

The Western Democrat. CHARLOTTE, N. C.

IMPORTANT LEGAL OPINION OF CHIEF JUSTICE CHASE.

From the Raleigh Standard.

At a recent term of the United States Circuit Court, held in this City, his honor Chief Justice Chase delivered the following important opinion...

There is no question of the liability of the defendant to the demand of the plaintiffs...

Upon these facts it is insisted that the defendant is discharged from his liability to the plaintiffs...

To maintain these propositions the counsel for the defendant rely upon the decisions of the Supreme Court of the United States...

But these decisions do not, in our judgment, sustain the propositions in support of which they are cited.

There is no doubt that the State of North Carolina by the acts of the Convention of May, 1861...

But these acts did not effect, even for a moment, the separation of North Carolina from the Union...

The National Constitution declares that "Treason against the United States shall consist only in levying war against them..."

The word "only" was used to exclude from the criminal jurisdiction of the new Republic the odious doctrines of constructive treason...

War, therefore, levied against the United States by citizens of the Republic under the pretended authority of the new State government of North Carolina...

It has been supposed, and by some strenuously maintained that the North Carolina Ordinance of 1861, which purported to repeal the North Carolina Ordinance of 1789...

No elaborate discussion of the theoretical question thus presented seems now to be necessary...

Courts have no policy and can exercise no political powers. They can only declare the law...

A poet intended to say, "See the pale martyr in a sheet of fire," instead of which the printer made him say, "See the pale martyr with his shirt on fire."

and demanding immense efforts and immense expenditures of treasure and blood for their defeat and suppression...

But it is said that this is the doctrine of the Supreme Court. We think otherwise.

In modern times it is the usual practice of civilized governments attacked by organized and formidable rebellions...

When the strife of arms is over, such governments, therefore, exercising still their political discretion, address themselves mainly to the work of conciliation and restoration...

These principles, common to all civilized nations, are those which regulated the action of the Government of the United States during the war of the rebellion...

The National Government has steadily sought to facilitate restoration with adequate guaranties of union, order and equal rights.

On no occasion, however, and by no act have the United States ever renounced their constitutional jurisdiction over the whole territory...

So, too, in the trial and punishment of criminals and offenders, he may supersede the civil jurisdiction. His power is to be exercised in these special emergencies...

These are strictly military powers, to be exercised by military authority—not by the civil authority or by civil officers appointed by him to perform ordinary civil duties...

This, in my judgment, is the whole scope of the military power conferred by this act, and in arriving at this construction of the act...

WHO ARE ENTITLED TO REGISTRATION. The following summary as to who are entitled to vote...

1. The oath prescribed in the supplemental act defines all the qualifications required, and every person who can take the oath is entitled to have his name entered upon the list of voters.

2. The board of registration have no authority to administer any other oath to the persons applying for registration than this prescribed oath...

3. As to citizenship and residence. The applicant for registration must be a citizen of the State and of the United States, and must be a resident of a county included in the election district.

4. An unnaturalized person cannot take this oath, but an alien who has been naturalized, can take it, and no other proof of naturalization can be required from him.

5. No one who is not twenty-one years of age at the time of registration can take the oath, for he must swear that he has then attained that age.

6. No one who has been disfranchised for participation in any rebellion against the United States, or for felony committed against the laws of any State, or of the United States, can take this oath.

7. The actual participation in a rebellion, or the actual commission of a felony, does not amount to disfranchisement. The sort of disfranchisement here meant is that which is declared by competent authority...

8. No law of the United States has declared the penalty of disfranchisement for participation in the rebellion alone. Nor is it known that any such law exists in either of these ten States...

ATTORNEY GENERAL'S OPINION OF THE POWERS OF MILITARY COMMANDERS, AND A SUMMARY OF THE QUALIFICATIONS OF VOTERS.

The following extract covers the conclusions of the Attorney General in reference to the power of removal of State officers by the military commanders of the several military districts:

I find it impossible, under the provisions of this act, to comprehend such an official as a Governor of one of these States, appointed to office by one of these military commanders. Certainly, he is not a Governor recognized by the laws of the State...

Two elements must concur in order to disqualify a person under these classes: First, the office and official oath to support the Constitution of the United States; second, engaging afterwards in rebellion...

11. Persons who have, prior to the rebellion, been members of the Congress of the United States, or members of a State Legislature, are subject to disqualification...

12. All the executive or judicial officers of any State who took an oath to support the Constitution of the United States are subject to disqualification, and in these I include county officers, as to whom I made a reservation in the opinion heretofore given.

13. Persons who exercised mere agencies or employments under State authority, are not disqualified; such as commissioners to lay out roads, commissioners of public works, visitors of State institutions, directors of State banks...

ENGAGING IN REBELLION. Having specified what offices held by any one prior to the rebellion come within the meaning of the law, it is necessary next to set forth what subsequent conduct fixes upon such person the offence of engaging in rebellion...

14. An act to fix upon a person the offence of engaging in rebellion under this law must be an overt and voluntary act, done with the intent of aiding or furthering the common unlawful purpose. A person forced into the rebel service by conscription, or under a paramount authority which he could not safely disobey, and who would not have entered such service if left free to the exercise of his own will, cannot be held to be disqualified from voting.

15. Mere acts of charity, where the intent is to relieve the wants of the object of such charity, and not done in aid of the cause in which he may have been engaged, do not disqualify. But organized contributions of food and clothing for the general relief of persons engaged in the rebellion, and not of a merely sanitary character, but contributed to enable them to perform their unlawful object, may be classed with acts which do disqualify.

16. All those who, in legislative or other official capacity, were engaged in the furtherance of the common unlawful purpose, where the duties of the office necessarily had relation to the support of the rebellion, Congresses and Legislatures, diplomatic agents of the rebel Confederacy, and other officials whose offices were created for the purpose of more effectually carrying on hostilities, or whose duties appertained to the support of the rebel cause, must be held to be disqualified.

17. The duties of the Board appointed to superintend the elections. This board, having the custody of the list of registered voters in the district for which it is constituted, must see that the name of the person offering to vote is found upon the registration list, and if such proves to be the fact, it is the duty of the board to receive his vote. They cannot receive the vote of any person whose name is not upon the list, though he may be ready to take the registration oath...

18. The mode of voting is provided in the act to be by ballot. The board will keep a record and poll-book of the election, showing the votes, list of voters, and the persons elected by a plurality of the votes cast at the election, and make returns of these to the Commanding General of the District.

19. The board appointed for registration and for superintending the elections, must take the oath prescribed by the act of Congress approved July 2, 1862, entitled "an act to prescribe an oath of office."

20. I have the honor to be, with great respect, Sir, your obedient servant. HENRY STANBERRY, Attorney Gen'l. Washington, June 12, 1862.

STENHOUSE & MACAULAY, COMMISSION MERCHANTS, 43 Stone Street, New York.

except, perhaps Virginia, as to which State special instructions will be given.

7. As to disfranchisement arising from having held office followed by participation in rebellion. This is the most important part of the oath, and requires strict attention to arrive at its meaning. I deem it proper to give the exact words. The applicant must swear or affirm as follows:

"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 an 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 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."

Two elements must concur in order to disqualify a person under these classes: First, the office and official oath to support the Constitution of the United States; second, engaging afterwards in rebellion.

A person who has held an office and taken the oath to support the Federal Constitution, and has not afterwards engaged in rebellion, is not disqualified. So, too, a person who has engaged in rebellion, but has not theretofore held an office and taken that oath, is not disqualified.

8. Officers of the United States. As to these the language is without limitation. The person who has at any time prior to the rebellion held any office, civil or military, under the United States, and has taken an official oath to support the Constitution of the United States, is subject to disqualification.

9. Military officers of any State, prior to the rebellion, are not subject to disqualification.

10. Municipal officers, that is to say, officers of incorporated cities, towns and villages, such as mayors, aldermen, town council, police, and other city or town officers, are not subject to disqualification.

11. Persons who have, prior to the rebellion, been members of the Congress of the United States, or members of a State Legislature, are subject to disqualification. But those who have been members of conventions framing or amending the constitution of a State, prior to the rebellion, are not subject to disqualification.

12. All the executive or judicial officers of any State who took an oath to support the Constitution of the United States are subject to disqualification, and in these I include county officers, as to whom I made a reservation in the opinion heretofore given.

13. Persons who exercised mere agencies or employments under State authority, are not disqualified; such as commissioners to lay out roads, commissioners of public works, visitors of State institutions, directors of State banks, notaries public, commissioners to take acknowledgements of deeds, and lawyers.

ENGAGING IN REBELLION. Having specified what offices held by any one prior to the rebellion come within the meaning of the law, it is necessary next to set forth what subsequent conduct fixes upon such person the offence of engaging in rebellion. I repeat that two things must exist as to any person to disqualify him from voting: first, the office held prior to the rebellion, and afterwards, participation in the rebellion.

14. An act to fix upon a person the offence of engaging in rebellion under this law must be an overt and voluntary act, done with the intent of aiding or furthering the common unlawful purpose. A person forced into the rebel service by conscription, or under a paramount authority which he could not safely disobey, and who would not have entered such service if left free to the exercise of his own will, cannot be held to be disqualified from voting.

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STATE NEWS.

HON. R. C. PURYEAR.—The numerous friends and admirers of this gentleman will be greatly gratified to learn that he is recovering from a stroke of paralysis, and is in a fair way to become entirely restored.

N. C. RAILROAD.—The Eighteenth Annual Meeting of the Stockholders of the North Carolina Railroad Company will be held in the town of Greensboro, on Thursday, the 11th day of July next.

THE GUANO COMPANY.—It has been announced heretofore that the valuable and beautiful property just north of this city, known as "Hilton," had been purchased by gentlemen who propose to establish a large Guano manufactory. To do this it is proposed to raise a joint stock company, with a capital stock of two hundred and fifty thousand dollars, one-half of which has already been subscribed by citizens of Baltimore, on condition that a like amount shall be subscribed in North and South Carolina.

CASE OF DISTRICT ATTORNEY STARBUCK.—It now appears that U. S. District Attorney Starbuck, before taking the "iron-clad" test oath, actually consulted Attorney General Speed, submitting the circumstances for his review. The first law officer of the government believed Mr. S. could take it with propriety in a legal view, and in a conscientious aspect that gentleman had no doubt of his fitness.

CIRCUIT COURT.—This Court adjourned on Monday afternoon. We learn that the investigations in the matter of the presentment in the case of District Attorney Starbuck, satisfied the Court that no action could be sustained, and the case was dismissed.

NORTH CAROLINA RAILROADS.—Information received at Washington from North Carolina announces the fact that proceeding will soon be instituted to force the Railroads of this State, in which the State has an interest, into bankruptcy, as they are insolvent, in reality, and are only allowed to keep in running order through the sufferance of their creditors.

ADMINISTRATOR'S SALE. As Administrator of Daniel Hoffman, deceased, I will sell in the town of Dallas, on Friday the 12th day of July next, the property known as Hoffman's Hotel. Also, one other House and Lot located in front and east of the Court House (1/2 acre). Also, 4 acres adjoining said town, on which is located a good Tan Yard. Also, 3 1/2 acre Lots adjoining the Tan Yard. Also, 288 acres of Land situated 1 1/2 miles South of Dallas, known as Hoffman's Mills, consisting of Flouring Mills, Saw Mill, Cotton Gin, &c., subject to the Widow's Dower.

TERMS.—A credit of twelve months will be given with approved security. W. H. HOFFMAN, Administrator. June 10, 1867. 4w

NOTICE TO FARMERS. Farmers wishing to purchase Agricultural Implements of any kind, Thrashing Machines, Fans, Reapers, Mowers, Horse Rakes, Corn Mills, Corn Shellers, Straw Cutters and Plows of any kind, can get them from us at the Baltimore retail price, with freight and drayage added.

W. H. HOFFMAN & SONS, Baltimore. HUTCHISON, BURROUGHS & CO. E. N. Y. HUTCHISON, J. C. BURROUGHS, B. A. SPRINGS. Charlotte, June 17, 1867.

BINGHAM SCHOOL, MEBANEVILLE, N. C. SESSION OF 1867. Fall Term opens July 24th. Course of instruction CLASSICAL, MATHEMATICAL and COMMERCIAL. For Circular address Col. W. M. BINGHAM. June 17, 1867. 6w

Teeth Extracted Without Pain, BY A NEW REMEDY. DR. JNO. H. WATY is prepared to administer the "Atrous Oxide Gas" in extracting Teeth. This agent has been successfully used in thousands of cases in the principal cities, without the slightest danger.

Freedom from pain or danger guaranteed. Office No. 5, Granite Row. Charlotte, June 17, 1867. 3m

Sale of Valuable Real Estate. On Tuesday, the 9th day of July ensuing, will be sold at public sale, the FAIR GROUNDS belonging to the Mecklenburg Agricultural Society.

The property contains 12 acres of land, more or less, situated within a short distance of the corporate limits of Charlotte, and therefore most desirable for building sites. Sale will take place on the Public Square at 12 o'clock M. TERMS CASH. Sale positive. Any information regarding the property may be had of Col. John A. Young, Charlotte, N. C.

A. B. DAVIDSON, President M. A. Society. J. E. STENHOUSE, NEW YORK. ALLAN MACAULAY, CHARLOTTE, N. C.

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Prompt personal attention given to the sale of Cotton, Cotton Yarns, Naval Stores, &c., and the purchase of Merchandise generally.

Consignments solicited. June 10, 1867.

EXECUTIVE ACTION UNDER THE OPINION OF THE ATTORNEY GENERAL.—We have satisfactory authority for saying that there is no foundation for the industrious representations multiplied all over the country to the effect that because the President has been officially advised, and having with his Cabinet approved the advice, of the invalidity of the removals and appointments of civil officers by the usurping commandants at the South, he is, therefore, about to rush precipitately to a complete nullification of all that has been done by these Generals, without discrimination and irrespective of expediency.

These statements are altogether groundless, and calculated to excite and inflame in advance the disapprobation of all who think they realize that some progress, however little, has been made toward a restoration of the South, and who would regret to see this progressive movement thrust back to its starting point. Even in such flagrant examples of usurpation as those of Sheridan in the cases of the Governor and Judges at New Orleans, now that the wrong is to be redressed not attempted, the question is viewed as one of rational expediency, to be governed by the circumstances, as they are now, and not as they were when the outrage was committed.

We learn that investigations are to be made, reports are to be had, and the whole matter deliberated upon as a practical question in every one of these cases of infraction of the laws of Congress and the principles of the Constitution. In a word, the President will act efficiently, but he will act remedially, not vindictively.

Washington Intelligencer.

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