

do anything reasonable to procure for them furloughs to return to their homes to vote as they may please; but I would not, and I do not believe you would, advocate an unconstitutional measure, or vindicate it when done, although done for the brave and patriotic men in the armies of the Union.

But you say, "If any wrong has been perpetrated by the convention, or any one should suffer in person or property by its wrongful actions, surely the judicial tribunals of the State are the proper ones to redress the injury, and possess the power to do so." It is a maxim of law, I know, that there is no right without a remedy; this, of course, refers to rights of persons and property under existing laws; but I am not satisfied that there is a remedy always in the law for the infraction of political rights. Will you point out the mode or manner of redress to one-third of the legal voters of the State after they may be wrongfully excluded from the polls, and by that act of exclusion a new government is instituted and officers are sworn to support it? The right of suffrage is a political right guaranteed by the constitution. If it be obstructed, and the party be injured, he may sue the judges of election, but that only awards him a pecuniary compensation and does not restore his right nor prevent the public wrong done by the rejection of his vote. How could suits be maintained by one-third of the voters of the State against the judges of election? Could any judge be supposed capable of liquidating, in money, the enormous amount of costs and damages that might be awarded? In a single case it might be so, but in such a multiplicity how could it be? The very jurors and judges who would be called to support the new constitution would have to decide upon his case. Could that be a "relief" of the injury? How few would be able to engage in such litigation? But how can the injury be prevented? Is it by *mandamus*? How can it be obtained and prosecuted by the masses? Judges of elections are being constantly changed—their appointments are frequently on the eve of an election. If absent, others are to be elected, and sometimes on the morning of the election, at which time they qualify.

Would it be practicable for every voter to apply for and obtain such a writ, and have it served and the case argued before election day, or on that day? The writ is not one of right, but rests in the judge's discretion, and we might have the anomalous spectacle of one judge granting the writ and another refusing it, and thus the election be conducted on different principles in different judicial districts. The theory of judicial redress may do for individual cases in matters of property and the rights which appertain to it, but how can it be applied or executed in a great political question which strikes at the fundament-

als of the government? If the courts could, by possibility, pronounce the proceedings of the convention unconstitutional in a case where an individual was a party, that decision would not affect the government, nor its administration; it would not destroy the government *de facto*, and it would continue its functions; the maxim of nought without a remedy, is only applicable where the remedy is co-extensive with the right and the injury, and its exercise fully adequate to the exigencies of the case. Do you not agree with me in these principles? But if it were a judicial question, it does not follow that it is not a political one. Is it not essentially political? If it is, to whom are the people to look for a preventive remedy? Can it be to any one but yourself, who are clothed with the powers of the government, civil and military, to enforce the laws. I respectfully lay down the following positions:

First—That the acts of the convention in respect to a test oath and soldiers voting out of the State, are clearly unconstitutional.

Second—That the execution or enforcement of those acts may inflict a permanent and flagrant wrong upon the people of the State by putting into operation an unconstitutional instrument.

Third—That the consummation of a wrong so great and enormous ought to be avoided.

Fourth—That the power to prevent it is somewhere.

Fifth—That the courts cannot effectually exercise the power; for their redress would succeed and not precede the perpetration of the wrong.

Sixth—That the executive has the appropriate and full power to prevent the wrong, and should exercise it.

On the 27th October, 1863, Gen. Schenck, then in military command of the middle department (Maryland,) issued an order to influence the then approaching elections. It recited "that there are many evil disposed persons now at large in the State of Maryland who have been engaged in rebellion against the government, or have given aid and comfort or encouragement to others so engaged, and who may avail themselves of the indulgence of the authority which tolerates their presence, to embarrass the approaching election," and he therefore commanded "all provost marshals and other military officers to arrest all such persons found at or hanging about or approaching any poll or place of election on the 4th November, 1863," &c. This order ostensibly professed to prevent disloyal persons who had been in rebellion or engaged in giving aid and comfort to the confederates, from embarrassing the election, and to protect and develop the Union sentiment of the State. On the 2d November, you very properly issued a proclamation in which you denounced the military order, and