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THE DAILY JOURNAL.

WILMINGTON, N. C.

WEDNESDAY, JUNE 19, 1867.

GOVERNMENT IN THE SOUTH

LATIONS OF THE CIVIL AND MILITARY

wers of the Military Commanders, and Summary of the Qualifications of Voters.

> ATTORNEY GENERAL'S OFFICE,) June 12, 1867.

SIR-On the 24th ultimo I had the honor to transmit for your consideration my opinion upon some of the questions arising unthe reconstruction acts therein referred to. I now proceed to give my opin-ion on the remaining questions, upon which the military commanders require instruc-

The original act recites in its preamble that "no legal State governments or ade-quate protection for life or property exist" in those ten States, and that "it is neces-

sary that peace and good order should be enforced" in those States "until loyal and blican State governments can be le-

gally established."

The first and second sections divide these States into five military districts, subject to the military authority of the United States as thereinafter prescribed, and make it the duty of the President to assign from the officers of the army, a general officer to the command of each district, and to furnish him with a military force to perform his duties and enforce his authority within his

The third section declares, "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 try offenders, or, when in his judgment it may be necessary for the trial of offenders, he shall have power to organize military com-missions or tribunals for that purpose; and all interference under color of State anthority with the exercise of military au-thority under this act shall be null and

The fourth section provides "that all persons put under military arrest by virtue of this act shall be tried without unnecessary delay, and no cruel or unusual punish-ment 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 ap-proved by the officer in command of the strict, and the laws and regulations for the government of the army shall not be affected by this act, except in so ar as they conflict with its provisions: Provided, That no sentence of death under the provisions of this act shall be carried into effect without the approval of the Presi-

The fifth section declares the qualification of voters in all elections, as well to frame the new constitution for each State as in tions to be held under the provisional government until the new State con-stitution is ratified by Congress, and also fixes the qualifications of the delegates to

provisional governments all persons shall be entitled to vote, and none others, who are entitled to vote under the provisions of

state which has no lawful Governor under the and judicial officers of the State, and to appoint other officers in their places, to suspend the legislative power of the State, to take under their control, by officers appointed by themselves, the collection and disbursement of the revenues of the State, proposed by the sagency of its appointed officers and disbursement of the revenues of the State, to prohibit the execution of the laws of the State by the agency of its appointed officers and agents, to change the existing developed to the state of the series, contains and the series, contains to be series, contains to be series and officers in their places, to appoint other officers in their places, to appoint other officers in their places, to suspend the legislative power of the State, appointed by the series in the mid of every lawer, what power of discretion belongs to the officers appointed by law. The law takes no cognitive power of the series, contains no less than seventeen sections embodying the variety of an existing necessity, to exercise no less than seventeen sections embodying the variety of an existing necessity, to exercise no less than seventeen sections embodying the variety of an existing necessity, to exercise no less than seventeen sections embodying the variety of an existing necessity, to exercise no less than seventeen sections embodying the variety of an existing necessity, to exercise no less than seventeen sections embodying the variety of an existing necessity, to exercise no less than seventeen sections embodying the variety of an existing necessity, to exercise no less than seventeen sections embodying the variety of an existing necessity, to exercise no less than seventeen sections embodying the variety of an existing necessity, to exercise no less than seventeen sections embodying the variety of an existing necessity, to exercise no less than seventeen sections embodying the variety of an existing necestate necestate not be substicted.

The distinct of the result of the section and and judicial officers of the State, and to cers and agents, to change the existing laws in matters affecting purely civil and private rights, to suspend or enjoin the execution of judgments and decrees of the established State courts, to interfere in the ordinary administration of justice in the State courts, by prescribing new qualifications for jurors, and to change, upon the ground of expediency, the existing relatible relations for jurors, and to change, upon the it gives—with all its severity, the right of electing their own officers is still left with the people, and

Their education and training have not been of the kind to fit them for the delicate and difficult task of giving construction to such city or place where it breaks out. Whatever power of the kind to fit them for the delicate and a statute as that now under consideration. is necessary to meet such emergencies the military require instruction, and nearly all of they require instruction, to solve I confine myself to the proper authority of the

construction according to which we must interpret this grant of power. It is a grant of power to military authority, over civil rights and citizens, in time of peace. It is a new jurisdiction, never granted befixes the qualifications of the delegates to frame the new constitution.

The sixth section provides, "That until the people of the 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, of the United States at any time to abolish, or supersede the same;

Statutes page 652: "A statute creating a new jurisdiction ought to be construed strictly."

Civil rights and citizens, in the supersedion of insurrection and riot, the military commander is wholly independent of the militar

strictly."

Guided by this rule, and in the light of own appointment to try and punish offenders.—
other rules of reconstruction familiar to other rules of reconstruction familiar to the executed by military authority, not by the civil authority or in every lawyer, especially of those which teach us that in giving construction to sin-

thin of the State. The act does not in any other respect change the provisional government, nor does the act authorize the military authority to change it. The power of military authority of change it. The power of further changing it is reserved, not cranted, and it is reserved to Congress, not delegated to the military commander.

Congress was not satisfied with the or call law, or constitution under which this civil government was catabilised. Thus constitution was to be changed in only one particular to make it and coephable to Congress, and that was in the matter of the clearly and the second to the constitution was to be changed in only one particular to make it and coephable to Congress, and that was in the matter of the clearly and the second to the constitution was to be changed in only one particular to make it and coephable to Congress, and that was in the matter of the clearly and the constitution was to be changed in only one of the flate, the constitution was to be changed in only one of the flate, the constitution was to be changed in only one of the flate, the constitution was to be changed in only one of the flate, or such of them as are made to the constitution was to be changed in only one of the flate, or such of them as are made to the flate, or such of them as are made to the flate, or such of them as are made with the constitution of the flate, or such of them as are made with the constitution of the flate, or such of them as are made with the constitution of the flate, or such of them as are made within the cognizance of civil courts as constitution of the mean time to present of the constitution of the constitution of the mean time to present of the constitution of the mean time to present of the constitution of the constitution of the mean time to present of the protection of all made to the constitution of t

of the proper officers of a State, either ex-

cause to be punished, all disturbers of the public peace and criminals," and he may do this by the agency of the criminal courts of the State, or, if necessary, he may have resort to military tribunals.

are recognized, and express provision is made to perpetuate them. It is enacted that "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 provisional state government; but no scrip or warrants for outstanding debts of other kind than those specified will be paid without special authority from these headquarters—He will deposit funds in the same mauner as though they were those of the United States."

In another of these districts a body of military

mander can oust one from his office, he can oust them all. If he can fill one vacancy, he can fill all vacancies, and thus usurp all civil jurisdiction into his own hands or the hands of those who hold their appointments from him and subject to his power of removal, and thus frustrate the very

tions of the parties to contracts, giving protection to one party by violating the rights of the other party.

I feel confident that these military officers, in all they have done, have supposed that they had full warrant for their action. Their education and training have not been the first still left with the people, and their own officers is still left with the people, and their own officers is still left with the people, and the protection to one party by violating the rights of the other party.

I must be preserved.

I must be understood as fixing limits to the power of the military commander in case of an actual insurrection in one of these States may be so general and formidable as to require the tempotration and training have not been

them have asked for instruction, to solve their own doubts, and to furnish to them a safe ground for the performance of their duties.

I confine myself to the proper authority of the Military Commander, where peace and order prevail, it is not allowable to displace the civil officers and appoint others in their places under any idea that the Military Commander can better perform his duties itary Commander can better perform his duties and carry out the general purposes of the act by the agency of civil officers of his own choice, rather than by the lawful incumbent. The act gives him no right to resort to such agency, but does give him the right to have sufficient military force to enable him to perform his duties and enforce his authority within the district to which he is assigned.

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."

The duties devolved upon the commanding general by the supplementary act related and the elections to the registration of voters and the elections to the registration of voters and the elections to be held under the provisions of that act. And as to these duties, they are plainly enough expressed in the act. To consider, then, in the first place, the person in their rights of person and property. It is not a power to create the provision as to these duties, and troubled by military authority, not by the civil authority or by civil officers appointed by him to perform ordinary civil duties. If these emergencies do not shall be eligible to any office under any such provisions of the third article of said to the whole law; that general clauses are to be controlled by particular clauses, and that such construction is to be put on a special clause as to make it harmonize with the other parts of the statute, so as to avoid the civil authority, not by the every lawyer, especially of those which the context and to the whole law; that general clauses are to be controlled by particular clauses, and that such construction is to be put on a special clause as to make it harmonize with the other parts of the statute, so as to avoid the civil authority, not by the civil authority or by civil officers appointed by him to perform ordinary civil duties. If these emergencies do not hat the civil ordinary civil duties. If these emergencies do not hat the total ordinary civil duties. If these emergencies do not hat the civil ordinary civil duties. If these there is previous construction to singulary civil duties. If these there is previous duties, the military power, though present, must construction to the tot

wistons of that soc. And as to these duline, they are plainly mough erroresed in the prevention of the grant. It is of a power to be call persons in their rights of persons and property. It is not a power to the call persons in their rights of persons and property. It is not a power to the call persons in their rights of persons and property. It is not a power to the call persons in their rights of persons and property. It is not a power to the call persons in their rights of persons and property. It is not a power to the call persons in their rights of persons and property. It is not a power to the call persons in their rights of persons and property. It is not a power to the call persons in their rights of persons and property. It is not a power to the call persons in their rights of persons and property. It is not a power to the call persons in their rights of persons and property and the power to the call persons and property against viol these powers and the call persons and property against viol to the protection has a protection of persons and property against viol to the protection the protection has a protect of the protection of persons and property against viol to the protection the protection has a protection of the protection of the protection of the protection has a protect of the protection of the protection of persons and property against viol to the protection has a protection of persons and property against viol to the protection of persons and property against viol to the protection of persons and property against viol to the protection of persons and property against viol to the protection of persons and property against viol to the protection of persons and property against viol to the protection of persons and property against viol to the protection of persons and property against viol to the right of the protection of persons and property against viol to the protection is not persons and property against viol to the protection of the protection is not persons and property against viol ton

the powers conferred on the military au-thority. Whatever power is not given to the military remains with the civil govern-for the removal by the military commander

ment.

We see, first of all, that each of these States is "made subject to the military authority altogether, but with this express limitation," as hereimafter provided, to find the extent and nature of the pewer granted.

The provided, to find the extent and nature of the pewer granted to the military commander is home the pewer granted.

This, then, is what is granted to the military commander is provided, to find the extent and nature of the pewer granted.

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This, then, is what do this by the agency of the criminal courts of the State, or, if necessary, he may have restore to military tribunals.

This comprises all the powers given to the military commander.

There is a general clause making it the dity of the military commander to give protection to all persons in their rights of person and property. Considered by tisself, and without reference to the context and to other provisions of the act, it is likely and the provisions of the act, it is likely and the provisions of the act, it is likely and the provisions of the act, it is more personally to be in the usual way, by the people, and the provisions of the rights of person and property. What sort of protection to be first the usual way, by the people, and the provisions of the act, it is more provisions of the act, it is more provisions of the act, it is likely and the provisions of the act, it is likely and the provisions of the act, it is likely and the provisions of the act, it is likely and the provision of the provision of the context and to other provisions of the act, it is likely and the provision of the provision of the context and to other provisions of the act, it is likely and the provision of the context and to other provisions of the act, it is likely and the provision of the provision of the context and to other provisions of the act, it is likely and the provision of the provision of the context and to other provisions of the act, it is likely and the provision of the provision of the context and to other provisions of the act, it is likely and the provision of the context and to other provisions of the act, it is likely and the provision of the provision of the context and to other provisions of the context and to other provisions of the context and to other provisions of the context and the provision of the context and to other provisions of the context and the provision of the context and the prov

by suspended and declared inoperative. Thus announcing not only a power to suspend the laws, but to declare them generally inoperative, and assuming full powers of legislation by the military

anthority.

The ground upon which these extraordinary powers are based is thus set forth in Military Order No. 1, issued in this district: "The civil olina, is provisional only, and in all respects subject to the paramount authority of the United States at any time to abolish, medify, control, or supersede the same." Thus far the provisions of the act of Congress are well recited. What follows is in these words: "Local laws and municipal regulations not inconsistent with the Constitution and laws of the United States, or the proclamation 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."

The construction of his powers under the act of supersede the same." Thus far the provisions o

The construction of his powers under the act of Congress places the military commander on the same footing as the Congress of the United States. It assumes that "the paramount authority of the United States at any time to abolish, modify, control, or supersede," is vested in him as fully as it is reserved to Congress. He deems himself a representative of that paramount authority.

control, or supersede, he vested in him as fully as it is reserved to Congress. He deems himself a representative of that paramount authority.—He puts himself upon an equality with the law-making power of the Union, the only paramount authority in our government, so far, at least, as the enactment of laws is concerned. He places himself on higher ground than the President, who is simply an executive officer. He assumes, directly or indirectly, all the authority of the State, legislative, executive and judicial, and in effect declares "I am the State."

I regret that I find it necessary to speak so plainly of this assumption of authority, I repeat what I have heretofore said, that I do not doubt that all these orders have been issued under an honest belief that they were necessary or expedient, and fully warranted by the act of Congress. There may be evils and mischiefs in the laws which these people have made for themselves through their own legislative bodies, which require change; but none of these can be so intolerable

lute or controlling necessity would give any color of authority for arraigning a citizen belore a milunctions. In another one of these districts a military order in any of these military districts has rights to be

vests him with jurisdiction. The concluding paragraph of this order No. 10, is in these words:

"Any law or ordinance heretofore in force in North Carolina or South Carolina, inconsistent with the provisions of this general order, are here.

"The authority given is to try and punish criminal code.—

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that he was unable to have his name to that he was unable to have his name.

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But, as to the measure of punishment, I regret to be obliged to say that it is left altogether to the military authorities, with only this limitation that the puishment to be inflicted shall not be cruel or enusual. The military commission may try the initials. The limitary commission may try the accused, fix the measure of punishment, even to the penalty of death, and direct the execution of the sentence. It is only when the sentence affects the "life or liberty" of the person that it need to the district.

13. The board appointed for registration and for superintending the elections, must take the oath prescribing "life or liberty" of the person that it need the sentence. It is only when the sentence affects the "life or liberty" of the person that it need be approved by the commanding general, and only in cases where it affects the life of the accused that it needs also the approval of the President

As to crimes or offences against the laws of the United States, the military authority can take no ognizance of them, nor in any way interfere with the regular administration of justice by the aptions arising under these laws, I gave at large for your consideration the grounds upon which my conclusions were arrived at, intending thereafter to state, these conclusions in a concise and clear to state, these conclusions in a concise and clear summary. I now propose to execute that purpose, which is made especially necessary from the confusion and doubts which have arisen upon that opinion in the public mind, caused in part by the errors of the telegraph and the press in its publication, and in part by the inaptitude of the general reader to follow carefully the successive and dependent stops of a protected legal coinion. lependent steps of a protracted legal opinion.

SUMMARY. WHO ARE ENTITLED TO REGISTRATION.

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 2. The board of registration have no authority to administer any other oath to the persons applying for registration than this prescribed oath; nor to administer any oath to any person tonching the qualifications of the applicant, or the falsity of the oath so taken by him. The act, to guard against falsity in the oath, provides that, if false, the person taking it shall be tried and punished for perjury.

No provision is made for challenging the qualifications of the applicant, or entering upon any trial or investigation of his qualifications, either by witnesses or any other form of proof.

ACADEMY,

HILLSBORO', N. C

Theoretical and Applied Scie

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through their own legislative bodies, which require change; but none or these can be so intolerable as the evils and mischiefs which must ensue from the sort of remedy applied. One can plainly see what will be the inevitable confusion and disorder which such disturbances of the whole civil policy of the State must produce. If these military edicts are allowed to remain, even during the brief time in which this provisional military government may be in power, the seeds will be sown for such a future harvest of litigation as has never been inflicted upon any other people.

There is, in my opinion, an executive duty to be performed here which cannot safely be avoided or delayed; for notwithstanding the paramount authority assumed by these commanders, they are not, even as to their proper executive duties of the applicant, or entering upon any trial or investigation of his qualifications, either for remedy applied. One can plainly see that a person the form of proof.

3. As to citizenship and residence.

The applicant for registration must be a citizen for registration must be a citizen of the United States, and must be a resident of a county included in the lection district. He may be registered if he has been such citizen for a period less than twelve months at the time he applies for registration, but he cannot vote at any election unless his citizenship has then extended to the full term of one year. As to such a person the exact length of his citizenship should be noted opposite his name on the list, so that it may appear on the day of election, upon reference to the list, whether the full term of one purpose.

A commercial course is fined to Principal atudes of regular course, Mathematical and Pysical Sciences, Engineering, Architecture and Drawing, Latin, French and Belles Letters of the has been such citizen for a period less than twelve months at the time he applies for registration.

Engineering of the State and of the United States, and must be a resident of a county included in the has been such citizen

requires no approval. If it affects the liberty of the accused it requires the approval of the commanding General; and if it affects his life, it requires the approval of the General and of the President. Military and executive authority rule throughout, in the trial, the sentence, and the execution. No habeas corpus from any State Court can be invoked; for this law declares that "all interference, under color of State authority, with the exercise of military authority under this act, shall be null and void."

I repeat it, that nothing short of an absolute necessity can give any color of authority to a military commander to call into exercise such a power. It is, a power, the exercise of which may involve him and every one concerned in the gravest responsibilities. The occasion for its exercise should

The board cannot enter into any inquiry as to the lifications of any person whose name is not on the name is on the list.

1s. The mode of voting is provided in the act to be by

'an act to prescribe an oath of office."

I have the honor to be, with great respect,

HENRY STANSERY, Attorney Gen'l.

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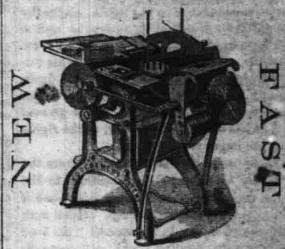
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