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VOL III. NO. 117

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Raleigh, Sept. 1, 186. Publishers,

that upon the admission of our Senators and Representatives, the States become

was purely domestic; no department of that the case of Luther rs. Borden may the general government had any interest and some of them was therefore a fit umpire to decide. Chief Justice Tancy de-on three grounds :

1. The general rule that the recogni-WREKLY WATCHMAN'AND NORTH STATE tion of a government belongs to the political department.

2. That the Statal Courts of Rhode Island had determined the question involved and that decision was bluding on The type on which the "OLP NORTH STATE," Is printed is entirely new. No pains will be spared to make it a welcome visitor to every family. In order the U. S. Courts.

3. That the question could not be the subject of judicial investigation, by reato do this we have engaged the services of able and son of the difficulty of the proof

The reasons given for confining the question of recognition to the political department is based upon the constitutional guarantees, viz :

1. That of a republican form of gov ernment.

2. That of protection against invasion 3. That of protection against domestic violence.

Now, I agree that, if the people could n legal intendment, here acted in forming the carpet-bag governments, that the decision in Luther vs. Borden applies-for then it is reduced to a quarrel between different factions of the people of the State - but it is equally unfair and un-lawyerlike to call out certain expressions dropped by the Court arguendo and apply them literally to the present situation. Unfair, for that case was decided at a time when it cannot be supposed that the court had in view a state of things, tollowing an unsuccessful attempt to dissolve the Union, and therefore, we may infer used much more general expressions, than had such a situation been contemplated.

to be disregarded, that general expres- written - then I say, that as in legal in-

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WHOLE NO 408

apply, there must co-exist these circumin upholding one party to the quarrel, stances : 1. A government de facto of rather than the other, but stood neutral, the PEOPLE. 2. That such government should have been, in law and fact, recognized by the political department of livering the opinion puts the decision up- the government, if therefore there is no government, and in legal intendment could have been no government formed by the PEOPLE; then there can be no recognition-recognition implies ratification and it is well settled that a nulfity cannot be ratified ; a voidable act may be confirmed, &c., but not a void act. Then could the PEOPLE of North

Carolina have formed any government under the reconstruction acts ? I say not. A very large portion of the PEOPLE were absolutely debarred from participating in the formation of such government to say nothing of the allowing all the coled people to participate. The exact proportion of those excluded is not, nor can be estimated, but was necessarily numerous from the character of the excluding test and for the same reason embraced much of the talent, learning, virtue and respectability of the people, the govern-ment proposed to be creeted under the reconstruction acts, by reason then of this exclusion of so large a class, could never then, as seen and understood by the judicial mind, be regarded in legal contemplation as having been formed by the PEO-PLE; in law, it is but a mob clothed in the habiliments of lawful power - clothed in them by force. And I ask you, sire, to distinguish the case as it stands from a government with the same officers framed under a reconstruction act, prohibiting all whites and permitting all negroes to vote ? The difference rests not on principle but exists merely in degree ; not only was a very large class absolutely debarred by

the terms of the act but the same act Uu-lawyer-like - for "it is a maxim, not provides military force to carry it out, as

Can the Present Government in North Carolina be Declared Void and Without Authority, by Judicial Decision ? Messrs. Editors :- In your issue of the 30th of June you take ground in the negstive, but state that you would rejoice exceedingly to see the questions discussed answered in such a way as "to show that we have a constitutional mode of escape from our present condition, &c." It is a momentous question indeed, and

RALEIGH, N. C. incolving, as I conceive, not only the wel-

fare of our Southern people, but the iutegrity of the Constitution itself. The doctrine you advance (and though advanstitutional lawyers in North Carolina.) is shocking to every idea of Constitutional government, violates every notion of ethics in government and is at war with the fundamental principles of justice.

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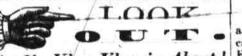
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ty years. Moses L. Brown's old stand, corner of Lee

and Liberty Street. MARTIN RICHWINE. Salisbury, N. C., May 19, 1868.

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BY virtue of a decree of the Probate Court of Rowan county, will be sold at the court-house door in Salisbury, on Tuesday, the 10th day of November, five hundred and ninety-five acres of land belonging to the estate of R. W. Griffith, dec'd. Said lands are situated in the Western part of the county, within two miles of the depot at Rowan Mills, and are very valuable. A further description of have been advertised before.-Terms made known on the day of sale. Z. GRIFFITH, Admr.

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1 Atw-36

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or that it is tantamount to such a recognition of the *statal [bogus] governments, by the political department of the Government from deciding on their validity. Congress, we may suppose, shall see fit

Your proposition, as I understand it is,

to reconstruct New York-a reconstruction act is passed -the Federal army sent on-a military Governor arrests Governor Fenton-a convention is called-all the 'E offer the largest and best assorted colored people allowed to vote, and all white Irish and Catholics prohibited-the convention assembles--establishes a constitution-enfranchising all the colored and disfranchising by means of test oaths or otherwise a large proportion of whites and a Legislature assembles in pursuance and by virtue of that Constitution-the Legislature elects two Senators, other than Messrs Morgan and Conkling-the new Senators present their credentials - can it be supposed for an instant that Congress. by recognizing the two Senators and new Representatives, and ejecting the old, could thereby preclude the question of the validity of such new government from

Suppose the above stated can be changed by Senator Morgan's resignation and the Senate seats one of the two newly elected Senators; which government is is then recognized by the political department, - "old New York," in Senator Conkling, or "new New York" in the newly elected Senator ? Or take another modi fication : Suppose that the seats of the He hopes to have the pleasure of welcoming Senators from New York become vacant -their successors are duly elected under the present government and they present

their credentials which are laid upon the table-then New York is reconstructed as before stated and the newly cleeted Senators are admitted to scats. Has New palpable and gross violation of her constrtutional rights ? By this logic the more outrageous and flagrant the wiolation of the constitution, the more effectually is it screened from the judicial condemnation ! That if Congress stops short of complete iniquity, their course may possibly be arrested by the judicial sentence; but if it proceeds to the exhaustion of every recourse of tyranny and usurpation, the more they tyranize-the more they usurp. the more certainly are their acts, screened from judicial scrutiny ! Such is the reductio ad absurdum from your argument.

You base your whole argument upon the authority of Luther vs. Borden, 7, How 1, and its application to the matter in and. Its authority none can deny-its pplication, I do. Long before that case had been decided it had been repeatedly held by the Supreme Court, that the recognition of foreign States was a matter Miss Sarah Freese and to be settled by the political departments of the Government. Gelston vs. Hoyt, 3. Wheat, 246. United States vs. Palmer, 3, Wheat, 610. The Santissima Trinilad and the St. Andres, 7, Wheat, 283. The case of Luther rs. Borden arose out of the Rhode Island difficulties ; those difficulties arose between different parties

"I am indebted to James Ponatleroy Taylor, Esq.; for this excellent adjective.

connection with the case in which those expressions are used. If they go beyond the so-called government and as accord-the case, they may be respected, but ought ing to the established theory (so often adnot to control the judgment in a subsequent suit, when the very point is presented for decision."-Cohens vs. Virginia, 6, Wheat, 399.

As then it cannot be successfully asserted but may be confidently denied, that the court in Luther rs. Borden could or would have possibly anticipated and directed their opinion, to a state of facts is law, and as must be seen by the Judges non-existent and non-contemplated, if indeed, not non-contemplatable, then it remains to consider, would a case involving the validity of the carpet-bag or bogus governments present the very point on which the case of Luther vs. Borden turn-

I say, that it would not, nor could it by any possibility. Taney, U. J., thus states the point decision : "The existence and authority of the government under which the defendants acted, was called in question ; and the plaintiff insists, that, before the acts complained of were committed, that government had been displaced and annulled by the PEOPLE of Rhode Is-

land," &c., p. 35. The learned Chief Justice, then assumes (and bases every position taken in the opposition over the other) that there existed a contest between different portions of the PEOPLE of Rhode Island for the government-no outside pressure-no dictation from abroad -- no importation of carpet-baggers aided by the bristling bayenets of U. S. Ttroops, but a pure, Kilkenny fight.

The question then which was raised and declined to be decided by the Court was, which was the rightful government of the PEOPLE of Rhode Island. Here could have had up voice in creeting, can be ratified into a legitimate government of such PEOPLE without their consent, by the recognition of its very creator !

Now the question which might be presented, is not whether or not the PEO- violate the first principles of justice to per-PLE have formed a so-called government, mit a recognition by Congress-indeed for admitting the legal opportunity, that becomes a political question and the decision in Luther es. Borden would applybut the question really is, whether in LR-GAL INTENDMENT the PE PLE could by any possibility have formed such govern- work, is an absurdity, an incognity, and mouts ?

If under the reconstruction acts the court should hold, that in legal contem- cide that when Congress shall have replation the PEOPLE could not have form cognized the question is at an end, but ed these governments-then as no government does, inclu-ernments could have been formed in law, ting the Executive. In our case you say none have been formed by the PEOPLE one department has recognised, the other in fact; this is a presumption juris of de has not, but expressly avoided doing so. jure-if the PEOPLE could have formed Then has there been no unequivocal reno government in law, a minority cannot cognition-does not the diverse action of form one in fact-then as the court can the Executive and Legislative department see that no government could be formed like mutual estoppels, set the matter at in law, they cannot without independent large ? I merely throw these points for proof, i. e., something more than the ad- consideration. I lay the stress of my mission of Senators, etc., see that any view on the other point. I have merely have been formed in fact, and as what skimmed the surface of the question. does not appear cannot exist, the court As some parties have written over my old nome de plume of SIGMA, articles which sas no government which could form the I dont intend to father, I sign myself subject matter of recognition. In order

sions, in every opinion, are to be taken in | tendment, the PEOPLE of North Caroli na could by no possibility have formed vanced by yourselves) there was no conquest but upon the surrender. we were co

instanti remitted to the jus postliminii, this so-called-bogus-carpet-bag-government, is not nor could not have been in law. the creation of our PEOPLE, but is nothing but the creation of Congress-anarchy legalized and styled government. It to have just as much and no other or higher effect than if Congress had instead passed a law as follows :

The Congress does enact, that W. W. Holden be Governor of North Carolina ; T. R Caldwell; Licut. Gov.; John Pool and Joseph C. Abbott Senators in Congress, and French, Deweese, etc., etc., be members of the llouse of Representatives, &c., and so on, enumerating all the other officers.

Now, I ask you, sirs, if you would contend by virtue of Pool and Abbott being allowed their seats under this act, and French, etc., of the other House, the Court. would be precluded from deciding upon such a government by force of the decision in Luther vs. Borden ? Will you, distinguish the reconstruction acts from the imagined one as applied to New York, under the established theory that the State has always been a member of the Federal Union ? It seems to me, sirs, that the lawyer who contends that Luther vs Borden is in the way of a judicial inquiry into the most infamous conspiracy against the rights and liberties of a peoples, like the reconstruction acts, has either never learned or has forgotten the maxim qui haeret in litera haeret in cartice. Indeed he has stuck in the form books of the law In the foregoing observations I have omitted the discussion of two points which bear upon the whole question of reconstruction.

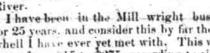
1. That as the bogus governments are wholly the creatures of Congress, it would that the idea of applying the term recognize, (conveying as it does through judicial interpretation, the idea of impartiality. neutrality and entire disinterestedness) to the action of Congress towards its own a legal solicism.

2. That Luther vs. Borden does not de-

TAU.

hate Mrs. Louisa Brown's old stand, near Imw-30 Sept. 25, 1868.





malem. Davie Co., N. C.

Sep. 10, 1868.