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Hon. I. N. Arnold
Confiscate the property
and free the Slaves
Wash. 1862.

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CONFISCATE THE PROPERTY AND FREE THE SLAVES OF REBELS.

SPEECH

OF

HON. I. N. ARNOLD, OF ILL.,

IN THE HOUSE OF REPRESENTATIVES,

MAY 23, 1862.

The House having under consideration the bills to confiscate the property and free from servitude the slaves of rebels—

Mr. ARNOLD said: Mr. SPEAKER, I listened on yesterday with great respect to the eloquent argument of the gentleman from Kentucky [Mr. GRIDER] against this bill. He made an affecting appeal to the forbearance and magnanimity of this House in behalf of *traitors* whose hands are red with the blood of the brave and patriotic soldiers of Illinois and Kentucky, killed in this most wicked war. He appealed to us in behalf of those who drop poison in the cup which they hand to the famishing soldier; who treacherously hide torpedoes in abandoned fortifications to murder the brave men whom they dare not meet in open, honorable warfare. Towards such men, treacherous, cruel, reckless, restrained by no law, human or divine, seeking to kill, murder, and destroy every loyal man, and to take the life of the nation, we are asked to extend "magnanimity and forbearance." Sir, we have all along, since the beginning of this rebellion, been too magnanimous and forbearing, until our very kindness and forbearance to the rebels and traitors has been regarded by them as an indication of our weakness and cowardice. They must be made to feel our power. They must be made to respect the majesty of that justice which punishes crime. It will be time to be magnanimous and forgiving when they throw down their arms and appeal to the mercy of that Government they have failed to destroy.

SLAVERY, DEFEATED AT THE BALLOT-BOX, APPEALED TO THE SWORD AND BROUGHT ON THIS WAR.

In the face of the stupendous events transpiring in our midst, the slavery question cannot be ignored. It is idle to seek to ignore it. It will *not* down at the bidding of any. We must grapple and meet it. The skilful physician might as well ignore the existence of a terrible disease threatening the death of his struggling patient, as the statesman seek to ignore or disregard the disease of slavery, now threatening the life of the nation. No man has spoken more wisely, cautiously, philosophically, on this subject than the President of the United States. Listen to the words of Abraham Lincoln, spoken at Springfield in 1858. He said:

"A house divided against itself cannot stand. I believe that this Government cannot endure permanently half slave and half free. I do not expect the house to fall. I do not expect the Union to dissolve, but I do expect it will cease to be divided. It will become all one thing or all the other. Either the opponents of slavery will arrest the further spread of it and place it where the public mind will rest in the belief that it is in the course of ultimate ex-

tion, or its advocates will push it forward, until it shall become alike lawful in all the States, the old as well as the new, North as well as South."

When Abraham Lincoln uttered these sentiments, sagacious and truthful as they are, he did not dream of any conflict between liberty and slavery but a moral one. That contest was fought out in 1860 at the ballot-box, and freedom triumphed. The weapons of freedom by which that victory was achieved were the press, free speech, the lecture, the pulpit, the newspaper, the school-house, the church, above all, the free, honest ballot. We fought against the encroachments of the aristocracy of slavery with ballots and not with bullets. We believed

"There was a weapon firmer set,
And better than the bayonet;
A weapon that comes down as still
As snow-flakes fall upon the sod,
But executes a freeman's will,
As lightnings do the will of God."

Slavery, like all great wrongs, has always resorted to violence. It used the bowie-knife of the border-ruffians in Kansas. Its weapons have been lynch-law and mob violence to silence the freeman's tongue and shut the patriot's mouth. It was a peaceful moral conflict, where reason should contend against wrong, which the late Senator from New York termed the "*irrepressible conflict*."

Freedom having triumphed at the ballot-box, slavery appealed to the sword, and brought upon the country this terrible desolating war. The contest still rages. It is idle to seek to disguise it; we fight for liberty and the Constitution. The rebels fight for slavery and the subversion of constitutional liberty. It is liberty against slavery, right against wrong, civilization against barbarism. The rebels, fighting for a barbarous institution, fight like inhuman barbarians.

Commencing the contest with perjury, with robbery, with larceny, they have disgraced the American name by their unparalleled brutalities. They poison wells and springs; they hold out to the famishing soldier the food charged with arsenic. The cup of southern hospitality, in rebel hands, has become the cup of death to the confiding soldier. They murder wounded men on the field of battle; they violate the sanctity of a flag of truce; they desecrate and mutilate the remains of the gallant soldiers who fall in a manner more infamous than the savages of those barbarous islands where the light of Christianity has never penetrated.

I ask what has transformed the noble, humane, generous, Christian gentlemen of the South into such barbarians? How is it that the land which produced a Washington, a Henry, a Jefferson, a John Marshall, now produces a Floyd, a Wise, a Jefferson Davis? Whence the degeneracy of this noble race? It is true we recognise many noble exceptions to this degeneracy. No more patriotic and unselfish men ever lived than some of the Union men of the slave States.

THE PRESIDENT SEEKS TO CONTROL THE WHIRLWIND SLAVERY HAS RAISED.

I have quoted the words of Abraham Lincoln uttered in 1858; listen to the words of the President of the United States to-day, still calm and cautious, seeking "to control the whirlwind and direct the storm." In the light of the past, hear his utterances of to-day.

On the 6th of March last the President solemnly proposed to Congress the inauguration of a gradual system of emancipation. His proposition was heard with delight, and adopted by large majorities of both Houses of Congress.

His proposition was welcomed by the world as "an authentic, definite, and solemn proposition of the nation" gradually and peacefully to terminate the existence of human slavery. It was a proposition which will culminate in making freedom not only "national," but universal, wherever the flag of our Union floats. This message struck the key-note, and gave form to the grand idea of liberty throbbing for expression in the popular heart. The institution of slavery, having the sin of this rebellion on its head, must, in process of time, cease to exist. Its prolonged life is incompatible with the national life, and it must die. "I believe," says Abraham Lincoln, "this Government cannot endure permanently half slave and half free."

The President desires the inevitable change to be peaceful, gradual, constitutional. Hence he says to the loyal slaveholders :

"I do not argue, I beseech you to make the argument for yourselves. You cannot, if you would, be blind to the signs of the times. The proposal makes common cause, for a common object, casting no reproach upon any." * * * * "The change it contemplates would come gently as the dews of heaven—not rending or wrecking anything. Will you not embrace it? So much good has not been done by one effort in all past time, as, in the providence of God, it is now your high privilege to do. May the vast future not have to lament that you have neglected it."

To this earnest appeal of the President every lover of liberty throughout the world responds, "amen." And thus, and to this end, the President abrogates the proclamation of freedom issued by the blunt and gallant Hunter, and gives to South Carolina even, her hands dripping with the blood of this civil war, one more chance for submission and gradual change.

HAVE FAITH IN ABRAHAM LINCOLN.

Lovers of liberty, and patriots, impatient of this delay in striking at the great criminal, I pray you trust Abraham Lincoln. Have faith in the President. He will not neglect the opportunity which the providence of God has given him. Peacefully, "gently as the dews of heaven," will come the blessings of liberty—if *it may be*. Like the bright beams of the morning sun, dispelling the darkness, clouds, and exhalations of black night, so will freedom dispel the darkness and barbarism of slavery. "You cannot," men of the border States, patriots of the border States, "be blind to the signs of the times." I beg you to join hands with the President; help to make this one great, homogeneous, free people. "So much good has not been done by one effort in all past time." Look at this capital, now free, but so long paralysed by slavery; look across yonder noble river to Arlington House, crumbling to ruin; take your melancholy way to Alexandria and Mount Vernon; go down yonder most magnificent Chesapeake bay to the ancient city of Norfolk; see those great tributary rivers, the Potomac, the Rappahannock, the York, and the James; sir, on the banks of these waters, now so lonely and desolate, should have been the seat of empire. Virginia was, should have been, would have been, the empire State of this Union but for slavery. I have lately sailed over these magnificent waters, seen their beauty, their natural advantages, and—their desolation. There is no more melancholy spectacle than the material decay and moral degeneracy of the "Old Dominion." Oh, border State men and men of the free States, why stay the hand that strikes down the great cause of this ruin and desolation? Why will you seek to restore to life and vigor this cursed institution of slavery, now dying by its own hand? Why not let the suicide of slavery be consummated? Democrats of the free States, if you warm this insidious viper again into life, if you take it to your bosom and restore its power, be sure, like the serpent in the fable, it will sting you to death. Remember, I beseech you, its treatment of your idol, Douglas.

In urging the passage by Congress of these acts the suggestions which I beg leave to present for consideration naturally range themselves under one or other of the following heads :

- I. The right of Congress to pass such a confiscation law.
- II. The justice and expediency of such a law.*

First. The right of Congress to pass a *general* confiscation law.

The right of Congress to pass an act for the confiscation of the property of persons engaged in the existing insurrection has, to a certain extent, already received the sanction of Congress. The act to "further provide for the collection of duties, approved July 13, 1861," authorized the seizure and condemnation of all goods, and chattels *in transitu* between the loyal and insurrectionary States, together with the vessel or vehicle conveying the same, and the act of August 6, 1861, authorized the confiscation of property used for insurrectionary purposes, and forfeited the claim of the master to the service of any person held by him to service when the slave was employed by the master to aid the insurrection in the manner therein stated.

The preceding legislation rests for its legality upon the same basis as the law now proposed. The extent to which Congress will go in the exercise of its power is a question of policy; the nature and source of the power is the same. It is a right belonging to the Government, under the law of nations, in time of war, and which is included in the power to declare war conferred by the Constitution. The right to confiscate and condemn enemy's property in time of war was very fully considered and settled in the case of *Brown vs. The United States*, reported first in 2 Gallison's Reports, and decided on appeal in the Supreme Court, in 8 Cranch. In that case the property libeled consisted of a quantity of lumber belonging to a British subject, and found after the declaration of war in New Bedford, Massachusetts. In the case below, Judge Story, after the most learned review of all the authorities, arrived at the following conclusions :

1. That a nation may lawfully confiscate the debts of her enemy during war or by way of reprisal, and cited *Ware vs. Hylton*, 3 Dallas, 199.

2. That the right of confiscation of the goods of an enemy found within the dominions of a belligerent Power is universally admitted, citing all the leading writers on public law.

3. Story held that, without any act of Congress, the mere declaration of war did *ex vi termini* authorize the capture of all enemy's property wherever, by the law of nations, it could be lawfully seized, and that where no act of Congress was made on the subject, the benefit of all such captures must inure to the use of the Government. He adhered to this opinion in the appellate court, and maintained that "the right of confiscation resulted not from the express provisions of any statute," but "from the very state of war which subjects the hostile property to the disposal of the Government." "The power to declare war includes all the powers incident to war and necessary to carry it into effect." "He was at a loss to perceive how the power existed to seize and capture enemy's property which was without our territory at the commencement of the war, and not the power to seize that which was within it at the same period." "Neither are expressly given or denied; and how can either be assumed except as an incident of war on national and public principles? That if the legislature did not limit the nature of the war, all the regulations and rights of general war attach upon it.

* I have drawn freely in these views from a very able brief in favor of confiscation prepared by E. C. LARNED Esq., United States District Attorney for Illinois.

In the opinion of the majority of the court, given by Chief Justice Marshall, it was held—

“That, respecting the power of the Government, no doubt was entertained.” “That war gives to the sovereign full right to take the persons and confiscate the property of the enemy wherever found, is conceded.”

But that the mere declaration of war did not, of itself, enact a confiscation of property within the territory of the belligerent. That the power of confiscating enemy's property is in the legislature, and that an act of Congress is necessary to authorize proceedings for the condemnation of enemy's property within the country at the commencement of the war. This authority conclusively settles the power of Congress to confiscate the property of enemies in time of war, and the necessity for the passage of an act of Congress to authorize such condemnation.

I beg leave to read, in confirmation of these views, the following extract from a work on *The Laws of War*, by General Halleck :

“The necessity of self-preservation, and the right to punish an enemy, and to deprive him of the means of injuring us, by converting these means to our own use against him, lie at the foundation of the rule, and constitute the right of a belligerent to enemy's property of any kind; and it is difficult to see why this right should be restricted to a particular species of property, to cattle, horses, money, ships, goods, and not include lands and immovables,” &c.

I add, why restrict to horses or lands especially if “contrabands,” negroes, are more hurtful to us in the hands of the enemy, and more useful if under our own control? The slave States live, to a considerable extent, on the labor of their slaves. Like the Jew, the traitors would be forced to exclaim, “you take my life when you do take from me the means whereby I live.”

The only remaining question is, whether there is any difference in respect to the power of Congress to confiscate the property of enemies, growing out of the fact that the enemies whose property is to be affected are not citizens of a foreign country which is at war with the United States, but citizens of the United States who are in insurrection against and waging war upon their own Government?

This subject received the most elaborate and thorough examination in the case of the *United States vs. The bark Hiawatha*, and the *United States vs. Bark Octavia*, and other vessels, recently decided by Judge Betts in the southern district of New York. In these cases Judge Betts held :

“That under the law of nations, the rights incident to a war waged by a Government to subdue an insurrection or revolt of its own subjects or citizens are the same in regard to neutral Powers as if the hostilities were carried on between independent nations, and apply equally in captures of property for municipal offences as prize of war, citing *Rose vs. Nimely*, 4 Cranch, 241-293; Appendix, 509; 7 Wheaton, 306.

“That the insurgents, so far as their own acts can make them, are as alien and foreign from the United States Government as if they assumed the names of citizens and subjects of Mexico and South America.

“They thus make themselves armed enemies, and wage war against the United States to accomplish its dismemberment and destruction. It can be of no consequence under what name or appellation these enemies unite and act, whether as State secessionists, southerners, or slaveholders. They are in every just contemplation of our system of Government insurgents and rebels against a common Government, and waging war for its overthrow.

“I consider the outbreak in particular States, as also in the confederate States, as an open and flagrant civil war waged against the United States. That citizens of the United States levying war against the United States are enemies of the Government notwithstanding their residence within the Union; and that the property possessed and held by them in a state of war, out of and against the authority of the United States, becomes thus the property of enemies of the Government, subject to confiscation when arrested at sea, and persons continuing within the authority and dominion of such enemies are clothed with the character and responsibilities of enemies because of their residence, without regard to their private sentiments.”

It is conceded that the words “arrested at sea” were used simply with reference to the facts of the cases before him. There is no difference in prin-

ciple between the right of confiscation of enemies' property on sea or on shore. The only difference is in respect to the admiralty jurisdiction. This case establishes the position that the rebels are public enemies in war against this Government, and liable to the same penalties, in the way of confiscation of property, as the alien enemies of a foreign Government with which we were in a state of war. (For full opinion of Judge Betts in this case, see New York Evening Post of October, 1861.)

Civil war is called by Grotius "a mixed war, public on the side of the established Government, and private on the part of the people resisting its authority, and gives belligerent rights against the rebels and other nations aiding them." (Wheaton's International Law, p. 4, chap. 1, sec. 7; Vattel, book 3, chap. 18, secs. 292-295.)

The law, as pronounced in the above opinion of Judge Betts, is similarly stated in the opinion of the district court of Pennsylvania for the eastern district, in the case of *The United States vs. Ship General Parkhill*, which was, in that case, condemned as being the property of citizens of Charleston, enemies of the United States; also in the case of *The United States vs. Schooner Tropic Wind*, in the admiralty court in the District of Columbia. The opinions in these cases review the whole law, and arrive at the same conclusions above stated.

The power of Congress to confiscate the property of all persons engaged in the present insurrection, and to pass an act for that purpose, conferring authority upon the proper tribunals of the country to enforce such right, may be considered as settled. It is *res adjudicata*. It is based alike upon reason and authority, and cannot now be considered as an open question.

II. The justice and expediency of such a law.

1. If in the case of ordinary war between foreign Powers, the property of alien enemies is subject to be confiscated, how much more should that of these, who are not only enemies but rebels, who are not only belligerents but traitors, and not only so, but rebels and traitors to the best, mildest, and most benignant Government which exists on earth. What can be said or thought in extenuation of the crime of men who are plotting the overthrow of the American Union and the destruction of American liberty? The atrocious wickedness of this rebellion is beyond all expression, and its utter want of all sufficient justification or excuse makes it the more unparalleled in its criminality. The annals of the world furnish no counterpart to it. In time of profound peace and prosperity, with no just cause of complaint, no evils or wrongs of any kind beyond the reach of legislation, these men have rushed this great country into this terrible and desolating civil war. They are seeking to destroy the great Republic in which the hopes of humanity are centred. Surely there should be no half-way measures with such men; there should be no sympathy for such treason; there should be no disposition to deal softly in such a case. Justice demands that these rebels and traitors to the Republic should be dealt with as such. The citizens of the loyal States demand that these men, while acting as rebels and traitors, should in every possible way be made to feel the consequences of their crimes; that they should be made to suffer as much as possible in every way in which it is in our power to affect them so long as they remain in arms against us, and there is no more potent and effective method than through the loss of their property.

2. Not only do justice and right demand such a measure, but it is necessary as a measure of retaliation. For months these people have been seizing and confiscating the property of the citizens of the loyal States. They did so for a long period without even any pretence of law or authority of their own,

and they have since attempted to give to their proceedings the pretended sanction of law by enacting in their pretended congress a general sweeping act of confiscation of all the property of citizens of the loyal States. It would be hard, indeed, for the citizens who are loyal to the Constitution and the Union to be compelled to submit to the confiscation of their property by these rebels for no other reason than because they remain true to the Government of their fathers, while these rebels and traitors are permitted to retain all which belongs to them in the loyal States. This is in truth a reward for treason. The traitors are allowed all their own property, and also all the spoils of that of loyal citizens found within their reach.

In the border States, where victory and defeat alternate, and whole sections of country are alternately in possession of the contending parties, the present system is a premium on treason. Its effect is to throw the powerful influence of the property interest on the side of rebellion. For if a man in these States declares for the Union, and the confederates are victorious, all he has is swept away by them; while if he declares for the confederates, and the Unionists succeed, his property is entirely safe under the existing legislation. The property of Jeff. Davis himself could not lawfully be interfered with as the law now stands, unless it could be made to appear that it had been used directly in aiding the rebellion.

3. Such a measure is demanded to meet the wishes of the loyal American people at this time. They demand in every quarter of the country that these men should be dealt with as they deserve; that they should not only be termed rebels and traitors, but made to feel the punishment which belongs to such crimes. The unanimous voice of the country demands such a measure, and it will be hailed in every section with entire approval.

4. No measure would give to the country more satisfactory assurance that the Government was in earnest in its design to suppress this rebellion. It would evince the firm, determined spirit which the people expect and demand.

A PARTY IN SYMPATHY WITH TRAITORS IS ORGANIZING TO DIVIDE THE NORTH.

Mr. Speaker, I have seen with regret that there is a party in the country seeking to divide the North; a party which is the especial guardian and protector of slavery; a party that is industriously sowing the seeds of discord and division, seeking to create distrust of their Government in the minds of the people; men who exaggerate and magnify the frauds and corruptions of the subordinates, and proclaim and use them, not to secure purity, retrenchment, and economy, but simply to make political capital. These men hate a black loyalist, however brave and patriotic, more than a white traitor. They will split hairs on technical quibbles to save rebels. They seem to think it is better that ninety-nine traitors should escape, rather than have one negro go free. They are ever holding up the Constitution as a shield to protect the traitors, while such traitors are making war upon it. Such men attack the President and attack the Secretary of War. Why is Mr. Stanton so bitterly assailed by those men? Simply because he is in earnest, and means to crush the rebels and punish the traitors at any sacrifice. He is for his country, and has no remote sympathy with traitors. His offence has "this extent, no more."

Slavery is the corner-stone of this rebellious Confederacy. Can you have permanent peace with slavery the dominant power in the land? Has not our country sacrificed enough for this institution? Turn over the pages of the last year's history. How many noble, gallant spirits have passed away. Their names and memories will live in our hearts; they will brighten our coun-

try's history, and hallow forever our national songs. But for slavery they would have all been living to-day: Lyon and Winthrop and Ellsworth and Baker and Wallace, and a host of other gallant patriots, all martyrs in this cause; but the undistinguished, brave privates and subordinates, hurried into nameless graves. Let us remember that each has left a vacant place around some hearthstone in some family circle. Go anywhere in the West, into any church, in town, city, village, or country, and the dark habiliments of mourning meet your eye. The sad faces of widows, mothers, and sisters tell how wide-spread are the victims of this treason. There has fallen no gallant soldier in all this year of desolation, but, if there had been no slavery in our land, would to-day have been living each in his own family circle. When you see a wounded soldier on his crutch, when you see him with an arm or a leg shot away, struggling, with his impaired powers, to gain a livelihood, you remember, and be sure that *he* will never forget, that slavery caused his wounds.

Now, who are the conservatives who would preserve an institution so destructive? There are those who adopt the name of conservatives to preserve slavery from destruction, rebel property from confiscation, and rebel necks from the halter. From all such conservatives "Good Lord deliver us." There is another class who wish to preserve the Constitution, the life of the nation, liberty, and all which is dear to us—to preserve these by destroying through peaceful, constitutional means the great enemy of all—*slavery*: of this class of conservatives the noblest type, in my judgment, is found in honest Abraham Lincoln.

Mr. DIVEN. I wish to inquire of the gentleman from Illinois whether he referred to the case decided by Chief Justice Marshall, where the property of a British subject was taken, he not being present.

Mr. ARNOLD. Yes; it is the case of a British subject whose property was found in this country.

Mr. DIVEN. I know the case. I ask the gentleman if he knows of any case in modern warfare where the property of private citizens has been taken for the public use? If the gentleman has such a case, I should like to hear it. I have looked in vain for such a case.

Mr. ARNOLD. There are plenty of such cases. I ask the gentleman to listen to the comments of Chancellor Kent on the case of Brown.

Mr. DIVEN. I have read them.

Mr. ARNOLD. I will read. In the Commentaries of Chancellor Kent, (vol. 1, p. 67,) after commenting on the case of Brown, the case referred to by the gentleman from New York, he says:

"When the case was brought up, on appeal, before the Supreme Court of the United States, the broad principle was assumed, that *war gave to the sovereign full right to take the persons and confiscate the property of the enemy, wherever found*; and that the mitigation of this rigid rule, which the wise and humane policy of modern times had introduced into practice, might more or less affect the exercise of the right, but could not impair the right itself."

Commending this declaration of the great judge of New York to the consideration of the gentleman, I yield the floor.

WASHINGTON, D. C.

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