

CHAPTER V.

DELEGATION OF AUTHORITY.

Judicial authority cannot be delegated, and as the commander of a department, or other officer who presides over a military tribunal while determining a case of civil jurisdiction, acts in a *quasi* judicial capacity, a question has been made whether the right to hold such courts can be delegated by the President to his officers. Although such proceedings of the war courts as complaints of parties, pleadings, examination of witnesses, deliberations and decisions of judges, in many respects resemble those of judicial courts, yet, as they are not deemed judicial within the true meaning of the Constitution, no valid objection arises from that source, to the delegation of the power to hold military courts, to such officers as may be appointed by the President.

This, and nearly all the war powers, must be exercised through officers acting under the Commander-in-Chief; for his authority must be exerted at the same time in different and distant places; and as he cannot be omnipresent, that authority which could not be delegated would become comparatively useless. The practice of the Government has, from the beginning, been in accordance with this view of constitutional law.

The power of the President is in part delegated to his Secretary of War, whose acts are deemed in law to be the acts of the President.* The commanders of military

* *Wilcox v. Jackson*, 13 Pet. R. 498.
Opinion of Wm. Wirt, Atty Genl. (July 6, 1820).
U. S. v. Eliason, 16 Pet. S. C. R. 291.

departments are clothed with authority transferred to them by the Commander-in-Chief. Therefore, if that authority is not limited so as to prevent it, they have the right, while in the enemy's country in time of war, to organize military courts martial and commissions, and to administer all other belligerent laws. Tribunals so organized may exercise all functions properly conferred upon them, and their decisions are not only valid, but are not subject to reversal by any judicial court; but only by the final action of the President.

So also, if a military governor is placed over such hostile district, clothed with the powers of the Commander-in-Chief, he may himself administer the laws of war over those subjected thereto within his precinct, and may establish courts military and civil, with jurisdiction over all persons and things therein. And whether he acts on his own discretion in so doing, under general orders, or under special orders in each case, he is, according to military law, responsible only to his superior officer.

Although no *civilian*, or *civil* or *merely executive* officer, has a right to institute a military court, unless deriving special authority to do so from some law of Congress or from military orders, there seems to be no reason why any of the war powers, in time of actual service, may not be delegated to military men by the President, or by any other military officer who possesses them; and no reason for making any distinction between the different classes of powers which may be so delegated.