

LEVI L. TATE, EDITOR.

"TO HOLD AND TRIM THE TORCH OF TRUTH AND WAVE IT OVER THE DARKENED EARTH."

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Select Poetry.

THE CONSTITUTION AS IT IS, THE UNION AS IT WAS.

BY G. P. FERGUSON.

Hail Democracy of every State, Who love your country's laws, Prepare ye for the conflict now; For near the battle draws; And let your banner blaze forth. The watchword of our cause—"THE UNION AS IT WAS!"

THE LAW IN THE VALLANDIGHAM CASE.

As much confusion seems to prevail with regard to the legal aspects of the arrest, trial, and conviction of Mr. Vallandigham on the charge of giving aid and comfort to the enemy, we think it proper, in view of the interest attaching to this question, considered as one of law rather than one of military caprice, to place distinctly before our readers the points on which it turns.

erment of the United States were about to appoint military marshals in every district to restrain the people of these liberties, to deprive them of their rights and privileges." Characterizing General Order No. 38, Headquarters Department of the Ohio, as "a base usurpation of arbitrary authority;" insisting his hearers to resist the same, by saying "the sooner the people inform the minions of usurped power that they will not submit to such restrictions upon their liberties the better."

J. M. Cutts, Capt. Eleventh Infantry, Judge Advocate Department of the Ohio. It will thus be seen that the charge and the specification, even if entirely sustained by the evidence; (as to which in this inquiry we raise no question) seek to convict Mr. Vallandigham, a citizen of Ohio, of "giving aid and comfort to the enemy."

Sec. 2. And be it further enacted, That if any person shall hereafter incite, set on foot, assist, or engage in any rebellion or insurrection against the authority of the United States, or the laws thereof, or shall give aid or comfort thereto, or shall encourage or aid in such rebellion, or shall be convicted thereof, such person shall be punished by imprisonment for a period not exceeding ten years, or by a fine not exceeding ten thousand dollars, and by the liberation of all his slaves, if any he have, or by both of said punishments, at the discretion of the court.

THE TRIBUNAL to take cognizance of such cases and questions distinctly appears from the concluding section of this statute as follows: This is conclusive as to the jurisdiction of the courts of the United States, and of them alone, over the offence alleged to have been committed by Mr. Vallandigham.

But the last Congress did not stop here. As if to shut the door against any such proceedings as those instituted by General Burnside, it passed an act, approved March, 3, 1863, expressly "relating to habeas corpus and regulating judicial proceedings in certain cases."

rected, as soon as may be practicable, to furnish the judges of the circuit and district courts of the United States, and of the District of Columbia, a list of the names of all persons, citizens of States in which the administration of the laws has continued unimpeded in the said Federal courts, who are now, or may hereafter be held as prisoners of the United States, or by order or authority of the President of the United States, or either of said Secretaries, in any fort, arsenal, or other place, as state or political prisoners, or otherwise than as prisoners of war; the said list to contain the names of all those who reside in the respective jurisdictions of said judges, or who may be deemed by the said Secretaries, or either of them, to have violated any law of the United States in any of said jurisdictions, and also the date of each arrest, the Secretary of State, to furnish a list of such persons as are imprisoned by the order or authority of the President, acting through the State Department, and the Secretary of War a list of such as are imprisoned by the order or authority of the President, acting through the Department of War.

And in cases where a grand jury, having attended any of said courts having jurisdiction in the premises, after the passage of this act, and after the furnishing of said list as aforesaid, has terminated its session without finding an indictment, or presenting, or other proceeding against any such person, it shall be the duty of the judge of said court forthwith to make an order that any such prisoner desiring a discharge from said imprisonment be brought before him to be discharged; and every officer of the United States having custody of such prisoner is hereby directed immediately to obey and execute said judge's order; and in case he shall delay or refuse so to do, he shall be subject to indictment for misdemeanor, and be punished by a fine not less than five hundred dollars and imprisonment in the county jail for a period of not less than six months in the discretion of the court; provided, however, that no person shall be discharged by virtue of the provisions of this act until after he or she shall have taken the oath of allegiance to the Government of the United States, and to support the Constitution thereof; and that he or she will not hereafter in any way encourage or give aid and comfort to the present rebellion, or the supporters thereof; and provided also, that the judge or court before whom such person may be brought, before discharging him or her from imprisonment, shall have power, on examination of the case, and, if the public safety shall require it, shall be required to cause him or her to enter into recognizance with or without surety, in a sum to be fixed by the said judge or court, to keep the peace and be of good behavior toward the United States and its citizens, and from time to time, and at such times as such judge or court may direct, appear before such judge or court to be farther dealt with according to law, as the circumstances may require. And it shall be the duty of the district attorney of the United States to attend such examination before the judge.

Sec. 3. And be it further enacted, That in case any of such prisoners shall be under indictment or presentment for any offence against the laws of the United States, and by existing laws, bail or a recognizance may be taken for the appearance for trial of such person, it shall be the duty of said judge at once to discharge such person upon bail or recognizance for trial as aforesaid. And in case the said Secretaries of State and War shall for any reason refuse or omit to furnish the said list of persons held as prisoners aforesaid at the time of the passage of this act, within twenty days thereafter, and of such persons as may hereafter be arrested, within twenty days from the time of the arrest, any citizen may, after a grand jury shall have terminated its session without finding an indictment or presentment, as provided in the second section of this act, by a petition alleging the facts as aforesaid touching any of the persons so as aforesaid imprisoned, supported by the oath of such petitioner or any other credible person, obtain and be entitled to have the said judge's order to discharge such prisoner on the same terms and conditions prescribed in the second section of this act: Provided, however, that the said judge shall be satisfied that such allegations are true.

The reader can easily educe from these provisions the law of the question raised by the arrest of Gen. Burnside. They will perceive that the proceedings under the writ of habeas corpus are to be suspended by the court whenever and wherever the privileges of this writ has been suspended by the President, which is not the case in the State of Ohio. Judge Leavitt, in refusing to grant the writ sued out in behalf of Mr. Vallandigham, stated that he had not seen the law which was cited in court by Mr. Pugh, the attorney of Mr. Vallandigham. We infer from this fact that Judge Leavitt does not deem it necessary to have a knowledge of laws which it is his sworn duty to administer, or that his means of procuring information under this head are more limited than those possessed by laymen who read the journals which are authorized to publish the laws of the United States officially, or who possess a sufficient interest in such matters to purchase the volume printed by the emi-

nent publishers, Messrs. Little & Brown, of Boston, under the authority of Congress. His ignorance of the laws may be his best excuse for not doing his duty under them.

And when a judge of the United States is ignorant of the legislation of Congress on this head, surely Gen. Burnside may be excused for not knowing that Congress, by the act of July 17, 1862, had expressly provided for the trial by the courts of the offence he alleges against Mr. Vallandigham. Nor is it any answer to say, as Gen. Burnside urges in his statement made to the judge, that "we are in a state of civil war, and an emergency is upon us which requires the operations of some power that moves more quickly than the civil;" for it was precisely in view of such an "emergency" that Congress passed the act of July 17th already cited, and it was to exclude the possibility of the arbitrary detention of persons held "as prisoners of the United States, as state or political prisoners, or otherwise than as prisoners of war," that Congress passed the act approved on the 3d of March last, and the sections of which, so far as they relate to this case, we have recited above. The intervention of a court martial, illegally charged with the trial of a citizen, does not alter the nature of the imprisonment of Mr. Vallandigham, who, while deprived of his liberty, must be regarded in law as one "imprisoned by the order or authority of the President, acting through the Department of War."

It is true, as is said, that Mr. Vallandigham has been imprisoned in Fort Warren by order of General Burnside, confirming the sentence of the court martial illegally charged with the trial of a citizen for an offence made cognizable by the courts, it follows that Mr. Vallandigham is now held as a "state or political prisoner" within the terms of the act of March 3d, 1863, and it will therefore be the duty, as we doubt not it will be the pleasure, of Mr. Secretary Stanton to report the name of Mr. Vallandigham to the Judge of the United States Circuit or District Court which has local and legal jurisdiction of the offence for which Mr. Vallandigham is now irregularly detained, that he may be put on trial according to the statute made and provided for precisely such offences as he is alleged to have committed. His conviction under such circumstances, would carry with it the sanction of law, and as such would receive the assent of law-abiding citizens and be a terror to evil-doers.

Sec. 14. And be it further enacted, That the courts of the United States shall have full power to institute proceedings, make orders and decrees, issue process, and do all other things necessary to carry this act into effect.

THE INTELLIGENCE continues: We have said that we believe it will give Mr. Stanton pleasure to pursue a legal course in procuring a regular trial for Mr. Vallandigham, under the Constitution and laws of the land, that he may receive justice or suffer punishment according to his deserts; for Mr. Stanton signalled his accession to office by an "order," in which he designated the circumstances that seemed to justify, only for a time, a departure from "the normal course of administration," at the outbreak of the rebellion, when the Government was called suddenly to meet an "emergency" which Congress had not anticipated and for which it had not provided. To this effect he declared as follows, under his order of February 14, 1863:

The breaking out of a formidable insurrection, based on a conflict of political ideas, being an event without precedent in the United States, was necessarily attended by great confusion and perplexity of the public mind. Disloyalty, before unsuspected, suddenly became bold, and treason astonished the world by bringing at once into the field military forces superior in numbers to the standing army of the United States.

In this emergency the President felt it his duty to employ with energy the extraordinary powers which the Constitution confides to him in cases of insurrection. He called into the field such military and naval forces unauthorized by the existing laws, as seemed necessary. He directed measures to prevent the use of the post office for treasonable correspondence. He subjected passengers to and from foreign countries to new passport regulation, and he instituted a blockade, suspended the writ of habeas corpus in various places, and caused persons who were represented to him as being or about to engage in disloyal or treasonable practices to be arrested by special civil as well as military agencies, and detained in military custody, when necessary, to prevent them and deter others from such practices. Examinations of such cases were instituted, and some of the persons so arrested have been discharged from time to time under circumstances or upon conditions compatible, as was thought, with the public safety.

MEANTIME A FAVORABLE CHANGE of public opinion has occurred. The line between loyalty and disloyalty is plainly defined; the whole structure of the Government is firm and stable; apprehensions of public danger and facilities of treasonable practices have diminished with the passions which prompted heedless persons to adopt them. The insurrection is believed to have culminated, and to be declining.

The President, in view of these facts, and anxious to favor a return to the normal course of the Administration, as far as regard for the public welfare will allow, directs that all political prisoners now held in military custody be released on their subscribing to a parole engaging them to render no aid or comfort to the enemies in hostility to the United States.

EXTRAORDINARY ARRESTS will hereafter be made under the directions of the military authorities alone.

Congress has by its recent legislation "anticipated" precisely such a case as that raised by the alleged conduct and language of Mr. Vallandigham, and has thus made provision for the "emergency." The only justification heretofore assigned for such extraordinary arrests in the heart of a loyal population no longer exists, for the "normal course" of proceeding is now plainly marked out by the law made and provided for the trial and punishment of all who give "aid and comfort to the enemy," and who are "citizens of States in which the administration of the laws has continued unimpeded in the Federal courts."

Anniversary of the Anti-Slavery Society.

Robert Purvis, a colored delegate from this State to the American anti-Slavery Society, which met in New York on Thursday last week, made a speech before the Society in which he stated that "The Loyal Leagues were all anti-Slavery Societies." (Cheers.) Rev. Dr. Cheever, Wendell Phillips, Lloyd Garrison, Fred. Douglass, and a host of other loyal (!) persons were present and participated in the exercises. A series of resolutions were read by Garrison and endorsed unanimously by the assemblage, setting forth that the Constitution of the United States is "a covenant with death and an agreement with hell;" that the Federal Government must for the future be paramount to State Constitutions; endorses the President's Emancipation Proclamation, defines copperheads to be any who object to the radical abolition policy; eulogizes Fremont, Hunter & Co.; glories in the recognition of the Haytian Government, &c.

Comment, Vallandigham is arrested and imprisoned for defending the Constitution and civil liberty, and these men who denounce the Constitution as "a covenant with hell," are favored and permitted to run free.

The Case of Vallandigham.

The arrest of Vallandigham for addressing a public meeting against the manner and the objects of the war, was evidently an experiment of the Administration, to see how far the people would tolerate these acts of violence. The removal of the prisoner out of the jurisdiction of the State shows the distrust that is felt as to the character and consequences of the outrage. The arrest is a threat against every public man who refuses to advocate the extreme measures of the Abolition Cabinet. It commences with Vallandigham, but where is it to stop? The opinions and course of the Ohio member can only be regarded as extreme, because an entry has been raised against him! He has constantly kept in view, in all his course, a restoration of the Union. He has never advocated a peace based upon separation. He is not only innocent, in the view of the Constitution, of all criminal offence, but is guiltless of any wrong such as a military tribunal should take cognizance of if committed within its jurisdiction; nay, more, he is not liable to the censures which the Administration press have so clamorously concentrated upon him. For every word he has spoken, which may be cited as obnoxious, we will produce an equivalent from the pen of Garrison, or of Greeley, or from the mouths of Phillips, Stevens, Kelley, and their abolition coadjutors; while it will be easy to prove that the general tenor of the labors of these men has been to destroy the Union which he sincerely labors to reconstruct.

We have differed with Mr. Vallandigham. He has been too impatient to sympathize with the moderate counsels and forbearing attitude of the conservative democracy. He believes that peace can be accomplished now on the basis of the restoration of the Union, and in our opinion he has a perfect right to state the ground on which he bases his conviction, and if it is fallacious the people will not be long in detecting it.

But the blow that falls upon a citizen of Ohio to-day, may be directed at a Democrat of Pennsylvania to-morrow. The second outrage must follow the first, for there is an inevitable sequence in the logic of such wrongs. The blow, therefore, is a threat at every Democrat; and we wonder at the folly, if not at the malignancy which prompted it. The act is done at a time when the Government is appealing to the States of the North for troops. The States upon which it must mainly rely—Pennsylvania, New York, New Jersey, Ohio, Indiana and Illinois, are Democratic States. They have already contributed a majority of all the forces in the field. Upon them the Government relies for the future. They must send volunteers, or their good will to render the conscription efficient, what could be more impolitic, at such a moment, than such a blow in the face! It looks as if the Administration sought "to divide the North, and unite the South," so as to find in the alienage of public sentiment in the loyal states, and in the concentrated power of the South, the excuse for an inglorious peace. Certainly they exhibit more ingenuity in efforts to make the war a failure than a wise Administration would do in devising means for its prosecution.

"GREEN BACKS;" "OR PAY DAY."

Written by Dr. Sutherland, a "Live Yankee," of the 92d N. Y. V., who was taken prisoner at the Battle of "Fair Oaks" and confined with many more in "Dixie's sunny land" during the summer and part of the autumn of 1862. Written while in camp at "Fort Anderson," near Newbern, N. C., after the regiment had been paid off. (The regiment had not been paid off for the last six months, and many of the soldier's families were in a suffering condition at home, to say nothing of their privations in camp.)

Hurrah! brave boys, 'pay day' has come! Our troubles now are o'er; We've got our pay of 'Uncle Sam,' Which we should had before. We suffered more for want of it. While others, I dare say, Have suffered more for those 'Green backs' Which we have got to-day.

We left 'sweet homes' with all its charms. We left our kindred near, And donned the soldier's uniform. With all its glittering gear. We bid our friends a 'long farewell,' In 'Dixie's Land' to stay, And promised them a few 'green backs,' When we should get our pay.

We march by night, we march by day. We march through mud and rain, And lay upon the cold wet ground— Of this we didn't complain. While we had wives and children dear, Who often wrote to say, Oh! can't you send us on 'green back?' Or haven't you got your pay?

We face'd the cannon's 'brazen mouth,' And saw the shot and shell Make fearful havoc in our ranks, When many comrades fell; While we had aged parents dear, Whose heads were turning gray, Who soon must have a few 'green backs' Or in the 'poor-house' lay.

We met contagion in the camp, The rebels in the field, And faced those deadly 'showers of lead,' To make those traitors yield; While we had notes and bonds at home, That brooked this long delay, And needed much a few 'green backs' Which we have got to-day.

We eat our 'scanty rations' here Without a 'barry red,' While now and then a tear would fall Upon our 'daily bread'; While health and strength are failing fast And friends died far away, In want of some of those 'green backs,' Which we have got to-day.

We done our duty while in camp, We toiled with axe and spade, Beneath old Dixie's southern sun, Without an tree or shade. Our letters went as 'soldiers letters,' We sent such every day; We could not raise a 'three cent stamp,' The postage to pre-pay.

And when we got an old 'green back,' To town we could not go, Unless our hair was cropped off short, And whiskers trimmed just so, * We'll charge this to their ignorance, Of facts they're not aware, That Sampson lost most of his strength When stern by Detlah (fair.)

And now we've got those old 'green backs' To duty we will go, And whip those rebels at the South, 'That need a whipping so. Our faces now look bright again, Our scuttles look more gay, We like this round-hate they take, When we have got our pay.

New when this bloody war is over, And ended this sad strife, I'll take my 'green backs,' leave for home If the Lord will spare my life. And if I again go to war, I will enlist some other way, Get a commission and then resign, In this way get away.

The author is refused a pass to Newbern until he will submit to have his hair and beard cut off.

Old Ben Franklin said "there never was good war nor a bad Peace."