

SPEECH OF HON. T. STEVENS, OF PENNSYLVANIA,

DELIVERED

In the House of Representatives, March 19, 1867,

ON THE

BILL (H. R. NO. 20) RELATIVE TO DAMAGES TO LOYAL MEN, AND FOR OTHER PURPOSES.

Published by the Republican Congressional Executive Committee.

Mr. STEVENS said—

Mr. SPEAKER: I am about to discuss the question of the punishment of belligerent traitors by enforcing the confiscation of their property to a certain extent, both as a punishment for their crimes and to pay the loyal men who have been robbed by the rebels, and to increase the pensions of our wounded soldiers. The punishment of traitors has been wholly ignored by a treacherous Executive and by a sluggish Congress. I wish to make an issue before the American people, and see whether they will sanction the perfect impunity of a murderous belligerent, and consent that the loyal men of this nation, who have been despoiled of their property, shall remain without remuneration, either by the rebel property or the property of the nation.

To this issue I desire to devote the small remnant of my life. I desire to make the issue before the people of my own State, and should be glad if the issue were to extend to other States. I desire the verdict of the people upon this great question.

This bill is important to several classes of people.

It is important to our wounded and maimed soldiers, who are unable to work for their living, and whose present pensions are wholly inadequate to their support. It is important to those bereaved wives and parents whose habiliments of woe are to be seen in every house, and proclaim the cruel losses which have been inflicted on them by the murderous hands of traitors.

It is important to the loyal men, North and South, who have been plundered and impoverished by rebel raiders and rebel Legislatures.

It is important to four millions of injured, oppressed, and helpless men, whose ancestors for two centuries have been held in bondage and compelled to earn the very property, a small portion of which we propose to restore to them, and who are now destitute, helpless, and exposed to want and starvation, under the deliberate cruelty of their former masters.

It is also important to the delinquents whose property it takes as a fine—a punishment for the great crime of making war to destroy the Republic, and for prosecuting the war in violation of all the rules of civilized warfare. It is certainly too small a punishment for so deep a crime, and too slight a warning to future ages.

No committee or party is responsible for this bill. It is chargeable to the President and myself. Whatever merit it possesses is due to Andrew Johnson. In the summer of 1864 he said in a public speech:

"Let me say now is the time to secure these fundamental principles, while the land is rent with anarchy and upheaves with the throes of a mighty revolution. While so-

ciety is in this disordered state and we are seeking security, let us fix the foundations of the Government on the principles of eternal justice, which will endure for all time.

"Shall he who brought this misery upon the State be permitted to control its destinies? If this be so, then all this precious blood of our brave soldiers and officers, so freely poured out, will have been wantonly spilled. All the glorious victories won by our noble armies will go for naught, and all the battle-fields which have been sown with dead heroes during the rebellion will have been made memorable in vain.

"Why all this carnage and devastation? It was that treason might be put down and traitors punished. I say the traitor has ceased to be a citizen, and in joining the rebellion has become a public enemy.

"Treason must be made odious and traitors must be punished and impoverished; their great plantations must be seized and divided into small portions, and sold to honest, industrious men. The day for protecting the lands and negroes of these authors of rebellion is past. It is high time it was. I have been most deeply pained at some things which have come under my observation. We get men in command, who, under the influence of flattery, fawning, and caressing, grant protection to the traitor, while the poor Union man stands out in the cold."

This is all the eloquent language of Andrew Johnson as "he was." This was the text which I took up and elaborated in a speech to my constituents at Lancaster, in September, 1865, and which has been much criticized by humane sympathizers with rebels. Andrew Johnson was the apostle whose preachings I followed. His doctrine pervades and animates this whole bill. Whatever of justice is in it is due to him. I call upon his friends to stand by him in this, his favorite policy. If you now desert him, who can you expect to defend the "much-enduring man" at the other end of the avenue? Having thus rendered unto Caesar the things that are Caesar's, I will proceed to defend the course recommended by him, who above all others knows what is due to traitors.

This bill, it seems to me, can be condemned only by the criminals and their immediate friends, and by that unmanly kind of men whose intellectual and moral vigor has melted into a fluid weakness which they mistake for mercy, and which is untempered with a single grain of justice, and to those religionists who mistake meanness for Christianity, and who forget that the essence of religion is to "do unto others what others have a right to expect from you." It is offensive to certain pretentious doctors of divinity, who are mawkishly prating about the "fatted calf, the prodigal son, and the forgiving father." They forget that there is no analogy between the cases. The thoughtless youth having received a part of his father's estate, and probably taking a load of corn to market, fell into bad company and contracted the loathsome vice of drunkenness, and spent the money in rioting and debauchery, and, like all drunkards, made his bed with the swine and fed on husks; but, like one case only in a thousand, he reformed, joined the total abstinence so

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ciety, washed himself clean, brushed his clothes, and with repentant steps returned to his father's house. Well might his aged parent rejoice; well might he kill the fatted calf at such a rescue. But how venial was such an offence compared with this murderous rebellion!

When the great ancestor of this bloody race had slain his brother, and tremblingly met his Judge and sought for pardon, what was the answer? "The voice of thy brother's blood crieth unto me from the ground. And now art thou cursed from the earth, which hath opened her mouth to receive thy brother's blood from thy hand. When thou tillest the ground it shall not henceforth yield unto thee her strength; a fugitive and a vagabond shalt thou be in the earth." When Cain cried out that his "punishment was more than he could bear," the Judge who administered justice in mercy drove him forth into stern, inexorable exile. He taught no forgiveness for such sins. He prated of no "fatted calves."

I proceed to consider the bill. By the act of 17th July, 1862, treason is made punishable by death or some smaller punishment, at the discretion of the court. Before punishment can be inflicted for treason or misprision of treason the party must be duly convicted in a court of the United States. Not so with the balance of the bill. All the rest of that law (after the first four sections) refers to persons engaged in the belligerent army, or officially connected with the government known as the "Confederate States of America," or to those who voluntarily aided that power. While that law supposed that most of the people composing that army and government were traitors, yet they are dealt with in all the provisions which refer to confiscation merely as belligerents making an unjust war. The forfeitures which follow from a conviction for treason are left to the operations of the common law.

The fifth section enacts that—

"To insure the speedy termination of the present rebellion, it shall be the duty of the President of the United States to cause the seizure of all the estates and property, money, stocks, credits, and effects of the persons hereinafter named in this section, and apply and use the same and the proceeds thereof for the support of the Army of the United States."

Then follow the enumeration of all the officers of the army and navy of the confederate government; all civil officers of said government; all persons engaged in the army or navy, or aiding said confederate States of America, unless they laid down their arms within a given time.

To secure the condemnation of property thus seized, proceedings *in rem* are to be instituted wherever the property may be found, which proceeding shall follow the proceedings in admiralty or revenue cases, and the same shall be condemned as enemies' property, and become the property of the United States, and the proceeds paid into the Treasury of the United States (Seventh section act of 17th July, 1862). The eighth section provides that the court shall make all necessary orders, and the marshal shall make deeds and conveyances for such property to the purchaser, and then such titles shall be good and valid.

This law is unrepealed. It is in full force, and

stands on the statute-book as one of the laws which the President swore to execute. (Would to God he had obeyed his oath! Let us see that we obey ours.)

It may be objected that the Government is stretching its powers in making such confiscations. That was a question well considered when the act of 1862 was passed. It must be remembered that this is not an open question; we are merely considering the enforcement of an existing law. But I will briefly review some of the arguments in favor of the right. We are treating these belligerents simply as enemies, and their property as enemies' property now in the possession and power of the conqueror. By the law of nations in its most stringent provision all the property, liberty, and lives of a conquered enemy who has waged an unjust war are at the disposal of the victor. Modern civilization will seldom justify the exercise of the extreme right. The lives, the liberty, and, in most cases, the real property of the vanquished are left untouched. The property, however, of the vanquished is held in some shape liable to pay the expenses and damages sustained by the injured party. If peace is brought about by treaty, it is usually stipulated that the expenses and damages shall be paid by the defeated belligerent. As such remuneration must be levied as taxes on the subjects, it does subject all their property to this burden. Where there is no government capable of making terms of peace, the law-making power of the conqueror must fix the terms. This gives them sufficient right to take just such property as it may deem proper. Where the subdued belligerent is composed of traitors, their personal crimes aggravate their belligerent offence and justify severer treatment, just as a tribe of savages are treated with more rigor than civilized foes.

From such a people much more might and ought to be exacted than from an honorable enemy. Whenever example requires it, heavy fines should be imposed and the criminals reduced to poverty, as was properly required by our excellent President. Vattel says:

"When, therefore, he has subdued a hostile nation, he undeniably may, in the first place, do himself justice respecting the object which has given rise to the war, and indemnify himself for the expenses and damages which he has sustained by it."

Halleck (page 457) says that by strict right property on land and real estate is subject to seizure, though seldom enforced with an ordinary enemy.

All writers agree with Vattel, (page 369)—

"Thus a conqueror who has taken up arms not only against the sovereign, but against the nation herself, and whose intention it was to subdue a fierce and savage people, and once for all to reduce an obstinate enemy, such a conqueror may with justice lay burdens on the conquered nation, both as compensation for the expenses of the war and as a punishment."

Apply these principles to the case in hand. The cause of the war was slavery. We have liberated the slaves. It is our duty to protect them, and provide for them while they are unable to provide for themselves. Have we not a right, in the language of Vattel, "to do ourselves justice respecting the object which has caused the war," by taking lands for homesteads for these "objects" of the war?

Have we not a right, if we chose to go to that extent, to indemnify ourselves for the expenses and damages caused by the war? We might make the property of the enemy pay the \$4,000,000,000 which we have expended, as well as the damages inflicted on loyal men by confiscation and invasion, which might reach \$1,000,000,000 more. This bill is merciful, asking less than one tenth of our just claims.

We could be further justified in inflicting severe penalties upon this whole hostile people as "a fierce and savage people," as an "obstinate enemy," whom it is a duty to tame and punish. Our future safety requires stern justice.

What more "savage or fierce people" than they who deliberately starved to death sixty thousand prisoners of war; who shot or reduced to bondage all captive soldiers of the colored race; who sought to burn our cities through secret agents; who sent infected materials into our most populous towns to destroy non-combatants, old men, women, and children, by the most loathsome and fatal diseases; and who consummated their barbarism by the assassination of the mildest of rulers and the best of men? If this is not a "fierce and savage enemy," whom we have a right to reduce to absolute submission and dependence, point me out one to which the language of Vattel will apply. You would do great injustice to those mild savages who owed us no allegiance by pointing to those who perpetrated the massacre of Wyoming; or to the Camanches or the wild Indians of the West, or the fierce tribes of the Oronoco—and yet you seize their lands and expel them from their native country.

I suppose none will deny the right to confiscate the property of the several belligerent States, as they all made war as States; or of the Confederate States of America; for no one ever denied the right of the conqueror to the crown property of the vanquished sovereign, even where the seizure of private property would not be justified by the circumstances.

That would give us all called for by the first section of the bill. I believe Texas has about one hundred and ten million acres. She retained all her public lands at the time of annexation on the condition of paying her own debts; and afterwards called on the United States Government for the payment of those very debts, and procured it. I know not how much the other States may have; possibly enough to make up with Texas, one hundred and fifty million acres. But it is said that only the property of the sovereign is subject to seizure by the conqueror. In ordinary wars between monarchies such is the fact; but that is not the case where war is made on a whole hostile people—"a fierce and savage people." But, admitting the limitation to prevail, still it does not obstruct us.

Here is a belligerent made up of men whose crimes had forfeited all their rights, independently of their belligerent liabilities. But beyond that, the case of republics is very different from absolute governments, where the people are responsible for nothing—are guilty of nothing. The sovereign and his estate may well be distinguished from his subjects and their estates. But in republics the people—the whole people—

are the sovereigns. All the responsibility of the acts of the Government falls upon all the people. Their individual property must answer for the expenses, damages, and indemnities which fall on the Government of the nation. The Romans, from whom we derive our national law, held that the private property of every citizen might be seized, because he was a sovereign, a part of the governing power.

But it matters not what you may think of the efficiency of the act of July 17, 1862. The laws of war authorize us to take this property by our sovereign power—by a law now to be passed. We have a subdued enemy in our power; we have all their property and lives at our disposal. No peace has been formed. No terms of peace or of reconciliation have been yet proclaimed, unless the proclamation of the President can make peace and war. The Constitution denies him any power in either case. Then, unless Andrew Johnson be king, the terms of peace are yet to be proclaimed. Among those terms, as we have shown, we have a right to impose confiscation of all their property—to "impoverish" them, as Andrew Johnson has told us; to "divide their large farms and sell them to industrious men." This is strict law and good common sense. Now, then, without reference to any former act, we have a right to seize the property named in this bill, and ten times more. You behold at your feet a conquered foe, an atrocious enemy. Tell him on what terms he may arise and depart or remain loyal. But do not embrace him too hastily. Be sure first that there is no dagger in his girdle. The President has been throwing thick around him decrees and proclamations and speeches upon subjects wholly beyond his jurisdiction. He assumes that his declaration of a fact creates a fact, however false it may be. His constitutions dictated to hordes of rebels; his declaration that the States are States in the Union; his proclamation that peace is restored, he has cunningly put forth as cumulative evidence of the condition of the "confederate States." Not one of them is any better than waste paper. All put together are but accumulated nonsense. Does he expect to deceive or to bewilder Congress by such incoherent assumptions? I think that Congress will proceed in that calm, unimpassioned, but unwavering course which distinguishes the statesman from the demagogue.

Having, as I conceive, justified the bill which I seek to have enforced, let us now look to the provisions of the bill under consideration.

The first section orders the confiscation of all the property belonging to the State governments, and the national government which made war upon us, and which we have conquered. I presume no one is prepared to object to this, unless it be those who condemned the conquest. To them I have nothing to say, except to hope that they will continue consistent in their love of the rebels; to show an exuberant humanity into which is merged and submerged all the exalted feelings of patriotism.

The second section requires the President to execute an existing law which he is sworn to execute, but the performance of which oath is in abeyance. Certainly such law should be en-

forced or repealed; it is a mockery to allow it to stand on your statute-books and be not only not enforced, but violated every day by the executive government.

The third section furnishes a more convenient and speedy mode of adjudicating such forfeitures, and more consistent with the military condition of the conquered States.

The fourth section provides, first, that out of the lands thus confiscated each liberated slave who is a male adult, or the head of a family, shall have assigned to him a homestead of forty acres of land, (with \$100 to build a dwelling,) which shall be held for them by trustees during their pupilage.

Let us consider whether this is a just and politic provision.

Whatever may be the fate of the rest of the bill, I must earnestly pray that this may not be defeated. On its success, in my judgment, depends not only the happiness and respectability of the colored race, but their very existence. Homesteads to them are far more valuable than the immediate right of suffrage, though both are their due.

Four million of persons have just been freed from a condition of dependence, wholly unacquainted with business transactions, kept systematically in ignorance of all their rights and of the common elements of education, without which none of any race are competent to earn an honest living, to guard against the frauds which will always be practiced on the ignorant, or to judge of the most judicious manner of applying their labor. But few of them are mechanics, and none of them skilled manufacturers. They must necessarily, therefore, be the servants and victims of others, unless they are made in some measure independent of their wiser neighbors. The guardianship of the Freedmen's Bureau, that benevolent institution, cannot be expected long to protect them. It encounters the hostility of the old slaveholders, whether in official or private station, because it deprives these dethroned tyrants of the luxury of despotism. In its nature it is not calculated for a permanent institution. Withdraw that protection and leave them a prey to the legislation and treatment of their former masters, and the evidence already furnished shows that they will soon become extinct, or driven to defend themselves by civil war. Withhold from them all their rights, and leave them destitute of the means of earning a livelihood, the victims of the hatred or cupidity of the rebels whom they helped to conquer, and it seems probable that the war of races might ensue which the President feared would arise from kind treatment and the restoration of their rights. I doubt not that hundreds of thousands would annually be deposited in secret, unknown graves. Such is already the course of their rebel murderers; and it is done with impunity. The clearest evidence of that fact has already been shown by the testimony taken by the "Central Directory." Make them independent of their old masters, so that they may not be compelled to work for them upon unfair terms, which can only be done by giving them a small tract of land to cultivate for themselves, and you remove all this danger. You also elevate the character of the

freedman. Nothing is so likely to make a man a good citizen as to make him a freeholder. Nothing will so multiply the productions of the South as to divide it into small farms. Nothing will make men so industrious and moral as to let them feel that they are above want and are the owners of the soil which they till. It will also be of service to the white inhabitants. They will have constantly among them industrious laborers, anxious to work for fair wages. How is it possible for them to cultivate their lands if these people were expelled? If Moses should lead or drive them into exile, or carry out the absurd idea of colonizing them, the South would become a barren waste.

When that wisest of monarchs, the Czar of Russia, compelled the liberation of twenty-five million serfs, he did not for a moment entertain the foolish idea of depriving his empire of their labor or of robbing them of their rights. He ordered their former owners to make some compensation for their unrequited toil, by conveying to them the very houses in which they lived and a portion of the land which they had tilled as serfs. The experiment has been a perfect success. It has brought the prosperity which God gives to wisdom and justice. Have they not a right to it? I do not speak of their fidelity and services in this bloody war. I put it on the mere score of lawful earnings. They and their ancestors have toiled, not for years, but for ages, without one farthing of recompense. They have earned for their masters this very land and much more. Will not he who denies them compensation now be accursed, for he is an unjust man? Have we not upon this subject the recorded decision of a Judge who never erred? Four million Jews were held in bondage in Egypt. Their slavery was mild compared with the slavery inflicted by Christians. For of all recorded slavery—Pagan, heathen, or Mohammedan—Christian slavery has been the most cruel and heartless; and of all Christian slavery, American slavery has been the worst. God, through no pretended, but a true Moses, led them out of bondage, as in our case, through a Red sea, at the cost, as in our case, of the first born of every household of the oppressor. Did he advise them to take no remuneration for their years of labor? No! He understood too well what was due to justice. He commanded the men and the women to borrow from their confiding neighbors "jewels of silver and jewels of gold and raiment." They obeyed him amply, and spoiled the Egyptians, and went forth full-handed. There was no blasphemer then to question God's decree of confiscation. This doctrine then was not "satanic." He who questions it now will be a blasphemer, whom God will bring to judgment. If we refuse to this down-trodden and oppressed race the rights which Heaven decreed them, and the remuneration which they have earned through long years of hopeless oppression, how can we hope to escape still further punishment if God is just and omnipotent? It may come in the shape of plagues or of intestine wars—race against race, the oppressed against the oppressor. But come it will. Seek not to divert our attention from justice by a puerile cry of fatted calves!

The fifth section provides that \$500,000,000 shall be raised out of the confiscated property for two purposes: the increase of the pensions of our soldiers and the payment to loyal despoiled citizens. Is there any injustice in this? We have seen that by the law of nations they were liable to pay all the expenses and damages of the war. Those expenses cannot be less than five billion dollars, including our debt and what was paid with taxes; the damages were probably half a billion more. To exact but one tenth part is mercy unexampled in national magnanimity. In the great munity in India, in which so many millions of the original owners of the soil were engaged, and who held proprietary rights under well-defined titles, the Government declared that their engagements had been canceled by the rebellion, and that the proprietary right in the soil was confiscated to the Government, which would dispose of that "right as to it might seem fitting." No one ever complained that this exceeded the power of the victors. Why so tender when a small punishment is to be inflicted on our enemy? Three hundred million dollars put at interest at six per cent. would just about double present pensions. Eight dollars a month to men unable to work is wholly inadequate to their necessities. That rate was fixed when the pay of soldiers was but eight dollars per month; it is now sixteen dollars. The increased price of all the necessities of life renders that necessary. The pension should be increased in the same proportion. Their present allowance is a mere mockery; it must be doubled out of some fund. Shall it be at the cost of loyal men, or of those who mangled and slew our noble soldiers? You talk of pity. Pity for whom? Your tears flow for pompous traitors: ours, for maimed, halting, crippled patriots.

I know there is a cry for the perfect impunity of the enemy. It is a dangerous and unwholesome doctrine. Inflict salutary punishments to prevent future civil wars and to punish the criminals; "their brothers' blood cries to us from the earth, which has opened its mouth to receive their brothers' blood from their hands;" all this blood cannot sink into the ground unavenged; the ghosts of these murdered martyrs will not down, but will haunt their murderers to the bar of eternal judgment.

Is there anything in the practice of nations to condemn this confiscation? Nothing; but everything to justify it. When a city of people in alliance with Rome conspired to levy war against her, on being conquered she was not unfrequently deprived of half her population and their lands taken and given to Roman colonists. Where all is justly forfeited, including their lives, to leave them a part is great mercy. I need not cite the examples of Greece and Macedonia. They were severer than Rome. Now, I would not exact much personal punishment. I have never believed in bloody penalties. I have long since adopted the milder views of Boccaccia and Montesquieu. But when I say that, it does not mean impunity to criminals. Heavy pecuniary punishments should take the place of personal inflictions. Rome at one time decreed that no blood should be shed except in hostile

conflict. But for making war on the republic and lesser crimes she interdicted to the "malefactor fire and water," which was the form of her sentence of banishment. Such banishment involved the forfeiture of all their estate, real as well as personal. While they allowed the malefactor to depart with life, they reduced him to poverty. Such was the fate of Cicero when he went into exile. It was from the study of this Roman law, no doubt, that our learned President took the idea contained in his speech, "traitors must be impoverished." He will, I hope, pardon us for not being hard-hearted enough fully to carry out his wishes.

Certain gentlemen seem hard to learn, either from the writings of learned publicists, or from the passing and visible events of the present age. The German empire had many features similar to our own. It was composed of thirty-eight States, each independent in its own municipal government and laws, but each subject to the general government of the empire in whatever came within its jurisdiction. By its constitution all the States were pledged to perpetual union. This pledge had come down to them through ages. It had a congress of members from each of the States, which was sitting permanently, whose acts were to bind each member of the confederacy. War broke out between two of the principal Powers. The minor States ranged themselves under the banner of the one or the other. Prussia triumphed. Did the constituent party say, "We lay down our arms; peace ensues; and we claim our old rights as they were under the constitution of the German empire? We could not go out of that empire, for our constitution declared that it should be perpetual." No. None of the vanquished Powers were so idiotic as to set up such pretences. No one was foolish enough to suggest it to the conqueror. Prussia took up these submissive States and dealt with them according to the universally acknowledged laws of war. She first imposed the expenses of the war upon the conquered belligerents according to what she deemed equitable. Austria bore forty-five millions, Saxony ten millions, Bavaria three millions, and so on. She refused to let the States participate in the Government, but incorporated several of them into the kingdom of Prussia. Why do not these injured parties invoke the indignation of the civilized world? Because they know that the verdict would be against them. They know that the war destroyed the constitution of the German empire and annulled the treaties of 1815; that all must be subject to the will of the conqueror. Where is our statesmanship, that we suffer the enemy to escape from the payment of the cost and damages of the war? Where is our patience, that we suffer them to clamor about rights under the Constitution? Where is our courage, that we suffer the President to head this new rebellion?

The remaining part of the sum levied, to wit, \$200,000,000, is to remunerate loyal men in both sections, who, in consequence of their loyalty, have been plundered and had their property destroyed by the invading armies and raiders of the enemy, or by the unjust seizure and confiscation of the property of loyal men

in the rebel States. Who objects to this? Whoever does, let him put his name on record, that the country may fairly judge on which side his sympathies lie. By the usages of nations the property of the citizens of the belligerent Power taken or destroyed as a military necessity is paid by the Government. But property taken or destroyed by the enemy is not paid by the Government. Strictly speaking, the property of citizens of the hostile Government, though friendly to the conqueror, cannot be charged to the victor. But in civil wars it seems to me that a distinction should be made, and those who had suffered for their adherence to the parent Government should be taken care of in adjusting the conditions of peace. We know there are loyal men in the South who are large sufferers. There are a still larger number in the North who are made larger sufferers, neither of whom have any chance of being remunerated except through this congressional legislation. Neither of them can ever receive a dollar out of the Treasury of the United States. I know not whether \$200,000,000 will pay them. Certainly it would be a great relief. I need not enumerate the sort of damages to which I refer. Southern loyalists who have suffered are everywhere to be seen. The valley of Virginia and the course of Sheridan's operations are full of them. The smoking ruins of Lawrence and Chambersburg, almost every county of Missouri and Maryland, and the frontier portions of Ohio, are samples of the latter.

If the war had been between two regular governments, both of which survived the war, the victors, in the treaty of peace, would require the vanquished to pay all such damages, as well as all the expenses of the war. If neither had conquered the other, they would probably be silent, and each bear his own loss. Congress is dictating the terms of peace. If she does not provide for these meritorious claimants, she will be bound in honor to pay them out of the National Treasury. If she does not, individuals will be wronged and the nation dishonored. This bill is very merciful toward a cruel, outlawed belligerent, who, when their armies were dispersed, would gladly have compromised if their lives were saved. Those who will be affected by this bill will not exceed seventy thousand, out of a population of six million whites, for this is a people of aristocrats and subjects—of a proud nobility and a cringing, poor peasantry. Those seventy thousand persons own about three hundred and ninety million acres of land out of the five hundred million in the confederate States. This, together with the town property, cannot be worth less than \$10,000,000,000. This estimate includes no man's property who was worth less than \$10,000; nor does it include any personal property, which may, perhaps, swell it to \$12,000,000,000. The fine proposed would be but one-twentieth of their estates. Were ever such great malefactors so gently dealt with? It were well if all their large estates could be subdivided and sold in small tracts. No people will ever be republican in spirit and practice where a few own immense manors and the masses are landless. Small independent landholders are the support and guardians of republican liberty.

But it is said that very many of these men have been pardoned by the President, and their forfeited estates restored to them.

I must take the liberty to deny that any pardon, or any other power vested in the President, can withdraw these forfeited estates from the confiscation decreed by Congress. Nothing less than an act of Congress can divest them from the United States and bestow them on the pardoned belligerents. No one denies that the President possesses the pardoning power. This power is conferred on the Chief Executive for wise purposes—to correct the errors and mistakes of courts, and imperfections of human laws. Bacon says:

"The power of pardoning offences is inseparably incident to the crown, and this high prerogative the king is intrusted with upon a special confidence that he will spare those only whose case, could it be foreseen, the law itself may be presumed willing to have excepted out of the general rules which the wisdom of man cannot possibly make so perfect as to suit every particular case." (6 Bac. Abr., 138.)

How well the President has adhered to the object of this high prerogative others must judge. The special pardons granted cannot indeed be over four thousand of the subjects of confiscation.

The pardons are granted for the crime of treason.

I shall not question that such pardons may be pleaded in bar of any prosecution for treason, and save the traitor's property from the forfeiture which results from the conviction of that crime.

But the act of July 17, 1862, under which these forfeitures arise, has no reference to treason, (except the first four sections, under which we do not ask the action of the Executive.) It declares the property of certain belligerents, enemies of the United States, subject to seizure, and orders it to be appropriated, as enemies' property, to the service of the United States Government. In perfecting the forfeiture, it does not pretend to prosecute the owners for crime, but treats their property as that of any enemy who was captured as lawful prize. How can the President by a pardon restore the property thus vested in the United States? Suppose the delinquent were an alien enemy, and as such his property or land was ordered to be seized by act of Congress? Could the President dispense with that law by his sovereign power and arrest the forfeiture in its transit to the Treasury? The belligerent has been guilty of no crime as belligerent of which the Executive could absolve him. Neither the war-making power nor the power to make peace is in the President. The power to declare war is vested in Congress alone. The power to make peace rests with the President and the Senate. The power to dispose of the property of a conquered people is vested in the sovereign law-making power of the nation, which in this Republic is Congress. A king of England once claimed and exercised the right to dispense with an act of Parliament; but the Parliament vindicated its rights, and by an act (1 Ws., 111) declared all such pardons and charters void, and that no "dispensation by *non obstante* of or to any statute or any part thereof be allowed." Have we the courage and the virtue of our British ancestors?

But at the most the pardons extend to but fourteen thousand out of seventy thousand wealthy belligerents. While there is not the least pretense in law that the President, by pardon or otherwise, can wrest this property from the Government, yet it is melancholy that the Executive should confederate with traitors, and by his own act and on his own individual responsibility attempt to take billions out of the Treasury of the United States to enrich bloody traitors; to impose burdens on the loyal men who risked life and property to save the nation that fawning rebels might live in affluence and glorify him. But even if all those now pardoned were beyond our reach, there are still several thousands who are not shielded by these potential charters. That will suffice for the small sum which this bill requires.

While all must mourn over the melancholy spectacle of the attempted robbery of loyal men and the suffering relations of the martyrs of liberty by one who should be their guardian, let us deal fairly and place the responsibility where it justly belongs. Andrew Johnson, before he was President, held, as we have seen, the following language. In a speech already referred to, made in the summer of 1864, he said:

"Why all this carnage and devastation? It was that treason might be put down and traitors punished; therefore I say that traitors should take a back seat in the work of reconstruction. [No "restoration" then.] I say the traitor has ceased to be a citizen, and in joining the rebellion has become a public enemy. He forfeited his right to vote with loyal men when he renounced his citizenship and sought to destroy our Government. [Then there was no being in the Union and entitled to "equal rights."] Treason must be made odious, and traitors must be punished and impoverished. Their great plantations must be seized and divided into small farms, and sold to honest, industrious men. The day for protecting the lands and negroes of these authors of rebellion is past. It is high time it was. I have been most deeply pained at some things which have come under my observation. We get men into command who, under the influence of flattery, fawning, and caressing, grant protection to the traitor, while the poor Union man stands out in the cold, often unable to get a receipt or a voucher for his losses."

How well he describes men when they get in command, "who, under the influence of flattery, fawning, and caressing, grant protection to traitors, while loyal Union men stand out in the cold." For some time after he "got in command" he held the same honest language: but, unfortunately, he had inherited the prime minister, the chief bane of his predecessor, who, oily and adroit, gradually gained his confidence and misled his judgment. He boasts that the plan of the Administration is his plan, invented by him, and carried on by him. This is doubtless true. It cannot be the President's plan, for it contradicts all his well-considered declarations; but in process of time he was beguiled. While he was "clothed and in his right mind" he uttered the thoughts and sentiments of a statesman; but Seward entered into him, and ever since they have both been running down steep places into the sea. Nor do I expect he will be cast out without "sore rending."

Without impeaching the motives of the President, it is the duty of Congress, in vindication of its proper rights and prerogatives, to declare that he has arrogated to himself powers and attempted to do and enforce acts for which he

can find no warrant in the Constitution and laws of the nation. Invested as he is with the command of the Army and Navy, with all the executive powers of the different departments, if he should be permitted to usurp still further powers, and take control of the States, and the organization of Congress, is there not danger that some future Executive, some ambitious Cæsar, will cross the Rubicon and march his legions upon the capital? While protecting the President in the exercise of all his legitimate duties, and in times of national peril making large allowance for patriotic acts of doubtful legality, great care should be taken that he does not draw to himself all the powers of Government, and thus enable him to become a despot. This is one of the sacred duties of Congress, which if they fail to discharge they deserve the severest censure, for they betray a nation; nay more, they betray the cause of universal liberty. To maintain this position is difficult, and requires great fortitude and moral courage. How apt is poor human nature to yield to the smiles or the frowns of power. How difficult to determine to cast from you all chance of influence and patronage! How difficult to resist the temptations of office and emolument! And yet all this must be done, or this great country, instead of being free, will become the heritage of tyrants.

Ten States of this Union have cast off their allegiance, and by the common acknowledgment of all have forfeited all their rights under the Constitution. To become again legitimate States in the Union, so as to entitle them to equal rights with the other States, the Constitution requires the sanction of Congress. It matters not whether such power is attributed to the provision to admit new States, or to the clause guarantying republican forms of government; in either case Congress is the only power authorized to act; so has the Supreme Court of the United States decided in *Luther vs. Borden*, and elsewhere. The law-making power providing for the case, the President's whole functions are to execute the laws. If the "Confederate States of America" are a conquered Power, the President, as Commander-in-Chief, may hold them in military rule until the sovereign power of the nation declares by what laws they shall be governed. Sovereignty rests with the people, and is exercised through their representatives in Congress. But the President has assumed not only the military control of those conquered States, but he has attempted to give the force of laws to his proclamations and decrees, whereby he has determined what acts shall entitle them to all the rights of States in the Union. He has imposed upon them forms of government without their consent, and without the consent of Congress. He has allowed a small minority of their votes to register his constitutions, and, without submitting them to the ratification of the people, he has declared them legitimate, organic laws, and the States "reconstructed." He has imperiously required of Congress to treat them as equal in all their rights to the loyal States, without inquiry whether they are entitled to representation, and dogmatically informed them that their only

power is "each House for itself to inquire into the qualification and election of members who present themselves and claim their seats." If his order is not obeyed, he obstructs legislation and "forbids" Congress to pass laws in the absence of such members. What more could a king do but place the crown upon his head? The king of England, for one hundred and fifty years, has not ventured to oppose his single will to the will of the nation and veto a bill which had passed the Parliament of the realm. England has had her servile and timid Commons ready to register the edicts of the Crown; but for the last hundred years such a body would have been hurled from power and doomed to infamy by the English people and by history. We are now undergoing the test of courage and of the integrity of a Republican Congress. How many may be craven none can tell. For who can judge of his own strength? History will record their names. Men now obscure may thus obtain the advantage of becoming famous.

But it is said that Mr. Johnson is but carrying out the policy of Mr. Lincoln. That, if true, would not justify his errors. But it is not true. In the midst of the war Mr. Lincoln had but little time or little occasion to examine into the question of reconstruction. Until the enemy was conquered everything was made subservient to that great object. Attempts to distract the "confederate" government were made by recognizing parts of her territory as loyal. Such was the case with small portions of Louisiana. The President encouraged them to assume the form of a State; but Congress never sanctioned it. The President, by his message and proclamation of December, 1863, suggested a mode of reconstruction; but in it he distinctly disclaimed all right to control Congress in the matter, and declared that his suggestion of a plan did not exclude other plans. He said:

"For the same reason it may be proper to say that, whether members sent to Congress from any State shall be admitted to seats constitutionally, rests exclusively with the respective Houses, and not to any extent with the Executive."

He defines more carefully what he meant in this proclamation in a well-prepared speech delivered three days before his death, (11th of April, 1865.) He said:

"In this I have done just so much and no more than the public knows. In the annual message of December, 1863, and accompanying proclamation, I presented a plan of reconstruction (as the phrase goes) which I promised, if adopted by any State, should be acceptable to and sustained by the Executive government of the nation. I distrust V stated that this was not the only plan which might possibly be acceptable; and I also distinctly protested that the Executive claimed no right to say when or whether members should be admitted to seats in Congress from such States."

How different from our present Secretary of State!

That good man, who never willingly infringed upon the rights of any other department of the Government, expressly accorded to Congress alone the power to declare "when or whether members should be admitted to their seats in Congress from such States." It is not to be denied that his anxiety for the admission of members from Louisiana—or rather from New Orleans and adjoining parishes—gave uneasi-

ness to the country. The people had begun to fear that he was misled, and was about to fall into error. If he would have fallen into that course, it is well for his reputation that he did not live to execute it. From being the most popular, he would have left office the most unpopular man that ever occupied the executive chair. But that overruling Providence that so well guided him did not permit such a calamity to befall him. He allowed him to acquire a most enviable reputation, and then, before there was a single spot upon it, "he sailed into the fiery sunset."

"And left sweet music in Cathay."

Here, if there were anything in common but their station, what a temptation to draw a parallel. But it would be unprofitable; especially in this debate. For what we say at the graves of admired friends or statesmen or heroes is not biography. The stern pen of history will strip such eulogies of their meretricious ornaments. But there is no danger that the highest praise that the most devoted friends could bestow on him would ever be reversed by posterity. So solid was the material of which his whole character was formed, that the more it is rubbed the brighter it will shine. Mr. Lincoln, also, was of humble origin, (and who is not that is formed of the coarse clay of humanity?) and earned his living by manual labor. But he had too good taste ever to boast of the accident of his birth, or to weary the public ear with the tautological recital of his menial employments. He rose to the Chief Magistracy of the great Republic by his sterling patriotism, sober habits, and modest worth. He was not thrown into power by any moral or political convulsion. His elevation was no accident, but the result of the cool judgment of a nation of freemen. No man ever assumed such vast responsibilities under such difficult circumstances, except, perhaps, William the Silent. How similar in their lives; how alike in their deaths.

If there was danger, and I admit there was some apprehension that Mr. Lincoln would be beguiled by his chief adviser into a course which would have tarnished his well-earned fame, that good Guardian who had guided him so well kindly preserved him from that calamity. Death is terrible. Death in high places is still more lamentable; but every day is showing that there are things more terrible than death. It was better that his posthumous fame should be unspotted than that he should endure a few more years of trouble on earth. All must regret the manner of his death; yet, looking to futurity and to his own personal position, it may be considered happy. From the height of his glory he beheld the promised land, and was withdrawn from our sight. In the midst of the most exquisite enjoyment of his favorite relaxation he was instantaneously taken away without suffering one pang of death. Like the prophet of the Lord, who knew not death, he was wrapt from earth to heaven along a track no less luminous than his who ascended in a chariot of fire with horses of fire. Would to God that some small portion of the mantle of our Elijah had fallen on his Elisha.