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5-7-1864

## Santa Fe Gazette, 05-07-1864

Hezekiah S. Johnson

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# SANTA FE GAZETTE.

VOLUME V.

SANTA FE, NEW MEXICO, MAY 7, 1864.

(NUMBER 47 NEW SERIES)

## PROPOSALS.

QUANTMASTER'S OFFICE:  
Santa Fe, N. M. April 23, 1864.

SEALD PROPOSALS will be received at this office until 12 M. on Wednesday the 24th day of May, 1864, for the transportation of Military supplies in the Department of New Mexico, during the year, commencing June 20, 1864, and ending May 20, 1865, viz:  
From Fort Union, or such other Depot, as may be established in the Territory of New Mexico, to any posts or stations that are or may be established in this Territory, and to such points and stations as may be designated and established in the Territory of Arizona and the State of Texas, west of longitude 100° west.  
Bidders to state the rate per 100 pounds per 100 miles at which they will transport said stores in each month.  
The weight to be transported will not exceed 5,000,000 pounds.  
No additional percentage will be allowed for the transportation of Hides, Hare Hides, Fine Lambs, or any other stores.  
Bidders must give their names in full, as well as their place of residence; and each proposal must be accompanied by a bond in the sum of Ten thousand dollars, signed by two or more responsible persons, guaranteeing that in case the contract is awarded to the bidder proposing, the contract will be accepted and carried out, and goods and supplies securely transported by such parties in accordance with the terms of this advertisement.  
Two good and responsible subscribers in the sum of forty thousand dollars each, will be required as security for the faithful fulfillment of the contract. The names of these subscribers must accompany the bid.  
Satisfactory evidence of the loyalty and advocacy of each bidder, and a permit signed as aforesaid will be required.  
Proposals will not be received for the transportation of less than 1,000,000 pounds of freight, from one and the same bidder.  
Separate proposals will be received for the transportation of stores in all points east of the Rio Grande del Norte, and also to all points west of that river.  
Proposals must be enclosed "Proposals for Army Transportation in New Mexico," and some will be returned, unless fully complied with all the requirements of this advertisement.  
Parties to whom awards are made must be prepared to commence to execute the contract by the 1st day of June, 1864, and to give the required bonds for the execution of the same.  
Contracts will be made subject to the approval of the Quartermaster General, but the right is reserved to reject any bid at all times that may be offered.  
Contractors must be in readiness for service by the 10th day of June, 1864, and will be required to have a place of business or agency, at Fort Union and other depots that may be established at which they may be communicated with promptly and readily.  
J. C. MURPHY,  
Major and Q. M.

DAVID V. WHITING      MIGUEL A. OTERO

NEW YORK,                      KANSAS CITY.

WHITING & OTERO.

FORWARDING AND COMMISSION  
MERCHANTS.

NEW YORK CITY AND KANSAS CITY, Mo.

Will make purchases, OF GOODS, in the Eastern Cities, at the lowest market rates.  
Their knowledge of the general trade and market enables them to secure the best quality of goods at the lowest prices, and to forward them with the greatest promptness and safety.  
They will receive and forward from Kansas City, to their destination, any goods that may be consigned to their care.

NEW MEXICAN WOOD, HICKS, PINE, &c., &c.

REGISTERED AND SOLD AT WHOLESALE RATES.

NEW YORK CITY,                      WHITING & OTERO,  
KANSAS CITY,                      May 1, 1864

1864, HARDWARE, 1864.

RICHARDS & CHAMBERLIN

DEALERS IN

HARDWARE & IRON

Plows, Hoos, Spades,

Sheep Shears, Pad Locks,

Said Irons, Frying Pans, &c. &c.

The attention of the trade to our complete stock of British and Continental Goods.

RICHARDS & CHAMBERLIN

No. 59, Delaware Street,

LEAVENWORTH, KANSAS.

No. 27, 17.

THOS. CARNEY THOS. C. STEVENS

CARNEY & STEVENS,

WHOLESALE GROCERS,

Corner Delaware St. & Lovee,

LEAVENWORTH, KANSAS.

No. 27, 17.

WILSON & HASTINGS,

Wholesale and Retail Dealers in Foreign and Domestic

HARDWARE,

IRON, STEEL,

Nails, Circular Saws,

Corn Mills, Plows, Cultivators,

GUM PACKING, BELTING, &c.

A suitable Stock for the New Mexican Trade.

No. 23 DELAWARE ST.                      LEAVENWORTH, KANSAS.

No. 27, 17.

C. D. BRACE,                      A. L. BAKER.

BRACE & BAKER,

Wholesale Dealers in American and Foreign

HARDWARE

OF EVERY DESCRIPTION.

Plows, Mowing Machines, Saws, Hoos and goods especially adapted to the Trade of New Mexico, constantly on hand.

No. 31 Delaware Street,

Between Second and Third Streets,

LEAVENWORTH, KANSAS.

No. 27, 17.

STETTAUER & BRO.,

JOURNALERS IN PAINT AND WAXES

DRY GOODS, CLOTHING

BOOTS, SHOES, HATS AND CAPS.

No. 17 Delaware Street, No. 17.

South Side, bet. Main and Second,

LEAVENWORTH, KANSAS.

R. H. TOMPKINS.

ATTORNEY AT LAW.

SANTA FE, N. M.

Special and prompt attention will be given to all business in the line of his profession that may be entrusted to him. No. 25, 17.

SANTA FE HOTEL

AND

RESTAURANT,

South-west corner of the Plaza

In the Two Story House of Pera & Co.

GEO. HUTH, Proprietor.

No. 25, 17.

## SANTA FE GAZETTE.

"Independent in all things, Neutral in nothing."

JAMES L. COLLINS,  
Editor and Proprietor.

SANTA FE, SATURDAY MAY 7, 1864.

### SUBSCRIPTIONS:

Payable in advance without exception:  
For one year ..... \$ 2.50  
For six months ..... 1.50  
For three months ..... 1.00  
Single copies ..... 10

### Military Arrests

IN

TIME OF WAR

BY

WILLIAM WHITING.

The people of America, educated to make their own laws, and to respect and abide by them, having made great sacrifices in olden times to acquire and maintain civil liberty under the law, and holding the rights of every citizen, however humble, as sacred as the rights of a sovereign, accustomed to an almost uninterrupted tranquility, and to the full enjoyment of the rights guaranteed by our Constitution and laws to citizens in time of peace, have been suddenly thrown into a new and startling position. The same Constitution which has guarded their rights in peace is now suddenly wheeled round for their protection against their former associates, who have become public enemies. A safeguard to its friends, it is an engine of destruction to its foes. Can it be wondered at that the sudden transition from their accustomed personal liberty to the stern restrictions imperatively required by the necessities of public safety, in time of civil war, should have found many intelligent and patriotic men, unprepared for this great change, alarmed by its consequences, and fearful that civil liberty itself might go down by military usurpation?

### ARRESTS IN LOYAL STATES REGARDING WITH ALIENS.

The arrest by military authority of enemies who are still left in the loyal States, and who are actually committing, or who entertain the will and intention to commit, hostile acts tending to obstruct, impede, or destroy the military operations of the army or navy, and the detention of such persons for the purpose of preventing hostilities, has been looked upon with alarm.

### RIGHT OF FREEDOM FROM ARREST CLAIMED BY PUBLIC ENEMIES.

And it has happened that loyal and peaceful citizens have in some instances made the mistake of setting up unjustifiable claims in behalf of public enemies, and of asserting for them the privilege of freedom from military arrest or of discharge from imprisonment. Citizens, meaning to be loyal, have thus aided the public enemy by striving to prevent the military power of the government from temporarily restraining persons who were acting in open hostility to the country in time of war.

### CIVIL WAR CHANGES OUR LIBERTIES.

In time of civil war every citizen must needs be curtailed of some of his accustomed privileges.

The soldier and sailor give up most of their personal liberty to the will and order of their commanding officers.

The person capable of bearing arms may be enrolled in the forces of the United States, and is liable to be made a soldier.

Our property is liable to be diminished by unusual taxes, or wholly appropriated to public use, or to be destroyed on the approach of an enemy.

Trade, intercourse, the uses to which it is usually lawful to put property of all kinds, are changed by war.

No civil, municipal, constitutional or international right is unchanged by the intervention of war.

Shall the person who is disloyal or hostile to the government and country complain that his privileges are also modified in order to protect the country from his own misconduct?

### GENERAL WAR POWERS OF THE PRESIDENT.

Some remarks on the general war powers of the President being essential to an explanation of the subject of military arrests, it has been found most convenient to reprint from a former treatise the following extracts on that subject:

"It is not intended (in this chapter, Chapter III "War Powers of the President, &c.," pages 52, 53, seventh edition,) to explain the general war powers of the President. They are principally contained in the Constitution, Art. II, Sect. 1, Cl. 1 and 7; Sect. 2, Cl. 1; Sect. 3, Cl. 1; and in Sect. 1, Cl. 1, and by necessary implication in Art. I, Sect. 9, Cl. 2. By Art. II, Sect. 2, the President is made commander-in-chief of the army and navy of the United States, and of the militia of the several States when called into the service of the United States. This clause gives ample powers of war to the President, when the army and navy are lawfully in "actual service." His military authority is supreme, under the Constitution, while governing and regulating the land and naval forces, and treating

captures on land and water in accordance with such rules as Congress may have passed in pursuance of Art. I, Sect. 8, Cl. 11, 14. Congress may effectually control the military power, by refusing to vote supplies, or to raise troops, and by impeachment of the President; but for the military movements, and measures essential to overcome the enemy—for the general conduct of the war—the President is responsible to, and controlled, by no other department of government. His duty is to uphold the Constitution and enforce the laws, and to respect whatever rights loyal citizens are entitled to enjoy in time of civil war, to the fullest extent that may be consistent with the performance of the military duty imposed on him. (The effect of a state of war, in changing or modifying civil rights, is explained in the "War Powers of the President," &c.)

"What is the extent of the military power of the President over the persons and property of citizens at a distance from the seat of war—whether he or the War Department may lawfully order the arrest of citizens in loyal States on reasonable proof that they are either enemies or aiding the enemy; or that they are spies or emissaries of rebels sent to gain information for their use, or to discourage enlistments; whether martial law may be extended over such places as the commander deems it necessary to guard, even though distant from any battle field, in order to enable him to prosecute the war effectually; whether the writ of *habeas corpus* may be suspended, as to persons under military arrest, by the President, or only by Congress, (on which point judges of the United States courts disagree); whether, in time of war, all citizens are liable to military arrest, on reasonable proof of their aiding or abetting the enemy, or whether they are entitled to practice treason until indicted by some grand jury; thus, for example, whether Jefferson Davis, or General Lee, if found in Boston, could be arrested by military authority and sent to Fort Warren?—Whether, in the midst of wide spread and terrific war, those persons who violate the laws of war and the laws of peace, traitors, spies, emissaries, brigands, bushwhackers, guerrillas, persons in the free States supplying arms and ammunition to the enemy, must all be proceeded against by civil tribunals only, under due forms and precedents of law, by the speedy and intellectual machinery of arrests by marshals, (who can rarely have means of apprehending them,) and of grand juries, (who meet twice a year, and could seldom if ever seasonably secure the evidence on which to indict them?) Whether government is not entitled by military power to punish the traitors and spies, by arrest and imprisonment, from doing the intended mischief, as well as to punish them after it is done?—Whether war can be carried on successfully, without the power to save the army and navy from being betrayed and destroyed, by depriving any citizen temporarily of the power of acting as an enemy, whenever there is reasonable cause to suspect him of being one? Whether these and similar proceedings are, or are not, in violation of any civil rights of citizens under the Constitution, are questions to which the answers depend on the construction given to the war powers of the Executive. Whatever any commander-in-chief, in accordance with the usual practice of carrying on war among civilized nations, may order his army and navy to do, is within the power of the President to order and to execute, because the Constitution, in express terms, gives him the supreme command of both. If he makes war upon a foreign nation, he should be governed by the law of nations; if lawfully engaged in civil war, he may treat his enemies as subjects and as belligerents.

"The Constitution provides that the government and regulation of the land and naval forces, and the treatment of captures, should be according to law; but it imposes, in express terms, no other qualification of the war power of the President. It does not prescribe any territorial limits, within the United States, to which his military operations shall be restricted; nor to which the picket guards or military officers (sometimes called *provost marshals*) shall be confined. It does not exempt any person making war upon the country, or aiding and comforting the enemy, from being captured, or arrested, wherever he may be found, whether within or out of the lines of any division of the army. It does not provide that public enemies, or their abettors, shall find safe asylum in any part of the United States where military power can reach them. It requires the President, as an executive magistrate, in time of peace, to see that the laws existing in time of peace are faithfully executed; and as commander-in-chief, in time of war, to see that the laws of war are executed. In doing both duties he is strictly obeying the Constitution."

### MARTIAL LAW IS THE LAW OF WAR.

It consists of a code of rules and principles regulating the rights, liabilities, and duties, the social, municipal, and international relations in time of war of all persons, whether neutral or belligerent. These rules are liable to modification in the United States by statutes, usually termed "military law," or "articles of war," and the "rules and regulations made in pursuance thereof."

### FOUNDATION OF MARTIAL LAW.

Martial law is founded upon the necessities of social organization. Martial law is founded upon the necessities of war. Whatever compels a resort to war compels the enforcement of the laws of war.

### THE EXTENT OF THE MEANS OF WAR AS SHOWN BY THE NECESSITIES OF WAR, AND ITS OBJECTS.

The objects and purposes for which war is inaugurated required the use of the instrumentsalities of war.

When the law of force is appealed to, force must be sufficiently untrammelled to be effectual. Military power must not be restrained from reaching the public enemy in all localities, under all disguises. In war there should be no asylum for treason.—Theegis of law should not cover a traitor.

A public enemy, wherever he may be found, may, if he resists, be killed, or captured, and if captured he may be detained as a prisoner.

The purposes for which war is carried on may and must be accomplished. If it is justifiable to commence and continue war, then it is justifiable to extend the operations of war until they shall have completely attained the end for which it was commenced, by the use of all means employed in accordance with the rules of civilized warfare.

And among those means none are more familiar or more essential than that of capturing, or arresting, and confining the enemy. Necessity arbitrates the rights and the methods of war. Whatever hostile military act is essential to public safety in civil war is lawful.

### POWERS AND RESPONSIBILITIES OF MILITARY COMMANDERS.

"The law of nature and of nations gives to belligerents the right to employ such force as may be necessary in order to obtain the subject for which the war was undertaken." Beyond this the use of force is unlawful. This necessity forms the limit of hostile operations.

We have the same rights of war against the co-allies or associates of an enemy as against the principal belligerent.

When military forces are called into service for the purpose of securing the public safety, they may lawfully obey military orders made by their superior officers. The commander in chief is responsible for the mode of carrying on war: He determines the persons or people against whom his forces shall be used. He alone is constituted the judge of the nature of the exigency, of the appropriate means to meet it, and of the hostile character or purposes of individuals whose conduct gives him cause to believe them public enemies.

His right to seize, capture, detain, and imprison such persons is as unquestionable as his right to carry on war. The extent of the danger he is to provide against must be determined by him; he is responsible, if he neglects to use the means of meeting or avoiding it.

The nature of the difficulty to be met and the object to be accomplished afford the true measure and limit of the use of military powers. The military commander must judge who the public enemy are, where they are, what degree of force shall be used against them, and what warlike measures are best suited to conquer the enemy or restrain him from future mischief. If the enemy be in small force they may be captured by another small force; if the enemy be a single individual, he may be captured by a provost guard or marshal. If an officer in the honest exercise of his duty makes a mistake in arresting a friend instead of an enemy, or in detaining a suspicious person, who may be finally liberated, he is not for such error responsible in criminal or civil courts.

Arrests or captures of persons whose conduct gives reasonable cause of suspicion that they contemplate acts of hostility, are required and justified by military and martial law. Such arrests are precautionary. The detention of such suspected persons by military authority is, for the same reason, necessary and justifiable. (Luther vs. Borden, 7 Howard's Supreme Court Reports, p. 1.)

Nothing in the Constitution or laws can define the possible extent of any military danger. Nothing therefore in either of them can fix or define the extent of power necessary to meet the emergency, to control the military movements of the army, or of any detachments from it, or of any single officer, provost marshal, or private.

Hence it is worse than idle to attempt to law down rules of law defining the territorial limits of military operations, or of martial law, or of captures and arrests.

Wherever danger arises, there should go the military means of defence or safeguard against it. Wherever a single enemy makes his appearance, there he should be arrested and restrained.

### ABUSE OF POWER OF ARREST.

The power of arrest and imprisonment is doubtless liable to abuse. But the liability to abuse does not prove that the power does not exist. "There is no power," says the Supreme Court, that is not susceptible of abuse. The remedy for this as well as for all other official misconduct, if it should occur, is to be found in the Constitution itself. In a free government the danger must be remote, since in addition

(Continued on 4th page.)



SANTA FE GAZETTE.

"Independent in all things, Neutral in nothing."

JAMES L. COLLINS, Editor and Proprietor.

SANTA FE, SATURDAY MAY 7, 1864.

SUBSCRIPTIONS.

Payable in advance without exception; For one year, \$ 2.50 For six months, 1.50 For three months, 1.00 Single copies, 10

CANDIDATE FOR PRESIDENT IN 1864

ABRAHAM LINCOLN.

Hezekiah S. Johnson.

The Editor of the Rio Abajo Press not content with moving on in the ever tenor of his Editorial way, for several months past has been developing himself in quite a censorious and pugnacious manner. In fact when he seats himself upon his Editorial Tripod and begins to squeeze his exhausted intellect for a little editorial with which to fill his mighty and ponderous sheet, fancies himself monarch of all he surveys and it is positively refreshing to read, the sir oracle leaders emanating from his six by ten thumb paper. Without popularity or influence sufficient to be elected a constable in any township in New Mexico, he was kindly taken up in the county of Bernalillo last year, and by the friends of Col. Francisco Perea who number their majority in that county by hundreds was elected to the Legislative Assembly of New Mexico. He had been in the Legislative Assembly, but a short time before he put himself up for sale to the opposite party, and was duly purchased marked and labelled by Army, Knapp, & Co., for the consideration of the Public Printing to do their dirty work in future. He first begins to draw it mild—to talk about cliques and parties and what rascality they either had done or contemplated doing, and to insinuate in no very modest or equivocal terms that if the light of Heaven had ever fallen upon one honest, patriotic, country loving man, that man was Col. Hezekiah S. Johnson, Editor of the Rio Abajo Press. But it has ever been thus. When a man makes up his mind to desert his old and long tried friends and sell himself to their enemies, for a consideration, no means of denunciation or abuse against his former associates is to gross or revolting in order to excuse or palliate his treason and desertion. Who made the Editor of the Press a Col? The very Governor, he is now hectoring and abusing. Who placed him in the Legislative Assembly and furnished him with the opportunity to sell himself? The friends of Col. Perea whom he is not satisfied with deserting but must slander and abuse. We have been led into these reflections by a remark in the Press of May 3rd 1864 upon the "John Donkeyism" of the Editor of the Gazette. Without attempting to deny our paternity it ought not to be considered strange if we occasionally develop proper instinct by the use of our heels when the necessity is manifest. The Editor of the Press was laboring to make the impression that himself, Lieb, Army and Judge Knapp were all the friends the Administration had in New Mexico, and on the 7th of April 1864 the Editor of the Press very properly placed in his paper a call for a convention of unconditional union men to meet at Albuquerque on Monday the 2d day of May, 1864. The counties were invited to send Delegates to the Convention at Albuquerque to choose Delegates to the National Convention to be held at Baltimore June 7, 1864. When the call was made it was not intended that it should be responded to. It was presumed by the Editor of the Press, that no persons would attend, and that no person would be present except himself from Bernalillo and Judge Knapp from Doña Ana, who after all his fuss and bluster concluded to take a pass like other people and attend to his duty. It was further calculated that the Editor of the Press and Judge Knapp would meet together, nominate Delegates to the National Convention, to misrepresent the wishes and opinions of the people of New Mexico and then come out with a flaming Editorial about the large and respectable convention at Albuquerque, the triumph of the people over cliques and federal officers. Such was the programme but it not infrequently happens that people who start out to forage their neighbor's wool come home sheared. The counties held their conventions, sent their Delegates and when the Delegates arrived, and the Editor and his corporal guard of friends found out that he and his masters would be ignored and their out and dried arrange-

ments knocked into pie, he was suddenly seized with an awful disgust. Notwithstanding in his call he had requested. Delegates to be sent and in numbers equivalent to the representation of each county in the Legislative Assembly, yet he tried to procure the general admission of people in the convention who had never been in any manner selected as Delegates, and failing to do so and not having been selected or thought of as a delegate in his own county, he was taken with a sudden disgust at his convention and left. It would have been a splendid affair if no person had attended to express the sentiments, opinions and wishes of the Union men of New Mexico and the Editor of the press had been permitted to fix up in his honest mode of doing such things the proceedings of the Convention. The main point of all the resolutions would have been, 1st Resolved, that the Territory of New Mexico has for a long time been going, and if it had not have been for the able exertions of Army, Knapp and the Rio Abajo Press, it would have been entirely gone to the Devil. 2nd Resolved, that the only efficient instrument yet discovered with which to redeem regenerate and disenfranchise New Mexico is the brilliant and resplendent rays of patriotism and intelligence spread abroad by the weekly issues of the Rio Abajo Press. 3rd Resolved, that the only judicial light worth noticing which has ever shone from the Bench in New Mexico was born with the advent and will expire with the exit of the illustrious Judge Knapp. Once upon a time a party of supposed gentlemen were amusing themselves with a game of Loo. The stake was considerable, and the temptation to win was too strong for resistance by one of the party, and he quietly secreted first an ace then a king, then a queen to be used when the proper trump should turn. Just as the trump was being turned a neighbor of his who had been watching the operation took from his lap the secreted cards, and placed his own worthless hand in its place. He went in for the pile on his supposed stock of cards, but on seeing his hand, threw it down with disgust, and exclaimed, "gentlemen there is cheating about the board." Hezekiah do you take? Alas poor Hezekiah! after this insignificant fizzle in your first effort to assume the leadership among your new political bed fellows, if the people of New Mexico know themselves, and they think they do, you may as well write on your political tombstone. "If so soon that I am done for I wonder why I was begun for."

DELEGATES TO THE NATIONAL CONVENTION. At the Territorial Convention held in Albuquerque on Monday the 2nd inst for the purpose of appointing Delegates to the National Convention which is to meet in Baltimore on the 7th day of June next, Hon. John S. Watts, Hon. Francisco Perea and Joshua S. Jones Esq. were appointed said Delegates. These gentlemen will make most excellent Delegates and will reflect the sentiment of New Mexico in the Convention as well as any other three men that could have been selected within her wide domain. RETURN.—On Friday of last week His Reverence, Bishop Lamy, returned to Santa Fe after an absence of six months from the city on a visit to the Arizona gold mines and Eastern California. The visit was made with a view to the promotion of the interest of the Church over which he so ably presides. He was welcomed back with great rejoicing among the people.

Head Quarters, Dept. of New Mexico, Santa Fe, N. M., May 1, 1864. General Orders No. 12.

Election for Delegate in Arizona.

Although at our latest dates from Arizona the day for the election of a Delegate in Congress and Territorial officers had not been designated by the Governor, the field was open for candidates for Delegate and the work of electioneering was going on bravely.

One of the candidates had already broken himself down and was entirely out of the ring. We mean Leib, the man of windy pretensions; the rattlebrain who thinks Dr. Charles Leib the greatest statesman and philosopher of the age; the man who was despised out of Santa Fe and through charitable motives sent to Fort Whipple; the man who turned his hospital into a political pothouse of the lowest grade, and who was therefore dismissed the service. He is broken down, and the good people of our sister Territory will not be troubled with his follies and impertinences during the further progress of the campaign.—Were he known there as he is known here the mere idea of his being an aspirant for any important position in the gift of the people would be laughed into ridicule.

The prominent candidates are Secretary McCormick, Col. Poston, Superintendent of Indian Affairs, and Col. T. A. Coulter. Were we to have anything to say in the contest we would be most decidedly in favor of Secretary McCormick. His ability and experience in affairs at Washington will make him the most influential and efficient Delegate that could be sent from the Territory. Entrusted to his keeping the interests of Arizona would be guarded with the utmost diligence and in him would be an advocate of a high order who could at all times command the respect and attention of the House of Representatives.—For these considerations briefly set forth, we would, were we a citizen of Arizona, give a hearty support to Secretary McCormick and use every honorable means to secure his election.

MORE NAVAJO.—We understand that six hundred more Navajos have surrendered themselves to the military authorities for the purpose of being removed to the Bosque Redondo.

From Franklin Texas to Santa Fe.

The following is a schedule of time made by Military Express between Franklin Tex. and Santa Fe.

Table with columns: Days, hours, min. Left Franklin April 25 at 12 m and arrived at Las Cruces April 25 at 8 p. m. 8 00 Left Las Cruces at 8.30 p. m. and arrived at Fort Craig at 12.40 p. m. April 26. 16 10 Left Fort Craig at 1 p. m. April 26 and arrived at Las Pinos at 5 p. m. April 27. 22 00 Left Las Pinos at 5.15 p. m. April 27 and arrived at Albuquerque at 10.25 p. m. April 28. 5 10 Left Albuquerque at 11 p. m. April 27 and arrived at Santa Fe at 2 p. m. April 28. 15 00

Time at different posts changing horses, 1 40 Total time out, 3 2 00 The distance traveled during this time is three hundred and fifty miles.

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Head Quarters, Dept. of New Mexico, Santa Fe, N. M., May 1, 1864. General Orders No. 12.

I. The Apaches of Arizona have been hostile ever since we have occupied this Territory; and now that the Navajo War is drawing to a successful termination, an earnest effort must be made not only to punish them for their continued murders, accompanied as many of those murders have been, by burnings of the stock, but also by their removal to a Reservation, or by the utter extermination of their men, to ensure a lasting peace and a security of life to all those who go to that country to search for the precious metals.

II. The plan of operations against these Apaches may, in general terms, be indicated as follows: Colonel Ewers A. Rice, 1st Infantry, California Volunteers, with a Force of five hundred Infantry and Cavalry, will establish a post upon the Gila River near the confluence of the Rio de Sanza (the great site to be selected by Lieutenant Colonel Nelson H. Davis, Assistant Inspector General, U. S. A.) and here Colonel Rice will have his Depot of Supplies. From this post, which is in a central position, the troops in such parties with regard to strength as Colonel Rice may indicate, will march in every direction to points where the enemy may be found.

III. The transportation when the troops do not carry their food in their haversacks—which they can do and must do on all occasions of seven days and less, will be pack mules. In the field, meat and bread, and sugar and coffee, and salt, alone of all the rations, will be carried. One blanket apiece will be as much bedding as will be permitted to have when on foot.—To be accompanied with more is not to find Indians.

IV. All Apache Indians in that Territory are hostile, and all Apache men large enough to bear arms who may be encountered in Arizona will be slain wherever met, unless they give themselves up as prisoners. No women or children will be harmed; these will be taken prisoners.

V. Simultaneous with these operations of the force under Colonel Rice, detachments will be sent northward from Tucson through by the Cafada del Oro and the San Pedro below the Aravayra; from Fort Bowie southwardly through the Chiricahui Mountains; from Fort Whipple south-eastwardly and across the Salinas; from Fort Canby southwardly by western end of Mogollon Mountains; from Fort Wingate southwardly toward the Sierra Blanca, and the head of the Gila; and from Forts Craig and McKee westwardly to the country around the head of the Mimbres and southwardly toward Pinos Altos, and towards Cooke's Canon. From Fort Cummings' route will be sent to scour over the country to the southward, from the camp on the Rio de Sanza, and toward the Florida Mountains. The size of these different parties will be as large as can be spared from the posts whence they start; their transportation, subsistence, and their instructions, are the same as those given for the guidance of the central force under Colonel Rice. They will all take the field on the 25th instant, and, if possible, remain out for sixty days; when full reports will be sent to Department Head Quarters, of the operations, day by day, and their results, of each party; when all parties except the central force under Colonel Rice will await further orders, and will "repair up" and be ready to take the field again at day's notice.

VI. The Governor of Arizona has been requested to have parties of men sent out at the same time, and arrangements are making to get four parties of fifty each, of Pimo and Maricopa Indians, to whom we have given arms and am-

munition, to move when we move, each over different ground, against their hereditary enemies the Apaches.

The Governor of Chihuahua and the Governor of Sonora have been informed of these contemplated movements, and have been notified that the Apaches will doubtless run into their respective States when thus incensed by our forces. They have each been requested to put a few hundred of their militia into the field against this common enemy; and have been granted authority to come over the line into our Territory in pursuit of Apaches when, where, and as far as they please. Thus the war against these bands of ruthless murderers will be a general war; and it is hoped that it may be productive of beneficial and lasting results. Every party, in energy, perseverance, resolution and self-denial, must strive to outdo all other parties. Dependence must be placed on the gallantry of small numbers against any odds. This covering of so much ground by detachments of determined men moving simultaneously from so many different points, must produce a moral effect upon the Indians which it is hoped will convince them of the folly long to hold out against us.

VII. The following is the organization of the central force which is to move out from Las Cruces, N. M., by detachments—the first detachment to start on or before the 16th instant, viz:

Colonel HOWES A. RICE, Commanding. Major JOSEPH SMITH, 6th Infantry, Cal. Vols. Major THOMAS J. BLAKESLEY, 1st Cavalry, Cal. Vols. Surgeon EDWARD J. WHITNEY, U. S. Volunteers. Surgeon JOHN H. PRENTISS, 1st Cavalry, Cal. Vols. 1st Lieut. WILLIAM A. THOMPSON, 1st Infantry, Cal. Vols, Adjutant. 2d Lieut. SIDNEY B. DeLONG, 1st Infantry, Cal. Vols. A. A. Q. M. and A. C. S. Companies "C" and "E," 1st Cavalry, California Volunteers. Companies "D" and "H," 1st Infantry, California Volunteers. Companies "A," "C," and "E," 6th Infantry, California Volunteers. Company "I," 1st Infantry, New Mexican Volunteers.

VIII. The Chiefs of the Quartermaster, Medical, Subsistence and Ordnance Departments, will furnish Colonel Rice with such means of transportation and supplies as may be necessary to give this order, so far as it relates to his command, immediate and practical effect.

IX. The field and staff officers named in the VII par. of this order will report to Colonel Rice without delay at Las Cruces, N. M.

X. Colonel Rice will at once make estimate for what supplies and funds he may need.

XI. Company "A," 1st Infantry, New Mexican Volunteers will take post at Fort Bowie.

XII. The post to be established on the Gila River by Colonel Rice will be known as Fort Gowen in honor of the first Governor of Arizona.

By order of Brig. Gen'l. CARLETON, CYRUS H. DeFORREST, Aide-de-Camp.

PROCLAMATION.

WHEREAS, A suspension of arms, in the prosecution of the war against the Navajo tribe of Indians exists, as the more hostile part of that tribe is now reduced to and located upon the Reservation at the Bosque Redondo, and the remainder of the tribe coming in and surrendering themselves to the military authorities; and, WHEREAS, Any hostile demonstration upon the part of our citizens towards the said Indians during this suspension of hostilities, would frustrate the intentions and efforts of the Government in the peaceable removal of the remainder of this tribe, now collecting around Forts Canby and Wingate—to whom has been granted safety to life and property while there and in transit to the Reservation; Therefore, I, HENRY CONNELLY, Governor of New Mexico, do issue this my PROCLAMATION, and Ordain:

First. That hostilities on the part of the citizens with the remainder of the Navajo tribe of Indians, who have, or have not presented themselves at the military Posts for removal to the Reservation, shall cease.

Second. That all forays by our citizens of a hostile character into the country heretofore or now occupied by any part of the said Navajo tribe of Indians, are, hereby positively prohibited under the severest penalties.

Third. That any parties of armed men, with hostile intentions heretofore found in the Navajo country, will be immediately arrested by the United States troops and sent to the Head Quarters of the Department of New Mexico, there to be dealt with according to law.

Fourth. It is proper in this connection to warn the people against further traffic in captive Indians. The laws of the country as well as those of justice and humanity positively forbid such a traffic. Measures are now being taken by the Department of the Interior to have all Indians surrendered who have been sold into slavery, and the people therefore have this timely warning to refrain at once from any such traffic in Indian captives as has heretofore been practiced among them.

Done at Santa Fe, this 4th day of May, 1864. HENRY CONNELLY, Governor and Commander-in-Chief of the Militia.

By the Governor: JOHN WATTS, Private Secretary, In absence of the Secretary of the Territory.

SANTA FE, NEW MEXICO, May 3rd 1864.

Editor Gazette, Santa Fe, New Mexico.

Sm.—Since my arrival at your City from the Bosque Redondo, I am informed that rumors are in circulation to the effect that the Apache Indians belonging to the Reservation, and at present under my command, are in the habit of making raids and committing acts of violence from their present location. I desire to avail myself of the present opportunity of denying in the most emphatic manner the truth of those rumors or reports. There are seventy or more of the Apaches who have never yielded themselves up to the authority of the Government, and, doubtless, these are the Indians who have recently committed the depredations complained of, as the Apa-

ches at Fort Sumner, under Cadete and Ojo Blanco, are well behaved and remain constantly at home attending to their peaceful avocations on their farms.

To ensure the presence of these Indians daily at the post, the Apache Agent, Mr. Lorenzo Lubadi, is required to make an inspection and report the result in writing to me every evening at my office. I know then, once in every twenty four hours, that the Apaches at Fort Sumner are not absent on improper expeditions.

I am, Sir, Very respectfully, Your obedient servant, H. D. WALLEY, Maj. Commanding, Fort Sumner.

Notice to Freighters.

All persons carrying freight to Fort Sumner, Bosque Redondo, are warned not to encamp their trains within seven miles of the Fort, or in any manner impure the acquiescence. A fine of twenty five dollars will be imposed for every violation of this injunction. By direction of the Comd' Gen'l. H. D. WALLEY, Maj. Comd'.

ADVERTISEMENTS

BAILE TICKETS!

Reduction of Price. Mr. Baile having in connection with his legitimate business as a merchant turned his attention to peddling bale tickets, which he has printed in the States, we propose to furnish those with tickets who wish them at rates lower than they can be had at any other place. For the present our rates will be \$2.50 per thousand. Our tickets will be gotten up in a better style and on better credit than the imported ones which have to be defaced by writing on them. No—47—

NOTICE.

All persons concerned are hereby notified that I am the owner of the north and south parts of the tract of land situated near the town of Franklin, El Paso, Co. Texas, and known as the El Paso Tract, and we intend to increase the same and to do so by cutting or destroying the timber upon the same, or by the commission of trespasses of any other nature as they will be held liable for all such damages. VINCENT or TRAVIS. MEX. N. M. April 28th 1864. No. 47.

MISSISSIPPI SANITARY FAIR.

Having been authorized and requested to receive contributions to this Fair, to be held in the City of New Orleans, Louisiana, on the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, 16th, 17th, 18th, 19th, 20th, 21st, 22nd, 23rd, 24th, 25th, 26th, 27th, 28th, 29th, 30th, 31st, of the month of May, 1864, I have the honor to inform you that the same will be held at the City of New Orleans, Louisiana, on the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, 16th, 17th, 18th, 19th, 20th, 21st, 22nd, 23rd, 24th, 25th, 26th, 27th, 28th, 29th, 30th, 31st, of the month of May, 1864. GEORGE R. FANCAUAT. No. 47.

STOLEN.

\$25 REWARD. Notice from the undersigned on the night of the 24th inst. from his stable near Fort Union, N. M. a Bay Spanish Breeze Mare, 3 years old—black nose and—branded on left shoulder, H. The above reward will be paid to any person who will recover said pony and bring it to the undersigned. GEORGE R. FANCAUAT. No. 47.

NOTICE.

"During my absence from New Mexico, I have appointed C. K. Conley my authorized agent, to transact all business in my name. GEORGE R. FANCAUAT. No. 47.

U. S. HOTEL,

ALBUQUERQUE, N. M. Southwest Corner of the Plaza

The proprietors having made extensive improvements in the premises have opened both the President and Transient Houses. The former are large and well furnished and the latter are small and well furnished. The hotel is supplied with the best that the market can afford. LOUIS BIEBER, Proprietor. No. 47.

HOT SPRINGS,

LAS VEGAS, NEW MEXICO.

Dr. H. Woodworth having taken possession of the Las Vegas Hot Springs and after them up in first rate style is now prepared to accommodate a large number of visitors. The wonderful effect of these springs in curing rheumatism and kidney disease, neuralgia, catarrhs, dyspepsia, indigestion, &c. &c. is well known in this Territory. Woodworth's Hot Springs. Those who desire to cure receive medical treatment. Physicians examine first and then an exact plan of treatment. The surrounding mountains and streams furnish plenty of game and excellent trout. The hotel will always be supplied with the best the market affords. U. H. WOODWORTH, M. D. No. 47.

NOTICE.

Notice is hereby given, that on the 2nd day of April 1864 Letters of Administration were issued to me, by the Probate Court of Santa Fe County, upon the Estate of Major Joseph Cummings deceased. The estate is subject to claims against said estate. All persons owing said estate, or having in their possession property belonging to said estate, will please pay what they owe to me, and turn over to me any property they may have belonging to said estate. JOHN WATTS, Joseph Cummings' executor. No. 47.

GOODS FOR NEW MEXICO.

GILL & BROTHER,

95 Main St. Saint Louis Mo.,

Established for nearly twenty years, order to their old customers in the Territory and to the merchants of New Mexico generally, an immense stock of White & Brown line Shirts Fancy of Manufacture Boston Shirts, Grey & Blue Cassimere Shirts, Fancy Cassimere & Flannel Shirts, Check & Hosiery Shirts, Ladies Thread, Cotton & Woolen under Shirts, Drilling, Canton & Woolen Traverses, Men Woolen Jackets, Heavy Dark Overalls, Stock Gloves of Genuineness, Cotton & Country knit Socks, Suspenders & India Rubber Goods, Silk & Cotton Hosiery, Ladies Gowns & Hosiery, Hair Nets, Hair Ac. Combs, Notions and Fancy Goods Generally. All orders entrusted to our house will have prompt personal attention. Cash buyers visiting St. Louis are invited to call and examine our Goods before buying, as they were bought for cash early in the season and will be sold at low prices. GILL & BROTHER. No. 47.







to the high qualities which the Executive must be presumed to possess of public virtue, and honest devotion to the public interests, the frequency of elections, and the watchfulness of the representatives of the nation, carry with them all the checks which can be useful to guard against usurpation or wanton tyranny. (12 Wheaton's Reports, page 32.)

#### SAFEGUARDS.

Our safeguard against the misuse of power is not, by denying its existence, to deprive ourselves of its protection in time of war, but to rely on the civil responsibility of the officer.

The right of impeachment of the commander in chief, the frequent change of public officers, the control of the army and navy by legislative power of Congress, the power of Congress over supplies, the power of Congress to make laws regulating and controlling the use of military power wherever it is liable to abuse the fact that the Commander in chief is also president and chief executive officer of government, and the great intelligence and high character of our soldiers, are all safeguards against arbitrary power or the abuse of legal authority.

#### EFFECT OF WAR UPON THE COURTS AND OF COURTS UPON THE WAR.

Justice should rule over the deadly encounters of the battle field; but courts and constables are there quite out of place. Far from the centres of active hostilities, judicial tribunals may still administer municipal law, so long as their proceedings do not interfere with military operations. But if the members of a court should impede, oppose, or interfere with military operations in the field, whether acting as magistrates or as individuals, they, like all other public enemies, are liable to capture and imprisonment by martial law. They have then become a belligerent enemy.

The character of their actions is to be determined by the military commander; not by the parchment which contains their commissions. A judge may be a public enemy as effectually as any other citizen. The rebellious districts show many examples of such characters. Is a judge sitting in a northern court, and endeavoring to commit acts of hostility under the guise of administering law, any less a public enemy than if he were holding court in South Carolina, and pretending to confiscate the property of loyal men? Are the black gown and wig to be the protection of traitors.

General Jackson arrested a judge in the war of 1812, kept him in prison in order to prevent his acts of judicial hostility, and liberated him when he had repulsed the enemy. The illegal fine imposed on him by that judge was repaid to the general after many years under a vote of Congress. Why should a judge be protected from the consequences of his act of hostility more than the clergyman, the lawyer, or the governor of a State?

The public safety must not be hazarded by enemies whatever position they may hold in public or private life. The more eminent their position, the more dangerous their disloyalty.

Among acts of hostility which constitute judges, public enemies, and subject them to arrest, are these:

1. When a State judge is judicially apprised that a party is in custody under the authority of the United States, he can proceed no further, under *habeas corpus* or other process, to discharge the prisoner.

If he orders the prisoner to be discharged, it is the duty of the officer holding the prisoner to resist that order, and the laws of the United States will sustain him in doing so, and in arresting and imprisoning the judge, if necessary. (Ableman vs. Booth, 21 How. 524-5.)

2. So long as the courts do not interfere with military operations ordered by the commander in chief, litigation may proceed as usual; but if that litigation entangles and harasses the soldiers or the officers so as to disable them from doing their military duty, the judges and the actors being hostile, and using legal processes for the purpose and design of impeding and obstructing the necessary military operations in time of war, the courts and lawyers are liable to precautionary arrest and confinement, whether they have committed a crime known to the statute law or not. Military restraint is to be used for the prevention of hostilities, and public safety in time of civil war will not permit courts or constables, colleges or slave pens, to be used as instruments of hostility to the country.

When a traitor is seized in the act of committing hostility against the country, it makes no difference whether he is captured in a swamp or in a court-house, or whether he has in his pocket the commission of a judge or a colonel.

Commanders in the field are under no obligations to take the opinions of judges as to the character or extent of their military operation, nor as to the question who are and who are not public enemies, nor who have and who have not given reasonable cause to believe that acts of hostility are intended. These questions are, by the paramount laws of war, to be settled by the officer in command.

#### MILITARY ARRESTS ARE NOT FORBIDDEN BY THE CONSTITUTION.

The framers of the Constitution having given to the commander in chief the full control of the army when in active service, subject only to the articles of war, have therefore given him the full powers of capture and arrest of enemies, and have placed upon him the corresponding obligation to use any and all such powers as may be proper to insure the success of our arms. To carry on war without the power of capturing or arresting enemies would be impossible. We should not, therefore, expect

to find in the Constitution any provision which would deprive the country of any means of self-defence in time of unusual public danger.

We look in vain in the Constitution for a clause which in any way limits the methods of using war powers when war exists. Some persons have turned attention to certain passages in the amendments relating, as was supposed, to this subject. Let us examine them:

ARTICLE VI. "The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated."

This amendment merely declares that the right of being secure against unreasonable searches or arrests shall not be violated. It does not declare that no arrests shall be made. Will any one deny that it is reasonable to arrest or capture the person of a public enemy?

If all arrests, reasonable or unreasonable, were prohibited, public safety would be disregarded in favor of the rights of individuals.

Not only may military, but even civil, arrests be made when reasonable.

#### ARREST WITHOUT WARRANT.

It is objected that military arrests are made without warrant. The military order is the warrant authorizing arrest, issuing from a commander, in like manner as the judicial order is the warrant authorizing arrest, issuing from a court. But even civil arrests at common law may be made without warrant by constables, or by private persons.—(1 Chitty, G. L., 15 to 22.) There is a liability to fine and imprisonment if an offender is voluntarily permitted to escape by a person present at the commission of a felony or the infliction of a dangerous wound.

Whenever there is probable ground of suspicion that a felony has been committed, a private person may without warrant arrest the felon, and probable cause will protect the captor from civil liability.

"When a felony has been committed, a constable may arrest a supposed offender on information without a positive charge, and without a positive knowledge of the circumstances." And Chitty says page 21, "A constable may justify an imprisonment, without warrant, on reasonable charge of felony to him, although he afterwards discharge the prisoner without taking him before a magistrate, although it turns out that no felony was committed by any one."

In *Wakely vs. Hart*, 6 Binney, 318, Chief Justice Tilghman says of the constitution of Pennsylvania, which is nearly in the same words on this subject as the Constitution of the United States:

"The plaintiff insists that by the constitution of this State no arrest is lawful without warrant issued on probable cause, supported by oath. Whether this be the true construction of the constitution is the main point in the case. It is declared in the 9th article, section 7, that the people shall be secure in their persons, houses, papers, and possessions, from unreasonable arrests, and that no warrant to search any place, or seize any person or thing, shall issue without describing them as nearly as may be by nor without probable cause, supported by oath or affirmation."

"The provisions of this section, so far as warrants, only guard against their abuse by issuing them without good cause, and in so general and vague a form as may put it in the power of officers who execute them to harass innocent persons under pretence of suspicion; for, if general warrants were allowed, it must be left to the discretion of the officer on what persons or things they are to be executed. But it is nowhere said that there shall be no arrest without warrant. To have said so would have endangered the safety of society. The felon who is seen to commit murder or robbery must be arrested on the spot, or suffered to escape. So, although if not seen, yet if known to have committed a felony, and pursued with or without warrant, he may be arrested by any person."

"And even where there is only probable cause of suspicion, a private person may, without warrant, at his peril, make the arrest. I say at his peril, for nothing short of proving the felony will justify the arrest; (that is, by a private person on suspicion.) "These principles of common law are essential to the welfare of society, and not intended to be altered or impaired by the constitution."

The right, summarily, to arrest persons in the act of committing heinous crimes has thus been sanctioned from ancient times by the laws of England and America. No warrant is required to justify arrests of person committing felonies. The right to make such arrests is essential to the preservation of the existence of society, though its exercise ought to be carefully guarded. The great problem is to reconcile the necessities of government with the security of personal liberty.

If, in time of peace, civil arrests for felonies may be made by private citizens without warrant *a fortiori*, military arrests in time of war for acts of hostility, either executed or contemplated, may be made under the warrant of a military command. And the provision that unreasonable seizures or arrests are prohibited has no application to military arrests in time of war.

OBJECTION THAT ARRESTS ARE MADE WITHOUT WARRANT.

The 15th article of the amendments of the Constitution provides that—

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled

in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation."

This article has no reference to the rights of citizens under the exigencies of war; but relates only to their rights in time of peace. It is provided that no person shall be subject for the same offence to be twice put in jeopardy of life or limb. If rebellion or treason be one of the offences here alluded to, and a rebel has been once under fire, and thus been put in jeopardy of life or limb, (in one sense of that phrase,) he could not be fired at a second time without violating the Constitution, because a second shot would put him twice in jeopardy for the same offence.

"Nor shall he be deprived of life, liberty, or property without due process of law." If this provision relates to the rights of citizens in time of war, it is obvious that no property can be captured, no rebel killed in battle or imprisoned by martial law.

The claim that "no person shall be held to answer for a capital or otherwise infamous crime, unless upon a presentment or indictment of a grand jury, except in cases," &c., in like manner applies only to the rights of citizens in time of peace.

What are "cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger?"

Suppose the Union forces arrest a spy from the enemy's camp, or catch a band of guerrillas, neither the spy nor the guerrillas belong to our land forces or navy. The enemy are no part of our forces or of our militia; and while this provision covers offences therein specified, if committed by our troops, and allows them to be dealt with by martial law, it would (if it is applicable in time of war) prevent our executing martial law against such enemies captured in war. We should, under such a construction, be required to indict and prosecute our enemy for capital crimes, instead of capturing and treating them as prisoners of war, or punishing them according to the laws of war.

The absurdity of such a construction is obvious. The language is inapplicable to a case of military arrest in war time. No soldier is held to answer for a crime; he is captured as a prisoner of war, to be released, paroled, or exchanged. He is never expected to answer to any indictment; prisoners of war are not indicted.

Nor can any prisoner be held to answer for any crime unless upon a charge of such crime made before some tribunal. No such charge is made against prisoners of war, nor are they charged with any crime, infamous or otherwise, therefore they are not held to answer any.

Hence that clause in the Constitution which provides for trial by jury, the right to be informed of the nature and cause of the accusation, &c., relates in express terms only to criminal prosecutions, and has nothing to do with military arrests or the procedures of martial law.

Therefore it is obvious that while criminal proceedings against persons not in the naval or military service are guarded in time of peace, and the outposts of justice are secured by freedom from unreasonable arrests, and in requiring indictment to be found by grand jurors, speedy and public trial by an impartial jury, information of the nature of the charges, open examination of witnesses, and aid of counsel, &c., all these high privileges are not accorded to our public enemy in time of war, nor to those citizens who commit military offences, which, not being against any statute or municipal law, cannot be the foundation of any indictment, punishment, or trial by jury, and do not constitute any capital or otherwise infamous crime, or to persons who commit acts which impede, embarrass, and tend to thwart the military measures of the government.

#### THE CONSTITUTION SANCTIONS MILITARY ARRESTS.

The Constitution itself authorizes courts martial. These courts punish for offences different from those provided for by any criminal statute. Therefore it follows that crimes not against statute laws may be punished by law according to the Constitution, and also that arrests necessary to bring the offenders before that tribunal are lawful.

In *Dynes vs. Hozer*, (20 Howard's Supreme Court Reports, page 65) the evidence was that an attempt had been made to hold a marshal liable for executing the order of the President of the United States in committing Dynes to the penitentiary for an offence of which he had been adjudged guilty by a naval court martial.

This case shows that the crimes to be punished, and the modes of procedure by courts martial are different from those punished by civil tribunals; that the jurisdiction of these classes of tribunals is distinct, and that the judicial power and the military power of courts martial are independent of each other, and both authorized by the same Constitution, and courts martial may punish offences other than those provided for by criminal statutes. And if they may do so, it follows that persons may be arrested for such offences. The law is laid down by the courts as follows:

"The demurrer admits that the court martial was legally organized, and the crime charged was one forbidden by law; that the court had jurisdiction of the charge as it was made; that a trial took place before the court upon the charge, and the defendant's plea of not guilty; and that, upon the evidence in the case, the court found Dynes guilty of an attempt to desert, and sentenced him to be punished as has been already stated; that the sentence of the court was approved by the Secretary, and by his direction Dynes was brought to Washington; and that the defendant was marshal for the District of Columbia, and

that in receiving Dynes and committing him to the keeper of the penitentiary, he obeyed the orders of the President of the United States in executing the sentence. Among the powers conferred upon Congress by the 8th section of the 1st article of the Constitution are the following: "To provide and maintain a navy;" "to make rules for the government of the land and naval forces." And the eighth amendment, which requires a presentment of a grand jury in cases of capital or otherwise infamous crime, expressly excepts from its operation "cases arising in the land or naval forces." And by the 2d section of the 2d article of the Constitution, it is declared that "the President shall be commander in chief of the army and navy of the United States, and of the militia of the several States when called into the actual service of the United States."

"These provisions show that Congress has the power to provide for the trial and punishment of military and naval offences in the manner then and now practiced by civilized nations, and that the power to do so is given without any connection between it and the 3d article of the Constitution, defining the judicial power of the United States; indeed, that the two powers are entirely independent of each other."

The fact that the power exists of suspending the writ of *habeas corpus* in time of rebellion, when the public safety requires it, shows that the framers of the Constitution expected that arrests would be made for crimes not against municipal law, and that the administration of the ordinary rules of law on *habeas corpus* would require discharge of prisoners, and that such discharge might endanger public safety. It was to protect public safety in time of rebellion that the right to suspend the *habeas corpus* was left in the power of government.

#### MILITARY POWERS MAY BE DELEGATED.

In the course of the preceding remarks the commander in chief has been the only military authority spoken of as authorized to order arrests and seizures. His powers may be delegated to officers, and may be exercised by them under his command. So also the Secretaries of War and State are public officers through whom the President acts in making orders for arrests, and their acts are in law the acts of the President. It is necessary to the proper conduct of war that many if not most of the powers of the President or commander should be exercised by his Secretaries and his generals, and that many of their powers should be executed by officers under them; and although it not seldom happens that subalterns use the powers of arrest and detention yet the inconvenience resulting from this fact is one of the inevitable misfortunes of war.

#### OBEDIENCE OF ORDERS IS JUSTIFICATION.

Whatever military man obeys the order of his superior officer, is justified by law in doing so. Obedience to orders is a part of the law of the land; a violation of that law subjects the soldier to disgraceful punishment. Acts done in obedience to military orders will not subject the agent to civil or criminal liability in courts of law. But, on the other hand, any abuse of military authority subjects the offender to civil liability for such abuse, and he who authorized the wrong is responsible for it.

#### OFFICERS MAKING ARRESTS NOT LIABLE TO CIVIL SUIT OR CRIMINAL PROSECUTION.

That military arrests are deemed necessary for public safety by Congress is shown by the act of March 3, 1863, ch. 81, wherein it is provided that no person arrested by authority of the President of the United States shall be discharged from imprisonment so long as the war lasts, and the President shall see fit to suspend the privilege of the writ of *habeas corpus*.

The 4th section of the same act provides "that any order of the President, or under his authority, made at any time during the existence of this present rebellion, shall be a defence in all courts to any action or prosecution, civil or criminal, pending or to be commenced for any search, seizure, arrest, or imprisonment, made, done, or committed, or acts omitted to be done under and by virtue of such order, or under color of any law of Congress, and such defence may be made by special plea, or under the general issue."

The same act further provides that actions against officers and others for torts in arrests commenced in State courts may be removed to circuit courts, and thence to the Supreme Court. The jurisdiction of State courts thereupon ceases, and the rights of the defendant may be protected by the laws of the United States administered by the Supreme Court. By these provisions there is secured protection for the past and security in the future performance of military and civil duties under orders of the President in time of war; and the statute contains an implied admission of the necessity to public welfare of arrests for crimes not against statutes, but endangering public safety, and of imprisonments for offences not known to the municipal laws, but yet equally dangerous to the country in civil war.

#### ARBITRARY POWER NOT CONSISTENT WITH CONSTITUTIONAL OR FREE GOVERNMENT.

The exercise of irresponsible powers is incompatible with constitutional government. Unbridled will, the offspring of selfishness and of arrogance, regards no rights, and listens to no claims of reason, justice, policy, or honor. Its imperious mandate being its only law, arbitrary power sucks out the heart's blood of civil liberty. Vindicated by our fathers on many a hard fought battle field, and made holy by the sacrifice of their noblest sons, that liberty must not be wounded or destroyed; and in time of peace, in a free country, its power should shelter loyal citizens from

arbitrary arrests and unreasonable seizures of their persons or property.

#### THE MEANING OF "ARBITRARY" AS DISTINGUISHED FROM "DISCRETIONARY."

What arrests are "arbitrary?" Among the acts of war which have been severely censured is that class of military captures reproachfully styled "arbitrary" arrests.

What is the true meaning of the word "arbitrary?" When used to characterize military arrests it means such as are made at the mere will and pleasure of the officer, without right, and without lawful authority. But powers are not arbitrary because they may be discretionary. The authority of judges is often discretionary; and even if discretion be governed by rules; yet no one can justly claim that such judicial authority is arbitrary.

The existence of an authority may be undeniable, while the mode of using it may be discretionary. A power is arbitrary only when it is founded upon no rightful authority, civil or military. It may be within the discretion of a commander to make a military order; to dictate its terms; to act upon facts and reasons known only to himself; it may suddenly and violently affect the property, liberty, or life of soldiers or of citizens; yet such an order, being the lawful use of a discretionary authority, is not the exercise of arbitrary power. When such orders are issued on the field, or in the midst of active operations, no objection is made to them on the pretence that they are lawless or unauthorized, nor for the reason that they must be instantly and absolutely obeyed.

The difference is plain between the exercise of arbitrary power and the arbitrary exercise of power. The former is against law; the latter, however, ungraciously or inconsiderately used, is lawful.

#### MILITARY ARRESTS LAWFUL.

The laws of war, military and martial, written and unwritten, founded on the necessities of government, are sanctioned by the Constitution and laws, and recognized as valid by the Supreme Court of the United States.

Arrests made under the laws of war are neither arbitrary nor without legal justification.

In *Cross vs. Harrison*, Judge Wayne, delivering the opinion, (16 Howard, 189, 190), says:

"Early in 1847 the President, as constitutional commander-in-chief of the army and navy, authorized the military and naval commanders of our forces in California to exercise the belligerent rights of a conqueror, and to form a civil government for the conquered country, and to impose duties on imports and tonnage as military contributions for the support of the government and of the army, which had the conquest in possession. No one can doubt that these orders of the President and the action of our army and navy commanders in California, in conformity with them, was according to the law of arms, &c."

"So, in *Fleming vs. Paige*, (9 Howard, 615,) Chief Justice Taney says: "The person who acted in the character of collector in this instance, acted as such under the authority of the military commander and in obedience to his orders; and the regulations he adopted were not those prescribed by law, but by the President in his character as commander-in-chief."

It is established by these opinions that military orders, in accordance with martial law or the laws of war, though they may be contrary to municipal laws, and the use of the usual means of enforcing such orders by military power, including capture, arrest, imprisonment, or the destruction of life and property, are authorized and sustained upon the firm basis of martial law, which is, in time of war, constitutional law.

A military arrest being one of the recognized necessities of warfare, is as legal and constitutional a procedure, under the laws of war, as an arrest by civil authority by the sheriff, after the criminal has been indicted by a grand jury for a statute offence.

In time of peace the interference of military force is offensive to a free people. Its decrees seem overbearing, and its procedures violent. It has few safeguards and no restraints. The genius of republican government revolts against permanent military rule. Hence the suspicions of the people are easily aroused upon any appearance of usurpation. It is for this reason that some opponents of the government have endeavored to cripple the war power of the President by making against him the unfounded pretence that military arrests, a familiar weapon of warfare, can be employed only at the hazard of civil liberty.

#### ON WHAT GROUND FORCE IS JUSTIFIABLE.

When the administration of laws is resisted by an armed public enemy; when government is assaulted or overthrown; when magistrate and ruler are alike powerless; the nation must assert and maintain its rights by force of arms. Government must fight or perish. Self preservation requires the nation to defend its rights by military power. The right to use military power rests on the universal law of self-defence.

#### MARTIAL LAW.

When war is waged, it ought not to degenerate into unbridled brutality, but it should conform to the dictates of justice and of humanity. Its objects, means, and methods should be justifiable in the forum of civilized and Christian nations. The laws or rules which usually govern this use of force are called military and martial law, or the laws of war.

Principles deducible from a consideration of the nature, objects, and means of war will, if understood, remove from the mind the apprehension of danger to civil liberty from military arrests and other employment of force. When war exists, whatever

(Concluded next week.)