

Selections.

PAY OF COLORED SOLDIERS.

ATTORNEY-GENERAL'S OFFICE, April 23.

SIR: You have done me the honor to refer to me a communication to yourself, from his Excellency, John A. Andrew, Governor of Massachusetts, with accompanying papers, relative to the claim of Rev. Samuel Harrison for pay as Chaplain of the 54th Regiment of Massachusetts Volunteers.

It appears, by Gov. Andrew's letter and the other papers, that Mr. Harrison, who is a colored man, was duly elected, and, on the 8th day of September, 1863, commissioned by Governor Andrew, as chaplain of the 54th Regiment of Massachusetts Volunteers, in the service of the United States; that on the 12th of November, 1863, he was mustered and accepted into the service of the United States, at Morris Island, South Carolina, by the proper mustering officer, and actually performed the duties of chaplain of that regiment, then and since serving in South Carolina. On demanding his pay as chaplain, on the 4th of February, 1864, he was met by the following refusal in writing, signed by the paymaster at Hilton Head:—

Samuel Harrison, chaplain of the 54th Regiment, Massachusetts Volunteers, (colored troops,) asks pay at the usual rate, \$100 per month and two rations, which, he being of African descent, I decline paying, under act of Congress passed July 17, 1862, employing persons of African descent in military service of the United States. The chaplain declines to receive anything less.

You have requested my opinion whether the Paymaster should have paid as demanded, and, if he should, whether it is your duty to order him to do so.

The 54th Regiment of Massachusetts Volunteers was organized in the same manner as were other regiments of State Volunteers, under the following order of the War Department, dated January 26, 1863, viz:—

I do not know that any rule of law, constitutional or statutory, ever prohibited the acceptance, organization, and muster of "persons of African descent" into the military service of the United States as enlisted men or volunteers. But whatever doubt may have existed on the subject had been fully resolved before this order was issued by the 11th section of the act of 17th July, 1861, chapter 195, which authorized the President to employ as many persons of African descent as he might deem necessary and proper for the suppression of the Rebellion, and, for that purpose, to organize and use them in such a manner as he might judge best for the public welfare; and the 12th section of the act of same date, chapter 201, which authorized the President to receive into the service of the United States, for the purpose of constructing entrenchments, or performing camp service, or any other labor, or any military or naval service, for which they might be found competent, persons of African descent, such persons to be enrolled and organized under such regulations, not inconsistent with the Constitution and laws, as the President might prescribe.

The 54th Massachusetts Regiment was, therefore, organized and mustered into the service of the United States under clear authority of law.

But the fifteenth section of the act of 17th July, 1862, chapter 201, after directing that all persons who have been or shall be enrolled in the service of the United States under that act, shall receive the pay and rations then allowed by law to soldiers, according to their respective grades, contains this proviso, "That persons of African descent who, under this law, shall be employed, shall receive ten dollars per month and one ration, three dollars of which monthly pay may be in clothing."

Whether persons of African descent "enrolled in the service of the United States" as private soldiers are included within the words "persons of African descent who, under this law, shall be employed," thereby limiting their pay as soldiers to ten dollars a month, is not the question you have submitted to me. For Mr. Harrison was not a private soldier, but an officer serving under the commission of the Governor of Massachusetts, the authenticity and validity of which were recognized and admitted by the United States when he was mustered into the service. But the question is, Can a person of African descent lawfully hold the office and receive the pay of chaplain of a volunteer regiment in the service of the United States?

I have already said that I know of no provision of law, constitutional or statutory, which prohibits the acceptance of persons of African descent into the military service of the United States; and if they could be lawfully accepted as private soldiers, so also might they be lawfully accepted as commissioned officers, if otherwise qualified therefor. But the express power conferred on the President by the eleventh section of the act of 17th of July, 1862, chapter 195, before cited, to employ this class of persons for the suppression of the Rebellion, as he may judge best for the public welfare, furnishes all needed sanction of law to the employment of a colored chaplain for a volunteer regiment of his own race.

Nor is any prohibition of the employment of such person found in the statutes which declare the qualification of chaplains. The ninth section of the act to authorize the employment of volunteers, &c., of 22d July, 1861, chapter 9, provides that there shall be allowed to each regiment one chaplain, who shall be appointed by the regimental commander on the vote of the field officers and company commanders on duty with the regiment at the time the appointment shall be made. The chaplain so appointed must be a regularly ordained minister of a Christian denomination, &c. The seventh section of the act of August 5, 1861, chapter 42, for the better organization of the military establishment, declares that one chaplain shall be allowed to each regiment of the army, to be selected and appointed as the President may direct:—*Provided*, That none but regularly ordained ministers of some Christian denomination shall be eligible to selection or appointment. The eighth section of the act of July 17, 1862, chapter 200, declares that the two sections last cited shall be construed to read as follows:—

That no person shall be appointed a chaplain in the United States army, who is not a regularly ordained minister of some religious denomination, and who does not present testimonials of his present good standing as such minister, with a recommendation for his appointment as an army chaplain from some authorized ecclesiastical body, or not less than five accredited ministers belonging to said religious denomination.

The closest inspection of these provisions will discover nothing that precludes the appointment of a Christian minister to the office of chaplain because he is a person of African descent. I therefore conclude that Mr. Harrison was the lawfully appointed and qualified chaplain of the 54th Massachusetts Regiment.

The ninth section of the act of 17th July, 1862, chapter 200, provides that thereafter the compensation of all chaplains in the regular or volunteer service, or army hospitals, shall be one hundred dollars

per month, and two rations a month. It was Mr. Harrison entitled to this rate of compensation, or was he limited to the pay of ten dollars a month and one ration, fixed by the proviso to the fifteenth section of the act of 17th July, 1862, chapter 201?

It will be observed that this proviso declares ten dollars a month and one ration shall be received by persons of African descent employed under the law of which it is a part, viz.: the act of 17th July, 1862, chapter 201. Now we have seen that it is not necessary to resort to that law to find authority for the appointment of Mr. Harrison as chaplain; for, apart from the authority which might be presumed to exist prior to the enactment of any of these statutes, the eleventh section of the act of 17th July, 1862, chapter 195, sufficiently warranted it.

To bring him, then, within the sweep of this proviso, and thus withdraw him from the reach of the act which specifically fixes the pay of the class of officers to which, by clear law, he belongs, would violate the plainest principles of construction. The act of which the proviso is a part was not intended, in my opinion, either to authorize the employment or fix the pay of any persons of African descent, except those who might be needed to perform the humblest offices of labor and service for which they might be found competent. The twelfth section authorizes them to be received into service for the purpose of constructing entrenchments, or performing camp services or any other labor, or any military or naval service for which they might be found competent.

The thirteenth section declares that when any man or boy of African descent, who, by the laws of any State, shall owe service or labor to any person aiding the Rebellion, shall render such service as that act provides for, he, his mother, wife, and children shall be free thereafter, with certain exceptions. And the fifteenth section fixes their pay as before stated. Whilst it is true, that the words of the twelfth section are broad enough to embrace all persons of African descent who may be received into the military or naval service of the United States, it is yet quite evident from the terms of the whole section, as well as from the promise of freedom held out to such persons who were slaves in the thirteenth section, that, in limiting their pay to ten dollars a month and one ration, Congress had in view the class who were fitted only for the humbler kinds of service referred to, and not persons who, under the authority of other laws, might be appointed to positions requiring higher qualifications and entitled to a higher rate of pay. To assume that because Mr. Harrison is a person of African descent, he shall draw only the pay which this law establishes for the class it obviously refers to, and be deprived of the pay which another law specifically affixes to the office he lawfully held, would be, in my opinion, a distortion of both laws, not only unjust to him, but in plain violation of the purpose of Congress. I therefore think that the Paymaster should have paid Mr. Harrison his full pay as Chaplain of a Volunteer Regiment.

Your attention having been specially called to the wrong done in this case, I am also of opinion that your constitutional obligation to take care that the laws be faithfully executed makes it your duty to direct the Secretary of War to inform the officers of the pay department of the army that such is your view of the law; and I do not doubt that it will be accepted by them as furnishing the correct rule for their action. I am, sir, very respectfully, your obedient servant,

EDWARD BATES, Attorney-General.

To the President.