DAILY SENTINEL

WEDNESDAY ..... MAY 1

The Union it must be preserved.
—*Jackson.*

Democratic Union State Ticket.

FOR SECRETARY OF STATE,
JAMES S. ATHON,
Of Marion County.

FOR AUDITOR OF STATE,
JOSEPH RISTINE,
Of Fountain County.

FOR TREASURER OF STATE,
MATTHEW L. BRETT,
Of Daviess County.

FOR ATTORNEY GENERAL,
OSCAR B. HORD,
Of Decatur County.

FOR SUPERINTENDENT OF PUBLIC INSTRUCTION,
SAMUEL L. RUGG,
Of Allen County.

THE CONFISCATION SCHEME.

An able Speech from Senator Browning, of Illinois—A Constitutional Lawyer's Review of Trumbull's Pettifogging.

We have in the *Globe* the official report of Senator BROWNING's speech in the Senate, on Tuesday, April 29th, in opposition to TRUMBULL's confiscation bill:

THE GENERAL GROUNDS OF HIS OPPOSITION TO THE BILL.

Senator BROWNING states in the following extract, in general terms, his opposition to the bill:

If I were satisfied its passage would tend to subdue the rebellion; to restore peace, harmony and fraternal regard between the people of the different sections of this unhappy land; to bring back erring and disobedient citizens to their allegiance, and to restore the now contemned authority of the Government in every part of the country, even then I should feel constrained to pause and inquire whether, compatibly with the very solemn obligation I, in common with all other Senators, am under to observe and maintain inviolate the Constitution, I could give it my support. But when the strong conviction of my mind is that its passage will be attended with precisely the opposite results; that it will strengthen rebellion instead of subduing it, widen the breach instead of closing it up, alienate instead of conciliating, and weaken instead of re-establishing the power and authority of the Government; and when, in addition to all this, I believe its enactment would be a gross violation of the Constitution, I can not hesitate as to my duty.

CONGRESS USURPING UNCONSTITUTIONAL POWERS.

Senator BROWNING then proceeds to show that the bill strikes at all the property of every kind and character of all the citizens of the seceded States, with scarcely an exception; and that this is done, not by any judicial process, in accordance with law, but by summary act of Congress, that body assuming not only to make the law, but to execute it. Said Mr. BROWNING, in reply to TRUMBULL:

The difference between my colleague and myself upon this branch of the subject, as I understand him, is, that he claims for Congress the power not only to make but to execute laws, while, according to my views of the Constitution, the powers of Congress are legislative only; and, when it attempts either to adjudicate or execute laws, it usurps powers not delegated to it, and subverts the Constitution. Congress may declare by law, within the limits prescribed by international law, what property of an armed enemy shall be subject to seizure and confiscation; but, when it undertakes to execute that law it breaks away from its legitimate orbit of power, and invades the prerogative of the President.

THE LAW OF NATIONS GIVES AMPLE AUTHORITY FOR ALL NECESSARY MEASURES.

Mr. BROWNING concluded that, under the law of nations, the requisite power to suppress the rebellion existed, and by that code we must be governed. He said:

What I insist upon is, that Congress shall not legislate upon subjects which are not to be regulated by legislation, and that it shall not execute, nor attempt to execute, laws upon any subject. Resort must be had to the law of nations to determine what property of a belligerent—a public enemy—is subject to confiscation, and the circumstances under which it may be confiscated; and then the executive and not the legislative department of the Government must carry the law into force and effect. It will be understood, of course, that I speak of enemy's property on land, and within the territory occupied by the enemy, and not of maritime captures, which rest upon different principles, and are subject to different rules, from captures on land; but neither of them are subject to the control of municipal laws unless such municipal laws conform to the laws of nations, and then they are of force only because of such conformity. The law of nations comes in and takes cognizance of the whole subject of captures and belligerent rights, both on sea and land. * * * * In the prosecution of the war emergencies may be developed which will impose a necessity, for the attainment of the just ends of the war, to ravage the enemy's country, and confiscate his property, even to a greater extent than is now proposed. It may become necessary before this war, so needlessly and so wickedly forced upon the country, is ended, to proclaim manumission of the slaves of rebels to a greater extent than this bill contemplates; and, if such a necessity should arise, the power to meet it under, and in harmony with the Constitution, is in my judgment undeniable. But who is to judge of the necessity and decide when we are authorized to resort to these extreme measures to secure the just object of the war, and to proceed to execute the law which justifies them? Is it Congress? Has Congress anything whatever to do with it? Just as well might Congress claim the right to tell the general on the field of battle when to advance and when to withdraw a column, and when the bayonet should be substituted for the musket and the rifle. These are not legislative functions, but executive. So is the seizure and confiscation of the property of a public enemy on land in time of war, executive. It is not the *making*, but the *executing* of a law. The law already exists, and settles both what kind of property is subject to seizure, and the circumstances under which it shall be lawful to make the seizure. Whether the circumstances have arisen which justify the act, and if so, to what extent; whether the capture and confiscation shall be restricted to certain specified articles of the enemy's property, or whether they shall embrace it all; whether the necessity has come for dashing to pieces the bonds which bind together masters and slaves, and bidding the latter go free, and if so, whether we shall simply turn them loose, or make them available for the prosecution of the war—are all questions to be considered, and measures to be carried into effect by the President as Commander-in Chief of the army, and by those who act under him and by his authority.

Is this be a fair and correct statement of the laws of war as they now are—and that it is I think will not be controverted by any one who will take the pains to give the subject a careful examination, then whence the necessity of such legislation as is proposed by the bill, and what other effect could the bill have, if passed, than to exasperate on the one side, and complicate and embarrass on the other?

WHAT RELATION THE REBELS SUSTAIN TO US UNDER THE CONSTITUTION.

To bring my own mind to satisfactory conclusions as to our powers of legislation upon the great questions before us, it has seemed to me that the first step was to determine what relation, under the Constitution, the rebels sustain to us, and must sustain during the continuance of the war? When this is done, our own course will be disembarrassed of much which might otherwise seem difficult. We cannot regard them as alien enemies. To do so would admit the permanent dismemberment of the States, the overthrow of the Union, the triumph of their cause, their separate and independent nationality. It would be to admit all for which they contend, and the further prosecution of the war would be both wicked and objectless. Nothing would remain but to adjust the terms of settlement, close the strife and accept the rebellion as an accomplished revolution. If not alien enemies, then they must stand to us in one of two other relations:

First, as citizens in so formidable a rebellion as to reach the dignity of a civil war, in which event we must recognize them as belligerents and public enemies while the war lasts, and deal with them during that time according to the laws of war, as ascertained and settled by the law of nations, with the right unimpaired, when the rebellion shall be crushed, to resume authority over them as citizens, and grant an amnesty for past offenses, or punish them for treason, in accordance with the Constitution and laws in such cases provided; or,

Second, as insurgent citizens, entitled to no belligerent rights, but subject to be indicted, tried, convicted and executed as traitors as soon and as fast as captured. Very manifestly we can not adopt this latter course. The rebellion is too formidable, too huge in its proportions to admit of it. If adopted it would soon degenerate into the indiscriminate slaughter on both sides of all who were so unfortunate as to be captured as prisoners. It would become a war of extermination, too barbarous, sanguinary and relentless for contemplation. The other nations of the world would not stand by idle spectators of the murderous strife, but, by common consent, would interpose to put an end to a proceeding so disgraceful to humanity, civilization and Christianity. Such extreme measures would defeat their own ends and aims. There is, then, but one course open to us, and that is, as long as the war continues, to regard them as belligerents and public enemies, entitled to be dealt with according to the laws of war as settled by the law of nations.

This my colleague admits. He says:

"When a rebellion becomes so formidable as to be able to muster armies of hundreds of thousands of men, and maintain itself in arms against the forces of the Government for almost a year, it surely has attained a magnitude entitling it to be called a civil war; and international law writers agree that the common laws of war are to be observed in a civil war in the same manner as in a war between independent States."

THE RIGHTS OF THE REBELS AS BELLIGERENTS UNDER THE LAWS OF WAR.

Upon this, then, we all agree, that we must accord to the rebels while the war lasts the character of belligerents, and that, under the laws of war, we can do to and with them just what we could do to and with the citizens of Canada, if we were at war with Great Britain, and nothing more. And what would that be? Why, just what the laws, as settled and established by the law of nations, would permit: kill in battle, capture those in arms and hold them as prisoners of war, and capture and confiscate all their munitions of war, and all their property of every kind and character which had any relation to the end of the war, and by the capture and confiscation of which we would either strengthen ourselves or weaken them. And this would be done by the Generals in the field, acting by the orders of the President. And if Congress should attempt to pass a law authorizing and directing the army to do anything to either person or property not warranted by the law of nations, that act of Congress would be null and void. It would be no law. The law of nations, and not municipal laws, fix and regulate belligerent rights, and a law of Congress can neither make nor modify a law of nations; and if the act of Congress should conform to the law of nations, then it would be only declaratory, but it would give no additional force or efficacy to the pre-existing law.

Now, sir, if we were at war with Great Britain, the passage of a law by us to confiscate the property of the citizens of Canada to the same extent and in the same manner that this bill proposes to confiscate the property of the citizens of the rebel States would bring upon us the ridicule of the world; and if we executed the law, as it could only be executed, by marching an army into the enemy's country, and by the strong hand of war, robbing and plundering all the people, in the language of the bill of all "the property, real and personal, of every kind whatsoever, and wheresoever situated," and reducing them to abject poverty, to the pinchings of want, to the horrors of famine, we would bring upon ourselves the deserved execration of mankind. Could we do it? Will any one contend that we would have the power to do it? And would our own people consent to such an act of barbarism if we had the power?

And now, sir, I respectfully ask of my colleague, and all other Senators who support this bill, whether, if we regard the rebels as belligerents and public enemies, we are not bound to deal with them under the laws of nations as long as the war continues precisely as we would be bound to deal with a foreign nation with which we might be at war; and further, whether, if we were at war with a foreign nation, we could pass such a bill as this in regard to its people, and whether we would have any right to execute it upon them even if we did pass it? A correct answer to these inquiries will dispose of the questions before us, provided we recognize the rebels as belligerents and public enemies.

But if we do not recognize them as belligerents and public enemies, then the law of nations will have no application, but we will be obliged to treat them as insurgent citizens, and deal with them under the Constitution and municipal laws made to carry into effect the provisions of the Constitution. And what in that event would be the course of proceeding? What in that event would we have power to do in respect to the confiscation of their property? If they were shot down on the battle-field, nothing; there would be an end of it. If they were captured alive, they would be subject to immediate trial and punishment for treason, without waiting for the end of the war, according to the provisions of the Constitution and laws in that regard, and in no other way, and to no greater extent. And what would that punishment be? The second clause of the third section of the third article of the Constitution declares:

"The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted."

The law declares that the punishment of the person shall be death. Forfeiture of property may be suspended, but the instant the sentence of the law is executed upon the person it is remitted against the property, which descends to the heir precisely as if the ancestor had never committed treason at all. Thus, when you treat the rebel as a citizen, and indict, try and convict him of treason, you cannot forfeit or confiscate his property absolutely. The Constitution forbids it. But this bill attempts to do that very thing—to forfeit the property, and all the property, both real and personal, of every kind and character, and wherever situated, and that forever.

THE PROPOSED LAW A BILL OF ATTAINDER.

But it is said this is not a bill of attainder, and is not therefore, obnoxious to the constitutional objection which has been urged. I am not fastidious about *names*. I am at the substance of the *thing*. Call it what you will, it is a bill to forfeit, absolutely and forever, property for treason, to punish citizens for treason by the forfeiture of their property in perpetuity. Now suppose for the sake of the argument, it be admitted that this is not a bill of attainder, is the difficulty got over by the admission? Surely not. The Constitution not only declares that "no bill of attainder shall be passed," but also that "no attainder of treason shall work corruption of blood or forfeiture except during the life of the person attainted." And it matters not whether the treason is ascertained by indictment, trial and conviction before the judicial tribunals, or whether it is determined by legislative enactment; the prohibition of forfeiture is equally imperative in either case. Is not the offense by which you are seeking to enforce this sweeping forfeiture treason? If it is not treason, what is it? Will Senators who urge the passage of this bill tell us? And if it is treason, does not the Constitution positively forbid you to declare such a forfeiture for such a cause?

Will it be answered that this bill is not within the constitutional inhibition because the persons against whom it is leveled have not been convicted of treason? Then you are brought to the monstrous proposition that, by assuming guilt, you may punish with a severity which the Constitution absolutely forbids, when the assumed offence has been ascertained by proof and judicially established. The Constitution intended to abolish in all cases of treason, the absolute forfeiture of estates as a punishment for the crime, and expresses that intention in the strongest and tersest terms, that not even an attainder shall be attended by such a consequence. Can it be supposed that it was ever in the imaginations of the framers of that wonderful instrument—the sublimest political production of human genius and wisdom—that this humane amelioration of the barbarous severities of criminal jurisprudence could be evaded by seeking victims among the unconvicted, when they had taken so much pains to protect the family of even the attainted felon? Nor is the difficulty obviated by alleging that the bill embraces only those who have levied war against the United States, or who have adhered to their enemies, giving them aid and comfort, for this is the exact definition of treason, and what alone constitutes treason; and if we punish in the manner proposed, we punish, in my judgment in palpable disregard of the Constitution. And yet the extraordinary proposition is put forward that, by a legislative assumption and declaration of guilt, Congress acquires a power, under the Constitution, to inflict punishments which could not be visited upon the offender for the same precise offense even after his guilt was judicially ascertained. It is upon this ground that my distinguished colleague rests his argument in support of the bill. I quote his own language:

"Surely, the prohibition against confiscating beyond life the property of the man who is arrested and made to suffer in his person for his crimes cannot prevent the absolute confiscation of the property of the criminal who is beyond our reach and cannot be arrested, but who has left property within our jurisdiction which we can reach."

And again:

"It is manifest that the clause of the constitution limiting the punishment for treason can have no more application to the confiscation of the property of a person who cannot be arrested and tried for treason than has the punishment prescribed by statute for murder to do with that for larceny."

Now, sir, I would be glad to know from the honorable chairman of the committee who reported this bill how and where we get the power to punish for treason at all without arrest and trial and conviction in the State where the offence was committed? And further, I should be glad to know whence he derives the power to *Congress* to inflict punishment upon any person for treason or any other offence whatever, wherever or however committed." Congress may pass laws within constitutional limits, declaring what the punishment of offences shall be, but it cannot decide the question of guilt and inflict the punishment. The Constitution provides that—

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war, or public danger," &c.

And again:

"In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence."

But this bill is for the punishment of treason by *Congress*, and for nothing else, and that by penalties positively prohibited by the Constitution; and this upon the sole ground that the traitor cannot be arrested and brought for trial before the judicial tribunals of the country in the manner prescribed by the Constitution.

If this doctrine be true, and if this power of legislative punishment really exists, what is to prevent us in any individual case of treason or other offence, where the offender has fled from justice and got beyond the reach of the process of law—what, I ask, is to prevent us, in any such case, from proceeding to a legislative outlawry of the fugitive, and the absolute confiscation of all his estate, both real and personal, and the total impoverishment of his family?

If, for the reason that the rebels in the seceded States are beyond the reach of legal process, Congress may proceed to declare them guilty of treason, and inflict a punishment forbidden by the Constitution, what is to hinder us from doing the same thing in regard to any citizen or citizens of any of the States who may be charged with the commission of treason, and who may have fled beyond the reach of the process of the courts? It is no answer to say that the rebels are numerous. The mode of proceeding to punish offenders against our laws, and the kind and measure of punishment to be inflicted, in no degree depend upon the number who may have been guilty of the same offense at the same time. If we can pass an act of outlawry and forfeiture—not to call it a bill of attainder—against a thousand or ten thousand or a hundred thousand, surely we may do the same precise thing against one or a dozen. It seems to me it would be preposterous to say that we could not.

Now, suppose a citizen of Illinois, residing there, having his home, his family, and his property there, to have committed treason by giving aid and comfort to the enemy; suppose him to have been detected; suppose a warrant to have issued for his arrest, and him to have escaped the clutches of the Marshal and fled beyond the jurisdiction of our courts and the reach of legal process, leaving his family and property behind him: may Congress then proceed to pass a bill for the forfeiture of his property and execute it by robbing his family by way of punishment of his crime? I presume no Senator will venture to claim for Congress any such power. And yet we may clearly do so if we may properly pass the bill under consideration. They stand precisely upon the same ground, and we have exactly the same power in the one case that we have in the other. We are to pass this bill against the rebels because they are citizens of the United States who have committed treason against the Government and are temporarily beyond the reach of process. This is the basis upon which my colleague places it. It has no other foundation, and is shown by the portions of his speech already quoted. He repeats the same proposition in other parts of his speech. He reiterates it whenever he attempts to demonstrate the possession of power by Congress to pass the bill. I again quote his own language:

"This bill provides for the forfeiture of estates in certain cases, as a punishment for crime hereafter to be committed, when the person of the individual committing the offense can not be reached."

And again:

"The right to confiscate the property of a rebel or traitor attaches without any conviction of the offender."

There, sir, it is boldly announced, as a general principle of Congressional power, that the right to confiscate the property of a traitor attaches without any conviction of the offender. Now, if we have this right to confiscate the property of a traitor without conviction, why have we not the same right of confiscation for murder, or larceny, or any other offense known to the law, without trial or conviction? How can we possess such power in regard to treason without having it in regard to all other offenses; and where do we get it in respect to any offence? This is not explained by any of the Senators who advocate the passage of this bill.

Let me bring the statement of my colleague in juxtaposition with the statements of the Constitution upon the same subject. He says:

"The right to confiscate the property of a rebel or traitor attaches without any conviction of the offender."

The Constitution says:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty or *property*, without due process of law."

And yet, in the face of these safeguards which the Constitution has endeavored to throw around person and property, it is confidently announced as a general principle that "the right to confiscate the property of a rebel or traitor attaches without any conviction of the offender," and this by *ex parte* legislative proceeding, without indictment, trial or opportunity of defence.

Can such things be,
And overcome us like a summer's cloud,
Without our special wonder?"

If the right to punish for treason by the confiscation of property attaches without the conviction of the offender, why does not the same right attach, in the same way, in respect to every other offence? What distinction does the Constitution make in the mode of proceeding for the punishment of treason and other offences? Does not this newly invented, India rubber, *in rem* proceeding for the punishment of offences committed by the person, and in which the property was not implicated, stretch itself over the entire category of crimes, and cover them all? And, if so, what becomes of the provisions of the Constitution to which I have referred? To what end and for what purpose were they made? What does the Constitution mean, if anything, when it declares that no person shall be held to answer for crime unless on a presentment or indictment of a grand jury? That in all criminal prosecutions the accused shall enjoy the right of trial by a jury, and that he shall not be deprived of his property without due process of law? After blundering blindly and stupidly along for three-quarters of a century in the belief that these provisions were imitations upon the powers of the Government and guarantees of individual right which we could not disregard, the scales have now suddenly fallen from our eyes, and we perceive they were intended to apply only in the event of the arrest of the offender; but that, when he has fled from justice, nothing is easier than to proceed to punish him without indictment, without trial, without due process of law, simply by arresting his horse and cow, instead of himself and proceeding against them *in rem* by some newly invented military machinery. True, the Constitution makes no such exception; but now it is discovered that we may shoot enemies in battle without indictment or trial, and therefore the same principle of punishment without indictment or trial may be applied to all offenders who flee from justice. How long will it be before this patent is so improved as to embrace all offenders, whether they flee or not?

Can it be necessary to pursue this branch of the argument further? Can it be possible that we have wandered so far from the political faith of our fathers as to be ready to admit, in the august characters of Senators, the fatal heresy of the bill, and the arguments in support of it, that "the right to confiscate the property of a rebel or traitor attaches without any conviction of the offender." To do so is to subvert the Constitution, and to concentrate not only all the powers of the Government, but all the sovereignty of the people in a single department of the Government, which was intended to be only co-ordinate with two others. To do so is to rend away all restraints and limitations sought to be imposed by the Constitution, and to establish a legislative despotism more capricious, more fatal to order, and more dangerous to the liberty and security of the citizen than any form of government on earth.

* * * What is a bill of attainder? It is an act passed by a legislative body, declaring a citizen or subject, by name or other sufficient description, guilty of treason or other felony, and inflicting punishment therefor; and it is equally a bill of attainder whether the punishment combines corruption of blood and forfeiture of life and property, or whether it is limited to any one of them separately.

Now, what does this bill propose to do but to declare a large number of citizens guilty of treason, and punish them therefor by forfeiture of their estates? Then is not this a bill of attainder? And if it is not, what is it? It is no answer to say that a bill of attainder punishes a crime already past, and that this is prospective in its provisions. It declares that certain acts committed, or to be committed, shall be followed by forfeiture of estate, and proceeds to inflict the penalty without judicial inquiry or determination; and what the Constitution intended to guard against was punishment for imputed crime without indictment and trial. If the acts intended to be reached by this bill had already been committed, then I think, in the face of the authorities I have read, it would hardly be denied the character of a bill of attainder. Is its character changed and is the Constitution satisfied by declaring that certain acts hereafter to be committed shall be punished as crime, and by proceeding to inflict the punishment without trial? I say again that this is exactly what the Constitution intended to hedge against, punishment in any form, or by any device, without indictment and trial, and its provisions cannot be in this way evaded.

The Constitution does not declare that there shall be no attainder of treason. It admits that there may be, but neither corruption of blood nor forfeiture of estate except for the life of the offender shall ensue as a consequence. The attainder may still take place, but it must be judicial attainder. There can be no legislative attainder in any case, nor under any circumstances or conditions, nor deprivation of life, liberty, or property without due process of law.

To demonstrate the unconstitutionality of the bill, it is not necessary that it shall be assumed or proven to be a bill of attainder. Give it what name you will, it is still a bill to punish for treason and rebellion, not upon the battlefield by the military arm of the Government, but by legislative enactment, and legislative enforcement of the enactment, without indictment and trial, without due process of law, which the Constitution forbids, under whatever name and by whatever contrivance it may be attempted. But if it *were* necessary to prove it a bill of attainder, is not that already sufficiently done by the English authorities cited? To these let us again add the most illustrious names which have illustrated and adorned American jurisprudence. Mr. Justice Story, in treating of this subject in his very able Commentaries on the Constitution, holds this language:

"Bills of attainder, as they are technically called, are such special acts of the Legislature as inflict capital punishment upon persons supposed to be guilty of high offences, such as treason and felony, without any conviction in the ordinary course of judicial proceedings. If an act inflicts a milder degree of punishment than death, it is called a bill of pains and penalties. But, in the sense of the Constitution, it seems that bills of attainder include bills of pains and penalties; for the Supreme Court has said, 'a bill of attainder may affect the life of an individual, or may confiscate his property, or both.'

"In such cases the Legislature assumes judicial magistracy, pronouncing upon the guilt of the party without any of the common forms and guards of trial, and satisfying itself with proofs, when such proofs are within its reach, whether they are conformable to the rules of evidence or not. In short, in all such cases the Legislature exercises the highest powers of sovereignty, and what may be properly deemed an irresponsible despotic discretion, being governed solely by what it deems political necessity or expediency, and too often under the influence of unreasonable fears or unfounded suspicions." * * * "The punishment has often been inflicted without calling upon the party accused to answer, or without the formality of proof; and sometimes because the law, in its ordinary course of proceedings, would acquit the offender. The injustice and iniquity of such acts in general constitute an irresistible argument against the existence of the power. In a free Government it would be intolerable, and in the hands of a reigning faction it might be, and probably would be, abused to the ruin and death of the most virtuous citizens. Bills of this sort have been most usually passed in England in times of rebellion, or of gross subserviency to the Crown, or of violent political excitements; periods in which all nations are most liable, as well the free as the enslaved, to forget their duties and to trample upon the rights and liberties of others."—2 *Story on the Constitution*, sec. 1,334.

In the case of Fletcher vs. Peck, the construction of the clause of the Constitution forbidding the enactment of bills of attainder, was not necessarily drawn into consideration; and yet its discussion was not impertinent or irrelevant, and what was said by the court can hardly be considered as loose *dicta*. The case was carefully and well considered, and the decision had the approval of all the judges; and I therefore quote, as authority entitled to very great weight, what was said by Chief Justice Marshal in delivering the opinion of the court:

"A bill of attainder may affect the life of an individual, or may confiscate his property, or may do both. In this form the power of the Legislature over the lives and fortunes of individuals is expressly restrained."

In what form? Why, sir, in the form of a law by which an individual may be deprived of either life or property without judicial investigation and decision.

I trust it will be understood that I am speaking of the powers of Congress, and not of the powers of the army and its commanders. I trust I will not be understood as advocating the novel doctrine, first suggested by my colleague and repeated by the Senator from Ohio [Mr. Wade] of empaneling juries upon the battlefield to try armed enemies before firing upon them.

The war powers of the Government to deal with the rebellion, with the rebels, and with the property of the rebels, I admit to the fullest extent that is allowed by the laws of war.

But the war power of the Government to be wielded by the President and the Generals in the field is not a despotic, capricious and irresponsible power, as my friend the honorable Senator from Ohio [Mr. Sherman] seems to have understood me to contend, but it is to be exercised as much in subordination of the Constitution and the laws recognized by the Constitution as any civil function of the Government whatever.

All the argument I made on a former occasion, and all I have made now, has been intended to point the distinction between what may be done by the civil authorities in the punishment of the violators of municipal law, and what may be done by the military power in subduing and punishing public enemies at war with the Government. The one is to be by due process of law, in obedience to the constitutional requirements; the other is to be equally in obedience to the Constitution, and in conformity to law, but a different law, differently administered by a different department of the Government.

AN ELOQUENT PERORATION.

Mr. President, the annals of past ages furnish no instance of such patriotic devotion to a Government as has been exhibited by the people of the loyal States of the Union. Armies of unexampled magnitude, and at unexampled sacrifice of individual interests and the comforts and enjoyments of private life, sprung into existence when danger threatened the country, as if at the call of the Deity. No conscriptions, no forced enlistments; but by the impulse of devotion to the country, veneration for the Constitution of our fathers and love for the *institutions* of our fathers, thousands and tens of thousands and hundreds of thousands voluntarily abandoned the quiet, peaceful and happy scenes of home, and rushed to the stormy fields of war, to vie with each other in doing and dying for their country. Hill-top and valley, field and forest, mountain peak and mountain gorge, quiet village and city full, have all, as if by one impulse, sent forth their armed men to swell the nation's force; and, when the ranks have been thinned by the breath of pestilence and disease and the storm and tempest of battle, other eager hearts and strong arms have crowded to the camp to fill the melancholy chasms. My own State, glorious Illinois—I do not claim more than others, but equally with any other—has furnished her full share of gallant men, and borne her full share of these great sacrifices. The valor of her sons has been vindicated upon every bloody battle-field of the West. Frederickstown and Belmont and Forts Henry and Donelson and Pittsburg Landing have been consecrated to history and made classic ground by their deathless deeds of heroism. The bones of her glorious dead lie strewn wherever the foe has been met, and her mutilated living are receiving homage in every city, village and neighborhood. Every household has been turned to a household of mourning, and every heart has quivered under the torture of grief.

And why, Mr. President, all these sacrifices, all this suffering and woe and anguish and death? Why are they so heroically, so sublimely met and borne? To what end, and to what purpose? I answer, to uphold, maintain, defend, and preserve, in all its integrity, perfect and uninjured in every word and letter, whole and sound in all its parts and provisions, in its form, and in its essence, the venerated Constitution of our fathers. This is the inspiration which sustains the heart and nerves the arm of the nation, and gives to the soldier, amid the horrors of war, his fortitude and endurance. The Constitution was assailed by traitors and rebels, and these gallant men have come to its defence. While they are doing battle *for* it in the field, let it go forth that we are warring *against* it here, that we scoff its principles and spurn its restraints, and usurp any and every power which the passion or prejudice of the hour may suggest as necessary to accomplish a wished for result, and the hope of the country will die, the inspiration of the army will be gone, the arms of our brave, true hearted soldiers become nerveless and impotent, and this great national struggle for national life will sink into disgraceful and disastrous failure.

Let us stand by the Constitution. Our only safety is there; our only hope of triumph is there. Let us not forget our obligations for its protection in the past, nor blast all just expectation of continued protection in the future. Let us stand by it in gratitude for the blessings it has heretofore secured to us, and in hope of the blessings it shall hereafter dispense to the unborn millions of our race. Let us prove to our brethren in arms that we are, honestly and in good faith, co-operating with them to maintain the Constitution with all its salutary restraints, and to uphold a Government of laws, and resist the reign of licentiousness and the confusion of anarchy which will inevitably rush in upon us over the shattered fragments of the Constitution, whenever we shall have broken it down, and this wicked and stupendous rebellion will be subdued, the just and full authority of the Government will be restored and the flag of our fathers, the symbol of our greatness and glory, will again float with the assent of all our people, with not a stripe obliterated, not a star obscured, over every inch of territory it heretofore protected.

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Returning, the same train will leave Peru at 6.00 A. M., after the arrival of the train on the T. & W. R. W. from the East, and arrive at Indianapolis at 9:50 A. M. in time to make connections for all points East, South and West.
An Express train will leave Indianapolis at 10:35 P. M., connect at Kokomo with train for Chicago, and arrive at Peru at 5:00 A. M., in time to make connection with trains going East and West on the Toledo and Wabash Railway.
Returning the same train will leave Peru at 12:00 M., making close connection at Kokomo with the trains on the Cincinnati and Chicago Railway from Chicago Valparaiso and Logansport, and arrive at Indianapolis at 4:10 P. M., in time to connect with the evening trains for Cincinnati, Louisville and other points.
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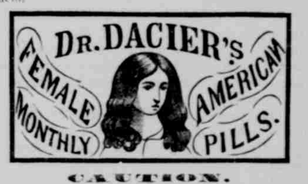

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