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The Minnesota *REBELLION* ACT of 1862

A LEGAL DILEMMA of the CIVIL WAR

WALTER N. TRENERRY

THE TIME was January, 1862, and the Minnesota winter had set in. Eight months earlier the rebels had occupied Fort Sumter and the Civil War had begun. The struggle, which both the North and the South had thought would end with quick and easy victory, dragged on, testing the resources of both sections. It had become obvious that every loyal citizen would have to pay heavily in time and money far into the future, perhaps giving his life to put down what some Minnesotans regarded as a causeless rebellion.

¹ See Alexander Ramsey, *Annual Message*, 1862, p. 4, 27, 28. For a general discussion of the formation of the first four Minnesota regiments, see William W. Folwell, *A History of Minnesota*, 2:84-95 (St. Paul, 1924).

² For a discussion of the effects of this tax on Minnesota, see Ramsey, *Annual Message*, 1862, p. 10.

³ As early as August 6, 1861, Congress had passed "An Act to confiscate Property used for Insurrectionary Purposes," but it was limited in scope and was merely declaratory of the law of war. See United States, *Statutes at Large*, 12:319. The Confederate act is found in James M. Matthews, ed., *Statutes at Large of the Provisional Government of the Confederate States*, 201, 260 (Richmond, 1864). For a historical discussion of these and other confiscation measures of the period, see James G. Randall, *The Confiscation of Property During the Civil War* (Indianapolis, 1913).

A very new state formed in part from the old Northwest Territory in which the Congress of the Confederation had forever barred slavery under the Ordinance of 1787, Minnesota in 1862 had only about two hundred thousand people. From them it had raised four regiments to help save the Union and smite slavery. The First Minnesota Volunteer Infantry had fought at Bull Run and had felt the shattering overconfidence of the first war days. The other regiments were in the field and would suffer heavily in days to come.¹

Congress had levied the first war tax — an apportioned direct tax which fell most heavily on the larger but more sparsely settled frontier states like Minnesota. As casualty lists grew longer and tax burdens heavier, demands for action — any action — that would help crush the rebellion became more insistent.²

The Confederate Congress had confiscated all Northern property for war use. Why had Congress thus far failed to enact similar legislation for the North?³ Should the rebels have the best of both worlds — seizing the property of loyal citizens and enjoying the certainty that rebel property in loyal states would remain safe and un-

touched, waiting for them at the war's end? If the president and Congress were laggard, why should the state of Minnesota suffer from the same paralysis of will?

The Minnesota legislature convened on January 9, 1862, to hear Governor Alexander Ramsey deliver his opening message. Fully conscious that he addressed the first wartime legislature to gather in the state of Minnesota, the governor reminded its members of "the grave responsibilities which the National peril imposes on the authorities of every State. . . . War rages, by land and sea, along three thousand miles of American territory," he continued, "and we stand upon the brink of events that may decide the fate of the Republic and of the human race on this and every continent." Ramsey's message was not conciliatory.

Recalling that he was the first governor to offer volunteer troops after the fall of Fort Sumter, Ramsey told the legislators that "all purely local objects of legislation sink into insignificance beneath the shadow of this stupendous national calamity." Since the Southerners chose to be enemies, Ramsey insisted that "Henceforth, all that the laws of war will justify against a foreign foe, and all that the first law of nature warrants for the subjugation of domestic treason, even if necessary to the extinction of human slavery, the undoubted cause of all our troubles, must be made to fall upon the crime and the criminals of this infamous rebellion."⁴

Members of the enemy camp, the governor went on, had owned and still owned property in Minnesota. Regardless of what Congress did, he made it clear that Minnesota should take positive steps to see that no rebel could use any of his property in Minnesota to harm the Union. "Individuals who are openly in arms against the United States, have large interests in Minnesota," Ramsey declared, "and I feel well assured that a general Confiscation Act, now so distinctly demanded by public sentiment, will be speedily passed, so framed as

to furnish adequate agencies for the sequestration of all the property of rebels, wherever situated, including the enfranchisement of slaves. Such a measure will be regarded as in the nature of a compensation, however partial and inadequate, for the pecuniary contributions which every citizen expects to make to the restoration of National authority."⁵

Within a week the legislature produced its answer to Governor Ramsey's implied request for local action. On January 15, Senator James Smith, Jr., of Ramsey County introduced in the Senate under a slightly different title "A Bill for an Act Suspending the Privilege of all persons aiding the rebellion against the United States, of prosecuting and defending actions and judicial proceedings in this State." Smith was not a member of the Senate judiciary committee and must have acted at the special request of the state administration. Under a suspension of the rules, the bill was read twice and ordered printed.⁶

The following day the *St. Paul Press* carried Senator G. K. Cleveland's comments on the need for an outright confiscation act and for more vigorous prosecution of the war. On that day, too, the Senate, sitting as a committee of the whole, considered the bill and recommended that it be engrossed for a third reading. On January 17, after being briefly referred to Senator Smith as a special committee of one, the bill had its third and final reading and passed the Senate by a unanimous vote. No debate or discussion is reported.⁷

House records noted the passage of the bill by the Senate on January 17, and on the following day it was given a first reading in the House and referred to the judiciary committee. Ten days later, on January 28, the bill was reported out by the committee. It was sponsored by Representative W. H. Burt of Washington

⁴ Ramsey, *Annual Message*, 3. 30.

⁵ Ramsey, *Annual Message*, 30.

⁶ *Senate Journal*, 1862, p. 33.

⁷ *Senate Journal*, 1862, p. 41, 44, 45, 47.

County and was recommended for passage with an amendment concerning the procedure to be used in appealing to the supreme court. The House took up the bill in committee of the whole on January 31 and recommended passage. Under a suspension of the rules, it received a final reading on February 1 and was passed unanimously. In its amended form, the bill then went back to the Senate.⁸

On February 3 the Senate took up the bill, voted to concur in the House amendment, and again passed the act unanimously. The House received due notice of the bill's passage, and on February 13 it was correctly engrossed and sent to the governor. Ramsey signed it the following day, and it went into effect immediately.⁹

IN VIEW OF the challenge this law met later, it is curious that it stimulated so little comment during its consideration by the legislature. Apparently, it suited the mood of the times too well to draw criticism. When the bill reached its final reading in the Senate, Rufus J. Baldwin of Minneapolis proposed an amendment. He was ruled out of order, however, and then voted for the measure as it stood. It appears that Baldwin's only objection to the bill as written was that it would give debtors or creditors of rebels possession of property they were not otherwise entitled to, and that he preferred to see the property impounded until after the war. He yielded to the ruling on order, however, and did not urge his ideas further. No other remarks on the act appear in the records of the House or Senate, and no one

seems to have expressed any of the doubts about the problems of constitutionality that later struck down the act.¹⁰

As state printer for the legislative session, the *St. Paul Press* reported on the bill's progress through the legislature. Its passage by both houses was noted on the front page of the *Press* for February 4 under the heading "Cutting off Rebels from Our Courts." On February 19 the paper printed the full text of the approved bill, but gave major space to other news, such as the capture of Fort Donelson. Although the editor was shocked because the Congressional judiciary committee was reportedly opposed to an "efficient" federal confiscation act, he failed to comment on the Minnesota bill.¹¹

The "Rebellion Act," as the Minnesota law came to be known, contained a number of sweeping provisions. It barred from the state courts any person "engaged in aiding or abetting the rebellion (now existing,) against the Government of the United States," and it stated that all citizens, residents, and inhabitants of the eleven Confederate states were *prima facie* "engaged in aiding and abetting the rebellion." Moreover, Section 4 said that, in cases arising under the act, it was "sufficient to allege generally" that a person was a resident of one of the listed Confederate states. Thus, anyone charged with being a rebel had to deny it and prove his loyalty. Unless denied, the charge would be accepted as true. The act stipulated that a rebel could deny the charge by appearing in person before any Union officer of the rank of colonel. Just how he was to leave his home, go into the Yankee lines, and find a colonel, the act did not specify. These provisions reversed the usual Anglo-American legal principle of assuming a man innocent until he was proved guilty.¹²

The bill enacted by the 1862 legislature seems cleverly to have created a situation causing injury for which the law gave no redress. The act did not take away title to property, but merely kept a rebel owner

⁸ For the progress of Senate File No. 8 through the House, see the *House Journal*, 1862, p. 53, 57, 110, 137, 142. The text of the amendment may be found in *General Laws*, 1862, p. 63.

⁹ *Senate Journal*, 105, 109, 110, 150, 159, 174; *General Laws*, 1862, p. 60.

¹⁰ *Senate Journal*, 109, 110; *St. Paul Press*, February 4, 1862.

¹¹ *Press*, January 16, 18, 29, February 1, 2, 4, 19, 1862.

¹² *General Laws*, 1862, p. 54, 56, 57.



*THE Ramsey County
Courthouse in 1862*

from asserting his title in the courts of Minnesota. Of course, while the owner was under this disability, his title obviously could be made worthless if his debtor withheld property or refused payment, or if a creditor attached property under a grossly inflated claim. In either case, the rebel owner could not appear in the courts to try to protect his property, even against a trumped-up lawsuit based entirely on fraud. As the next thing to a confiscation act, the Rebellion Act served very well.

But it presented a dilemma. On the one hand, the North was engaged in a struggle in which it held that the Union was one and inseverable, that no state could or did secede, and that everyone within the geographical limits of the United States of 1860 was a citizen of the American Union. On the other hand, treating some citizens as foreign foes implied admitting that they had been successful either in withdrawing from the Union or in conducting a revolution that set up an effective new government. This it was dangerous to admit. Yet

not one man in public life in Minnesota seemed to realize that this legal conclusion drawn from the Rebellion Act in any way lessened its validity as a war measure.

AS USUALLY HAPPENS when the citizen can test laws in the courts, a case under the Rebellion Act quickly came up. Thanks to counsel who had no hesitation in looking to the courts to test a statute forbidding recourse to legal proceedings, the judicial literature of Minnesota is richer as a result of a keen inquiry into constitutionalism and emergency legislation.

In 1859 F. A. W. Davis, a resident of Natchez, Mississippi, began a routine mortgage foreclosure action against Allen Pierce in the district court of Ramsey County. The case involved Minnesota lands. Until passage of the Rebellion Act the case had dragged along in a desultory way, and in February, 1862, seemed about to reach trial on its merits. Ten days after Governor Ramsey signed the new act, however, on February 24, counsel for the defendant

served a document entitled "Supplemental Answer," respectfully setting forth that Davis, the plaintiff, was "a resident and citizen of the State of Mississippi, which said state has been and still is in rebellion against the government of the United States." Under the new act, that was that; Davis was out of court.¹³

But counsel for the rebel plaintiff did not give up so easily. His client admittedly lived in Mississippi and might be lynched if he dared go to Minnesota, but could the Minnesota legislature make him an outlaw without any rights? Probably not, Davis' counsel reasoned, and on March 15 he demurred to the "Supplemental Answer," claiming that the Rebellion Act was unconstitutional and that the case must go forward for trial on its merits.¹⁴

This brought the matter to a precise issue of law: could the legislature, consistent with the constitutions of Minnesota and the United States, forbid even admitted rebels to enter the state courts? The question went before the Ramsey County district court for argument in May, 1862. The case was heard by Judge Edward C. Palmer, a legal scholar, a good writer, and a popular local speaker. Although no friend of the rebels, Palmer took his oath of impartiality as a judge seriously, and he had a strict devotion to the

Federal Constitution that would now seem old-fashioned.¹⁵

Speaking for the litigants was as capable a pair of opponents as the bar of Minnesota could show. For the defendants, urging the constitutionality of the Rebellion Act, appeared David Cooper of St. Paul, a former justice of the supreme court of Minnesota Territory and a man more than usually learned in the law. For the rebel plaintiff, attacking the constitutionality of the act, was Harvey Officer also of St. Paul, who had served as editor of the opinions of that very supreme court on which his opponent had sat as a judge.

Counselor Officer had the heavy oar. He could not, and he did not, deny that his client lived in rebellious Mississippi, the home of Jefferson Davis himself. But, admitting that, he did deny that Minnesota could keep his client from the courts. How to urge this? Brilliantly, Counselor Officer created a turnabout situation: the rebel asserted the illegality of the rebellion. As a result of this line of argument, the local court of a frontier state was brought face to face with the question that perplexed Lincoln—how to justify military action to force back into the Union the states which never lawfully left it.

Speaking for the Mississippi rebel who denied the legality of the rebellion, Counselor Officer asserted that the Rebellion Act was clearly unconstitutional, that since no state had the power to secede residents of the South had never lost the rights given them by the Constitution of the United States, including the right of access to the local courts. If it is admitted for a moment, Officer pointed out, that one citizen can be treated differently from another by burdening him with a disability normally only inflicted on a foreign enemy, it must also be admitted that the state in which he lives can withdraw from the Union. Further, it must be admitted that the state has done so.

And then, more paradox. In the curious about-face sprung by Counselor Officer,

¹³ Material in this and succeeding paragraphs on the proceedings in the district court of Ramsey County is based upon manuscript records in the court files of F. A. W. Davis *v.* Allen Pierson *et al.*, File No. 2629, found in the office of the clerk of the district court in the Ramsey County Courthouse in St. Paul.

¹⁴ The test case under the Minnesota Rebellion Act arose during the war because the new law applied to pending lawsuits as the law of war would in dealing with alien enemies. The Davis case, which began in 1859, was already under way in 1862. After 1861 there might have been some question about the authority of counsel for the rebel to go on representing him, but this issue was not raised, probably because both sides wanted a decision on the constitutionality of the act.

¹⁵ See, for example, a report on Judge Palmer's lecture in the Mercantile Library course, in the *Press* for January 22, 1862. He edited the *General Statutes* of 1866 and other legal publications.

the loyal defendants had to assert the legal efficacy of the rebellion in order to sustain the constitutionality of the Rebellion Act which gave them their special privilege in the case. While Counselor Officer could call down the thunders of heaven with a right good will, damning secession up and down, Counselor Cooper might have a bad time with the legal implications of the argument he had to present—that the realities of secession justified Minnesota in treating rebels as alien enemies.

Cooper, however, urged softly that all this talk was rather premature. In its very terms, he said, the Rebellion Act forbade recourse to the courts. He suggested that the act meant what it said: that it prevented the district court from judging the validity of a measure taking away its power. The judge, argued Cooper, was wasting his time by listening to Counselor Officer's undoubtedly admirable legalistics.

This argument is not as farfetched as it may sound to those unfamiliar with legal procedures. Courts have the power to hear and decide only the types of cases referred to them by the law, and no others. Sworn to obey the law, the judge must also obey one that takes away his power to act. But he is not forbidden to scrutinize the constitutionality of that law. If it is not law, he need not obey it.

Officer answered Cooper's argument by appealing frankly to that predisposition of judges to feel omniscient. He observed that Article 1, Section 8 of the Minnesota Constitution provided that every person was "entitled to a certain remedy in the laws for all injuries and wrongs," and that the American system, reinforced by the new Minnesota Constitution, required a court to give an aggrieved person some way to test an act of the legislature against the constitutions controlling it. Only a court, argued Officer, had such power; surely the executive department did not have it. He reasoned that there was nothing unusual in letting a court decide the constitutionality of an act taking away its

powers. In this respect, he said, the Rebellion Act was like any other measure passed by the legislature and was subject to judicial test. In passing, it might be noted as one of the curiosities of the American system that under it judges are the only governmental agents who have the enviable right to make final rulings on the extent of their own powers.

Cooper, however, was too astute to rest his entire case on the hope of keeping Officer from presenting his arguments. He went on to say, in effect, that if the judge did consider the constitutionality of the act, he must find it constitutional, for it did not take away any of the citizen's rights. It merely suspended, for a short time, the right of certain persons to indulge in lawsuits in Minnesota. But, in the long run, he argued, it did no more than that. The times, said Cooper, were certainly extraordinary; necessity is the mother of and the excuse for many things. Indeed, the act was rather mild, he felt, when one considered how it might have been drawn.

The actual oral arguments presented by the opposing counsels in this case have not been preserved, but the manuscript summaries here outlined, with their implications of paradox and dilemma, are to be found in the court files.¹⁶ In a day which valued rhetoric, these arguments were no doubt urged eloquently and at length. Although one must suppose that the case was known in the small city of St. Paul and that some people followed it, there seems to be no record of any comment or discussion about it.

Judge Palmer kept the matter under advisement for about a month, and on June 16 gave his opinion. In support of Officer's arguments, the court vigorously affirmed its right to test the constitutionality of the Rebellion Act. In effect, the judge said, "Gentlemen, it is no use trying to foreclose this court from considering the merits of your constitutional arguments," and

¹⁶ See Ramsey County district court, File No. 2629.

then proceeded to consider those arguments.

Viewing the act in the light of its expressed effect—that it suspended a privilege during a temporary period and did not take it away permanently—the court found the act well within the powers of the wartime legislature. The judge expressed the opinion that “The anomalous and extraordinary condition of the country not only excuses but justifies legislation which has for its object the suppression of the rebellion by denying to those engaged therein the use of our courts and the benefit of our law.”¹⁷ Counselor Officer was doubtless chagrined at Judge Palmer’s decision, while Cooper had reason to be joyful.

ON JUNE 30, two days after Judge Palmer filed his order, Officer appealed the case to the Minnesota supreme court. Again there seems to be no record of public comment on the matter. The case waited on the supreme court calendar through the hot summer of the Sioux Uprising, which reached a climax in the autumn with the defeat of Little Crow. On the national scene, in July Lincoln announced his decision to issue an emancipation proclamation, and Congress finally enacted a confiscation act which directed the president to seize and sell the property of all persons aiding or abetting the rebellion.¹⁸ After New Orleans fell,

¹⁷ Quoted from a memorandum opinion of June 16, 1862, in Ramsey County district court, File No. 2629.

¹⁸ “An Act to suppress Insurrection, to punish Treason and Rebellion, to seize and confiscate the Property of Rebels, and for other purposes” passed by Congress on July 17, 1862, and the joint resolution of the same date differed in legal method from the Minnesota act. The national act allowed the seizure and sale of property of persons actually engaged in aiding the rebellion, a measure which the law of war permits against rebellious *citizens*. The Minnesota act, on the other hand, denied access to the courts, a measure which the law of war usually invokes against *alien* enemies. See *Statutes at Large*, 12:589, 627.

¹⁹ The text of Judge Emmett’s opinion may be found in 7 *Minnesota* 3–11 (Gil.). Quotations in succeeding paragraphs are drawn from this source.

moves were made to open the Mississippi, and alarming reports reached Minnesota of Confederate troops moving slowly northward into Maryland and Pennsylvania. Would they threaten Washington? Rumors circulated that the French planned to put an army into Mexico. At a party rally in England, Gladstone commented that the South had created a new nation. Would Great Britain recognize the Confederacy?

At last in the spring of 1863, at the low tide of the Union and the high tide of the Confederacy, the supreme court of loyal Minnesota took under consideration a case in which an admitted rebel urged that an act of the Minnesota legislature aimed at putting down the rebellion was unconstitutional. What would the court decide?

At that time, three men of undoubted loyalty sat on the supreme bench of Minnesota. Lafayette Emmett was chief justice and Charles E. Flandrau and Isaac Atwater were associate justices. All were men with strong ethical convictions, devoted to the Union, the Constitution, and the traditional legal procedures and safeguards of the common law. Counselors Officer and Cooper were old friends of the justices, but they no doubt weighed their legal arguments carefully for all that.

The arguments presented were essentially those heard earlier by Judge Palmer. The issues in the supreme court were exactly those Judge Palmer had faced: could the court decide the constitutionality of the Rebellion Act and, if so, was the act valid. From the text of their opinion, it is abundantly clear that the justices recognized the paradoxes in the case of *Davis vs. Pierse* as well as its importance.¹⁹

On April 23, 1863, the court handed down its unanimous decision in an opinion written by Chief Justice Emmett. Judge Palmer was sustained in his view that a court may examine the constitutionality of an act removing its jurisdiction.

“As this case is presented to us, the only question necessary to be considered, is as to the constitutionality” of the act, begins



CHIEF Justice Lafayette Emmett

the opinion. The chief justice first took note of the atmosphere and the circumstances under which the Rebellion Act was passed. He commented that the measure "was doubtless intended to be in aid of the general government" in its "efforts to put down a most gigantic and causeless rebellion," and that it "was but natural, at such a time, that every patriotic citizen should feel that any one engaged in this traitorous attempt to dismember the republic, ought not still to enjoy privileges secured to him only by that government which he has renounced and is striving to subvert; and especially, that he should not be permitted, by the aid of our courts, to take of the substance of the people of the loyal states, to be afterwards used by him in support of the rebellion." Under these circumstances, the decision pointed out, "the legislature was readily induced to pass an act, which, while it visited those who had already engaged in the rebellion with certain disabilities, might, by the

powerful motive of self-interest, restrain others from following their bad example."

The judge warned, however, that "the very fact that the act was passed under such a state of excitement admonishes us of the necessity of carefully examining its several provisions, lest in our anxiety to punish the guilty authors and abettors of our national troubles, we do far greater injury to ourselves, by forgetting justice and disregarding the wholesome restraints of our fundamental law." He felt that "the greater the seeming necessity, or popular demand for such legislation, the greater the danger to be apprehended from yielding to it, and the more imperative the obligation on the part of the courts to square it rigorously by the constitution."

Was the act constitutional? Was Judge Palmer right in this as well? The court first tested the act in the light of the State Constitution.²⁰ The Bill of Rights of that document required, the justice pointed out, "that no person shall be held in answer for a criminal offense, unless on the presentment or indictment of a grand jury"; that every person is entitled to a "certain remedy in the laws for all injuries or wrongs which he may receive in his person, property, or character"; and that he shall obtain justice "promptly and without delay." Further, continued the decision, the State Constitution prohibited "the legislature from passing any *ex post facto* law,"—a law making into a crime retroactively an act innocent when done—or any law impairing the obligation of contracts. In the opinion of the court, the

²⁰Eight years later the United States Supreme Court held that an aggrieved party must have a chance to present his arguments against the constitutionality of the Confiscation Act of 1862. See *McVeigh v. United States*, 11 Wall. (78 U.S.) 259, 20 L. Ed. 80 (1871). The test case under the federal act arose only after the war had ended because its terms did not apply to anything done before its passage and because during the war a Southerner could hardly go to the North to indulge in a lawsuit. For a discussion of the constitutionality of the national confiscation acts, see Randall, *Confiscation of Property*, 22, 29-32.

judge stated emphatically, "the act under consideration contravenes each of these provisions or declarations in one form or other." Tested by the Constitution of the state in which the act was passed, then, the measure was unconstitutional.

Looking more closely at the provisions of the Rebellion Act, the court asked if it really barred only disloyal persons from the Minnesota courts? Differing with Judge Palmer, the supreme court justices felt that, as a practical matter, even a loyal person living in a disloyal state was also barred. The act suspended access to the courts on the basis of residence, and the only possible method of overcoming the guilt associated with residence in the South was singlehandedly to put down the rebellion in the particular state in which the person involved lived. The suspension, in short, really prohibited entrance into the courts at all.

It is true that under both Anglo-American law and the international law of war an enemy alien loses his right to resort to the courts upon the outbreak of war. What, however, was an enemy alien? Was a Johnny Reb or a "secesh" to be considered a foreign enemy? Although he may be an enemy in the legal sense, was he an alien?²¹

The Constitution of the United States governs the relations of states within the Union, and to this document the court turned. At the outset, to insure that there would be a Union in which a citizen could pass freely from state to state without discrimination and without being considered as of semi-alien character in every state but the one in which he lived, the writers of

the Constitution inserted what is usually known as the "privileges and immunities" clause. This simply carried forward Colonial practice and used the very words of the Articles of Confederation in providing that "The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states." In an able opinion, Justice Bushrod Washington of the United States Supreme Court, who lies buried at Mount Vernon alongside his renowned uncle, had held that these privileges and immunities included the right of a nonresident to go into the state courts.²² In essence the Rebellion Act denied this, on the basis of residence alone. But no state had power to deny it, and as long as the government treated the rebels as citizens within the meaning of the Federal Constitution, that Constitution took precedence over any law inconsistent with it. The federal government in its wisdom might relax the strict law of war and give the rebels the benefit of the status of prisoners of war, but it never deviated from the legal concept of an indissoluble Union.²³

The justices of Minnesota's supreme court understood this problem very well. "There appears to be but one way in which this act can be made to apply to citizens of other states," wrote Justice Emmett, "and that is to hold and treat them as alien enemies. But this view cannot for one moment be tolerated, because it involves either an admission of the right of a state to secede from the Union, or that the rebellion has become a revolution. So long as the government of the Union treats the revolt of certain states as a rebellion, and continues its efforts to reinstate the federal authority, we must treat their several ordinances of secession as nullities merely, and recognize and respect every right and privilege which the people of those states may have as citizens of the United States." The rebels were not, therefore, to be considered aliens, and Minnesota could not treat them as such. Since they were American citizens, they had all the rights of citizens, includ-

²¹ On the legal status of rebels during the Civil War, see Randall, *Confiscation of Property*, 19-23.

²² Washington's decision was made in the United States Circuit Court for the districts of Pennsylvania and New Jersey in 1823. See *Corfield vs. Coryell*, 4 Wash. C.C. 371 (1823).

²³ Confirmed by the United States Supreme Court in *Texas v. White et al.*, 7 Wall. (74 U.S.) 700, 19 L. Ed. 227 (1869), holding that Texas could not and did not secede. As in other cases, it was not until after the war that a Southerner could pursue a lawsuit through the federal courts.

ing the right to enter the courts to protect their property. So tested by the Federal Constitution, the act must fall. Judge Palmer's decision on the constitutionality of the Rebellion Act was emphatically reversed.²⁴

With quiet pride, Chief Justice Emmett ended his opinion with the comment that at least in the new state of Minnesota, justice and constitutionalism had found a sanctuary. "We have not a doubt of the unconstitutionality of this act," he wrote, "although many patriotic citizens may regret for the moment . . . that the state and federal constitutions stand in the way of an enactment which might aid, however feebly, in restoring the supremacy of the Union, yet, in the end, all must regard as matter of pride and gratulation, that in this state, no one, not even the worst of felons, can be denied the right to simple justice."²⁵

THE DECISION passed almost unnoticed. It was mentioned in a front-page editorial note in the *St. Paul Pioneer* for April 23, and on an inside page the opinion was quoted in full as an "Important Decision of the Supreme Court of Minnesota." The *Press* did not mention the matter, and no later newspaper comment appeared. Members of the legislature, which passed the act unanimously, and the governor, who approved it, probably had some angry feelings, but the events of the day diverted attention to more stirring scenes of action.

The big news of April 23 concerned Admiral David D. Porter's fleet, which had run the batteries at Vicksburg. In the East the Confederate Army was moving northward. It was obvious that the North must put down the rebellion on the battlefield, not in the courtroom. Other things demanded attention, and the Rebellion Act was forgotten. During the course of the war, the Minnesota legislature tried no more punitive measures. In any case, the federal Confiscation Act had become effective, and Minnesota could leave to the dis-

cretion of the federal administration punitive measures of a similar nature and national measures of economic warfare.

As a footnote to a footnote to history—the foreclosure case dragged on. The legal effect of the supreme court's opinion was to direct Judge Palmer to proceed with the trial in the district court. This he did during the May, 1863, term of court. After hearing the testimony, he ruled in favor of the rebel plaintiff on July 6, and on September 6 he ordered a foreclosure sale which the sheriff conducted on October 23.

The Minnesota defendants and Counselor Cooper were reluctant to yield to a rebel, and on January 4, 1864, they again appealed to the supreme court, this time on technical matters of law arising in the suit and not on constitutional grounds. The court took a long time to consider the matter and did not give its decision on the merits until August 16, 1865. By that time the war was over; Lincoln was dead; and the plaintiff was no longer technically rebellious. The court's decision was in favor of Davis of Mississippi. On October 28, 1865, Judge Palmer entered his order confirming the foreclosure sale of October 23, 1863, and the case disappeared from the records.²⁶

The Rebellion Act is an example of emergency legislation passed in anger without regard for its propagandist effect. How easy it would have been for the Minnesota court to yield to the argument of all-out military necessity, war powers, and other pressing excuses for coercion. The admirable decision here discussed is little known even among lawyers and judges, yet it provides a model for analyzing emergency legislation passed in time of crisis, and it serves as a reminder that from the earliest days of statehood any person claiming to be wronged had the right to ask redress in a Minnesota court.

²⁴ 7 *Minnesota* 10 (Gil.).

²⁵ 7 *Minnesota* 11 (Gil.).

²⁶ Ramsey County district court, File No. 2629.



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