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APPENDIX.

REPORT
OF THE
ATTORNEY-GENERAL OF TEXAS
FOR 1867.

TRANSMITTED TO THE CONVENTION BY GOVERNOR
E. M. PEASE, JUNE 19, 1868, AND ORDERED PRINTED.

[SEE PAGE 129.]

ATTORNEY-GENERAL'S OFFICE, }
Austin, Texas, November 2, 1867. }

On retiring from office it is incumbent upon me to give in the form of a report an official statement of the business that came within my charge, and to accompany it with such suggestions in regard to the administration of the law as the public welfare appears to demand.

No reports have been made to me in regard to the suits directed to be instituted in behalf of the State during the time I filled this office under Provisional Governor Hamilton, and so short a time has elapsed since my appointment under the present administration, that nothing has transpired touching those suits and the other pending suits in which the State is concerned, worthy of mention.

The opinions delivered to the heads of departments are on file with the officers at whose instance they were prepared. They are not recorded in this office, because the opinion book in which they should be inserted, was not delivered to me by my predecessor, who retained it in order to have his official opinions and correspondence neatly recorded, until too late a period to admit of their insertion.

Shortly after entering upon the discharge of the duties of my office, I addressed communications to the Commissioner of the Gen-

eral Land Office requesting him to furnish certain statements, which he did as soon as the investigations requisite to their completion could be made. These statements are appended with the suggestion that they demand further attention.

The first of them shows the amount of land scrip, (viz: 145,600 acres,) issued from the General Land Office, and to whom, during the earlier period of the not yet ended rebellion and war, and paid for with what is called "Confederate money." That the scrip so issued is null and void, and should be so declared, there can be no doubt. Its recognition as valid would be a wrong to every owner of a good title to land in Texas, with whose land it might come into competition; and besides, would be justly offensive to the national Government.

The second of these statements consist of an elaborately full showing of the financial condition of the General Land Office while administered by Capt. Stephen Crosby, as Commissioner. It appears that the books of that officer make it manifest that a deficit of money due the State and individual depositors, existed when Capt. Crosby was removed, amounting in the aggregate to \$17,839 34, in coin.

For so much of this sum as is due the State, viz: \$14,073 24, he and his sureties may, and should be held responsible.

It is further evident from this statement that the interest of the public would be better served were it provided by law, that hereafter no money should be paid *directly* into the General Land Office, and that all fees and dues chargeable by that office should be deposited on warrant of the Comptroller, based on a statement of the Commissioner in the Treasury.

It may not be amiss in this connection to call attention to the duties and labors imposed by law upon the office which I am about to leave, and hence, of which I can speak with impartiality. They are amply sufficient to occupy the whole time of four active and industrious members of the legal profession, not diverted from their work by any private business. To do justice to the defence of mandamus suits, to claims and suits in favor of the State, to estates without heirs, to the preparation of State cases brought up by appeal, to corporations,—besides the preparation of opinions, of correspondence, and a personal attendance upon the Supreme Court at three points, requires more time and thought than any one person can give, even though he should permit nothing else to interfere. In this opinion my predecessor fully concurs. The Attorney General should be allowed competent assistants, and no law officer of the State, while such, should be permitted to continue to act, or to accept employment in any matter of private litigation.

The inefficiency and delay in the administration of the law, both civil and criminal, merits special attention. The delay in civil suits is often so great as to amount to a denial of justice. In that class of suits too many oaths and too many suretyships are provided for. "The first affidavit for a continuance" offers a premium for an immunity to false swearing, and should in any event be abolished. There should be a mode provided whereby a citizen may have his property judicially bound, so that he may not be compelled to entangle his friends and neighbors by suretyships.

To guard against stay and appraisal laws, a provision should be inserted in our Constitution similar to that existing in the Constitution of New Jersey, prohibiting the Legislature from passing any law "depriving a party of any remedy for enforcing a contract which existed when the contract was made." (*Vide* Sedgwick on Statute and Constitutional Law, 696.)

The civil law of Texas needs to be reformed and to have its defects supplied in the following additional matters:

An original should constitute the record of every instrument required by law to be recorded.

There should be a registration of births and deaths, as well as of marriages.

Tax sales of land should be abolished, and the payment of taxes with interest, in case of a failure to pay, enforced by the prohibition of the registration of any instrument affecting the title, save on the proof of the payment of the taxes, with interest.

Juries should not be required, where liquidated demands, the execution of which is not denied, are sued upon.

Interest should not exclude any person from being a witness in a civil cause.

Only a single execution, properly directed and to be supplied in case of loss, should be issued upon a judgment.

Terms of courts should be abolished, and all our tribunals should be like admiralty courts, always open for business save on Sundays and holidays.

These suggestions may be regarded as Utopian and impracticable, but on slight investigation it can be ascertained that every one of them (excepting, perhaps, that in regard to taxes,) is now the law in almost every civilized country in the world.

In a word, our civil statutes need to be reformed so as to give prompt justice to the people, and with a constant view of the principle that one who is wronged should be reinstated, as near as may be, in the condition in which he was immediately before he was wronged, and at the cost of the wrong-doer.

The condition of the administration of criminal and penal law in

Texas is truly deplorable. As a physician, before determining what remedies should be applied, must ascertain the nature and extent of the disease, so a government, before legislating further against crime, should obtain full and accurate criminal statistics. The reports of district attorneys and clerks (so far as such have been made), received at this office, are meagre and unsatisfactory. At best, they only show what indictments have been found, and what disposition has been made of them. No provision exists for obtaining statistics of the vast mass of crime for which, from various causes, indictments are not found. The records of appealed cases, in some instances, as in the case of Spence, a freedman from Bell county, show that torture was resorted to; but in other cases, as in that of Charles Thompson, a freedman from Williamson county, whose feet were burned until the skin burst open, they are silent on that fact. No one has thus far been indicted for inflicting torture. Officers of the law admit verbally that, in general, a freedman who is guilty of crime can be convicted and punished, but that it is next to impossible to convict and punish a white man; and, indeed, acknowledge that a white man can not be convicted and punished for a homicide, especially if it be of a freedman.

I learn from all sources that human life has never been less protected by law in Texas than at the present time.

A military officer of high character has informed me that since the surrender of General E. Kirby Smith, and until the first of July last, one hundred and forty murders, chiefly of freedmen, had been committed in a county in which he was on duty. Another stated to me, that, while a member of the staff of the late Brevet Major General Griffin, he was for a time in a county in a different region in which twenty homicides were committed in the course of one month. The counties referred to certainly show an average of crimes of violence above that of the remaining one hundred and twenty-six organized counties of the State; but taking three homicides per county as the average number per year, as was stated by the late Judge Buckley in his charge to the grand juries of his district, and it follows that not less than three hundred and eighty-four murders per year are committed, or rather were committed before the rebellion and war, which has certainly not improved the morals of the people. I am satisfied that this estimate falls far short of the truth, as may be ascertained by a reference to official statements, imperfect as they are, on file.

These appalling facts cannot be ignored or suppressed. The whole truth should be ascertained and stated, and an efficient protection to life afforded by law.

If sheriffs will aid in packing juries, and if juries will not convict

for crimes against life, at least a remedy should be afforded so far as practicable by civil suit. The provision of the common law which holds the right of civil suit to be merged in the felony, should be repealed, and a right of civil action for exemplary damages given, independently of a prosecution and conviction, or a failure to prosecute and convict for crime. The statute of February 2, 1860, (vide Paschal's Digest, page 98,) is insufficient. A statute better planned and of greater scope is needed.

The too great size of the geographical State of Texas is, perhaps, one of the greatest obstacles that exist to the enforcement of law and the maintenance of order. To attempt to govern economically and well a State which contains over five times more square miles than the great State of New York,* and which has scarce any facilities for intercommunication, is to attempt an impossibility. A letter can go by mail from Austin to any capital city of Europe, and a reply to it can be received, with more promptitude and certainty than one can be sent to and answered from very many of the counties of Texas. A division of Texas into five States, as is contemplated by the joint resolution of annexation, would be a finality, and would greatly conduce to effect the leading objects of a government founded on equality before the law; protection, education and internal improvements.

Appended hereto as a part of this report, will be found a report which was some time since submitted to the officer in command of the District of Texas, on the pretended "public and general laws" of Texas, of 1866. It sets forth briefly in the first instance the "laws" leveled against the freedmen; and in the second instance such as are directly or indirectly hostile to the United States government and to the loyal citizens thereof. It does not embrace the "special laws" of that year, which, with a few and unimportant exceptions, amount in the aggregate to an ingenious system of rewards to persons who were active as politicians, editors, officers military or civil, blockade runners, contractors, etc., etc., in behalf of the rebellion.

In leaving office, I file herewith a printed opinion touching the pretended legislation of the rebellion, and likewise a printed copy of my letter of resignation. [See documents A. and B.]

I again solemnly protest against the attempt that is made to put

*According to the Compendium of the United States Census of 1860, New York has 46,000 square miles, and Texas 237,321 square miles. The report of the Commissioner of the General Land Office of Texas for 1859, sets forth that Texas contains 274,356 square miles. Mr. Pressler, the present Chief Draughtsman of the General Land Office, estimates that Texas contains 265,578 square miles.

upon the people of Texas, who did not make and who never have sanctioned them, the pretended "laws" of the rebellion.

The registered voters are the "people."

The leading propositions bearing upon the claims of the pretended legislation of the rebellion, the so-called "laws" of 1866, inclusive, are briefly as follows:

The Congress of the United States cannot go beyond the power of attorney under which (and which alone) it acts—the Constitution of the United States.

The legislation of the rebellion was made within the limits of the United States, and not only without, but against, the authority of the national constitution, the continuously supreme law of the land. Such being the case Congress could not, without exceeding its warrant of attorney, recognize or confirm it, and Major General Sheridan could not derive from Congress any power with which that body could not be clothed by the constitution. Besides, neither Congress nor Major General Sheridan is justly chargeable with having attempted to inflict upon Texas so unprovoked and so great a wrong. Under the Constitution of the United States a rebel "law" cannot be legalized. A rebel official act, where found to be indifferent in its character, may from considerations of public convenience be validated, but even that should not be done save with an express proviso to the effect that neither the United States government nor any loyal citizen thereof should in any manner or to any extent be prejudiced thereby.

Considerations of policy do not warrant a sworn officer of the law to abandon propositions and conclusions established by reason and sanctioned by authority; hence I adhere to the positions I have taken. A correspondence with able jurists in other States who had previously arrived at the same views, has confirmed me in the conviction that they are correct and true, and that like all truths they will stand the test of time.

WILLIAM ALEXANDER,
Attorney General.

PRETENDED LAWS OF 1866 AGAINST THE FREEDMEN.

The foundation of what are termed the Laws of Texas of 1866 is the rejected Constitution of 1866. If it is null and void, because incompatible with and hostile to the supreme law of the land, the Constitution and laws of the United States, all that has been built up upon it must be null and void also. By referring to art. 3, secs. 1, 5 and 10; to art. 4, sec. 16; to art. 8; to art. 10, sec. 2; and to ordinance No. 11; the incompatibility of the rejected constitution of 1866 and its hostility to the Constitution of the United States may be clearly perceived.

The main object kept in view by those who made that instrument, and of those who devised the pretended laws based upon it was the restoration of African slavery, in the modified form of peonage. This object is very distinctly foreshadowed by the peculiar phraseology of art. 8, which sets out by declaring that "African slavery, *as it heretofore existed*," (only,) is regarded as having been abolished, not by the people of Texas, but "by the government of the United States, by force of arms." That such was the intent and purpose alike of the unauthorized Convention and Legislature of 1866 will be more fully apparent on reference to the following of the pretended laws and joint resolutions of 1866, made to carry that constitution into effect:

Ch. 80, p. 76—the so-called labor law.—It provides expressly for a system of peonage, though without using that term, in many respects similar to the peon system abolished by the Liberals of Mexico a few years since, which Maximilian was unable to restore. It is directly opposed to the Thirteenth Amendment of the Constitution of the United States, and of the Civil Rights Act.

Ch. 82, p. 80—Against persuading, enticing and tampering with laborers. This is in furtherance of the above, and is subject to the same objections.

Ch. 73, p. 70—Defines "persons of color." The sole object of this law was to defeat equality before the law—justice; to discriminate on account of race. This is subject to the same objections.

Ch. 59, p. 59—Restricts the right of persons of color to testify in certain cases. Subject to the same objections.

Ch. 128, p. 131—Defines the rights of persons of color. Subject to the same objections. It is restrictive, giving them no more rights than free persons of color had during the existence of African slavery. It takes special care not to declare them to be "citizens."

Ch. 135, p. 160—Exempting from sale under execution a certain

amount of the property of every "citizen." A very ingenious thrust at the freedmen. Subject to the same objections.

Ch. 92, p. 90—Makes the carrying of fire-arms on enclosed land, without consent of the land-owner, an offence. It was meant to operate against freedmen alone, and hence is subject to the same objections.

Ch. 146, p. 170—As to public schools for whites (only.) Subject to the same objections.

Ch. 154, p. 195—Providing for indigent white children (only.) Subject to the same objections.

Ch. 164, p. 203—Donates land to white settlers (only.) Subject to the same objections.

Ch. 180, p. 225—Jury law, for whites only. Subject to the same objections. This pretended law has been obviated by the jury order of Brevet Major General Griffin.

Ch. 53, p. 43—Organizes a new county court system. This onerous act was devised chiefly in order that rebels might be able to get at the freedmen without waiting for the semi-annual terms of the district courts. It is subject to the same objections.

Ch. 63, p. 61—The apprentice law. It provides for "moderate corporeal chastisement." This act seems to have been framed in ignorance of sec. 990 of Oldham & White's Digest, which it should either have amended or repealed. It is subject to the same objections.

Ch. 102, p. 97—Provides for special cars on railroads for freedmen. Subject to the same objections, and hence obviated by an order of Brevet Major General Griffin.

Ch. 111, p. 102—The vagrant act. The latter part of sec. 1 of this act is insidiously leveled against the freedmen, who are not even mentioned as such in it. Subject to the same objections that lie to the whole of the system of which it forms a part.

Ch. 120, p. 119—Provides for employment of convicts for petty offences. Intended for the freedmen, and subject to the same objections.

Ch. 125, p. 126—The "stay law," delaying the collection of debts. It prevents freedmen dependent upon their immediate earnings from collecting their wages. Subject to the same objections that lie to the whole system.

Ch. 64, p. 64—Gives a lien on crop. An ingenious device, whereby a man who rents land and hires laborers to cultivate it may be enabled to avoid paying the laborers. Subject to the same objections. Believed to have been obviated by an order of General Kiddoo.

Ch. 132, p. 134—For the assessment and collection of taxes.

Said to be substantially the "Confederate Act" re-enacted. It is cumbrous in its machinery, complicated and unjust. Under it more than double the tax due is frequently collected from freedmen who cannot read the notices, and against whom mileage is charged and received in consequence. By military circular No. 15, current taxes are made payable under the act, the circular being the law.

Ch. 153, p. 192—For employing convict labor on railroads. A very ingenious feature of the peon system. It does not mention the freedmen, but was devised with an especial reference to them. Subject to the same objections.

Ch. 178, p. 221—To amend the rebel Sunday law of December 16, 1863. Said to be modeled on one of the blue laws of Connecticut, only it ingeniously provides that laborers not hired specially to work seven days in the week may, on sugar plantations, &c., be made to work on Sundays in certain cases. Subject to the same objections that lie to the rest of the system.

Ch. 186, p. 236—Militia law. It makes the militia to consist of "able-bodied free white male" inhabitants. Subject to the same objections.

Joint Resolution No. 4, p. 260—For the removal of the United States troops. Their presence being the chief protection afforded the freedmen, the attempt to remove them is a part of the system stated, and is subject to the same objections.

Joint Resolution No. 13, p. 166—The refusal to ratify the fourteenth proposed amendment to the Constitution of the United States. As the first section of this amendment guarantees freedmen their civil rights as citizens of the United States and of the States in which they reside, the rejection of the amendment is not only subject to the same objections, but is subject to the further objection of being a rejection of a condition precedent since imposed by the military reconstruction act. By that act, an acceptance of the Fourteenth Amendment is made indispensable.

Query—Is not Ch. 177, p. 221, (the dog tax law,) aimed at the freedmen also?

It is to be observed that all of the foregoing general acts and joint resolutions, (twenty-four in number,) were approved by Ex-Governor Throckmorton, who also signed the constitution and ordinances of 1866, on which they are based. He was probably removed from office on account of his sustaining and executing the same, together with some forty odd other pretended general laws, and a larger number of pretended special laws, hostile in their character to the United States Government and its loyal citizens, white and colored.

PRETENDED LAWS,

Based upon the Rejected Constitution of 1866, which are incompatible with the Constitution of the United States, and are either directly or indirectly hostile to the United States Government, and to the loyal citizens thereof; in addition to the twenty-four pretended General Laws leveled at the Freedmen.

Ch. 6 and 65, and Joint Resolutions No. 22, pp. 6, 64 and 272—Making appropriations for 11th Legislature.

Insidious attempts to legalize the two preceding rebel "Legislatures." If the bodies that claimed to be the 9th and 10th were not legislatures because they were made up wholly of "public enemies," and were carried on during the existence of active hostilities against the United States Government, the pretended Legislature of 1866 could not by any possibility be "the 11th Legislature."

Ch. 10, p. 7—Lays off Texas into Congressional Districts. This "Act" "gerrymanders" the (geographical) State with a special reference to the vote for Governor Pease at the last general election, so as to make it impossible to elect a loyal member

Ch. 12, p. 10—Provides for a rebel military organization under pretext of defence of the frontier. Not permitted to be executed by Brevet Major General Griffin.

Ch. 30, p. 33—Provides for a special term of the District Court for *Davis* county, which is the rebel name for Cass county.

The name of Cass county was changed during active hostilities expressly to dishonor Gen. Cass on account of his loyalty, and to honor Jefferson Davis on account of his disloyalty. This pretended law was enacted to validate the change.

Ch. 31, p. 23—Supplementary to ch. 10, p. 7.

Ch. 33, p. 24—Makes appropriation under ch. 12, p. 10.

Ch. 34, p. 25—Relieves Assessors and Collectors where tax has been collected "in treasury warrants, or other liabilities of the late Confederate States."

An attempt at a recognition of the so-called "Confederate States," and at the same time to legalize the official collection of rebel paper just as though that was not a crime.

Ch. 35, p. 26—Creates Judicial Districts. Under the pretext of doing this, this pretended act was artfully framed to throw out of office two of the three loyal Judges elected. On being apprised of the fact Brevet Major General Griffin promptly restored them to office.

Ch. 36, p. 28—Supplementary to the preceding.

Ch. 41, p. 32—An apparently public act devised to determine a pending suit.

Such legislation is as reprehensible in morals as unwarrantable in law.

Ch. 48, p. 40—Creates the unnecessary office of State Librarian to provide for the charge of a damaged and broken lot of books which originally cost \$5000, and which would not now bring at public auction \$1000, the salary of the Librarian for one year.

This "act" is a job to pension the editor of a rebel newspaper because he had been private secretary to Jefferson Davis, and Secretary of State under the rebel Governor of Arizona, and who, when appointed by, and acting under Governor Throckmorton, had not yet taken the amnesty oath.

Governor Pease promptly removed the ineligible incumbent and left the office vacant, declaring that it should so remain.

Ch. 51, p. 42—Appropriates \$5000 to pay for a then unpublished law treatise, which, as the Constitution of 1866, is rejected, is no authority as to a very material portion of its contents.

Another job.

Ch. 69, p. 67—Confirms grant of lands to a rebel railroad.

Ch. 79, p. 74—Provides for sale of school lands.

Owing to the rebellion they will not bring their value, so the cause of education is made subservient to the interest of land speculators.

A blow at public schools.

Ch. 85, p. 83—Creates the county of Hood "in honor of Gen. J. B. Hood, of the late Confederate army." (See notice of ch. 30, p. 33.)

Comment upon this is unnecessary.

Ch. 86, p. 84—Amends general railroad law.

As most, if not all, of the railroads of Texas were used with the consent of their officers to aid and abet the rebellion, the United States government may yet enforce the Confiscation Act of August 6, 1861, against them. At all events, the State when re-organized and re-admitted may see how far they have complied with existing laws, and may enforce its lien.

Ch. p. 79. Authorizes guardians and administrators to compound.

Query. Is this done to obviate sales made for "C. S." paper, and instalments made in "C. S." bonds; or, is it a sly mode of sanctioning them? Perhaps widows, orphans, and loyal creditors, would be decidedly better off if such an "Act" had never been passed.

Ch. 91, p. 90. Enables those who, by rebelling, caused certain counties to become disorganized, to take advantage of their own

wrong. Most probably, like ch. 41, page 32, this act is a general law prepared with reference to a special case.

Ch. 93, p. 91. To levy taxes.

It makes specie the basis of valuation instead of legal tender notes; is opposed to the U. S. Legal Tender Act.

Ch. 95, p. 93. For the sale of University Lands.

It does this when, in consequence of the rebellion, and of the want of confidence, caused by the disloyal Convention and Legislature of 1866, the lands would not bring near their value. Another attempt of rebel politicians to take advantage of their own wrong. A job combined with a speculation at the expense of the cause of public education.

Gov. Pease put a stop to this scheme.

Ch. 98, p. 95. A cool appropriation of \$25,355 33 of the School Fund—which, under our accepted and unrepealed State Constitution of 1845-6, ought to be inviolate—to the State Revenue account.

Everything opposed to our accepted State Constitution (as modified by the amendments to the United States Constitution and the laws passed thereunder) is hostile to the United States Constitution. The pretended legislation of 1866 shows a spirit of hostility to public education for the whites almost as bitter and determined as that manifested towards the public education of the freedmen.

Ch. 113, p. 105. Provides for the public printing.

This "act" carries into effect an ingenious scheme to subsidize a rebel press by covertly paying the highest, not the lowest, price for public printing. (See remarks in ch. 48, p. 40.) Section twelve is contrary to the United States statute touching legal tender, and is remarkable alike for the ideas it aims to embody and the grammar in which they are expressed.

On inquiry at the Comptroller's office, it can be ascertained how much in coin, or in currency at coin rates, has been paid for public printing, as well as what sort of printing it has been.

Ch. 117, p. 111—Appropriation Act for Expenses of 1866.

Functus officio, but bad. (See remarks on Ch. 175, p. 213, post.)

Ch. 118, p. 117—Provides for the issue of bonds for Frontier Defence.

An attempt to do this by a disorganized (geographical) State under a rejected constitution—a Provisional Government while the state or condition of war yet continues—is contrary to the Constitution of the United States.

Ch. 119, p. 118—An attempt to legalize judgments rendered by "public enemies," not unfrequently against loyal citizens, before the

state or condition of war is declared by Congress to be at an end, and at the same time to repeal a law in regard to judgments, enacted by competent parties under an accepted constitution.

Ch. 121, p. 120—Supplementary to Sequestration Act of March 15, 1848, &c.

Subject to the objections urged against the foregoing.

Ch. 122, p. 122—To establish an Industrial Board.

Not permissible. (See remarks on Ch. 118, p. 117, and Ch. 119, p. 118.) Besides, it is a job to give salaries to "ex-Confederate States" officers.

Ch. 123, p. 125—Sets apart one acre for a United States Military Cemetery.

An inexcusable and ill-timed display of animosity toward the dead of those whose patriotism, courage and endurance maintained our national cause by victories in the field. In the convention of 1866, United States soldiers were said to be, when living; "the scum of the earth," and their remains, after they were dead, were spoken of as "vile dust," which might, by a too close proximity, contaminate the remains of the rebel dead. Hence, this acre was set apart for them by the Legislature. It is to be noted, that the men who used the brutal epithets cited are described by the Supreme Court of the United States as being "none the less enemies, because they are traitors." (2 Black's Repts., p. 674.)

Ch. 124, p. 125—Amends District Court Act of March 16, 1868. Provides that unknown heirs may be represented by Attorney.

An arrangement far more advantageous to disloyal attorneys than to loyal unknown heirs.

Probably, like Ch. 41, p. 32, an apparently public and general act, artfully devised to dispose of a particular pending suit.

Ch. 138, p. 160—Provides for a bonded Receiving Clerk in the General Land Office.

An adroit device for apparently "locking the stable after the horse has been stolen," after the coin in the General Land Office had been exchanged for "Confederate paper," and nobody held responsible for it. A job.

Ch. 140, p. 163—Provides for enclosing the State Cemetery.

A shabby display of disloyalty, for it appropriates only fifteen hundred dollars for a rough wooden fence, instead of providing sufficient for a permanent wall. This was done by a legislature which, by joint resolution, number five, page 261, appropriated two thousand dollars to exhume and reinter the body of an ex-United States officer, who was not born in Texas—whose domicile, when he was killed, was in the free State of California, where his widow and

children yet live—who never fought but one battle for the “Confederacy, was defeated and fell in that, and whose christian and surname our legislators did not know, for they spelled it wrong three times consecutively in the caption and body of their joint resolution! Truly, they must have been hard run to find a subject for a rebel pageant. Ex-Governor Throckmorton’s reflections on Generals Sheridan and Griffin, in his funeral discourse, are in print and need no comment.

Ch. 141, p. 165—Increases salaries above the difference between coin and currency.

The spirit of this enactment is apparent.

Ch. 145, p. 169—Establishes a six months’ limitation to suits against “Confederate States” receivers and other rebel officers.

All mention of this act is omitted in the index. It is thoroughly rebel in spirit, and is evidently intended to practically repeal the act of the United States Congress of July 11, 1864, suspending the running of statutes of limitations in the rebel territory.

Ch. 148, p. 185—University of Texas established.

This is attempted in a disorganized State that has not established so much as one free public school. Contrary to the Civil Rights Act, and, besides, a job.

Ch. 150, p. 188—For the collection of State arms.

Well enough, if the so-called “Confederacy” had conquered the United States.

Ch. 151, p. 189—For publication of the reports of the rebel Supreme Court.

This act has two objects—to legalize by implication the decisions of the rebel Supreme Court, and to cause United States currency to be paid for the publication of the same at an arbitrarily fixed discount. Besides, it creates another job. As to the character and decisions of the rebel Supreme Court, see *ex parte* Louisa Merry, 26 Texas reports, pp. 23-4, and *Ib.* pp. 404-5.

Ch. 152, p. 191—Supplementary to ch. 95, p. 93—For sale of University lands. (See remarks on ch. 95, p. 93.)

Ch. 165, p. 204—For collection of back taxes; rebel war taxes inclusive. Stopped by an order of Brevet Major General Griffin.

Ch. 167, p. 208—For the issue of bonds for School Fund.

By ch. 98, p. 95—A portion of the School Fund is unconstitutionally appropriated, and this act aims to supply the place of that together with the rest of that spoliated fund by bonds, before Texas is reorganized and readmitted. The Constitution of 1866 being rejected, this is unauthorized.

Ch. 174, p. 212—Grants lands to railroad companies.

How many of these corporations have forfeited their charters from

a non-compliance with the statutes of the State? How many of them are subject to condemnation and sale by the United States government? How many of them are chartered by the pretended Legislature of 1866?

Ch. 175, p. 213—General appropriation act for 1867–8.

Defective, extravagant and unauthorized. Needs to be supplied by a military order.

Ch. 176, p. 219—Empowers towns, counties, &c., to create funded debts.

Wrong in principle, even were the rejected Constitution of 1866 in force.

Ch. 183, p. 288—Regulating fees of office.

It ought to be entitled, "An Act regulating the value of United States legal tender treasury notes in certain cases," as it makes these notes legal tender at a discount adjusted arbitrarily for each fee, contrary to the United States statute as to legal tender.

Ch. 188, p. 255—Makes United States District Clerks the custodians of "Confederate States" district court records, and makes transcripts thereof evidence. The coolest piece of impudence, combined with disloyalty, of all! Comment upon it is needless.

Ch. 189, p. 255—Creates the office of State Engineer.

This is a good job for rewarding some rebel officer or politician. Useless. Governor Pease has removed the incumbent, and left the office vacant.

Ch. 190, p. 257—For assessment and collection of the United States direct tax.

Unnecessary and unauthorized. It aims to throw the fees for collecting the United States direct tax into the hands of rebels, and is so devised as to cause loyal men who have already paid the United States direct tax to a United States officer, and who are in consequence careless as to pretended State legislation in regard to it, to pay a second time.

It is to be observed that the United States Secretary of the Treasury has suspended the further collection of this tax until January 1, 1868.

Ch. 11, p. 9—An act to provide for elections in certain cases.

It is really intended to restore all rebel State officers, except assessors and collectors, to office, "where no election was held or ordered prior to the expiration of the Provisional State Government, on the 13th August, 1866, in accordance with the laws in force." Of course it refers to the rebel "laws" as being in force.

Perhaps this pretended law shows the spirit of the rebellion more fully and distinctly than any other in the volume.

Ch. 45, p. 38—Appropriates two thousand dollars for removing

obstructions in Sabine Pass, "placed there by the authorities of the Confederate States government," &c. Loyal men should not be made to pay for this, but rebels alone.

Ch. 46, p. 39—Legalizes election of judge and district attorney in Twelfth District, neither of whom could register or take the test oath, and one of whom has since been removed from the judgeship by or at the instance of Brevet Major General Reynolds.

Joint resolutions 6, p. 262; 8, 263; 9, 263; 10, 264; 16, 268; 21, 271; and 23, 272, in addition to those specified as hostile to freedmen, are all, to a greater or less extent, opposed to the Constitution and laws of the United States—the supreme law of the land.

DOCUMENT "B."

LETTER OF RESIGNATION.

ATTORNEY GENERAL'S OFFICE,
Austin, October 28, 1867.

GENERAL: A few weeks ago several of the gentlemen who have since been appointed to the principal offices of the present provisional government of Texas, together with other citizens, signed a petition, drawn up by myself, to Brevet Major General Griffin (who, to the sincere regret of all really loyal men, is now no more), asking him, in substance, to declare, by a military order, all pretended legislation done in Texas and dating from and after February 1, 1861 (the date of the so-called Ordinance of Secession), to be what the law holds it to be—null and void from the beginning. You are respectfully referred to that petition, which must be on file either in your office or at the headquarters of the Fifth Military District, for the matters it presents and the names of the signers.

On being subsequently appointed to the office of Attorney General, I, with the other officers appointed at the same time, in pursuance of the order of appointment, took the United States test oath, together with the oath of office prescribed by the accepted constitution of Texas of 1845. The same oath appears to have been taken by all the recently appointed officers of the provisional government.

There can be no question as to what State constitution and laws

we were sworn to support. The phrase, "since the adoption of this constitution by the Congress of the United States," settles beyond a doubt that we did not qualify to the rebel State constitution of Texas, for it substitutes "since the second day of March, A. D. 1861," for the words cited; nor to the rejected State constitution of 1866, which, had we inserted "since the *rejection*," etc., instead of "adoption," might with propriety be regarded as the instrument to which we made oath.

Having taken a solemn oath, from which I have not been released, to perform the duties of my office agreeably to the only "adopted" or accepted constitution of Texas, and the laws enacted in pursuance thereof (all relating to African slavery having been previously annulled by the thirteenth amendment to the United States constitution, and by-laws to carry the same into effect), I can not conform to the requirements of the proclamation of the Executive of Texas, dated on the 25th inst., but only this day received, which, though in my conception not free from ambiguity in language, has been verbally explained in your presence and before the heads of the departments of the provisional government as being designed to declare the constitution and statutes of 1866, subject to certain exceptions, to be "rules for the government of the people of Texas and the officers of the civil government," or, in other words, our body of municipal law.

Holding, as I do, that the rejected constitution of 1866 and the laws based thereon are neither in force *proprio vigore*, nor by virtue of the military reconstruction act and its supplements, nor yet by Major General Sheridan's order assuming command, I regard the proclamation of the 25th inst. as requiring me to do what is inconsistent with my oath of office as well as with my settled convictions of law.

It is respectfully and earnestly submitted that the proclamation, as explained, promulgates errors fraught with danger to the loyal people of Texas, white and colored, and eminently prejudicial to the national cause, which I deem it to be my official duty to briefly point out.

Laws, organic or otherwise, in the United States, may be unconstitutional on one or both of two independent grounds; because made *against or without the authority of the national constitution*, or because made under the authority of the supreme law of the land and yet intrinsically in conflict therewith. All rebel constitutions and laws are unconstitutional and null, and void *ab initio* for the first of these reasons, and very many of them for the second in addition.

If, indeed, as I hold, the constitution and laws of the United States have continued, without cessation, to be the supreme law of

the land, the friends (citizens), not to speak of the "public enemies" of the United States, could not, without the authority of the United States government, make any law within our national limits. Any pretended law they might so enact would, to borrow the language of Chief Justice Marshall, be "incompatible" with the constitution of the United States; would necessarily be unconstitutional. If, on so unimportant a subject as defining the times for the sessions of a court, because passed against the authority and without the consent of the national government, which, by the constitution, can only permit admitted States and lawfully organized Territories to legislate, it would be unconstitutional. In contemplation of law, all hostile and unauthorized legislation done in Texas from and after February 1, 1861, is unconstitutional, and no decision can be cited showing that an eclectic system can now be introduced under which we can say that one pretended law *so made* is valid and another void on account of its provisions.

If, on the other hand, the rebel view be correct, and the constitution, etc., etc., of the United States were not the supreme law of the land in Texas, from February 1, 1861, until the date of the surrender of General E. Kirby Smith, valid laws might have been made here, all of which would remain in force after the constitution, etc., etc., of the United States had "again resumed their sway," except such as might be incompatible therewith on account of their contents. Still, there seems to be no authority to show that a State constitution made without the authority of Congress, after General E. Kirby Smith's surrender, which that body subsequently, by the military reconstruction act, provided should never be laid before it for acceptance, but that a new one should be formed by the action of registered voters and presented, can supplant an accepted constitution and the laws passed in pursuance of the same.

According to the theory of government generally adopted in a Republic, the government is regarded as being a collection of agencies of the sovereign people, who furnish to their agents or officers a constitution and laws as their power of attorney beyond which they cannot go. Congress (our collection of legislative agents for national purposes) has not the power to validate a State Constitution or laws made by a people within our limits, hostile to, or not authorized by, the national government. Not having the power to do so, it could not confer such power upon Major General Sheridan, as it did not itself possess.

If these propositions be correct, the military reconstruction act and the order cited ought to be construed in accordance with them.

To do so, we have only to regard the word "governments" as employed in the act and in the order in signifying "the bodies of

administrators who rule," (see Encyc. Britt., vol. 10, p. 731,) the persons claiming to be and acting as civil officers—nothing more, and not as also including the rejected constitutions of the rebel States with the laws based thereupon.

To hold otherwise would be to assume that Major General Sheridan, when he used the phrase "provisions of law," did not mean, as his language clearly imports, to refer to valid existing laws, but on the contrary intended to validate pretended law; or, in other words, that in his order assuming command he took upon himself to do what his known character precludes him from being charged with—to reject the accepted constitution of Texas of 1845 and to accept the rejected constitution of 1866—to doubly repeal and overrule legislation enacted at different periods by the Congress of the United States.

I am firmly convinced that that officer, who, during his command of the Fifth Military District, gained a reputation for administrative ability scarce surpassed by his achievements in the field, undertook to do nothing of the sort. Hence, I beg leave to protest against his being charged with having put the rejected constitution and "laws" (so-called) of 1866 upon us. Indeed, the character of those "laws" is such that he could not have done so. Not less than eighty-three of such of them as claim to be *public and general* in their nature, are either directly or indirectly hostile to the United States Government, or, to its loyal citizens, twenty-four being leveled at the freedmen; while about two hundred of such as are styled *special* confer magnificent rewards upon those who had been prominent in upholding the rebellion.

Major General Sheridan did not validate rebel judgments and sales under execution had against loyal men, (some of them bearing arms under him at the time,) *because they were in the service of their country*. He did nothing to put down the friends and build up the enemies of the United States; to make loyalty odious and treason respectable in this State. True, notwithstanding the military reconstruction act we did not have a military government established, but instead, a rebel civil government organized under a constitution not accepted, and administering rebel laws, was continued and upheld; but this was done against the earnest and reiterated remonstrances of the commander of the Fifth Military District.

Now, since he at last was permitted to place appointees of his own in power, if rebel laws are to be administered by them, what has the United States Government, what have the people of Texas, in the true political sense of the term—the registered voters, white and colored, who did not make and who have never sanctioned such

laws, gained by the change? Had the rebels been victorious in the field, what could they have won beyond the establishment of their laws? When they have lost, must the result be the same?

I am averse to occupying your time and attention farther, or, in this connection, I would trace the progress that has been and is insidiously made by disloyal judges, by means of these pretended laws, toward a judicial justification of the rebellion; and would also give my reasons for believing that the administration of ex-Governor Throckmorton was regarded an impediment to reconstruction, partly, at least, because it executed rebel laws in their spirit.

Having taken the position of Attorney General expressly to aid in the enforcement of our accepted constitution and unquestionably valid laws, and the *programme* having, against my protest, been altered, and a rejected constitution, with disloyal "laws," substituted, I conceive myself to be under no obligations to continue in office to assist in the administration of a body of municipal law which, in my belief, has not been and could not be sanctioned by the military reconstruction act nor by general order No. 1 of Major General Sheridan.

Not having changed the views to which I subscribed before being appointed, I cannot abandon them now without doing wrong--occupying a false position, and appearing to be actuated not by principle, but by a mere vulgar desire for office.

Sincerely convinced of the correctness of the opinions set forth, which, however objectionable to rebels, it must be conceded would, if carried out, work no prejudice to any loyal man or to the United States Government, I beg leave to transmit through yourself to the Commander of the Fifth Military District this my resignation, to take effect as soon as a successor can be appointed and qualified, so that I can deliver over to him the books and papers of the office.

I remain, very respectfully,
Your obedient servant,

WILLIAM ALEXANDER,

Brevet Major General J. J. REYNOLDS, U. S. A., Commanding the
District of Texas.

DOCUMENT "A."

COMPTROLLER'S OFFICE,
AUSTIN, TEXAS, Sept. 5, 1867.

Hon. W. ALEXANDER,
Attorney General of Texas :

SIR: On entering upon the duties of Comptroller of Public Accounts, I am admonished at once of the embarrassments which lie in the way of what I conceive to be a proper and efficient administration of the laws of the State, so far as they relate to this office, which I am sworn to support and to execute.

The first duty devolving upon me arises under Chapter 175 of the General Laws of the Eleventh Legislature of the State, designated "An Act making appropriations for the support of the State Government, for the years 1867 and 1868." The act provides for the payment of sundry sums of money, not necessary to the proper administration of the laws of the State, during its provisional term, nor, indeed, at any time.

The question, upon which the opinion of the Attorney General is solicited, is whether the statute is a valid law of the State of Texas, and, consequently, whether the accounting officers are bound to respect and execute it as such. If not, then what law, if any, beyond the military orders of the Commanding General of the District, is in force? or if in force, what other authority than the United States can now make appropriations for the support of the Provisional Government of Texas?

I shall be pleased to have the early and careful consideration of these enquiries by the Attorney General.

I have the honor to be your ob't serv't,

M. C. HAMILTON,
Comptroller.

ATTORNEY GENERAL'S OFFICE,
AUSTIN, TEXAS, Sept. 7, 1867.

SIR: Your communication of the 5th instant was received on the

evening of that day, and its contents have been duly considered. In reply I transmit the subjoined opinion.

I remain, very respectfully, your ob't serv't,

WILLIAM ALEXANDER,
Attorney General.

Hon. M. C. HAMILTON,
Comptroller.

OPINION.

The Constitution of the United States, etc., the supreme law of the land. The accepted Constitution of Texas, which took effect February 16, 1846, and the laws made under it, the municipal law of the land. The rejected Constitution of 1866, and the pretended laws dependent upon it, null and void, ab initio.

The leading facts bearing upon the inquiry submitted, which, being matters of public and general notoriety, may be taken notice of without proof, are as follows :

Certain politicians of the slave States finding that, as they were in a hopeless minority, they could no longer control the national government, conspired together to organize a rebellion and war against that government, in order that they might overthrow it and establish a stronger and more aristocratic form of government than a republic in its place, constructed with a special reference to the maintenance and extension of African slavery, which was declared to be its "corner stone." In pursuance of this scheme some sixty-one of them, who were citizens of Texas, published a call for a "Constitutional Convention," asking county officers to hold "unofficially" an election for delegates. Rather less than one-third* of the then electors voted for delegates favorable to the conspiracy.† The minority-elected delegates assembled, and on February 1, 1861, passed what

*From the proclamation appended to the so-called Constitution of Texas, it appears that only 28,119 persons voted for its adoption, a small minority. The delegates to the Convention of 1861 were not elected by so small a minority as that which voted for the (rejected) constitution of 1866.

†This minority controlled the masses by means of secret organization, terrorism and violence.

is commonly known as the "Ordinance of Secession." They also passed, a little later, what they styled "amendments" to the Constitution of the State of Texas which had been accepted by Congress. It was under this accepted constitution that Texas, on February, 16, 1846, organized as a State, forming a part of the nation known as the United States of America.

These "amendments," if operative, substituted for the constitution a new and essentially different instrument, asserting allegiance to a treasonable organization, never recognized* as a government by any existing nationality, called the "Confederate States of America." These "amendments," or new rebel constitution, are claimed to have continued in force until superceded, in 1866, by another constitution, also passed under the guise of "amendments" (materially different from its predecessor, and from the constitution of 1845-6), and which was rejected by the United States Congress.

What purports to be the "law" in regard to which you inquire, was passed under and is dependent upon the instrument last referred to. If the one is the Constitution of the State of Texas, the other is a law; but not otherwise.

*The non-recognition of the so-called Confederate States Government, and of every pretended State thereof, prevents their being taken notice of by courts and judicial officers. This is perfectly well settled by the Supreme Court of the United States.

The following is the language of Chief Justice Marshall, in the case of *Rose v. Himely*, 4 Cranch, 272:

"The colony of San Domingo, originally belonging to France, had broken the bond that connected her with the parent state, had declared herself independent, and was endeavoring to support that independence by arms. France still asserted her claim of sovereignty, and had employed a military force in support of that claim. A war *de facto* then unquestionably existed between France and San Domingo. It has been argued that the colony, having declared itself a sovereign State, and having thus far maintained its sovereignty by arms, must be considered and treated by other nations as sovereign in fact, and as being entitled to maintain the same intercourse with the world that is maintained by other belligerent nations. In support of this argument the doctrines of Vattel have been particularly referred to. But the language of that writer is obviously addressed to sovereigns, not to courts. It is for governments to decide whether they will consider San Domingo as an independent nation; and until such decision shall be made, or France shall relinquish her claim, courts of justice must consider the ancient state of things as remaining unaltered, and the sovereign power of France over that colony as still subsisting."

The principle stated in the foregoing citation is commented upon and reaffirmed by Mr. Justice Story, in the case of *Gelston v. Hoyt*, 3 Wheaton's Reports, 324, as follows:

"No doctrine is better established than that it belongs exclusively to governments to recognize new states in the revolutions that occur in the world; and until such recognition, either by our own government or the government to which the new state belonged, courts of justice are bound to consider the ancient state of things as remaining unaltered. This was expressly held by this court in the case of *Rose v. Himely* (4 Cranch, 241), and to that decision on this point we adhere. And the same doctrine is clearly sustained by the judgment of foreign tribunals. (*The Manilla*, 1 Edwards Reports, 1. *The City of Berne v. the Bank of England*, 9 Ves. 347. *Dolter v. the Bank of England*, 10 Ves. 353; 11 Ves. 283.)"

A citizen of an unacknowledged government cannot maintain a suit in chancery. *Bire v. Thompson*, cited in 1 Rob. Prac. 60; *Thompson v. Powles*, 2 Simmons, 184; 2 Cond. Eng. Ch. Rep. 378. See also for analogy furnished, *Kennett v. Chambers*, 14 How. 38.

The Constitution of the United States is conclusive as to this, as it declares that it, with the treaties and laws made in pursuance thereof, are the supreme law of the land. No authority can be found showing that the supreme law of the land ever ceased to be in force for any moment of time that has elapsed since it first took effect, and over every square inch of ground within our national limits. If all the time in force, no pretended constitution incompatible with it, and no "law" dependent upon such constitution, has existed in Texas since Texas first became a State in the Union.

The three departments which together make up the national government have also separately furnished constructions throwing light on the matter in hand, which accord with the supreme law of the land and with each other.

Firstly (in order of time), the Judiciary—the Supreme Court of the United States has decided that the rebellion amounted to a war; that the rebels were "the public enemy" of the United States, and that they were "none the less enemies because they were traitors." (2 Black's Rep. 674.)*

*See also *Bland v. the Adams Express Company*, 1 Duval's Ky. Rep. 232, in which it was decided that "Confederate soldiers" commanded by John Morgan, were the "public enemy," and that in consequence the Adams Express Company was not, as a common carrier, responsible to the owners thereof for money captured by the "Confederate soldiers" when in transit in its safe.

It is to be observed that the statutes of the so-called Confederate States term the citizens of the United States "alien enemies." The records of the so-called Confederate States District Court at Austin show that all the personal property and real estate it could reach, that belonged to loyal citizens of the United States, was sequestered and sold as the property of "alien enemies." Even the American Bible Society's books were condemned and sold. It has been estimated that not less than twelve million dollars worth of lands were condemned and sold by that branch of the Confederate States District Court for a mere trifle. The pretended laws of the rebel organization that claimed to be the State of Texas, also treat loyal citizens of the United States as their enemies. See for example "General Laws of the Ninth Legislature," p. 35, ch. 42; and p. 39, chs. 51 and 52. One of these "laws" merits special attention, and is as follows:

CHAPTER XVI.

An Act to exclude from office, serving on juries, taking or holding property, and from the rights of suffrage, all persons who take the alien oath, leave our country to avoid the service, or who join the enemy or in anywise give them aid and comfort.

SECTION 1. Be it enacted by the Legislature of the State of Texas, That no person, being a resident of the State, or of any one of the Confederate States, who may, during the existing war between the Confederate States and the United States, take the oath commonly known as the alien oath, whereby he claims the protection of any foreign government as a shield from serving in the cause of the Confederate States in their present struggle, or who may leave, or having left, remain absent, from this State or any of the Confederate States, to avoid participating in behalf of the Confederate States; or who may join, or having joined, continue in the army, or service, or employment of the United States, or who may conceal himself and thereby avoid service in our cause, or who may, in any wise, give aid and comfort to the enemy, shall, upon conviction thereof before any court of competent jurisdiction, take or hold any estate, real, personal or mixed, whether by purchase, gift, devise or descent, in this State, nor hold any office of trust, profit or honor, nor vote at any election, nor serve on any juries in any court within this State; provided, that persons who shall prove themselves to be *bona fide* neutrals and citizens of a friendly power, shall not be subject to the provisions of this act.

SEC. 2. That the judgment of the court upon the verdict of a jury in any one of the causes enumerated in the preceding section, shall be sufficient evidence of the guilt

By the law of war, public enemies have no political rights under the government against which they are warring. As regards it, they have, in general, only the right to be killed when in arms in the field, and to be treated as prisoners of war in case they are forced to surrender. A citizen who assumes, and is recognized in, the incompatible character of a public enemy, *ipso facto* forfeits his citizenship. No argument is required to prove that public enemies, when inside our national boundaries, are incompetent to do what loyal citizens alone may do, and even they only with the (at least) implied consent of Congress that they should set about the work, and the express approval of Congress when it is completed and submitted. (Const. of the U. S., art. 4, sec. 4. See also the Military Reconstruction Act (No. 68) for the conditions precedent imposed.

Secondly, the Executive Department of the National Government—the President, has put himself upon the record repeatedly,* and in various ways, in harmony with the Judiciary. To cite one example: In his proclamation of June 17, 1865, appointing General A. J. Hamilton Provisional Governor, he declared that the rebellion had deprived Texas of “all civil government.” If the rebels had, by their own criminal conduct, deprived themselves of all civil government, it is not perceived that, while in that condition, they could perform *any* governmental act, much less set aside a State constitution, made by competent parties, and accepted by Congress, together

of the party, in any suit or proceeding that may subsequently arise, on any issue made, upon any question involved in the said first section.

SEC. 3. That for the offences enumerated in the first section of this act, the party may be prosecuted at any time within five years after the ratification of a treaty of peace between the Confederate States and the United States.

SEC. 4. That this act take effect from and after its passage.

Approved March 5, 1863.

(General Laws, extra session, Ninth Legislature, p. 12.)

See also the Joint Resolution on page thirty-six of the General Laws of the same session, in which Major General Butler is described as “better known as Butler the Beast,” and the laws changing the names of Cass, Buchanan and Walker counties to Davis, Stephens and (Samuel H., impliedly.) Walker counties. General Laws Ninth Legislature, ch. 14, p. 8, and Special Laws Tenth Legislature, ch. 12, p. 39; *cum multis aliis*.

It will doubtless be contended that this “law” was repealed by Ordinance No. 11 of the Convention of 1866. If the rejection of the work of the Convention of 1866 by Congress made it as valid as the acceptance would have made it, the “law” in question may be regarded as repealed by it, but not otherwise.

However, it can scarcely be claimed that the Convention of 1866 attempted to repeal certain very obnoxious laws passed preparatory to the rebellion, such as that authorizing magistrates to search the United States mails, and to take out and burn abolition documents, etc. (General Laws of Eighth Legislature, pp. 99, 100; that prohibiting negroes from holding religious meetings, unless two slaveholders should be present, etc. (*Ib.*, pp. 101, 102.)

From a hasty examination, I have been unable to discover that articles 915, 916, of the Code of Criminal Procedure (see O. & W. Digest, pp. 689, 670), which provide for selling free persons of color into slavery, have ever been attempted to be repealed.

*In each of the several proclamations appointing Provisional Governors for the other insurgent States, the President made use of the same language. Indeed the form of proclamation was printed with a blank for the name of the State, and was issued officially when the blank was filled up and the date affixed. One of these proclamations, of which a large quantity, with the blanks unfilled, was sent by the State Department to Texas, is now before me.

with the laws and civil rights that had accrued under it, during the lapse of years of peace and comparative good order.

Though it was a matter of public and general notoriety that what claimed to be a State Government existed in Texas; that persons claiming to be "officers," occupied all the public offices, and that such had been the case continuously since February 1, 1861; it is worthy of note that our Chief Magistrate very properly ignored both that government and its officers. Regarding them as illegal, he did not trouble himself to remove F. S. Stockdale, Esq., who, as "Lieutenant Governor," claimed to be "Governor," when P. Murrah, Esq., had absconded to Mexico, but appointed General Hamilton, without taking the slightest notice of him whatever.

Thirdly, the Legislative Department of the National Government—Congress, appears to have concurred fully with the views given by the Judiciary and Executive Departments, though it has expressed itself in more moderate terms. It has set forth, in the preamble to the Military Reconstruction Act of March 2, 1867, (No. 68), that "no legal State Government exists in Texas," etc. This may be regarded as a statutory fact. If no legal State government existed in Texas on March 2, 1861, when the ordinance of secession took effect in a disorganizing act, and related back to February 1, 1861, the date of its passage, there did not exist, then nor since, any power, on the part of the rebels of Texas, competent to modify the State constitution and laws. A State constitution can, in general, only be altered by means of a legal State government, and with the express approval of the work by Congress, subject to the exceptional case of a modification through the operation of amendments to the National Constitution, and of laws enacted under and by virtue of such amendments.

It is fairly inferable, from the expressions of its departments, that the National government regarded what are termed the insurgent or rebel States, as disorganized *political* States, which, as their boundaries were never changed by law, were considered as mere *geographical* States; nothing more. Though unquestionably aware that what were called "governments," continuously existed in them, it ignored those pretended governments, as they were not legal, considering that the persons claiming to be the officers occupied no higher ground than men who, finding public offices empty, entered, and gave themselves out to be officers. The United States government has never admitted, and could not, under the constitution, admit the Texas Ordinance of Secession to be other than null and void *from the beginning*, together with all pretended legislation connected with or dependent upon it. The United States government has only done what implies that it regards that void ordinance as fixing the date

when, according to the rebels, the disorganization under the State constitution occurred. A State may disorganize without making a futile attempt to secede. For example, were all the officers of the three departments of a State government at once to die, resign, leave the State, or accept incompatible offices, the State would be disorganized, though, as in the case under consideration, *the constitution and laws would remain intact*; and enabling legislation, on the part of Congress, would be required to assist the geographical State to regain its lost character of a political State, and to resume its working relations to the National government, of which it never ceased to form a part.

The rebellion and war had no legal effect, save to produce disorganization. It did not repeal any thing. The resistance or escape of a vast number of criminals, for a greater or less period of time, *when they are afterward captured, and put subject to the supreme and municipal law of the land*, does not make them a *de facto* government, nor empower them to repeal the civil and criminal statutes, nor the constitution on which those statutes are based, any more than does the resistance or escape of a single criminal.

Were the pretended legislation of the rebels, framed in defiance of the constitution, held valid, no honest or loyal purpose would be effected thereby, and a greater impediment would be interposed to reconstruction than any now in existence. There is nothing in its character that would justify or even excuse us in holding that it swept away an accepted constitution, with the laws that had been enacted and the rights that had accrued under it. Our laws, as they stood on February 1, 1861, were generally more just and efficient for the ends of justice, than at any previous time—far more than any pretended laws of a later date. Whatever then has been done in Texas during the rebellion, that was lawful, considered with reference to our constitution and laws as they stood at the date of the attempted secession, except where inconsistent with the National constitution as amended, and laws, is as valid as if done at any earlier period. Lawful contracts, marriages, etc., made then, are as binding as they would be had they been made previously.

The pretended constitution (ordinances included) of 1866, passed under the style of "amendments," is not only null and void for reasons already indicated, but for additional considerations. It shows on its face that it is the work of disloyal men, actuated by a subdued hostility to the United States government. Besides, it is founded and built up upon the rebel State constitution, (which had been previously adopted under the guise of "amendments" also), and not the State constitution accepted by Congress, which "public enemies" were incompetent to set aside or alter. Taken with the ordinances,

it amounts to an insidious attempt to legalize so much of the rebel State constitution and laws as is not openly and directly opposed to the National constitution, and thus to make the legislation of the rebels, since February 1, 1861, (inclusive), as far as possible, *constructive* as regards itself, but *destructive* as regards the supreme law of the land and the accepted State constitution, with the laws enacted under it, as they existed and continue to exist.

In order that a State constitution should be so framed in a disorganized State, that Congress *can* accept it, not only must the conditions precedent imposed by the Military Reconstruction Act, as explained by its supplements, be observed, but it must ignore the rebel State constitution and laws, and must be based upon the (accepted) State constitution and statutes; for, in legal contemplation, they are the municipal law of the land.

When Congress accepts a State constitution, it is valid; hence, when Congress rejects one, it must be void. On principle, the rejection of a State constitution does not merely exclude United States Senators and Representatives elected under it, but makes it a nullity, and we are thrown back upon the old State constitution. A rejected constitution is not cognizable by the judiciary. (*Luther v. Borden*, 7 How. 42).

Under the constitution of the United States, but three sorts of governments, in the nature of State governments, are possible: Territorial governments, State governments, and, where either of them are disorganized, from the necessity of the case, military governments. What are termed provisional governments, under the acts of Congress, are but subordinate parts of military government.

More inconvenience would be unjustly wrought upon loyal men by holding that the legislation of fifteen years has been swept away by rebels, than would be justly wrought upon rebels by holding their pretended legislation of the last six years to be what the law holds it to be—void.* The “legislation” of the rebels, during the earlier part of the rebellion, was not only hostile to our country, but was in itself eminently unjust and unscrupulous. Nor are the “laws” of the last so-called Legislature otherwise. They, too, are persistently leveled against the United States Government and its loyal citizens, and not a few of them are artfully contrived to effect fraudulent and criminal designs, not apparent on the surface.† Certain of

* The rebel State “laws” permitted the property of estates to be sold for “Confederate paper,” and the money of estates to be invested in “Confederate bonds,” to the great loss of widows, orphans and loyal creditors, who, as they were unable to protect themselves, the government is morally bound to protect. They also authorized “Confederate paper” to be received at par for land warrants at the General Land Office. A vast quantity of land warrants were obtained for this paper at the actual cost of one cent per acre.

† See for example, ch. 41, p. 32, of the volume entitled *General Laws of 11th Legis-*

them, such as the "Labor," "Persuading," "Vagrant," "Fire-Arms," "Apprentice," "Tax" and "School," &c., "laws," amount to a cunningly devised system, planned to prevent equality before the law, and for the restoration of African slavery in a modified form, in fact, though not in name. They were designed to defeat justice.

The so-called "Special Laws" of 1866 appear to have been devised chiefly to reward, *at the cost of the people*, leading rebel military men, politicians and contractors, for their services in behalf of the rebellion, by granting them a great number and variety of charters, which, if valid, would be worth millions.

It may not be amiss to briefly consider the views of those persons who, whether because they are disloyal, or because their judgments have been warped by the pressure of the rebellion, differ from what has been hereinbefore advanced. Such of them as are rebels admit that the Supreme Court was right in declaring them to be "the public enemy," but not in deciding them to be also "traitors." They claim that they were not only public enemies, but were more—were a foreign nation. It seems never to have occurred to them that, if so, as Congress, the war-making power, have not yet declared the state or condition of war ended, and as they have never been naturalized and enfranchised, in 1866 they could not legislate at all. They and their sympathizers hold the statement of the President, that they had deprived themselves of "all civil government," to be simply untrue in point of fact, instead of construing it fairly to mean what that officer intended, that they had no government that he was bound to respect.

Instead of construing the Military Reconstruction Act in accordance with the settled principles of the law, so as to make it all to stand, these people misconstrue it in an absurd manner, making it alike self-destructive and unconstitutional—contending that while in its preamble it declares that no legal State Government exists in Texas, it legalized the so-called State Government in existence at its passage, and thus makes a military government unconstitutional! They construe the words "that may exist" to read, "that do or may exist," contending that rebels can *be* officers, without taking the test oath, who cannot *be appointed* officers, because unable to take the test oath. As a matter of course, they produce no warrant of law for their style of construction. All their arguments are based upon a tacit assumption of what they have not the hardihood to directly

lature. This act, though apparently general in its terms, was devised to cause a widow to lose a valuable tract of land involved in a pending suit.

See also ch. 145, p. 169, in the same volume of which is omitted in the index. Also joint resolutions 4, 5 and 13, appended to the same volume,

assert—that the Constitution, &c., of the United States have not been continuously since February 16, 1846, and till now, the supreme law of the land in Texas. They are not unaware of the effect, which this proposition, if true, would produce upon the United States laws, passed since February 1, 1861, such as the Direct Tax law, the Internal Revenue law, the law establishing United States Circuit Courts, the law declaring Statutes of Limitation not to run, &c., &c. Hence they insidiously aim, by inducing acquiescence, sufferance and delay, on the part of those charged with the execution of the law, and, indeed, by all other indirect means, to get their theory established—that, during four years, the Constitution and laws of the United States, with the State Constitution accepted by Congress, and the laws made under it, were not in force in Texas, but were supplanted by the rebel “C. S.” and State Constitutions, to which the United States Constitution and laws, (except those passed during the four years); and the rejected State Constitution of 1866, with the laws made under it, are the successors, or heirs at law.

Indeed, some of them very gravely contend for a proposition, than which they can scarce go farther, that the validity of the rebel statutes must be determined, (in each case separately,) by comparing them with the United States and the accepted State Constitutions. They might, with equal warrant of authority, and with greater plausibility, argue that Canadian statutes may be tested by the Constitution of Mexico. As the statutes of Canada were not framed with reference to the Mexican Constitution as the paramount law; so the rebel statutes were not drafted with reference to the United States and accepted State Constitutions, as the superior and controlling law. There the parallel ends. The Dominion of Canada never having been at war with Mexico, the Canadian legislation is, at least, not hostile in its character. It was not devised by a criminal organization, co-operative in all its parts, to dismember and overthrow our sister Republic. It is needless to consider such propositions.*

Had Congress expressly declared, in the Military Reconstruction Act, that legal governments existed, at the time of its passage, in the rebel States, that declaration would have made the act unconstitutional. The conditions precedent required by the act to be

*One, however, is so curious that it deserves to be noticed. Although under the U. S. Constitution only three sorts of governments in the nature of State governments are possible, viz: Territorial, State, or where they are disorganized *ex necessitate rei*, Military, they vaguely assume that there may be a fourth sort, which they call *Provisional Governments*: evidently not comprehending that what are called “Provisional,” under the laws of Congress, are but subordinate parts of military governments.

It is idle to argue with persons who contend that a rejected State Constitution with the laws made under it are as valid as an accepted State Constitution and the laws made under it.

complied with by loyal citizens, viz: Registration, the adoption of a Constitution, its submission to and approval by Congress, and the adoption of the proposed Amendment to the Constitution of the United States, show that it was not designed to legalize the work of rebels unconditionally.

Because, therefore, the Constitution, treaties and laws† of the United States have been continuously, since February 16, 1846, the supreme law of the land in Texas: because our State Constitution, (under which Texas organized on February 16, 1846,) and laws, as they stood on February 1, 1861, have continued to be the municipal law of the land, and for the other reasons stated, no pretended legislation by criminal and incompetent persons, hostile to or unauthorized by our National and State Constitutions, can be regarded as law.

The pretended "law" as to which you inquire was null and void from the beginning.

Under the Military Reconstruction Act and the acts supplementary thereto, the General in command of this District has not merely the power to supply the place of any law which may have expired by its own terms, or become inapplicable in consequence of the changes wrought by the rebellion, but can make any orders legislative in their nature, which he may regard as necessary for the public good.

† Not excepting the U. S. direct tax law, of August 8, 1861; the internal revenue law of July 1, 1862; the law establishing U. S. Circuit Courts in Texas, of July 15, 1862; the law suspending the running of statutes of limitation in cases civil and criminal, of June 11, 1864, &c., &c.

The rebels seek to get it established, that these acts were not in force in Texas until E. Kirby Smith surrendered. Coolly assuming that the rejected State Constitution of 1866, on which the pretended laws of 1866 depend, is as valid as if it had been accepted and that, too, in spite of its being based upon a rebel State Constitution, not upon our accepted Constitution and State laws as they stood on February 1st, 1861, they rely chiefly on considerations of "policy" and the *argumentum ab inconvenienti*. So far as "policy" is concerned, they are referred to the opinion of Judge Thornton, published in the Austin Republican of September 11th. They complain of hardships and inconvenience. By a wicked attempt to subvert the supreme and municipal law of the land, they brought about such confusion as exists, and now they modestly ask us, in violation of principle as well as of positive law, to legalize that confusion, instead of returning to the simplicity of a Constitution and statute law, which they were incompetent to overthrow.

