

Abner L. Duncan, March 27, 1815, from Correspondence of Andrew Jackson. Edited by John Spencer Bassett.

OPINION OF ABNER L. DUNCAN ON MARTIAL LAW.

March 27, 1815.

My opinion agrees with that of Mr. Reid as far as it extends to give authority to Courts Martial; On this subject the following principles may be assumed

1st That when a country is invaded by an Enemy, it is the duty of every Inhabitant indiscriminately to contribute to its defence, that this duty is more positive and more urgent than those resulting from the common and usual transactions of private or even public life since the occasion that calls it forth, involves at once the very existence of the Government together with the liberty, property and lives of the citizens.

2d That the urgency of the occasion must secure means to compel the exercise of the duty referred to, and those means must be vested in the person to whom the safety and defence of the country is entrusted, his authority therefore must extend over all, since every member of the community forms a part of his disposeable force.

3d The operations of the civil authority must necessarily cease, since the very many citizens to whom its functions are confided have, on the occasion refer'd to, other paramount duties to perform—can it be intended, that when the country is invaded by the Enemy, when the United exertions of all are required to render a force competent to resist him, that so great a number of men as are usually employed in the Executive Legislative and Judicial departments, should be exempted? If not exempted, they must become soldiers and as such cannot at the same time exercise their civil functions

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4th All jurisdiction therefore under circumstances of so cogent a nature must necessarily devolve from the civil to the Military Tribunal which latter may seek such opportunities for holding sessions as circumstances will allow, and may terminate them as speedily as the pressure demands. They may take cognizance of such cases as cannot, without manifest detriment to the Public, or injustice to individuals, be postponed.

In discharging these duties a Military Tribunal is governed by the Laws of the Land and except as to the mode of Trial affords the same security for fair and impartial investigation as the ordinary courts of Justice. For most of the opinions here expressed, the authority of Vattel in his Treatise on the Laws of Nations affords a sanction and as a necessary deduction from the sentiments of that enlightened author aided by sound reason it is thought the whole will prove correct.

The constitution of the United States secures to the citizen the more valuable privileges, yet the same constitution contemplates the necessity of suspending the operation of some in order to secure the continuance of all. The 1st article §9. in its 2d provision authorizes the suspension of the writ of Habeas Corpus, and impliedly, the operation of Martial Law, when, in cases of rebellion or invasion the public safety may require it. It therefore belongs to the guardian of the Public safety, to him who is to conduct the operations against the Enemy, whose vigilance is to descry danger and whose arms are to repel it, to judge of those cases provided for by the Constitution. With the suspension of this writ all the ordinary proceedings under the Civil Law are also suspended, for this writ is the sentinel destined to guard the portals of civil justice, and ensure to individuals the protection of the Judiciary whenever it may be required.