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BY J. A. SELBY.

COLUMBIA, S. C., TUESDAY MORNING, AUGUST 8, 1865.

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THE PHŒNIX

DAILY AND TRI-WEEKLY.

WEEKLY GLEANER

EVERY WEDNESDAY.

BY JULIAN A. SELBY.

TERMS_IN ADVANCE.

Captured Property.

We print below the opinion of the Attorney-General of the United States relative to the status of captured or abandoned, rebel property taken into military possession and transferred to the agents of the United States Treathe agents of the United States Treasury for sale. As it involves very large interests both North and South, it is important. Much of this property, since it came into possession of the United States, appears to have been designed to pay off debts contracted before the war with Northern merchants many of whom you held. merchants, many of whom now hold assignments of claims ostensibly for that purpose. And there has been a good deal of speculation in these claims also, certain parties in the North having purchased them at a very nominal figure. To all concerned, the only recourse, according to the Attorney-General, is the Court of

Attorney-General's Office, July 5, 1865. Hon. Hugh McCalloch, Secretary of the

Treasury.
Sm: I have the honor to acknowledge the receipt of your letter of the 17th ult., submitting for my opinion the questions that have arisen in your department in the case of the Savan-

The circumstances under which the property in question came into the possession of the Government are stated in your letter substantially as follows:

On the occupation of the city of Savannah, in December last, by the United States forces, under Maj. Gen. Sherman, some 38,000 bales of cotton were found stored there. This property was seized and taken possession of by the military authorities, and by of by the military authorities, and by them turned over to agents of the Treasury Department as "captured property," pursuant to the provisions of the Acts of Congress of March 12, 1863, and July 2, 1864, (12 Stat. at Large, 820; 13 id. 375.) After it was thus received by the appropriate Large, \$20; 13 id. 375.) After it was thus received by the appropriate agents, the property was forwarded to New York, and there sold at auction as provided by law. You state that a number of claims for the proceeds of the sales are now being presented to your department, some of the claimants being residents of Savanuel. ants being residents of Savannah, who aver that they have been loyal to the Government during the rebellion; others being subjects of foreign Governments resident in Savannnah, or abroad, averring that they were neutral during the late conflict; others, Northern stating that they came into possession of the cotton claimed by them in paymerchants, ment of, or as security for, debts contracted prior to the rebellion; and still others, claiming restitution of their property, or its proceeds, on the ground that the cotton in question was not capturable, or properly "captured property," and should not be held and treated as such.

The first question arising on this state of facts that you submit is, whether the property to which reference has been made, should or should not be regarded as "captured," under the Acts of Congress of March 12, 1863,

and July 2, 1864. I do not perceive that either of the statutes provides what property shall be regarded as "captured property,"

provides that "property, real or personal, shall be regarded as abandoned when the lawful owner shall be voluntarily absent therefrom, and engaged either in arms or otherwise, in aiding or encouraging the rebellion." (13 Stat. at Large, 376.) But I apprehend that there need be no difficulty in determining, for our present purposes, what property is comprehended by the phrase "captured property" as used in these statutes, for the phrase is its own sufficient explanation. I suppose that all movable property, other than that species described by the proviso to the first section of the Act of 1863, actually and hostilely seized and taken on land, by a military officer or soldier of the United States, in a State, or any portion of a State, when the lawful owner shall be volunin a State, or any portion of a State, designated as in insurrection against the United States, may be regarded as "captured" within the meaning of the statutes of 1863 and 1864. Ido not intend to say that no other property than that I have thus andeavored to describe, may be depositived and treat that I have thus andeavored to describe, may be denominated and treaten as "captured property" under these statutes. It would seem by the 7th section of the Act of 1864, that certain property seized and taken by naval forces, viz: "property seized by the navy upon any of the inland waters of the United States," may be dealt with in the manner provided by the laws under consideration, (13 Stat. at Large, 377;) whether this section takes a say the prize jurisdiction of the courts in all cases of seizure of water-borne property on the inland water-borne property on the inland waters of the United States, effected there by naval commissioned captors, and commissall jurisdiction over such and commits all jurisdiction over such cases to the Court of Claims and to Congress, must remain for judicial determination. But the Supreme Court has recently decided that private property seized by a naval force on land bordering upon one of the inland waters of the insurrectionary South, was not the subject of prize jurisdiction, and was receivable by the Tressury agents under the statute of 1863, (U. S. 72 Bales of Cotton, Dec. 7, 1864, No. 360.) This decision was rendered in a case to which the Act of 1864 did not apply, the capture there considered having been made prior to the passage of that statute. I refer to it for the purpose of showing that it for the purpose of showing that certain cases of purely naval capture must pursue the course indicated in the statute for the collection of abanthe statute for the collection of abandoned and captured property. I have said that property seized or taken by any military person in the insurrectionary territory is denominated as "eaptured;" but the 6th section of the Act of 1863 would seem to affix that character to "cotton, sugar, rice and tobacco" received by any United States officer or soldier within insurrectionary districts. The section provides that it shall be the duty of every vides that it shall be the duty of every officer or private soldier, who may take or receive abandoned property, or any cotton, sugar, rice or tobacco, from persons in insurrectionary dishis control, to turn the same over to an agent of the Treasury Department; and it further provides that the refusal or neglect to do so shall subject such an officer or soldier to trial and punish-ment. (12 Stat. at Lagree 391) ment. (12 Stat. at Large, 321.)

Property of the foregoing character thus turned over to a Treasury agent, and in that manner "received" by him, must be dealt with as the 2d section of the Act provides: that is, it must be sold, and its proce ds paid into the Treasury, there to await the action of the Court of Claims, when duly invoked.

Thus it appears that all cotton received by, or that may have come under the control of, any military officer or soldier, whether it was actually seized or captured by him or not, must be dealt with as "abandon-ed or captured property." I may have occasion hereafter to comment

upon the effect of this provision.

The statute, it may be said, thus affixes to all cotton, as well as all the other articles above stated, that may be under the control of a military or naval officer in the insurrectionary districts, the de jure character of "captured" property, and when such property is received by a Treasury within the meaning of the law. A definition of "abandoned" property, and when such finition of "abandoned" property, however, is contained in the first section of the Act of 1864. That statute it becomes, it may be said, de facto, ciples of writers on what is styled the lawer of the law. A deproperty is received by a Treasury observed, in effecting the captures, what are called "the recognized usages of war," or had violated all the printage of war," or had violated all the printage of war," or had violated all the printage of war, and when such property is received by a Treasury observed, in effecting the captures, what are called "the recognized usages of war," or had violated all the printage of the law. A definition of "abandoned" property, and when such property is received by a Treasury observed, in effecting the captures, what are called "the recognized usages of war," or had violated all the printage of the law. A definition of the Act of 1864. That statute it becomes, it may be said, de facto, ciples of writers on what is styled the Laurens District.

ed as de facto and de jure "captured" property, under the statutes of 1863 and 1864.

The second question which you propose is, whether, it this property be of the character that I am of opinion it is, the power rests with the Secretary of the Treasury, or the President, to appoint a Commission to examine the claims, and restore to loyal claimants, the president of the presiden ants, the proceeds of so much of the property in question as they can show to have been legally theirs.

I am of opinion that neither the President nor any other Executive officer can restore or authorize such a officer can restore or authorize such a commission as you suggest, to make restoration of the proceeds of their captured property to these loyal claimants. Congress, by the legislation under consideration, has reserved to itself the power of finally disposing of the claims of the alleged owners of this property; and, so long as that legislation exists, the claimants must pursue the remedy which it indicates for the establishment and enforcement of their rights. ment and enforcement of their rights. By the Constitution, Congress has ex-clusive power "to make rules concern-ing captures on land and water." The present legislation, I apprehend, is clearly an exercise of that power. This is a general and comprehensive This is a general and comprehensive sovereign prerogative. Under other systems of Government the authority to make such rules may be exercised by the political department. But in this country the legislative department of the Government possesses exclusive authority both to establish rules for the regulation of the right of captaire in time of war, and also to provide the method by which all questions touching captures may be determined. The present legislation is not so much a regulation of the the right of capture—though the sixth section of the Act of 1863 may be interpreted as authorizing, if not commanding, the seizure of may be interpreted as authorizing, if not commanding, the seizure of certain kinds of property found by our military forces within the hostile districts of the South—as it is a provision for the judicial ascertainment of the rights of persons affected by captures that may have been, or may be, made in the process of our beligor. made in the progress of our beligerent operations, set on foot for the reduction of the rebellions Southern country. Congress took notice of the fact that captures of property on hand had been made, and would continue to be made, by the armies operating in and against that territory, as a necessary and proper means of diminishing the wealth, and thus reducing the power, of the insurgent rulers. It the power, of the insurgent rulers. It was not expected that such captures had been, or would be, in all cases, well and wisely made, or that in the course of such predatory hostility, the innocent would not suffer sometimes as well as the guilty. Nor was it thought well that the Administration, so to speak, if so much of the property within the enemy's territory as might be reduced into the possession of the military forces, should be controlled by or under executive authority. In this view of existing facts, and of just policy, the system provided by the Act of 1863 was devised for the adjudicaof 1863 was devised for the adjudica-tion and decision of the cases contem-plated by the statute. The Secretary point agents to "collect all abandoned or captured property" in the enemy's country. To secure faithful ann honest performance of their duty, the

of the Treasury was authorized to ap-Secretary was authorized to require such agents to give bonds in such amounts as he might deem necessary. The duty of the agents was to receive all property in the insurgent States which was in fact captured or seized out of the enemy's possession by the military authorities. They had no duty or power to inquire whether or not such property had been rightfully captured; whether the generals who reported it to them for collection had

"captured" property, and must be disposed of accordingly.

I am of opinion, therefore, that the cotton found by our army at Savannah, taken possession of there by the military authorities, and received from them by the agents of the Treasury

Department, is and should be regarded as the first and the inva "centured" and to dispose of it from seizure, having been captured, ifrespective of any considerations touching the legal exemption of any of it from seizure, and to dispose of it in the manner provided by the law. After the conversion of the property into money, the proceeds were directed to be 'paid into the Treasury.' The words of the statute are: "The proceeds thereof shall be paid into the Treasury of the United States." But these proceeds do not pass into the Treasury as proceeds of property sold under a judicial do not pass into the Treasury as pro-ceeds of property sold under a judicial sentence of confiscation. They are not sequestered or condemmed, but simply held by the United States, so to speak, in trust for those who may, in the manner provided, and in the time limited by law, ultimately esta-blish a level wight to receive them after blish a legal right to receive them after pacification. When the insurrection pacification. When the insurrection has been suppressed, the owners are authorized to invoke the jurisdiction of the Court of Claims, and obtain there and djudication of their respective claims. The proceeds of the property are thus in the possession of the United States, subject to the adjudication of that Court; and when it shall have passed upon the claimants' rights, and decree in their favor, Congress has solemuly declared that they shall receive restitution of their property.

receive restitution of their property. In the presence of such legislation—covering as it does the entire subject matter, providing for the safe custody of the property in question pending hostilities, and for the final judicial determination of the rights of the parties interested—I cannot see that the Executive has power to make a different disposition of the property from that provided by Congress, or authorize any one to determine the questions which Congress has entrusted to the decision of another forum.

I am, therefore, of opinion, in reply to your inquiry, that jurisdiction can-not be conferred upon a commission appointed either by the President or the Secretary of the Treasury to exa-mine the claims in question, and to make restoration of the proceeds of so much of this cotton as may belong to

loyal claimants.

The third and last question you propose is, what disposition should be made of the proceeds of the sales of

the property?

I think it is your duty to see that the direction of the Act of Congress is obeyed by those in whose hands the obeyed by those in whose hands the proceeds may be. The statute says that after the sale of any abandoned or captured property, "the proceeds thereof shall be paid into the Treasury of the United States." I am of opinion, therefore, that the proceeds of the property in question should be paid into the Treasury of the United States. into the Treasury of the United States, there to await the action of the Court of Claims and of Congress.

Very respectfully, your obedient

servant, (Signed) JAMES SPEED,

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