

isions are the interpreters of Constitutional law, as the "higher law" doctrine, which, if the gentleman and those with whom he acts can get the power, will be put in operation in this country, and build up as unlimited a despotism of the majority as history ever recorded—a despotism in which *white men* alone will not take part. For one, I would rather have my face veiled, and sink into the earth beneath me, than to witness that species of despotism in which the *black man* will figure as the enslaver and partial despot of the *white man*.

The question was raised before the Supreme Court, of the right and authority of the President and Congress to declare the ports of the Southern States which entered into the rebellion, to be blockaded. And it was there held, that

"5. A state of actual war may exist without any formal declaration of it by either party; and this is true of both a civil and a foreign war.

"6. A civil war exists, and may be prosecuted on the same footing as if those opposing the government were foreign invaders, whenever the regular course of justice is interrupted by revolt, rebellion or insurrection, so that the courts cannot be kept open.

"7. The present civil war between the United States and the so-called Confederate States, has such character and magnitude as to give the United States the same rights and powers which they might exercise in the case of a national or foreign war; and they have therefore the right *jure bello* to institute a blockade of any ports in possession of the rebellious States.

"8. The proclamation of blockade by the President is of itself conclusive evidence that a state of war existed, which demanded and authorized recourse to such a measure.

"9. *All persons* residing within the territory occupied by the hostile party in this contest, are liable to be treated as *enemies*, though not foreigners."

So there is the doctrine announced by the Supreme Court, ye loyal men in those States, that you can have *no more* protection from the government. *Your* property is liable to capture. *You* can be treated under the law as *enemies*, just as much as the man found with arms in his hands. That is the principle upon which the Federal authorities are now prosecuting this war.

Mr. STIRLING. I will ask the gentleman whether he accepts that decision of the Supreme Court?

Mr. CLARKE. I will say this: I do accept this as law, that the government of the United States has no right, if it proceeds under the Constitution and is dealing with men under that instrument, to carry on the war except according to the Constitution. But this decision goes to another point: that in putting down this rebellion the government

has placed itself in a position where it cannot prosecute it within the limits of the Constitution, but must fall back upon rights *de jure bello*. It has put itself in a position where it can no longer hold up the flag, and say the government is fighting for the old flag and the Constitution. We must wage the war with the South as *belligerents*. It is *practical* recognition on the part of the Supreme Court, to a certain extent, of the independence of the Southern States. You do not, Mr. President, treat the men who are carrying on the war as *traitors*. You are taking them every day. They are traitors according to one theory. Why does not the Government try them and hang them? Why is not every man of them hung? Merely from the fact that to the extent of the decision of the Supreme Court it is an admission as laid down in Vattel, that the government is waging war against *States*. Hence the very doctrine that this is a war by the General Government against a revolution by *States*, is recognized both by acts of the General Government and the decision of the Supreme Court. The result is this: The Government has got itself into such a position that nothing remains but to carry on the war against these States for purposes of *subjugation*. That is the issue which the people of the country are called on now to meet, whether this war shall be carried on for the purpose of subjugation by fire and sword, to overthrow all Constitutional rights, and destroy, as it is now claimed the Government can lawfully do, all rights which belong to the people in those States—the rights of slavery, their personal rights of property, and the rights which have ever been deemed "immortal and unimpeachable"—the rights of the States.

There is another doctrine therein declared, that every man in the Southern States is an *enemy*. Does the converse of that decision hold? Does the Supreme Court intend to recognize the principle that persons residing within the territory of the United States not occupied by the hostile party are to be treated as *friends*, as *loyal men*, as men who under the Constitution, can claim their rights? So help me God, so long as I have that decision of the Supreme Court to stand upon, so long as I hold the Constitution of the United States and this form of government to be as much mine as the gentleman's from Baltimore city (Mr. Stirling's) I contend that he is entitled to no right under it which I have not an *equal right* to claim, whether of person, of property or of liberty. I hold the gentleman and those who act with him liable, if they violate the Constitution and laws of the United States, passed in pursuance thereof, to be treated as *traitors* who should be dealt with accordingly. And when you deal with us, and with those who act with us, under this decision of the Supreme Court of the United States, you are