

## JUDGE CURTIS'S VIEW OF THE EXECUTIVE POWER.

*To the Editors of the Boston Daily Advertiser:*

There are three questions concerning the President's emancipation proclamation. One, has he a constitutional power to issue it as a civil, political or administrative act? The second, was it expedient? The third, has he constitutional power as Commander-in-Chief, to issue it, at this time, as a military act?

These questions are perfectly distinct. One of the most common and most fruitful causes of error upon all subjects is the mingling of questions which are distinct in themselves, but so near each other that they confuse each other.

Judge Curtis mingles these questions so entirely, that no study of his pamphlet enables me to see clearly as to much of his argument upon which of these questions it is intended to bear.

Let us separate these questions.

I am sure that the President has no power to emancipate a single slave, as a civil, political or administrative act.

Was it expedient? I leave this question to the President. For he is honest, he is capable; he has considered the question long, carefully and painfully, and in all the relations in which it can present itself. However wise I may be, or Judge Curtis may be, on this subject, the President must be wiser, or all rules of probability fail.

As to the remaining question,—I have not the slightest doubt of his constitutional power as Commander-in-Chief, to issue this proclamation as a military act.

If Halleck, when before Corinth, might have sent a force a hundred miles to catch and bring into his lines a hundred negroes with the wagons, horses and provision they were bringing to Beauregard, the President and Commander-in-Chief, sitting in the centre, with wider views, wider necessities, and wider rights to meet those necessities, may, if he can, prevent the whole mass of slaves from laboring to feed the rebellion. He may, if he can, by the danger of insurrection, or of starvation, or of loss of property, dishearten the rebels, and drive their armies home.

To say otherwise, would be to say that he might strike at rebellion, but must be careful not to strike away its corner stone.

Can he do it in fact? This question touches the expediency of the measure, and this I leave to him. But it does not touch his military right, to threaten it, and to do it if he can.

Judge Curtis speaks much and eloquently of the President's right to inflict "penalty" and "punishment," and the rights of the rebels to the protection of the law.

Rebellion has no rights. If rebellion means anything, it means the renunciation and destruction of all law. And THEREFORE it is accursed before God and man.

No rebel has any right, a regard to which should weaken or obstruct any military measure needed to subdue the rebellion.

Judge Curtis's argument would give the Constitution and the law to the rebels, as their sword to smite with, and their shield to save them; and leave it to us only as a fetter.

Then he tells us the innocent must suffer with the guilty. This is true, and it is sad. But when the mingled fire and hail of God's vengeance run along the ground, they pursue no devious path that they may leave the homes of the innocent unharmed; for when national sins bring national calamities, the innocent suffer with the guilty. This may be one of the mysteries of Providence; it is, at all events, a fact. And what has been will be.

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