

CHAPTER VI.

STATUTES AGAINST TREASON. WHAT THEY ARE, AND HOW
THEY ARE TO BE ADMINISTERED.

THE United States statute of April 30th, 1790, provides that,—

“If any person or persons, owing allegiance to the United States of America, shall levy war against them, or shall adhere to their enemies, giving them aid and comfort, within the United States or elsewhere, and shall be thereof convicted, on confession in open court, or on the testimony of two witnesses to the same overt act of the treason whereof he or they shall stand indicted, such person or persons shall be adjudged *guilty of treason* against the United States, and *shall suffer death.*”

Concealment of knowledge of treason (misprision of treason) is, by the same act, punished by fine not exceeding one thousand dollars, and imprisonment not exceeding seven years. By the statute of January 30th, 1799, corresponding with foreign governments, or with any officer or agent thereof, with intent to influence their controversies with the United States, or to defeat the measures of this government, is declared to be a high misdemeanor, though not called treason, and is punishable by fine not exceeding five thousand dollars, and imprisonment during a term not less than six months, nor exceeding three years. So the law has stood during this century, until the breaking out of the present rebellion.

The chief provisions of the law passed at the last session of Congress, and approved July, 17th, 1862, chap. 195. are these:—

Section 1. Persons committing treason shall suffer one of two punishments: 1. Either death, and freedom

to his slaves; or, 2. Imprisonment not less than five years, fine not less than ten thousand dollars, and freedom of slaves; the fine to be collected out of any personal or real estate except slaves.

Sect. 2. Inciting rebellion, or engaging in it, or aiding those who do so, is punishable by imprisonment not more than ten years, fine not more than ten thousand dollars, and liberation of slaves.

Sect. 3 disqualifies convicts, under the preceding sections, from holding office under the United States.

Sect. 4 provides that former laws against treason shall not be suspended as against any traitor, unless he shall have been convicted under this act.

Sect. 5 makes it the duty of the President to cause the seizure of all the property, real and personal, of several classes of persons, and to apply the same to the support of the army, namely: 1. Rebel army and navy officers; 2. Government officers of Confederate States in their national capacity; 3. Confederate State officers; 4. United States officers turned traitor officers; 5. Any one holding any office or agency, national, state, or municipal, under the rebel government, *provided* persons enumerated in classes 3, 4, and 5 have accepted office since secession of the State, or have taken oath of allegiance to support the Confederate States; 6. Persons who, owning property in loyal States, in the territories, or in the District of Columbia, shall hereafter assist, aid, or comfort such rebellion. All transfers of property so owned shall be null, and suits for it by such persons shall be barred by proving that they are within the terms of this act.

Sect. 6. Any persons within the United States, not above named, who are engaged in armed rebellion, or

aiding and abetting it, who shall not, within sixty days after proclamation by the President, "cease to aid, countenance, and abet said rebellion," shall be liable to have all their property, personal and real, seized by the President, whose duty it shall be to seize and use it, or the proceeds thereof. All transfers of such property, made more than sixty days after the proclamation, are declared null.

Sect. 7. To secure the condemnation and sale of seized property, so as to make it available, proceedings *in rem* shall be instituted in the name of the United States, in any District Court thereof, or in any territorial court, or in the United States District Court for the District of Columbia, within which district or territory the property, or any part of it, may be found, or into which, if movable, it may first be brought. Proceedings are to conform to those in admiralty or revenue cases. Condemnation shall be as of enemy's property, and it shall belong to the United States; the proceeds thereof to be paid into the treasury.

Sect. 8. Proper powers are given to the courts to carry the above proceedings into effect, and to establish legal forms and processes and modes of transferring condemned property.

Sect. 9. Slaves of rebels, or of those aiding them, escaping and taking refuge within the lines of our army; slaves captured from them; slaves deserted by them, and coming under the control of the United States government; slaves found in places occupied by rebel forces, and afterwards occupied by the United States army, shall be deemed captives of war, and shall be forever *free*.

Sect. 10. No fugitive slave shall be returned to a person claiming him, nor restrained of his liberty, except for crime, or offence against law, unless the claimant

swears that the person claiming the slave is his lawful owner, has not joined the rebellion, nor given aid to it. No officer or soldier of the United States shall surrender fugitive slaves.

Sect. 11. The President may employ, organize, and use as many persons of African descent as he pleases to suppress the rebellion, and use them as he judges for the public welfare.

Sect. 12. The President may make provisions for colonizing such persons as may choose to emigrate, after they shall have been freed by this act.

Sect. 13. The President is authorized by proclamation to pardon any persons engaged in the rebellion, on such terms as he deems expedient.

Sect. 14. Courts of the United States have full powers to institute proceedings, make orders, &c., to carry the foregoing measures into effect.

The joint explanatory resolution of the 17th of July, 1862, declares that this statute applies to no act done prior to its passage, and to no judge or member of a State legislature, who has not taken the oath of allegiance to support the constitution of the Confederate States; and that no punishment or proceedings shall be so construed as to "work forfeiture of the real estate of the offender beyond his natural life."

The President's proclamation, in accordance with the above act, was issued July 25th, 1862. Thus all persons engaged in the rebellion, who come within the provisions of the sixth section, will be liable to the penalties after sixty days from July 25th. This is one of the most important penal acts ever passed by the Congress of the United States.*

* *Note to Forty-third Edition.* — For the laws of the Confederate Congress which provide for confiscation of estates *in fee*, see Note on "Confiscation," p. 409.

THE CONFISCATION ACT OF 1862 IS NOT A BILL OF ATTAINDER. NOR AN EX POST FACTO LAW.

This act is not a *bill of attainder*, because it does not punish the offender in any instance with corruption of blood, and it does not declare him, *by act of legislature*, guilty of treason, inasmuch as the offender's guilt must be duly proved and established by judicial proceedings before he can be sentenced. It is not an *ex post facto* law, as it declares no act committed prior to the time when the law goes into operation to be a crime, or to be punishable as such. It provides for no *attainder* of treason, and therefore for none of the penal consequences which might otherwise have followed from such attainder.*

The resolution, which is to be taken as part of the act, or as explanatory of it, expressly provides that no punishment or proceedings under said act shall be so construed as to work a forfeiture of the real estate of the offender beyond his natural life. Thus, to prevent our courts from construing the sentence of death, under Sect. 1, as involving an attainder of treason, and its consequences, Congress has, in express terms, provided that no punishment or proceeding shall be so construed as to work forfeiture, as above stated. Thus this statute limits the constructive penalties which result from forfeitures worked by attainders, and perhaps may be so construed as to confine the punishments to those, and those only, which are prescribed in the plain terms of the statute. And this limitation is in accordance with the constitution, as understood by the President, although the forfeiture of rebels' real estate might have been made absolute and unlimited, without exceeding the constitutional power of Congress to punish treason.†

* So decided by the Supreme Court in 1870, in *Bigelow v. Forrest*. Appendix, p. 610.

† Note to *Forty-third Edition*. — The views of President Lincoln on this question were subsequently changed. See Note on "Confiscation," pp. 406-409. Also, note to p. 111.