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CHRISTIAN ADVOCATE.

Liability of Individuals for Injuries Done by the Confederate Armies—A Legal Opinion.

Under this head, John Brannon, of Western Virginia, lately published the following letter, which is herewith republished in this paper as a matter of general interest, and one in which many of the people of this State are deeply interested. In the opinion of the present writer, an abler argument on that subject might have been framed; but, in the absence of such, this is given, and it will be well carefully to read and study it:

WESTON, West Va., March 3, 1866.
DEAR SIR: Yours, asking my opinion upon the subject of the suit against you, has been received.

If I understand the proposition submitted by you, it is this: you were a soldier in the Confederate army, and an effort is being made to render you liable for property taken from individuals in West Virginia by the Confederate armies, and it is claimed by the plaintiff that the late war, which has recently terminated in the overthrow of the Confederate armies, was not such a war as conferred upon the parties to it the rights of belligerents, and, therefore, you are liable.

It will be necessary—first, to consider what are the rights of belligerents in a public war. Secondly, was the late war between the Government of the United States and the Confederate States such a war as conferred upon the parties to it, whether for or against the Government, belligerent rights?

A public war is a contest, by force, between independent States, and entitles both of the belligerent parties to all the rights of war against each other; and this applies to those not in arms, as well as to the soldiers. When one State is at war with another, it has a right to seize upon all the enemy's property, of whatsoever kind and wheresoever found, and to appropriate it to its own use, or to that of the captors, if the neutral rights of other nations are not violated.

This is the extreme right of war, modified and restrained only by the purposes of the war.

It is immaterial whether the person from whom the property is taken has, or has not, taken part in the war, or given aid to the power having military control of the part of the country in which he resides, or whether he is in sympathy with the party making the capture. Again: the situation of the property is one of the tests of the belligerent right to take it. If it is at a place where it can be controlled by the enemy to the capturing party, it may be seized.

Again: any property of any kind, within the limits or control of the enemy, that may be the subject of commerce and trade—that may be the subject of taxation, or otherwise strengthen and give pecuniary or other power to an enemy, may be captured. The reason of all this results from the fact that war is the exercise of force by a nation, or a body assuming to be a nation, against another, for the purpose of coercion.

In a public or civil war, all who belong to either of the belligerents, whether voluntarily or involuntarily, are regarded, in all questions affecting the rights of war, as enemies, whether in arms or not; and Vattel, in treating of the rights over enemy's property, uses this language: "We have a right to deprive our enemy of his possession of every thing which may augment his strength, and enable him to make war." It is because of all these consequences that all mankind dread and recoil from such a dreadful alternative as war. An abuse of this power can only be regarded as licentious, and condemned, but is tolerated, nevertheless, for in the particular case of excessive pillage who can be the judge?

As Vattel expresses it: "Even if the point (excessive pillage) could be exactly ascertained, nations acknowledge no common judge."

When one side does an act of war, such as seizing property, laying waste a country, and the like, it is always done with a concession to the other side, that like acts may be resorted to by the other. The rights of the parties are reciprocal, and when the usages of war are violated by the enemy, retaliation may be resorted to.

By the laws of war, whatever is permitted to one of the parties to a war, is conceded to the other. This grows out of the fact that a war, from necessity, is to be considered, in its effects at least, as just on both sides.

The second proposition above stated is next to be considered: was the recent war of such a character as conferred belligerent rights upon the parties to it?

If it was a civil war, all the authorities concur in admitting that the parties to it had all the rights of belligerents.

Vattel declares: "That the common laws of war are in civil wars to be observed on both sides. The same reasons which make them obligatory between foreign States, render them more necessary in the unhappy circumstances where two exasperated parties are destroying a common country." All the authorities on the subject of *ius belli*, concur in the concession of these rights in a civil war.

Was this a civil war? Strange, indeed, if there should be any question about the character of this war! If the political department of the Government has decided that question, it is, by like concurrence of all the authorities, conclusive on the courts. It can not be denied, at this day, with all its history before us, to be found in the published proclamations of President Lincoln, the acts of Congress, the acts of the War, Navy and State Departments of the Government, that this was a civil war. At most the first act of the Government was to make it so. On the 15th of April, 1861, a blockade was proclaimed by the President; and, on the 27th of the same month, the said blockade was declared to apply to Virginia and North Carolina, bringing at that time the whole coast of the Southern States under the blockade. A blockade is an act of war. It can not be sustained, as to neutrals, otherwise than as a belligerent measure.

I know that it has been urged, that the right to declare the blockade referred to, existed as a public right—as a right attaching and belonging to a sovereign. No such power is conferred, as a public right, on the President alone, without an act of Congress. This was done, by the President, clearly as Commander-in-Chief of the Army and Navy. It may be true that a sovereign may interdict trade with foreigners, when he has dominion and exercises sovereign powers over the coast, and the small part of the sea within the civil jurisdiction of the sovereign, because they can be commanded from the coast. If, therefore, follows, that, when the sovereign has not the command of

the coast, he can not enforce any interdict to trade with foreigners, as a mere municipal or foreign right, but can only assert such interdict as a belligerent right of blockade—as a right of public or civil war, and not as a municipal right to close ports. If the right existed as a sovereign right, it would not be necessary to make the blockade effective—a mere interdict would answer the purposes of a blockade.

During the revolution and revolt in Spanish America, Spain claimed this sovereign right, and Mr. Monroe, the Secretary of State, in a note to the Spanish Minister, asserted the principle—I have here stated.

In a dispatch of Lord Russell to Lord Lyons, in 1861, he stated that the existence of civil war gave to both parties the rights of war against each other, and that his Government could not admit the right of the United States, at one and the same time, to exercise the belligerent right of blockade, and the municipal right of closing the ports in the South, but admitted "the right of blockade to ports in possession of the Confederates, but an assumed right to close any ports in the hands of insurgents, would imply the right to stop vessels on the high seas without instituting an effective blockade," and he declared further that he "would consider a mere decree closing the ports in possession of the insurgents as null and void."

Judge Dunlap, of the United States District Court for the District of Columbia, held, in case of the Tropic Wind, the said blockade "to be a belligerent right, and could only have place in a state of war," and that the proclamation of the President, declaring the blockade, was "an executive declaration that civil war existed."

He further states: "I do not find, on examination of the writers on public law, any difference as to belligerent right in civil or foreign war. The blockade being one of the rights of war, and the President having in substance asserted civil war to exist, I am of the opinion that the blockade was lawfully proclaimed."

In a note in Lawrence's Wheaton, the annotator says: "The fact set out in the proclamations of the President of the 15th and 27th of April, 1861, with the assertion of the right of blockade, amounts to a declaration that civil war exists."

Under this blockade it became necessary to establish the blockade to be lawful, and the right to make prizes under it, not by the sovereign right to interdict commerce as a municipal right, but as a right *jure belli*; otherwise the seizures and prizes under it could not be held.

This very question has been decided during the late war in many cases of vessels belonging to English, Mexicans, and other neutrals, and to persons residing within the Confederate lines, and citizens of the United States residing in the Northern States, and decided by the inferior and Supreme Courts of the United States to have been a lawful blockade, and that it was a civil war, and that the prizes, under it were lawful because it was a civil war, and that belligerent rights existed. I have previously shown that such rights, to be belligerent, must be reciprocal—that one side can not enjoy them without conceding them to the other.

The blockade, then, was about the first act of the political department recognizing civil war. This was followed by many other acts of the political department, in effect, recognizing the existence of civil war. The act of Congress, of the 13th of July, 1861, say, the Supreme Court of the United States, in certain prize cases, recognized the war as a civil war. Other acts in like manner recognized it as such.

By the effect of an act declaring the existence of civil war, all within the States declared to be in revolt would be treated as enemies, and Congress, well-knowing this to be the effect, passed some laws for the benefit of the loyal.

It has always been the usage, in civil wars, to modify its hardships by allowing privileges to those adhering to the Government revolted against; otherwise hardships and cruelties would fall upon the loyal, and distinctions between the guilty and innocent be confounded. The acts of Congress, and the proclamations of the President, made such exceptions. It would not have been necessary to make these exceptions, if it had been a mere personal war with the persons in arms, and not a civil war.

Again: Gen. Halleck, who was Commander-in-Chief of the armies of the United States, and who stands deservedly high as an author on international law, in his instructions to the commanding officer in Tennessee, and indicating the policy to be pursued toward non-combatants, says: "In a civil war, like that now waged, their property should not be seized, except as a military necessity. They are, however, subject to forced loans, military requisition, their houses to be let for soldiers' quarters," etc.

It will hardly be pretended that these rights could not exist to the extent asserted, except in a war *inter gentes*, or in a civil war. The daily events of war, such as the destruction of property, the laying waste of whole sections of country, all from the painful necessities of the war, constrained a recognition of these acts by the political departments of the Government.

It must be a civil war to render lawful the taking or destruction of the property of the loyal, within the limits of the enemy.

These and many other recognitions by the political departments of the Government, treating the late war as a civil war, make your defense complete.

Should these acts be ignored and a technical ignorance affected, then the question of its having been a civil war is a question of fact. The sad events of the war, the painful reminiscences which constantly recur to the minds of all, the frightful magnitude of it, the desolate fields, the impregnable ramparts yet standing, the vast and extensive lines of intrenchments, the immense lines of pointed bayonets, all demonstrated it to be the greatest of civil wars; and it strikes every mind as singularly strange that there should be any question of its real character.

Diquelme says: "When a part of a State takes up arms against the Government, if it is sufficiently strong to resist its action, and to constitute two parties of equally balanced forces, the existence of civil war is thenceforward determined."

Vattel says: "A civil war breaks the bands of society and of the Government, or, at least suspends their force and effect; it produces in the nation two independent parties, who consider each other as enemies, and acknowledge no common judge. Those two parties must therefore necessarily be considered as constituting, at least for a time, two separate bodies, two distinct societies. Having no common superior to judge between them, they stand precisely in the same predicament as two nations who engage in a contest and have recourse to arms. The common laws of war are, in civil wars, to be observed on both sides." "The Prince," he says, "never fails to call rebels all his subjects who openly resist him; but when the latter become sufficiently strong to make war against him, to compel him to carry on the war regularly against

them, he must be content with the term, civil war."

We all know this test of civil war was fully made out by the acts of both sides. Civil prisoners were taken and only released by paroles. Seamen, acting under letters of marque granted by the Confederates, were captured, tried and convicted of piracy, and the Government was forced, in order to release hostages, to ignore the power of the courts and have them exchanged, and finally repudiated the act of Congress and made a cartel for the general exchange of such persons as well as soldiers, who might be taken as prisoners.

Judge Grier, in delivering the opinion of the Supreme Court of the United States in the prize cases referred to, says this was "not the less a civil war, with belligerent parties in hostile array, because it may be called an insurrection by one side and the insurgents be considered as rebels or traitors. It is not necessary that the independence of the revolted province or State be acknowledged, in order to constitute it a party belligerent in a war, according to the law of nations." He further says: "A civil war is never publicly proclaimed, *eo nomine*, against insurgents; its actual existence is a fact in our domestic history which the Court is bound to notice and to renew." "The true test," he states, "of its existence, as found in the writings of the sages of the common law, may be thus summarily stated: 'When the regular course of justice is interrupted by revolt, rebellion or insurrection, so that the courts of justice cannot be kept open, civil war exists, and hostilities may be prosecuted on the same footing as if those opposing the Government were foreign enemies invading the land.'"

He says again: "This greatest of civil wars was not gradually developed by popular commotion, tumultuous assemblies of local, unorganized insurrections. However long may have been its previous conception, it nevertheless sprung forth suddenly from the parent brain, a Minerva in the full panoply of war. The President was bound to meet it in the shape it presents itself, without waiting for Congress to baptize it with a name, and no name given to it by him or them, could change the fact."

It is clear, then, should any one be found now to deny that the political department of the Government recognized the war as a civil war, that its actual existence, as a fact, cannot be denied, and that the courts are bound to regard it as such; and that all the rights existing in a public war—in a war *inter gentes*—existed under the late war, and that belligerent rights, to the full extent, and for stronger reasons, as I have shown, attach.

The Supreme Court of the United States, in the cases referred to, to be found in 2 Black's reports, has decided the question. They decide that this was a civil war, both upon the ground of its political recognition as such, and its character, its magnitude, organization, etc.; and that the courts are bound to so regard it. That the rights of the parties to it are the same as in a war between independent nations.

Five of the nine judges held that it was a civil war, with all belligerent rights attaching to it, from the time of the declaration of the blockade in April, 1861, and the remaining four held that it was such a war only from the passage of the act of Congress on the 13th of July, 1861, that being the only difference between the majority and minority of the Court.

The war has now ceased, and peace, sweet gift of Heaven! has again diffused its happy influence over our land, and the people throughout its length and breadth, under the wise and conciliatory policy of President Johnson, are pursuing peaceful and remunerative avocations, and under such a state of things, I feel sure the good sense of the people will discountenance all efforts to protract the war in detail. I feel sure such will be the happy solution of these controversies. It is proper to mention that I have not in the above opinion expressed any views as to the rights of the military conquering power, that being a wholly different question from the one propounded by you.

I advise all to accept the amnesty offered by President Johnson, and to respect it most religiously. However honest you may have been in the support of a cause which has failed, good sense and a proper respect for the Government which has been successful, demands this obedience. Most truly yours, etc., JOHN BRANNON.

CHRISTIAN'S VOYAGE.

I'm out upon the deep,
And frail'st my bark;
The rough winds round me sweep;
The night is dark.
I see dark clouds arise;
A storm at hand;
They blacken all the skies—
How far is land?
The tempests round me rave,
The thunders roar;
But Thou, O Lord, can'st save—
I'll fear no more.
Though billows o'er me roll,
And dark the night,
O'er all Thou hast control—
All will be right.
But hark! a voice I hear,
Says, "Peace, be still!"
The storm-clouds disappear
At Jesus' will.
The billows cease to roll;
The stars shine bright;
Praise Thou the Lord, my soul—
All will be right.
And now the morning gray
Dispels the night;
Behold the King of Day!
The Prince of Light!
My sail glides swift along;
Ho! land in sight,
I'll raise the cheerful song—
All will be right.
Safe on the shining shore,
And Jesus near;
I'll breast the storms no more—
Farewell to fear.

A. T. J.

Gen. Longstreet has been elected President of a New Orleans Insurance Company.

[For the Advocate.]

Reply to Brothers Speer and Bird.

The strictures of these brethren on my article against the unscriptural language and idea conveyed in the proposition "Christ paid the debt for us" have been closely read and considered. I thank these brethren for their labored effort to enlighten the readers of the *Advocate* and myself especially, as I suppose, upon Greek and what different authors say. I have to tell them, however, as it regards myself, the failure is complete, and as it regards those who have no knowledge of the Greek language, I am very fearful they will not attempt to wade through such depths of lore; if so, they of course, are still in darkness.

All the authors to which the brethren refer, both Greek and English, I have, and have studied them closely and critically in other days. I find nothing new, and especially as their Greek does not touch the matter of difference between us, it may pass.

Much the greater part of these articles is upon facts, about which there is no difference of opinion. To make the points of agreement and the points of difference plain, I will sum them up:

First—We agree that "Christ died the just for the unjust," the innocent for the guilty.

Secondly—That through the meritorious sufferings of our Lord Jesus Christ we receive all good, spiritual and temporal, pardon, regeneration, sanctification, holiness and heaven.

Thirdly—That the price offered for man's salvation was the greatest in the "universe of being," nothing less than the precious blood of Christ.

Fourthly—That the best acts of the best men have no merit.

Here are the points of agreement, and, notwithstanding nothing can be found in my article in opposition to these facts, yet the brethren's articles are almost exclusively upon these points of agreement, and closing up, come to the same conclusion with myself. The points of difference are:

First—These brethren affirm that "Christ paid the debt for us" entire and complete.

Secondly—That after the debt is thus paid entire and complete, it must be forgiven.

If these are not the points of difference, there is none as I can see. These propositions I deny, because, as I have showed in my former article, to which the reader is referred, that both the language and the idea, that "Christ paid the debt for us" are anti-scriptural, and the propositions contradictory and unmeaning. The brethren admit the language is not in the Bible, and as their effort to show that the idea is there, is so exceedingly tame, not in the least impairing what I said in my former article, but agreeing with almost all I did say as it regards man's recovery to the favor of God, I shall proceed to show what is the plain, unmistakable Bible doctrine of man's recovery from his ruined condition, such as must strike every Bible-reader as being scriptural, both in language and idea, and therefore not contradictory, and then show that both these brethren agree with me, however much they may disagree with themselves.

God made man holy and loved him with a love that none but God can love. Man fell from this holy state and became a sinner, an enemy to God, and was bound down under eternal death. God loved him still, only another principle in his character, his eternal justice shuts off the exercise of that love. God cannot now be just (and therefore cannot exist at all as God), and forgive man, bring him up from that eternal death into which he had plunged himself and restore him to his favor. There is the whole of man's condition so far. What objection have you to it? You cannot raise any on Bible grounds. Something must be done so that God's pardoning, regenerating and sanctifying love may reach man, and God yet be just, or man is eternally doomed. No objection can possibly be made to this statement. That something Jesus Christ engages to do, and He Himself declares has done by the offering of His own precious blood, and His apostles bear witness to the same fact. Do He and the apostles tell us, when reasoning on this subject, that this offering pays the entire and complete debt. They never intimate it. These brethren may tell us so, but they have not the least authority for it from Jesus and the apostles. Hear the words of the ever-blessed Jesus Himself proclaiming to a lost world what His sufferings and rising again have effected for them: "Thus it is written" (in the prophets, in the streaming blood and flaming sacrifice at the altar,) and thus it behooved Christ to suffer, and to rise from the dead on the third day, and that repentance and REMISSION of sins (forgiveness of debts) should be preached in His name among all nations. Now hear St. Paul as he emphatically declares the offering of the price, the blood of Jesus, as an atoning sacrifice, has removed the difficulty entire, "God can now be just and the justifier (pardon) of him that believeth in Jesus." Such texts by the score might be quoted, but the subject is too plain to waste time and space upon. The whole system is one of forgiveness—not of debt-paying. It is the grand leading central idea both of the Old and New Testaments. It is taught, in doctrines unmistakable, as the leading fact around which every thing in theology circles. To use the language of divines (and this can not be objectionable to the brethren, as it is there they get most all their authority), "It is the

great provisional or remedial scheme of PAR-
DON." Bro. Speer says "lutron (redemption price) signifies every-thing which satisfies another so as to effect deliverance." The italicizing is mine. This view of the subject is correct precisely. The *lutron*, or redemption price, satisfies another (the Father) so as to effect the deliverance of man. How? By paying the debt? Never. It is neither so stated, nor intimated, in the Bible, but by effecting pardon and holiness.

These brethren, after laboring hard on untenable and unscriptural ground, as might be expected, like Noah's dove, not finding where to place their foot, in their conclusion and summing up, come up and take their stand upon the Bible. Bro. Speer tells us that "the penitent sinner confides in the meritorious death of Christ as the only source of pardon, holiness and heaven." Bro. Bird tells us, "Christ dies; man is redeemed; pardon is offered upon gracious terms." These are plain Bible facts, sustained every-where by the plainest Scripture reference. I welcome these brethren to the light and true position, and feel confident they must enjoy it after penetrating to such depths in mazy darkness. Brethren, we are together now, though you seem to differ with yourselves. Why did you not tell us in your summing up that the *lutron* paid the debt entire and complete, and yet the debt must be forgiven? You would then have been consistent with yourselves, though very inconsistent with the Bible. Truth is ever consistent with itself and with the Bible. Error is ever inconsistent with itself and the Bible. When one attempts to defend error from the Bible, he is inconsistent with the Bible, and, ere he advances two pages, he is most likely to be inconsistent with himself. The truth is, the phrase "Christ paid the debt for us," is anti-Bible, both in language and idea, and can not be defended.

Those who believe in partial atonement, tell us that Christ paid the debt for a certain number, and that number is as certain of heaven as if they were there. Just conclusion from the premises. Universalists tell us that Christ paid the debt for all, and all will be saved. Just conclusion from the premises. Bros. Speer and Bird tell us, Christ paid the debt entire and complete, and yet, unless the debt is forgiven, we are lost! I see no just premises or conclusion.

Now, dear brethren, if you write any more upon this subject, you must write to the point, or I can not waste valuable time in replying. Tell us if God did not love man after his sin. And tell us if his love would not have extended to his pardon, had it not been for difficulties that stood in the way of pardon. And when these difficulties, that stood in the way of pardon, are removed, so that God can be just and forgive man, what more is needed? And then tell us why it is, and how it is, that a debt paid entire and complete must be forgiven. Why it is, after such complete and entire payment of our debts, we are taught to pray "forgive us our debts."

My object in writing these articles, is to get back to the simplicity and plainness of Bible teaching.

I shall conclude by making another short quotation from Bro. Speer, showing that he does occupy the Bible ground after all. "In His death is the reason for, and the procuring and meritorious cause of, FORGIVENESS."

THE OLD MAN.

UNSCRIPTURAL LANGUAGE.—No. 3.

"Christ died that we might not die." This language is not in the Bible; neither is the legitimate idea it conveys, there. The legitimate idea is, that we are out of death, and that Christ died that we might not enter this state. The slightest examination of this subject must satisfy every one that this view of the subject is unscriptural and erroneous. Man's being in a state of death, deep, dark and eternal, was the very object that brought the Son of God down to die. Not that man might not die, for he was already dead; but that man might come up from his state of death and live. Christ died that man might not continue dead, that man might come up from eternal death into which he had plunged himself, and have eternal life in its place. Never say "He (Christ) died that we might not die," for neither the language nor the legitimate idea the language conveys, can be found in the Bible. Use, when on theology, the plain language of the Bible that conveys plain Bible facts and ideas, then the people committed to our care and instruction, will have a much better knowledge of theology than they now have, and will find a hundredfold more pleasure in searching into the sacred treasures of the Holy Book.

THE OLD MAN.

THE LOWEST THE HIGHEST.—As Christ was nearing his exaltation, in the lowest depths of his humiliation, so it is with His Church. When things are brought to the most hopeless appearance, then shall light come out of darkness.