OPINION OF CHARLES O'CONOR, ESQ'R, ON THE TREASURY AGENT SYSTEM OF COTTON SEIZURES IN THE SOUTH, ALSO CONCURRING OPINION OF WM. M. EVARTS, EDWARDS PIERREPONT, AND JAMES T. BRADY, ESQ'RS

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OF

Cotton Seizures in the South,

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OPINION.

The Act of Congress approved March 12, 1863, (12 Statutes at large, p. 820, § 1,) provided that it should be lawful for the Secretary of the Treasury to appoint special agents "to receive and collect all abandoned or captured property" in certain territory specially designated by the act, but which for the present purpose may conveniently be termed the Insurgent States.

Two distinct provisions in the subsequent act, adopted July 2, 1864, define with precision the sense in which Congress employed the phrase "abandoned property." It is there said that property shall be regarded as "abandoned" when the lawful owner thereof shall be voluntarily absent therefrom and engaged, either in arms or otherwise, in aiding or encouraging the rebellion, (13*th Statutes at large*, p. 376, §§ 2 and 3). The term "captured property" did not receive a legislative definition, and it required none. Its legal import has long been well established.

These Treasury-Agent acts, as for the sake of brevity we may call them, provided that the property referred to might be "appropriated to public use on due appraisement, or forwarded to" a place of sale. They directed that all sales of such property should be "at auction to the highest bidder, and that the proceeds thereof shall be paid into the treasury of the United States." (12 Statutes, p. 820, § 2).

The practical construction given to these acts by the Treasury Department, or by its subordinates with its sufferance, is, that they authorized these agents to seize any prop-

erty on which they could lay their hands within the prescribed territory, forcibly to remove it to any place of sale designated by the Department, and there to sell it without judicial proceedings or investigation of any kind, paying the proceeds into the public treasury.

Under this interpretation of their powers, these Treasury Agents have habitually made extensive seizures of cotton in the Southern States, carried it to New-York, and there sold it, disposing of the proceeds, in each instance, as directed by the Department.

Conformably to this practice, and on the twenty-sixth day of January, 1866, one hundred and thirty-six bales of cotton, then in Savannah, Georgia, and held by Messrs Wm. Battersby & Co., of that city, on account of Messrs Dennistoun & Co., of New-York, were forcibly seized by certain Agents of the Treasury under color of the acts in question. They have transported the property to New-York, and are about to sell it at public auction. It is announced that after allowing to the actors in the affair such rewards or compensation for their services as may be thought fit by the department, the residue of the proceeds will be paid into the Treasury of the United States.

Messrs Dennistoun & Co., have requested me to inquire whether they are remediless, and therefore obliged to acquiesce in these proceedings.

The receipt and collection of abandoned or captured property within the insurgent States, as contemplated by the acts in question, were war measures. The enactments on the subject were in their nature temporary and operative only during the continuance of hostilities, or to use a term found in one of the acts until "the suppression of the rebellion." I am therefore of opinion that the seizure in question, was wholly un-

warrantable, and that there is no authority in law for the disposition intended to be made of the property.

Many reasons offer themselves in support of this conclusion:

I. That such was the intent of Congress is quite apparent. The only thing that can be urged to the contrary is the absence of any express or formal declaration in the acts, that the authority conferred by them was to cease at any particular time or on the happening of any event. It will readily occur, that this, if it proves anything, proves quite too much.

It is altogether inconsequential, unless it requires the Courts to hold that the practice in question was intended to be perpetual; or, what is equivalent, to continue in full operation until abrogated by express legislation. Indeed, there is no middle ground between a construction which would hold the Treasury Agent system to be a temporary measure, instituted for belligerent purposes, and that which would accept it as establishing a policy intended to govern for all future time within that region which the President, on the 12th July, 1862, "designated as in insurrection." (12 *Statutes at Large, p.* 820, §1.) There is no alternative: one or the other of these readings must be adopted. If there be a jurist in the land whose moral perceptions would not force upon him an instantaneous and indignant rejection of the latter, considerations may be stated which will convince even him.

Legal perpetuity cannot be claimed for the practice merely because the acts do not, in terms, declare that it shall cease when the occasion for its employment shall have passed away.

The principle that "every law of itself and by its nature, is supposed to be perpetual," applies only when "it contains nothing in its disposition, or in the circumstances attending it, that evidently denotes a contrary intention of the legislator, or that may induce us reasonably to presume that it was only

a temporary ordinance." (*Burlamaqui part* 1, *Ch.* 10, § 14, *subs.* 2.) Such is not the case with respect to these acts. The general language of statutes is constantly restrained to the time, occasion, or purpose for which, upon a fair view of all their provisions taken together, the courts can see the legislature designed to provide. "The most universal and effectual way of discovering the true meaning of a law," *says Mr. Justice* BLACKSTONE, "is by considering the cause which moved the legislator to enact it; for, when this reason ceases, the law itself ought likewise to cease with it." (1 *Com., p.* 61.) Lord Mansfield, when urged to expound, as if it were without limit, a statute which was general in its terms, replied: "If there is no express exception there is one implied from the nature and reason of the thing." (*Alway* v. *Burrows*, 1 *Douglas R.*, 264.) See, also, *Main* v. *Prosser*, 1 *John's Cases, p.* 130—*Judge Denio's notes to his Reports, vol.* 3, *p.* 84.

It is undoubtedly true that the very words employed by the legislature itself, are the primary guide to the legislative intent. It is equally true that when the legislature plainly, and by words which admit of no reasonable doubt, *express* a particular intent, there is no room for interpretation; and courts are bound to hold that such intent existed. No departure from these principles need be advocated; for of the acts in question, the most that can be asserted is, that they use general words and are silent in respect to the duration of the practice which they introduced. This is the precise case which invites interpretation. On the point of duration no particular intent is directly expressed by the legislature; and, therefore, it is the province of the judiciary to ascertain and declare the will of the law-making power. For this purpose, the courts will weigh every indication found in the acts themselves, and carefully consider all such external matters as, by the general principles of interpretation, are allowable aids in the inquiry.

Very grave mischief would necessarily attend the execu-

tion of such a system at any time. Public hostilities might induce or compel a government to disregard this consideration; but the return of peace takes away all the license that springs from war.

Between treating these acts as intended to establish a permanent policy to govern for all time within the prescribed territory, or as merely designed to subject that territory to be thus harshly dealt with for some limited period immediately succeeding the actual close of hostilities, it might be difficult to choose. If we were compelled to make a distinction, perhaps the latter would not be preferred.

When executive agents are allowed by law to seize and appropriate private property without judicial process or judicial supervision, they soon fall into a habit which is utterly subversive of justice. They regard themselves as holding not a special commission, but a general warrant. Every magina-ble claim that might possibly exist in favor of the government, is deemed to be within their cognizance, and, therefore, summarily enforcible. Even in time of profound and long-established peace, when the courts are open and free to every suitor, the individual who might be thus despoiled of his property, would be much embarrassed in his search for a remedy. Under a law which was itself valid and constitutional, and which, like that under review, purported absolutely to sanction the seizure and sale, leaving the owner without a judicial remedy, the administration could scarcely fail to become rapacious and tyrannical.

What would be the character and tendency of such a law, if designed to continue in force only for a limited period after the termination of existing hostilities? It would bear a certain resemblance to the practice of those barbarian warriors of former times, who delivered over to be sacked and plundered by their followers, the territories which they had conquered; but greater evils would result from it. Ancient