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Of the Most Favorite Patterns.

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With a full and general assortment of

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And all other articles usually found in a

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Repairing Neatly and Promptly Executed.

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Feb. 2, '67—v2n25tf

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Keep constantly on hand

A FULL ASSORTMENT

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At Lower Figures than any other House

This side of Portland,

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In the line of

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Which has no equal in the world. Get one and satisfy yourself.

Particular attention paid to all orders in our line.

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au18-1y

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DOUBLE AND SINGLE BUGGIES,

Together with the best of Livery and

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All of which will be let on

REASONABLE TERMS.

GIVE US A CALL!

MARSHALL & SCHLOSSER.

Albany, Jan. 14, 1867—v2n23ly

PRESIDENT JOHNSON'S VETO OF THE MILITARY BILL.

To the Houses of Representatives:

I have examined the bill "To provide for the more efficient government of the rebel states," with care and anxiety, which its transcendent importance is calculated to awaken. I am unable to give it my assent for reasons so grave that I hope a statement of them may have some influence on the minds of the patriotic and enlightened men with whom the decision must ultimately rest.

The bill places all the people of ten states therein named under the absolute domination of military rules; and the preamble undertakes to give the reason upon which it is justified.

It declares that there exists in those states no legal governments, and no adequate protection for life or property, and asserts the necessity of enforcing peace and good order within their limits. Is this true as a matter of fact? It is not denied that the states in question have each of them an actual government, with all the powers, executive, juridicial, and legislative, which properly belongs to a free state.

They are organized like the other states of the union, and like them they make administer, and execute the laws which concern their domestic affairs. An existing *de facto* government, exercising such functions as these, is itself the law of state upon all matters within its jurisdiction. To pronounce the supreme law-making power of an established state illegal, is to say that law itself is unlawful. The provisions which these governments have made for the preservation of order, the suppression of crime, and the redress of private injuries, are in substance and principle the same as those which prevail in the Northern states, and in other civilized countries. They certainly have not succeeded in preventing the commission of all crime, nor has this been accomplished anywhere in the world. There, as well as elsewhere, offenders sometimes escape for want of vigorous prosecution, and occasionally perhaps by the insufficiency of the courts, or the prejudice of jurors. It is undoubtedly true that these evils have been much increased and aggravated North and South by the demoralizing influences of civil war, and by the rancorous passions which the contest has engendered, but that these people are maintaining local governments for themselves which habitually defeat the object of all government and render their own lives and property insecure, is in itself utterly improbable, and the averment of the bill to that effect is not supported by any evidence which has come to my knowlege. All the information I have on the subject convinces me that the masses of the Southern people and those who control their public acts, while they entertain diverse opinions on questions of Federal policy, are completely united in their effort to reorganize their society on the basis of peace, and to restore their mutual prosperity as rapidly and as completely as their circumstances will permit. The bill, however, would seem to show upon its face that the establishment of peace and good order is not its real object.

The fifth section declares that the preceding sections shall cease to operate in any state where certain events shall have happened. These events are first, the selection of delegates to a state convention by an election, at which negroes shall be allowed to vote; second, the formation of a state constitution by the convention so chosen; third, the insertion into the state constitution of a provision which will secure the right of voting at all cletions to negroes and to such white men as may not be disfranchised for rebellion or felony; fourth, the submission of the constitution for ratification to negroes and white men not disfranchised, and its actual ratification by their vote; fifth, the submission of the state constitution to Congress for examination, and the actual approval of it by that body; sixth, the adoption of a certain amendment to the federal constitution by a vote of the legislature elected under the new constitution; seventh, the adoption of said amendment by a sufficient number of other votes to make it a part of the constitution of the United States. All these conditions must be fulfilled before the people of any of these states can be relieved from the bondage of military domination, but when they are fulfilled, then immediately the pains and penalties of the bill are to cease, no matter whether there be peace and order or not, and without any reference to the security of life and property. The excuse given for the bill in the preamble is admitted by the bill itself not to be real. The military rule which it establishes, is plainly to be used not for any purpose of order, or for the prevention of crime, but solely as a means of coercing the people into the adoption of principles and measures to which it is known that they are opposed, and upon which they have an undeniable right to exercise their own judgment.

I submit to Congress whether this measure is not in its whole character, scope and object without precedent and without authority; in palpable conflict with the plainest provisions of the constitution, and utterly destructive to those great principles of liberty and humanity for which our ancestors, on both sides of the Atlantic, shed so much blood, and expended so much treasure.

The ten states named in the bill are divided into five districts; for each district an officer of the army, not below the rank of brigadier general, is to be appointed to rule over the people, and he is to be supported with an efficient military force, to enable him to perform his duties and enforce his authority. Those duties and that authority, as defined by the third section of the bill, are to protect all persons in their rights of person and property, to suppress insurrection, disorder and violence, and to punish, or cause to be punished, all disturbers of the public peace, or criminals. The power thus given to the commanding officer over all the people of each district is that of an absolute monarch; his mere will is to take the place of all law. The law of the states is now the only rule applicable to the subjects placed under his control, and that is completely displaced by the clause which declares all interference of the state authority to be null and void. He alone is permitted to determine what are the rights of person or property, and he may protect them in such way as in his discretion may seem proper. It places at his free disposal all the lands and goods in his district, and he may distribute them without let or hindrance, to whom he pleases.—

Being bound by no state law, and there being no other law to regulate the subject, he may make a criminal code of his own; and he can make it as bloody as any recorded in history, or he can reserve the privilege of acting upon the impulse of his private passions in each case that arises. He is bound by no rules of evidence; there is indeed no provision by which he is authorized or required to take evidence at all. Everything is a crime which he chooses to call so, and all persons are condemned whom he pronounces to be guilty. He is not bound to make any report, or keep any record of his proceedings; he may arrest his victims wherever he finds them without warrant, accusation, or proof of probable cause. If he gives them a trial before he inflicts the punishment, he gives it of his grace and mercy, not because he is commanded so to do. To a casual reader of the bill it might seem that some kind of trial was secured by it to persons accused of crime, but such is not the case. The officer may allow local civil tribunals to try offenders, but of course this does not require that he shall do so.

If any state or federal court presumes to exercise its legal jurisdiction by the trial of a a malefactor without his special permission, he can break it up and punish the judges and juror as being themselves malefactors. He can save his friends from justice and despoil his enemies contrary to justice. It is also provided that he shall have power to organize military commissiones or tribunals, but this power he has not commanded to exercise. It is merely permissive, and is to be used only when in his judgment it may be necessary for the trial of offenders. Even if the sentence of a commission were made a prerequisite to the punishment of a party, it would be scarcely the slightest check upon the officer, who has authority to organize it as he pleases, prescribe its mode of proceeding, appoint its members from among his own subordinates, and revise all its decisions. Instead of *mitigating* the harshnes of his single rule such a tribunal would be used, much more probably, to divide the responsibility of making it more cruel and unjust.

Several provisions dictated by the humanity of Congress have been inserted in the bill, apparently to restrain the power of the commanding officer, but it seems to me that they are of no avail for that purpose.

The fourth section provides, first, that trials shall not be unnecessarily delayed, but I think I have shown that the power is given to punish without trial, and if so this provision is practically inoperative; second, cruel or unusual punishments are not to be inflicted, but who is to decide what is cruel and what unusual? The words have acquired a legal meaning by long use in the courts. Can it be expected that military officers will understand or follow a rule expressed in language so purely technical and not pertaining in the least degree to their profession? If not, then each officer may define cruelty according to his own temper, and if not usual he will make it usual. Corporal punishment, the gag, the ball and chain and the other almost insupportable forms of torture invented for military punishment lie within the range of choice.—Third, the sentence of a commission is not to be executed without being approved by the commander if it affects life or liberty, and a sentence of death must be approved by the president. This applies to cases in which there has been a trial and sentence. I take it to be clear, under the bill, that the military commander may condemn to death without even the form of a trial by a military commission, so that the life of the condemned may depend on the will of two men instead of one. It is plain that the authority here given to the military officer amounts to absolute despotism. But to make it still more unendurable, the bill provides that it may be delegated to as many subordinates as he chooses to appoint, for it declares that he shall "punish or cause to be punished." Such a power has not been wielded by any monarchy in England for more than five hundred years.—In all that time no people who speak the English language have borne such servitude. It reduces the whole population of the ten (10) states—all persons of every color, sex and condition, and every stranger within their limits—to the most object and degrading slavery. No master ever had a control so absolute over his slaves as this bill gives to the military officers over both white and colored persons. It may be answered to this that the officers of the army are too magnanimous, just and humane to oppress and trample upon a subjugated people. I do not doubt that army officers are as well entitled to this kind of confidence as any other class of men, but the history of the world has been written in vain if it does not teach us that unrestrained authority can never be safely trusted in human hands. It is almost sure to be more or less abused under any circumstances, and it has always resulted in gross tyranny, where the rulers who exercise it are strangers to their subjects, and come among them as the representatives of a distant power, and more especially when the power, that sends them is unfriendly. Governments closely resembling that here proposed have been tried in Hungary and Poland, and the sufferings endured by those people roused the sympathies of the entire world. It was tried in Ireland, and though first tempered by principles of English law, it gave birth to cruelties so atrocious that they are never recounted without just indignation. The French convention armed its deputies with this power, and sent them to the southern departments of the republic. The massacres, murders and other atrocities which they committed, show what the passions of the oldest men in the most civilized society will attempt to do when wholly unrestrained by law. The men of our race in every age have struggled to tie up the hands of their governments and keep them within the law, because their own experience of all mankind taught them that rulers could not be relied on to concede those rights which they were not legally bound to respect. The head of a great empire has sometimes governed it with a mild and paternal sway; but the kindness of an irresponsible deputy never yields what the law does not extort from him. Between such a master and the people subjugated to his domination, there can be nothing but enmity. He punishes them if they resist his authority, and if they submit to it he hates them for their servility.

I come now to a question which is, if possible, still more important.

Have we the power to establish and carry into execution a measure like this? I answer certainly not if we derive our authority from the constitution, and if we are bound by the limitations which imposes. This proposition is perfectly clear, that no branch of the federal government executive, legislative or judicial, can have any just powers except those which it derives through, and exercises under the organic law of the union. Outside of the constitution we have no legal authority more than private citizens of the United States, which are within the union, but it shields every human being who comes, or is brought under our jurisdiction. We have no right to do in one place more than in another that which the constitution says we shall not do at all. If therefore, the Southern States were in truth, out of the union, we could not treat their people in a way which the fundamental law forbids. Some people assume that the success of our arms in chrushing the opposition which was made in some of the states to the execution of the federal laws, reduced those states, and all their people the innocent as well as guilty, to a condition of vassalage, and gave us a power over them which the constitution does not bestow, or define or limit. No fallacy can be more transparent than this. Our victories subjected the insurgents to legal obedience, not to the yoke of an arbitrary despotism. When an absolute sovereign reduces his rebellious subjects, he may deal with them according to his pleasure, because he had that power before; but when a limited monarch puts down an insurrection he must still govern according to law. If an insurrection should take place in one of our states against the authority of the state government, and end in the overthrow of those who planned it, would that take away the rights of all the people of counties where it was favored by a part or a majority of the population? Could they, for such a reason, be wholly outlawed and deprived of their representation in the legislature? I have always contended that the government of the United States was sovereign within its constitutional sphere; that it executed its laws like the states themselves, by applying its coercive powers directly to individuals, and that it could put down insurrection with the same effect as a state, and no other. The opposite doctrine is the worst heresy of those who advocated secession, and cannot be agreed to without admitting heresy to be right. Invasion, insurrection, rebellion and domestic violence were anticipated when the government was framed, and the means of repelling and suppressing them were wisely provided for in the constitution, but it was not thought necessary to declare that the states in which they might occur should be expelled from the union.

Rebellions, which were invariably suppressed, occurred prior to that out of which these questions grow; but the states continued to exist and the union remained unbroken. In Massachusetts, in Pennsylvania, in Rhode Island and in New York, at different periods in our history, violent and armed opposition to the United States was carried on, but the relations of those states with the federal government were not supposed to be interrupted or changed thereby after the rebellious portions of their population were defeated and put down. It is true that in these earlier cases there was no formal expression of a determination to withdraw from the union, but it is also true that in the Southern states the ordinances of secession were treated by all the friends of the union as mere nullities, and are now acknowledged to be so by the states themselves. If we admit that they had any force or validity, or that they did in fact take the states in which they were passed out of the union, we sweep from under our feet all the grounds upon which we stand in justifying the use of federal force to maintain the integrity of the government. This is a bill passed by Congress in time of peace. There is not, in any of the states brought under its operation, either war or insurrection. The laws of the states and the federal government are in undistributed and harmonious operation. The courts, state and judicial, are open and in the full exercise of their proper authority. Over every state comprised in the five military districts, life, liberty and property, are secured by state laws and judicial law, and the national constitution is everywhere obeyed. What, then, is the ground on which this bill proceeds? The title of the bill announces that it is intended for these ten states. It is recited, by way of preamble, that no legal state governments nor adequate protection for life or property exist in those states, and that peace and good order should thus be enforced. The first thing that arrests attention upon these recitals which prepare the way for martial law is this: that the only foundation upon which martial law can exist under our form of government is not stated or so much as pretended. Actual war, foreign invasion, domestic insurrection—none of these appear, and none of these in fact exist. It is not even recited that any sort of war or insurrection is threatened. Let us pause here to consider upon this question of constitutional law and the power of Congress. The recent decision of the supreme court of the United States in *exparte* Milligan. I will first quote from the opinion of the majority of the court: "Martial law cannot arise from a threatened invasion. The necessity must be actual, and present the invasion real; such as effectually closes the courts and deposes the civil administration." We see that martial law comes in only when actual war closes the courts and deposes the civil authority. But this bill, in time of peace, makes martial law operate as though we were in actual war, and becomes the cause instead of the consequence of the abrogation of civil authority: "It follows, from what has been said on this subject, that there are occasions when martial law can be properly applied. If in foreign invasion or civil war, the courts are actually closed and it is impossible to administer criminal justice according to law, then, on the theatre of active military operations where war really prevails, there is a necessity to furnish a substitute for the civil authority thus overthrown to preserve the safety of the army and society, and as no power is left but the military it is allowed to govern by martial rule until the laws can have their free course."

I now quote from the opinion of the minority of the court, delivered by Chief Justice Chase: "We by no means assert that Congress can establish and apply the laws of war where no war has been declared or exists.

Where peace exists the laws of peace must prevail." This sufficiently explicit peace exists in all the territory to which the bill applies. It asserts a power in Congress in time of peace to set aside the laws of peace and substitute the laws of war. The minority concurring with the majority declares that Congress does not possess that power. Again and if possible, more emphatically, the Chief Justice, with remarkable clearness and condensation, sums up the whole matter as follows:

"There are under the constitution three kinds of military jurisdiction. One, to be exercised both in peace and war; another to be exercised in time of foreign war without the boundaries of the United States, or in time of rebellion or civil war within states or districts occupied by rebels treated as belligerents, and a third to be exercised in time of invasion or insurrection within the limits of the United States, or during rebellion within the limits of the states maintaining adhesion to the National Government when the public danger requires its exercise. The first of these may be called jurisdiction under the military law, and and is in acts of Congress, prescribing rules and articles of war, or otherwise providing for the Government of the national force. The second may be distinguished as military government superseding as far as may be deemed expedient the local law, and exercised by the military commander under the direction of the President, while the third may be denominated martial law proper, and is called into action by Congress, or temporarily when the action of Congress cannot be invited and in the case of justifying or excusing peril by the President in times of insurrection or invasion of civil or foreign war, within districts or localities where ordinary law no longer adequately secures public safety or private rights." It will be observed that of the three kinds of military jurisdiction which can be exercised or created under our Constitution, there is but one that can prevail in time of peace, and that is the code of laws enacted by Congress for the government of the national forces. That body of military law has no application to the citizen, nor even to the citizen soldier enrolled in the militia in time of peace. But this bill is part of that sort of military law, for that applies only to the soldier and not to the citizen while contrariwise the military law provided by this bill applies only to the citizen and not the soldier. I need not say to the Representatives of of the American people that their Constitution forbids the exercise of judicial power in any way but one—that is, by the ordained and established courts. It is equally well known that in all criminal cases, a trial by jury is made indispensable by the express words of that instrument. I will not enlarge on the inestimable value of the right thus secured to every freeman, or speak of the danger to public liberty in all parts of the country, which must ensue from a denial of it anywhere, or upon any pretence. A very recent decision of the Supreme Court has traced the history, vindicated the dignity, and made known the value of this great privilege so clearly that nothing more is needed. To what extent a violation of it may be excused in time of war or public danger may admit of discussion, but we are providing now for a time of profound peace where there is not an armed soldier within our borders, except those who are in the service of the Government. It is in such a condition of things that an act of Congress is proposed, which, if carried out, would deny a trial by the lawful courts and juries to nine millions of American citizens, and to their posterity for an indefinite period. It seems to be scarcely possible that any one should seriously believe this consistent with a Constitution which declares in simple, plain and unambiguous language that all persons shall have that right, and that no person shall ever, in any case, be deprived of it. The Constitution also forbids the arrest of the citizen without judicial warrant founded on probable cause. This bill authorizes an an arrest without warrant at the pleasure of a military commander. The Constitution declares that no person shall be held to answer for a capital or otherwise infamous crime unless on presentment by a grand Jury. This bill holds every person not a soldier answerable for all crimes, and all charges, without any presentment.—The Constitution declares that no person shall be deprived of life, liberty, or property without due process of law. This bill sets aside all process of law, and makes the citizen answerable in his person and property to the will of one man, and with his life to the will of two. Finally, the Constitution declares that the privilege of the writ of habeas corpus shall not be suspended, unless when in case of rebellion or invasion the public safety may require it; whereas this bill declares martial law, which of itself suspends this great writ in time of peace, and authorizes the military to make the arrest and gives to the prisoner only one privilege, and that is a trial "without unnecessary delay."—He has no hope of release from custody except the hope, such as it is, of release by acquittal before a military commission. The United States are bound to guarantee to each state a Republican form of government. Can it be pretended that this obligation is not palpably broken if we carry but a measure like this which wipes away every vestige of republican government in ten states, and puts the life, property, liberty and honor of all the people in each of them under the domination of a single person clothed with unlimited authority. The Parliament of England, exercising omnipotent power which it claimed, was accustomed to pass bills of attainder; that is to say, it, would convict men of treason and other crimes by legislative enactment.

The person accused had a hearing—sometimes a patient and fair one, but generally party prejudice prevailed instead of justice. It often became necessary for Parliament to acknowledge its error and reverse its own action. The fathers of our country determined that no such thing should occur here; they withheld the power from Congress, and thus forbade its exercise by that body, and they provided in the Constitution that no state should pass any bill of attainder. It is therefore impossible for any person in this country to be constitutionally convicted or punished for any crime by a legislative proceeding of any sort. Nevertheless here is a bill of attainder against nine millions of people at one. It is based upon an accusation so vague as to be scarcely intelligible, and found it to be true upon no creditable evidence. Not one of the nine millions was heard in his own defense. The representatives of the doomed parties were excluded from all participation in the trial. The conviction is to be followed by the most ignominious punishment ever inflicted upon large masses of men. It disfranchises them by hundreds of thousands, and degrades them all, even those who are admitted to be guiltless, from the rank of freemen to the condition of slaves. The purpose and object of the bill, the general intent which pervades from beginning to end, is to change the entire structure and character of the state governments, and to compel them by force to the adoption of organic laws and regulations which they are unwilling to adopt if left to themselves. The negroes have not asked for the privilege of voting. The vast majority of them have no idea what it means. This bill not only thrusts it into their hands, but compels them as well as the whites to use it in a particular way. If they do not form a constitution with prescribed asticles in it, and afterward elect a legislature which will act upon certain measures in a prescribed way, neither blacks nor whites can be relieved from the slavery which the bill imposes upon them.—Without pausing here to consider the policy or impolicy of Africanizing the southern part of our territory, I would simply ask the attention of Congress to that manifest, well known and universally acknowledged rule of constitutional law which declares that the Federal Government has no jurisdiction, authority or power to regulate such subjects for any state. To force the right of suffrage out of the hands of the white people and into the hands of the negroes, is an arbitrary violation of this principle. This bill imposes martial law at once, and its operations will begin as soon as the General and his troops can be put in place. The dread alternative between its harsh rule and compliance with the terms of this measure is not suspended, nor are the people afforded any time for free deliberation. The bill says to them, take martial law first, then deliberate; and when they have done all that this measure requires them to do, other conditions and contingencies over which they have no control yet remain to be fulfilled before they can be relieved from martial law. Another Congress must first approve the constitutions made in conformity with the will of this Congress, and must declare these states entitled to representation in both Houses. The whole question thus remains open and, unsettled, and must again occupy the attention of Congress; and, in the meantime, the agitation which now prevails will continue to disturb all portions of the people. The bill also denies the legality of the governments of ten of the states which participated in the ratification of the amendment to the Federal Constitution abolishing slavery forever within the jurisdiction of the United States, and practically excludes them from the Union.—If this assumption of the bill be correct, their concurrence cannot be considered as having been legally given, and the important fact is made to appear that the consent of three-fourths of the states, the requisite number, has not been constitutionally obtained to the ratification of that amendment, thus leaving the question of slavery where it stood before. The amendment was officially declared to have become a part of the Constitution. That the measures proposed by this bill violate the Constitution in the particulars mentioned, and in many ways which I forbear to enumerate, is too clear to admit of the least doubt. It only remains to consider whether the injunctions of the instrument ought to be obeyed, for reasons which I will proceed to give as briefly as possible. In the first place it is the only system of free government which we can hope to have as a nation; when it ceases to be the rule of our conduct, we may, perhaps, take our choice between complete anarchy, a consolidated despotism, and a total dissolution of the Union; but national liberty, regulated by law, will have passed beyond our reach.

It is the best form of government the world ever saw. No other is or can be as well adapted to the genius, habits or wants of the American people, combining the strength of the great Empire with the unspeakable blessings of local self-government having a central power to defend the general interests and recognizing the authority of the states as the guardian of industrial rights. It is the sheet-anchor of our safety abroad, and our peace at home. It was ordained to "form a more perfect union, establish justice, insure domestic tranquility, promote the general welfare, provide for the common defense, and secure the blessings of liberty to ourselves and our posterity. These great ends have been attained heretofore, and will be again by faithful obedience to it; but they are certain to be lost if we treat

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