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IMPORTANT DECISION BY THE SUPREME COURT.

Liability of Druggists.

We publish below the full text of the judgment of the Supreme Court in the case of McCubbin vs. Hastings; Hornor & Benedict, counsel for plaintiff. It is, we believe, the first case of the kind in this State. It has been before our courts since the latter end of 1868. It was twice tried before juries in the Fifth District Court, and a third time before Judge Theard in the Fourth District Court, having been transferred by consent and the jury waived. The case was then appealed by the plaintiff to the Supreme Court, where it has been under advisement for a year. It is a grave and important matter. The public are deeply interested, for it establishes the liability of a druggist if he improperly compounds a prescription, and the patient dies in consequence, just as clearly as if he had carelessly driven over him in the public streets, and death followed:

William McCubbin, tutor, etc., vs. Samuel Hastings. Judge Morgan—On Monday, the twenty-sixth of August, 1867, the wife of William McCubbin was attacked with yellow fever. A physician was immediately called in, and the patient was placed under the charge of a nurse. On the Wednesday following she was quiet. About one o'clock of that day the physician ordered her an enama. We are satisfied from the evidence that the enama as ordered was to have been composed as follows: Sulphate of quinine, thirty grains; mucilage of gum arabic, four ounces; camphor water, four ounces; Batley's sedative solution, thirty or sixty drops to be administered, one half as soon as received, the other in an hour after.

We ascertain the component parts of the prescription from the testimony of the physician, as the prescription itself could not be found in the defendant's shop, where it should have been kept. The prescription was ordered by the physician to be compounded at the defendant's shop. The husband of the deceased took it there. He handed it to an employe. After it was compounded he purchased an injection pipe, paid for both and left. He gave them to the nurse. She administered a portion of it. The effect seems to have been instantaneous. It threw the unfortunate woman into spasms and convulsions, causing her to purge and vomit at the same time.

The attending physician was immediately sent for. He could not be found, and only reached the patient late at night. He did all that his science allowed him to do for her relief. He called in another physician. Their efforts were fruitless. Two days after the patient died. This suit is instituted by the husband of the deceased and he father of her child, a minor, against the defendant to make him responsible in damages for the death of this woman, the allegation being that the prescription was improperly compounded. The evidence leaves no doubt in our mind that spirits of camphor was substituted for camphor water; that the sufferings of the woman, which was shown to have been intense, were caused by this mistake, camphor water being a very innocent preparation, spirits of camphor being a decoction of camphor and alcohol, and that it contributed to a large extent if it did not absolutely cause the death of the patient. The prescription was not compounded by the defendant. At the time it was put up he was not in the city. The clerk had not been employed by him. His services had been engaged by his brother. The defendant is none the less responsible for his acts. The employment was authorized, and his responsibility for the acts of his employes can not be disputed.

The case was twice tried before a jury in the Fifth District Court. It was then, by consent, removed to the Fourth District Court and submitted to the judge alone. He decided in favor of the defendant, and the plaintiff has appealed. In his own name plaintiff claims damages for the necessary expenses incurred by him consequent upon the death of his wife, for the loss of time it occasioned him, from the loss of his wife's services, and by the wrongs inflicted upon his feelings. As tutor to his minor child, he claims that from the agonies endured by his wife she suffered heavy damages, and that her right of action therefor has been transmitted to her heir, and that her death, which he lays at the defendant's door, having deprived the child of a mother's care, he is responsible in damages on that account.

The aggregate amount claimed from the defendant is $35,000.

His damages, if he is entitled to any, is the amount expended by him for medical and other services subsequent to the giving of the enema, and for the funeral expenses. The right to damages on the part of the child is that which he inherits from his mother.

The defendant filed a peremptory exception to plaintiff's demand, on the ground that the petition disclosed no cause of action. This exception was filed after the jury had been impaneled. The grounds upon which it rests are: First, "Because it is not alleged that the damage complained of was suffered through the fault of the defendant, and it is necessary it should be alleged to be the defendant's fault before that fact could be proved," and second, "Because it (the petition) does not state that the defendant, as employer, might have prevented the act which caused the damage, and did not do it." The exception was sustained, but the defendant was allowed to amend. Plaintiff excepted to the ruling of the court which maintained the exception. Defendant excepted to the order allowing plaintiff to amend.

Both rulings were correct. The exception was a peremptory one, and could be pleaded at any time during the progress of the trial. Amendments are always allowed in the discretion of the court.

After the amendment was made defendant then pleaded the prescription of one year. The plea was properly overruled. The demand was made within the year of the alleged tort. The demand is the test, and not the sufficiency of the allegations which support it.

But the defendant still contends that the amended petition is defective because it does not allege that he was in fault. The allegations are that the death of the deceased was caused by the negligence of the defendant's clerk, and that he, the defendant, might have prevented the act complained of, but did not do so. If the act which caused the damage was done by the defendant's clerk, and the defendant be responsible therefor, and the defendant could have prevented it, but did not, then clearly it was by the fault of the defendant that the damage occurred, and the use of the word "fault" was not a necessary allegation to fix the responsibility upon him. If he could have prevented the act, and did not, he was necessarily in fault.

On the trial the defendant moved to strike out the second and third causes of action as stated in the petition, which are: Second—"Also, as tutor of his minor, for $10,000 damages suffered by the minor, personally, in the loss and deprivation of the care, education, assistance and love of his mother."

Third—"In his individual capacity and on his own behalf for $5000 damages for actual expenses, loss of the assistance and services of his wife in business, and for personal sufferings in mind for the loss of his wife, all caused by said criminal mistake."

The judge ordered them stricken out.

As regards the second his ruling was correct. The action, in so far as the minor is concerned, is the right of action which his mother had against the defendant for the sufferings which were caused her by the defendant's employe, and which he inherited. He has no claim against him for the loss which he suffered through his mother's death.

With regard to the third objection the court erred. Defendant is responsible to the plaintiff for all the expense and damage which he suffered subsequent to the giving of the enema.

The first objection which the defendant raises to the plaintiff's demand on the merits is, that the certificate of death, given by the physician, states that she died of yellow fever, and that the plaintiff caused it to be published in the newspapers that she died of yellow fever. In so far as the certificate is concerned that was no act of the plaintiff; as regards the notice, she might have died of yellow fever and still her death from that disease might have been caused by the enema. If a pistol had been fired into some fleshy part of her body while she was laboring under an attack of fever, the ball itself might not have produced death, but the shock by aggravating the fever probably would. Under these circumstances she would have died of yellow fever, but her death would have been superinduced by the shot. So in this case. The deceased was suffering under an attack of yellow fever. It was a violent attack; quiet and repose were, of all things, most necessary to her safety. She was dangerously ill, it is true. But she had at least one chance for her life, and the injection of this violent and exciting substance into a particularly sensitive portion of her body took, in our opinion, from the unfortunate woman the one chance which was left to her. She died, it is true, from yellow fever, but it was the enema which made the fever result fatally.

The next ground of defense is, that defendant can not be condemned unless the plaintiff proves that he was some way in fault, and that he really might have prevented the act which caused the damage.

In one sense it was impossible for him to have prevented the calamity, because he was not in the city. But if a master is only to be held responsible for the act of his servant, when he might have prevented the act and did not, there would be no responsibility in the principal except for such acts as were done in his presence. If this was the law, if the driver of a carriage owned by the keeper of a public stable wantonly ran into and destroyed the carriage of another, the owner of the public carriage could not be held responsible for the damages caused by his servant, because it was no fault of his that the other carriage was run into. If a man is run into by a careless car driver the company in whose employ the driver is can not be held responsible because it was not the company's fault. But we know that this has never been considered law, and that where injuries have occurred as the result of carelessness on the part of the employes of such parties, the principals have been made to respond in damages.

He further attempts to exculpate himself from the fact that the clerk who compounded the prescription was reported to be a competent druggist.

To a certain extent he has established this; that is to say, he has produced a number of witnesses who testify in that direction. But there is one recommendation he did not have, and that was a diploma. It is not pretended that he was a graduate in pharmacy from any medical institute. It may, however, be assumed that he was competent. The defendant's liability would be none the less certain. The defendant is himself represented as being a most competent druggist. If he had made the mistake would his proficiency in his calling shield him, or would it not rather aggravate the fault?

Incompetency or carelessness—and such mistakes arise from one or the other of these causes—result in the same way. Either or both produce suffering, and sometimes death. And can it be that if a physician should prescribe for his slightly ailing patient a small quantity of calomel and soda, and the druggist were to substitute arsenic for soda, that he could shield himself from the consequences which might result by saying, if the prescription was compounded by himself, that it was a mistake, and if the act of his servant that he could not have prevented it? The law does not place a community in the position of being poisoned by mistakes, with no one to be held responsible therefor. If it was the master who did the wrong the master is responsible.

If it was his servant who did it, he is still responsible, for the master is responsible for the acts of his servant when done in the course of his usual employment.

The last serious defense set up is that the enema did the patient no harm. Many physicians were examined on this point, and counsel for defendant, in the very able brief which he furnished us, says: "With surprising unanimity these physicians, every one of whom have had large experience in the treatment of yellow fever, declared the effect would have been beneficial rather than injurious."

As we have said before, Mrs. McCubbin was taken ill on Monday, the twenty-sixth of August. On the Wednesday following the enema was administered. Up to this time the patient had been quiet. The nurse says that turning into the third day the fever began to abate, and the physician said he found her much better: that he was going to order a mixture which would act like a charm, as she was not sweating freely enough. The enema came, and this is how the nurse who administered it describes its effects: "As soon as I gave it to her she commenced to complain; she said, 'Oh, nurse! don't give me any more, for God's sake; it will kill me!' I suppose I gave her one-third of it; she was complaining all the time. I set the cup down on the bed and called McCubbin (who had left the room at his wife's request when the nurse was about to administer the enema) and told him the injection made her very ill. It made her that ill it threw her into spasms. She commenced throwing up and purging down, and was in great agony, but got easier afterward."

McCubbin swears that when he got up stairs his wife was straightened out and almost black in the face, and apparently in spasms or a fit. He says: "I put my hands underneath her to raise her from the bed; she worked in the spasms about three minutes, and in her spasms both purged and vomited at the same moment, which seemed to give her some ease. 'Oh, my God, Will,' she said, 'what have you given me? I am all on fire; I am burning!' And so she kept on; you could hear her until ten o'clock at night a block off, and she had never made a moan before."

The attending physician was sent for immediately. It was a season of calamity. The physician was in full practice, and hurrying, as he was, from patient to patient, could not be found. Late at night he came of his own accord. Discovering her condition, he immediately denounced the mistake which had been made; said to several who were present, and at various times, that the injection had injured her; took the bottle himself to the druggist to see whether per chance he had made the mistake in writing out the formula, and is shown to have said that but for the injection his patient would have done well. He did all in his power to remedy the evil which had been done. Nothing that was tried for her relief succeeded. She sank gradually from the time the enema was administered until three days afterward, when she died.

When scientific gentlemen undertake to tell us, under such a state of facts, that the enema, as administered, was a benefit to the patient instead of an injury; that a substance as powerful as alcohol, in which camphor, a violent stimulant, has been dissolved, can be injected into one of the tenderest parts of the human frame, when the patient is suffering from a severe attack of such a disease as the yellow fever is, without doing any harm, but, on the contrary, doing good, we see in our mind's eye the unfortunate victim upon whom the experiment has been tried, as she is described by the witnesses, writhing in agony, dying, dead, and we say that dreadful fact alone destroys all the theories, and we think that he who, by himself, or those for whose acts he is responsible, caused this agony, not to say death, should be made to answer for the suffering which he caused.

As regards the damages, the plaintiff has not shown what he expended, and therefore we can give him no judgment. As to the minor child, we think he should receive $2500.

It is therefore ordered adjudged and decreed, that the judgment of the District Court be avoided, annulled and reversed: and it is now ordered adjudged and decreed that there be judgment in favor of plaintiff, William McCubbin, in his capacity as tutor of his minor child, William James McCubbin, and against the defendant, in the sum of $2506, with legal interest from judicial demand and costs in both courts.

Cole's circus, traveling in the West, has attached to it an exhibition of wax work groups of the principal comedians in the Beecher case; but that is nothing. The same show has the guests at the Lord's Supper, Professor Webster, Santa Anna, Modoc Jack and other celebrated persons.

RECOLLECTIONS OF THE WAR.

History of the First Black Regiment.

BY THE LATE COLONEL CHARLES G. HALPINE.

CHAPTER I.

Black troops are now an established success, and hereafter—while the race can furnish enough able-bodied males—the probability would seem that one-half the permanent naval and military forces of the United States will be drawn from this material, under the guidance and control of white officers. To-day there is much competition among the field and staff officers of our white volunteers—more especially in those regiments being disbanded—to obtain commissions of like or even lower grade in the colored regiments of Uncle Sam. General Casey's board of examination can not keep in session long enough, nor dismiss incompetent aspirants quick enough to keep down the vast throngs of veterans, with and without shoulder straps, who are now seeking various grades of command in the colored brigades of the Union.

Over this result all intelligent men will rejoice—the privivilege of being either killed or wounded in battle, or stricken down by the disease, toils and privations incident to the life of a marching soldier, not belonging to that class of prerogatives for the exclusive enjoyment of which men of sense, and with higher careers open to them, will long contend.

Looking back, however, but a few years to the organization of the first regiment of black troops in the department of the South, what a change in public opinion are we compelled to recognize? In sober verity, war is not only the sternest, but the quickest of all teachers; and contrasting the then and now of our negro regiments, as we propose to do in this sketch, the contrast will forcibly recall Galileo's obdurate assertion that "the world still moves."

Be it known, then, that the first regiment of black troops raised in our recent war, was raised in the spring of 1862 by the commanding general of the department of the South, of his own motion, and without any direct authority of law, order, or even sanction from the President, the Secretary of War, or our houses of Congress. It was done by General Hunter as "a military necessity" under very peculiar circumstances, to be detailed hereafter; and, although repudiated at first by the government—as were so many other measures originated in the same quarter—it was finally adopted as the settled policy of the country and of our military system, as have likewise since been adopted all the other original measures for which this officer, at the time of their first announcement, was made to suffer both official rebuke and the violently vituperative denunciation of more than one-half the Northern press.

In the spring of 1862, General Hunter, finding himself with less than 11,000 men under his command, and charged with the duty of holding the whole tortuous and broken seacoast of Georgia, South Carolina and Florida, had applied often, and in vain, to the authorities at Washington for reinforcements. All the troops that could be gathered in the North were less than sufficient for the continuous drain of General McClellan's great operations against the enemy's capital, and the reiterated answer of the War Department was, "You must get along as best you can. Not a man from the North can be spared."

On the main land of the three States nominally forming the Department of the South, the flag of the Union had no permanent foothold, save at Fernandina, St. Augustine and some few unimportant points along the Florida coast. It was on the sea islands of Georgia and South Carolina that our troops were stationed and continually engaged in fortifying, the enemy being everywhere visible and in force across the narrow creeks dividing us from the main land, and mutual raids—they across to our islands, and we back to their main land and up their creeks, with a few gunboats to help us—being the order of the day; yea, and yet oftener, of the night.

No reinforcements to be had from the North; vast fatigue duties in throwing up earthworks imposed on our insufficient garrisons; the enemy continually increasing both in insolence and numbers; our only success the capture of Fort Pulaski, sealing up Savannah, and this victory offset, if not counterbalanced, by many minor gains of the enemy; this was about the condition of affairs as seen from the headquarters fronting Port Royal bay, when General Hunter, one fine morning, with twirling glasses, puckered lips and dilated nostrils (he had just received another "don't-bother-us-for-reinforcements" dispatch from Washington) announced his intention of "forming negro regiments," and compelling "every able-bodied black man in the department to fight for the freedom which could not but be the issue of our war."

This resolution being taken, was immediately acted upon with vigor, the General causing all the necessary orders to be issued and taking upon himself, as his private burden, the responsibility for all the irregular issues of arms, clothing, equipments, and rations involved in collecting and organizing the first experimental negro regiment. The men he intended to pay, at first, by placing them as laborers on the pay rolls of the chief quartermaster; but it was his hope that the obvious necessity and wisdom of the measure he had thus presumed to adopt without authority, would secure for it the immediate approval of the higher authorities, and the necessary orders to cover the required pay and supply issues of the force he had in contemplation. If his course should be indorsed by the War Department, well and good; if it were not so indorsed, why he had enough property of his own to pay back to the government all he was irregularly expending in this experiment.

But now, on the very threshold of this novel enterprise, came the first—and it was not a trivial—difficulty. Where could experienced officers be found for such an organization? "What! command niggers!" was the reply—if possible more amazed than scornful—of nearly every competent young lieutenant or captain of volunteers to whom the suggestion of commanding this class of troops was made. "Never mind," said Hunter, when this trouble was brought to his notice; "the fools or bigots who refuse are enough punished by their refusal. Before two years they will be competing eagerly for the commissions they now reject."

Straightway there was issued a circular to all commanding officers in the department, directing them to announce to the non commissioned officers and men of their respective commands that commissions in the "South Carolina Regiments of Colored Infantry," would be given to all deserving and reputable sergeants, corporals, and men who would appear at department headquarters, and prove able to pass an examination in the manual and tactics before a board of examiners, which was organized in a general order of concurrent date. Captain Arthur M. Kinzie, of Chicago, aid-de-camp—now of Hancock's Veteran Reserve Corps—was detailed as colonel of the regiment, giving place, subsequently, in consequence of injured health, to the present Brigadier General James D. Fessenden, then a captain in the Berdan Sharpshooters, though detailed as acting aid-de-camp on General Hunter's staff. Captain Kinzie, we may add, was General Hunter's nephew, and his appointment as colonel was made partly on the grounds of superior fitness; and partly to prove—so violent was then the prejudice against negro troops—that the commanding general asked nothing of others which he was not willing that one of his own flesh and blood should be engaged in.

The work was now fairly in progress, but the barriers of prejudice were not to be lightly overthrown. Non-commissioned officers and men of the right stamp, and able to pass the examination requisite, were scarce articles. Few had the hardihood or moral courage to face the screaming, riotous ridicule of their late associates in the white regiments. We remember one striking instance in point, which we shall give as a sample of the whole.

Our friend, Mr. Charles F. Briggs, of this city, so well known in literary circles, had a nephew enlisted in that excellent regiment the Forty eighth New York, then garrisoning Fort Pulaski and the works on Tybee Island. The youngster had raised himself by gallantry and good conduct to be a non-commissioned officer; and Mr. Briggs was anxious that he should be commissioned, according to his capacities, in the colored troops then being raised. The lad was sent for, passed his examination with credit, and was immediately offered a first lieutenancy, with the promise of being made captain when his company should be filled up to the required standard—probably within ten days. The inchoate first lieutenant was in ecstasies; a gentleman by birth and education, he longed for the shoulder straps. He appeared joyously grateful; and only wanted leave to run up to Fort Pulaski for the purpose of collecting his traps, taking leave of his former comrades, and procuring his discharge papers from Colonel Barton. Two days after that came a note to department headquarters respectfully declining the commission! He had been laughed and jeered out of accepting a captaincy by his comrades; and this—though we remember it more accurately from our correspondence with Mr. Briggs—was but one of many score of precisely similar cases.

At length, however, officers were found; the ranks were filled: the men learned with uncommon quickness, having the imitativeness of so many monkeys apparently, and such excellent ears for music that all evolutions seemed to come to them by nature. At once, despite all hostile influences, the negro regiment became one of the lions of the South; and strangers visiting the department, crowded out eagerly to see its evening parades and Sunday morning inspections. By a strange coincidence, its camp was pitched on the lawn and around the mansion of General Drayton, who commanded the rebel works guarding Hilton Head, Port Royal and Beaufort, when the same were first captured by the joint naval and military operations under Admiral Du Pont and General Timothy W. Sherman—General Drayton's brother, Captain Drayton of our navy, having command of one of the best vessels in the attacking squadron; as he subsequently took part in the first iron-clad attack on Fort Sumter.

Meantime, however, the War Department gave no sign, and the oracles of the Adjutant General's office were dumb as the statue of the Sphynx. Reports of the organization of the First South Carolina Infantry were duly forwarded to army headquarters; but evoked no comment, either of approval or rebuke. Letters detailing what had been done, and the reason for doing it: asking instructions, and to have commissions duly issued to the officers selected; appeals that the department paymasters should be instructed to pay these negro troops like other soldiers; demands that the government should either shoulder the responsibility of sustaining the organization, or give such orders as would absolve General Hunter from the responsibility of backing out from an experiment which he believed to be essential to the salvation of the country—all these appeals to Washington proved in vain; for the oracles still remained profoundly silent, probably waiting to see how public opinion and the politicians would receive this daring innovation.

At length one evening a special dispatch steamer plowed her way over the bar, and a perspiring messenger delivered into General Hunter's hands a special dispatch from the War Department, "requiring immediate answer." The General was just about mounting his horse for his usual evening ride along the picket line, when this portentous missive was brought under his notice. Hastily opening it, he first looked grave, then began to smile, and finally burst into peals of irrepressible laughter—such as were rarely heard from "Black David," his old army name. Never was the General seen, before or since, in such good spirits; he literally was unable to speak from constant interruptions of laughter; and all his Adjutant General could gather from him was: "That he would not part with the document in his hand for $50,000."

At length he passed over the dispatch to his chief of staff, who on reading it, and re-reading it, could find in its text but little apparent cause for merriment. It was a grave demand from the War Department for information in regard to our negro regiment—the demand being based on certain resolutions introduced by the Hon. Mr. Wickliffe, of Kentucky, asking for specific information on the point in a tone clearly not friendly. These resolutions had been adopted by Congress; and as Hunter was without authority for any of his actions in the case, it seemed to his then not cheerful Adjutant General that the documents in his hands were the reverse of hilarious.

Still Hunter was in extravagant spirits as he rode along, his laughter startling the squirrels in the dense pine woods, and every attempt that he made to explain himself being again and again interrupted by renewed peals of inextinguishable mirth. "The fool," he at length managed to say: "that old fool has just given me the very chance I was growing sick for. The War Department has refused to notice my black regiment; but now, in reply to this resolution, I can lay the matter before the country, and force the authorities either to adopt my negroes or to disband them."

He then rapidly sketched out the kind of reply he wished to have prepared; and, with the first ten words of his explanation, the full force of the cause he had for laughter became apparent. Never did General and his chief of staff, in a more unseemly state of cachinnation, ride along a picket line. At every new phase of the subject it presented new features of the ludicrous; and though the reply, at this late date, may have lost much of the drollery which then it wore, it is a serio-comic document of as much vital importance in the moral history in our late contest as any that can be found in the archives under the care of General E. D. Townsend. It was received late Sunday evening, and was answered very late that night, in order to be in time for the steamer Arago, which sailed at daylight next morning—the dispatch steamer which brought the request for "immediate information" having sustained some injuries which prevented an immediate return. It was written after midnight, we may add, in a tornado of thunder and tempest such as has rarely been known even on that tornado-stricken coast; but loud as were the peals and vivid the flashes of heaven's artillery, there were at least two persons within the lines on Hilton Head who were laughing far too noisily themselves to pay any heed to external clamors. The reply thus concocted and sent, from an uncorrected manuscript copy now in our possession, ran as follows:

HEADQUARTERS DEPARTMENT OF THE SOUTH,
Hilton Head, S. C., June, 1862.

To the Hon. E. M. Stanton, Secretary of War, Washington, District of Columbia:

SIR—I have the honor to acknowledge the receipt of a communication from the Adjutant General of the army, dated June 13, 1862, requesting me to furnish you with the information necessary to answer certain resolutions introduced in the House of Representatives, June 9, 1862, on motion of the Hon. Mr. Wickliffe, of Kentucky—their substance being to inquire:

1. Whether I had organized, or was organizing, a regiment of "fugitive slaves" in this department.

2. Whether any authority had been given to me from the War Department for such organization; and

3. Whether I had been furnished, by order of the War Department, with clothing, uniforms, arms, equipments, and so forth, for such a force?

Only having received the letter at a late hour this evening, I urge forward my answer in time for the steamer sailing to-morrow morning—this haste preventing me from entering as minutely as I could wish upon many points of detail, such as the paramount importance of the subject would seem to call for. But, in view of the near termination of the present session of Congress, and the widespread interest which must have been awakened by Mr. Wickliffe's resolutions, I prefer sending even this imperfect answer to waiting the period necessary for the collection of fuller and more comprehensive data.

To the first question, therefore, I reply that no regiment of "fugitive slaves" has been, or is being, organized in this department. There is, however, a fine regiment of loyal persons whose late masters are "fugitive rebels"—men who everywhere fly before the appearance of the national flag, leaving their loyal and unhappy servants behind them to shift, as best they can, for themselves. So far, indeed, are the loyal persons composing this regiment from seeking to evade the presence of their late owners, that they are now, one and all, endeavoring with commendable zeal to acquire the drill and discipline requisite to place them in a position to go in full and effective pursuit of their fugacious and traitorous proprietors.

To the second question, I have the honor to answer that the instructions given to Brigadier General T. W. Sherman by the Hon. Simon Cameron, late Secretary of War, and turned over to me, by succession, for my guidance, do distinctly authorize me to employ "all loyal persons offering their services in defense of the Union, and for the suppression of this rebellion," in any manner I may see fit, or that circumstances may call for. There is no restriction as to the character or color of the persons to be employed, or the nature of the employments—whether civil or military—in which their services may be used. I conclude, therefore, that I have been authorized to enlist "fugitive slaves" as soldiers, could any such "fugitives" be found in this department.

No such characters, however, have yet appeared within view of our most advanced pickets—the loyal negroes everywhere remaining on their plantations to welcome us, aid us, and supply us with food, labor and information. It is the masters who have in every instance been the "fugitives," running away from loyal slaves as well as loyal soldiers; and these, as yet, we have only partially been able to see—chiefly their heads over ramparts, or dodging behind trees, rifle in hand, in the extreme distance. In the absence of any "fugitive master law," the deserted slaves would be wholly without remedy, had not the crime of treason given them the right to pursue, capture and bring back those persons of whose benignant protection they have been thus suddenly and cruelly bereft.

To the third interrogatory, it is my painful duty to reply that I never have received any specific authority for issues of clothing, uniforms, arms, equipments, and so forth, to the troops in question—my general instructions from Mr. Cameron, to employ them in any manner I might find necessary, and the military exigencies of the department and the country, being my only, but, I trust, sufficient, justification. Neither have I had any specific authority for supplying these persons with shovels, spades and pickaxes, when employing them as laborers; nor with boats and oars, when using them as lighter men; but these are not points included in Mr. Wickliffe's resolution. To me it seemed that liberty to employ men in any particular capacity implied and carried with it liberty, also, to supply them with the necessary tools; and, acting upon this faith, I have clothed, equipped and armed the only loyal regiment yet raised in South Carolina, Georgia or Florida.

I must say, in vindication of my own conduct, that, had it not been for the many other diversified and imperative claims on my time and attention, a much more satisfactory result might have been achieved; and that, in place of only one regiment, as at present, a least five or six well-drilled, brave and thoroughly acclimated regiments, should, by this time, have been added to the loyal forces of the Union.

The experiment of arming the blacks, so far as I have made it, has been a complete and even marvellous success. They are sober, docile, attentive and enthusiastic—displaying great natural capacities in acquiring the duties of the soldier. They are now eager beyond all things to take the field and be led into action; and it is the unanimous opinion of the officers who have had charge of them that, in the peculiarities of this climate and country, they will prove invaluable auxiliaries—fully equal to the similar regiments so long and successfully used by the British authorities in the West India islands.

In conclusion, I would say, it is my hope—there appearing no possibility of other reinforcements, owing to the exigencies of the campaign in the Peninsula—to have organized by the end of next fall, and be able to present to the government, from forty-eight to fifty thousand of these hardy and devoted soldiers.

Trusting that this letter may be made part of your answer to Mr. Wickliffe's resolutions, I have the honor to be, very respectfully, your most obedient servant,

DAVID HUNTER,
Major General Commanding.

This missive was duly sent, with many misgivings that it would not get through the routine of the War Department in time to be laid before Congress previous to the adjournment of that honorable body, which was then imminent. There were fears, too, that the Secretary of War might think it not sufficiently respectful or serious in its tone; but such apprehensions proved unfounded. The moment it was received and read in the War Department it was hurried down to the House, and delivered, *ore rotundo*, from the Clerk's desk.

Here its effect was magical. The Clerk could scarcely read it with decorum, nor could half his words be heard amidst the universal peals of laughter in which both Democrats and Republicans appeared to vie as to which should be the more noisy. Mr. Wickliffe, who only entered during the reading of the latter half of the document, rose to his feet in a frenzy of indignation, complaining that the reply, of which he had only heard some portion, was an insult to the dignity of the House, and should be severely noticed.

The more he raved and gesticulated the more irrepressibly did his colleagues, on both sides of the slavery question, scream and laugh; until, finally, the merriment reached its climax on a motion made by some member—Schuyler Colfax, if we remember rightly—that "as the document appeared to please the honorable gentleman from Kentucky so much, and as he had not heard the whole of it, the Clerk be now requested to read the whole again"—a motion which was instantaneously carried amid such an uproar of universal merriment and applause as the frescoed walls of the chamber have seldom heard, either before or since. It was the great joke of the day, and coming at a moment of universal gloom in the public mind, was seized upon by the whole loyal press of the country as a kind of politico-military champagne cocktail.

This set the question at rest forever; and not long after the proper authorities saw fit to authorize the employment of "50,000 able-bodied blacks for labor in the Quartermaster's Department," and the arming and drilling as soldiers of 5000 of these—but for the sole purpose of "protecting the women and children of their fellow-laborers who might be absent from home in the public service."

Here we have another instance of the reluctance with which the national government took up this idea of employing negroes as soldiers—a resolution, we may add, to which they were only finally compelled by General Hunter's disbandment of his original regiment, and the storm of public indignation which followed that act.

CHAPTER II.

Nothing could have been happier in its effect upon the public than General Hunter's reply to Mr. Wickliffe, of Kentucky, given in our last. It produced a general broad grin throughout the country, and the advocate who can set his jury laughing rarely loses his cause. It also strengthened the spinal column of the government in a very marked degree, although not yet up to the point of fully indorsing and accepting this darling experiment.

Meantime the civil authorities, of course, got wind of what was going on—Mr. Henry J. Windsor, special correspondent of the New York *Times* in the department of the South, having devoted several very graphic and widely copied letters to a picture of that new thing under the sun—"Hunter's negro regiment."

Of course the chivalry of the rebellion were incensed beyond measure at this last Yankee outrage upon Southern rights. Their papers teemed with vindictive articles against the commanding general who dared to initiate such a novelty—the Savannah *Republican*, in particular, denouncing Hunter as "the cold-blooded abolition miscreant who, from his headquarters at Hilton Head, is engaged in executing the bloody and savage behests of the imperial gorilla who, from his throne of human bones at Washington, rules, reigns and riots over the destinies of the brutish and degraded North."

Mere newspaper abuse, however, by no means gave content to the outraged feelings of the chivalry. They therefore sent a formal demand to our government for information as to whether General Hunter, in organizing his regiment of emancipated slaves, had acted under the authority of our War Department, or whether the villainy was of his own conception. If he had acted under orders, why, then, terrible measures of fierce retaliation against the whole Yankee nation were to be adopted: but if, per contra, the iniquity were of his own motion and without the sanction of our government, then the foreshadowed retribution should be made to fall only on Hunter and his officers.

To this demand, with its alternative of threats, President Lincoln was in no mood to make any definitive reply. In fact no reply at all was sent—for, as yet, the most far-seeing political augurs could not determine whether the bird seen in the sky of the Southern department would prove an eagle or a buzzard. Public opinion was not formed upon the subject, though rapidly forming. There were millions who agreed with Hunter in believing that "the black man should be made fight for the freedom which could not but be the issue of our war," and then there were other millions whose conservative notions were outraged at the prospect of allowing black men to be killed or maimed in company with our nobler whites.

Failing to obtain any reply, therefore, from the authorities at Washington, the Richmond people determined to pour out all their vengeance on the immediate perpetrators of this last Yankee atrocity, and forthwith there was issued from the rebel War Department a general order—No. 60, we believe, of the series of 1862—reciting that "as the government of the United States had refused to answer whether it authorized the raising of a black regiment by General Hunter or not," said General, his staff and all officers under his command who had directly or indirectly participated in the unclean thing, should hereafter be marantha—outlaws not covered by the laws of war, but to be executed as felons for the crime of "inciting negro insurrections, wherever caught."

This order reached the ears of the parties mainly interested just as General Hunter was called to Washington—ostensibly for consultation on public business, but really on the motion of certain prominent speculators in marine transportation, with whose "big things" in Port Royal harbor—and they were enormous—the General had seen fit to interfere. These frauds, however, will form a fruitful and pregnant theme for some future chapters. At present our business is with the slow but certain growth in the public mind of this idea of allowing some black men to be killed in the late war, and not continuing to arrogate death and mutilation by projectiles and bayonets as an exclusive privilege for our own beloved white race.

No sooner had Hunter been relieved from this special duty at Washington than he was ordered back to the South, our government still taking no notice of the order of outlawry against him issued by the rebel Secretary of War. He and his officers were thus sent back to engage, with extremely insufficient forces, in an enterprise of no common difficulty, and with an agreeable sentence of *sus. per col.*, it captured; hanging over their devoted heads.

"Why not suggest to Mr. Stanton, General, that he should either demand the special revocation of that order, or announce to the rebel War Department that our government has adopted your negro regiment policy as its own—which would be the same thing?"

It was partly on this hint that Hunter wrote the following letter to Jefferson Davis—a letter subsequently suppressed and never sent, owing to influences which the writer of this article does not feel himself at liberty to reveal—further than to say that Mr. Stanton knew nothing of the matter. Davis and Hunter, we may add, had been very old and intimate friends until divided, some years previous to our late war, by differences on the slavery question. Davis had for many years been adjutant of the First United States Dragoons, of which Hunter had been captain commanding, and a relationship of very close friendship had existed between their respective families. It was this thorough knowledge of his man, perhaps, which gave peculiar bitterness to Hunter's pen, and the letter is otherwise remarkable as a prophecy or preordainment of that precise policy which President Johnson has so frequently announced and reiterated since Mr. Lincoln's death. It ran, with some few omissions, no longer pertinent or of public interest, as follows:

To Jefferson Davis, Titular President of the So-Called Confederate States:

WASHINGTON, September 20, 1862.

SIR—While recently in command of the Department of the South, in accordance with the laws of war and the dictates of common sense, I organized and caused to be drilled, armed and equipped a regiment of enfranchised bondmen, known as the First South Carolina Volunteers.

For this action, as I have ascertained, the pretended government, of which you are the chief officer, has issued against me and all of my officers who were engaged in organizing the regiment in question a general order of outlawry, which announces that, if captured, we shall not even be allowed the usual miserable treatment extended to such captives as fall into your hands; but that we are to be regarded as felons, and to receive the death by hanging due to such, irrespective of the laws of war.

Mr. Davis, we have been acquainted intimately in the past. We have campaigned together, and our social relations have been such as to make each understand the other thoroughly. That you mean, if it be in your power, to execute the full rigor of your threat I am well assured; and you will believe my assertion that I thank you for having raised in connection with me and my acts this sharp and decisive issue. I shall proudly accept, if such be the chance of war, the martyrdom you menace; and hereby give you notice that unless your general order against me and my officers be formally revoked within thirty days from the date of the transmission of this letter, sent under a flag of truce, I shall take your action in the matter as final, and will reciprocate it by hanging every rebel officer who now is, or may hereafter be taken prisoner by the troops of the command to which I am about returning.

Believe me that I rejoice at the aspect now being given to the war by the course you have adopted. In my judgment, if the undoubted felony of treason had been treated from the outset as it deserves to be—as the sum of all felonies and crimes—this rebellion would never have attained its present menacing proportions. The war you and your fellow-conspirators have been waging against the United States must be regarded either as a war of justifiable defense, carried on for the integrity of the boundaries of a sovereign confederation of States against foreign aggression, or as the most wicked, enormous and deliberately planned conspiracy against human liberty and for the triumph of treason and slavery, of which the records of the world's history contain any note.

If our government should adopt the first view of the case, you and your fellow-rebels may justly claim to be considered a most unjustly treated body of disinterested patriots—although, perhaps, a little mistaken in your connivance with the thefts by which your agent, John B. Floyd, succeeded in arming the South and partially disarming the North, as a preparative to the commencement of the struggle.

But if, on the other hand, as is the theory of our government, the war you have levied against the United States be a rebellion the most causeless, crafty, cruel and bloody ever known, a conspiracy having the rule-or-ruin policy for its basis, the plunder of the black race and the reopening of the African slave trade for its object, the continued and further degradation of ninety per cent of the white population of the South in favor of a slave-driving ten per cent aristocracy, and the exclusion of all foreign born immigrants from participation in the generous and equal hospitality foreshadowed to them in the declaration of independence—if this, as I believe, be a fair statement of the origin and motives of the rebellion of which you are the titular head, then it would have been better had our government adhered to the constitutional view of treason from the start, and hung every man taken in arms against the United States, from the first butchery in the streets of Baltimore down to the last resultless battle fought in the vicinity of Sharpsburg.

If treason, in other words, be any crime, it is the essence of all crimes; a vast machinery of guilt, multiplying assassinations into wholesale slaughters, and organizing plunder as the basis for supporting a system of national brigandage. Your action, and that of those with whom you are in league, has its best comment in the sympathy extended to your cause by the despots and aristocracies of Europe. You have succeeded in throwing back civilization for many years, and have made the country that was the freest, happiest, proudest, richest, and most progressive but two years ago, a vast temple of mourning, doubt, anxiety, and privation—our manufactures of all but war material nearly paralyzed, the inventive spirit which was forever developing new resources destroyed, and our flag, that carried respect everywhere, now mocked by enemies who think its glory tarnished, and that its power is soon to become a mere tradition of the past.

For all these results, Mr. Davis, and for the 300,000 lives already sacrificed on both sides in the war—some pouring out their blood on the battlefield, and others, fever-striken, wasting away to death in over-crowded hospitals—you and the fellow miscreants who have been your associates in this conspiracy are responsible. Of you and them it may with truth be said, that if all the innocent blood which you have spilled could be collected in one pool, the whole government of your Confederacy might swim in it.

I am aware that this is not the language in which the prevailing etiquette of our army is in the habit of considering your conspiracy. It has come to pass—through what instrumentalities you are best able to decide—that the greatest and worst crime ever attempted against the human family, has been treated in certain quarters as though it were a mere error of judgment on the part of some gifted friends; a thing to be regretted, of course, as causing more or less disturbance to the relations of amity and esteem heretofore existing between those charged with the repression of such eccentricities and the eccentric actors; in fact, as a slight political miscalculation or peccadillo, rather than as an outrage involving the desolation of a continent, and demanding the promptest and severest retribution within the power of human law.

For myself, I have never been able to take this view of the matter. During a lifetime of active service, I have seen the seeds of this conspiracy planted in the rank soil of slavery, and the Upas growth watered by just such tricklings of a courtesy alike false to justice, expediency and our eternal future. Had we at an earlier day commenced to call things by their right names, and to look at the hideous features of slavery with our ordinary common eyesight and common sense, instead of through the rose-colored glasses of supposed political expediency, there would be 300,000 more men alive to-day on American soil; and our country would never for a moment have forfeited her proud position as the highest exemplar of the blessings—moral, intellectual and material—to be derived from a free form of government.

Whether your intention of hanging me and those of my staff and other officers who were engaged in organizing the First South Carolina Volunteers, in case we are taken prisoners in battle, will be likely to benefit your cause or not, is a matter mainly for your own consideration. For us, our profession makes the sacrifice of life a contingency ever present and always to be accepted; and although such a form of death as your order proposes is not that to the contemplation of which soldiers have trained themselves—I feel well assured, both for myself and those included in my sentence, that we could die in no manner more damaging to your abominable rebellion and the abominable institution which is its origin.

The South has already tried one hanging experiment, but not with a success—one would think—to encourage its repetition. John Brown, who was well known to me in Kansas, and who will be known in appreciative history through centuries, which will only recall your name to load it with curses—once entered Virginia with seventeen men and an idea. The terror caused by the presence of his idea, and the dauntless courage which prompted the assertion of his faith against all odds, I need not now recall. The history is too familiar and too painful. "Old Ossawatomie" was caught and hung; his seventeen men were killed, captured or dispersed, and several of them shared his fate. Portions of his skin were tanned, I am told, and circulated as relics dear to the barbarity of the slaveholding heart. But more than 1,000,000 of armed white men, Mr. Davis, are to-day marching South, in practical acknowledgment that they regard the hanging of three years ago as the murder of a martyr; and as they march to a battle which has the emancipation of all slaves as one of its most glorious results, his name is on their lips; to the music of his memory their marching feet keep time; and as they sling knapsacks, each one becomes aware that he is an armed apostle of the faith preached by him

"Who has gone to be a soldier
In the army of the Lord!"

I am content, if such be the will of Providence, to ascend the scaffold made sacred by the blood of this martyr; and I rejoice at every prospect of making our struggle more earnest and inexorable on both sides; for the sharper the conflict the sooner ended—the more vigorous and remorseless the strife the less blood must be shed in it eventually.

In conclusion, let me assure you, that I rejoice with my whole heart that your order in my case, and that of my officers, if unrevoked, will untie our hands for the future; and that we shall be able to treat rebellion as it deserves, and give to the felony of treason a felon's death.

Very obediently, yours.
DAVID HUNTER, Major General.

Not long after General Hunter's return to the Department of the South, the first step toward organizing and recognizing negro troops was taken by our government, in a letter of instructions, directing Brigadier General Rufus Saxton—then military Governor of South Carolina, Georgia and Florida, within the limits of General Hunter's command—to forthwith raise and organize 50,000 able-bodied blacks, for service as laborers in the quartermaster's department; of whom 5000—only 5000 mark you!—might be armed and drilled as soldiers for the purpose of "protecting the women and children of their fellow-laborers who might be absent from home in the public service."

Here was authority given to General Saxton, over Hunter's head, to pursue some steps further than the experiment which Hunter—soon followed by General Phelps, also included in the rebel order of "outlawry"—had been the first to initiate. The rebel order still remained in full force, and with no protest against it on the part of our government; nor, to our knowledge, was any demand from Washington ever made for its revocation during the existence of the Confederacy. If Hunter, therefore, or any of his officers, had been captured in any of the campaigns of the past two and a half years, they had the pleasant knowledge for their comfort that every rebel officer into whose hands they might fall, was strictly enjoined to—not "shoot them on the spot," as was the order of General Dix—but to hang them on the first tree, and hang them quickly.

With the subsequent history of our black troops the public is already familiar. General Lorenzo Thomas, titular Adjutant General of our army, not being regarded as a very efficient officer for that place, was permanently detailed on various services—now exchanging prisoners, now discussing points of military law, now organizing black brigades down the Mississippi and elsewhere. In fact, the main object seemed to be to keep this General Thomas—who must not be confounded with General George H. Thomas, one of the true heroes of our army—away from the Adjutant General's office at Washington, in order that Brigadier General Townsend—only a colonel until quite recently—might perform all the laborious and crushing duties of Adjutant General of our army, while only signing himself and ranking as first assistant Adjutant General. If there be an officer who has done noble service in the late war while receiving no public credit for the same—no newspaper puffs or public ovations—that man is Brigadier General E. D. Townsend, who should long since have been made a Major General, to rank from the first day of the rebellion.

And now let us only add, as practical proof that the rebels, even in their most rabid state, were not insensible to the force of proper "reasons"—the following anecdote:

Some officers of one of our black regiments—Colonel Higginson's, we believe—indiscreetly rode beyond our lines at St. Augustine in pursuit of game—but whether feathered or female this deponent sayeth not. Their guide proved to be a spy, who had given notice of the intended expedition to the enemy; and the whole party were soon surprised and captured. The next we heard of them they were confined in the condemned cells of one of the Florida State prisons and were to be "tried"—i. e. sentenced and executed—as "having been engaged in inciting negro insurrection."

We had then some wealthy young slaveholders belonging to the first families of South Carolina in the custody of Lieutenant Colonel J. F. Hall, now Brigadier General, of this city, who was our provost marshal; and it was on this basis General Hunter resolved to operate. "Release my officers of black troops from your condemned cells at once, and notify me of the fact. Until so notified, your first family prisoners in my hands," the names then given, "will receive precisely similar treatment. For each of my officers hung, I will hang three of my prisoners who are slaveholders." This dose operated with instantaneous effect, and the next letter received from our captured officers set forth that they were at large on parole, and treated as well as they could wish to be in that miserable country.

We can not better conclude this sketch, perhaps, than by giving the brief but pregnant verses in which our ex-orderly, Private Miles O'Reilly, late of the old Tenth Army Corps, gave his opinion on this subject. They were first published in connection with the banquet given by General T. F. Meagher and the officers of the Irish Brigade to the returned veterans of that organization on the thirteenth of January, 1864, at Irving Hall. Of this song it may, perhaps, be said, in verity and without vanity, that—as General Hunter's letter to Mr. Wickliffe had settled the negro soldier controversy in its official and congressional form—so did the publication and immediate popular adoption of these verses conclude all argument upon this matter in the mind of the general public. Its common sense, with a dash of drollery, at once won over the Irish, who had been the bitterest opponents of the measure, to become its friends, and from that hour to this the attacks upon the experiment of our negro soldiery have been so few and far between that, indeed, they may be said to have ceased altogether. It ran as follows, and appeared in the *Herald* the morning after the banquet, as portion of the report of the speeches and festivities:

SAMBO'S RIGHT TO BE KILT.

Air—"The Low-Backed Car."

Some say it is a burnin' shame
To make the naygurs fight,
An' that the thrade o' bein' kilt
Belongs but to the white;
But as for me, upon my sowl,
So liberal are we here,
I'll let Sambo be murthered in place o' meself
On every day in the year.
On every day in the year, boys,
An' every hour in the day,
The right to be kilt I'll divide wid him,
An' divil a word I'll say.

In battle's wild commotion
I shouldn't at all object,
If Sambo's body should stop a ball
That was comin' for me direct;
An' the prod of a Southern bagnet,
So liberal are we here,
I'll resign, and let Sambo take it
On every day in the year.
On every day in the year, boys,
An' wid none o' your nasty pride,
All my right in a Southern bagnet prod
Wid Sambo I'll divide.

The men who object to Sambo
Should take his place an' fight,
An' it's betther to have a naygur's hue
Than a liver that's wake an' white;
Though Sambo's black as the ace o' spades
His finger a thrigger can pull,
An' his eye runs sthraight on the barrel sights
From under it's thatch o' wool.
So hear me all, boys, darlins!
Don't think I'm tippin' you chaff,
The right to be kilt I'll divide wid him,
An' give him the largest half!

In regard to Mr. Hunter's reply to Mr. Wickliffe, we shall only add this anecdote, told us one day by that brilliant gentleman and scholar, the Hon. Sunset Cox, of Ohio:

"I tell you that letter from Hunter spoiled the prettiest speech I had ever thought of making. I had been delighted with Wickliffe's motion, and thought the reply to it would furnish us first rate Democratic thunder for the next election. I made up my mind to sail in against Hunter's answer, no matter what it was, the moment it came; and to be even more humorously successful in its delivery, and reception than I was in my speech against War Horse Gurley, of Ohio, which you have just been complimenting. Well, you see, man proposes, but Providence orders otherwise. When the Clerk announced the receipt of the answer, and that he was about to read it, I caught the Speaker's eye and was booked for the first speech against your negro experiment. The first sentence, being formal and official, was very well; but at the second the House began to grin, and at the third not a man on the floor—except Father Wickliffe, of Kentucky, perhaps—who was not convulsed with laughter. Even my own risibles I found to be affected, and before the document was concluded I motioned the Speaker that he might give the floor to whom he pleased, as my desire to distinguish myself in that particular tilt was over."

An exchange says: "An old Colorado miner claims to have discovered a silver mine that promises as well as the Newburyport mine in Massachusetts, not ten miles from Portland, Maine." As to location in this case. New Hampshire comes between Portland and Newburyport; but that is of no consequence, for it is easy to silver o'er the truth.