9, 1867.

General Orders, No. 13.

No commander having yet been appointed for the military district of Louisiana and Texas, created by the recent law of Congress, entitled "An act to provide for the more efficient government of the rebel States," and Brevet Major-General Mower, commanding in this city, and the mayor and chief of police of the city of New Orleans having all expressed to me personally their fears that the public peace may be disturbed by the election for some of the city officers ordered by an act of the legislature of Louisiana, to take place on Monday, the 11th instant, and that body, at a special session, having refused to postpone said election, thereby rendering it necessary that measures for the preservation of the peace should be taken, I hereby assume the authority conferred upon the district commanders provided for in the act of Congress above cited, so far as it is necessary to declare that no such election shall take place. It is, therefore, ordered that for the preservation of the public peace, no polls shall be opened on that day, and that the elections shall be postponed until the district commander, under the law, is appointed, or special instructions are received covering the case.

P. H. SHERIDAN,
Major General Commanding.

HEADQUARTERS FIFTH MILITARY DISTRICT,
NEW ORDEANS, LA., *March* 19, 1867.

General Orders, No. 1.

I. The act of Congress entitled "An act to provide for the more efficient government of the rebel States" having been officially transmitted to the undersigned in an order from the Headquarters of the Army, which assigns him to the command of the Fifth Military District created by that act, consisting of the States of Louisiana and Texas, he hereby assumes command of the same.

II. According to the provisions of the sixth section of the act of Congress above cited, the present State and municipal governments in the States of Louisiana and Texas are hereby declared to be provisional only, and subject to be abolished, modified, controlled, or superseded.

III. No general removals from office will be made, unless the present incumbents fail to carry out the provisions of the law, or impede the reorganization, or unless a delay in reorganizing should necessitate a change. Pending the reorganization, it is desirable and intended to create as little disturbance in the machinery of the various branches of the provisional governments as possible, consistent with the law of Congress and its successful execution; but this condition is dependent upon the disposition shown by the people, and upon the length of time required for reorganization.

IV. The States of Louisiana and Texas will retain their present military designations, viz: "District of Louisiana," and "District of Texas." The officers in command of each will continue to exercise all their military powers and duties as heretofore, and will, in addition, carry out all the provisions of the law within their respective commands, except those which specifically require the action of the military district commander, and except in cases of removals from and appointments to office.

P. H. SHERIDAN,
Major General Commanding.

HEADQUARTERS FIFTH MILITARY DISTRICT,
NEW ORLEANS, LA., *March* 27, 1867.

General Orders, No. 5.

Andrew S. Herron, attorney general of the State of Louisiana; James T. Monroe, mayor of New Orleans; Edmund Abell, judge of the first district court of the city of New Orleans, are

hereby removed from their respective offices from 12 m., to-day. The following appointments have been made to take effect from the same date: B. L. Lynch, attorney general of the State of Louisiana; Edward Heath, mayor of New Orleans; W. W. Howe, judge of the first district court of New Orleans. Each person removed will turn over all the books, papers, and records, &c., pertaining to his office, to the one appointed thereto. The authority of the latter will be duly respected and enforced.

By command of Major General Sheridan.

GEO. L. HARTSUFF, *A. A. G.*

HEADQUARTERS FIFTH MILITARY DISTRICT, NEW ORLEANS, LA., *April* 10, 1867.

Special Orders, No. 15.

2. In obedience to the directions contained in the first section of the law of Congress, entitled "An act supplemental to an act entitled 'An act to provide for the more efficient government of the rebel States,'" the registration of the legal voters, according to the law of the parish of Orleans, will be commenced on the 15th instant, and must be completed by the 15th of May.

The four municipal districts of the city of New Orleans, and the parish of Orleans, right bank, (Algiers,) will each constitute a registration district. Election precincts will remain as at present constituted.

The following appointments of boards of registers is hereby made—to continue in office until further orders, viz:

First District—John A. Roberts, Wm. Baker, and W. M. Geddes.

Second District—Edward Ames, T. C. Thomas, and Michael Vidal.

Third District—Charles F. Berens, John McWhorter, and H. Stiles.

Fourth District—John L. Davies, Henry Bensel, Jr., and Edmund Flood.

Orleans Parish, right bank—W. H. Seymour, Thomas Kenefec, and George Herbert.

Each member of the board of registers, before commencing his duties, will file in the office of the assistant inspector general at these headquarters the oath required in the sixth section of the act referred to, and be governed in the execution of his duty by the provisions of the first section of that act, faithfully administering the oath therein prescribed to each person registered.

Boards of registers will immediately select suitable offices, within their respective districts, having reference to convenience and facility of registration, and will enter upon their duties on the day designated. Each board will be entitled to two clerks. Office hours for registration will be from 8 o'clock till 12 a. m., and from 4 till 7 p. m.

When elections are ordered the board of registers for each district will designate the number of polls and the places where they shall be opened in the election precincts within its district, appoint the commissioners and other officers necessary for properly conducting the elections, and will superintend the same.

They will also receive from the commissioners of elections of the different precincts the result of the vote, consolidate the same, and forward it to the commanding general.

Registers and all officers connected with elections will be held to a rigid accountability, and will be subject to trial by military commission for fraud, or unlawful or improper conduct in the performance of their duties. Their rate of compensation and manner of payment will be in accordance with the provisions of sections 6 and 7 of the supplemental act.

Brevet Brigadier General J. W. Forsyth, assistant inspector general of the Fifth Military District, is hereby directed to supervise the boards of registration for the parish of Orleans, to listen to and adjust, or refer to this office, all just causes of complaint. He is authorized to employ such experts as may be necessary to detect fraud in registration or elections.

Every male citizen of the United States twenty-one years old and upward, of whatever race, color, or previous condition, who has been resident in the State of Louisiana for one year, and parish of Orleans for three months previous to the date at which he presents himself for registration, and who has not been disfranchised by act of Congress or for felony at common law, shall, after having taken and subscribed the oath prescribed in the first section of the act herein referred to, be entitled to be, and shall be, registered as a legal voter in the parish of Orleans and State of Louisiana.

Pending the decision of the Attorney General of the United States on the question as to who are disfranchised by law, registers will give the most rigid interpretation to the law, and exclude from registration every person about whose right to vote there may be a doubt. Any person so excluded who may, under the decision of the Attorney General, be entitled to vote, shall be permitted to register after that decision is received, due notice of which will be given.

By command of Major General P. H. Sheridan

GEO. L. HARTSUFF, *A. A. G.*

A MILITARY COMMISSION APPOINTED.

The New Orleans *Republican* of the 13th of April, says:

General Sheridan has ordered a military commission to meet in this city on Monday next, 15th instant, for the trial of Mr. —— Walker, and such other persons as may be properly brought before it. The following is the detail for the commission: Brevet Major General A. Beckwith, Brevet Brigadier General C. G. Sawtelle, Brevet Colonel M. Maloney, Brevet Colonel A. D. Nelson, Brevet Major M. J. Asch, Captain J. D. DeRussey, First Lieutenant John Hamilton. Brevet Major Leslie Smith, judge advocate.

Texas.

ORDER OF GEN. GRIFFIN.

Gen. Griffin, in command of the State, issued the following order on the 5th inst.:

Under the act of Congress passed March 2, 1867, to provide for a more efficient government of the rebel States, and the supplementary act thereto, the district commander is required to protect all persons in their rights of person and property, to suppress insurrection, disorder, and violence, and to punish or cause to be punished all disturbers of the public peace and criminals. Jurisdiction of offenses may be taken, and offenders tried by the local civil tribunals, but where

it is evident that local civil tribunals will not impartially try cases brought before them, and render decisions according to law and evidence, the immediate military commander will arrest or cause the arrest of the offenders or criminals, and hold them in confinement, presenting their cases in writing, with all the facts, to these headquarters, with the view to the said parties being brought before and tried by a military commission or tribunal, as provided in section three of the military bill.

Proclamation of Gov. Brownlow, of Tennessee, February 25, 1867.

Whereas, it has been made known to me, the Governor of the State of Tennessee, that certain atrocious murders and numerous outrages have been committed in certain counties in this State, by violent and disloyal men, upon the persons and property of Union men, whose only offense has been their unswerving devotion to the national flag, and their uniform support of the State government; and whereas these bad men are banding themselves together in some localities, and notifying Union men to leave within a given time: Now, therefore, I, William G. Brownlow, Governor as aforesaid, by virtue of the authority and power in me vested, do hereby proclaim, that I intend to put a stop to all such outrages, by calling into active service a sufficient number of loyal volunteers, under the following recent act, which is now the law of Tennessee:

An Act to organize and equip a State Guard, and for other purposes.

Be it enacted by the General Assembly of the State of Tennessee, That the Governor is hereby authorized and empowered to organize, equip, and call into active service a volunteer force, to be known as the Tennessee State Guard, to be composed of one or more regiments from each congressional district of the State: *Provided always*, that the Tennessee State Guard shall be composed of loyal men, who shall take and subscribe the oath prescribed in the franchise act.

SEC. 2. That the Governor shall be commander-in-chief, and any member of said force shall be subject to his order, when in his opinion the safety of life, property, liberty, or the faithful execution of law require it; to be organized, armed, equipped, regulated, and governed by the rules and articles of war, and the revised army regulations of the United States, so far as applicable, and shall receive pay and allowances according to grade of rank, as provided for the United States Army while in active service, to be paid out of any money in the State treasury not otherwise appropriated: *Provided*, That the force provided for by this act shall not be armed and equipped until called into active service by the Governor.

SEC. 3. That this act shall take effect from and after its passage.

Standing, as I do, on the broad principles of the Constitution, and sworn to enforce the laws, I have no concessions to make to traitors; no compromises to offer assassins and robbers; and if, in the sweep of coming events, retributive justice shall overtake the lawless and violent, their own temerity will have called it forth. The outrages enumerated must and shall cease. Having reached the foregoing conclusion. I feel justified in expressing the opinion that the present State government in Tennessee—so generally acquiesced in by loyal and law-abiding people—will be sustained and preserved, despite all the efforts of disappointed traitors and disloyal newspapers.

The interests of trade, of agricultural pursuits, of commercial intercourse between this State and others—of the development of our vast resources, of immigration, as well as justice to loyal sufferers—all require that these outrages at once cease in every county in the State. Disloyal men are giving forth their vile utterances in railroad cars, in public hotels, on the streets, and through the newspapers, damaging the material interests of the State, those of commerce, those of the mechanic arts, of religion and education, as well as bringing reproach upon the Commonwealth.

I cannot, however, close this brief proclamation without endeavoring to impress upon my fellow-citizens of all parties the importance, the absolute necessity, of remaining quiet, of preserving good order, and a quiet submission to, and a rigid enforcement of, the laws everywhere within the limits of our State. Outrages upon loyal citizens, whether white or black, and the setting aside of the franchise law, are all the work of bad men, who desire to foment strife, and will not be tolerated.

Prudent and experienced men will be placed in charge of the "State Guard" in every county where they are placed, who will be required to protect all good citizens, irrespective of political parties, and to punish murderers, robbers, and all violators of law. And the number of troops called into active service will be increased or diminished as the good or bad conduct of the people shall be developed. Hoping this proclamation will strengthen the hands and inspire the hearts of the loyal people of our State, as to the future, and deter the disloyal from further acts of violence, I respectfully submit it, with a repetition of the assurance that I mean what I say, and that the General Assembly was in earnest in the passage of this military law.

In testimony whereof I have hereunto set my hand and caused the great seal of the State to be affixed at the executive department in Nashville, on the twenty-fifth day of February, 1867.

[L.S.] WILLIAM G. BROWNLOW,
Commander-in-Chief, &c.

XX.

JUDICIAL OPINIONS.

THE SUPREME COURT.

On Trial by Military Commissions, Dec. 17, 1866.

No. 350.—DECEMBER TERM, 1865.

Ex parte in matter of Lambdin P. Milligan, petitioner. On a certificate of division of opinion between the judges of the Circuit Court of the United States for the District of Indiana.

Mr. Justice DAVIS delivered the opinion of the Court.

On the 10th day of May, 1865, Lambdin P. Milligan presented a petition to the circuit court of the United States for the district of Indiana to be discharged from an alleged unlawful imprisonment. The case made by the petition is this: Milligan is a citizen of the United States; has lived for twenty years in Indiana, and at the time of the grievances complained of was not, and never had been, in the military or naval service of the United States. On the 5th day of October, 1864, while at home, he was arrested by order of General Alvin P. Hovey, commanding the military district of Indiana, and has ever since been kept in close confinement.

On the 21st day of October, 1864, he was brought before a military commission, convened at Indianapolis by order of General Hovey, tried on certain charges and specifications, found guilty, and sentenced to be hanged, and the sentence ordered to be executed on Friday, the 19th day of May, 1865.

On the 2d day of January, 1865, after the proceedings of the military commission were at an end, the circuit court of the United States for Indiana met at Indianapolis and empanneled a grand jury, who were charged to inquire whether the laws of the United States had been violated, and if so, to make presentments. The court adjourned on the 27th day of January, having prior thereto discharged from further service the grand jury, who did not find any bill of indictment or make any presentment against Milligan for any offense whatever, and, in fact, since his imprisonment no bill of indictment has been found or presentment made against him by any grand jury of the United States.

Milligan insists that said military commission had no jurisdiction to try him upon the charges preferred, or upon any charges whatever; because he was a citizen of the United States and the State of Indiana, and had not been, since the commencement of the late rebellion, a resident of any of the States whose citizens were arrayed against the Government, and that the right of trial by jury was guaranteed to him by the Constitution of the United States.

The prayer of the petition was, that under the act of Congress approved March 3, 1863, entitled "An act relating to *habeas corpus*, and regulating judicial proceedings in certain cases," he may be brought before the court, and either turned over to the proper civil tribunal, to be proceeded against according to the law of the land, or discharged from custody altogether.

With the petition were filed the order for the commission, the charges and specifications, the findings of the court, with the order of the War Department, reciting that the sentence was approved by the President of the United States, and directing that it be carried into execution without delay. The petition was presented and filed in open court by the counsel for Milligan; at the same time the district attorney of the United States for Indiana appeared, and, by the agreement of counsel, the application was submitted to the court. The opinions of the judges of the circuit court were opposed on three questions, which are certified to the Supreme Court:

1st. "On the facts stated in said petition and exhibits, ought a writ of *habeas corpus* to be issued?"

2d. "On the facts stated in said petition and exhibits, ought the said Lambdin P. Milligan to be discharged from custody, as in said petition prayed?"

3d. "Whether, upon the facts stated in said petition and exhibits, the military commission mentioned therein had jurisdiction legally to try and sentence said Milligan, in manner and form as in said petition and exhibit is stated?"

The importance of the main question presented by this record cannot be overstated; for it involves the very framework of the Government and fundamental principles of American liberty.

During the late wicked rebellion, the temper of the times did not allow that calmness in deliberation and discussion so necessary to a correct conclusion of a purely judicial question. Then considerations of safety were mingled with the exercise of power, and feelings and interests prevailed which are happily terminated. Now that the public safety is assured, this question, as well as all others, can be discussed and decided without passion or the admixture of any element not required to form a legal judgment. We approach the investigation of this case, fully sensible of the magnitude of the inquiry and the necessity of full and cautious deliberation. But we are met with a preliminary objection. It is insisted that the Circuit Court of Indiana had no authority to certify these questions, and that we are without jurisdiction to hear and determine them. The sixth section of the "Act to amend the judicial system of the United States," approved April 29, 1802, declares "that whenever any question shall occur before a circuit court, upon which the opinions of the judges shall be opposed, the point upon which the disagreement shall happen shall, during the same term, upon the request of either party or their counsel, be stated under the direction of the judges, and certified, under the seal of the court, to the Supreme Court, at their next session to be held thereafter, and shall by the said Court be finally

decided; and the decision of the Supreme Court and their order in the premises shall be remitted to the circuit court and be there entered of record, and shall have effect according to the nature of the said judgment and order: *Provided*, That nothing herein contained shall prevent the cause from proceeding, if, in the opinion of the court, further proceedings can be had without prejudice to the merits."

It is under this provision of law that a circuit court has authority to certify any question to the Supreme Court for adjudication. The inquiry, therefore, is, whether the case of Milligan is brought within its terms. It was admitted at the bar that the circuit court had jurisdiction to entertain the application for the writ of *habeas corpus* and to hear and determine it; and it could not be denied, for the power is expressly given in the 14th section of the judiciary act of 1789, as well as in the later act of 1863. Chief Justice Marshall, in Bollman's case, (4 Cranch,) construed this branch of the judiciary act to authorize the courts as well as the judges to issue the writ for the purpose of inquiring into the cause of the commitment; and this construction has never been departed from. But it is maintained with earnestness and ability that a certificate of division of opinion can occur only in a cause; and that the proceeding by a party moving for writ of *habeas corpus* does not become a cause until after the writ has been issued and a return made.

Independently of the provisions of the act of Congress of March 3, 1863, relating to *habeas corpus*, on which the petitioner bases his claim for relief, and which we will presently consider, can this position be sustained?

It is true that it is usual for a court, on application for a writ of *habeas corpus*, to issue the writ, and on the return to dispose of the case; but the court can elect to waive the issuing of the writ and consider whether, upon the facts presented in the petition, the prisoner, if brought before it, could be discharged. One of the very points on which the case of Tobias Watkins, reported in 3 Peters, turned was, whether, if the writ was issued, the petitioner would be remanded upon the case which he had made.

The Chief Justice, in delivering the opinion of the Court, said: "The cause of imprisonment is shown as fully by the petitioner as it could appear on the return of the writ; consequently the writ ought not to be awarded if the court is satisfied that the prisoner would be remanded to prison."

The judges of the circuit court of Indiana were therefore warranted by an express decision of this Court in refusing the writ, if satisfied that the prisoner, on his own showing, was rightfully detained; but, it is contended, if they differed about the lawfulness of the imprisonment, and could render no judgment, the prisoner is remediless, and cannot have the disputed question certified under the act of 1802. His remedy is complete by writ of error or appeal, if the court renders a final judgment refusing to discharge him; but if he should be so unfortunate as to be placed in the predicament of having the court divided on the question whether he should live or die, he is hopeless and without remedy. He wishes the vital question settled, not by a single judge at his chambers, but by the highest tribunal known to the Constitution; and yet the privilege is denied him, because the circuit court consists of two judges instead of one. Such a result was not in the contemplation of the Legislature of 1802, and the language used by it cannot be construed to mean any such thing. The clause under consideration was introduced to further the ends of justice by obtaining a speedy settlement of important questions where the judges might be opposed in opinion.

The act of 1802 so changed the judicial system that the circuit court, instead of three, was composed of two judges; and without this provision, or a kindred one, if the judges differed, the difference would remain, the question be unsettled, and justice denied. The decisions of this court upon the provisions of this section have been numerous. In United States *vs.* Daniel, (6 Wheaton) the court, in holding that a division of the judges on a motion for a new trial could not be certified, say: "That the question must be one which arises in a case depending before the court relative to a proceeding belonging to the cause." Testing Milligan's case by this rule of law, is it not apparent that it is rightfully here, and that we are compelled to answer the questions on which the judges below were opposed in opinion? If, in the sense of the law, the proceeding for the writ of *habeas corpus* was the "*cause*" of the party applying for it, then it is evident that the "cause" was pending before the court, and that the questions certified arose out of it, belonged to it, and were matters of right and not of discretion.

But it is argued that the proceeding does not ripen into a cause until there are two parties to it. This we deny. It was the *cause* of Milligan when the petition was presented to the circuit court. It would have been the *cause* of both parties, if the court had issued the writ and brought those who held Milligan in custody before it. Webster defines the word "cause" thus: "A suit or action in court; any legal process which a party institutes to obtain his demand, or by which he seeks his right, or supposed right"—and he says, "this is a legal, scriptural, and popular use of the word, coinciding nearly with case, from *cado*, and action, from *ago*, to urge and drive."

In any legal sense, action, suit, and cause are convertible terms. Milligan supposed he had a right to test the validity of his trial and sentence; and the proceeding which he set in operation for that purpose was his "cause" or "suit." It was the only one by which he could recover his liberty. He was powerless to do more; he could neither instruct the judges nor control their action, and should not suffer, because, without fault of his, they were unable to render a judgment. But the true meaning to the term "suit" has been given by this Court. One of the questions in Weston *vs.* City Council of Charleston (2 Peters) was, whether a writ of prohibition was a suit; and Chief Justice Marshall says: "The term is certainly a comprehensive one and is understood to apply to any proceeding in a court of justice by which an individual pursues that remedy which the law affords him."

Certainly Milligan pursued the only remedy which the law afforded him.

Again, in Cohens *vs.* Virginia, (6 Wheaton,) he says: "In law language a suit is the prosecution of some demand in a court of justice." Also, "to commence a suit is to demand something by the institution of process in a court of justice; and to prosecute the suit is to continue that demand." When Milligan demanded his release by the proceeding relating to *habeas corpus* he commenced a suit, and he has since prosecuted it in all the ways known to the law. One of the questions in Holmes *vs.* Jennison (14 Peters) was, whether under the 25th section of the judiciary act a proceeding for a writ of *habeas corpus* was a "suit." Chief Justice Taney held that, "if a party is unlawfully imprisoned, the writ of *habeas corpus* is his appropriate legal remedy. It is his suit in court to recover his liberty." There was much diversity of opinion on another ground of jurisdiction, but on this, that in the sense of the 25th section of the judiciary act, the proceeding by *habeas corpus* was a suit, was not controverted by any except Baldwin, Justice, and he thought that "suit" and "cause," as used in the section, mean the same thing.

The court do not say that a return must be made and the parties appear and begin to try the case before it is a suit. When the petition is filed and the writ prayed for, it is a *suit*—the suit of the party making the application. If it is a suit under the 25th section of the judiciary act, when the proceedings are begun, it is, by all the analogies of the law, equally a suit under the 6th section of the act of 1802.

But it is argued that there must be *two* parties to the suit, because the point is to be stated upon the request of "either party or their counsel." Such a literal and technical construction would defeat the very purpose the Legislature had in view, which was to enable any party to bring the case here, when the point in controversy was a matter of right and not of discretion; and the words "either party," in order to prevent a failure of justice, must be construed as words of *enlargement*, and not of *restriction*. Although this case is here *ex parte*, it was not considered by the court below without notice having been given to the party supposed to have an interest in the detention of the prisoner. The statements of the record show that this is not only a fair, but conclusive inference. When the counsel for Milligan presented to the court the petition for the writ of *habeas corpus*, Mr. Hanna, the district attorney for Indiana, also appeared; and, by agreement, the application was submitted to the court, who took the case under advisement, and on the next day announced their inability to agree, and made the certificate. It is clear that Mr. Hanna did not represent the petitioner, and why is his appearance entered? It admits of no other solution than this—that he was informed of the application, and appeared on behalf of the Government to contest it. The Government was the prosecutor of Milligan, who claimed that his imprisonment was illegal, and sought, in the only way he could, to recover his liberty. The case was a grave one; and the court, unquestionably, directed that the law officer of the Government should be informed of it. He very properly appeared, and as the facts were uncontroverted and the difficulty was in the application of the law, there was no useful purpose to be obtained in issuing the writ. The cause was, therefore, submitted to the court, for their consideration and determination. But Milligan claimed his discharge from custody by virtue of the act of Congress "relating to *habeas corpus*, and regulating judicial proceedings in certain cases," approved March 3, 1863. Did that act confer jurisdiction on the circuit court of Indiana to hear this case? In interpreting a law, the motives which must have operated with the legislature in passing it are proper to be considered. This law was passed in a time of great national peril, when our heritage of free government was in danger. An armed rebellion against the national authority, of greater proportions than history affords an example, was raging; and the public safety required that the privilege of the writ of *habeas corpus* should be suspended. The President had practically suspended it, and detained suspected persons in custody without trial; but his authority to do this was questioned. It was claimed that Congress alone could exercise this power, and that the legislature, and not the President, should judge of the political considerations on which the right to suspend it rested. The privilege of this great writ had never before been withheld from the citizen; and, as the exigence of the times demanded immediate action, it was of the highest importance that the lawfulness of the suspension should be fully established. It was under these circumstances, which were such as to arrest the attention of the country, that this law was passed. The President was authorized by it to suspend the privilege of the writ of *habeas corpus* whenever, in his judgment, the public safety required; and he did, by proclamation, bearing date the 15th of September, 1863, reciting among other things the authority of this statute, suspend it. The suspension of the writ does not authorize the arrest of any one, but simply denies to one arrested the privilege of this writ in order to obtain his liberty.

It is proper, therefore, to inquire under what circumstances the courts could rightfully refuse to grant this writ, and when the citizen was at liberty to invoke its aid.

The second and third sections of the law are explicit on these points. The language used is plain and direct, and the meaning of the Congress cannot be mistaken. The public safety demanded, if the President thought proper to arrest a suspected person, that he should not be required to give the cause of his detention on return to a writ of *habeas corpus*. But it was not contemplated that such person should be detained in custody beyond a certain fixed period, unless certain judicial proceedings known to the common law were commenced against him. The Secretaries of State and War were directed to furnish to the judges of the courts of the United States a list of the names of all parties, not prisoners of war, resident in their respective jurisdictions, who then were or afterwards should be held in custody by the authority of the President, and who were citizens of States in which

the administration of the laws in the Federal tribunals was unimpaired. After the list was furnished, if a grand jury of the district convened and adjourned, and did not indict or present one of the persons thus named, he was entitled to his discharge; and it was the duty of the judge of the court to order him brought before him to be discharged, if he desired it. The refusal or omission to furnish the list could not operate to the injury of any one who was not indicted or presented by the grand jury; for if twenty days had elapsed from the time of his arrest and the termination of the session of the grand jury, he was equally entitled to his discharge as if the list were furnished; and any credible person, on petition verified by affidavit, could obtain the judge's order for that purpose.

Milligan, in his application to be released from imprisonment, averred the existence of every fact necessary under the terms of this law to give the circuit court of Indiana jurisdiction. If he was detained in custody by the order of the President, otherwise than as a prisoner of war; if he was a citizen of Indiana, and had never been in the military or naval service, and the grand jury of the district had met, after he had been arrested for a period of twenty days, and adjourned without taking any proceedings against him, *then* the court had the right to entertain his petition and determine the lawfulness of his imprisonment. Because the word "court" is not found in the body of the second section, it was argued at the bar that the application should have been made to a judge of the court, and not to the court itself; but *this is not so;* for power is expressly conferred in the last proviso of the section on the court equally with a judge of it to discharge from imprisonment. It was the manifest design of Congress to secure a certain remedy by which any one deprived of liberty could obtain it, if there was a judicial failure to find cause of offence against him. Courts are not always in session, and can adjourn on the discharge of the grand jury; and before those who are in confinement could take proper steps to procure their liberation. To provide for this contingency, authority was given to the judges out of court to grant relief to any party who could show that, under the law, he should be no longer restrained of his liberty. It was insisted that Milligan's case was defective, because it did not state that the list was furnished to the judges, and, therefore, it was impossible to say under which section of the act it was presented.

It is not easy to see how this omission could affect the question of jurisdiction. Milligan could not know that the list was furnished, unless the judges volunteered to tell him; for the law did not require that any record should be made of it, or anybody but the judges informed of it. Why aver the fact, when the truth of the matter was apparent to the court without an averment? How can Milligan be harmed by the absence of the averment when he states that he was under arrest for more than sixty days before the court and grand jury, which should have considered his case, met at Indianapolis? It is apparent, therefore, that under the *habeas corpus* act of 1863, the circuit court of Indiana had complete jurisdiction to adjudicate upon this case, and if the judges could not agree on questions vital to the progress of the cause they had the authority, (as we have shown in a previous part of this opinion,) and it was their duty to certify those questions of disagreement to this Court for final decision. It was agreed that a final decision on the questions presented ought not to be made, because the parties who were directly concerned in the arrest and detention of Milligan were not before the court; and their rights might be prejudiced by the answer which should be given to those questions. But this court cannot know what return will be made to the writ of *habeas corpus* when issued; and it is very clear that no one is concluded upon any question that may be raised to that return. In the sense of the law of 1802, which authorized a certificate of division, a final decision means final upon the points certified; final upon the court below, so that it is estopped from any adverse ruling in all the subsequent proceedings of the cause. But it is said that this case is ended, as the presumption is that Milligan was hanged in pursuance of the order of the President. Although we have no judicial information on the subject; yet the inference is that he is alive; for otherwise learned counsel would not appear for him and urge the Court to decide his case.

It can never be in this country of written constitution and laws, with a judicial department to interpret them, that any Chief Magistrate would be so far forgetful of his duty as to order the execution of a man who denied the jurisdiction that tried and convicted him, after his case was before federal judges, with power to decide it, who, being unable to agree on the grave questions involved, had, according to known law, sent it to the Supreme Court of the United States for decision. But even the suggestion is injurious to the Executive, and we dismiss it from further consideration. There is, therefore, nothing to hinder this Court from an investigation of the merits of this controversy.

The controlling question in the case is this: Upon the facts stated in Milligan's petition, and the exhibits filed, had the military commission mentioned in it jurisdiction legally to try and sentence him? Milligan, not a resident of one of the rebellious States, or a prisoner of war, but a citizen of Indiana for twenty years past, and never in the military or naval service, is, while at his home, arrested by the military power of the United States, imprisoned, and, on certain criminal charges preferred against him, tried, convicted, and sentenced to be hanged by a military commission, organized under the direction of the military commander of the military district of Indiana. Had this tribunal the legal power and authority to try and punish this man? No graver question was ever considered by this Court, nor one which more nearly concerns the rights of the whole people; for it is the birthright of every American citizen, when charged with crime, to be tried and punished according to law. The power of punishment is alone through the means which the laws have provided for that purpose, and if they are ineffectual there is an immunity from punishment, no matter how great an offender the individual may be, or how much his crimes may have shocked the sense of

justice of the country or endangered its safety. By the protection of the law human rights are secured; withdraw that protection, and they are at the mercy of wicked rulers, or the clamor of an excited people. If there was law to justify this military trial, it is not our province to interfere; if there was not, it is our duty to declare the nullity of the whole proceedings. The decision of this question does not depend on argument or judicial precedents, numerous and highly illustrative as they are. These precedents inform us of the extent of the struggle to preserve liberty and to relieve those in civil life from military trials. The founders of our Government were familiar with the history of that struggle, and secured in a written constitution every right which the people had wrested from power during a contest of ages. By that Constitution, and the laws authorized by it, this question must be determined. The provisions of that instrument on the administration of criminal justice are too plain and direct to leave room for misconstruction or doubt of their true meaning. Those applicable to this case are found in that clause of the original Constitution which says, "that the trial of all crimes, except in case of impeachment, shall be by jury;" and in the fourth, fifth, and sixth articles of the amendments. The fourth proclaims the right to be secure in person and effects against unreasonable search and seizure; and directs that a judicial warrant shall not issue "without proof of probable cause supported by oath or affirmation." The fifth declares "that no person shall be held to answer for a capital or otherwise infamous crime unless on presentment by a grand jury, except in cases arising in the land or naval forces or in the militia when in actual service in time of war or public danger, nor be deprived of life, liberty, or property without due process of law." And the sixth guaranties the right of trial by jury in such manner and with such regulations that with upright judges, impartial juries, and an able bar, the innocent will be saved and the guilty punished. It is in these words: "In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation, to be confronted with the witnesses against them, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence." These securities for personal liberty thus embodied, were such as wisdom and experience had demonstrated to be necessary for the protection of those accused of crime. And so strong was the sense of the country of their importance, and so jealous were the people that these rights, highly prized, might be denied them by implication, that when the original Constitution was proposed for adoption, it encountered severe opposition, and, but for the belief that it would be so amended as to embrace them, it would never have been ratified.

Time has proven the discernment of our ancestors; for even these provisions, expressed in such plain English words that it would seem the ingenuity of man could not evade them, are now, after the lapse of more than seventy years, sought to be avoided. Those great and good men foresaw that troublous times would arise, when rulers and people would become restive under restraint, and seek, by sharp and decisive measures, to accomplish ends deemed just and proper, and that the principles of constitutional liberty would be in peril, unless established by irrepealable law. The history of the world had taught them that what was done in the past might be attempted in the future. The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances. No doctrine involving more pernicious consequences was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of Government. Such a doctrine leads directly to anarchy or despotism, but the theory of necessity on which it is based is false; for the Government, within the Constitution, has all the powers granted to it which are necessary to preserve its existence, as has been happily proved by the result of the great effort to throw off its just authority.

Have any of the rights guarantied by the Constitution been violated in the case of Milligan? and, if so, what are they? Every trial involves the exercise of judicial power; and from what source did the military commission that tried him derive their authority? Certainly no part of the judicial power of the country was conferred on them, because the Constitution expressly vests it "in the Supreme Court and such inferior courts as the Congress may, from time to time, ordain and establish," and it is not pretended that the commission was a court ordained and established by Congress. They cannot justify on the mandate of the President, because he is controlled by law, and has his appropriate sphere of duty, which is to execute, not to make the laws; and there is "no unwritten criminal code to which resort can be had as a source of jurisdiction." But it is said that the jurisdiction is complete under the "laws and usages of war." It can serve no useful purpose to inquire what those laws and usages are, whence they originated, where found, and on whom they operate; they can never be applied to citizens in States which have upheld the authority of the Government, and where the courts are open and their process unobstructed. This Court has judicial knowledge that in Indiana the Federal authority was always unopposed, and its courts always open to hear criminal accusations and to redress grievances; and no usage of war could sanction a military trial there, for any offence whatever, of a citizen in civil life, in no wise connected with the military service. Congress could grant no such power; and, to the honor of our National Legislature be it said, it has never been provoked by the state of the country even to attempt its exercise. One of the plainest constitutional provisions was, therefore, infringed when Milligan was tried by a court not ordained and established by Congress, and not composed of judges appointed during good behavior. Why was he not delivered to the circuit court of Indiana, to be proceeded against according to law?

No reason of necessity could be urged against it, because Congress had declared penalties against the offences charged, provided for their punishment, and directed that court to hear and determine them. And soon after this military tribunal was ended the circuit court met, peacefully transacted its business, and adjourned. It needed no bayonets to protect it, and required no military aid to execute its judgments. It was held in a State eminently distinguished for patriotism by judges commissioned during the rebellion, who were provided with juries, upright, intelligent, and selected by a marshal appointed by the President. The Government had no right to conclude that Milligan, if guilty, would not receive in that court merited punishment, for its records disclose that it was constantly engaged in the trial of similar offences, and was never interrupted in its administration of criminal justice. If it was dangerous in the distracted condition of affairs to leave Milligan unrestrained Government, afforded aid and comfort to rebels, of his liberty because he "conspired against the and incited the people to insurrection," the law said arrest him, confine him closely, render him powerless to do further mischief, and then present his case to the grand jury of the district, with proofs of his guilt, and, if indicted, try him according to the course of the common law. If this had been done the Constitution would have been vindicated, the law of 1863 enforced, and the securities for personal liberty preserved and defended.

Another guaranty of freedom was broken when Milligan was denied a trial by jury. The great minds of the country have differed on the correct interpretation to be given to various provisions of the Federal Constitution; and judicial decision has been often invoked to settle their true meaning; but until recently no one ever doubted that the right of trial by jury was fortified in the organic law against the power of attack. It is now assailed; but, if ideas can be expressed in words, and language has any meaning, this right—one of the most valuable in a free country—is preserved to every one accused of crime who is not attached to the army or navy, or militia in actual service. The sixth amendment affirms that "in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury," language broad enough to embrace all persons and cases; but the fifth, recognizing the necessity of an indictment, or presentment, before any one can be held to answer for high crimes "excepts cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger;" and the framers of the Constitution doubtless meant to limit the right of trial by jury, in the sixth amendment, to those persons who were subject to indictment or presentment in the fifth.

The discipline necessary to the efficiency of the army and navy required other and swifter modes of trial than are furnished by the common law courts; and, in pursuance of the power conferred by the Constitution, Congress has declared the kinds of trial, and the manner in which they shall be conducted, for offences committed while the party is in the military or naval service. Every one connected with these branches of the public service is amenable to the jurisdiction which Congress has created for their government, and while thus serving, surrenders his right to be tried by the civil courts. All other persons, citizens of States where the courts are open, if charged with crime, are guarantied the inestimable privilege of trial by jury. This privilege is a vital principle, underlying the whole administration of criminal justice; it is not held by sufferance, and cannot be frittered away on any plea of State or political necessity. When peace prevails, and the authority of the Government is undisputed, there is no difficulty of preserving the safeguards of liberty; for the ordinary modes of trial are never neglected, and no one wishes it otherwise. But if society is disturbed by civil commotion—if the passions of men are aroused and the restraints of law weakened, if not disregarded—these safeguards need, and should receive, the watchful care of those entrusted with the guardianship of the Constitution and laws. In no other way can we transmit to posterity unimpaired the blessings of liberty, consecrated by the sacrifices of the Revolution.

It is claimed that martial law covers with its broad mantle the proceedings of this military commission. The proposition is this: That in a time of war the commander of an armed force (if, in his opinion, the exigencies of the country demand it, and of which he is to judge,) has the power, within the lines of his military district, to suspend all civil rights and their remedies, and subject citizens as well as soldiers to the rule of his will; and in the exercise of his lawful authority cannot be restrained, except by his superior officer or the President of the United States. If this position is sound to the extent claimed, then when war exists, foreign or domestic, and the country is subdivided into military departments for mere convenience, the commander of one of them can, if he chooses, within his limits, on the plea of necessity, with the approval of the Executive, substitute military force for and to the exclusion of the laws, and punish all persons as he thinks right and proper, without fixed or certain rules

The statement of this proposition shows its importance; for, if true, republican government is a failure, and there is an end of liberty regulated by law. Martial law, established on such a basis, destroys every guarantee of the Constitution, and effectually renders the "military independent of and superior to the civil power" —the attempt to do which by the King of Great Britain was deemed by our fathers such an offence that they assigned it to the world as one of the causes which impelled them to declare their independence. Civil liberty and this kind of martial law cannot endure together; the antagonism is irreconcilable, and in the conflict one or the other must perish.

This nation, as experience has proved, cannot always remain at peace, and has no right to expect that it will always have wise and humane rulers, sincerely attached to the principles of the Constitution. Wicked men, ambitious of power, with hatred of liberty, and contempt of law, may fill the place once occupied by Washington and Lincoln; and, if this right is conceded, and,

the calamities of war again befall us, the dangers to human liberty are frightful to contemplate. If our fathers had failed to provide for just such a contingency, they would have been false to the trust reposed in them. They knew —the history of the world told them—the nation they were founding, be its existence short or long, would be involved in war—how often, or how long continued, human foresight could not tell—and that unlimited power, wherever lodged at such a time, was especially hazardous to freemen. For this and other equally weighty reasons, they secured the inheritance they had fought to maintain, by incorporating in a written constitution the safeguards which time had proved essential to its preservation. Not one of these safeguards can the President, or Congress, or the judiciary disturb, except the one concerning the writ of *habeas corpus*.

It is essential to the safety of every government that, in a great crisis like the one we have just passed through, there should be a power somewhere of suspending the writ of *habeas corpus*. In every war there are men of previously good character wicked enough to counsel their fellow citizens to resist the measures deemed necessary by a good government to sustain its just authority and overthrow its enemies, and their influence may lead to dangerous combinations. In the emergency of the times an immediate public investigation, according to law, may not be possible, and yet the peril to the country may be too imminent to suffer such persons to go at large. Unquestionably, there is then an exigency which demands that the Government, if it should see fit, in the exercise of a proper discretion, to make arrests, should not be required to produce the persons arrested in answer to a writ of *habeas corpus*. The Constitution goes no further. It does not say after a writ of *habeas corpus* is denied a citizen, that he shall be tried otherwise than by the course of the common law; if it had intended this result, it was easy by the use of direct words to have accomplished it. The illustrious men who framed that instrument were guarding the foundations of civil liberty against the abuses of unlimited power; they were full of wisdom, and the lessons of history informed them that a trial by an established court, assisted by an impartial jury, was the only sure way of protecting the citizen against oppression and wrong. Knowing this, they limited the suspension to one great right, and left the rest to remain forever inviolable. But it is insisted that the safety of the country in time of war demands that this broad claim for martial law shall be sustained. If this were true, it could be well said that a country preserved at the sacrifice of all the cardinal principles of liberty is not worth the cost of preservation. Happily it is not so.

It will be borne in mind that this is not a question of the power to proclaim martial law, when war exists in a community and the courts and civil authorities are overthrown. Nor is it a question what rule a military commander, at the head of his army can impose on States in rebellion to cripple their resources and quell the insurrection. The jurisdiction claimed is much more extensive. The necessities of the service during the late rebellion required that the loyal States should be placed within the limits of certain military districts, and commanders appointed in them; and it is urged that this, in a military sense, constituted them the theatre of military operations, and, as in this case, Indiana had been and was again threatened with invasion by the enemy, the occasion was furnished to establish martial law. The conclusion does not follow from the premises. If armies were collected in Indiana, they were to be employed in another locality, where the laws were obstructed and the national authority disputed. On her soil there was no hostile foot; if once invaded, that invasion was at an end, and with it all pretext for martial law. Martial law cannot arise from a threatened invasion. The necessity must be actual and present, the invasion real—such as effectually closes the courts and deposes the civil administration.

It is difficult to see how the safety of the country required martial law in Indiana. If any of her citizens were plotting treason, the power of arrest could secure them until the Government was prepared for their trial, when the courts were open and ready to try them. It was as easy to protect witnesses before a civil as a military tribunal; and, as there could be no wish to convict, except upon sufficient legal evidence, surely an ordained and established court was better able to judge of this than a military tribunal, composed of gentlemen not trained to the profession of the law.

It follows, from what has been said on this subject, that there are occcasions when martial rule can be properly applied. If in foreign invasion or civil war the courts are actually closed, and it is impossible to administer criminal justice according to law, then on the theater of active military operations, where war really prevails, there is a necessity to furnish a substitute for the civil authority thus overthrown to preserve the safety of the army and society; and as no power is left but the military, it is allowed to govern by martial rule until the laws can have their free course. As necessity creates the rule, so it limits its duration; for if this government is continued after the courts are reinstated, it is a gross usurpation of power. Martial rule can never exist where the courts are open, and in the proper and unobstructed exercise of their jurisdiction. It is also confined to the locality of actual war. Because during the late rebellion it could have been enforced in Virginia, where the national authority was overturned and the courts driven out, it does not follow that it should obtain in Indiana, where that authority was never disputed, and justice was always administered. And so in the case of a foreign invasion, martial rule may become a necessity in one State, when in another it would be "mere lawless violence." We are not without precedents in English and American history illustrating our views of this question; but it is hardly necessary to make particular reference to them.

From the first year of the reign of Edward the Third, when the Parliament of England reversed the attainder of the Earl of Lancaster, because he could have been tried by the courts of the realm, and declared "that in time of peace no

man ought to be adjudged to death for treason or any other offence without being arraigned and held to answer, and that regularly when the king's courts are open it is a time of peace in judgment of law," down to the present day, martial law, as claimed in this case, has been condemned by all respectable English jurists as contrary to the fundamental laws of the land, and subversive of the liberty of the subject.

During the present century, an instructive debate on this question occurred in Parliament, occasioned by the trial and conviction by court martial at Demarara of the Rev. John Smith, a missionary to the negroes, on the alleged ground of aiding and abetting a formidable rebellion in that colony. Those eminent statesmen, Lord Brougham and Sir James Macintosh, participated in that debate, and denounced the trial as illegal, because it did not appear that the courts of law in Demarara could not try offences, and that "when the laws can act every other mode of punishing supposed crimes is itself an enormous crime."

So sensitive were our Revolutionary fathers on this subject, although Boston was almost in a state of siege when General Gage issued his proclamation of martial law, they spoke of it as an "attempt to supersede the course of the common law, and instead thereof to publish and order the use of martial law." The Virginia Assembly also denounced a similar measure on the part of Governor Dunmore "as an assumed power, which the king himself cannot exercise, because it annuls the law of the land and introduces the most execrable of all systems, martial law."

In some parts of the country, during the war of 1812, our officers made arbitrary arrests, and by military tribunals tried citizens who were not in the military service. These arrests and trials, when brought to the notice of the courts, were uniformly condemned as illegal. The cases of Smith *vs.* Shaw, and McConnell *vs.* Hampton, (reported in 12 Johnson,) are illustrations which we cite, not only for the principles they determine, but on account of the distinguished jurists concerned in the decisions, one of whom for many years occupied a seat on this bench.

It is contended that Luther *vs.* Borden, decided by this court, is an authority for the claim of martial law advanced in this case. The decision is misapprehended. *That case* grew out of the attempt in Rhode Island to supersede the old colonial government by a revolutionary proceeding. Rhode Island at that period had no other form of local government than the charter granted by King Charles II in 1663, and as that limited the right of suffrage, and did not provide for its own amendment, many citizens became dissatisfied because the Legislature would not afford the relief in their power, and without the authority of law formed a new and independent constitution, and proceeded to assert its authority by force of arms. The old government resisted this, and as the rebellion was formidable, called out the militia to subdue it, and passed an act declaring martial law.

Borden, in the military service of the *old* government, broke open the house of Luther, who supported the *new* in order to arrest him. Luther brought suit against Borden, and the question was, whether, under the constitution and laws of the State, Borden was justified. This court held that a State "may use its military power to put down an armed insurrection too strong to be controlled by the civil authority," and if the Legislature of Rhode Island thought the peril so great as to require the use of its military forces and the declaration of martial law, there was no ground on which *this court* could question its authority, and as Borden acted under military orders of the charter government, which had been recognized by the political power of the country, and was upheld by the State judiciary, he was justified in breaking into and entering Luther's house. This is the extent of the decision. There was no question in issue about the power of declaring martial law under the Federal Constitution, and the court did not consider necessary even to inquire "to what extent nor under what circumstances that power may be exercised by a State."

We do not deem it important to examine further the adjudged cases; and shall, therefore, conclude without any additional reference to authorities. To the third question, then, on which the judges below were opposed in opinion, an answer in the negative must be returned.

It is proper to say, although Milligan's trial and conviction by a military commission was illegal, yet, if guilty of the crimes imputed to him, and his guilt had been ascertained by an established court and impartial jury, he deserved severe punishment. Open resistance to measures deemed necessary to subdue a great rebellion by those who enjoy the protection of government, and have not the excuse even of prejudice of section to plead in their favor, is wicked; but that resistance becomes an enormous crime when it assumes the form of a secret political organization armed to oppose the laws, and seeks by stealthy means to introduce the enemies of the country into peaceful communities, there to light the torch of civil war, and thus overthrow the power of the United States. Conspiracies like these, at such a juncture, are extremely perilous; and those concerned in them are dangerous enemies to their country, and should receive the heaviest penalties of the law, as an example to deter others from similar criminal conduct. It is said the severity of the laws caused them; but Congress was obliged to enact severe laws to meet the crisis; and as our highest civil duty is to serve our country, when in danger, the late war has proved that rigorous laws, when necessary, will be cheerfully obeyed by a patriotic people, struggling to preserve the rich blessings of a free government.

The two remaining questions in this case must be answered in the affirmative. The suspension of the privilege of the writ of *habeas corpus* does not suspend the writ itself. The writ issues as a matter of course; and on the return made to it, the court decides whether the party applying is denied the right of proceeding any further with it.

If the military trial of Milligan was contrary to law, then he was entitled on the facts stated in his petition, to be discharged from custody by the terms of the act of Congress of March 3, 1863.

The provisions of this law having been considered in a previous part of this opinion, we will not restate the views there presented. Milligan avers he was a citizen of Indiana, not in the military or naval service, and was detained in close confinement, by order of the President, from the 5th day of October, 1864, until the 2d day of January, 1865, when the circuit court for the district of Indiana, with a grand jury, convened in session at Indianapolis, and afterwards, on the 27th day of the same month, adjourned without finding an indictment or presentment against him. If these averments were true, (and their truth is conceded for the purposes of this case,) the court was required to liberate him on taking certain oaths prescribed by the law, and entering into recognizance for his good behavior. But it is insisted that Milligan was a prisoner of war, and, therefore, excluded from the privileges of the statute. It is not easy to see how he can be treated as a prisoner of war, when he lived in Indiana for the past twenty years, was arrested there, and had not been, during the late troubles, a resident of any of the States in rebellion. If, in Indiana, he conspired with bad men to assist the enemy, he is punishable for it in the courts of Indiana; but, when tried for the offence, he cannot plead the rights of war, for he was not engaged in legal acts of hostility against the Government, and only such persons, when captured, are prisoners of war. If he cannot enjoy the immunities attaching to the character of a prisoner of war, how can he be subject to their pains and penalties?

This case, as well as the kindred cases of Bowles and Horsey, were disposed of at the last term, and the proper orders were entered of record. There is, therefore, no additional entry required.

DISSENTING OPINION.

Mr. Chief Justice CHASE delivered the following opinion:

Four members of the court concurring with their brethren in the order heretofore made in this cause, but unable to concur in some important particulars with the opinion which has just been read, think it their duty to make a separate statement of their views of the whole case.

We do not doubt that the circuit court for the district of Indiana had jurisdiction of the petition of Milligan for the writ of *habeas corpus*.

Whether this Court has jurisdiction upon the certificate of division admits of more question. The construction of the act authorizing such certificates which has hitherto prevailed here, denies jurisdiction in cases where the certificate brings up the whole cause before the court. But none of the adjudicated cases are exactly in point, and we are willing to resolve whatever doubt may exist in favor of the earliest possible answers to questions involving life and liberty. We agree, therefore, that this Court may properly answer questions certified in such a case as that before us.

The crimes with which Milligan was charged were of the gravest character, and the petition and exhibits in the record, which must here be taken as true, admit his guilt. But whatever his desert of punishment may be, it is more important to the country and to every citizen that he should not be punished under an illegal sentence, sanctioned by this Court of last resort, than that he should be punished at all. The laws which protect the liberties of the whole people must not be violated or set aside in order to inflict even upon the guilty, unauthorized, though merited justice.

The trial and sentence of Milligan were by military commission convened in Indiana during the fall of 1864. The action of the commission had been under consideration by President Lincoln for some time, when he himself became the victim of an abhorred conspiracy. It was approved by his successor in May, 1865, and the sentence was ordered to be carried into execution. The proceedings, therefore, had the fullest sanction of the executive department of the Government.

This sanction requires the most respectful and the most careful consideration of this Court. The sentence which it supports must not be set aside except upon the clearest conviction that it cannot be reconciled with the Constitution and the constitutional legislation of Congress.

We must inquire, then, what constitutional or statutory provisions have relation to this military proceeding.

The act of Congress of March 3d, 1863, comprises all the legislation which seems to require consideration in this connection. The constitutionality of this act has not been questioned, and is not doubted.

The first section authorized the suspension during the rebellion of the writ of *habeas corpus* throughout the United States by the President. The two next sections limited this authority in important respects.

The second section required that lists of all persons, being citizens of States in which the administration of the laws had continued unimpaired in the Federal courts, who were then held or might thereafter be held as prisoners of the United States, under the authority of the President, otherwise than as prisoners of war, should be furnished to the judges of the circuit and district courts. The lists transmitted to the judges were to contain the names of all persons residing within their respective jurisdictions, charged with violation of national law. And it was required, in cases where the grand jury in attendance upon any of these courts should terminate its session without proceeding by indictment or otherwise against any prisoner named in the list, that the judge of the court should forthwith make an order that such prisoner, desiring a discharge, should be brought before him or the court to be discharged, on entering into recognizance, if required, to keep the peace and for good behavior, or to appear, as the court may direct, to be further dealt with according to law. Every officer of the United States, having custody of such prisoners, was required to obey and execute the judge's order, under penalty, for refusal or delay, of fine and imprisonment.

The third section provided, in case lists of persons other than prisoners of war then held in confinement, or thereafter arrested, should not be furnished within twenty days after the passage of the act, or, in cases of subsequent arrest, within twenty days after the time of arrest, that any citizen, after the termination of a session of

the grand jury without indictment or presentment, might, by petition alleging the facts, and verified by oath, obtain the judge's order of discharge in favor of any person so imprisoned, on the terms and conditions prescribed in the second section.

It was made the duty of the district attorney of the United States to attend examinations on petitions for discharge.

It was under this act that Milligan petitioned the circuit court for the district of Indiana for discharge from imprisonment.

The holding of the circuit and district courts of the United States in Indiana had been uninterrupted. The administration of the laws in the Federal courts had remained unimpaired, Milligan was imprisoned under the authority of the President, and was not a prisoner of war. No list of prisoners had been furnished to the judges either of the district or circuit courts, as required by the law. A grand jury had attended the circuit courts of the Indiana district while Milligan was there imprisoned, and had closed its session without finding any indictment or presentment, or otherwise proceeding against the prisoner.

His case was thus brought within the precise letter and intent of the act of Congress, unless it can be said that Milligan was not imprisoned by authority of the President, and nothing of this sort was claimed in argument on the part of the Government.

It is clear upon this statement that the circuit court was bound to hear Milligan's petition for the writ of *habeas corpus*, called in the act an order to bring the prisoner before the judge or the court, and to issue the writ, or, in the language of the act, to make the order.

The first question therefore—Ought the writ to issue?—must be answered in the affirmative.

And it is equally clear that he was entitled to the discharge prayed for.

It must be borne in mind that the prayer of the petition was not for an absolute discharge, but to be delivered from military custody and imprisonment, and if found probably guilty of any offence, to be turned over to the proper tribunal for inquiry and punishment; or, if not found thus probably guilty, to be discharged altogether.

And the express terms of the act of Congress required this action of the court. The prisoner must be discharged on giving such recognizance as the court should require, not only for good behavior, but for appearance, as directed by the court, to answer and be further dealt with according to law.

The first section of the act authorized the suspension of the writ of *habeas corpus* generally throughout the United States. The second and third sections limited this suspension in certain cases within States where the administration of justice by the Federal courts remained unimpaired. In these cases the writ was still to issue, and under it the prisoner was entitled to his discharge by a circuit or district judge or court, unless held to bail for appearance to answer charges. No other judge or court could make an order of discharge under the writ. Except under the circumstances pointed out by the act, neither circuit nor district judge or court could make such an order. But under those circumstances the writ must be issued, and the relief from imprisonment directed by the act must be afforded. The commands of the act were positive, and left no discretion to court or judge.

An affirmative answer must, therefore, be given to the second question, namely, Ought Milligan to be discharged according to the prayer of the petition?

That the third question, namely, Had the military commission in Indiana, under the facts stated, jurisdiction to try and sentence Milligan? must be answered negatively, is an unavoidable inference from affirmative answers to the other two.

The military commission could not have jurisdiction to try and sentence Milligan, if he could not be detained in prison under his original arrest or under sentence, after the close of a session of the grand jury, without indictment or other proceedings against him.

Indeed, the act seems to have been framed on purpose to secure the trial of all offences of citizens by civil tribunals in States where these tribunals were not interrupted in the regular exercise of their functions.

Under it, in such States, the privilege of the writ might be suspended. Any person regarded as dangerous to the public safety might be arrested and detained until after the session of a grand jury. Until after such session no person arrested could have the benefit of the writ, and even then no such person could be discharged, except on such terms as to future appearance as the court might impose. These provisions obviously contemplate no other trial or sentence than that of a civil court, and we could not assert the legality of a trial and sentence by a military commission, under the circumstances specified in the act and described in the petition, without disregarding the plain directions of Congress.

We agree, therefore, that the two first questions certified must receive affirmative answers, and the last a negative. We do not doubt that the positive provisions of the act of Congress require such answers. We do not think it necessary to look beyond these provisions. In them we find sufficient and controlling reasons for our conclusions.

But the opinion which has just been read goes further, and, as we understand it, asserts not only that the military commission held in Indiana was not authorized by Congress, but that it was not in the power of Congress to authorize it, from which it may be thought to follow that Congress has no power to indemnify the officers who composed the commission against liability in civil courts for acting as members of it.

We cannot agree to this.

We agree in the proposition that no department of the Government of the United States—neither President nor Congress nor the courts—possess any power not given by the Constitution.

We assent fully to all that is said in the opinion of the inestimable value of trial by jury and of the other constitutional safeguards of civil liberty; and we concur also in what is said of

the writ of *habeas corpus* and of its suspension, with two reservations: (1.) That, in our judgment, when the writ is suspended, the Executive is authorized to arrest as well as to detain; and, (2.) that there are cases in which, the privilege of the writ being suspended, trial and punishment by military commission, in States where civil courts are open, may be authorized by Congress, as well as arrest and detention. We think that Congress had power, though not exercised, to authorize the military commission which was held in Indiana.

We do not think it necessary to discuss at large the grounds of our conclusions. We will briefly indicate some of them.

The Constitution itself provides for military government as well as for civil government; and we do not understand it to be claimed that the civil safeguards of the Constitution have application in cases within the proper sphere of the former.

What, then, is that proper sphere? Congress has power to raise and support armies; to provide and maintain a navy; to make rules for the government and regulation of the land and naval forces, and to provide for governing such part of the militia as may be in the service of the United States.

It is not denied that the power to make rules for the government of the army and navy is a power to provide for trial and punishment by military courts without a jury. It has been so understood and exercised from the adoption of the Constitution to the present time.

Nor, in our judgment, does the fifth or any other amendment abridge that power. "Cases arising in the land and naval forces, or in the militia in actual service in time of war or public danger," are expressly excepted from the fifth amendment, "that no person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury," and it is admitted that the exception applies to the other amendments as well as to the fifth.

Now we understand this exception to have the same import and effect as if the powers of Congress in relation to the government of the army and navy and the militia had been recited in the amendment, and cases within those powers had been expressly excepted from its operation. The States, most jealous of encroachments upon the liberties of the citizen when proposing additional safeguards in the form of amendments, excluded specifically from their effect cases arising in the government of the land and naval forces. Thus Massachusetts proposed that "no person shall be tried for any crime by which he would incur an infamous punishment or loss of life until he be first indicted by a grand jury, except in such cases as may arise in the government and regulation of the land forces." The exception in similar amendments proposed by New York, Maryland, and Virginia, was in the same or equivalent terms. The amendments proposed by the States were considered by the First Congress, and such as were approved in substance were put in form, and proposed by that body to the States. Among those thus proposed, and subsequently ratified, was that which now stands as the fifth amendment of the Constitution. We cannot doubt that this amendment was intended to have the same force and effect as the amendment proposed by the States. We cannot agree to a construction which will impose on the exception in the fifth amendment a sense other than that obviously indicated by action of the State conventions.

We think, therefore, that the power of Congress in the government of the land and naval forces and of the militia, is not at all affected by the fifth or any other amendment. It is not necessary to attempt any precise definition of the boundaries of this power. But may it not be said that government includes protection and defence as well as the regulation of internal administration? And is it impossible to imagine cases in which citizens conspiring or attempting the destruction or great injury of the national forces may be subjected by Congress to military trial and punishment in the just exercise of this undoubted constitutional power? Congress is but the agent of the nation, and does not the security of individuals against the abuse of this, as of every other power, depend on the intelligence and virtue of the people, on their zeal for public and private liberty, upon official responsibility secured by law, and upon the frequency of elections, rather than upon doubtful constructions of legislative powers?

But we do not put our opinion, that Congress might authorize such a military commission as was held in Indiana, upon the power to provide for the government of the national forces.

Congress has the power not only to raise and support and govern armies, but to declare war. It has, therefore, the power to provide by law for carrying on war. This power necessarily extends to all legislation essential to the prosecution of war with vigor and success, except such as interferes with the command of the forces and the conduct of campaigns. That power and duty belong to the President as Commander-in-Chief. Both these powers are derived from the Constitution, but neither is defined by that instrument. Their extent must be determined by their nature, by the laws of nations, and by the principles of our institutions.

The power to make the necessary laws is in Congress; the power to execute, in the President. Both powers imply many subordinate and auxiliary powers. Each includes all authorities essential to its due exercise. But neither can the President, in war more than in peace, intrude upon the proper authority of Congress, nor Congress upon the proper authority of the President. Both are servants of the people, whose will is expressed in the fundamental law. Congress cannot direct the conduct of campaigns, nor can the President, or any commander under him, without the sanction of Congress, institute tribunals for the trial and punishment of offences, either of soldiers or civilians, unless in cases of a controlling necessity, which justifies what it compels, or at least ensures acts of indemnity from the justice of the Legislature.

We by no means assert that Congress can establish and apply the laws of war where no war has been declared or exists.

Where peace exists the laws of peace must

prevail. What we do maintain is, that when the nation is involved in war, and some portions of the country are invaded, and all are exposed to invasion, it is within the power of Congress to determine in what States or districts such great and imminent public danger exists as justifies the authorization of military tribunals for the trial of crimes and offences against the discipline or security of the army, or against the public safety.

In Indiana, for example, at the time of the arrest of Milligan and his co-conspirators, it is established by the papers in the record, that the State was a military district, was the theatre of military operations, had been actually invaded, and was constantly threatened with invasion. It appears, also, that a powerful secret association, composed of citizens and others, existed within the State, under military organization, conspiring against the draft, and plotting insurrection, the liberation of the prisoners of war at various depots, the seizure of the State and national arsenals, armed co-operation with the enemy, and war against the National Government.

We cannot doubt that, in such a time of public danger, Congress had power, under the Constitution, to provide for the organization of a military commission, and for trial by that commission of persons engaged in this conspiracy. The fact that the Federal courts were open was regarded by Congress as a sufficient reason for not exercising the power; but that fact could not deprive Congress of the right to exercise it. Those courts might be open and undisturbed in the execution of their functions, and yet wholly incompetent to avert threatened danger, or to punish, with adequate promptitude and certainty, the guilty conspirators.

In Indiana the judges and officers of the courts were loyal to the Government. But it might have been otherwise In times of rebellion and civil war it may often happen, indeed, that judges and marshals will be in active sympathy with the rebels, and courts their most efficient allies.

We have confined ourselves to the question of power. It was for Congress to determine the question of expediency. And Congress did determine it. That body did not see fit to authorize trials by military commission in Indiana, but by the strongest implication prohibited them. With that prohibition we are satisfied, and should have remained silent if the answers to the questions certified had been put on that ground, without denial of the existence of a power which we believe to be constitutional and important to the public safety—a denial which, as we have already suggested, seems to draw in question the power of Congress to protect from prosecution the members of military commissions who acted in obedience to their superior officers, and whose action, whether warranted by law or not, was approved by that upright and patriotic President under whose administration the Republic was rescued from threatened destruction.

We have thus far said little of martial law, nor do we propose to say much. What we have already said sufficiently indicates our opinion that there is no law for the government of the citizens, the armies, or the navy of the United States, within American jurisdiction, which is not contained in or derived from the Constitution. And wherever our army or navy may go, beyond our territorial limits, neither can go beyond the authority of the President or the legislation of Congress.

There are under the Constitution three kinds of military jurisdiction—one to be exercised both in peace and war; another to be exercised in time of foreign war without the boundaries of the United States, or in time of rebellion and civil war within States or districts occupied by rebels treated as belligerents; and a third to be exercised in time of invasion or insurrection within the limits of the United States, or during rebellion within the limits of States maintaining adhesion to the National Government, when the public danger requires its exercise. The first of these may be called jurisdiction under MILITARY LAW, and is found in acts of Congress prescribing rules and articles of war, or otherwise providing for the government of the national forces; the second may be distinguished as MILITARY GOVERNMENT, superseding, as far as may be deemed expedient, the local law, and exercised by the military commander under the direction of the President, with the express or implied sanction of Congress; while the third may be denominated MARTIAL LAW PROPER, and is called into action by Congress, or temporarily, when the action of Congress cannot be invited, and in the case of justifying or excusing peril, by the President, in times of insurrection or invasion, or of civil or foreign war, within districts or localities where ordinary law no longer adequately secures public safety and private rights.

We think that the power of Congress, in such times and in such localities, to authorize trials for crimes against the security and safety of the national forces, may be derived from its constitutional authority to raise and support armies and to declare war, if not from its constitutional authority to provide for governing the national forces.

We have no apprehension that this power, under our American system of government, in which all official authority is derived from the people, and exercised under direct responsibility to the people, is more likely to be abused than the power to regulate commerce or the power to borrow money. And we are unwilling to give our assent by silence to expressions of opinion which seem to us calculated, though not intended, to cripple the constitutional powers of the Government, and to augment the public dangers in times of invasion and rebellion.

Mr Justice Wayne, Mr. Justice Swayne, and Mr. Justice Miller concur with me in these views.

On the Missouri Constitutional Test Oath of Loyalty, January 14, 1867.

Mr Justice FIELD delivered the opinion of the Court in the case of *John A. Cummings* vs. *The State of Missouri.*

This case comes before us on a writ of error to the supreme court of Missouri, and involves a consideration of the test oath imposed by the constitution of that State. The plaintiff in error is a priest of the Roman Catholic Church, and was indicted and convicted, in one of the circuit

courts of that State, of the crime of teaching and preaching, as a priest and minister of that religious denomination, without having first taken the oath, and was sentenced to pay a fine of $500, and to be committed to jail until the same was paid. On appeal to the supreme court of the State, the judgment was affirmed.

The oath prescribed by the constitution, divided into its separable parts embraces more than thirty distinct affirmations or tests. Some of the acts against which it is directed constitute offences of the highest grade, to which, upon conviction, heavy penalties are attached. Some of the acts have never been classed as offences in the laws of any State, and some of the acts under many circumstances would not even be blameworthy. It requires the affiant to deny not only that he has ever been in armed hostility to the United States or the lawful authorities thereof, but, among other things, that he has ever, "by act or word," manifested his adherence to the cause of the enemies of the United States, foreign or domestic, or his desire for their triumph over the arms of the United States, or his sympathy with those engaged in rebellion, or that he has ever harbored or aided any person engaged in guerrilla warfare against the loyal inhabitants of the United States, or has ever entered or left the State for the purpose of avoiding enrollment or draft in the military service of the United States, or to escape the performance of duty in the militia of the United States, or has ever indicated in any terms his disaffection to the Government of the United States in its contest with rebellion.

Every person who is unable to take this oath is declared incapable of holding in the State "any office of honor, trust, or profit under its authority, or of being an officer, counselor, director, or trustee, or other manager of any incorporation, public or private, now existing or hereafter established by its authority, or of acting as a professor or teacher in any educational institution, or in any common or other school, or of holding any real estate or other property in trust for the use of any church, religious society, or congregation." And every person holding any of the offices, trusts, or positions mentioned, at the time the constitution takes effect, is required within sixty days thereafter to take the oath, and if he fail to comply with this requirement, it is declared that his office, trust, or position shall *ipso facto* become vacant. And no person after the expiration of the sixty days is permitted, without taking the oath, "to practice as an attorney or counselor at law, nor, after that period, can any person be competent as a bishop, priest, deacon, minister, elder, or other clergyman of any religious persuasion, sect, or denomination, to teach or preach or solemnize marriage." Fine and imprisonment are prescribed as a punishment for holding or exercising any of the offices, positions, trusts, professions or functions specified without having taken the oath, and false swearing or affirmation to the oath is declared to be perjury, and punishable by imprisonment in the penitentiary.

The oath thus required is without any precedent that we can discover for its severity. In the first place, it is retrospective. It embraces all the past from this day, and if taken years hence, it will also cover all the intervening period. In its retrospective feature, it is peculiar to this country. In England and France there have been test oaths, but they have always been limited to an affirmation of present belief or present disposition towards the Government, and were never exacted with reference to particular instances of past misconduct. In the second place, the oath is directed not merely against overt and visible acts of hostility to the Government, but is intended to reach words, desires, and sympathies also; and, in the third place, it allows no distinction between acts springing from malignant enmity and acts which may have been prompted by charity or affection or relationship. If one has ever expressed sympathy with any who were drawn into the rebellion, even if the recipients of that sympathy were connected by the closest ties of blood, he is as unable to subscribe to the oath as the most active and most cruel of rebels, and is equally debarred from the offices of honor and trust and the positions and employments specified.

But, as it was observed by the learned counsel who appeared on behalf of the State of Missouri, this Court cannot decide this case upon the justice or hardship of these provisions. Its duty is to determine whether they are in conflict with the Constitution of the United States. On behalf of Missouri, it is urged that these provisions only prescribe a qualification for holding certain offices and practicing certain callings, and are therefore within the power of the State to adopt. On the other hand, it is contended that these provisions are in conflict with that clause of the Constitution which forbids any State to pass a bill of attainder or *ex post facto* law.

We admit the propositions of the counsel for Missouri, that the States which existed previous to the adoption of the Federal Constitution possessed originally all the attributes of sovereignty; that they still retain those attributes, except as they have been surrendered by the formation of the Constitution and the amendments thereto; that the new States, upon their admission into the Union, became invested with equal rights, and were thereafter subject only to similar restrictions; and that among the rights reserved to the States is the right of each State to determine the qualifications for office, and the conditions upon which its citizens may exercise their various callings and pursuits within its jurisdiction. These are general propositions, and involve principles of the highest moment. But it by no means follows that under the form of creating a qualification or attaching a condition, the States can in effect inflict a punishment for a past act which was not punishable at the time it was committed. The question is not as to the existence of the power of the State over matters of internal police, but whether that power has been made in the present case an instrument for the infliction of punishment against the inhibition of the Constitution.

Qualifications relate to the fitness or capacity of the party for a particular pursuit or profession. Webster defines the term to mean "any natural endowment or any acquirement which fits a person for a place, office, or employment, or

enables him to sustain any character with success." It is evident from the nature of the pursuits and professions of the parties placed under disabilities by the constitution of Missouri, that the acts from the taint of which they must purge themselves have no possible relation to their fitness for those pursuits and professions. There can be no connection between the fact that Mr. Cummings entered or left the State of Missouri to avoid enrollment or draft in the military service of the United States, and his fitness to teach the doctrines or administer the sacraments of his church. Nor can a fact of this kind, or the expression of words of sympathy with persons drawn into the rebellion, constitute any evidence of the unfitness of the attorney or counselor to practice his profession, or of the professor to teach the ordinary branches of education, or of the want of business knowledge or business capacity in the manager of a corporation, or in its directors or trustees. It is manifest, upon the simple statement of the acts and the professions and pursuits, that there is no such relation between them as to render a denial of the commission of the acts at all appropriate as a condition of allowing the exercise of the professions and pursuits. The oath could not, therefore, have been required as a means of ascertaining whether parties were qualified or not for their respective callings or the trusts with which they are charged. It was required in order to reach the person, not the calling. It was exacted not from any notion that the acts designated indicated unfitness for the calling, but because the acts were thought to deserve punishment, and there was no way to punish the persons who had committed them but by depriving them of some of the rights and privileges of the citizen.

The disabilities created by the constitution of Missouri must be regarded as penalties. They constitute punishment. We do not agree with the counsel of Missouri that "to punish one is to deprive him of life, liberty, or property, and that to take from him anything less than these is no punishment at all." The learned counsel does not use these terms, "life, liberty, and property," as comprehending every right known to the law. He does not include under "liberty" freedom from outrage on the feelings as well as restraints on the person. He does not include under "property" those estates which one may acquire in professions, though they are often the source of the highest emoluments and honors.

The deprivation of any rights, civil or political, may be punishment, the circumstances attending and the causes of deprivation determining this fact. Disqualification from office may be punishment, as in cases of conviction upon impeachment. Disqualification from the pursuit of a lawful avocation, or from positions of trust, or from the privilege of appearing in the courts, or acting as executor. administrator, or guardian, may also, and often has been, imposed as punishment. By the statute of 9 and 10 William III, if any person educated in or having made a profession of the Christian religion did, by writing, printing, teaching or advised speaking, deny the truth of the religion or the Divine authority of the Scriptures, he was for the first offence rendered incapable to hold any office or place of trust, and for the second he was rendered incapable of bringing any action, being guardian, executor, legatee, or purchaser of lands, beside being subjected to imprisonment without bail. By statute 2 George I, contempts against the king's title were punished by incapacity to hold a public office or place of trust, to prosecute any suit, to be guardian or executor, to take any legacy or deed of gift, and to vote at any election for members of Parliament, and also by forfeiture of £500 to any one who would sue for the same.

"Some punishments," says Blackstone, "consist in exile or banishment, by abjuration of the realm or transportation: others in loss of liberty, by perpetual or temporary imprisonment Some extend to confiscation by forfeiture of lands or movables, or both, or of the profits of lands for life. Others induce a disability of holding office or employments, being heirs and executors, and the like." Among the Romans, loss of the privilege of membership of the family or of citizenship were punishments inflicted by her laws. In France, deprivation or suspension of civil rights, or of some of them, are punishments prescribed by her code, and among civil rights are included the right of voting, of eligibility to office, of taking part in family councils, of being guardian and trustee, of bearing arms, or being employed in a school or seminary of learning.

The theory upon which our political institutions rest is, that all men have certain inalienable rights; that among these are life, liberty, and the pursuit of happiness; and that in the pursuit of happiness, all avocations, all honors, all positions, are alike open to every one, and that in the protection of these rights all are equal before the law. Any deprivation or suspension of any of these rights for past conduct or acts is punishment, and can in no otherwise be defined.

Punishment not being therefore restricted, as contended by counsel, to the deprivation of life, liberty, or property, but also embracing deprivation or suspension of political or civil rights, and the disabilities prescribed by the provisions of the Missouri constitution being in effect punishment, we proceed to consider whether there is any inhibition in the Constitution of the United States against their enforcement.

The counsel from Missouri closed his argument in this case by presenting a striking picture of the struggle for ascendency in that State during the recent rebellion between the friends and the enemies of the Union, and of the fierce passions which that struggle aroused. It was in the midst of the struggle that the present constitution was framed, although it was not adopted by the people until the war had ceased. It would have been strange, therefore, had it not exhibited in its provisions some traces of the excitement amid which the convention held its deliberations. It was against the excited action of the States, under such influences as these, that the framers of the Federal Constitution intended to guard. In Fletcher *vs.* Peck, Mr. Chief Justice Marshall, speaking of such action, uses this language:

"Whatever respect might have been felt for the State sovereignties, it is not to be disguised that the framers of the Constitution viewed, with some apprehension, the violent acts which might grow out of the feelings of the moment; and that the people of the United States, in adopting that

instrument, have manifested a determination to shield themselves and their property from the effects of those sudden and strong passions to which men are exposed. The restrictions on the legislative power of the States are obviously founded in this sentiment; and the Constitution of the United States contains what may be deemed a bill of rights for the people of each State:

"'No State shall pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts.'"

A bill of attainder is a legislative act which inflicts punishment without a judicial trial. If the punishment be less than death the act is termed a bill of pains and penalties. Within the meaning of the Constitution bills of attainder include bills of pains and penalties. In these cases the legislative body, in addition to its legitimate functions, exercises the powers and office of judge. It assumes, in the language of the text books, judicial magistracy. It pronounces upon the guilt of the parties without any of the forms or safeguards of trial. It determines the sufficiency of the proofs produced, whether conformable to the rules of evidence or otherwise. It fixes the degree of punishment in accordance with its own notion of the enormity of the offence. "Bills of this sort," says Mr. Justice Story, "have been usually passed in England in times of rebellion, or gross subserviency to the crown, or of violent political excitement—periods in which all nations are most liable, as well the free as the enslaved, to forget their duties and trample upon the rights and liberties of others."

These bills are generally directed against individuals by name, but they may be directed against a whole class. The bill against the Earl of Kildare, passed in the reign of Henry VIII, enacted "that all such persons which be or heretofore have been comforters, abettors, partakers, confederates or adherents of the said late Earl in his or their false and traitorous acts and purposes shall in likewise stand, be attainted, adjudged and convicted of high treason, and that the same attainder, judgment and conviction against the said comforters, aiders, abettors, undertakers, confederates, and adherents shall be as strong and effectual in the law against them and every one of them as though they and every one of them had been specially, singularly, and particularly named by their proper names in the said act."

These bills may inflict punishment absolutely or may inflict it conditionally. The bill against the Earl of Clarendon, passed in the reign of Charles II, enacted that the Earl should suffer perpetual exile and be forever banished from the realm, and that if he returned or was found in England, or in any other of the king's dominions after the first of February, 1667, he should suffer the pains and penalties of treason, with a proviso, however, that if he surrendered himself before the said first day of February for trial, the penalties and disabilities declared should be void and of no effect.

"A British act of Parliament," to cite the language of the supreme court of Kentucky, "might declare that if certain individuals failed to do a given act by a named day they should be deemed to be and treated as convicted felons and traitors, and the act would come precisely within the definition of a bill of attainder, and the English courts would enforce it without indictment or trial by jury." If the clauses of the third article of the constitution of Missouri, to which we have referred, had in terms declared that Mr. Cummings was guilty, or should be held guilty, of having been in armed hostility to the United States, or of having entered that State to avoid being enrolled or drafted into the military service, and thereafter should be deprived of the right to preach as a priest of the Catholic Church or to teach in any institution of learning, there would be no question but that the clauses would constitute a bill of attainder within the meaning of the Federal Constitution. If these clauses, instead of mentioning his name, had declared that priests and clergymen within the State of Missouri were guilty of these acts, or should be held guilty of them, and hence should be subjected to the like deprivation, the clauses would be equally open to objection. And further, if these clauses had declared that all such priests and clergymen should be held guilty, and be thus deprived, provided they did not by a day designated do certain specified acts, they would be no less within the inhibition of the Federal Constitution.

In all these cases there would be the legislative enactment creating the deprivation, without any of the ordinary forms and guards provided for the security of the citizen in the administration of justice by the established tribunals.

The results which would follow from clauses of the character mentioned do follow from the clauses actually adopted. The difference between the last case supposed and the case actually presented is one of form only, and not of substance. The existing clauses presume the guilt of the priests and clergymen, and adjudge the deprivation of their right to preach or teach unless the presumption be first removed by their expurgatory oath. In other words, they assume the guilt and adjudge the punishment conditionally. The clauses supposed differ only in that they declare the guilt, instead of assuming it. The deprivation is effected with equal certainty in the latter case as it would be in the former, but not with equal directness. The purpose of the law-maker in the case supposed would be openly avowed; in the case existing it is only disguised. The legal result must be the same, for what cannot be done directly cannot be done indirectly. The Constitution deals with substance, not shadows. Its inhibition was leveled at the thing, not the name. It intended that the rights of the citizen should be secured against deprivation for past conduct by legislative enactment, however disguised. If the inhibition can be avoided by the form of the enactment, its insertion in the fundamental law was a vain and futile proceeding.

We proceed to consider the second clause of what Mr. Chief Justice Marshall terms "a bill of rights for the people of each State," the clause which inhibits the passage of an *ex post facto* law. By an *ex post facto* law is meant one which imposes a punishment for an act which was not punishable at the time it was committed, or imposes additional punishment to that then proscribed, or changes the rules of evidence, by which less or different testimony is required to convict than was then exacted. In Fletcher *vs.*

Peck, Mr. Chief Justice Marshall defined an *ex post facto* law to be "one which makes an act punishable in a manner in which it was not punishable when it was committed." "Such a law," said that eminent judge, "may inflict penalties on the person, or may inflict pecuniary penalties which swell the public treasury. The legislature is, then, prohibited from passing a law by which a man's estate, or any part of it, shall be seized for a crime which was not declared by some previous law to render him liable to that punishment. Why, then, should violence be done to the natural meaning of the words for the purpose of leaving to the Legislature the power of seizing for public use the estate of an individual in the form of a law annulling the title by which he holds the estate? The Court can perceive no sufficient grounds for making this distinction. The rescinding act would have the effect of an *ex post facto* law. It forfeits the estate of Fletcher for a crime not committed by himself, but by those from whom he purchased. This could not be effected in the form of an *ex post facto* law or bill of attainder. Why, then, is it allowable in the form of a law annulling the original grant?

The act to which reference is here made was one passed by the State of Georgia repealing a previous act under which land had been granted. The repealing act, divesting the title of the grantees, did not in terms define any crimes or inflict any punishment or direct any judicial proceedings; yet, inasmuch as the Legislature was forbidden from passing any law by which a man's estate could be seized for a crime which was not declared by some previous law to render him liable to that punishment, the Chief Justice was of opinion that the repealing act had the effect of an *ex post facto* law, and was within the constitutional inhibition.

Now, the clauses in the Missouri constitution which are the subject of consideration do not in terms define any crime or declare that any punishment shall be inflicted, but they produce the same result upon the parties against whom they are directed as though the crimes were defined and the punishment declared. They assume that there are persons in Missouri who are guilty of some of the acts designated. They would have no meaning in the constitution were not such the fact. They are aimed at past acts, and not future facts. They were intended to operate upon parties who, in some form or manner, by action or words, directly or indirectly, had aided or countenanced the rebellion, or sympathized with parties engaged in the rebellion, or had endeavored to escape the proper responsibilities and duties of a citizen in time of war. And they were intended to operate by depriving such persons of the right to hold certain offices and trusts, and to pursue their ordinary and regular avocations. This deprivation is punishment; nor is it any less so because a way is opened for escape from it by the expurgatory oath. The framers of the constitution of Missouri knew at the time that whole classes of individuals would be unable to take the oath prescribed. To them there is no escape provided. To them the deprivation was intended to be and is absolute and perpetual. To make the enjoyment of a right dependent upon an impossible condition is equivalent to an absolute denial of the right under any condition, and such denial enforced for a past act is nothing else than punishment imposed for that act; it is a misapplication of terms to call it anything else.

Now, some of the acts to which the expurgatory oath is directed were not offences at the time they were committed. It was no offence against any law to enter or leave the State of Missouri for the purpose of avoiding enrollment or draft in the military service, however much the evasion of such service might be the subject of moral censure. Clauses which prescribe a penalty for an act of this nature are within the terms of the definition of an *ex post facto* law. They impose a punishment for an act not punishable at the time it was committed. Some of the acts at which the oath is directed constituted high offences at the time they were committed, to which, upon conviction, fine and imprisonment or other heavy penalties were attached. The clauses which provide a further penalty for these acts are also within the definition of an *ex post facto* law. They impose additional punishment to that prescribed when the act was committed. And this is not all. The clauses in question subvert the presumptions of innocence and alter the rules of evidence which heretofore, under the universally recognized principles of the common law, have been supposed to be fundamental and unchangeable. They assume that the parties are guilty; they call upon the parties to show their innocence, and they declare that such innocence can be shown only in one way, by an inquisition in the form of an expurgatory oath into the consciences of the parties.

The objectionable character of these clauses will be more apparent if we put them in the ordinary form of a legislative act. Thus, if instead of the general provisions in the Constitution, the convention had provided as follows: "Be it enacted, that all persons who have been in armed hostility to the United States shall, upon conviction thereof, not only be punished as the laws provided at the time the offences were committed, but shall also be thereafter rendered incapable of holding any of the offices, trusts, and positions, and of exercising any of the pursuits mentioned in the third article of the constitution of Missouri," no one could have any doubt of the nature of the act. It would be an *ex post facto* law, and void, for it would add a new punishment to an old offence. So, too, if the convention had passed an enactment of a similar kind with reference to those acts which do not constitute offences. Thus, had it provided as follows: "Be it enacted, that all persons who have heretofore at any time entered or left the State of Missouri with intent to avoid enrollment or draft in the military service of the United States, shall, upon conviction thereof, be forever rendered incapable of holding any office of honor, trust, or profit in the United States, or of teaching in any seminary of learning, or of preaching as a minister of the Gospel of any denomination, or exercising any of the professions or pursuits mentioned in the third article of the Constitution," there would be no question of the character of the enactment. It would be an *ex post*

facto law, because it would impose a punishment for an act not punishable at the time it was committed.

The provisions of the constitution of Missouri accomplish precisely what enactments like those supposed would accomplish. They impose the same penalty without the formality of a judicial trial and conviction, for the parties embraced by the supposed enactments would be incapable of taking the oath prescribed. To them its requirements would be an impossible condition. Now, as the State, had she attempted the course supposed, would have failed, it must follow that any other mode producing the same result must equally fail. The provisions of the Federal Constitution intended to secure the liberty of the citizen cannot be evaded by the form in which the power of the State is exerted. If this be not so, if that which cannot be accomplished by means looking directly to the end can be accomplished by indirect means, the inhibition may be evaded at pleasure. No kind of oppression can be named against which the framers of the Constitution supposed they had guarded, which may not be effected. Take the case supposed by counsel, that of a man tried for treason and acquitted, or, if convicted, pardoned.

The legislature then may pass an act that if the person thus acquitted or pardoned does not take an oath that he never has committed the acts charged against him, he shall not be permitted to hold any office of honor or trust or profit, or pursue any avocation in the State. Take the case before us: The constitution of Missouri excludes, on failure to take the oath we have described, a large class of persons within her borders from numerous offices and pursuits. It would have been equally within the power of the State to have extended the exclusion so as to deprive the parties who were unable to take the oath from any avocations whatever in the State. Suppose, again, in the progress of events, persons now in the minority in the State should obtain the ascendency, and secure the control of the Government; nothing could prevent, if the constitutional prohibition can be evaded, the enactment of a provision requiring every person, as a condition of holding any office of honor or trust, or of pursuing any avocation in the State, to take an oath that he had never advocated or advised or supported the imposition of the present expurgatory oath. Under this form of legislation the most flagrant invasions of private rights in periods of excitement may be enacted, and individuals, and even whole classes, may be deprived of political and civil rights.

A question arose in New York, soon after the treaty of peace of 1783, upon a statute of that State, which involved a discussion of the nature and character of these expurgatory oaths when used as a means of inflicting punishment. The subject was regarded as so important, and the requirement of the oath such a violation of the fundamental principles of civil liberty and the rights of the citizen, that it engaged the attention of eminent lawyers and distinguished statesmen of the time, and among others, of Alexander Hamilton. We will cite some passages of a paper left by him on the subject, in which, with his characteristic fullness and ability, he examines the oath and demonstrates that it is not only a mode of inflicting punishment, but a mode in violation of all the constitutional guaranties secured by the Revolution of the rights and liberties of the people:

"If we examine it," (the measure requiring the oath,) said this great lawyer, "with an unprejudiced eye, we must acknowledge not only that it was an evasion of the treaty, but a subversion of one great principle of social security, to wit, that every man shall be presumed innocent until he is proved guilty. This was to invert the order of things, and instead of obliging the State to prove the guilt in order to inflict the penalty, it was to oblige the citizen to show his own innocence to avoid the penalty. It was to excite scruples in the honest and conscientious, and to hold out a bribe to perjury." * * * "It was a mode of inquiring who had committed any of those crimes to which the penalty of disqualification was annexed, with this aggravation, that it deprived the citizen of the benefit of that advantage which he would have enjoyed by leaving, as in all other cases, the burden of proof upon the prosecution. To place this matter in a still clearer light, let it be supposed that instead of the mode of indictment and trial by jury, the Legislature was to declare that every citizen who did not swear that he had never adhered to the King of Great Britain should incur all the penalties which our treason laws prescribe, would this not be a palpable evasion of the treaty, and a direct infringement of the Constitution? The principle is the same in both cases, with only this difference in the consequences, that in the instance already acted upon the citizen forfeits a part of his rights, in the one supposed, he would forfeit the whole. The degree of punishment is all that distinguishes the cases. In either, justly considered, it is substituting a new and arbitrary mode of prosecution for that ancient and highly esteemed one recognized by the laws and the constitution of the State—I mean the trial by jury.

"Let us not forget that the constitution declares that trial by jury in all cases in which it has been formerly used should remain inviolate forever, and that the legislature should at no time erect any new jurisdiction which should not proceed according to the course of the common law. Nothing can be more repugnant to the true genius of the common law than such an inquisition as has been mentioned into the consciences of men." * * * "If any oath with respect to past conduct had been made the condition on which individuals who have resided within the British lines should hold their estates, we should immediately see that this proceeding would be tyrannical and a violation of the treaty; and yet, when the same oath is employed to divest that right which ought to be deemed still more sacred, many of us are so infatuated as to overlook the mischief.

"To say that the persons who will be affected by it have previously forfeited their right, and that therefore nothing is taken away from them is a begging of the question. How do we know who are the parties in this situation? If it be answered this is the mode taken to ascertain it, the objection returns, it is an improper mode,

because it puts the most essential interests of the citizen upon a worse footing than we should be willing to tolerate where inferior interests are concerned, and because, if allowed, it substitutes for the established and legal mode of investigating crimes and inflicting forfeitures one that is unknown to the constitution and repugnant to the genius of our law."

Similar views have frequently been expressed by the judiciary in cases involving analogous questions. They are presented with great force in the matter of Dorsey, (7 Porter,) but we do not deem it necessary to pursue the subject further. The judgment of the supreme court of Missouri must be reversed and the cause remanded, with directions to enter a judgment reversing the judgment of the circuit court, and directing that court to discharge the defendant from imprisonment and suffer him to depart without day, and it is so ordered.

On the Test Oath of Lawyers, Jan. 14, 1867.

Mr. Justice FIELD delivered the opinion of the Court:

I am also instructed by the Court to deliver its opinion in the matter of the petition of A. H. Garland.

On the 2d of July, 1862, Congress passed an act prescribing an oath to be taken by every person elected or appointed to any office of honor or profit under the Government of the United States, either in the civil, military, or naval departments of the public service, except the President of the United States, before entering upon the duties of his office, and before being entitled to its salary or other emoluments. On the 24th of January, 1865, Congress passed a supplementary act, extending its provisions so as to embrace attorneys and counselors of the courts of the United States, which provides that after its passage no person shall be admitted as an attorney or counselor to the bar of the Supreme Court, and, after the 4th of March, 1865, to the bar of any circuit or district court of the United States, or of the Court of Claims, or be allowed to appear and be heard by virtue of any previous admission or any special power of attorney; unless he shall have first taken and subscribed the oath prescribed in the act of July 2, 1862. The act also provides that the oath shall be preserved among the files of the court; and if any person take it falsely, he shall be guilty of perjury, and, upon conviction, shall be subject to the pains and penalties of that offence.

At the December term of 1860, the petitioner was admitted as an attorney and counselor of this Court, and took and subscribed the oath then required. By the second rule, as it then existed, it was only requisite to the admission of attorneys and counselors of this Court that they should have been such officers for the three previous years in the highest courts of the States to which they respectively belonged, and that their private and professional character should appear to be fair. In March, 1865, this rule was changed by the addition of a clause* requiring the administration of an oath, in conformity with the act of Congress.

In May, 1861, the State of Arkansas, of which the petitioner was a citizen, passed an ordinance of secession which purported to withdraw the State from the Union, and afterwards, in the same year, by another ordinance, attached herself to the so-called Confederate States, and by act of the Congress of that Confederacy she was received as one of its members. The petitioner followed the State and was one of her representatives, first in the lower House, and afterwards in the Senate, of the Congress of that Confederacy, and was a member of the Senate at the time of the surrender of the Confederate forces to the armies of the United States.

In July, 1865, he received from the President of the United States a full pardon for all offences committed by him by participation, direct or implied, in the rebellion. He now produces this pardon, and asks permission to continue to practice as an attorney and counselor of the court, without taking the oath required by the act of January 24, 1865, and the rule of this court, which he is unable to take by reason of the offices he held under the Confederate government.

He rests his application principally upon two grounds: First, that the act of January 24, 1865, so far as it affects his status in the court, is unconstitutional and void; second, that if the act be unconstitutional, he is released from compliance with its provisions by the pardon of the President. The oath prescribed by the act is as follows: 1. That the deponent has never voluntarily borne arms against the United States since he has been a citizen thereof. 2. That he has not voluntarily given aid, countenance, counsel, or encouragement to persons engaged in armed hostility thereto. 3. That he has never sought, accepted, or attempted to exercise the functions of any office whatsoever under any authority or pretended authority in hostility to the United States. 4. That he has not yielded a voluntary support to any pretended government, authority, power, or constitution within the United States hostile or inimical thereto. 5. That he will support and defend the Constitution of the United States against all enemies, foreign and domestic, and will bear true faith and allegiance to the same.

This last clause is promissory only, and requires no consideration. The questions presented for our determination arise from the other

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* The rule, adopted without dissent, is as follows:

SUPREME COURT OF THE UNITED STATES.

December Term, 1864.—*Friday, March* 10, 1865.

AMENDMENT TO 2D RULE.

Ordered, That the last clause of the second rule of this Court be amended so as to read as follows:

They shall respectively take and subscribe the following oath or affirmation:

I, —— ——, do solemnly swear that I have never voluntarily borne arms against the United States since I have been a citizen thereof; that I have voluntarily given no aid, countenance, counsel, or encouragement to persons engaged in armed hostility thereto; that I have neither sought, nor accepted, nor attempted to exercise the functions of any office whatever, under any authority, or pretended authority, in hostility to the United States; that I have not yielded a voluntary support to any pretended government, authority, power, or constitution, within the United States, hostile or inimical thereto. And I do further swear, (or affirm,) that, to the best of my knowledge and ability, I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion.

And I do further solemnly swear, (or affirm, as the case may be,) that I will demean myself as an attorney and counsellor of this Court uprightly and according to law: So help me God.

clauses. These all relate to past acts. Some of these acts constituted, when they were committed, offences against the criminal laws of the country, and some of them may or may not have been offences, according to the circumstances under which they were committed and the motives of the parties. The first clause covers one form of the crime of treason, and the affiant must declare that he has not been guilty of this crime, not only during the war of rebellion, but during any period of his life since he has been a citizen. The second clause goes beyond the limits of treason, and embraces not only the giving of aid and encouragement of a treasonable nature to a public enemy, but also the giving of assistance of any kind to persons engaged in armed hostility to the United States. The third clause applies to the seeking, acceptance, or exercise, not only of offices created for the purpose of more effectually carrying on hostilities, but also of any of those offices which are required in every community, whether in peace or war, for the administration of justice and the preservation of order. The fourth clause not only includes those who gave a cordial and active support to the hostile government, but also those who yielded a reluctant obedience to the existing order established without their co-operation.

The statute is directed against parties who have offended in any of the particulars embraced by these clauses, and its object is to exclude them from the profession of the law, or at least from its practice in the courts of the United States. As the oath prescribed cannot be taken by these parties, the act as against them operates as a legislative decree of perpetual exclusion. An exclusion from any of the professions or any of the ordinary avocations of life for past conduct can be regarded in no other light than as a punishment for such conduct. The exaction of the oath is the mode provided for ascertaining the parties upon whom the act is intended to operate, and, instead of lessening, increases its objectionable character. All enactments of this kind partake of the nature of bills of pains and penalties, and are subject to the constitutional inhibition against the passage of bills of attainder, under which general designation they are included. In the exclusion which the statute adjudges, it imposes a punishment for some of the acts specified, which were not punishable, or may not have been punishable at the time they were committed; and for other acts it adds a new punishment to that then prescribed, and it is thus brought within the further inhibition of the Constitution against the passage of an *ex post facto* law.

In the case of Cummings *vs.* The State of Missouri, just decided, we had occasion to consider the meaning of a bill of attainder and an *ex post facto* law in the clause of the Constitution forbidding their passage by the States, and it is unnecessary to repeat here what we there said. A like prohibition is contained in the Constitution against enactments of this kind by Congress, and the argument presented in that case against certain clauses of the constitution of Missouri is equally applicable to the act of Congress under consideration in this case.

The profession of an attorney and counselor is not like an office created by an act of Congress, which depends for its continuance, its powers, and its emoluments on the will of its creator, and the possession of which may be burdened with any conditions not prohibited by the Constitution. Attorneys and counselors are not officers of the United States. They are not elected or appointed in the manner prescribed by the Constitution for the election or appointment of such officers. They are officers of the court, admitted as such by its order upon evidence of their possessing sufficient legal learning and fair character. Since the statute of 4 Henry IV, it has been the practice in England, and it has always been the practice in this country, to obtain this evidence by an examination of the parties. In this Court the fact of the admission of such officers in the highest court of the States to which they respectively belong for three years preceding their application is regarded as sufficient evidence of the possession of the requisite legal learning, and the statement of counsel moving their admission sufficient evidence that their private and professional character is fair. The order of admission is the judgment of the court that the parties possess the requisite qualifications as attorneys and counselors, and are entitled to appear as such and conduct causes therein From its entry the parties become officers of the court, and are responsible to it for professional misconduct.

They hold their office during good behavior, and can only be deprived of it for misconduct, ascertained and declared by the judgment of the court, after opportunity to be heard has been afforded. Their admission and their exclusion are not the exercise of a mere ministerial power. The court is not in this respect the register of the edicts of any other body. It is the exercise of judicial powers, and has been so held in numerous cases. It was so held by the court of appeals of New York in the matter of the application of Cooper for admission. "Attorneys and counselors," said that court, "are not only officers of the court, but officers whose duties relate almost exclusively to proceedings of a judicial nature, and hence their appointment may, with propriety, be entrusted to the courts; and the latter, in performing this duty, may very justly be considered as engaged in the exercise of their appropriate judicial functions." In *ex parte* Secomb, a *mandamus* to the supreme court of the Territory of Minnesota to vacate an order removing an attorney and counselor was denied by this court on the ground that the removal was a judicial act.

"We are not aware of any case," said the court, "where a *mandamus* was issued to an inferior tribunal commanding it to reverse or annul its decision, where the decision was in its nature a judicial act, and within the scope of its jurisdiction and discretion." And in the same case the court observed that "it has been well settled by the rules and practice of common-law courts that it rests exclusively with the court to determine who is qualified to become one of its officers as an attorney and counselor, and for what causes he ought to be removed." The attorney and counselor, being by the solemn judi-

cial act of the court clothed with his office, does not hold it as a matter of grace and favor; the right which it confers upon him to appear for suitors, and to argue causes, is something more than a mere indulgence, revokable at the pleasure of the court or at the command of the legislature; it is a right of which he can only be deprived by the judgment of the court for moral or professional delinquency. The legislature may undoubtedly prescribe qualifications for the office, with which he must conform, as it may, where it has exclusive jurisdiction, prescribe qualifications for the pursuit of any of the ordinary avocations of life; but to constitute a qualification, the condition or thing prescribed must be attainable, in theory at least, by every one. That which from the nature of things, or the past condition or conduct of the party, cannot be attained by every citizen, does not fall within the definition of the term. To all those by whom it is unattainable it is a disqualification which operates as a perpetual bar to the office. The question in this case is not as to the power of Congress to prescribe qualifications, but whether that power has been exercised as a means for the infliction of punishment against the prohibition of the Constitution. That this result cannot be effected indirectly by a State under the form of creating qualifications, we have held in the case of Cummings *vs.* The State of Missouri, and the reasoning upon which that conclusion was reached applies equally to similar action on the part of Congress.

These views are further strengthened by a consideration of the effect of the pardon produced by the petitioner and the nature of the pardoning power of the President. The Constitution provides that the President "shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment." The power thus conferred is unlimited, with the exception stated; it extends to every offence known to the law, and may be exercised at any time after its commission, either before legal proceedings are taken, or during their pendency, or after conviction and judgment. This power of the President is not subject to legislative control. Congress can neither limit the effect of his pardon, nor exclude from its exercise any class of offenders. The benign prerogative of mercy reposed in him cannot be fettered by any legislative restriction. Such being the case, the inquiry arises as to the effect and operation of a pardon. On this point all the authorities concur: a pardon reaches both the punishment prescribed for the offense, and the guilt of the offender, and when the pardon is full it releases the punishment and blots out of existence the guilt, so that in the eye of the law the offender is as innocent as if he had never committed the offence. If granted before conviction, it prevents any of the penalties and disabilities consequent upon conviction, from attaching. If granted after conviction it removes the penalties and disabilities, and restores him to all his civil rights. It makes him, as it were, a new man, and gives him a new credit and capacity. There is only this limitation to its operation: it does not restore offices forfeited, or property or interests vested in others in consequence of the conviction and judgment. The pardon produced by the petitioner is a full pardon for all offences by him committed arising from participation direct or implied in the rebellion, and is subject to certain conditions which have been complied with. The effect of this pardon is to relieve the petitioner from all penalties and disabilities attached to the offence of treason committed by his participation in the rebellion. So far as that offence is concerned he is thus placed beyond the reach of punishment of any kind; but to exclude him by reason of that offence from continuing in the enjoyment of previously acquired right is to enforce a punishment for that offence notwithstanding the pardon. If such exclusion can be effected by the exaction of an expurgatory oath covering the offence, the pardon may be avoided, and that accomplished indirectly which cannot be reached by direct legislation. It is not within the constitutional power of Congress thus to inflict punishment beyond the reach of executive clemency.

From the petitioner, therefore, the oath required by the act of January 24, 1865, cannot be exacted, even were that act not subject to any other objection than the one just stated. It follows, from the views expressed, that the prayer of the petitioner must be granted.

The case of R. H. Marr is similar in its main features to that of the petitioner, and his petition must be granted; and the amendment to the second rule of the court, which requires the oath prescribed by the act of January 24, 1865, to be taken by attorneys and counselors, having been unadvisedly adopted, must be rescinded, and it is so ordered.*

DISSENTING OPINION.

Mr. Justice MILLER. I dissent from both the opinions of the Court just announced. It may be hoped that the exceptional circumstances which give present importance to these cases will soon pass away, and that those who make the laws, both State and national, will find in the conduct of the persons affected by the legislation just declared to be void sufficient reason to repeal or essentially modify it. For the speedy return of that better spirit which shall leave no cause for such laws all good men look with anxiety, and with a hope, I trust, not altogether unfounded.

But the question involved, relating, as it does, to the right of the legislatures of the nation and the States to exclude from offices and places of high public trust, the administration of whose functions is essential to the very existence of the Government, those of its own citizens who engaged in the recent effort to destroy that Government by force, can never cease to be one of profound interest. It is at all times the exercise of an extremely delicate power for this Court to declare that the Congress of the nation or the

*The new order, made by a majority, is as follows:

SUPREME COURT OF THE UNITED STATES.
December Term, 1866.—*Monday, January* 14, 1867.
ORDER OF COURT.

It is now here ordered by the Court that the amendment to the second rule of this Court, which requires the oath prescribed by the act of Congress of January 24, 1865, to be taken by attorneys and counselors, be, and the same is, hereby rescinded and annulled.

legislative body of a State has assumed an authority not belonging to it, and, by violating the Constitution, has rendered void its attempt at legislation. In the case of an act of Congress, which expresses the sense of the members of a co-ordinate department of the Government, as much bound by their oath of office as we are to respect that Constitution, and whose duty it is, as much as it is ours, to be careful that no statute is passed in violation of it, the incompatibility of the act with the Constitution should be so clear as to leave little reason for doubt before we pronounce it to be invalid. Unable to see this incompatibility either in the act of Congress or in the provision of the constitution of Missouri upon which the Court has just passed, but entertaining a strong conviction that both were within the competency of the bodies which enacted them, it seems to me an occasion which demands that my dissent from the judgment of the Court and the reasons for that dissent should be placed on its records.

In the comments which I have to make on these cases, I shall speak of principles equally applicable to both, although I shall refer more directly to that which involves the oath required of attorneys by the act of Congress, reserving to the close some remarks more especially applicable to the oath prescribed by the constitution of the State of Missouri.

The Constitution of the United States makes ample provision for the establishment of courts of justice, to administer its laws and protect and enforce the rights of its citizens. Article 3, section 1, of that instrument says that "the judicial power of the United States shall be vested in one supreme court and such inferior courts as Congress may from time to time ordain and establish." Section 8 of article 1, closes its enumeration of the powers conferred on Congress by the broad declaration that it shall have authority "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this Constitution in the Government of the United States, or in any department thereof." Under these provisions, Congress has ordained and established circuit courts; district courts, and Territorial courts, and has, by various statutes, fixed the number of the judges of the Supreme Court; it has limited and defined the jurisdiction of all these and determined the salaries of the judges who hold them. It has provided for their necessary officers, as marshals, clerks, prosecuting attorneys, bailiffs, commissioners, and jurors; and by the act of 1789, commonly called the judiciary act, passed by the first Congress assembled under the Constitution, it is, among other things, enacted "that in all the courts of the United States parties may plead and manage their causes personally, or by the assistance of such counsel or attorneys at law as by the rules of the said courts respectively shall be permitted to manage and conduct causes therein." It is believed that no civilized nation of modern times has been without a class of men intimately connected with the courts and with the administration of justice, called variously attorneys, counselors, solictors, proctors, or other terms of similar import. The enactment which we have just cited recognizes this body of men and their utility in the judicial system of the United States, and imposes upon the courts the duty of providing rules by which persons entitled to become members of this class may be permitted to exercise the privilege of managing and conducting causes in those courts. They are as essential to the successful working of the courts as clerks, sheriffs, and marshals, and, perhaps, as the judges themselves, since no instance is known of a court of law without a bar. The right to practice law in the courts as a profession is a privilege granted by the law under such limitations or conditions in each State or government as the law-making power may prescribe. It is a privilege, and not an absolute right.

The distinction may be illustrated by the difference between the right of a party to a suit in court to defend his own cause, and the right of another party to appear and defend for him. The one, like the right to life, liberty, and the pursuit of happiness, is inalienable; the other is the privilege conferred by law on a person who complies with the prescribed conditions. Every State in the Union, and every civilized government, has laws by which the right to practice in its courts may be granted, and makes that right to depend upon the good moral character and professional skill of the party upon whom the privilege is conferred. This is not only true in reference to the first grant of license to practice law, but the continuance of the right is made by these laws to depend upon the continued possession of these qualities. Attorneys are often deprived of this right upon evidence of bad moral character, or specific acts of immorality or dishonesty, which show that they no longer possess the requisite qualifications. All this is done by law, either statutory or common, and, whether the one or the other, equally the expression of the legislative will, for the common law exists in this country only as it is adopted or permitted by legislatures or by constitutions.

No reason is perceived why this body of men, in their important relations to the courts of the nation, are not subject to the action of Congress to the same extent that they are under the legislative control in the States, or in any other Government, and to the same extent that the judges, clerks, marshals, and other officers of the court are subject to congressional legislation. Having the power to establish the courts, to provide for and regulate the practice in those courts, to create their officers, and to prescribe their functions, can it be doubted that Congress has the full right to prescribe terms for the admission, rejection, and expulsion of attorneys, and for requiring of them an oath to show whether they have the proper qualifications for the discharge of their duties.

The act which has just been declared to be unconstitutional is nothing more than a statute which requires of all lawyers who propose to practice in the national courts that they shall take the same oath which is exacted of every officer of the Government, civil or military. This oath has two aspects—one which looks to the past conduct of the party, and one to his future conduct—but both have reference to his disposition to support or to overturn the Government in

whose functions he proposes to take a part. In substance, he is required to swear that he has not been guilty of treason to that Government in the past, and that he will bear faithful allegiance to it in the future. That fidelity to the Government under which he lives, and true and loyal attachment to it, and a sincere desire for its preservation, are among the most essential qualifications which should be required in a lawyer, seems to me too clear for doubt. The history of the Anglo-Saxon race shows that for ages past the members of the legal profession have been powerful for good or evil in the Government. They are by the nature of their duties the moulders of public sentiment on questions of government, and are every day engaged in aiding in the construction and enforcement of the laws. From among their numbers are necessarily selected the judges who expound the laws and the Constitution. To suffer treasonable sentiments to spread here unchecked is to permit the stream on which the life of the nation depends to be poisoned at its source. In illustration of this truth, I venture to affirm that if all the members of the legal profession in the States lately in insurrection had possessed the qualification of a loyal, faithful allegiance to the Government, we should have been spared the horrors of that rebellion. If, then, this qualification be so essential in a lawyer, it cannot be denied that the statute under consideration was eminently calculated to secure that result.

The majority of the Court, however, do not base their decision on the mere absence of authority in Congress and the States to enact the laws which are the subject of consideration, but insist that the Constitution of the United States forbids in prohibitory terms the passage of such laws, both to Congress and to the States. The provisions of that instrument relied on to sustain this doctrine are those which forbid Congress and the States respectively from passing bills of attainder and *ex post facto* laws. It is said that the act of Congress and the provision of the constitution of the State of Missouri under review are in conflict with both these provisions, and are therefore void.

I will examine this proposition in reference to these two clauses of the Constitution in the order in which they occur in that instrument. First, in regard to bills of attainder. I am not aware of any judicial decision by a court of Federal jurisdiction which undertakes to give a definition of that term. We are therefore compelled to recur to the bills of attainder passed by the English Parliament, that we may learn so much of their peculiar characteristics as will enable us to arrive at a sound conclusion as to what was intended to be prohibited by the Constitution. The word "attainder" is derived by Sir Thomas Tomlyn in his law dictionary from the words *attincto* and *attinctura*, and is defined to be the stain or corruption of the blood of a criminal capitally condemned, the immediate, inseparable consequence, by the common law, of the pronouncing of the sentence of death, and the effect of this corruption of the blood was that the party attainted lost all inheritable quality, and could neither receive nor transmit any property or other rights by inheritance. This attainder or corruption of blood, as a consequence of judicial sentence of death, continued to be the law of England in all cases of treason to the time when our Constitution was framed, and, for aught that is known to me, is the law of that country on condemnation for treason at this day. Bills of attainder, therefore, or acts of attainder, as they were called after they were passed into statutes, were laws which declared certain persons attainted and their blood corrupted, so that it had lost all inheritable quality. Whether it declared other punishments or not, it was an act of attainder if it declared this. This also seems to have been the main feature at which the authors of the Constitution were directing their prohibition; for, after having in article 1 prohibited the passage of bills of attainder, in section 9 to Congress, and in section 10 to the States, there still remained to the judiciary the power of declaring attainders. Therefore, to still further guard against this odious form of punishment, it has provided in section 3, article 3, concerning the judiciary, that, while Congress shall have power to declare the punishment of treason, no attainder of treason shall work corruption of blood or forfeiture, except during the life of the person attainted.

This, however, while it was the chief, was not the only peculiarity of bills of attainder which was intended to be included within the constitutional restriction. Upon an attentive examination of the distinctive features of this kind of legislation, I think it will be found that the following comprise the essential elements of bills of attainder, in addition to the one already mentioned, which distinguished them from other legislation, and which made them so obnoxious to the statesmen who organized our Government: First, they were convictions and sentences pronounced by the legislative department of the Government instead of the judiciary; second, the sentences pronounced and the punishments inflicted were determined by no previous law or fixed rule; third, the investigation into the guilt of the accused, if any such were made, was not necessarily or generally conducted in his presence or that of his counsel, and no recognized rule of evidence governed the inquiry. (See Story on the Constitution, section 1,344.)

It is no cause for wonder that the men who had just passed successfully through a desperate struggle in behalf of civil liberty should feel a detestation for legislation of which these were the prominent features. The framers of our political system had a full appreciation of the necessity of keeping separate and distinct the primary departments of the Government. Mr. Hamilton, in the seventy-eighth number of the Federalist, says that he agrees with the maxim of Montesquieu, that there is no liberty if the power of judging be not separated from the legislative and executive powers; and others of the ablest numbers of that publication are devoted to the purpose of showing that in our Constitution these powers are so justly balanced and restrained that neither will probably be able to make much encroachment upon the others. Nor was it less repugnant to their views of the security of personal rights that any person should be condemned without a hearing and punished with-

out a law previously prescribing the nature and extent of that punishment. They therefore struck boldly at all this machinery of legislative despotism, by forbidding the passage of bills of attainder and *ex post facto* laws, both to Congress and to the States.

It remains to inquire whether in the act of Congress under consideration—and the remarks apply with equal force to the Missouri constitution—there is found any of these features of bills of attainder, and, if so, whether there is sufficient in the act to bring it fairly within the description of that class of bills. It is not claimed that the law works a corruption of blood. It will therefore be conceded at once that the act does not contain this leading feature of bills of attainder. Nor am I capable of seeing that it contains a conviction or sentence of any designated person or persons. It is said that it is not necessary to a bill of attainder that the party to be affected should be named in the act, and the attainder of the Earl of Kildare and his associates is referred to as showing that the act was aimed at a class. It is very true that bills of attainder have been passed against persons by some description when their names were unknown, but in such cases the law leaves nothing to be done to render its operation effectual but to identify those persons. Their guilt, its nature, and its punishment are fixed by the statute, and only their personal indentity remains to be made out. Such was the case alluded to. The act declared the guilt and punishment of the Earl of Kildare and all who were associated with him in his enterprise, and all that was required to insure their punishment was to prove that association. If this were not so, then it was mere *brutum fulmen*, and the parties other than the Earl of Kildare could only be punished, notwithstanding the act, by proof of their guilt before some competent tribunal.

No person is pointed out in the act of Congress, either by name or by description, against whom it is to operate. The oath is only required of those who propose to accept an office or to practice law, and as a prerequisite to the exercise of the functions of the lawyer or the officer it is demanded of all persons alike. It is said to be directed, as a class, to those alone who were engaged in the rebellion; but this is manifestly incorrect, as the oath is exacted alike from the loyal and disloyal under the like circumstances, and none are compelled to take it. Neither does the act declare any conviction either of persons or classes. If so, who are they, and of what crime are they declared to be guilty? Nor does it pronounce any sentence or inflict any punishment. If by any possibility it can be said to provide for conviction and sentence, though not found in the act itself, it leaves the party himself to determine his own guilt or innocence, and pronounce his own sentence. It is not, then, the act of Congress, but the party interested, that tries and condemns. We shall see, when we come to the discussion of this act in its relation to *ex post facto* laws, that it inflicts no punishment. A statute which designates no criminal either by name or by description, which declares no guilt, pronounces no sentence, and inflicts no punishment, can in no case be called a bill of attainder.

Passing now to the consideration, whether this statute is an *ex post facto* law, we find that the meaning of that term, as used in the Constitution, is a matter which has been frequently before this Court, and it has been so well defined as to leave no room for controversy. The only doubt which can arise is as to the character of the particular acts claimed to come within the definition, not as to the definition of the phrase itself. All the cases agree that the term is to be applied to criminal causes alone, and not to civil proceedings. In the language of Justice Story in the case of Watson *vs.* Mercer, 8 Peters, 88, "*ex post facto* laws relate to penal and criminal proceedings which impose punishments and forfeitures, and not to civil proceedings, which affect private rights retrospectively." (Calder *vs.* Bull, 3 Dallas, 386; Fletcher *vs.* Peck, 6 Cranch, 87; Ogden *vs.* Saunders, 12 Wheaton, 266; Satterlee *vs.* Matthewson, 2 Peters, 380.)

The first case on the subject is that of Calder *vs.* Bull, and it is the case in which the doctrine concerning *ex post facto* law is most fully expounded. The Court divides all laws which come within the meaning of that clause of the Constitution into four classes: 1. Every law that makes an action done before the passing of the law, and which was innocent when done, criminal, and punishes such action. 2. Every law that aggravates a crime, or makes it greater than it was when committed. 3. Every law that changes the punishment, and inflicts a greater punishment than the law annexed to the crime when committed. 4. Every law that alters the rule of evidence, and receives less or different testimony than the law required at the time of the commission of the offence to convict the offender.

Again, the Court draws, in the same opinion, the true distinction as between *ex post facto* laws and retrospective laws, and proceeds to show that however unjust the latter may be, they are not prohibited by the Constitution, while the former are. This exposition of the nature of an *ex post facto* law has never been denied, nor has any court or any commentator on the Constitution added to the classes of laws here set forth as coming within that clause of the organic law. In looking carefully at these four classes of laws, two things strike the mind as common to them all: First, that they contemplate the trial of some person charged with an offence; second, that they contemplate a punishment of a person found guilty of such offence.

Now, it seems to me impossible to show that the law in question contemplates either the trial of a person for an offence committed before its passage, or the punishment of any person for such an offence. It is true the act requiring an oath provides a penalty for falsely taking it; but this provision is prospective, as no one is supposed to take the oath until after the passage of the law. This prospective penalty is the only thing in the law which partakes of a criminal character. It is in all other respects a civil proceeding. It is simply an oath of office, and it is required of all office-holders alike. As far as I am informed, this is the first time in the history of jurisprudence that taking an oath of office has been called a criminal proceeding. If it is not a criminal proceeding, then, by all the

authorities, it is not an *ex post facto* law. No trial of any person is contemplated by the act for any past offence; nor is any party supposed to be charged with any offence in the only proceeding which the law provides. A person proposing to appear in the court as an attorney is asked to take a certain oath. There is no charge made against him that he has been guilty of any of the crimes mentioned in that oath; there is no prosecution. There is not even an implication of guilt by reason of tendering him the oath; for it is required of the man who has lost everything in defence of the Government, and whose loyalty is written in the honorable scars which cover his body, the same as of the guiltiest traitor in the land. His refusal to take the oath subjects him to no prosecution; his taking it clears him of no guilt and acquits him of no charge.

Where, then, is this *ex post facto* law which tries and punishes a man for a crime committed before it was passed? It can only be found in those elastic rules of construction which cramp the powers of the Federal Government when they are to be exercised in certain directions, and enlarge them when they are to be exercised in others. No more striking example of this could be given than the cases before us, in one of which the Constitution of the United States is held to confer no power on Congress to prevent traitors from practicing in our courts, while in the other it is held to confer power on this Court to nullify a provision of the constitution of the State of Missouri relating to a qualification required of ministers of religion.

But the fatal vice in the reasoning of the majority is in the meaning which they attach to the word "punishment," in its application to this law, and in its relation to the definitions which have been given of the phrase *ex post facto* law. Webster's second definition of the word "punish" is this: "In a loose sense, to afflict with pain, &c., with a view to amendment; to chasten;" and it is in this loose sense that the word is used by the Court as synonymous with "chastisement," "correction," "loss or suffering to the party supposed to be punished," and not in the legal sense, which signifies a penalty inflicted for the commission of a crime. So in this sense it is said, that whereas persons who have been guilty of the offences mentioned in the oath were, by the laws then in force, only liable to be punished with death and confiscation of all their property, they are, by a law passed since those offences were committed, made liable to the enormous additional punishment of being deprived of the right to practice law. The law in question does not in reality deprive a person guilty of the acts therein mentioned of any right which he possessed before, for it is equally sound law, as it is the dictate of good sense, that a person who, in the language of the act, has voluntarily borne arms against the Government of the United States while a citizen thereof, and who has voluntarily given aid, comfort, counsel, or encouragement to persons engaged in armed hostility to the Government, has, by doing those things, forfeited his right to appear in her courts and take part in the administration of her laws. Such a person has exhibited a trait of character which, without the aid of the law in question, authorizes the court to declare him unfit to practice before it, and to strike his name from the roll of its attorneys, if it be found there. I have already shown that this act provides for no indictment or other charge, that it contemplates and admits of no trial, and I now proceed to show that even if the right of the court to prevent an attorney guilty of the acts mentioned from appearing in its forum depended upon the statute, still it inflicts no punishment in the legal sense of that term.

"Punishment," says Mr. Wharton in his Law Lexicon, "is a penalty for transgression of the law," and this is perhaps as comprehensive and at the same as accurate a definition as can be given. Now, what law is it whose transgression is punished in the case before us? None is referred to in the act, and there is nothing on its face to show that it was intended as an additional punishment for any offence described in any other act. A part of the matters of which the applicant is required to purge himself on oath may amount to treason, and surely there could be no intention or desire to inflict this small additional punishment for a crime whose penalty was already death and confiscation of property. In fact, the word "punishment" is used by the court in a sense which would make a great number of laws, partaking in no sense of a criminal character, laws for punishment, and therefore *ex post facto*. A law, for instance, which increases the facility for detecting frauds, by compelling a party to a civil proceeding to disclose his transactions under oath, would result in his punishment in this sense if it compelled him to pay an honest debt which could not be coerced from him before; but this law comes clearly within the class described by this Court in Watson *vs.* Mercer, as a civil proceeding which affects private rights retrospectively.

Again, let us suppose that several persons afflicted with a form of insanity heretofore deemed harmless shall be found all at once to be dangerous to the lives of persons with whom they associate. The State, therefore, passes a law that all persons so affected shall be kept in close confinement until their recovery is assured. Here is a case of punishment, in the sense used by the Court, for a matter existing before the passage of the law. Is it an *ex post facto* law; and, if not, in what does it differ from one? Just in the same manner that the act of Congress does—namely, that the proceeding is a civil, and not a criminal proceeding, and that the imprisonment in the one case, and the prohibition to practice law in the other, are not punishments in the legal meaning of that term.

The civil law maxim, *nemo debet bis vexari pro una et eadem causâ*, has long since been adopted in the common law as applicable both to civil and criminal proceedings; and one of the amendments of the Constitution incorporates this principle into that instrument so far as punishment affects life or limb.

It results from this rule that no man can be twice lawfully punished for the same offence. We have already seen that the acts of which the party is required to purge himself on oath constitute the crime of treason. Now, if the judgment of the Court in the cases before us, instead of permitting parties to appear without taking

the oath, had been the other way, here would have been the case of a person who, on the reasoning of the majority, is punished by the judgment of this Court for the same acts which constitute the crime of treason; and yet, if the applicant here should be afterwards indicted for treason on account of those same acts, no one would pretend that the proceeding here could be successfully pleaded in bar of that indictment. But why not? Simply because there is here neither trial nor punishment within the legal meaning of these terms.

I maintain that the purpose of the act of Congress was to require loyalty as a qualification of all who practice law in the national courts. The majority say that the purpose was to impose a punishment for past acts of disloyalty. In pressing this argument, it is asserted by the majority that no requirement can be justly said to be a qualification which is not attainable by all, and that to demand a qualification not attainable by all is a punishment. The Constitution of the United States provides as a qualification for the office of President and Vice President that the person elected must be a native-born citizen. Is this a punishment to all those naturalized citizens who can never attain that qualification? The constitution of nearly all the States requires as a qualification for voting that the voter shall be a white male citizen. Is this a punishment for all the blacks who can never become white? It was a qualification required by some of the State constitutions for the office of judge that the person should not be over sixty years of age. To a very large number of the ablest lawyers in any State this is a qualification which they can never attain, for every year removes them further away from the designated age. Is it a punishment? The distinguished commentator on American law and chancellor of the State of New York was deprived of that office by this provision of the constitution of that State. He was, just in the midst of his usefulness, not only turned out of office, but he was forever disqualified from holding it again by a law passed after he had accepted the office. Here is a much stronger case than that of a disloyal attorney forbid by law to practice in the courts, yet no one ever thought that the law was *ex post facto* in the sense of the Constitution of the United States.

Illustrations of this kind could be multiplied indefinitely, but they are unnecessary. The history of the time when this statute was passed, the darkest hour of our great struggle, the necessity for its existence, the humane character of the President who signed the bill, and the face of the law itself, all show that it was purely a qualification exacted in self-defence of all who took part in administering the Government in any of its departments, and that it was not passed for the purpose of inflicting punishment, however merited, for past offences.

I think I have now shown that the statute in question is within the legislative power of Congress in its control over the courts and their officers, and that it is not void as being either a bill of attainder or an *ex post facto* law. If I am right on the question of qualification and punishment, that discussion disposes also of the proposition that the pardon of the President relieves the party accepting it of the necessity of taking the oath, even if the law be valid. I am willing to concede that the presidential pardon relieves the party from all penalties, or, in other words, from all the punishment which the law inflicts for his offence; but it relieves him from nothing more. If the oath required as a condition to practicing law is not a punishment, as I think I have shown it is not, then the pardon of the President has no effect in relieving him from the requirement to take it. If it is a qualification which Congress had a right to prescribe as necessary to an attorney, then the President cannot, by pardon or otherwise, dispense with the law requiring such qualification. This is not only the plain rule as between the legislative and executive departments of the Government, but it is the declaration of common sense. The man who, by counterfeiting, by theft, or by murder, or by treason, is rendered unfit to exercise the functions of an attorney or counsellor at law may be saved by the Executive pardon from the penitentiary or the gallows, but is not thereby restored to the qualifications which are essential to admission to the bar. No doubt it would be found that very many persons among those who cannot take this oath deserve to be relieved from the prohibition of the law, but this in nowise depends upon the act of the President in giving or refusing a pardon; it remains to the legislative power alone to prescribe under what circumstances this relief shall be extended.

In regard to the case of Cummings *vs.* The State of Missouri, allusions have been made in argument to the sanctity of the ministerial office and to the inviolability of religious freedom in this country; but no attempt has been made to show that the Constitution of the United States interposes any such protection between the State governments and their own citizens; nor can anything of the kind be shown. The Federal Constitution contains but two provisions on this subject. One of these forbids Congress to make any law respecting the establishment of religion or prohibiting the free exercise thereof; the other is, that no religious test shall ever be required as a qualification to any office or public trust under the United States. No restraint is placed by that instrument on the action of the States; but, on the contrary, in the language of Story, (Commentaries on the Constitution, section 1878,) the whole power over the subject of religion is left exclusively to the State governments, to be acted upon according to their own sense of justice and the State constitution. If there ever was a case calling for this Court to exercise all the power on this subject which properly belonged to it, it was the case of the Rev. B. Permoli, reported in 3 Howard, 589. An ordinance of the first municipality of the city of New Orleans imposed a penalty on any priest who should officiate at any funeral in any other church than the Obituary Chapel. Mr. Permoli, a Catholic priest, performed the funeral services of his Church over the body of one of his parishioners enclosed in a coffin in the Roman Catholic Church of St. Augustin. For this he was fined, and relying upon the vague idea advanced here, that the Federal Constitution protected him in the exercise of his holy functions, he

brought the case to this Court; but, hard as the case was, the Court replied to him in the following language: "The Constitution of the United States makes no provision for protecting the citizens of the respective States in their religious liberties; this is left to the State constitutions and laws; nor is there any inhibition imposed by the Constitution of the United States in this respect on the States." Mr. Permoli's writ of error was therefore dismissed for want of jurisdiction. In that case an ordinance of a mere local corporation forbade a priest loyal to his Government from performing what he believed to be the necessary rites of his Church over the body of his departed friend. This Court said it could give him no relief. In this case the constitution of the State of Missouri, the fundamental law of the people of that State, adopted by their popular vote, declares that no priest of any Church shall exercise his ministerial functions unless he will show by his own oath that he has borne true allegiance to his Government; and this Court now holds this constitutional provision void, on the ground that the Federal Constitution forbids it. I leave the two cases to speak for themselves.

In the discussion of these cases I have said nothing, on the one hand, of the great evils inflicted on the country by the voluntary action of many of those persons affected by the laws under consideration, nor, on the other hand, of the hardships which they are now suffering much more as a consequence of that action than of any laws which Congress could possibly frame; but I have endeavored to bring to the examination of the grave questions of constitutional law involved in this inquiry those principles alone which are calculated to assist in determining what the law is, rather than what in my private judgment it ought to be.

I am requested to say that the Chief Justice and Justices Swayne and Davis concur in this opinion.

Opinion of the Supreme Court of the District of Columbia in a like Case, February 12, 1867.

Chief Justice CARTTER said:

This is a motion on the application of Mr. Allen B. Magruder and others for admission to the bar of this court, connected with a motion to rescind the rule which provides that each applicant for admission to bar shall, before being admitted, take and subscribe the following oath:

"I, ——, do solemnly —— that I have never voluntarily borne arms against the United States since I have been a citizen thereof; that I have voluntarily given no aid, countenance, counsel, or encouragement to persons engaged in armed hostility thereto; that I have neither sought, nor accepted, nor attempted to exercise, the functions of any office whatever, under any authority, or pretended authority, in hostility to the United States; that I have not yielded a voluntary support to any pretended government, authority, power, or constitution within the United States, hostile or inimical thereto. And I do further —— that, to the best of my knowledge and ability, I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of the office on which I am about to enter: so help me God. Sworn to and subscribed before me this —— day of ——, 186—."

The consideration of the subject in the order of the application suggests the inquiry, whether the applicant is eligible to admission irrespective of the oath. His history in this connection, as rendered by himself, makes him a citizen of the District of Columbia immediately antecedent to the outbreak of the rebellion, and a member of the bar of the former circuit court, and as such attorney under the obligation of the following oath, which he took and subscribed on the 12th of December, 1857:

"I do solemnly swear that I will support the Constitution of the United States; that I do not hold myself in allegiance to the king or queen of Great Britain; and that I will well and truly behave and demean myself in the office of attorney of this court in all things appertaining to the duties thereof, to the best of my skill and judgment; so help me God. And I declare that I believe in the Christian religion."

It also appears, from his own statement, that about the time of the inauguration of the rebellion, and before the secession of Virginia, he transferred himself from this jurisdiction to that State, where he became an officer in the rebel army, doubtless, as such, binding himself under oath to do all in his power to destroy this Government.

The reason he assigns for the violation of his oath to support the Constitution of the United States, as an attorney of the former circuit court, as we understand him, is that he was a native of Virginia, and owed to Virginia a paramount fealty. The mere statement of his case, as given by himself, would seem to make it impossible for any federal court to incorporate him among its officers.

The assumption of State sovereignty and the paramount duty of the citizen to the State is old as a pretence in justification for resistance to federal authority, having been chiefly used as a means to that end; but as an honest conviction of intelligent judgment it has been entertained but by few. The proposition that a part is greater than the whole, and that the Government of the United States only existed at the will of one of its members, is incapable of belief, and simply argues that the Government of the United States never existed, or if it had existence, had not vitality for self-preservation. The disqualification of the applicant for admission is made more significant if possible by his disinclination and failure to say that in taking the oath to support the Constitution of the United States in contemplation of admission to the bar of this court, he would regard it as binding him and his conscience in paramount duty to this Government. The essential absurdity of the position, that a State in conflict with the federal power is greater than the nation, and duty to the State greater than duty to the nation, which was put forth prior to the rebellion chiefly as a speculative means to the destruction of the Federal Government, seems still to afflict him, notwithstanding it has been persuaded and whipped out of nearly everybody else of similar hallucination by five years of bloody war and the sacrifice of about a million of men. It will be perceived, from this view of his case, that if the oath in question did not exist, it would still be impossible for the court to give the applicant admission to this bar.

This leads us to the consideration of the motion to rescind the first rule of this court, adopted March 23, 1863, in order that the several parties named in the motion may be admitted as mem-

bers of the bar without first taking the oath prescribed by that rule.

We understand the motion to be based substantially upon the assumption that the oath is unconstitutional, that its unconstitutionality has been determined by the Supreme Court, and that that determination is mandatory upon the judgment of this court; that it is unconstitutional because it is *ex post facto* and in the nature of a penalty. It is a fundamental rule, that to authorize a court to pronounce a law unconstitutional the fault of the law should be clear, and its violation of the Constitution unembarrassed by doubt. Deference to the deliberations and judgment of the law-making and co-ordinate branch of the Government not only recommends this rule, but makes it imperative. Up to the time of the publication of the recent opinion of the majority of the Supreme Court, this court, from the time of the adoption of the rule, has entertained no doubt of its constitutionality, or of its propriety and necessity. The only doubt now existing in this regard has been raised by the expression of the opinion of the majority of that Court.

It is said to be *ex post facto* and in the nature of a penalty. Let us inquire. The penalty for what act? A law after what act? Does it propose to inflict an additional penalty for the treason committed, or simply to leave the traitor where the treason left him—in the enjoyment of all the ordinary and natural estate of the citizen? The *ex post facto* penalty contemplated by law is a new penalty prescribed for previous crimes—a new punishment for an old transgression. Does this rule do that? If it does, it is by withholding a privilege that the party never had, and that does not pertain to the estate of ordinary citizenship. The fact in the premises which it is objected is *ex post facto* is the office of attorney, with its privileges and immunities as a member of this bar—a fact which the party never had, and is now for the first time seeking. The condition to the enjoyment of the office complained of here, instead of being after the fact, precedes it, and is really complained of as an obstacle to it. The oath, instead of being a penalty, is simply among the evidences of fitness for the enjoyment of the estate in prospect, which, among other tests, this court has seen fit to impose for the protection of the *morale* of the bar and the integrity of the Government.

This view of the nature and constitutional character of this rule is sufficiently satisfactory to our mind without the aid even of the acknowledged constitutional power of Congress to make retroactive laws.

It is unnecessary to discuss in the light of this argument the effect of the pardon, inasmuch as it is not part of the office of a pardon to create in a criminal new rights disconnected with his crime and which he did not before possess.

But it is insisted that the unconstitutionality of this rule has been determined by the Supreme Court, which determination is mandatory upon this court. In ascertaining what the Supreme Court has determined, the first guide to judgment is the consideration of the case that the Supreme Court had before them. If the case before them defines the limits of their opinion, that Court has not decided the case before us. The case decided by the Supreme Court was the case of an existing member of their bar. The case before us is the case of the application of parties for admission to the bar. The case in the Supreme Court was a privilege in possession. The case before us is a privilege in prospect. The decision in the Supreme Court involved a dismemberment from the bar. The decision here involves admission to the bar. It may be said of the case in the Supreme Court that the pardon of the President, so far as the legal disabilities of Garland were concerned, removed them. It cannot be said that a similar pardon in the case before us would create the privilege. If the law expounded by the majority of the Supreme Court is simply an exposition of the case they had before them, it is not analogous with the case at bar; and it may be well questioned whether it would be authority beyond the limits of the legitimate issue presented. Outside of the issue, at most, it could only be considered as the expression of opinion by eminent judges.

The question remaining to be considered in this connection is, conceding the decision of the Supreme Court to be in point, whether it is mandatory upon the judgment of this court. This question is to be determined by the legal relation of this tribunal to that. To make their decision mandatory upon the judgment of this court in the strict definition of their authority, they must have the power to execute it upon the deliberation of this court. The only power they possess in this behalf is given by act of Congress, and regulated by the right of appeal, and confessedly does not extend to the subject under consideration. If there was any doubt upon this point, that doubt has been removed by the repeated decisions of that eminent tribunal. In *ex parte* Burr, 9 Wheaton, 529, Chief Justice Marshall, delivering the opinion of the Court, said:

"On one hand the profession of an attorney is of great importance to an individual, and the prosperity of his whole life may depend on its exercise. The right to exercise it ought not to be lightly or capriciously taken from him. On the other hand it is extremely desirable that the respectability of the bar should be maintained, and that its harmony with the bench should be preserved. For these objects some controlling power, some discretion, ought to reside in the court."

"This discretion ought to be exercised with great moderation and judgment, but it must be exercised; and no other tribunal can decide in a case of removal from the bar with the same means of information as the court itself. If there be a revising tribunal, which possesses controlling authority, that tribunal will always feel the delicacy of interposing its authority, and would do so only in a plain case."

In *ex parte* John L. Tillinghast, 4 Peters, 108, the Court said:

"When, on a former occasion, a *mandamus* was applied for to restore Mr. Tillinghast to the roll of counsellors to the district court, this Court refused to interfere with the matter, not considering the same within their cognizance."

And in *ex parte* Secomb, 19 Howard, page 13, Chief Justice Taney said:

"In the case of Tillinghast *vs.* Conkling, which came before this Court in January term, 1829, a similar motion was overruled by the Court. The case is not reported to the Court, but a brief written opinion remains on the files of the Court, in which the Court says that the motion is overruled upon the ground that it had not jurisdiction in the case. The removal of the attorney and counsellor in that case took place in a district court of the United States, exercising the power of a circuit court in a court of that character, and the relations between the court and the attorneys and counselors

who practise in it, and their respective rights and duties, are regulated by the common law; and it has been well settled by the common rules and practice of the common law courts that it rests *exclusively* with the court to determine who is qualified to become one of its officers as an attorney and counsellor, and for what cause he ought to be removed."

After these repeated decisions this question may be said to be *res judicata*.

The inherent right of each court to regulate its own rules of practice, including the terms of admission of attorneys to and dismissions from the bar, has come down to us unquestioned through the long life of the common law. With regard to this court, and its inherent power of making its rules of admission to and dismission from the bar, Congress, the law-maker of this court, has not only confirmed the common law power of the court, hitherto deemed almost necessary to the existence of the court, but made it the duty of the court, in the organic act of its creation, to exercise that power, leaving the court in its discretion the sole tribunal to pass upon the question, subject only to the penalty of impeachment for the abuse of the power. These considerations are conclusive of the assumption that the opinion referred to is authority with this court. While we deny to this decision of the Supreme Court the office of such authority, we acknowledge the potency of that tribunal as the instructor of judgment, and if it had united its great wisdom in the pronunciation of opinion invalidating the rule in controversy we should feel disposed to bow to it.

But it comes to us as advisory, and we must receive it upon the conditions upon which it is sent. These conditions in the way of advice are that a majority of one of that Court counsels the condemnation of the rule, while a minority of one less than the majority counsels its support, leaving this court to form its own opinion without any substantial aid from the decision.

If we were to adopt the conclusion of the majority, it would be at the expense of condemning a law of Congress in defiance of the rule of judgment already referred to, and substantially upon the opinion of a single justice of the Supreme Court, for the judgmant, after all, weighed in the balance, is reduced to the opinion of one justice, a result, however binding, not very impressive of wisdom when applied to the condemnation of a law.

In January term, 1835, the Supreme Court, through Chief Justice Marshall, refused to take up the cases of the Mayor of New York *vs.* George Miln and George Bricer *vs.* the Commonwealth's Bank of Kentucky (9 Peters, 85) because the Court was "not full," in consequence of the resignation of Justice Duvall.

This controversy of judicial opinion, largely attributable to political excitement, demonstrates to our judgment that the question in controversy is so involved with political considerations as to render it eminently proper that it should be referred back to the political power of the nation, and the law-making power which created it be consulted in its modification or repeal.

Without suggesting what would be our judgment as to the modification of the rule, or whether any, let it be sufficient to say that it is a question for legislation, and not for a ljudication. The motions are denied.

JUDGE WYLIE'S OPINION.

Matter of the application of Allen B Magruder to be admitted to the bar of the supreme court of the District of Columbia.

Also, motion made by Mr. Bradley, that said court rescind its rule requiring applicants for admission to the bar to take the oath commonly called the test-oath, prescribed and adopted 23d March, 1863.

This application and this motion, though in some respects distinct subjects, have been argued together.

I shall first proceed to consider the motion to rescind our rule.

By the act of the 3d March, 1863, the late circuit court and the late criminal court of this District were abolished, and their powers and jurisdiction transferred to the supreme court of the District of Columbia, which was established by the same act. That act also conferred upon this court full power to make all rules which it might think proper relating to the practice of the court.

At the first meeting of the new court, held on the 23d of March, 1863, it was ordered that all applicants for admission to the bar should take and subscribe, as a condition of their admission, the oath, which the judges had themselves voluntarily taken, prescribed by the act of Congress approved July 2, 1862.

That act is in the following words:

"That hereafter every person elected or appointed to any office of honor or profit under the Government of the United States, either in the civil, military, or naval department of the public service, excepting the President of the United States, shall, before entering upon the duties of such office, and before being entitled to any of the salary or other emoluments thereof, take and subscribe the following oath or affirmation: 'I, A B, do solemnly swear (or affirm) that I have never voluntarily borne arms against the United States since I have been a citizen thereof; that I have voluntarily given no aid, countenance, counsel, or encouragement to persons engaged in armed hostility thereto; that I have neither sought nor accepted nor attempted to exercise the functions of any office whatever, under any authority or pretended authority, in hostility to the United States; that I have not yielded a voluntary support to any pretended government, authority, power, or constitution within the United States hostile or inimical thereto; and I do further swear (or affirm) that, to the best of my knowledge and ability, I will support and defend the Constitution of the United States against all enemies, foreign or domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of the office on which I am about to enter; so help me God."

This oath has been taken and subscribed by every one who has since been admitted to the bar of this court.

The act, however, was not of itself obligatory upon the court or any of its officers, but only upon persons in the civil, military, or naval departments of the public service.

But we were in the midst of a terrible civil war; surrounded by a large population, many of whom were, in sentiment at least, disloyal to the Government; we were a court created by the United States, to stand if it stood, and be destroyed if it were overthrown; we were at the capital of the nation, and yet in sight of the armed forces of the rebellion. Treason walked our very streets defiantly, and encouraged its partisans amongst us with the promise of a speedy triumph of the rebellion.

It was at a time like this that the court felt

itself called upon to exert its whole power to exclude the traitors to their country from admission to the bar of one of that country's courts, and we ordained the rule which we now have under consideration.

Its constitutionality was not then called in question, nor was its propriety doubted.

The office of attorney at law is one known to the common law, and with us is regulated in part by that law, partly by several acts of the Assembly of Maryland yet in force in this District, and partly by the act of Congress of 3d March, 1863, creating this court. The English statutes relating to attorneys at law are not in force here.

At common law no one was allowed to practice law in any court till after examination and admission, and every court possessed the exclusive power of prescribing the qualifications and conditions for admission to its bar. Blackstone says:

"No one can practice as an attorney in any of the courts of Westminster Hall but such as is admitted and sworn an attorney of that particular court; an attorney of the court of king's bench cannot practice in the common pleas, nor *vice versa*."

The statute of Maryland of April, 1715 ch. 41, sec. 2, conferred upon the courts of that State full powers to make "such rules and orders from time to time for the well-governing and regulating the said courts, and the officers and suitors thereof, as to the courts, in their discretion, shall seem meet."

By another act of Maryland of the same year and month, ch. 48, sec. 12, the justices of the courts of that State were invested with authority to admit and to suspend attorneys at the bar without qualification or restriction, (*salvo jure coronæ*,) except that no court should admit any attorney to its bar without requiring of him the oath of allegiance prescribed by the act of Parliament, passed in the 6th of Queen Ann, entitled "An act for the security of her majesty's person and government, and of the succession to the crown of Great Britain in the Protestant line."

These acts, though more than a hundred and fifty years old, are still the law of this District, except that the Government of the United States has succeeded to the allegiance which was formerly sworn to the queen of Great Britain; and our rule has furnished a fitting substitute for that oath, accommodated to the changes of governments which have taken place in this country since the reign of Queen Ann.

Being thus a court of the United States, vested with full power to establish our own rules for the admission of members to the bar, and for governing and regulating the court and the officers and suitors thereof, without accountability to any other court, it would seem that we should ourselves be the ultimate judges of all the law upon these subjects. And, in my judgment, this principle has been affirmed and settled by the Supreme Court of the United States in Secomb's case, 19 Howard R., 9.

It is not to be inferred from this, however, that we are at liberty, in regard to these matters, to transgress against the Constitution of the United States at our pleasure. On the contrary, it is the sworn obligation and duty of the court faithfully to support that Constitution. As it regards the question of the constitutionality of our test-rule, it is not my intention to discuss that subject on this occasion. I have as yet heard no arguments which have disturbed my original convictions on that point.

The recent decision of the Supreme Court of the United States in Garland's case has been made the occasion of the present motion, and has been cited as settling the question against the rule. But I do not so understand that decision. On the contrary, it seems to my apprehension plainly inapplicable to the case under consideration. In compliance with the act of Congress of January 24, 1865, the Supreme Court had adopted a rule to carry out the provisions of that act, which were as follows: "That no person, after the date of this act, shall be admitted to the bar of the Supreme Court of the United States, or at any time after the 4th of March next shall be admitted to the bar of any circuit or district court of the United States, or of the Court of Claims, as an attorney or counsellor of such court, or shall be allowed to appear and be heard in any such court by virtue of any previous admission, or any special power of attorney, unless he shall have first taken the oath prescribed in an act to prescribe an oath of office, and for other purposes, approved July 2, 1862, according to the forms and in the manner in the said act prescribed."

Garland had been admitted an attorney and counsellor of that Court at the December term, 1860. He subsequently committed treason against the United States by taking part in the late rebellion, but was pardoned by the President. He then presented his petition to the Court, asking permission to appear and continue to practice there under his admission of 1860 and the pardon of the President, without being required to make the oath prescribed by the act of January 24, 1865, and the rule of court made in pursuance of said act. The decision of the Court was that his application should be granted; and the grounds of this decision were, that the pardon granted by the President had blotted out the sins of his rebellion, as though they had never been committed, and that being thus innocent of all offence in the eye of the law, he could not be a proper subject for punishment, or of exclusion from the privileges of the court, which had formerly belonged to him.

Mr. Justice Field, who delivered the opinion of the Court, says: "The effect of this pardon is to relieve the petitioner from all penalties and disabilities attached to the offence of treason committed by his participation in the rebellion. So far as that offence is concerned, he is thus placed beyond the reach of punishment of any kind; but to exclude him, by reason of that offence, from continuing in the enjoyment of a *previously acquired right*, is to enforce a punishment for that offence notwithstanding the pardon."

I can have no controversy with the Supreme Court as to that doctrine. It merely teaches that Garland, having been already admitted to the bar before the commencement of the war, and having received perfect absolution for his offences committed during the rebellion, he was not subject to the operation of either the act of

Congress or the rule of the court any otherwise than one who had been loyal to the Government throughout the war.

The facts in Garland's case required the Court to go no farther than this, but the opinion does go farther, and pronounces, in effect, that Garland would have been entitled to continue to practice in that Court, even without having been pardoned by the President for his treason, on the ground that to deprive him of the right to pursue his profession in that Court would have been a penalty inflicted for his offence, to which he was not liable at the time of its commission.

Although there is one passage in this opinion which seems to go even beyond this, and to advance the doctrine that the Court had no right to debar a man from admission to the profession on account of crimes previously committed, yet I am not disposed to believe that the Court intended to advance or to advocate, even *obiter*, a doctrine so extreme as that. If such, however, be the fair construction of the opinion, (and nothing short of such construction will answer the object of either of the motions now under our consideration,) I am constrained to avow my unwillingness to obey the doctrine thus promulged.

In the first place, the facts in the case of Garland called for no such decision; and, in the second place, having the absolute right ourselves to prescribe our own rules for admission to the bar, as has been already shown, we are not required to do violence to our convictions, in following such an interpretation of the Constitution, when given even by the eminent justices who concurred in that opinion. The opinion, in that respect, not coming to us with mandatory authority, I must for myself be permitted to look upon it only as the opinion of five gentlemen, learned in the law, weighed against the contrary opinion of the four other gentlemen, equally learned and able, and against the judgment of the whole legislative branch of the Government, by which the law was enacted; and whilst I acknowledge the importance of the principle that *res adjudicata pro veritate accipitur*, yet in this matter I am at perfect liberty to test the opinion of these five gentlemen by the application of that other maxim of the law, *testimonia ponderanda sunt, non numeranda.* Tried by this test, it appears to me that the preponderance of authority is not on the side of the doctrine of the Court's opinion on this point. In Fletcher *vs.* Peck, 6 Cranch, 87, Chief Justice Marshall says: "The question whether a law be void for its repugnancy to the Constitution is at all times a question of much delicacy, which ought seldom, if ever, to be decided in the affirmative in a doubtful case."

I am of the opinion, therefore, that the decision of the Supreme Court in Garland's case, even if received as authority and interpreted in its widest latitude, falls far short of requiring us to declare our rule void for unconstitutionality. Our rule applies only to persons not yet admitted to the bar, and who, therefore, possess no "previously acquired right" of which its enforcement can deprive them.

The rule of the Supreme Court was different from ours. It required persons already members of that bar to take the oath, under penalty of forfeiture of their "previously acquired right." Ours has no such operation.

It is true that one branch of the rule of the Supreme Court applied, like ours, also to persons asking for admission to that bar, and we are told that the rule has been wholly rescinded —no part of it preserved—in consequence of the decision in Garland's case. This may be true, but we have received no judicial evidence to convince our minds of the fact, and if it has been done, it must have been for other reasons than those furnished by the opinion of the court in that case.

In respect to the application of Magruder, the case is this: He is a native of Virginia, but for several years previous to the rebellion was a citizen of the United States, having his domicile in this District, and was a member of the bar of the late circuit court of this District. In April or May, 1861, he left us, and entered into the rebellion on the call of Virginia, and continued until the close of the war in armed hostility to the United States.

He has since received the pardon of the President for his offence, and been admitted to practice in the Supreme Court of the United States since the decision in Garland's case was made.

But the fatal objection to his admission to our bar is that he is now only applying for admission for the first time, and cannot furnish the requisite evidence of a previously acquired right whose *continued enjoyment* he might demand at the hands of the court, and is unable to take the oath required by our rule.

In his case, too, there is an additional reason, of great force in our judgment, which forbids his admission, and it is this: On being admitted to the bar of the late circuit court, he was sworn, among other things, "to support the Constitution of the United States," and should he be admitted to practice in the bar of this court, would be required to take the same oath again. This oath has a meaning, and was prescribed for an object. We understand that it requires him who takes it to support the Constitution of the United States as the supreme law of the land, in all cases in which its provisions come into conflict with the constitution or laws of any of the States, and in this sense to require a primary and paramount allegiance to the Government of the United States.

Mr. Magruder has told us that in taking up arms against the United States he acted conscientiously, and indignantly repels the imputation that he had violated his oath to support the Constitution. He says that he regarded himself as under "duality of allegiance;" that his first and paramount allegiance was due to his native State, and his secondary and subordinate allegiance was due to the United States; and that it was in this belief, honestly entertained, he went into the rebellion, in obedience to the call of his State, although he was himself of the opinion that the rebellion was without any just cause.

He acknowledges to have had no change of opinion on these points to the present hour.

Were we now, with a full knowledge of these facts, to admit him to take this oath, the ceremony would be a meaningless farce; we should

swear him in one sense, whilst he would take the oath in another.

It would be well, perhaps, that our rule on this subject should be so amended as to enable gentlemen whose native States may hereafter rush into rebellion without just cause to see at once the path of their duty, and so relieve their consciences from any embarrassments originating in fanciful theories about a "duality of allegiance."

Opinion of the Supreme Court on the Mississippi Application for an Injunction against the President and other officers, April 15, 1867.

Chief Justice CHASE delivered the opinion of the Court, as follows:

A motion was made some days since on behalf of the State of Mississippi, for leave to file a bill in the name of the State, praying this Court perpetually to enjoin and restrain Andrew Johnson, President of the United States, and E. O. C. Ord, general commanding in the district of Mississipi and Arkansas, from executing or in any manner carrying out certain acts of Congress therein named.

The acts referred to are those of March 2 and March 25, 1867, commonly called the reconstruction acts.

The Attorney General objected to the leave asked for upon the ground that no bill which makes the President a defendant and seeks an injunction against him to restrain the performance of his duties as President, should be allowed to be filed in this Court.

This point has been fully argued, and we will now dispose of it.

We shall limit our inquiry to the question presented by the objection, without expressing any opinion on the broader issues discussed in argument, whether in any case the President of the United States may be required by the process of this Court to perform a purely ministerial act required by law, or may be held answerable, in any case, otherwise than by impeachment, for crime.

The single point which requires consideration is this: Can the President be restrained from carrying into effect an act of Congress alleged to be unconstitutional?

It is assumed by the counsel for the State of Mississippi that the President, in the execution of the reconstruction acts, is required to perform a mere ministerial duty. In this assumption there is, we think, a confounding of the terms "ministerial" and "executive," which are by no means equivalent in import.

A ministerial duty, the performance of which may in proper cases be required of the head of a department by judicial process, is one in respect to which nothing is left to discretion. It is a simple, definite duty, arising under conditions admitted or proved to exist or imposed by law.

The case of Marbury *vs.* Madison, Secretary of State, furnishes an illustration. A citizen had been nominated, confirmed, and appointed a justice of the peace for the District of Columbia, and his commission had been made out, signed, and sealed. Nothing remained to be done except delivery, and the duty of delivery was imposed by law on the Secretary of State. It was held that the performance of this duty might be enforced by *mandamus* issued from a court having jurisdiction.

So in the case of Kendall, Postmaster General, *vs.* Stockton and Stokes, (12 Peters, 527.) An act of Congress had directed the Postmaster General to credit Stockton and Stokes with such sums as the Solicitor of the Treasury should find due to them, and that officer refused to credit them with certain sums so found due. It was held that the crediting of this money was a mere ministerial duty, the performance of which might be judicially enforced.

In each of these cases nothing was left to discretion. There was no room for the exercise of judgment. The law required the performance of a single specific act; and that performance, it was held, might be required by *mandamus.*

Very different is the duty of the President in the exercise of the power to see that the laws are faithfully executed, and among those laws the acts named in the bill. By the first of these acts he is required to assign generals to command in the several military districts, and to detail sufficient military force to enable such officers to discharge their duties under the law. By the supplementary act other duties are imposed on the several commanding generals, and their duties must necessarily be performed under the supervision of the President, as Commander-in-Chief. The duty thus imposed on the President is in no just sense ministerial. It is purely executive and political.

An attempt on the part of the judicial department of the Government to enjoin the performance of such duties by the President might be justly characterized, in the language of Chief Justice Marshall, as "an absurd and excessive extravagance."

It is true that in the instance before us the interposition of the Court is not sought to enforce action by the Executive under constitutional legislation, but to restrain such action under legislation alleged to be unconstitutional.

But we are unable to perceive that this circumstance takes the case out of the general principle which forbids judicial interference with the exercise of executive discretion.

It was admitted in the argument that the application now made to us is without a precedent, and this is of much weight against it. Had it been supposed at the bar that this Court would in any case interpose to arrest the execution of an unconstitutional act of Congress, it can hardly be doubted that applications with that object would have been heretofore addressed to it. Occasions have not been infrequent.

The constitutionality of the act for the annexation of Texas was vehemently denied. It made important and permanent changes in the relative importance of States and sections, and was by many supposed to be pregnant with disastrous results to large interests in particular States. But no one seems to have thought of an application for an injunction against the execution of the act by the President.

And yet it is difficult to perceive upon what principle the application now before us can be allowed, and similar applications in that and other cases could have been denied.

The fact that no such application was ever before made in any case indicates the general judgment of the profession that no such application should be entertained.

It will hardly be contended that Congress can interpose, in any case, to restrain the enactment of an unconstitutional law, and yet how can the right to judicial interposition to prevent such an enactment, when the purpose is evident and the execution of that purpose certain, be distinguished in principle from the right to such interposition against the execution of such a law by the President?

The Congress is the legislative department of the Government; the President is the executive department. Neither can be restrained in its action by the judicial department, though the acts of both, when performed, are in proper cases subject to its cognizance.

The impropriety of such interference will be clearly seen upon consideration of its probable consequences.

Suppose the bill filed and the injunction prayed for be allowed. If the President refuse obedience, it is needless to observe that the Court is without power to enforce its process. If, on the other hand, the President complies with the order of the Court, and refuses to execute the act of Congress, is it not clear that a collision may occur between the executive and legislative departments of the Government? May not the House of Representatives impeach the President for such refusal? And in that case could this Court interpose in behalf of the President, thus endangered by compliance with its mandate, and restrain by injunction the Senate of the United States from sitting as a court of impeachment? Would the strange spectacle be offered to the public wonder of an attempt by this Court to arrest proceedings in that court?

These questions answer themselves. It is true that a State may file an original bill in this Court; and it may be true, in some cases, such a bill may be filed against the United States. But we are fully satisfied that this Court has no jurisdiction of a bill to enjoin the President in the performance of his official duties, and that no such bill ought to be received by us.

It has been suggested that the bill contains a prayer that if the relief sought cannot be had against Andrew Johnson as President, it may be granted against Andrew Johnson as a citizen of Tennessee. But it is plain that relief against the execution of an act of Congress by Andrew Johnson is relief against its execution by the President. A bill praying an injunction against the execution of an act of Congress by the incumbent of the presidential office cannot be received, whether it describes him as President or simply as a citizen of a State. The motion for leave to file the bill is therefore denied.

In the case of The State of Georgia against certain officers, the Attorney General makes no objection to the policy of the bill, and we will, therefore, grant leave to file that bill.

Mr. Sharkey. If the Court please, the objection to the bill which I attempted to file seems to be that it is an effort to enjoin the President. The bill is not filed, and I can reform it to suit the views of the Court, and present it again.

The Chief Justice. Leave to file the bill is refused. When another bill is presented it will be considered.

Mr. Sharkey. Do I understand the Court to say that the application can be made on Thursday?

The Chief Justice. On Thursday.

This subpœna was issued in the case, April 16, 1867:

The State of Georgia, complainant *vs.* Edwin M. Stanton, Ulysses S. Grant, and John Pope, defendants. In equity.

The President of the United States to Edwin M. Stanton, Ulysses S. Grant, and John Pope, greeting:

For certain causes offered before the Supreme Court of the United States, holding jurisdiction in equity, you are hereby commanded that, laying all other matters aside, and notwithstanding any excuse, you be and appear before the said Supreme Court, holding jurisdiction in equity, on the first Monday in December next, at the city of Washington, in the District of Columbia, being the present seat of the National Government of the United States, to answer unto the bill of complaint of the State of Georgia in the said Court exhibited against you. Hereof you are not to fail at your peril.

Witness: The Honorable SALMON P. CHASE, Chief Justice of the said Supreme Court, at the city of Washington, the first Monday of December, in the year of our Lord one thousand eight hundred and sixty-six, and of the Independence of the United States of America the ninety-first.

D. W. MIDDLETON,
Clerk of the Supreme Court of the U. S.

XXI.

RESOLUTIONS OF NATIONAL AND STATE CONVENTIONS.

Of the Philadelphia Fourteenth of August Convention.

They were reported August 17th, by Hon. Edgar Cowan, chairman of the committee on resolutions, and were unanimously adopted:

DECLARATION OF PRINCIPLES.

The National Union Convention, now assembled in the city of Philadelphia, composed of delegates from every State and Territory in the Union, admonished by the solemn lessons which, for the last five years, it has pleased the Supreme Ruler of the Universe to give to the American people; profoundly grateful for the return of peace; desirous, as are a large majority of their countrymen, in all sincerity, to forget and forgive the past; revering the Constitution as it

comes to us from our ancestors; regarding the Union in its restoration as more sacred than ever; looking with deep anxiety into the future, as of instant and continuing trials, hereby issues and proclaims the following declaration of principles and purposes, on which they have, with perfect unanimity, agreed:

1. We hail with gratitude to Almighty God the end of the war and the return of peace to our afflicted and beloved land.

2. The war just closed has maintained the authority of the Constitution, with all the powers which it confers, and all the restrictions which it imposes upon the General Government, unabridged and unaltered, and it has preserved the Union, with the equal rights, dignity, and authority of the States perfect and unimpaired.

3. Representation in the Congress of the United States and in the electoral college is a right recognized by the Constitution as abiding in every State, and as a duty imposed upon the people, fundamental in its nature, and essential to the existence of our republican institutions, and neither Congress nor the General Government has any authority or power to deny this right to any State or to withhold its enjoyment under the Constitution from the people thereof.

4. We call upon the people of the United States to elect to Congress as members thereof none but men who admit this fundamental right of representation, and who will receive to seats therein loyal representatives from every State in allegiance to the United States, subject to the constitutional right of each House to judge of the elections, returns, and qualifications of its own members.

5. The Constitution of the United States, and the laws made in pursuance thereof, are the supreme law of the land, anything in the constitution or laws of any State to the contrary notwithstanding. All the powers not conferred by the Constitution upon the General Government, nor prohibited by it to the States, are reserved to the States, or to the people thereof; and among the rights thus reserved to the States is the right to prescribe qualifications for the elective franchise therein, with which right Congress cannot interfere. No State or combination of States has the right to withdraw from the Union, or to exclude, through their action in Congress or otherwise, any other State or States from the Union. The Union of these States is perpetual.

6. Such amendments to the Constitution of the United States may be made by the people thereof as they may deem expedient, but only in the mode pointed out by its provisions; and in proposing such amendments, whether by Congress or by a convention, and in ratifying the same, all the States of the Union have an equal and an indefeasible right to a voice and a vote thereon

7. Slavery is abolished and forever prohibited, and there is neither desire nor purpose on the part of the southern States that it should ever be re-established upon the soil, or within the jurisdiction of the United States; and the enfranchised slaves in all the States of the Union should receive, in common with all their inhabitants, equal protection in every right of person and property.

8. While we regard as utterly invalid, and never to be assumed or made of binding force, any obligations incurred or undertaken in making war against the United States, we hold the debt of the nation to be sacred and inviolable; and we proclaim our purpose in discharging this, as in performing all other national obligations, to maintain unimpaired and unimpeached the honor and the faith of the Republic.

9. It is the duty of the national Government to recognize the services of the Federal soldiers and sailors in the contest just closed, by meeting promptly and fully all their just and rightful claims for the services they have rendered the nation, and by extending to those of them who have survived, and to the widows and orphans of those who have fallen, the most generous and considerate care.

10. In Andrew Johnson, President of the United States, who, in his great office, has proved steadfast in his devotion to the Constitution, the laws, and interests of his country, unmoved by persecution and undeserved reproach, having faith unassailable in the people and in the principles of free government, we recognize a Chief Magistrate worthy of the nation, and equal to the great crisis upon which his lot is cast; and we tender to him in the discharge of his high and responsible duties, our profound respect and assurance of our cordial and sincere support.

Of the Philadelphia Convention of Southern Loyalists.

They were reported by Hon. Andrew J. Hamilton, of Texas, chairman of the committee on resolutions, and unanimously adopted:

1. That the loyal people of the South cordially unite with the people of the North in thanksgiving to Almighty God, through whose will a rebellion unparalleled for its causelessness, its cruelty, and its criminality has been overruled to the vindication of the supremacy of the Federal Constitution over every State and Territory of the Republic.

2. That we demand now, as we have demanded at all times since the cessation of hostilities, the restoration of the States in which we live to their old relations with the Union, on the simplest and fewest conditions consistent with the protection of our lives, property, and political rights, now in jeopardy from the unquenched enmity of rebels lately in arms.

3. That the unhappy policy pursued by Andrew Johnson, President of the United States, is, in its effects upon the loyal people of the South, unjust, oppressive, and intolerable; and accordingly, however ardently we desire to see our respective States once more represented in the Congress of the nation, we would deplore their restoration on the inadequate conditions prescribed by the President, as tending not to abate, but only to magnify the perils and sorrows of our condition.

4. That with pride in the patriotism of the Congress, with gratitude for the fearless and persistent support they have given to the cause of loyalty, and their efforts to restore all the States to their former condition as States in the American Union, we will stand by the positions taken by them, and use all means consistent with a

peaceful and lawful course to secure the ratification of the amendments to the Constitution of the United States, as proposed by the Congress at its recent session, and regret that the Congress, in its wisdom, did not provide by law for the greater security of the loyal people in the States not yet admitted to representation.

5. That the political power of the Government of the United States in the administration of public affairs, is, by its Constitution, confided to the popular or law-making department of the Government.

6. That the political status of the States lately in rebellion to the United States Government, and the rights of the people of such States, are political questions, and are therefore clearly within the control of Congress to the exclusion of the independent action of any and every other department of the Government.

7. That there is no right, political, legal, or constitutional, in any State to secede or withdraw from the Union; that they may, by wicked and unauthorized revolution and force, sever the relations which they have sustained to the Union; and when they do so, and assume the attitude of public enemies at war with the United States, they subject themselves to all the rules and principles of international law, and the laws which are applicable to belligerents, according to modern usage.

8. That we are unalterably in favor of the Union of the States, and earnestly desire the legal and speedy restoration of all the States to their proper places in the Union and the establishment in each of them of influences of patriotism and justice by which the whole nation shall be combined to carry forward triumphantly the principles of freedom and progress, until all men of all races shall everywhere beneath the flag of our country have accorded to them freely all that their virtues, intelligence, industry, patriotism and energy may entitle them to attain.

9. That the organizations of the unrepresented States, assuming to be State governments, not having been legally established, are not legitimate governments until reorganized by Congress.

10. That the welcome we have received from the loyal citizens of Philadelphia, under the roof of the time-honored Hall in which the Declaration of Independence was adopted, inspires us with an animating hope that the principles of just and equal government, which were made the foundation of the Republic at its origin, shall become the corner-stone of reconstruction.

11. That we cherish with tender hearts the memory of the virtues, patriotism, sublime faith, upright Christian life, and generous nature of the martyr President, Abraham Lincoln.

12. That we are in favor of universal liberty the world over, and feel the deepest sympathy with the oppressed peoples of all countries in their struggles for freedom and the inherent right of all men to decide and control for themselves the character of the government under which they live.

13. That the lasting gratitude of the nation is due the men who bore the hardships of the battle, and, in covering themselves with imperishable glory, have saved to the world its hope of free government; and relying upon the "invincible soldiers and sailors" who made the grand army and navy of the Republic to be true to the principles for which they fought, we pledge them that we will stand by them in maintaining the honor due the saviors of the nation, and in securing the fruits of their victories.

14. That, remembering with profound gratitude and love the precepts of Washington, we should accustom ourselves to consider the Union as the primary object of our patriotic desire, which has heretofore sustained us with great power in our love of the Union, when so many of our neighbors in the South were waging war for its destruction; our deep and abiding love for the memory of the Father of his Country and for the Union is more deeply engraven upon our hearts than ever.

After the adjournment of this convention, the loyalists of the non-reconstructed States met and adopted an address, closing with this declaration:

"We affirm that the loyalists of the South look to Congress with affectionate gratitude and confidence, as the only means to save us from persecution, exile, and death itself; and we also declare that there can be no security for us or our children; there can be no safety for the country against the fell spirit of slavery, now organized in the form of serfdom, unless the Government, by national and appropriate legislation, enforced by national authority, shall confer on every citizen in the States we represent the American birthright of impartial suffrage and equality before the law. This is the one all-sufficient remedy. This is our great need and pressing necessity."

The vote was as follows: TEXAS, 10 yeas; LOUISIANA, 14 yeas; VIRGINIA, 28 yeas, 3 nays; GEORGIA, 8 yeas, 1 nay; ALABAMA, 2 yeas, 3 nays; MISSISSIPPI, 1 yea; ARKANSAS, 2 yeas; NORTH CAROLINA, 1 yea, 2 nays; FLORIDA, 2 yeas, 1 nay.

Pittsburgh Convention of Soldiers and Sailors, September 26, 1866.

General Benjamin F. Butler reported these resolutions, which were adopted unanimously:

By the soldiers and sailors of the army and navy of the United States, in convention assembled, be it

Resolved, That the action of the present Congress in passing the pending constitutional amendment is wise, prudent, just. It clearly defines American citizenship, and guaranties all his rights to every citizen. It places on a just and equal basis the right of representation, making the vote of a man in one State equally potent with the vote of another man in any State. It righteously excludes from places of honor and trust the chief conspirators, guiltiest rebels, whose perjured crimes have drenched the land in fraternal blood. It puts into the very frame of our Government the inviolability of the national debt and the nullity forever of all obligations contracted in support of the rebellion.

2. That it is unfortunate for the country that these propositions have not been received in the spirit of conciliation, clemency, and fraternal feeling in which they were offered, as they are the mildest terms ever granted to subdued rebels.

3. That the President, as an executive officer,

has no right to a policy as against the legislative department of the Government; that his attempt to fasten his scheme of reconstruction upon the country is as dangerous as it is unwise; his acts in sustaining it have retarded the restoration of peace and unity; they have converted conquered rebels into impudent claimants to rights which they have forfeited, and places which they have desecrated. If consummated, it would render the sacrifices of the nation useless, the loss of the lives of our buried comrades vain, and the war in which we have so gloriously triumphed, what his present friends at Chicago in 1864 declared to be a failure.

4. That the right of the conqueror to legislate for the conquered has been recognized by the public law of all civilized nations; by the operation of that law for the conservation of the good of the whole country, Congress has the undoubted right to establish measures for the conduct of the revolted States, and to pass all acts of legislation that are necessary for the complete restoration of the Union.

5. That when the President claims that by the aid of the army and navy he might have made himself dictator, he insulted every soldier and sailor in the Republic. He ought distinctly to understand that the tried patriots of this nation can never be used to overthrow civil liberty or popular government.

6. That the neutrality laws should be so amended as to give the fullest liberty to the citizen consistent with the national faith; that the great Union Republican party is pledged to sustain liberty and equality of rights everywhere, and therefore we tender to all peoples struggling for freedom our sympathy and cordial co-operation.

7. That the Union men of the South, without distinction of race or color, are entitled to the gratitude of every loyal soldier and sailor who served his country in suppressing the rebellion, and that in their present dark hours of trial, when they are being persecuted by thousands, solely because they are now, and have been, true to the Government, we will not prove recreant to our obligations, but will stand by and protect with our lives, if necessary, those brave men who remain true to us when all around are false and faithless.

8. That in reorganizing the Army justice to the volunteer officers and soldiers demands that faithful and efficient service in the field ought ever to have place in the army and navy of the Union.

Cleveland Convention of Soldiers and Sailors, September 18, 1866.

Col. L. D. Campbell reported these resolutions, which were adopted unanimously:

The Union soldiers and sailors who served in the army and navy of the United States in the recent war for the suppression of the insurrection, the maintenance of the Constitution, the Government, and the flag of the Union, grateful to Almighty God for His preservation of them through the perils and hardships of war, and for His mercy in crowning their efforts with victory, freedom, and peace; deploring the absence from their midst of many brave and faithful comrades who had sealed with their life-blood their devotion to the sacred cause of American nationality, and determined now as heretofore, to stand by the principles for which their glorious dead have fallen, and by which the survivors have triumphed, being assembled in National Mass Convention in the city of Cleveland, Ohio, this 17th day of September, 1866, do resolve and declare—

1. That we heartily approve the resolutions adopted by the National Union Convention held in the city of Philadelphia, on the 14th day of August last, composed of delegates representing all the States and Territories of the United States.

2. That our object in taking up arms to suppress the late rebellion was to defend and maintain the supremacy of the Constitution, and to preserve the Union with all the dignity, equality, and rights of the several States unimpaired, and not in any spirit of oppression, nor for any perpose of conquest and subjugation; and that whenever there shall be any armed resistance to the lawfully constituted authorities of our national Union, either in the South or in the North, in the East or in the West, emulating the self-sacrificing patriotism of our revolutionary forefathers, we will again pledge to its support "our lives, our fortunes, and our sacred honor."

STATE CONVENTIONS, 1867.

Connecticut.

Republican, January 24.

1. That the result of the elections of the last autumn affords new proof of the devotion of the American people to the fundamental principles of free government, and of their determination to establish and confirm a Union based upon those principles only; that we congratulate each other and the country upon that auspicious result, and pledge ourselves that Connecticut, in this respect, shall emulate the example of her loyal sister States.

2. That the pending amendment to the Federal Constitution, in the generous magnanimity of the terms which it proposed to the late insurgents, deserved and should have received their grateful recognition; that its rejection by them proceeds from a still prevailing spirit of rebellion, and imposes upon the national authority the duty of establishing the Union upon none other than just and durable foundations; that, in so doing, loyalty to the Republic should be recognized as the first of political virtues, and disloyalty as the worst of political crimes, and that the protection of all citizens throughout the Republic in the exercise of all the rights and immunities guarantied by the Constitution should be inviolably secured.

3. That the only just basis of human governments is the consent of the governed; that, in a representative republic, such a consent is expressed through the exercise of the suffrage by the individual citizen, and that the right to that exercise should not be limited by distinctions of race or color.

4. That in any revision of the revenue system the duties upon imports should be adjusted with a view to the encouragement of American industry, without impairing the public revenue, and

that the burdens now imposed by internal taxation should be alleviated as far as possible, and especially by the reduction of existing taxes upon incomes and sales.

5. That in the administration of State policy we are in favor of a rigid economy in expenditures, and permanent provision for the steady reduction and final payment of the State debt.

6. That the Republican party is identified in its history, and by its essential principles, with the rights, the interests, and the dignity of labor; that by all the record of that history and all the sanctity of those principles it is bound in sympathy with the toiling masses of society, of whom is composed the great proportion of its number, and that the workingmen of Connecticut will receive at its hands every needed legislative remedy of the evils of which they complain.

7. That the present salutary law concerning the employment of children in manufactories and education of such children should be rendered more efficient in its operation and more rigidly enforced.

8. That the Republican party regards with earnest solicitation the struggles of oppressed nationalities toward independence and purer liberty, and that it extends its earnest sympathy to Crete, to Ireland, and to Mexico, in their heroic efforts to liberate themselves from hated foreign dominion.

9. That the so-called Democratic Convention at New Haven, by its malignant spirit of hostility to the Federal authority, its deliberate attempt to renew the horrors of civil war, and its sanction of the treasonable utterances of its more prominent members, deserves, and should receive, the unqualified condemnation of every lover of of the National Union.

10. That a grateful people will never forget or cease to revere the heroic soldiers and sailors who, during the dark days of the rebellion, devoted their strength, their constancy, and their valor to the overthrow of an unholy rebellion, and rescued the country from its peril, and established the Government on the rock of universal liberty.

11. That we heartily recommend to the people of this commonwealth the gentlemen nominated by this Convention for State officers, and pledge ourselves to their cordial support and triumphant election.

DEMOCRATIC, JANUARY 8.

Whereas, it becomes a free and intelligent people, justly jealous of their rights and liberties, to frankly and fearlessly assert their views upon all great and important public questions; and

Whereas, when armed resistance to the authority of the United States ceased each of the several States that had been in antagonism to the Government became, by the inherent force of the Constitution and the fundamental principles upon which our system of government is based, reinstated and restored to all their rights and privileges; and

Whereas, the Supreme Court of the United States has declared "that if military government is coutinued after the courts are reinstated, it is a gross usurpation of power. Martial rule can never exist where the courts are open and in the proper and unobstructed exercise of their jurisdiction:" Therefore,

Resolved, That each and all of the States that were arrayed in armed opposition to the authority of the Government of the United States, having ceased such opposition, are now entitled to representation in the Congress of the United States, and to all other rights and privileges appertaining to the States of the Union.

2. That the Congress of the United States, in its present exclusion of the Senators and Representatives of said States; in its open and avowed determination to destroy the organization and subvert the authorities of said States, violates and undermines the Constitution of the United States, attacks the very principles that lie at the foundation of our system of government, and strikes a fatal blow at the financial and commercial and industrial interests of the entire people of the Union.

3. That the Congress of the United States, in all its legislation, in its act levying internal taxes upon all the States, including the said States expressly by name; in its act prescribing the number of Representatives in Congress for all the States; in its act in submitting the constitutional amendment abolishing slavery to all the States; in its act of last session, submitting another proposed constitutional amendment to all the States; in its joint resolution, passed with almost entire unanimity, declaring the object of the war to be "to defend and maintain the supremacy of the Constitution, and to preserve the Union with all the dignity, equality and rights of the several States unimpaired;" and in other acts has uniformly, from the commencement of the civil war to the present time, in the most deliberate manner, recognized said States as existing States, and as States in the Union.

4. That the executive department of the United States, by its proclamations, its administrative action, and in its diplomatic intercourse with foreign Powers, has uniformly recognized all the said States as existing States, and as States in the Union.

5. That the judicial department of the United States, including the Supreme Court at Washington, the circuit courts in the several circuits, and the district courts in their respective districts, has uniformly recognized the said States as existing States, and as States in the Union.

6. That this repeated recognition of said States as existing States, and as States in the Union, by the executive, judicial, and legislative departments of the Government, leaves no question that the exclusion of these States from Congress, governing them and taxing them without representation, is not only a violation of the Federal Constitution in its most essential part, and tyranny as defined by the Declaration of Independence, but a most flagrant breach of public faith, alike prejudicial to the best interests and to the honor of the country.

7. That in the Supreme Court of the United States we possess a tribunal that may be justly termed the bulwark of republican liberty, and in the language of its eminent jurists,

"The Constitution of the United States is law for rulers and people, *equally in war and in peace*, and covers with its shield of protection all classes of men under all circum-

stances." * * "No doctrine involving more pernicious consequences was ever invented by the wit of man, than that any of its provisions can be suspended during any of the great exigencies of government. Such a doctrine leads directly to anarchy or despotism. But the theory of *necessity*, upon which this is based, is *false*, for the government within the Constitution has the powers granted to it which are necessary to preserve its existence."

Thus, the Supreme Court of the United States in 1866, vindicates and sustains the positions assumed and announced by the Democracy of Connecticut in convention in 1863.

8. That after solemn deliberation, it is the opinion of this convention that the suggestion of our conservative brethren of Kentucky, that a convention of the Democracy and all constitutional Union men of the thirty-six States should be called without delay by the National Democratic Committee; and we respectfully suggest that said convention meet in the city of New York on the 4th day of March next, to advise and counsel upon the great questions that agitate the public mind; to protest against the revolutionary and unconstitutional acts of the present majority of Congress; to announce the determination of the conservative men of the Union; to resist and oppose by constitutional exercise of power the disorganization of States and the destruction of State authority.

9. That the thanks of every patriotic citizen are eminently due the President of the United States for his repeated exercise of the Executive power in behalf of the Constitution and the rights of the States; and we pledge to him our support in all his future efforts to the same noble end.

Rhode Island.

DEMOCRATIC, MARCH 11.

1. That frequent innovations upon our laws are pernicious, as tending to confuse the minds of the people and destroy that reverence for legal authority which is essential to the perpetuity of the State and the safety of the citizen.

2. That we regard the judiciary as the shield of the people against the unwise or arbitrary acts of popular or official passion, and that any attempt to weaken or override the authority of our courts, or to detract from their dignity, imperils the very existence of the Republic.

3. That after an exhausting war our whole energy should be turned to the development of all our internal resources and to the increase of our commerce; that our system of taxation ought to be so adjusted as to bear equally upon all classes of the community and all sections of the country, to necessitate the least expense in collection, and relieve as rapidly as possible the burden of debt; that our laws ought to be so framed as to require the smallest possible number of officials in their execution, since a multiplicity of offices begets arrogance and corruption in the holders, and discontent in the people, who unwillingly lavish that money upon the leeches on the body politic which should go to nourish the body itself.

4. That the Democratic party, having spent much of its blood in a struggle to preserve the Union, will watch earnestly and anxiously and labor patiently for the same great end in the present not less terrible, though bloodless, contest. We believe it to be the duty of all people, in all sections of the Republic, to accept the circumstances which have resulted from war; to endeavor by all means consistent with honor to adapt themselves to the new status thus created, and to conform to it both in legislation and in personal and official regard for each other. As to political supremacy, we are content to await the hour when the fury of passion gives place to the temperance of reason, and the bitterness of hate is lost in the lapse of time.

Maryland.

REPUBLICAN, FEBRUARY 27.

Whereas the present state of national affairs, and the action of the coalition which, by the treachery of Governor Swann, now usurps the power of the State, have caused this assembling of the Unconditional Union men of Maryland, and render proper a clear utterance on all the issues of the times: Therefore,

Resolved, by the Republican Union party of Maryland, in State Convention assembled, That we cordially approve the reconstruction bill which has been passed by Congress, and that we declare the principles of impartial manhood suffrage contained therein to be the only secure basis of reconstruction, and that the time has come when its adoption by every State is demanded by every consideration of right and interest.

2. That we hail the result of the late election in Georgetown as a practical proof of the wisdom of Congress, and as the omen of loyal control over all the South.

3. That the convention bill now before the Legislature is in conflict with the existing constitution, and can be made valid only by the assent of the people of the State and the Government of the United States; and that no change of the existing constitution can or shall be made, or ought to be recognized by Congress, which is not made by impartial manhood suffrage, without respect to color.

4. That we request the Republican members of the State Senate to prepare an amendment to said bill basing representation upon population and submitting the question of a convention to all the male citizens of the State, and providing for a new State government on the basis of impartial manhood suffrage; and that we shall insist that any change in the constitution shall be made upon this basis, and that no State government now erected without impartial manhood suffrage ought to be considered republican; and that, in the event of the passage of the oppressive and anti-republican bill now before the Legislature, we will appeal to Congress to provide for the assembling of a convention in this State on the basis of the reconstruction bill, and to organize a loyal State government with impartial suffrage.

5. That further to carry out the object of the foregoing resolutions, this convention, when it adjourns, stands adjourned to meet at the call of its president, on such early day after the adjournment of the Legislature as the president may by public notice direct, and in the event of the president being prevented by any cause from acting, the chairman of the State Central Committee be empowered to make such call.

REPUBLICAN, MARCH 27.

Whereas the Legislature of Maryland has since the adjournment of this Republican State Convention on the 27th of February, passed the convention bill, in regard to which this convention has already in previous resolutions declared its judgment, and this convention is now reassembled as provided for by its fifth resolution on the contingency of the passage of said convention bill: Therefore,

Resolved, That we return our thanks to the Republican members of the General Assembly for their memorial to Congress presented to that body on the 25th of March, and this convention in behalf of the majority of the people of Maryland appeal hereby to the Congress of the United States to grant the request of that memorial.*

2. That we will oppose any new constitution set up in subversion of the existing constitution under the convention bill which does not express the will of the majority of the people without regard to color, and that we will, with the aid of the loyal representatives of the nation, and by all means in our power, resist and destroy any such constitution as a revolutionary usurpation.

3. That we will take no part in the approaching election for delegates to a constitutional convention further than to recommend a general vote of the Republicans of the State against the call for a convention, and to use every lawful means in their power to defeat the call.

4. That should the call be sustained by a ma-

* The memorial is as follows:

"*To the Honorable Senate and House of Representatives of the United States:*

"The undersigned, members of the General Assembly of Maryland, respectfully present this memorial to your honorable body on the condition of public affairs in this State, to which they ask the immediate consideration of the national legislature. The General Assembly of Maryland is about to adjourn, after a session as memorable for evil and as important to the country as that which consigned the legislature of 1861 to the casemates of Fort Warren. Elected in great part by the deliberate violation of the election laws of the State by the votes of men who were in active accord with the rebellion, and whose hatred to the Government rendered the presence of military force during the war necessary to prevent their active aid to the rebels in arms, and in spite of which they did give large aid in men and money, they have marked their session by a series of acts to which we desire to call your attention.

"The rebels of Maryland sent South during the war some 20,000 soldiers to the rebel army. These men have nearly all returned, and an emigration from the South since the war has largely added to their number. By doubtful construction of a clause of the existing constitution, this General Assembly, thus elected, has enfranchised all white men, no matter what treason they have committed, and thus have added to the voting population about 30,000 persons who have only lately ceased an armed resistance to the Government. Not satisfied with this, they have just passed a militia bill, which, in direct defiance to the present constitution of the State, has made all white rebels, no matter what their previous treason, part of the militia force. They have, by deliberate vote, refused to exclude, even from the highest office under this law, any person, no matter what his rank in the rebel army, and they are about to put in force this law, the effect of which is against our own constitution and the army laws of Congress, and which puts in the rear of the capital an armed force, composed largely of the same men who have just been forced to cease armed attempts to capture the capital.

"One great object of this bill is to better carry out the scheme of revolutionizing the government of the State, abolishing the existing constitution, and making another, still more firmly fastening on the necks of loyal people the yoke of rebel control. The present constitution of Maryland, while it does not allow colored suffrage, does not give to the late masters the right to represent in the legislature their disfranchised freedmen. It bases representation on white population. These conspirators, not satisfied with controlling the legislative and executive departments, have passed a bill calling an election for a constitutional convention on the 10th day of April, the convention to meet on the second Monday of May, 1867. This they have done, although the constitution provides that the legislature shall pass no laws providing for a change in the existing constitution except in the mode therein prescribed; and although the constitution regulates the representation in any convention called to make a new constitution by fixing it the same as that of each county in the General Assembly, they having fixed an arbitrary basis of representation which, while it excludes the colored man from the ballot-box, gives to the old worn-out counties, which were as rebellious as South Carolina, an increased representation, by which the oppressor is to represent the oppressed against his will, and by which a minority of the people of the State are to hold in their proposed convention the same power as the majority. The State of Maryland has at present a colored population of at least 200,000, and by emigration since the war perhaps 250,000, making a voting population of from 40,000 to 50,000. In most of the counties whose representation has thus been illegally increased, the colored population is equal to or greater than the white. The House of Representatives of the United States has already passed a resolution of inquiry whether the present constitution of this State is now republican, and since the colored man is now a citizen, it may well be doubtful whether a State which excludes for no crime one-fourth of its population who are citizens is republican. This General Assembly has inaugurated, however, a movement which, from the illegal representations made in the bill itself, actually now accomplishes not only the exclusion of this population from suffrage, but also gives the disloyal population a representation for them.

"The present judiciary of the State is for the most part loyal, and one object of this movement is to legislate out all the remaining loyal officers whom they have not already removed, and place ex-rebels, perhaps brigadiers and colonels of the rebel army, in their places. Not satisfied with the pardon and the charity which Union men have extended, they have commenced a reaction against the results of the war, and determined on a policy which, if unchecked, destroys a loyal constitution, and puts in its place one made by traitors, and flagrantly anti-republican, and places an armed militia of disloyal men and a minority government of rebel sympathizers and rebels in the complete possession of this State.

"While the South is about to commence a career of freedom and progress, these men, untaught by the lessons of the past, have determined, by the forms of law, but in real violation of both the State and Federal law, to put this State back into a condition of darkness and slavery. These acts, we submit, are in violation of State and national law, oppressive, revolutionary, and dangerous to the order and peace of this nation. The Union men of Maryland are groaning under this tyranny; they are now oppressed by verdicts of disloyal juries in many counties; immigration to the State, except from the South, is stopped, and many loyal men are deliberating upon leaving the State. The most, however, are ready, by all personal means, and at all personal hazards, to resist this infamous attempt at oppression.

"The danger of bloodshed is imminent and the times are perilous. We call upon Congress not to adjourn before settling this grave matter, which, if not settled, may startle them in their recess by something worse than the massacre at New Orleans, although not so unequal and one-sided. We earnestly ask, on the part of the majority of the people of Maryland, deprived of legal voice except through us, a minority of the General Assembly, that Congress will guaranty to us a republican form of government on the only basis of right, truth, and peace—impartial suffrage, without respect to race or color, as it has already guarantied it to the southern States.

CURTIS DAVIS, Senator from Caroline.
CHARLES E. TRAIL, Senator from Frederick.
JACOB TOME, Senator from Cecil.
ELIAS DAVIS, Senator from Washington.
HART B. HOLTON, Senator from Howard.
JAMES L. BILLINGSLEA, Senator from Carroll.
EDWARD P. PHILPOT, Senator from Baltimore county
DANIEL C. BRUCE, Delegate from Allegany.
JONATHAN TOBEY, Delegate from Washington.
A. R. APPLEMAN, Delegate from Washington.
THOMAS GORSUCH, Delegate from Frederick.
J. P. BISHOP, Delegate from Washington.
BENJAMIN POOL, Delegate from Carroll.
JAMES V. CRISWELL, Delegate from Carroll.
JOHN L. LINTHICUM, Delegate from Frederick.
J. R. ROUZER, Delegate from Frederick.
HENRY BAKER, Delegate from Frederick.
R. C. BAMFORD, Delegate from Washington,
S. R. GORE, Delegate from Carroll."

This memorial was signed by all the Republican members who were present at Annapolis when it was signed.

jority of the voters, that the State Central Committee, on ascertaining that result, issue a call for district meetings to be held in every election district in the State, for the choice by ballot, on the basis of universal manhood suffrage, of delegates to a State constitutional convention, each county and the city of Baltimore to elect the number to which they may be entitled under the present constitution of the State.

5. That said State constitutional convention, if called, shall assemble in the city of Baltimore on the first Wednesday in June, and proceed to form a constitution based on universal manhood suffrage.

6. That courage, wisdom, and action are all that is necessary to success, and we call on the tried Union veterans of the State, who have been hardened by the conflicts of six years of battle and agitation, to fly high the banner of liberty and Union, and know no end but victory.

This memorial was presented, and referred to the Committee on the Judiciary.

CALL FOR STATE REPUBLICAN CONVENTION.

At a meeting of the Republican Union State central committee of Maryland, held on Wednesday, April 17, 1867, the following resolutions were unanimously adopted:

Resolved. That all male citizens of Maryland, who are opposed to the organized conspiracy about to assemble at Annapolis on the 8th day of May, are requested to meet in primary assemblages in the various counties and the city of Baltimore, at such time as may be most convenient, to elect delegates to a State Republican convention, which shall assemble in Baltimore city on Tuesday, May 14, at 12 o'clock, m.

Resolved, That the State convention will be expected to take into consideration the present condition of political affairs in the State, and to deliberate upon the best method of guaranteeing to the people a republican form of government. To the primary meetings, the county conventions, and the State convention are invited all loyal citizens, without regard to past political differences, race, or color, who subscribe to the doctrine of the Republican Union party. The number of delegates to the State convention will not be limited; but the counties and the city of Baltimore shall be entitled to the same number of votes in the convention as they have representatives in both houses of the General Assembly. The members of the State central committee of the different counties will announce the day for holding the primary meetings, county conventions, or mass conventions, in the several counties, and the executive committee will fix the day for the aforesaid purposes in the city of Baltimore. THOMAS J. WILSON, *Chairman.*

J. W. CLAYTON, *Secretary.*

Ohio.

DEMOCRATIC, JANUARY 8.

1. *Resolved*, That the democracy of Ohio steadfastly adhere to the principles of the party as expounded by the fathers, and approved by experience; that in accordance with these principles we declare that the Federal Government is a government of limited powers, and that it possesses no powers but such as are expressly, or by necessary implication, delegated to it in the federal Constitution; that all other powers are reserved to the States or the people; that a strict construction of the Constitution is indispensable to the preservation of the reserved rights of the States and the people; that all grants of power to Government, whether State or federal, should be strictly construed, because all such grants abridge the natural rights of men; that the preservation of the equality and rights of the State and the rights of the people is necessary to the preservation of the Union; that the Federal Government is unfitted to legislate for, or administer the local concerns of, the States; that it would be monstrous that the local affairs of Ohio should be regulated by a federal Congress in which she has but two Senators, and the New England States, with but a little greater population, have twelve; that the tendency of the Federal Government is to usurp the reserved rights of the States and of the people; and that, therefore, a centralization of power in its hands is an ever-pending danger; that such an absorption of power would, while it lasted, be destructive of the liberties and interests of the people, and would end either in despotism or a destruction of the Union; that a national debt, besides impoverishing the people, fosters an undue increase of the powers of the Federal Government; that high protective tariffs have a like effect, sacrificing the interests of the many for the emoluments of the few, and plainly violating the equity and spirit of the Constitution; that the collection and disbursement of the enormous revenues by the Federal Government have the same tendency, besides corrupting the Government, and that, therefore, economy is essential not only to the prosperity, but also to the liberties of the people; that unequal taxation is a plain violation of justice, of which no government can safely be guilty; that to each State belongs the right to determine the qualification of its electors, and all attempts to impair this right, either by congressional legislation or constitutional amendment, are unwise and despotic; that the tendency of power is to steal from the many to the few, and that, therefore, "eternal vigilance is the price of liberty;" that the tendency of the Government is to enlarge its authority by usurpation, and therefore the Government needs to be watched; that another of its tendencies is to govern too much—unnecessarily and vexatiously interfering with the business and habits of the people; that the freedom of speech and of the press is essential to the existence of liberty; that no person not in the military or naval service, or where the civil courts are prevented by war or insurrection from exercising their functions, can lawfully be deprived of life, liberty, or property, without due process of civil law; that the courts should always be open for the redress of grievances; that no *ex post facto* law should ever be made; that, in the language of the Supreme Court, "the Constitution of the United States is a law for the rulers and the people, equal in war and in peace, and covers with the shield of its protection all classes of men, at all times and under all circumstances. No doctrine involving more pernicious consequences was ever invented by the wit of man than that any of its provisions

can be suspended during any of the great exigencies of government. Such a docrine leads directly to anarchy or despotism;" that the right of the people to peaceably assemble and consult upon public affairs is inviolable; that the military should be held in due subjection to the civil power; that while the majority, as prescribed by the Constitution, have the right to govern, the minority have indefeasible rights; and that a frequent recurrence to first principles is essential to the welfare of the State and the people.

2. That the States lately in rebellion are States in the Union, and have been recognized as such by every department of the Government, and by President Lincoln, who, in the midst of war, invited them to elect members of Congress; by President Johnson, in various proclamations and official acts; by Congress, which permitted Andrew Johnson to sit in the Senate as a Senator from Tennessee, and members from Virginia, Tennessee, and Louisiana to sit in the House of Representatives after those States had seceded, and while the war was being carried on, and which further recognized them as States in the Union by the congressional apportionment act, providing for their due representation in Congress; by various tax laws, and especially by the direct tax; by the resolutions submitting amendments to the Constitution for their approval, and by various other acts and resolutions imparting the same recognition, all of which were passed since the attempted secession of those States; by the judiciary of the United States, which holds federal courts in all those States, and especially by the Supreme Court, which entertains jurisdiction of cases coming from them, which it could not do were they not in the Union. That being thus in the Union, they stand on an equal footing with their sister States—States with unequal rights being a thing unknown to the Constitution; that, by the express terms of the Constitution, each State is entitled to have two Senators and a fair proportion of Representatives in the Congress, and to vote in all elections of President and Vice President; that, though these rights are subject to interruption by a state of civil war, they cannot, in time of peace, be suspended, much less destroyed, without a plain violation of the Constitution; that the assent of three-fourths of all the States, whether represented in Congress or not, is essential to the validity of constitutional amendments; that Congress has no power to deprive a State of its reserved rights and reduce it to a territorial condition; that, therefore, the exclusion, by the so-called Congress, of all representation from ten States, the proposed exclusion of those States from all voice in the next presidential election, the threatened overthrow of their State governments, and the reduction of their States to the condition of Territories, are each and every one of them unconstitutional, revolutionary, and despotic measures, destructive not merely of the rights of those States, but also of the rights of every other State in the Union. That those measures are parts of a plan to nullify the Constitution, to virtually overthrow the State governments, to erect a consolidated despotism on their ruins, and to establish and perpetuate a tyrannical rule of a minority over a majority of the American people. That the people cannot, without a loss of their liberties, prosperity, and honor, submit to such a result; and, therefore, in the hope that the warning will be heeded, and the danger to our institutions be peaceably averted, we do solemnly warn the advocates of the plan that it will not be submitted to.

3. That Congress is not an omnipotent law-making power; that the Constitution provides that no bill shall become a law without the approval of the President, unless it be passed by two-thirds of each House of Congress; that one of the objects of the present so-called Congress in excluding ten States from representation is to pass bills by a two-thirds vote, which, were all the States represented, could not pass, and thus to abolish the constitutional provision aforesaid; that if the precedent be acquiesced in there will be nothing to prevent a bare majority of Congress, at any time in the future, from nullifying the constitutional veto of the President, and usurping uncontrolled legislative power by an exclusion of the minority from their seats; that the exclusion of a single State might give this control, and a pretext for such an exclusion would never be wanting to an unscrupulous and revolutionary party.

4. That the people, and especially those of the agricultural States, have suffered too long the exactions of high protective tariffs, and as the representatives of an agricultural and laboring population, we demand that their substance shall no longer be extorted from them in order to fill the pockets of eastern monopolists.

5. That unequal taxation is contrary to the first principles of justice and sound policy, and we call upon our Government, Federal and State, to use all necessary constitutional means to remedy this evil.

6. That the radical majority in the so-called Congress have proved themselves to be in favor of negro suffrage, by forcing it upon the people of the District of Columbia against their wish, solemnly expressed at the polls; by forcing it upon the people of all the Territories, and by their various devices to coerce the people of the South to adopt it; that we are opposed to negro suffrage, believing it would be productive of evil to both whites and blacks, and tend to produce a disastrous conflict of races.

7. That for their efforts to uphold the Constitution, we tender to the President and to the majority of the judges of the Supreme Court of the United States our hearty thanks.

8. That we are in favor of a Democratic convention of delegates from all the States, to be held at such time and place as may be agreed upon, and that the State central committee be authorized to concur with other proper committees in fixing time and place, and that we prefer Louisville, Kentucky, as the place.

9. That the Democratic newspapers of Ohio deserve our earnest and liberal support, and that an early and thorough organization of the party is indispensable.

Tennessee.

REPUBLICAN, FEBRUARY 22, 1867.

We, the representatives of the loyal people of Tennessee, in convention assembled, are thankful to Almighty God for the success of the arms

of the United States over the army of traitors, who sought to destroy the best government ever known to man, thereby saving us and our posterity the blessings and privileges of our republican institutions, and a solution of the heretofore doubtful problem that man is capable of self-government.

"We hold these truths to be self-evident:"

1. "That all men are created equal, endowed with certain inalienable rights," and therefore the law should afford equal protection to all in the exercise of these rights, and, so far as it can, insure perfect equality under the law.

2. That a State or a nation should be governed, controlled, and directed by those who have saved it in times of peril, and who seek to preserve it with friendly hands from foes and dangers, external and internal.

3. That a wise regard for the public safety sometimes renders it necessary that those who have sought resolutely to overthrow a government should not hastily be restored to the privileges of which they have deprived themselves by their crime of treason; certainly not until they have shown evidence of sincere repentance, and a disposition as energetically to support as they have in times past sought to destroy.

4. That rebellion is disfranchisement, and armed attempts to overthrow our common government treasonable expatriation; and the present franchise organic law is but the declaration of the handiwork of secession and rebellion. Those who have sought our country's ruin cannot be intrusted with its safety.

5. That lawless violence, reckless disregard of the rights of person and property, murder, assassination, arson, and kindred crimes, must be put down by the strong arm of power, and be made to feel that law is indeed a terror to evil-doers.

6 Therefore, in accordance with the above principles, we fully indorse the policy and action of the General Assembly of the State of Tennessee, in restricting the elective franchise to those who are not hostile to the Government, in extending it to those who proved their loyalty by imperiling their lives, and who need this privilege for their own protection, and in establishing a military organization which shall give necessary physical support to the moral power of the State government, becoming a salutary terror to evil-doers and a cheerful hope to those who do well.

7. That the "privileges and immunities" guarantied under the Constitution of our Union to the loyal from other States, and the pledge of freedom and equality in the declaration of American Independence, shall be *living truths* and *practical maxims* in Tennessee, for the protection of "life, liberty, and the pursuit of happiness."

8. That we have entire confidence in the integrity, wisdom, and ability of the Republican Union majority of Congress, and deem it signally fortunate that they, in whom alone the power resides to restore, preserve, and govern the country, have shown themselves so eminently fitted for these high duties, that no State should be admitted to representation in Congress without adopting the constitutional amendment.

9. That the Republican Union party of Tennessee are in favor of free speech and free discussion, and to this end we invite our friends from other States to come among us, and discuss the great issues now before the people, and we pledge the Republican Union party of Tennessee to tolerate all legitimate discussion, and at the same time claiming equal privileges on our part; and that any interference to prevent this will be regarded as an unwarranted act, and resisted to the last extremity.

10. That we honor the firmness, courage, and wisdom which have characterized the administration of our Chief Magistrate, the Hon. Wm. G. Brownlow, and while we sympathize with him in his bodily suffering, we admire the healthy mind, conscious to itself of rectitude, which bears with like equanimity the throes of pain and the perilous cares of State; and that we declare him the unanimous choice of the loyal people of Tennessee for our next Governor.

11. That we cover our faces with shame when we contemplate the disgrace brought upon our beloved State by the defection and degeneracy of her unprincipled adopted son, who by the bullet of an assassin has ascended to the Chief Magistracy of the nation; and we shall cordially endorse any action of Congress which shall legitimately deprive him of continued power to disturb the peace of the country.

"CONSERVATIVE," APRIL 17, 1867.

We, the Conservative men of Tennessee, adopt the following platform of principles:

1. We are in favor of the Union of the States under the Constitution of the United States.

2. We are the friends of peace and civil law, and that these great objects can be best promoted by legislation recognizing equal and exact justice to all—exclusive privileges to none.

3. We are in favor of the immediate restoration of our disfranchised fellow-citizens to all rights, privileges, and immunities of full and complete citizenship.

4. That our colored fellow-citizens, being now citizens of the United States and citizens of the State of Tennessee and voters of this State, are entitled to all the rights and privileges of citizens under the laws and Constitution of the United States and of the State of Tennessee.

5. We are opposed to the repudiation of the national debt, and are in favor of equal taxation as the proper method of paying the same.

6. That the establishment of a standing army in our State, in time of peace, is a flagrant and dangerous encroachment upon the rights and liberties of the citizen, heavily oppressive to the tax-payer, and evidently designed to overawe the voters at the ballot-box.

7. We cordially approve of the patriotic efforts of Andrew Johnson, President of the United States, in defending the Constitution, preserving the Union of the States, and maintaining the supremacy of the laws.

Alabama.

RESOLUTIONS OF THE GRAND COUNCIL OF THE UNION LEAGUE, APRIL, 1867.

Resolved, That the Alabama Grand Council of the Union League of America return thanks to the Congress of the United States for its patri-

otic action in affording to all the people an opportunity, on fair terms, to re-organize the government of the State, to put her destinies into the hands of true Union men, and to unite her again to her sister States by the only enduring bond of unswerving loyalty.

2. That we hail with joy the recurrence to the fundamental principle on which our forefathers achieved their independence—"that all men are created equal;" that we welcome its renewed proclamation as a measure of simple justice to a faithful and patriotic class of our fellow-men, and that we firmly believe that there could be no lasting pacification of the country under any system which denied to a large class of our population that hold upon the laws which is given by the ballot.

3. That while we believe that participation in rebellion is the highest crime known to the law, and that those guilty of it hold their continued existence solely by the clemency of an outraged but merciful Government, we are nevertheless willing to imitate that Government in forgiveness of the past, and to welcome to the Republican Union party all who, forsaking entirely the principles on which the rebellion was founded, will sincerely and earnestly unite with us in establishing and maintaining for the future a government of equal rights and unconditional loyalty.

4. That we consider willingness to elevate to power the men who preserved unswerving adherence to the Government during the war as the best test of sincerity in professions for the future.

5. That if the pacification now proposed by Congress be not accepted in good faith by those who staked and forfeited "their lives, their fortunes, and their sacred honor" in rebellion, it will be the duty of Congress to enforce that forfeiture by the confiscation of the lands, at least, of such a stiff-necked and rebellious people.

6. That the assertion that there are not enough intelligent loyal men in Alabama to administer the government is false in fact, and mainly promulgated by those who aim to keep treason respectable, by retaining power in the hands of its friends and votaries.

Arkansas.

REPUBLICAN, APRIL 5, 1867.

The people of the State of Arkansas, willing to associate together for the purpose of co-operating with the National Union Republican party of the nation in securing and maintaining equal legal and political rights to all the citizens of the Republic and restore the State to its political relations in the Union, now here in State convention assembled, do proclaim and declare the following declaration of principles on which they have unanimously agreed:

I. That we will ever defend the Constitution of the United States thereunder as the sacred palladium of our rights and liberties. That the Union of the States under the Constitution constitutes a national Republic, and not a mere league of independent States, and that the Constitution of the United States and the laws made in pursuance thereof are the supreme laws of the land, anything in the constitution or laws of any State to the contrary notwithstanding.

II. That we arraign the unprincipled and corrupt demagogues who for so many years held every office and exercised a despotic control over its legislation as the sole authors of the present deplorable condition of the State and its people. To convict them of the folly and crime of having brought upon the people of the State their present woes, let facts be stated.

1. They appropriated to their own use and squandered the grants of money and lands made to the State by the National Government for educational purposes, and then refused to provide free schools or make sufficient provision for the education of the youth of the State.

2. They in like manner appropriated to their own use and otherwise squandered the swamp land grant and all other grants of land made by the National Government to the State for internal improvements and other purposes; and refusing to make any provision therefor, the State is left to this day without a completed railroad or other work of internal improvement within her borders.

3. They issued the bonds of the State as a pretended basis for a banking capital, and having negotiated the bonds and appropriated the proceeds to their own use, the State is left to pay their bonds, with years of accumulated interest, amounting in the aggregate to millions of dollars.

4. In a time of profound peace, and when the people of the State were enjoying a degree of prosperity and happiness unparalleled in any country on the globe, these unscrupulous and reckless demagogues, actuated by none but the most selfish purposes and wicked ambition, with a design of founding a government based on human slavery, and governed and controlled by an aristocracy of office-holders and slave-owners, and in defiance of the expressed will of the people at the ballot-box, and in violation of their own pledges, passed an ordinance of secession, proclaimed the State out of the Union, made war upon the National Government, and by the use of vigorous conscription laws and a military rule, the despotism of which is without a parallel in the history of the world, they forced an unwilling and loyal people, who loved their country and its flag, to join in an effort to destroy the Government that had showered blessings on them and their fathers.

Having inaugurated the rebellion for these hateful purposes, they secured to themselves all the civil and military offices of their insurrectionary government, and they used the power thus usurped over the lives, liberty, and property of the people to coerce them to join in their treason and rebellion, and wickedly and wantonly protracted the struggle until one-third of their victims were in their graves, and the property of all impressed, wasted away, or destroyed.

6. Failing to destroy the Republic and rob the people of their liberty by force of arms, they returned and at once demanded to be restored to the offices and control of the State, and speedily possessed themselves of the legislative department, the supreme court, and other important offices. Again in power in the State they renewed the atrocious system of plunder and oppression. The brief respite enjoyed by the people of the State from the despotic control of these

political vampires, who fled the State in 1863 to avoid a just punishment for their crimes, had enabled a loyal provisional government, by an honest and economical administration, to accumulate in the treasury of the State over $150,000 in cash. The treasury is at once plundered by these men of this hard-earned money of the people; extravagance, corruption, favoritism, and oppression mark their every act; the loyal men of the State are wronged and oppressed, and denied redress; treason is made a virtue and loyalty a crime; the constitution of the State is set at defiance, and the pretended laws and decrees of the now defunct rebel government declared to be in full force and binding on loyal people living under the Constitution of the United States. The obligations and evidence of indebtedness of the rebel State government which these men issued to themselves, and obtained fraudulently and without consideration, and of which the most unscrupulous of these men hold large amounts, are declared to be binding on a loyal State and a loyal people; they refuse to take the necessary, reasonable, and just steps to restore the State to the Union and representation in Congress, and contemptuously reject terms of settlement the most magnanimous and liberal ever offered to men in their position, and up to the present moment continue to present an attitude of hostility to the National Government, its authority, and supporters, bordering on open rebellion, and dangerous alike to the peace of the nation and State, and the safety of loyal and law-abiding men. And Congress wisely and justly judged that reconstruction was impossible while such constitutional and chronic traitors, plunderers of the public treasury and oppressors of the people, were permitted to exercise the political power of the State, which they have usurped and so long held by fraud, deceit, and oppression.

III. That we recognize the power and right of the National Government to determine the method and apply the means of reconstructing the rebel States, and of providing lawful governments for the same, and do willingly abide by and heartily accept the measures adopted, or which may hereafter be necessarily prescribed by Congress for a full, perfect, and final reconstruction of said States; and to the end that the State may be admitted to its wonted position in the Union and representation in Congress; that the liberty and rights of every citizen may be secured and sacredly guarded and protected under an honest, competent, and loyal State government; that the credit of the State may be restored, and economy in the public expenditures secured; that the construction of railroads and other internal improvements so necessary to the prosperity of the State may be commenced and vigorously prosecuted; that an enlightened and judicious system of free common schools, providing for the education of all the children of the State, may be inaugurated; that emigration and capital from every quarter may be invited and induced to enter our State, and that peace, security, and prosperity may be restored to the State and all its people, we declare that we are in favor of immediate action under and in conformity to the acts of Congress, and we hereby tender to the major general commanding this district our hearty and cordial support and co-operation in the honest and faithful execution of the same.

IV. That we denounce the guilty authors of the late rebellion who refuse to acquiesce in the necessary, legitimate, and just results of their own folly and crime, and who are now counseling the people to renewed opposition and resistance to the legitimate and lawful authority of the National Government, as enemies of the Union, and all the dearest and best interests of the State and her people, and they deserve and should receive the scorn of every honest citizen who desires to see law, and order, and peace, security, and prosperity secured to the State.

V. That the most dangerous enemies of the nation and State are the disloyal newspapers and political demagogues, who, while they denounce the late action of Congress as illegal, unconstitutional, and despotic, nevertheless declare it to be their purpose to control, if they can, all action thereunder, with the declared purpose, as soon as representation in Congress is secured, of immediately repudiating their compact with the National Government, and by a change of the constitution of the State disfranchise the recently enfranchised citizens of the State, prohibit the education of their children, and adopt other reactionary and revolutionary measures.

VI. That the Congress of the nation is solemnly pledged not to recognize any State government made by and in the hands of open and declared enemies of the great principles of liberty and justice embraced in the measures of reconstruction; and more especially will Congress refuse to recognize a government in the hands of men who avow it to be their purpose to overthrow these great principles the moment they obtain congressional recognition of their dishonest and hypocritical action; and we warn every good citizen of the State who favors reconstruction and wishes to enjoy the blessings and benefits to be derived from our early restoration to the Union against the criminal folly of intrusting the work to such hands.

VII. That we heartily indorse all meetings and conventions heretofore held in the State which had in view the reconstruction of this State in harmony with the will of Congress.

VIII. That State taxation shall be equal and uniform, and that no discrimination should be made in favor of one species of property at the expense of another.

IX. That all the citizens of every county in the State who approve of the declaration of principles and purposes here announced are earnestly urged to meet in their respective counties and organize, and report their organization to the chairman of the State central committee, at Little Rock, in order that a united and harmonious effort may be made to secure equal rights and justice to all, just and good government, wisely and honestly administered, by loyal men.

North Carolina.

REPUBLICAN, MARCH 27, 1867.

Having assembled in the city of Raleigh, on the 27th of March, 1867, in conformity with a timely and patriotic call, reflecting the sentiments

of the loyal men of the State, and believing the time is at hand when an open and fearless expression of sentiment, opinion, and purpose is urgently demanded: Therefore,

1. *Resolved*, That in view of our present political condition, our relations to the National Government, and the people of all sections of the country, we do this day with proud satisfaction unfurl the brilliant and glorious banner of the Republican party, and earnestly appeal to every true and patriotic man in the State to rally to its support.

The splendid and patriotic record made by this great political organization, in standing by the General Government with an inflexible resolution, in carrying forward profound measures of statesmanship to a successful issue, and the powerful aid given by it in finally overthrowing and prostrating the most gigantic rebellion of ancient or modern times, should command the respect and challenge the admiration of every candid man.

2. That the American Congress is eminently entitled to the profound thanks of the whole country for its persevering, persistent, and heroic devotion to the great principles of human rights as enunciated in the Declaration of Independence; that in the name of the patriotic people of this State we feel warranted in cordially assenting to and accepting the reconstruction plan recently and finally adopted by that body; and to the end that peace and order may be permanently secured, and every industrial pursuit resumed and encouraged, we pledge ourselves to use every fair and legitimate means to influence public sentiment to the nearest possible approach to unanimity on this subject.

3. That we rejoice that the dogma, long propagated, of the right of peaceable secession under the Constitution, has been forever overthrown by the majestic uprising of the American people, in crushing out the late rebellion by force of arms, and that the doctrine of the supremacy of the General Government has been established, and that the paramount allegiance of the citizen has been acknowledged as due to the United States.

4. That we sincerely exult in the fact that as a nation we are now absolutely a nation of freemen, and that the sun in all his course over our wide-spread country no longer shines upon the brow of a slave. Without reservation, we heartily indorse the great measures of civil rights and impartial enfranchisement, without any property qualification, conferred without distinction of color, and that we are ready to unite in the early practical attainment of these inestimable privileges. Although the mortal remains of Abraham Lincoln now rest silently beneath the soil of his adopted State, yet his voice still rings like a clarion through the land, earnestly summoning every American citizen to the support of the great party of liberty and emancipation.

5. That as the most potent and efficient means by which the South can speedily regain her lost prosperity, we earnestly advocate the spreading of knowledge and education among all men, and that to the attainment of this great end, we demand and shall persistently and firmly insist upon the absolute right of free discussion and free speech on all subjects of public interest.

6. That we join in an earnest wish for the maintenance, untarnished and undimmed, of the public credit and plighted faith of the nation.

7. That in the maintenance of the position taken and the principles this day avowed, we earnestly invite the influence and co-operation of men of all political persuasions, who regard and cordially support the recent action of Congress as a solution of our present political difficulties; that we deprecate partizan violence, and desire peace and good-will toward all men; and if in an open and fearless effort, which we propose to make on every suitable occasion, to persuade and convince the people that our highest duty and truest interest are to be subserved by maintaining the principles of the Republican party, an earnest interest should be awakened, it will be from no other cause than a rigid adherence to what we regard as a sacred right and a solemn public duty.

South Carolina.

OF CHARLESTON REPUBLICANS, MARCH 22, 1867.

1. *Resolved*, That we give our cordial and entire sanction to the action of Congress for the restoration of the Union, and to the wise and just principles of the Republican party.

2. That in order to make the labors of all our loyal fellow-citizens more effectual for carrying out the provisions of Congress for the restoration of law and order in our State, as well as for the peace and prosperity of our entire country, we do form an association to be known as the "Union Republican party of South Carolina."

3. That we pledge our sacred honor, our fortunes, and our lives to serve our country, to preserve her institutions, and especially to aid her in keeping inviolate the national faith, which has been sacredly pledged to the payment of the national debt incurred to save the liberties of the country and to suppress rebellion, and that the people will not suffer this faith to be violated or impaired; but all debts incurred to support the rebellion, as they were unlawful, void, and of no obligation, shall never be assumed by the United States, nor shall South Carolina be permitted to pay any debt whatever which was contracted to aid the rebellion in any form.

4. That the nation owes to the brave men, white and colored, of our army and navy a debt of lasting gratitude for their heroic services in defence of the Constitution and the Union, and that, while we cherish with a tender affection the memories of the fallen, we pledge to their widows and orphans the nation's care and protection.

5. That as republican institutions cannot be preserved unless intelligence be generally diffused among all classes, we will demand of our legislature a uniform system of common schools, which shall be open to all, without distinction of race, color, or previous condition; such system to be supported by a general tax upon all kinds of property.

6. That we will favor a liberal system of public improvements, such as railroads, canals, and other works, and also such a system of awarding contracts for the same as will give all our fel-

low-citizens an equal and fair chance to share in them.

7. That we will also insist on such modification of the laws of the State as will do away with imprisonment for debt, except for fraud; and imprisonment of witnesses, except for willful absence; and especially to abolish, entirely and forever, the barbarous custom of corporal punishment for crime or any other cause.

8. That, as large land monopolies tend only to make the rich richer and the poor poorer, and are ruinous to the agricultural, commercial, and social interests of the State, the legislature should offer every practicable inducement for the division and sale of unoccupied lands among the poorer classes and as an encouragement to emigrants to settle in our State.

9. That the law of ejectment and distraint should be so modified as to protect equally the landlord and the tenant.

10. That provision should be made for the exemption of the poor man's homestead.

11. That the interests of the State demand a revision of the entire code of laws and the reorganization of the courts.

12. That the interests not only of the State, but of the whole country, demand every possible guaranty for the perpetuity of all the rights conferred upon the newly enfranchised portion of our fellow-citizens, and that, in the use of the sacred right of the elective franchise, we will seek to elevate to offices of trust and honor only those who are truly loyal, honest, and capable, irrespective of race, color, or previous condition.

13. The consideration of justice and humanity demand provision by the legislature for the protection and support of the aged, infirm, and helpless poor, irrespective of race, color, or previous condition.

14. That we will not support any candidate for office who will not openly indorse, advocate, and defend the principles adopted by the Union Republican party.

15. Relying upon Divine Providence for wisdom in our counsels, efficiency in our action, harmony among ourselves, with malice toward none and charity to all, we pledge our earnest and best efforts for the return of peace and prosperity to all our people, and for an early representation of our beloved State in the Congress of the United States.

Virginia Republican State Convention.

APRIL 17 AND 18, 1867.

Whereas, having for the first time in the history of Virginia assembled at her State capital, at the call of a Union Republican State committee, as a convention of Union men, for the purpose of ratifying the acts of the 39th and 40th Congresses, and adopting measures to unite all parties who earnestly and honestly desire that this legislation should be perfected in accordance with the express desire of Congress and carried out in good faith by the people of this State, we, therefore, in convention assembled, do

First. *Resolve*, That we return our sincere and heartfelt thanks to the 39th Congress for their recent legislation resulting in the passage of the Sherman-Shellabarger bill and its supplement, and certify with gratitude that the beneficial effects of such legislation are already visible in the increased security of loyal men, and in inducing immediate efforts toward reconstruction on the part of all classes; and that we do hereby pledge our earnest and persistent efforts to carry out in good faith, without evasion, with honesty of purpose, unflinching courage, and never-tiring energy, all its provisions, believing that by this course alone can permanent peace and prosperity be restored to the State and an early admission to the Union be secured.

2. That in the principles of the National Republican party of the United States we recognize all we can desire as a guide in our political future; that we adopt them as our platform, and pledge ourselves to their support, and cordially invite the co-operation of all classes of our fellow-citizens, without distinction of race or color, without regard to former political opinions or action, induced by such convictions. We invite them to join us, and pledge them a warm welcome to our ranks, and a full and free participation in all the advantages of our organization. And firmly believing that in the present condition of public affairs the Republican party offers the most available means through its organization for the speedy attainment of permanent reconstruction, we do hereby adopt its principles and platform as the basis and platform of the Union Republican party of Virginia.

3. That we adopt as part of our platform and as cardinal points in the policy of the Union Republican party of Virginia the following propositions: first, equal protection to all men before the courts, and equal political rights in all respects, including the right to hold office; second, a system of common-school education, which shall give to all classes free schools and a free and equal participation in all its benefits; third, a more just and equitable system of taxation, which shall apportion taxes to property, and require all to pay in proportion to their ability; fourth, a modification of the usury laws sufficient to induce foreign capital to seek investment in the State; fifth, encouragement to internal improvements and every possible inducement to immigration.

4. That in the noble utterances of the founders of our Constitution, we recognize a true appreciation of the great fact that parties or governments, to be prosperous or successful, must be founded or administered on the basis of exact and equal justice to all men; and we accept as our guides the great principles enunciated by them, first and most important of which is the great and glorious truth "that all men are created free and equal, are endowed with certain inalienable rights, and that among these are life, liberty, and the pursuit of happiness;" and we solemnly pledge, on the part of this convention and the party it represents, a strict adhesion to these sentiments, which, for the first time in the history of Virginia, a political organization is in a position to adopt in spirit and action as in name.

5. That believing the principles enunciated in the foregoing resolutions can be objectionable to no man who really loves the Union, and that they are the only true principles which can give to Virginia an early restoration to the Union

and enduring peace and prosperity, we solemnly pledge ourselves to support no man for an elective office who fails to join us in their adoption and enforcement, who fails to identify himself with the Union Republican party in spirit and action, or hesitates to connect himself openly and publicly with its platform as adopted here to-day.

6. That we recognize the great fact that the interests of the laboring classes of the State are identical, and that, without regard to color, we desire to elevate them to their true position; that the exaltation of the poor and humble, the restraint of the rapacious and the arrogant, the lifting up of the poor and degraded without humiliation or degradation to any; that the attainment of the greatest amount of happiness and prosperity to the greatest number is our warmest desire, and shall have our earnest and persistent efforts in their accomplishment; that while we desire to see all men protected in full and equal proportions, and every political right secured to the colored man that is enjoyed by any other class of citizens, we do not desire to deprive the laboring white men of any rights or privileges which they now enjoy, but do propose to extend those rights and privileges by the organization of the Republican party in this State.

KENTUCKY AND VIRGINIA RESOLUTIONS.

Kentucky Resolutions, November, 1798.

1. *Resolved*, That the several States composing the United States of America are not united on the principle of unlimited submission to their General Government; but that, by compact, under the style and title of a Constitution for the United States and of Amendments thereto, they constituted a general government for special purposes, delegated to that Government certain definite powers, reserving each State to itself the residuary mass of right to their own self-government; and that whensoever the General Government assumes undelegated powers, its acts are unauthoritative, void, and of no force: That to this compact each State acceded as a State, and is an integral party, its co-States forming as to itself the other party: That the government created by this compact was not made the exclusive or final *judge* of the extent of the powers delegated to itself; since that would have made its discretion, and not the constitution, the measure of its powers; but that, as in all other cases of compact among parties having no common judge, each party has an equal right to judge for itself, as well of infractions, as of the mode and measure of redress.

2. That the Constitution of the United States having delegated to Congress a power to punish treason, counterfeiting the securities and current coin of the United States, piracies and felonies committed on the high seas, and offences against the laws of nations, and no other crimes whatever, and it being true as a general principle, and one of the amendments to the Constitution having also declared, "that the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people;" therefore, also the same act of Congress, passed on the 14th day of July, 1798, and entitled, "An act in addition to the act entitled, 'an act for the punishment of certain crimes against the United States," as also the act passed by them on the 27th day of June, 1798, entitled "An act to punish frauds committed on the Bank of the United States,'" (and all other their acts which assume to create, define, or punish crimes other than those enumerated in the Constitution,) are altogether void and of no force, and that the power to create, define, and punish such other crimes is reserved, and of right appertains solely and exclusively, to the respective States, each within its own territory.

3. That it is true as a general principle, and is also expressly declared by one of the amendments to the Constitution, that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people;" and that no power over the freedom of religion, freedom of speech, or freedom of the press, being delegated to the United States by the Constitution, nor prohibited by it to the States, all lawful powers respecting the same did of right remain, and were reserved, to the States or to the people: That thus was manifested their determination to retain to themselves the right of judging how far the licentiousness of speech and of the press may be abridged without lessening their useful freedom, and how far those abuses which cannot be separated from their use should be tolerated rather than the use be destroyed; and thus, also, they guarded against all abridgment by the United States of the freedom of religious opinions and exercises, and retained to themselves the right of protecting the same, as this State, by a law passed on the general demand of its citizens, had already protected them from all human restraint or interference: And that, in addition to this general principle and express declaration, another and more special provision has been made by one of the amendments to the Constitution, which expressly declares that "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press," thereby guarding in the same sentence, and under the same words, the freedom of religion, of speech, and of the press, insomuch that whatever violates either throws down the sanctuary which covers the others, and that libels, falsehoods, and defamation, equally with heresy and false religion, are withheld from the cognizance of federal tribunals: That therefore the act of the Congress of the United States, passed on the 14th day of July, 1798, entitled "An act in addition to the act for the punishment of certain crimes against the United States," which does abridge the freedom of the press, is not law, but is altogether void and of no effect.

4. That alien friends are under the jurisdiction and protection of the laws of the State wherein they are; that no power over them has been delegated to the United States nor prohibited to the individual States distinct from their power over citizens; and it being true, as a general principle, and one of the amendments to the Constitution having also declared that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States,

are reserved to the States respectively or to the people," the act of the Congress of the United States, passed on the 22d day of June,1798, entitled "An act concerning aliens," which assumes power over alien friends not delegated by the Constitution, is not law, but is altogether void and of no force.

5. That in addition to the general principle as well as the express declaration that powers not delegated are reserved, another and more special provision inserted in the Constitution from abundant caution has declared "that the *migration* or importation of such persons as any of the States now existing shall think proper to admit shall not be prohibited by the Congress prior to the year 1808:" That this Commonwealth does admit the migration of alien friends described as the subject of the said act concerning aliens; that a provision against prohibiting their migration is a provision against all acts equivalent thereto, or it would be nugatory; that to remove them when migrated is equivalent to a prohibition of their migration, and is therefore contrary to the said provision of the Constitution and void.

6. That the imprisonment of a person under the protection of the laws of this Commonwealth on his failure to obey the simple *order* of the President to depart out of the United States, as is undertaken by the said act, entitled "an act concerning aliens," is contrary to the Constitution, one amendment to which has provided, that "no person shall be deprived of liberty without due process of law," and that another having provided "that in all criminal prosecutions the accused shall enjoy the right to a public trial by an impartial jury, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence," the same act undertaking to authorize the President to remove a person out of the United States who is under the protection of the law, on his own suspicion, without accusation, without jury, without public trial, without confrontation of the witnesses against him, without having witnesses in his favor, without defence, without counsel, is contrary to these provisions also of the Constitution, is therefore not law, but utterly void and of no force. That transferring the power of judging any person, who is under the protection of the laws, from the courts to the President of the United States, as is undertaken by the same act concerning aliens, is against the article of the Constitution which provides that "the judicial power of the United States shall be vested in courts, the judges of which shall hold their offices during good behavior;" and that the said act is void for that reason also; and it is further to be noted, that this transfer of judiciary power is to that magistrate of the General Government who already possesses all the executive, and a qualified negative in all the legislative powers.

7. That the construction applied by the General Government (as is evinced by sundry of their proceedings) to those parts of the Constitution of the United States which delegates to Congress a power to lay and collect taxes, duties, imposts, and excises; to pay the debts, and provide for the common defence and general welfare of the United States, and to make all laws which shall be necessary and proper for carrying into execution the powers vested by the Constitution in the Government of the United States, or any department thereof, goes to the destruction of all the limits prescribed to their power by the Constitution. That words meant by that instrument to be subsidiary only to the execution of the limited powers ought not to be so construed as themselves to give unlimited powers, nor a part so to be taken as to destroy the whole residue of the instrument: That the proceedings of the General Government under color of these articles will be a fit and necessary subject for revisal and correction at a time of greater tranquillity, while those specified in the preceding resolutions call for immediate redress.

8. That the preceding resolutions be transmitted to the Senators and Representatives in Congress from this Commonwealth, who are hereby enjoined to present the same to their respective houses, and to use their best endeavors to procure, at the next session of Congress, a repeal of the aforesaid unconstitutional and obnoxious acts.

9. *Lastly*, That the Governor of this Commonwealth be, and is hereby, authorized and requested to communicate the preceding resolutions to the legislatures of the several States, to assure them that this Commonwealth considers union for specified national purposes, and particularly for those specified in their late federal compact, to be friendly to the peace, happiness, and prosperity of all the States: that faithful to that compact, according to the plain intent and meaning in which it was understood and acceded to by the several parties, it is sincerely anxious for its preservation: that it does also believe, that to take from the States all the powers of self-government, and transfer them to a general and consolidated government, without regard to the special obligations and reservations solemnly agreed to in that compact, is not for the peace, happiness, or prosperity of these States: And that therefore this Commonwealth is determined, as it doubts not its co-States are, tamely to submit to undelegated and consequently unlimited powers in no man or body of men on earth: that if the acts before specified should stand, these conclusions would flow from them; that the General Government may place any act they think proper on the list of crimes, and punish it themselves, whether enumerated or not enumerated by the Constitution as cognizable by them; that they may transfer its cognizance to the President or any other person, who may himself be the accuser, counsel, judge, and jury, whose *suspicions* may be the evidence, his order the sentence, his officer the executioner, and his breast the sole record of the transaction; that a very numerous and valuable description of the inhabitants of these States, being by this precedent reduced as outlaws to the absolute dominion of one man, and the barrier of the Constitution thus swept away from us all, no rampart now remains against the passions and the power of a majority of Congress to protect from a like exportation or other more grievous punishment the minority

of the same body, the legislatures, judges, governors, and counselors of the States, nor their other peaceable inhabitants who may venture to reclaim the constitutional rights and liberties of the States and people, or who for other causes, good or bad, may be obnoxious to the views, or marked by the suspicions of the President, or be thought dangerous to his or their elections or other interests, public or personal; that the friendless alien has indeed been selected as the safest subject of a first experiment; but the citizen will soon follow, or rather has already followed; for already has a sedition act marked him as its prey: that these and successive acts of the same character, unless arrested on the threshold, may tend to drive these States into revolution and blood and will furnish new calumnies against republican governments, and new pretexts for those who wish it to be believed that man cannot be governed but by a rod of iron: that it would be a dangerous delusion, were a confidence in the men of our choice to silence our fears for the safety of our rights: that confidence is everywhere the parent of despotism; free government is founded in jealousy and not in confidence; it is jealousy and not confidence which prescribes limited constitutions to bind down those whom we are obliged to trust with power: that our Constitution has accordingly fixed the limits to which and no further our confidence may go; and let the honest advocate of confidence read the alien and sedition acts, and say if the Constitution has not been wise in fixing limits to the government it created, and whether we should be wise in destroying those limits? Let him say what the Government is if it be not a tyranny, which the men of our choice have conferred on the President, and the President of our choice has assented to and accepted over the friendly strangers, to whom the mild spirit of our country and its laws had pledged hospitality and protection: that the men of our choice have more respected the bare suspicions of the President than the solid rights of innocence, the claims of justification, the sacred force of truth, and the forms and substance of law and justice. In questions of power, then, let no more be heard of confidence in man, but bind him down from mischief by the chains of the Constitution. That this Commonwealth does therefore call on its co-States for an expression of their sentiments on the acts concerning aliens and for the punishment of certain crimes hereinbefore specified, plainly declaring whether these acts are or are not authorized by the federal compact? And it doubts not that their sense will be so announced as to prove their attachment unaltered to limited government, whether general or particular, and that the rights and liberties of their co-States will be exposed to no dangers by remaining embarked on a common bottom with their own: That they will concur with this Commonwealth in considering the said acts as so palpably against the Constitution, as to amount to an undisguised declaration that the compact is not meant to be the measure of the powers of the General Government, but that it will proceed in the exercise over these States of all powers whatsoever: That they will view this as seizing the rights of the States, and consolidating them in the hands of the General Government with a power assumed to bind the States, (not merely in cases made federal,) but in all cases whatsoever, by laws made, not with their consent, but by others against their consent: That this would be to surrender the form of government we have chosen, and to live under one deriving its powers from its own will, and not from our authority; and that the co-States, recurring to their natural right in cases not made federal, will concur in declaring these acts void and of no force, and will each unite with this Commonwealth in requesting their repeal at the next session of Congress.

Virginia Resolutions, December, 1798.

Resolved, That the General Assembly of Virginia doth unequivocally express a firm resolution to maintain and defend the Constitution of the United States and the constitution of this State against every aggression, either foreign or domestic; and that they will support the Government of the United States in all measures warranted by the former.

2. That this Assembly most solemnly declares a warm attachment to the Union of the States, to maintain which it pledges its powers; and that, for this end, it is their duty to watch over and oppose every infraction of those principles which constitute the only basis of that Union, because a faithful observance of them can alone secure its existence and the public happiness.

3. That this Assembly doth explicitly and peremptorily declare, that it views the powers of the Federal Government as resulting from the compact to which the States are parties, as limited by the plain sense and intention of the instrument constituting that compact, as no further valid than they are authorized by the grants enumerated in that compact; and that, in case of a deliberate, palpable, and dangerous exercise of other powers, not granted by the said compact, the States, who are parties thereto, have the right, and are in duty bound, to interpose for arresting the progress of the evil, and for maintaining, within their respective limits, the authorities, rights, and liberties appertaining to them.

4. That the General Assembly doth also express its deep regret that a spirit has, in sundry instances, been manifested by the Federal Government to enlarge its powers by forced constructions of the constitutional charter which defines them; and that indications have appeared of a design to expound certain general phrases (which, having been copied from the very limited grant of powers in the former Articles of Confederation, were the less liable to be misconstrued) so as to destroy the meaning and effect of the particular enumeration which necessarily explains and limits the general phrases, and so as to consolidate the States, by degrees, into one sovereignty, the obvious tendency and inevitable result of which would be to transform the present republican system of the United States into an absolute, or, at best, a mixed monarchy.

5. That the General Assembly doth particularly protest against the palpable and alarming infractions of the Constitution in the two late

cases of the "alien and sedition acts," passed at the last session of Congress; the first of which exercises a power nowhere delegated to the Federal Government, and which, by uniting legislative and judicial powers to those of executive, subverts the general principles of free government, as well as the particular organization and positive provisions of the Federal Constitution; and the other of which acts exercises, in like manner, a power not delegated by the Constitution, but, on the contrary, expressly and positively forbidden by one of the amendments thereto—a power which, more than any other, ought to produce universal alarm, because it is levelled against the right of freely examining public characters and measures, and of free communication among the people thereon, which has ever been justly deemed the only effectual guardian of every other right.

6. That this State, having by its convention, which ratified the Federal Constitution, expressly declared that, among other essential rights, "the liberty of conscience and the press cannot be cancelled, abridged, restrained, or modified, by any authority of the United States," and from its extreme anxiety to guard these rights from every possible attack of sophistry and ambition, having, with other States, recommended an amendment for that purpose, which amendment was, in due time, annexed to the Constitution—it would mark a reproachful inconsistency, and criminal degeneracy if an indifference were now shown to the most palpable violation of one of the rights thus declared and secured, and to the establishment of a precedent which may be fatal to the other.

7. That the good people of this Commonwealth, having ever felt, and continuing to feel, the most sincere affection for their brethren of the other States, the truest anxiety for establishing and perpetuating the union of all, and the most scrupulous fidelity to that Constitution, which is the pledge of mutual friendship and the instrument of mutual happiness; the General Assembly doth solemnly appeal to the like dispositions in the other States, in confidence that they will concur with this Commonwealth in declaring, as it does hereby declare, that the acts aforesaid are unconstitutional, and that the necessary and proper measures will be taken by each for co-operating with this State in maintaining unimpaired the authorities, rights, and liberties reserved to the States respectively, or to the people.

8. That the Governor be desired to transmit a copy of the foregoing resolutions to the executive authority of each of the other States, with a request that the same may be communicated to the legislature thereof, and that a copy be furnished to each of the Senators and Representatives representing this State in the Congress of the United States.

XXII.

POLITICAL MISCELLANY.

ELECTIVE FRANCHISE IN THE STATES.

In Tennessee.

1867, February 6—The HOUSE passed a bill striking the word "white" from the franchise law of the State*—yeas 38, nays 25. The yeas were Messrs. Anderson of Hamilton, Anderson of White, Baker, Blackman, Clements, Clingan, Donaldson, Doughty, Dowdy, Elliott, Fuson, Garner, Gilmer, Hudson, Hale, Kerchival, Maxwell, McNair, Morris, Murphy, Norman, Patton, Porter, Puckett, Raulston, Richards, Shepherd, Smith of Hardeman, Smith of Obion, Taylor, Thornburgh, Underwood, Waters, Welsh, Wines, Woodcock, Woods, and Speaker (*pro tem.*) Mulloy—38.

February 18—The SENATE concurred—yeas 14, nays 7.

March 21—The supreme court of the State unanimously sustained the constitutionality of the franchise law.

A law was also passed containing this provision:

"That in all State, district, county, and all other elections, such aliens as have resided more than one year in the United States, and more than six months in the State of Tennessee, shall have the right of the elective franchise: *Provided*, That such persons shall have previously declared their intention to become citizens of the United States, and that they shall not have participated in the late rebellion."

In Ohio.

1867, April 6—This joint resolution passed:

A RESOLUTION

Relative to an amendment of the constitution, providing for the extension of the elective franchise:

Resolved, By the General Assembly of the State of Ohio, three-fifths of the members elected to each house agreeing thereto, that it be and is hereby proposed to the electors of this State, to vote at the next annual October election upon the approval or rejection of the following amendment as a substitute for the first section of the fifth article of the constitution of this State, to wit: "Every male citizen of the United States of the age of twenty-one years, who shall have been a resident of the State one year next preceding the election, and of the county, township, or ward in which he resides such time as may be provided by law, except such persons as have borne arms in support of any insurrection or rebellion against the Government of the United States, or have fled from their places of residence to avoid being drafted into the military service thereof, or have deserted the military or naval service of said Government in time of war, and

* For copy of the law see Political Manual for 1866, pp. 27, 28.

had not subsequently been honorably discharged from the same, shall have the qualifications of an elector, and be entitled to vote at all elections."

In the SENATE, the vote was yeas 23, nays 11, strictly party vote except that Mr. Combs (Republican) voted in the negative.

In Wisconsin.

Both houses have agreed to proposing an amendment to the constitution so as to extend suffrage to *all persons** over the age of twenty-one years. The vote in the Senate was 18 to 9, not voting 6.

In New Jersey.

A proposition to strike the word "white" from the constitution was defeated in the house —yeas 20, nays 38, as follow:

YEAS—Messrs. Atwater, Sayre, Murphy, Edwards, Baldwin, Voorhees, Runyon, A. P. Condit, Bruere, Stansbury, Mount, Estler, J. D. Condit, Wolsieffer, Moore, Custis, Ball, Trimble, Morris, Falkenbury—20.

NAYS—Messrs. *Allen*, *Taylor*, *Iliff*, *Davenport*, W. W. Clark, *Vail*, *Lippincott*, Fort, *Christie*, *White*, *Pickel*, *Henry*, Coles, Crozer, Ayres, Tyrrell, *W. J. Iliff*, *Evans*, H. F. Clark, *Vliet*, Nixon, Garrison, Collings, *Wilson*, *Thompson*, Hendrickson, *Hedden*, *Dwyer*, Beesley, *Van Emburgh*, Jarrard, *Fulmer*, *Corlies*, *Ward*, *Perrine*, *Givens*, Coate, *Fawger*—38.

In New York.

The Republican State convention to nominate delegates at large for a constitutional convention unanimously adopted this resolution:

Resolved, That the delegates to the coming constitutional convention, this day appointed, be instructed to support by every honorable means an amendment to the constitution giving to the black man the same rights of ballot as to the white man.

In Kansas.

A proposition to extend the elective franchise to women is pending.

A PROPOSED SUBSTITUTE FOR THE CONSTITUTIONAL AMENDMENT.

In February, 1867, an effort was made to prepare a constitutional amendment to be substituted for that proposed by Congress. The plan given below was published, and was declared to be approved by President Johnson, and submitted to the Legislature of North Carolina, but was not favorably received:

Whereas it has been announced by persons high in authority that propositions from the southern States having in view the adjustment of our present political troubles would be received and considered, &c: Therefore,

Resolved by the Legislature of the State of ——, That the Congress of the United States be requested to propose to the legislatures of the several States the following amendment to the Constitution of the United States:

ARTICLE 14, SEC. 1 No State under the Constitution has a right of its own will to renounce its place in or to withdraw from the Union; nor has the Federal Government any right to eject a State from the Union, or to deprive it of its equal suffrage in the Senate or of representation in the House of Representatives. The Union under the Constitution shall be perpetual.

SEC. 2. The public debt of the United States, authorized by law, shall ever be held sacred and inviolate; but neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the Government or authority of the United States.

SEC. 3. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the States in which they reside; and the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States. No State shall deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

SEC. 4. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when any State shall, on account of race or color or previous condition of servitude, deny the exercise of the franchise at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, members of the legislature, and other officers elected by the people, to any of the male inhabitants of such State being twenty-one years of age and citizens of the United States, then the entire class of persons so excluded from the exercise of the elective franchise shall not be counted in the basis of representation.

And whereas, &c., be it further resolved by the Legislature of ——, That the following article shall be adopted as an amendment to, and become a part of the constitution of the State of ——.

ARTICLE —. Every male citizen who has resided in this State for one year, and in the county in which he offers to vote six months immediately preceding the day of election, and who can read the Declaration of Independence and the Constitution of the United States in the English language and write his name; or who may be the owner of two hundred and fifty dollars' worth of taxable property, shall be entitled to vote at all elections for governor of the State, members of the legislature and all other officers the election of whom may be by the people of the State: *Provided*, That no person by reason of this article shall be excluded from voting who has heretofore exercised the elective

*The following paragraph from the *New York Tribune* is apposite:

Lucy Stone and H. B. Blackwell, citizens of New Jersey, have made an investigation, the result of which is remarkable, and proves that previously to 1776 only men voted, but that in 1776 the original State constitution conferred the franchise on "*all inhabitants*" (men or women, white or black) possessing the prescribed qualifications of £50 clear estate and twelve months' residence, and this constitution remained in force until 1814. In 1790, the Legislature, in an act regulating elections, used the words "he or she" in reference to voters. In 1797, another act relative to elections repeatedly designates the voters as "he or she." In the same year, 1797, seventy-five women voted in Elizabethtown for the Federal candidate. In 1800 women generally voted throughout the State in the presidential contest between Jefferson and Adams. In 1802 a member of the legislature from Hunterdon county was actually elected, in a closely contested election, by the votes of two or three women of color. In 1807, at a local election in Essex county for the location of the county seat, men and women generally participated, and were jointly implicated in very extensive frauds. In the winter of 1807–8, the legislature, in violation of the terms of the constitution, passed an act restricting suffrage to free white male adult citizens, and, in reference to these, virtually abolished the property qualification of £50, thus extending it to all white male tax-payers, while excluding all women and negroes. In 1820 the same provisions were repeated, and remained unchanged until the adoption of the present constitution in 1844.

franchise under the constitution or laws of this State, or who, at the time of the adoption of this amendment, may be entitled to vote under said constitution and laws.

THE ELECTIONS OF 1867.

In NEW HAMPSHIRE, the vote stood: *Governor*—Harriman, Republican, 35,776; Sinclair, Democrat, 32,733. Republican majority in Legislature, about 75.

In CONNECTICUT, the vote stood: *Governor*—Hawley, Republican, 46,585; English, Democrat, 47,575. *State Legislature:* SENATE—Republicans 11, Democrats 10. HOUSE—Republicans 124, Democrats 114. Republican majority on joint ballot, 11.

In RHODE ISLAND, the vote stood: *Governor*—Burnside, Republican, 7,554; Pierce, Democrat, 3,350. The legislature is largely Republican.

In MARYLAND, the vote on calling a convention to revise the constitution of the State, was: For a convention, 34,534; against, 24,136.

In Maryland, a new registry law was passed, directing the registering of "all white male persons" over twenty-one, not criminals or lunatics, and possessing sufficient residence. The legislature also passed an act authorizing and directing the comptroller of that State to examine, adjust, and pay all claims presented to him for settlement by the officers and members, and others of the General Assembly of 1861. It rejected a bill to authorize colored persons to testify in the courts. It provided for the appointment by the governor, by the advice and consent of the senate, in each county, of a "commissioner of slave statistics," to prepare statements of the names, number, age, sex, and physical condition of the slaves in the respective counties at the time of the adoption of the State constitution in 1864, to state whether they were slaves for life or term of years, and whether they were enlisted or drafted into the military service of the United States, so far as is known to said owners or others, and in what regiment they were placed, and what compensation, if any, has been received by such owners from the State or General Government for such slaves—the lists to be preserved among the public records of the counties, and declared to be legal evidence of ownership, &c. The commissioners are to receive twenty-five cents *per capita* for each slave, to be paid by the former owner.

CONSTITUTIONAL CONVENTIONS.

A convention has recently been chosen in NEW YORK by the votes of all persons qualified to vote for members of the Assembly; but no person was allowed to vote who could not, if challenged, take and subscribe this oath:

"I (A. B.) do solemnly swear (or affirm) that I have never voluntarily borne arms against the United States since I have been a citizen thereof; that I have voluntarily given no aid, countenance, counsel, or encouragement to persons engaged in armed hostility thereto; that I have neither sought nor accepted, nor attempted to exercise, the functions of any office whatever under any authority or pretended authority in hostility to the United States; that I have not yielded a voluntary support to any pretended government, authority, power, or constitution within the United States, hostile or inimical thereto, and did not wilfully desert from the military or naval service of the United States, or leave this State to avoid the draft during the late rebellion."

The convention is to meet in Albany on the first Tuesday in June. The new constitution is to be submitted in November next—as a whole or otherwise, as the convention may determine—to a vote of those qualified to vote for delegates. The convention stands, politically, Republicans 100, Democrats 60.

A convention was chosen in MARYLAND, "by the registered voters thereof," on the second Wednesday of April, in which St. Mary's county has three delegates; Kent, 4; Calvert, 3; Charles, 3; Baltimore county, 7; Talbot, 4; Somerset, 5; Dorchester, 4; Cecil, 5; Prince George's, 4; Queen Anne's, 4; Worcester, 5; Frederick, 7; Harford, 5; Caroline, 4; Baltimore city, 21; Montgomery, 4; Allegany, 6; Carroll, 6; Howard, 4; Anne Arundel, 4; and Washington, 6. Said constitution it is provided, shall contain a "clause prohibiting the legislature from making any law providing for payment by this State for persons heretofore held as slaves." The convention is to meet in Annapolis, on the second Wednesday of May, 1867, the compensation of members to be five dollars per day and mileage, and the president of the convention is authorized to order the payment of the compensation above provided, and the treasurer required to pay the same, in conformity with said order. The constitution is to be submitted to the legal and qualified voters for their ratification or rejection, at such time, in such manner, and subject to such rules and regulations as the convention may prescribe. Judges of election, clerks of court, or sheriffs failing or neglecting to perform any duties required of them respecting these elections, are made liable to indictment, and fine of $1,000 and imprisonment of six months. The convention is unanimously Democratic and "Conservative," the Republicans declining to run candidates.

In MICHIGAN, a Convention has been chosen, with a large Republican supremacy.

Statement of the Public Debt of the United States on the 1st of April, 1867.

Debt bearing coin interest		$1,499,381,591 80
Debt bearing currency interest		734,280,780 00
Matured debt not presented for payment		12,825,658 32
Debt bearing no interest.—U. S. Notes	$375,417,249 00	
Fractional currency	29,217,494 96	
Gold certificates of deposit	12,590,600 00	
		417,225,343 96
Total debt		2,663,713,374 18
Amount in Treasury, Coin	105,956,477 22	
" " Currency	34,328,826 52	
		140,285,303 74
Amount of Debt, less Cash in the Treasury		$2,523,428,070 44

To find a reference in the text, add 126 to the paging in the index; the paging having been changed after the printing of the earlier editions.

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