

has power to repeal State laws on the subject of Slavery, or to continue those laws in force, according to his judgment of the military necessities of the moment. Practically, it may prove to be very difficult to return to bondage three millions of negroes declared to be free by Executive proclamation. But this is not enough. It should be *legally*, as well as physically, impossible. The President's action should have been so shaped into conformity with his actual powers under the Constitution as to leave no shadow of doubt concerning its validity.

Nor is it too late to cure this defect, if it exists. The Proclamation has been issued and may or may not prove to be valid. *But why should not the President follow it with a military order on the same subject and aiming at the same result?* Why should he not, in explicit terms, command every General of the army, when he enters upon Slaveholding territory, to deprive the rebels of the aid and support of their slaves, by setting them free and maintaining them in their freedom? This would be strictly within the scope of his rightful powers as they are defined by the *National Intelligencer*. It would be in the clear and unmistakable exercise of his powers as Commander-in-Chief of the army. It would not be a legislative act in any sense, nor would it involve any interference with, or assumed sovereignty over, the laws of any State on the subject of Slavery. It would be the direct "application of military force" under military necessity, and as such would be entirely free from the objections which may be urged against the promulgation of a sweeping decree of emancipation.

Practically, the effect of such a Military Order would be just as complete as that of a Proclamation. In terms the latter covers all the rebellious States:—but every one understands, and no one better than the President, that its actual force will be restricted to the territory in possession of our armies.

We beg leave to commend this matter to those Democratic presses which have been greatly distressed lest the Proclamation should prove to be *brutum fulmen*,—a mere "Pope's bull against the Comet." We sympathize with them somewhat, because to some extent we share their apprehensions. We should be quite as sorry as they could be to see it thus fail of its intended effect. Let us, then, have it put beyond all peradventure. The Proclamation has been issued, and has met the demands of that numerous and clamorous class of our fellow-citizens who love high-sounding words,—who think that it is the rolling thunder instead of the lightning flash that does execution. Now let us have something which will stand fire, even if the Proclamation fails. Let us have a Military Order, commanding the enfranchisement, by military force, of every slave who may be aiding, directly or indirectly, the rebel cause.

The President's Proclamation.

The *National Intelligencer* of the 3d inst., has an able article commenting upon the President's proclamation of Emancipation. The following extract embodies the views of that journal in regard to this document:

"We do not deny that the President, as Commander-in-chief of the army and navy, may, in time of armed rebellion against the authority and Government of the United States, and while conducting war on slaveholding territory, *rightfully liberate slaves, so far as may be necessary to the success of his military operations.* And the measure of his power in this direction may be admitted to be commensurate with the military necessity under which he acts, and with the extent to which he can practically employ in services auxiliary to his operations, the slaves whom he actually liberates.

But it is denied by many (and we are of their number) that the Executive Department of the Government has the right to 'order and declare' that slaves now held to service *by virtue of certain State laws* shall on a day fixed be 'then, thenceforward, and forever free.' For this style of language proceeds on the assumption that the Executive branch of the Government is, because of the enlarged powers conferred upon it in the name of 'military necessity,' endowed with legitimate authority to *repeal or suspend the laws of certain States as respects Slavery.* It implies that the President has a paramount *de jure* control over the law of Slavery, inasmuch that he could retain that law in its validity and in its obligation on the slave from the 22d of last September to the 1st of January, 1863, and unbind its sanctions after the latter date.

As we understand the matter, there is a great difference between the assumption of this prerogative right, which is legislative in its nature, and the emancipation of slaves as the necessary incident of actual military operations, or as the consequence of legal conviction for treason. It is, as we have already said, to enact a political solecism for the 'Executive Government' to declare slaves legally free where the President has and can have no legal jurisdiction over the law of Slavery. It is to carry into one department the style and language belonging exclusively to another sphere of political ideas.

A single citation from the recent annual message of the President, will serve to show the incongruity as well as inefficacy of this 'war measure.' In that message, arguing in favor of his project for emancipation with compensation to owners, Mr. LINCOLN said:

'The liberation of the slaves is the destruction of property—property acquired by descent or by purchase, the same as any other property.'

It will hardly be pretended that any mere words of the President, however solemnly uttered, can avail to do that which it is not in the power of words to do—'to destroy property.' As in the case of 'other property,' so in that of 'slave property;' if it be 'destroyed,' it must be *by the actual application of force, and not by the promulgation of a decree.* And the force is as vigorous without the decree as with it.

Where the President has no control over the law of any relation, his sole authority over that relation must result from actual force applied under stress of military necessity. *And this actual force may be legitimately applied wherever or whenever it is necessary to enforce the laws.* If, then, the President, instead of assuming to declare slaves free, had announced his purpose, in conducting the war within certain districts, to hold and treat all slaves as free, so far as they should come under the Federal sway, he would have avoided the objection which justly lies against a mere edict of emancipation. Those who love the Union better than Slavery may be prepared to see Slavery overthrown wherever it stands in the way of National authority, but they are not prepared to admit that the President can, by the breath of his mouth, make or unmake the law of freedom and bondage. For to declare slaves free does not lie within the province of the Executive Department of the National Government on any theory of the President's duty, whether as Commander-in-Chief of the army and navy or as a civil ruler, nor can he consistently exercise this legislative function any more in a time of war than of peace. *But to make slaves free may not only rightfully, but must almost necessarily be the incident of his Executive duties in conducting large military operations on slaveholding territory."*

It is useless to deny that there is very great force in these suggestions. They confirm fully the opinions we have more than once expressed as to the *form* which should have been given to this decree. If it had been issued as a *military order*, addressed to Generals in actual command, prescribing their conduct in certain specified emergencies, and directing the application of force to the enfranchisement of slaves under certain circumstances, it would have avoided all these objections, without in the slightest degree impairing or lessening its practical effect.

As we remarked in our comments on the Proclamation the day after it was issued, the *form* given to it may become absolutely essential to its validity. Suppose at some future time a negro should claim his freedom under that Proclamation,—or a master should reclaim his slave in spite of it: the Supreme Court would, in the end, have to decide the question of its constitutionality. Certainly it is a matter of the utmost importance, that whatever action is taken on this momentous subject, should be such as will stand the severest tests to which it can be subjected. Yet we doubt very much whether the Proclamation will stand this test. We think every dispassionate person must feel some doubt whether the Supreme Court will decide that the President