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THE SENTINEL.

WM. E. PELL, | SEATON GALES,
EDITORS.

SATURDAY, SEPTEMBER 21, 1867.

COUNTY MEETINGS.

We observe that the Conservative press and people of the State, very generally, approve of uniting and consolidating their influence, to stay the tide of Brownlow-Holden Radicalism in this State. The people are moving, and it will be seen that at Goldsboro' they have taken the initiative in holding a meeting. Let the ball be kept moving.

We desire to make a few suggestions to our friends. So far as we remember, there has been no party organization in this State, since the war began, except what may have been done by the disorganizers and factionists, and the subsequent formation of the Radical party. Among our conservative people, everything that has been done by them, has been pretty much left to the spontaneous dictation of their own minds, except in the encouragement they have received from the conservative press.

Hence, in combining the influence of the Conservative men of the State at the present time, something more is necessary than the mere suggestions of the newspapers or meetings called by unknown or anonymous persons. Our steps must be measured and well taken, and our course well pondered, before we move.

We have suggested the holding of District and State Conventions, but really the first and most important step is the holding of precinct and County meetings. And these should be called by responsible names and by as many persons as possible. We must have no flash in the pan, no blundering or failure. Meagre, hasty attended and unadvertised meetings will be followed by bad results. We, therefore, respectfully suggest to the Conservative people in every County, the following plan as an introductory one to the call of public meetings.—The following appeal will be circulated for names in this City several days before the call of the meeting:

TO THE CONSERVATIVE CONSTITUTIONAL UNION MEN OF —— COUNTY.—The undersigned, citizens of —— County, friends of the American Union and supporters of the Constitution of the United States, being convinced that the incorporation of the Brownlow-Holden-Radical programme into the Constitution of the State would most surely embarrass, if not annihilate, all enterprise and all hope of recuperation, and would discourage all immigration, the investment of capital and diminish or destroy the sources of employment *to our laboring population*, do most earnestly implore all Conservative citizens of every County in the State, to hold meetings for the adoption of such plans as they may deem wisest and best, for uniting and consolidating the Conservative influence in the State, to effectively prevent the success of ultra Republican or Radical rule in our State organization.

The Congress of the United States has cut us off from all participation at present in National politics. Nothing is left us but the care of our State institutions, and this movement has nothing to do with National politics or with hindering or attempting to obstruct the operation of any law of Congress. It has simple reference only to the preventing of the incorporation of those Radical principles and measures into our State organization, which would place the control and government of the State in the hands of the ignorant, the vicious and the most unprincipled among us, which would certainly result in the destruction of the enterprise and vitality of the State. All the aid or encouragement, therefore, which this movement could give to the friends of Constitutional liberty and free government, elsewhere, would be simply incidental.

We, therefore, urge all Conservative Constitutional Union men of the County of ——, of all parties holding these views, to unite with us in holding a meeting at the Court House in ——, on the —— of the present month, to effect the above named object, and we urge our fellow citizens of the several registration precincts in the County to unite with us, or hold meetings in their several precincts.

[Names of signers.]

Such an inauguration of the movement would insure success. First, organize in the precincts and Counties. If the desire becomes general for District or State Conventions, and sufficient time is allowed before the election for Convention, delegates of course will be appointed at the County meetings. The absolute necessity for District and State Conventions, we think, will be found to be more urgent after the State Convention, authorized by the Reconstruction Acts, shall have done its work, than before.

ORDER OF GEN. CANBY.

The following order from Gen. Canby we find in the newspapers, and publish it for general information. We see no discretion left to the Courts, except in the expression "and who are qualified," by which, we suppose, Gen. Canby means, neither ignorant nor vicious persons,—men incapable of sifting evidence, or who are so ignorant or prejudiced that they would not or could not do justice, or persons whose vicious habits are such as to incapacitate them. All other men in the State, who are not disfranchised, who have been assessed for taxes and paid taxes for the current year, are declared to be eligible for jurors. Gen. Pope's exclusion of disfranchised persons, including, as they do, many of the most intelligent and virtuous citizens of the State, has been severely criticised. Gen. Canby may be more fortunate, and he and Gen. Pope may be much wiser men than Gen. Sickles. The trials of the plan will satisfy all, perhaps, as to its wisdom. Let the Courts obey the order promptly:

GENERAL ORDERS—NO. 69.

HEAD'QRS SECOND MILITARY DISTRICT, | CHARLESTON, S. C., Sept. 14, 1867. |

Paragraph two of General Order No. 32, dated May 30, 1867, is modified as follows: All citizens assessed for taxes, and who shall have paid taxes for the current year, and who are qualified, and have been or may be duly registered voters, are hereby duly qualified to serve as jurors. It shall be a sufficient ground of challenge to the competency of a person drawn as a juror, that he has not been duly registered as a voter.—Such right of challenge may be exercised in behalf of the people or of the accused in all criminal proceedings, and by either party in all civil actions or proceedings. Any requirement of a property qualification for jurors in addition to the qualifications herein prescribed is hereby abrogated.

The Governors of North and South Carolina respectively are hereby authorized and empowered to order, if it should be necessary, special terms of courts to be held for the purpose of revising and preparing jury lists and to provide for summoning and drawing jurors in accordance with the requirements of this order.

By command of
Brevet Major General ED. R. S. CANBY.
Louis V. Caziare, A. A. A. G.

REGISTRATION IN NORTH CAROLINA.—Registration returns from North Carolina indicate that in the western part of the State, more white people will be registered than the total vote of 1860. The proportion of white to black was six to five. The colored vote will increase the total over that of 1860 by at least fifteen per cent. The Republican ticket will receive a large majority in that portion of the State.

We find the foregoing copied as an item of news in the Norfolk *Journal*. We are satisfied that it is incorrect in every particular. The returns of registration from the West are very meagre and imperfect, but it is highly improbable that the white vote can exceed that of 1860. The West lost many brave men in the war, many are disfranchised by Congress, and there has been no considerable immigration to that section to supply the deficiency.

Instead of a proportion of six to five, the white element is and was probably as six to one in the West. There were but comparatively few slaves in any of the Western counties, except Burke. Hence, it is hardly supposable that the new colored vote will increase the total of 1860 anything like fifteen per cent.

It is, perhaps, the greatest mistake of all to assume that the "Republican ticket will receive a large majority" in the West. The sturdy mountaineers of that section have no idea of contributing to negro domination.—Possibly, the "Union feeling," during the war, was strong in certain portions of it, but that is a totally distinct thing from modern neophyte Radical negroism.

STATE ITEMS.

——Registration in Warren has been completed. Here are the returns: Whites 812, Blacks 2,589,—Total 3,401.

——Messrs. Cyrus P. Mendenhall & Co., of Baltimore, as we learn from the *Gazette* of that City, on the 16th. received a bale of Cotton from North Carolina, being the first of the new crop. It was a good sample of the grade known as low middlings, and sold for twenty-three cents per pound.

——The sentence of Captain Charles Frederick Brown, Thirty-seventh United States colored troops, who was tried before a court martial in this City, in November last, has just been confirmed by General Grant. He was tried on the charges of selling the property of the United States and appropriating to his own use the proceeds of the sales. He was found guilty, and sentenced to be dishonorably dismissed the service, with loss of all pay and allowances now due or hereafter to become due; to be forever disqualified to hold any office of trust or profit under the government; to pay a fine of $2,000 and be imprisoned in Fort Macon, North Carolina, until the fine is paid; and that the name and place of abode of the criminal and the sentence be published in the newspapers of the States of Massachusetts and North Carolina.

——Jno. Taylor and Jim Knight, charged with murder, were convicted at the late term of Edgecombe Superior Court, and sentenced to be hanged on the second Friday in October. An appeal, however, to the Supreme Court, was prayed and granted.

——Gen. Colston has accepted an invitation of the "Goldsboro Literary Association," to deliver his able and interesting lecture upon Stonewall Jackson, in that place, shortly.

——The Cotton worm has made its appearance in the Eastern part of the State, we are sorry to learn.

——Several parties have been bound over, by U. S. Commissioner Holmes, at Salisbury, to answer at the next Federal Court for violations of the Revenue laws.

——Messrs. Lang & Co. have commenced the manufacture of cigars at Charlotte. The *News* says that "they understand their business." We smoke.

——The Salisbury *Banner* is informed that the negroes drill nightly in that City. It very properly calls the attention of Col. Edie, the Post Commandant, to the fact.

——Messrs. J. P. Robertson and D. G. McDuffie, engineers, have reported the results of a *reconnoissance* made by them, at the instance of the President and Directors of the Fayetteville and Florence Railroad. The *News*, of Fayetteville, says:

"It is, as it necessarily must be from the character of the survey, meagre. It embodies main directions of the lines and general features of the country over which they passed, and sums up, as well as can be done in a report of the kind, the great advantages to all the country through which it is contemplated to be built. They considered two lines, which they term the Eastern and Western lines, both of which are shown to be in an excellent country over which to build a railroad. In fact, there is nothing to do, almost literally, but to lay down the material, as is proven by the fact that the average cost per mile is only $12,800.

When we consider the singularity, as is shown in this report, and as will be shown by-and-by more fully by the instrumental survey, of this road for a great line of travel and trade, we must come to the conclusion that it must be built, and that very soon."

Official returns from four hundred and sixty towns in Maine show the majority for Chamberlain to have been 11,794. The same towns last year gave the same man, against the same opponent, 27,708, which shows a falling off in the Republican majority of 16,000.

(Reported for the Sentinel.)

THE MILITARY COMMISSION.

UNITED STATES *VS.* TOLAR, POWERS AND WATKINS.

Abstract of a portion of the Argument of

HON. S. F. PHILLIPS,

OF THE COUNSEL FOR THE DEFENCE.

* * * I come now, may it please the Court, to consider this question of jurisdiction, which we regard as a very serious one,—not the question of jurisdiction that was raised on the "plea" of *jurisdiction*, but that question of jurisdiction, on account of which, whenever it occurs to the Court, whether suggested or not, the Court dismisses the case from before it.

A plea of jurisdiction does not cover the particular defense I wish to make now. We desire to bring to the attention of the Court a matter of which upon the plea of "not guilty," without any question of jurisdiction, we will have the right to avail ourselves. Suppose a man were indicted for murder in our County Court, no plea of jurisdiction put in; as soon as the Court heard what the facts were, they would dismiss the case.

There are certain technical points, of which, if we wish to avail ourselves, we must put in a plea of jurisdiction; but there are others, going to the very substance of the trial, which do not require to be supported by such plea. The Court will recollect that the first day of the trial, we asked to put in a plea of jurisdiction; we thought we might wish to have the advantages of it, subsequently, and our request was granted. But the point which we make now does not come under that plea, at all. It is a point that goes to the very substance of the right of this Court to sit upon the life and death of these men, and we have all confidence in it. We shall not engage in any tirade upon politics to-day; this is not the theatre for it. I shall address myself entirely to what I consider best for the interests of these prisoners.

You are seated here, if I understand it, under the authority of Congress, given on March 2nd. 1867, and I concede it is a perfectly valid authority. I concede that Congress had a perfect right to pass that act; that Gen'l. Sickles had a perfect right to convene this Court; and that this Court may enforce its jurisdiction, so far as that act gives it authority. But what I do say, and with all confidence, is, that that act gives you no authority or jurisdiction over this case. I wish to be understood distinctly. I say, conceding all that Congress claims to the very fullest extent, that that act of March 2nd. gives you no jurisdiction over an act committed on 11th. of Feb. I call the attention of the Court to the language of the Chief Justice of the United States in the address he made to the Bar at Raleigh, in June 1867. I think the Court will conclude, upon hearing this address, as the Bar did, when it was delivered, and as the public did, so far as it has been read by them, that it was not the opinion of the Chief Justice alone, but of the whole or a majority of the tribunal of which he is an illustrious member. I might say, and I do say—and I hope without transgressing what I have said on the subject of the exclusion of politics from my remarks, but it seems to me germane to the issue,—that the Chief Justice of the United States is a principal figure in the party whose policy is being carried out, by the act of March 2nd. 1867; that he has heretofore co-operated with that party, and does co-operate with it; and that he understands the grave constitutional theories upon which it is carrying out its operations. I, therefore, think that, whenever he has expressed an opinion upon a solemn occasion such as this was, an opinion which seems on the face of it to be not merely a personal opinion, but of that tribunal to which he belongs, it is safe for all persons, who are carrying out that policy, who are called upon to execute the policy of Congress, to be governed in a great measure by his conclusions, or at least to pay very great respect to them.—They are not the opinions of an enemy of Congress, but of a gentleman who desires their policy to succeed. The Court will pardon me, therefore, for reading this address. It is as follows:

[Mr. Phillips here read the address of the Chief Justice.]

The Chief Justice says there is a military authority now in the South, and by virtue of the acts of Congress. He states expressly that military authority and martial law heretofore prevailing throughout the South, in consequence of conquest, by the striking down of the rebel arms in 1865, ceased upon the proclamation of April 2nd. and 20th. August '66.

I will call attention, hereafter, to some acts of Congress, which, it seems to me, are of the same purport. If I understand it aright, this military authority runs back no further than the 2nd. of March, 1867.

There was martial law here in '65; it ceased in April, '66. The proclamation of August, the Court well knows, was made entirely in reference to the State of Texas. There are two proclamations referred to, but the State of North Carolina was included in the first of them.

With the surrender of the Southern armies, martial law extended throughout the South. All the insurgent States were covered with it, but it was an *executive* function to put an end to that martial law, which was done by proclamation of the President on April 2nd., '66.

We were then restored to our *civil* rights, but not to our *political* rights; the President had nothing to do with them. According to this theory, and I am arguing under this theory, we were not restored to any political right, but were to our civil rights by that proclamation. Martial law was put an end to. What does the Chief Justice say? Why, he says: If I had come down here before April and held a Court, I would have held it in subordination to the military authorities; since then, at any time, I would have held it without such subordination, but I have not been here before, because an act of Congress has been passed redistricting the Circuits of the United States, and I was not appointed to any particular Circuit, and, therefore, did not come, and would not have come. I might have come so far as civil law was concerned, but as I had no Circuit appointed me, I could not. Before then I could not come, because I could not have any power except in subordination to the power of the military government. It would have been vain, he says, that the Chief Justice of the Supreme Court, at Washington, should come down into the insurgent States, and hold Courts in subordination to the military authority. Judge Brooks was holding his Courts, but in subordination to the military authorities. We did not, therefore, come; however, at any time, since April, '66, I might have come, but did not from the fact that I was not appointed to any Circuit.

Why could he have come? Because that proclamation restored civil law, restored the tribunals of the United States to their civil authority,—how? In no way except by expelling martial law. The effect of that proclamation was to expel the martial law that prevailed throughout the South on the surrender of the rebel armies in 1865. It was an executive function, constitutionally exercised by the President and recognized by the Supreme Court of the United States. But is that the only evidence that we had civil law in the South previous to March 2nd, 1867? This is the point I am making—that we are under martial law now, to the extent of the Act of Congress of March 1867; but I insist, may it please the Court,—I insist that that act establishing martial law, has no retrospective, *ex post facto* effect. I say that the civil rights of persons, North Carolinians and others, who were here March 1st, 1866, could not constitutionally be affected by the Act of March 2nd, 1867, and there is no appearance, anywhere, that it is the theory of Congress, or of those who support it,—the main pillars of the Republican party, if I may use the term. There is no appearance of such a theory anywhere, except on this present occasion, that this military or martial law can be proclaimed, not only for the future, but for the past, as well.

Now, may it please the Court, I respectfully refer you to two Acts of Congress, as bearing upon this theory.

I call your attention to what is called the Act of 1866, chapter 31, "Civil Rights Act," but particularly the language of the Act "establishing the Freedmen's Bureau," as we term it. I shall not read any extract from the Civil Rights Bill, because the language of the other Act, passed in April, 1866, is repeated with much more strength in the Act for establishing the Freedmen's Bureau. I wish to call the attention of the Court, particularly, to the 14th section, page 173, chapter 200, which reads as follows:

* * * * * * *

Without respect to color, means, I suppose, without respect to white color, as well as without respect to black color. This Act passed over the President's veto in July, 1866, contains the very deliberate belief of Congress upon this matter. This Civil Rights bill, to which I have already referred, was also passed by a two-thirds majority after having been vetoed by the President. When were acts of Congress more solemn than these? What formality can be given to acts of Congress, to give them binding effect and force, that these have not? And what do they say? They say "the benefit of all law and proceedings concerning personal property and personal security." What is the right of personal security? Nobody studies law three days without knowing what personal security is. In the very opening of the very first book of law, we are told, that the right to personal security is the right among other things "to *life*." Here, then, an act of Congress, passed in July, 1866, says, that then, without respect to race or color, every man in the insurgent States, until they be restored, shall be entitled to the benefit of all laws and proceedings. *All laws and proceedings!*

I ask the Court could it be, that, on the 2nd. day of March, 1867, Congress could have passed an act, establishing martial law from the date of this act, July 16th., 1866, and have annulled and abrogated it?

It there be a declaration, contained in this act of "having restored the civil law in the Courts" it did not restore the State Courts, for, it expressly says "where the ordinary course of judicial proceedings have been interrupted and until they shall be restored." It does not say that the ordinary local Courts have been restored at all. I don't depend upon it for that. If they have been established I must get argument from some other source than that, because it expressly speaks of them as having been interrupted. But it says until they are restored—*until then*—every man shall have the right of personal security. Is the Chief Justice then not justified by this very solemn act of Congress, in holding that civil rights existed in North Carolina up to this 2nd. day of March, 1867? Does not Congress itself say so?

I see in a recent law book, published in Boston, by a very eminent brother of our profession, Mr. Bishop, such a proposition as this—it seems to me to be a sensible one, and one to which I may with reason direct the attention of the Court: He says that when States, as the Southern States did in '61, break away from connection with the General Government, and destroy State governments, as he said they did, and as I admit for the purposes of this argument,—though I might be unwilling to admit it for other purposes—when they destroyed these governments and set up rebellious ones, having destroyed the only governments that the United States could recognize, and the political surface of the States, having become as it were a blank upon which the United States Government might write what it chose, it was the duty of the United States Government "to run" the State governments until proper legal State governments be established in the form provided for by any reconstruction bill that may be adopted by the United States.—Until, for instance, North Carolina is restored to a Constitutional State government, it is the business of the United States to run the local government.

Now I understand that to be a part of the theory upon which this reconstruction is going on. That the United States Government may have its military and civil Commissions throughout North Carolina, it may adopt either form, or it may permit the local tribunals to transact the business, but whether it does permit the local government to do this work, or appoint military officers of its own, it is all the while the United States that is *running the machine*. What does this act of Congress mean? It says that however the United States may run the local State machines, it must be with a due reverence to "the laws and proceedings affecting personal security." Whatever be the machinery, the people must have the right, and that the U. S. itself is bound to grant them the benefits, of all laws and proceedings concerning personal security. That is not so since March 2nd., 1867.

So far as this act of March comes in conflict with former acts, then, we have military law; so the Chief Justice says. Before March 2nd. we had the benefit of civil law here, in North Carolina. Congress restored us to our civil rights. Until the State should be restored to its Constitutional functions as a member of the U. S., Congress can repeal that act, it may have repealed it, but until it was repealed, it was in force. A later act may modify it, may repeal it by implication, but, *until* then, it is the law of the land. The Chief Justice says that the President, by his proclamation, had the right to restore civil rights. That was done on April 2nd. Congress admits that civil rights were restored, or enacts that they shall be restored, by the act of 16th. of July. I am not entering into any political theory as to whether it was done by the proclamations or by these acts. I wish the Court to understand that up to the 2nd. of March the people of North Carolina had a right to the benefit of all laws and proceedings attaching to personal security. What are they? They are so simple that he who runs may read. What is the *great proceeding!*—that is a good word for my purpose; *laws* would have done, but *proceedings* is more specific. I could have made my argument under the word *laws*, but when Congress says *proceedings*, it looks as if its attention had been called to that particular privilege or right for which I contend. What is one of the great *proceedings* in behalf of personal security? Anglo Saxon—ten centuries old, running back into the German forest,—the right by which your fathers and mine have been tried, in this country and others, whenever their right of personal security was threatened! What is that great solemn proceeding!—so solemn and earnest that Blackstone thinks it is the great prop of modern liberty—TRIAL BY JURY! That is the great proceeding of proceedings, *the* proceeding in behalf of personal security.

But is this the only proceeding in behalf of personal security?

"The trial of all crimes except in cases of impeachment shall be by jury." Constitution of the United States, art. 3rd., sec. 2d., clause 3rd. "Such trials shall be held in the State where the said crime is committed, or when not committed in any State the trial shall be in such place as Congress shall name." The government of which you are members, and whose laws you come here to execute, says that all crimes are to be tried by jury, not under a military law. We'll come to that directly.

That is one of the *proceedings* in behalf of personal security, that our fathers were not satisfied with having put into the Constitution only, but insisted that it should be again inserted in what are called the Declaration of Rights, attached to the Constitution—the amendments of the Constitution. "No person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment, except in cases arising in the land or naval forces in time of war or public danger." Repeated twice in the Constitution.

What I say, may it please the Court, and what I say with all confidence, and what will be the law, in my opinion, when civil law and liberty become established here, is that Congress, on the second of March, could not pass any act which deprived a man, who had committed an offence before the second of March, of the right of trial by jury. Because, whatever be the case now, when your martial law is here, and when it is here for certain purposes and within certain limits, it discharges the civil law of all its duties within those limits, I admit, but cannot have any retrospective effect. If civil law was existing here up to the time of this act of second of March, '67, and the Chief Justice of the United States says it was, and Congress says what is equivalent, then these persons are, whoever killed Archy Bebee, entitled to a trial by jury, and there is not the power that can deprive them of it. And I go further, and I say that, upon the face of it, Congress did not intend to deprive them of it. I say that, by all just rules of construction, that act does not apply to crimes committed before the act was passed, but has a prospective and not a retrospective effect. I understand it to be the rule, under which you are assembled here, that if a man commits a crime in North Carolina to-day he has not a right to trial by jury. That is the theory of this act of March 2nd., '67, and it is the proper theory for all purposes of argument hereafter. Because, when your martial law comes in it excludes civil rights, and civil law, even those of the Constitution.

It is a very peculiar thing, and a very strong one, that can exclude the Constitution of the United States, but it seems that martial law can; that there are no privileges guaranteed under the Constitution of the United States that can breathe the air in which martial law exists. It smothers it like the gases. But how can it affect a man whose offence was committed during the existence of civil law? I have looked carefully into the books, and I have not been able to find any case in which it has been held that a declaration of martial law has a retrospective effect. I have not seen, anywhere, a proposition to the effect that if a military officer, going and taking possession of a country, declares martial law therein, that he can declare that it existed a month or a year ago, and try at his discretion all offences that were committed during the time. It has an effect, now and henceforth, but it does not have any retrospective effect. It seems to me that it must be established that Congress could not have declared military law, with a retrospective effect; but I am not obliged to argue that, because the act which is before me has no such retrospective language. The act of March 2nd., '67, gives no such jurisdiction, proposes, *pretends* to no such jurisdiction.

I am not bound to say what the powers of Congress are, or might be. Let them be as great as they may be, I am not interested in the discussion. But if it be true, as the Supreme Court of the U. S. say, and as they act, that there was civil law in the State of North Carolina, by the proclamation of the President, and that whatever military law is here, is by virtue of acts of Congress, then your military law has a certain boundary, a limit beyond which it cannot go, to exercise any of its functions. Congress did not say how this Commission should be established. It says that the Military General presiding over this district, might either allow the legal tribunals to take jurisdiction of those offences, or he might send a Commission of his own to try them. He has sent one Commission to this section. There is a Provost Court down in Fayetteville. That is a part of the machinery of the U. S. They run that part of their jurisdiction by means of this Provost Court. I am not saying that Congress has recognized any of the civil courts of the State of North Carolina at any time. I don't know that it has. I don't say that Congress has recognized a single officer in North Carolina, or the existence of a State. I don't know that it has, as a State, but I do say that whatever machinery the U. S. resorts to, for the purpose of punishing crime throughout these insurgent States, so long as there is any martial law here, it must have a jury as a part of the machinery, and it was perfectly competent for General Sickles to summons a jury to try this offense, though it would not have been according to the analogy of military law. But suppose he had done it! Martial law, as I understand it, is the discretion of the Commanding General. But, according to the opinions of this Court, I mean the Supreme Court of the U. S., if we can attribute to them this language of Chief Justice Chase, his discretion is limited. He has no power, whatever, over the functions of the U. S. Government except in his own department. He is not bound to recognize any State tribunal. But he is bound to recognize—with regard to offences that were committed before March 2nd. 1867—he is bound to recognize those principles of civil law that are guaranteed in the Constitution of the U. S. to every person. I say that these men cannot be tried without a jury. I do not say they cannot be tried by the United States. I do not say that the United States cannot destroy these legal tribunals and set up a tribunal of its own here.—But that tribunal must have a jury attached to it. These crimes, whenever it tries crimes, must be ascertained by a jury. If martial law did not exist in North Carolina before March 2d., '67, did those persons that killed Archy Bebee commit any violation of the martial law? And don't you sit here to try questions connected with the breach of the martial law? I mean so far as you are a military tribunal, so far as you all get your rights under the martial law, don't you sit here to try violations of the martial law? Was there any martial law in North Carolina on the 11th. of February, 1867? As soon as martial law comes in it displaces civil law, and you may do as you please, both with regard to proceedings and punishment, because there are offences against martial law proclaimed, but martial law proclaimed on the second of March, '67, does not enable you to try, as violations of martial law, offences committed Feb. 11th., '67.

Now for the language of this act of Congress under which this Court sits: "It shall be the duty of such officer assigned as aforesaid to protect all persons in their rights of 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; and to this end he may allow local 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."

You are to suppress insurrection, violence or rebellion, and if you cannot do it you are to punish the offenders. Take the ordinary criminal codes of the country and see how they read. I call the Court's attention to this question, that the language of the acts of Congress has a prospective and not a retrospective meaning. "Every person who shall be convicted, according to due course of law, of wilful murder, shall suffer death." (Rev. Code of N. C.)

This act was passed Jan. 1st., '56. Suppose there had been no law for murder in North Carolina before that, could the Courts of the State have taken up a man for a murder committed ten years before?—This act has a prospective effect. I call your attention to this as throwing light upon the language of the act before you to show what Congress means by certain language. The Legislature of North Carolina said on Jan. 1st., '56, "Any person convicted of wilful murder shall suffer death." This book is the digest of our laws, and this law did exist in North Carolina before; but suppose it did not, suppose there was no change in the law here, could he be tried for the past offense under this law? If the person was convicted on the 1st. of April for the violation of this law, he would have to come in the rule of it. It does not say when the murder shall be committed. It says when the conviction shall take place.—There is a provision in the Constitution of the United States that Congress shall pass no *ex post facto* law. Congress can pass no act after a murder has been committed, and render the punishment more severe.

If a man commits murder, the form of procedure must depend upon the acts in force at the time he was tried; but with regard to the form of proceedings assigned in the Constitution, it is otherwise. That is a part of his Constitutional rights, and after a man has been convicted of an offense, you cannot change his right to any Constitutional privilege he has, or his rights of personal security, without being guilty of passing an *ex post facto* law. It is not so with regard to ordinary proceedings, but with regard to any proceedings guaranteed in the Constitution, it is so. You cannot do it directly or indirectly. You cannot do it by declaring, for instance, martial law with a retrospective effect. Martial law excludes Constitutional privileges, excludes them for the future, excludes them, because it smothers them, for the future—prospectively. But in this free country, Congress has no right to deprive a man in any portion of it of a trial by jury, for past offences, by the declaration of martial law. Is there any such sign of oppression in the Constitution or frame of government that we have?

These prisoners are humble men, plain citizens, as plain perhaps as the United States will find anywhere within its jurisdiction. But their rights, the rights that are guaranteed them, are precious to the people of the United States throughout every latitude and longitude over which the flag floats, and it has been by the oppression of just such individuals in England, and in other countries, that public liberty has from time to time been vindicated. It has been by the government, inadvertently or by the zeal of its officers, transcending rights belonging to plain, humble and sometimes vicious persons, that the greatest principles that we have guaranteed to us in the Constitution have come to be reckoned so precious. I refer the Court to its own readings in history, if it has not been true that some of the vilest men, as vile as Wilkes, or as plain as Jacques, have not become immortal in the history of civil liberty, merely because they were elevated from their seclusion by an attempt made by a proud and powerful government upon rights that were precious to the general mass of the people of the community; and I would rather try this case upon an indictment against David Watkins—"Monk"—than the proudest man in the country. I would rather vindicate these privileges in his person, I say, than I would in that of the late President of the Confederate government.

Let it be known, hereafter, as a lesson to those who shall come to study the grounds and limits of civil liberty, that in the person of a man as humble as he, the people of this government, from one end to the other, became excited over an abolition of the grand principle of civil liberty! These things have to be discussed hereafter. This cause will be re-judged hereafter, and the theories that are to be established now will be scrutinized most closely if ever civil liberty is to be restored in this land; as I believe and trust with all my heart it will.

It is not in the power of Congress, by any means, direct or indirect, to deprive David Watkins of the trial by jury, for any offense committed by him on the 11th of February, 1867; and whether it be in the power of Congress or not, Congress has not attempted to do it in this Act of March 2nd, 1867.

If I have caught public opinion to any degree, there seems to be an impression abroad, that when Congress established military law in March, 1867, it was a continuation of the law of July 16th, 1866, and that it is all *one* stream of military law. I say that this is a very loose opinion indeed.—I say that this is an opinion that will not bear arguing, and will not bear consideration.

* * * * * * *

Let the United States, then, run the State government. I have no objection to it.—Let it take every means in its power, and that its wisdom may suggest, for the purpose of hastening the reconstruction of this country; but while it administers its functions let it not forget the organic law, which is its only claim to exercise those functions anywhere. Let it not forget that it is based upon the principle that every man, every citizen, is entitled to be tried, for any crime with which he may be charged, *by a jury*, and that it is not in its power, directly or indirectly, to pass any Act, *ex post facto* Act, to take away these rights.

"No bill of attainder or *ex post facto* law shall be passed."—*Constitution of the U. S.*

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I beg your permission to read an extract from a work of authority on the subject by Mr. Sedgwick, a distinguished lawyer of New York City:

"The result of this branch of our inquiry is, then, that the legislature is competent to give a statute a retrospective or retroactive effect, *unless*: 1st. the act violates the provision of the Federal Constitution in regard to *ex post facto* laws, and the obligations of contracts; or 2nd. unless it so interferes with vested rights of property, as not to come within the proper limits of the law making power; or 3rd. unless it comes within the purview of some express prohibition contained in a State Constitution; that independently of these exceptions, retrospective statutes are within the scope of the legislative authority, and that the Courts are bound to enforce them, but that such laws, as a general rule, are objectionable in principle, and unjust in practice, and that a judiciary will give all laws a prospective operation only, unless their language is so clear as not to be susceptible of any other construction."

I have gone further than that, but I need only say in Mr. Sedgwick's language, that it is competent for the legislature to pass retrospective acts, unless they be *ex post facto*, &c., but Congress cannot pass any retrospective act that is an *ex post facto law*. By *ex post facto* laws we mean laws affecting crimes, taking away some Constitutional right, or their right with regard to the crime. * * * *

The Judge Advocate says they cannot be tried in Cumberland Co., but, then the law of N. C. provides that when a public prosecutor thinks they cannot be tried in a particular county, he may have the case removed. * * * * *

North Carolina has had no opportunity to punish these men, because the Superior Court was not allowed to finish its deliberations before they were claimed and put under military surveillance. I am not blaming the military for so doing, but it is germane to say,—in answer to the charge against North Carolina, that she would not have done justice to these persons—that she has not had an opportunity; because the only tribunal, that has jurisdiction of crimes of this magnitude, had not yet met in this county, or, if it had met, had not adjourned—had not shown what it would do. The very machinery that North Carolina has set up, and that has been set up all over this country, for the purpose of administering justice, irrespective of local prejudice, had not yet passed upon this offence; and it is a very hasty thing, and a thing that does the State very great injustice, to say, before an opportunity of that sort was allowed, that the State would not have been just as to these persons. * * * * *

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