

CONFISCATED PROPERTY.

S P E E C H

OF

HON. F. E. WOODBRIDGE,

IN THE

HOUSE OF REPRESENTATIVES, FEB. 4, 1864,

ON THE

*Joint Resolution to amend the act to suppress insurrection, to
punish treason and rebellion, to seize and confiscate
property of rebels, and for other purposes.*

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1864.

SPEECH OF HON. F. E. WOODBRIDGE.

Mr. SPEAKER, I had not intended to occupy the time of the House in discussing the subject now under consideration, but as the debate has assumed proportions which I did not anticipate, and as I am a member of the committee which reported the joint resolution, it is due to myself, as briefly as I may, to express the views which control my action. I shall treat the confiscation act, so far as legislation is concerned, as "*res adjudicata*." The various questions arising under it, upon which the best minds of the last Congress honestly differed, will doubtless, when the proper occasion arises, receive a judicial construction from the highest legal tribunal in the land.

Admitting confiscation to be the settled policy of the country, and the confiscation act to be the law of the land, I shall direct my remarks to the point as to how far the property of the rebels may be taken under it, and whether there is any constitutional objection to enforcing its provisions to the extent claimed by its friends.

Respecting the rebellious States, two extreme grounds seem to have been taken. First, that they are still in the Union, with all their former rights not impaired, but temporarily suspended by violence and wicked rebellion, and that upon its suppression all these rights again vest. Second, that they are out of the Union, having forfeited, by solemn renunciation of their obligations to the Federal Government and war upon it, all claim to the rights and privileges accorded to them by the Constitution, and hence are to be treated as alien enemies. I confess sir, that with my present views, I am inclined, as between the two, to adopt the first position, with important modifications.

I am accustomed to listen to the distinguished and experienced gentleman from Penn. [Mr. STEVENS] with the greatest interest, and always distrust myself when I differ from him; but, sir, when admit the rebellious States to be belligerents and alien enemies, the war assumes an aspect and is controlled by laws and principles which I do not propose to extend to rebels in arms. As alien enemies, they are to be treated under the law of nations, and no municipal regulation or law of ours can affect their status either as to person or property; or in other words it can neither add to nor detract from their rights as established by the law of nations. When we concede them to be alien enemies, we concede the territory which they occupy to be alien territory. By force of arms we may occupy it, but by occupancy we do not divest the title to the realty except so far as it may rest in the public. Suppose we were at war with Great Britain, and marched our armies into Canada. By the law of nations we may occupy and use their lands for the convenience and comfort of our armies, or we may use or take away, subject to our own municipal regulations, whatever personalty we may capture; but could we divest, under the law of nations, the title to the realty? I think not; and hence if we treat the rebels as alien enemies, the confiscation act is unnecessary.

Are the rebels alien enemies? If the rebellious States are *de jure* out of the Union, they may be. If the rebellious States are in the Union, they cannot be. The position of the South, so far as the character of the war is concerned, depends, in my judgment, upon the solution of a single question. Can a State, either by an ordinance of secession or by the uprising of the people, take itself out of the Union? I do not consider it necessary to discuss this point to loyal and intelligent gentlemen. Upon the other hand, if we adopt the view that the rebellious States have not dissolved their allegiance to and connection with the Union, then a confiscation law is not only wise but may be legally enforced. Treat the rebels as rebels, and the war as a rebellion, and the confiscation act as a municipal regulation is effective, and effective upon the ground that it operates upon the property of those who have wickedly renounced and opposed by arms the Government to which they owe allegiance. Treat them as alien enemies, and the war as a contest between nations, and the element of allegiance drops out, and the law of nations alone is applicable to the conflict. The municipal regulations of neither one side or the other can change the status or condition of either person or property.

Now, sir, the confiscation act proceeds upon the distinct ground that the war is a rebellion, and that those engaged in it are rebels. The first section provides that every person who shall commit the crime of treason against the United States, and shall be adjudged guilty thereof, shall suffer death, and all his slaves, if any, shall be declared and made free; or, at the discretion of the court, he shall be imprisoned for not less than five years, and fined not less than ten thousand dollars, and all his slaves be declared free; and that said fine shall be levied and collected on the property, real and personal, excluding slaves of which the person was the owner when the crime was committed.

The second section provides 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 engage in or give aid or comfort to any such existing rebellion or insurrection, and be convicted thereof, he shall be punished by imprisonment for a period not exceeding ten years, or by fine not exceeding ten thousand dollars, or both of said punishments.

Section five—and the objections from the other side are mainly to this section—provides that, to insure the speedy termination of the present rebellion, property may be seized by the President in certain cases without trial and conviction of the owner, and applied for the support of the army, after condemnation as provided in the subsequent sections of the act. Thus the whole bill is based upon the fact that the war is a rebellion, and the penalties are against those engaged in it as rebels and because they are rebels.

Now, sir, let us for a moment examine the arguments used by gentlemen upon the other side of the House against the constitutionality of the law.

It is said that the law is unconstitutional because it takes the real estate of persons engaged in a war against the Government and forfeits it in fee; that the persons are *de facto* and *de jure* traitors; that their acts constitute the crime of treason as defined by law; and that by the provisions of the Constitution no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attainted. The answer is, there is no attainder of treason under the law. What is an attainder? There never has been such a thing in this country. In England it was the necessary incident to and consequence of conviction and judgment for treason, and carried with it corruption of blood, whereby the descendant of the felon could not inherit through the guilty ancestor, and forfeiture in fee not only of the real estate which the felon owned in perpetuity, but also that which he held in entail. The forfeiture for an attainder of treason is not involved in the confiscation law.

As a punishment for treason *per se* there is no forfeiture of estate, for in 1790 Congress expressly declared that there should be no corruption of blood or any forfeiture of estate.

Now, the confiscation act simply declares that whosoever shall commit the crime of treason and be adjudged guilty thereof shall suffer death and forfeit his slaves, or be imprisoned and fined not less than ten thousand dollars. It also declares that any person setting on foot any rebellion or insurrection, or who shall give aid or comfort to any person engaged in any rebellion or insurrection, shall, upon conviction, be imprisoned, fined, and forfeit his slaves.

I do not understand that it is contended that slaves, personal chattels, may not be forfeited absolutely, as it is doubtless the law, as stated by the gentleman from Pennsylvania, that the forfeiture of personal property for an hour is a forfeiture forever. Certainly Congress has power to declare what shall constitute treason, and what the punishment shall be. Under the law of the last Congress one portion of the punishment was, a fine of not less than ten thousand dollars, to be levied and collected upon the estate of the offender, both real and personal. As there is no provision of the Constitution which by any construction can render such punishment illegal, it necessarily follows that by indirection Congress can work an absolute forfeiture of all the real estate of the convicted offender, while as a direct measure, if the gentlemen on the other side are correct, it can only forfeit a life interest. To a practical man this is rather absurd.

The great difficulty, however, upon the other side of the House seems to rest in the fifth section. Under this section the forfeiture is not a penalty for the crime of treason, inasmuch as the section does not provide for a conviction of treason, and without conviction there can be no punishment. It merely provides for the seizure of the estate of certain persons, who as citizens of the United States, have assumed to throw off their allegiance to the Government, and by force of arms seek to destroy it.

Is this seizure lawful? In my judgment, under all the circumstances, it is. By

natural law, which is the only law by which individual rights are governed before men form themselves into organized societies, there is no such thing as the right of property in real estate. A person can only own and enjoy what he occupies, and hence he is under the protection of no law except the law of force. When, for the sake of mutual protection, men form themselves into societies and organized governments those natural rights are abandoned, and obligation to Government is assumed and protection from Government guaranteed, both as to person and property. When our Constitution was established it was not done by states as such. Its preamble is "We, the people of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America." Now, under this Constitution and what the Government based upon it, what were the rights and duties of the citizen, and what were the power and duty of the Government? The duty of the citizen was *Allegiance*, and upon the performance of that duty rested his right to protection. The duty of the Government was to extend to the citizen protection both to person and property, and that obligation was only imposed by virtue of the allegiance of the citizen. The duty of the Government and the obligation of the citizen are mutual. Whenever the citizen disregards his obligation, throws off his allegiance, and thrusts the assassin's dagger at the heart of the Government, he not only commits the highest crime, but, forever absolves the Government from the duty of extending its protection either to his person or property.

The rebels in arms are in this position. They have broken the compact, and it is the right and duty of Congress to authorize the seizure of their persons and property; to restrain their persons and to appropriate their property, not as a forfeiture for treason *per se*, but as an exercise of a just and sovereign power over a rebellious subject; and this in accordance with paramour law. Hence, in my judgment, the confiscation act can be administered without involving the great constitutional question about which we have heard so much said and read respecting the forfeiture in fee of real estate upon an attainder of treason. As I have before said, there is no such thing known to our law as an attainder. By the common law attainder was a necessary incident to conviction of treason, and declares what its punishment shall be. There are no attendant effects to the judgment beyond the prescribed penalty. There is neither corruption of blood nor judgment of treason. In this country Congress determines what constitutes the forfeiture. Whether Congress, as a punishment for treason, can forfeit the real estate of the offender in fee is another question. The authority quoted from one of the articles of Mr. Madison, in the *Federalist*, does not settle the point either way. It merely asserts that Congress is restrained in punishing treason from extending the consequences of guilt beyond the person of its author; or, in other words, that punishment for treason does not work corruption of blood, or forfeiture of interests in property, except so far as those interests pertain to the person of the offender. Mr. Justice Story—whose memory I hold in the profoundest reverence—seems to go further, and his language would naturally enough indicate that, as a punishment for treason, there can be no forfeiture of estate beyond the life of the offender. I have ever admired the juridical scholarship of Mr. Justice Story, and been accustomed to receive his opinions with the greatest respect. If, however, his reasoning upon this subject—which, to say the least is somewhat desultory and unsatisfactory—will only bear the construction which the gentlemen upon the other side give it, I must with great humility disagree with the learned commentator.

The Constitution is to be construed in accordance with the intention of its framers, and that intention may be determined to some extent by an examination of history contemporaneous with the adoption of the Constitution. Our fathers were striking out upon a system entirely different, in most respects, from that of England. They had seen the effect of bills of attainder, and hence wisely provided that no bills of attainder or *ex post facto* laws should be passed by Congress. They had seen the effect of attainder of treason under the common law, whereby corruption of blood was worked and inheritable qualities destroyed. Hence they provided that upon an attainder of treason there should be no corruption of blood. They had seen interests in the realty, absolutely vested in the innocent descendant, forever taken in fee upon the attainder of the ancestor. Estates in England were held generally by virtue of feudal grants from the Crown, and each tenant held only a life estate, and hence corruption of blood was necessary, as a consequence of an attainder of treason, to destroy the entail, and revert the title in the Crown. Otherwise the heir would inherit, for in entailed estates there is an interest *in esse* in the remainder-man during the life of an ancestor; an interest that may be legally encumbered by way of mortgage.

In this country at the time of the Revolution and the adoption of the Constitution, entailed estates abounded, and the Constitution leaves it wholly to the several States to regulate the descent of property and to allow or prohibit entails; and they now exist, probably in large numbers, in the States, limited by law to terms of years, or the lives of persons in being when created; but still entailed estates, where one person has the life interest and another the remainder; and the Constitution undoubtedly provides against legislation which shall deprive innocent persons of their legal rights *in esse* for the crime of an ancestor through the doctrine of corruption of blood. But *nemo est hæres viventis*; and because the conviction of the tenant in tail shall not work injury to the remainder-man through corruption of blood, can it be said that treason may not be punished by depriving the convicted person of that property which belongs solely to him, to which no one else during his life has any legal claim, and that he is to be permitted before he mounts the scaffold to dispose of it for the furtherance of the very cause for engaging in which we deprive him of life? Could the fathers have gravely discussed this question of forfeiture and inserted in the Constitution the mere shadow without a particle of substance? Did they mean that for the highest crime known to the law, the forfeiture should attach only long enough for the convicted felon to be transported from the prison to the scaffold? No, sir, our fathers never were cheated by shadows, or grasped at straws. They meant something by the insertion of this clause. Forfeiture was to have some practical operation as a punishment for treason. If so, the forfeiture was intended to operate upon the interest of the offender in whatever estate he possessed, and upon the whole of that interest and nothing more; and wisely and humanely, contrary to the English law, it was not intended to operate upon an interest *in esse*—a vested interest in an innocent descendant to the property in possession of the convicted traitor by virtue of an heirship which the ancestor himself could neither divest nor affect. In other words, the forfeiture could not operate upon any title or interest not resting in the person attainted; and this, in my judgment, is all that was intended by the clause “for forfeiture beyond the life of the person attainted.”

The tears which we have seen shed here in behalf of innocent heirs are crocodile tears; tears like those of the play-actors on the boards, got up for the occasion, for effect; always bottled and ready for use. No more like the tears which flow from the true fountain than the muddy waters of the Potomac are like the waters of the crystal brooks, which leap from the mountains of my own noble State. Suppose the innocent little children do suffer in estate? Suffering is the consequence of crime. There is an authority upon this point. I hope the gentlemen upon the other side will recognize it and be comforted thereby. It is older and higher than Blackstone, or Mamsfield, or Marshall, or Story; more potent than the edict of kings or the judgment of courts. It is the authority of God himself, who says to those who rebel against His government and bow down to and serve other gods:

“I the Lord thy God am a jealous God, visiting the iniquity of the fathers upon the children unto the third and fourth generations of them that hate me; and showing mercy unto thousands of them that love me, and keep my commandments.”

So much, sir, in regard to forfeiture. Sir, I do not wish to be misunderstood. I have taken the ground that as the right of secession does not exist, no State can take itself out of the Union, either by ordinance of secession passed in convention or by the uprising of the people in rebellion. Such, as I understand, is the position taken by the gentleman from Kentucky, [Mr. YEAMAN,] who addressed the House in a labored and polished argument a few days since, upon certain joint resolutions introduced by him, and still undisposed of. While I admire the argument of the accomplished gentleman as tasteful and replete with the subtle refinements of the schools, I cannot agree with his conclusions as being either necessary or logical.

If I understood the honorable gentleman, he contended that a State cannot secede. I agree with him. He then contended that inasmuch as a State cannot secede she may at any time, although she is *de facto* and not *de jure* out of the Union, come back into the family of States with her old constitution and institutions, and that Congress is bound to receive her. Upon this point I take issue with the gentleman from Kentucky. This may not be the time to discuss this question. When the proper occasion arises I may submit my views upon the subject.

Sir, there is no one upon this floor who deprecates this unhappy and unhallowed war more than I do. There is no one who desires peace more than I do; but, sir, that peace must be an honorable peace, and based upon principles consonant with the integrity, the honor, and the purposes of a free Government. Slavery caused the war, and it is to protect it that the war is continued by the rebels. When the Constitution is

was framed slavery existed, inherited from our mother who now in the day of our trial claims to stand with folded arms an indifferent spectator of a war upon the issue of which depends the progress of Christian civilization more intimately than upon any or all the conflicts and struggles of all the centuries. Our fathers supposed that this great evil would gradually melt away before an advancing civilization as the snows of a northern winter before the genial rays of an April sun. But the evil grew. Agencies arose which stimulated it until it became a monster "whose tread made the continent shake." The invention of the cotton-gin gave a stimulus to the production of cotton, and the adaptation of the climate and soil of the South to the production of this leading staple of the world increased the demand for labor. "More laborers," was the cry, and whole States, Virginia, the mother of Presidents, leading the rest, gave themselves to supplying the market. "More land," was the cry; and Texas was thrown to the insatiable leech. The free North stood back aghast as this crowned and unclean leper, under the claimed sanction of the Constitution, marched to its new domain.—The institution which our fathers had looked upon as an evil had become divine. It occupied the bench, it controlled the Administration, it struck down Senators in the Halls of Congress, it cajoled and flattered and threatened and lied, till its all-absorbing maw swallowed Congress itself. The intelligence and moral sense of the nation were against it. The wealth of the nation was against it. The popular vote of the nation, when uncontrolled by demagogues and doughfaces, was against it. In God's good time the people, seeing the administration of their Government was a cheat, arose in their majesty. The weak and pliant Buchanan, the pilfering Floyd, the cultured but traitorous Davis, were hurled from power, and an honest man, the noblest work of God, placed in the presidential chair. The propagandists of slavery, like their great prototypes, deeming it better to rule in hell than serve in heaven, rebelled. To them alone belongs the responsibility. To them alone should attach the consequences of their awful crime.

The gentlemen upon the other side, in words whose persuasive sweetness might almost raise mortals to the skies or bring angels down, call for peace and restoration of "the Union as it was." Sir, let them restore the crumbled walls of Sumter surmounted by our starry banners; let them call from its depths to the surface of the James, the Cumberland and her gallant crew who went down with their proud flag still flying; let them revivify the scores of thousands whose martyr forms consecrate the hundred battle-fields of this contest, and whose blood has given our land in holiest baptism to freedom henceforth forever; let them give us back our Winthrop and Lyon and Stevens and Kearney and Richardson and Reno and the comrades who with them "sleep their last sleep and have fought their last battle," let them summon back to our Senate Halls the moldering dust that once was Baker, the noble heart and eloquent tongue now stilled forever; let them hush the grief that fills our land for the loss of those who died that our country might live—grief that proudly mourns and asks no sympathy from traitorous hearts; let them rebuke the gaunt demon of famine now stalking with his triumphal train of woes throughout the South; let them change the stars in their courses, and turn back the hands upon the dial-plate of time, and obliterate the bloody record of the past three years. Then, sir, they can have peace and the Union as it was—a peace which the North would never break. When they shall have done all this, then "may the dog return to his vomit and the sow to her wallowing in the mire." But never until then, sir, shall the crack of the slave-whip again make sweet music in their ears.

Sir, the gentlemen are the Bourbons of our country—they learn nothing and forget nothing. But,

"There's a divinity that shapes our ends,
Rough-hew them how we will."

And has there not been, sir—and I quote from another—a divine purpose controlling all the political and military phases of this conflict; snatching from us victories; granting successes; forcing us at last by the gigantic proportions of this revolt, to shear it of its strength in pronouncing a doom upon its cherished institution and arming against them those of their own household; in frustrating our military campaigns that in the delay public sentiment might conform to the ever-changing condition of things, that slavery by the ravages of war might more effectually be extirpated? Can a man with clear-eyed vision, with reverence in his soul, with a belief within him in the righteousness of Jehovah, fail to read that purpose—the *extinction of slavery*?

Sir, I was greatly, delighted with the beautiful apostrophe to our Union pronounced yesterday by the gentleman from Kentucky. It is, indeed, the palladium of our liberty, the only ark of our safety; and it will stand. Let no loyal heart be discouraged. The

lines of the rebellion are already greatly circumscribed. Its means are already greatly crippled. Its hopes of foreign aid are destroyed. Let the people who love the Union and freedom still stand by the old flag, and not a single star shall be blotted out. Star after star shall be added to the constellation, until it culminates in one splendid galaxy spanning the free continent of North America.

Sir, I have been astonished at the spirit evinced by certain gentlemen upon the other side against the Administration which is so earnestly endeavoring to put down this rebellion. While they proclaim that they would prosecute the war, they seem quite indisposed to sustain the measures of the Administration or of Congress by which alone the war can be carried on. Distinguished gentlemen from Ohio—I learn from the remarks of my friend from Ohio upon this side of the House—who now prate their patriotism so loudly, are fresh from the support of Vallandigham in the recent gubernatorial controversy in that State. If so, sir, we must somewhat distrust them, for I cannot be charitable enough to believe that, like poor dog Tray, they were only caught in very bad company. Sir, had it not been for the Vallandighams of the North, the rebellion, if inaugurated at all, would never have assumed its gigantic proportions. The traitors of the North have held up the hands of the rebels at the South, and, like poor and despised Vallandigham, by the verdict of a loyal people they will receive their reward. Vallandigham, now without a Government, without a home, friendless and alone, seeks the shelter of a foreign land; and future history will write his name among the Arnolds and Burrs of his country.

The gentleman from New York [Mr. F. Wood] a few days since delivered a most remarkable speech. Its only virtue, in my judgment, was its frankness, and hereafter loyal people will have no doubt as to where the gentleman's sympathies are. He quotes liberally from Burke and Chatham, those immortal English statesmen who always defended the people against the encroachments of the Crown, and applies the quotations to the present rebellion. Is the gentleman honest or is he blinded? Can he see no distinction between that great and manly struggle for independence involving the right of self-government and free institutions, and this rebellion which seeks to overthrow and destroy them both? Can he see no distinction between a people rising in arms who are taxed without representation, who are humiliated and oppressed by unjust decrees and ordinances and regulations, and a people rising in rebellion against the most beneficent Government on earth? Sir, I do not wonder that he is the representative of a city which required forty thousand national troops to protect it from the violence and rapine of his own constituency and the peculiar friends of the Union-loving Governor of the State of New York.

The unjust and unwarrantable assertion of the gentleman from New York [Mr. F. Wood,] respecting New England merits and meets my hearty contempt. New England needs no vindication from the aspersions of the defenders of treason, or the advocates of human bondage. Her "airy bulwark in the cedar's top, and dallies with the wind, and scorns the sun." Her soil is made sacred by the first blood of the Revolution. Liberty was first cradled upon her bosom, and the history of her sons is written upon a scroll which I apprehend the gentleman will never reach. Hers was the first martyr of this godless rebellion, and she will stand in the front ranks, with all her men and all her money, until this Government shall be restored and the old flag shall float in triumph over our entire Union, redeemed, regenerated, and disenthralled from the curse of American slavery. It is impossible to foresee what effect the teachings of such gentlemen may have upon the passions of men. Before to-day, the clouds of secession have lowered over our land. Before to-day liberty-loving New England has been treated with contumely and scorn. Before to-day has the old Bay State, the mother of New England and the mother of freedom, been unjustly assailed. But there she stands, as she stood more than thirty years ago, when the immortal Webster, in his reply to Mr. Hayne, said, "There is her history. The world knows it by heart. The past, at least, is secure. There are Boston and Lexington and Concord and Bunker Hill, and there they will remain forever. The bones of her sons, fallen in the great struggle for independence, now lie mingled with soil of every State from New England to Georgia, and there they will remain forever. And, sir, where American liberty raised its first voice where youth was nurtured and sustained, there it still lives in the strength of its manhood and full of its original spirit. If discord and disunion shall wound it; if party strife and blind ambition shall hawk at and tear it; if folly and madness, if uneasiness under necessary and salutary restraint shall succeed in separating it from that Union by which alone its existence is made sure, it will stand in the end by the side of that cradle in which its infancy was rocked, and will fall at last, if fall it must, amidst the proudest monuments of its own glory on the very spot of its origin."