

CHAPTER VII.

It has been shown in the foregoing chapters, that the President has authority to establish military governments over enemy's territory in time of civil war, because the Constitution, by designating him as Commander-in-Chief of the Army and Navy, confers on him the right to use, in prosecuting hostilities, all means which may be necessary and proper for that purpose, including, as such means, the establishment of military governments and of military courts, which are not only the necessary but are the usual means employed by belligerents in making war, and in securing the objects for which it has been carried on. This right has been recognized and sanctioned in several cases by the Supreme Court of the United States. Our next inquiry relates to the character and extent of the powers which may be exercised by military governments.

JURISDICTION OF MILITARY GOVERNMENTS.

To such military governments as are established by the Commander-in-Chief, in time of war, he may delegate more or less power, according to the object for which he has instituted them.

In the District of Columbia, a military governor has been appointed for the performance of certain limited duties essential to the police regulation of the forces stationed within the defences of Washington, the treatment of persons under arrest and in prison, and other important specific duties. In the mean time, the

sessions of the Supreme Court of the United States, and of the local courts, and of Congress, and the business of all the departments of the Government, are undisturbed.

In districts of country declared to be in rebellion, whose inhabitants are "public enemies," such governments have been commissioned with powers to administer local, municipal, civil, and criminal law, and with jurisdiction embracing all persons and all questions which may arise therein.

There is no other necessary limit to the jurisdiction of a military governor, than there is to that authority under which he received his appointment. The existence of state or municipal governments, or of military, civil, or ecclesiastical tribunals, established before the war began, in the rebellious districts, does not affect the jurisdiction of such governments or courts as may be erected therein by the war power of the United States. Since these sections of country have become hostile — the inhabitants thereof being now public enemies — no authority of such enemies, executive, judicial, or military, can be recognized by the conqueror as rightful or legitimate. No legislature, no judiciary of a public enemy, can be permitted to retain or exercise any jurisdiction or control over persons or property found in that region which is within the military occupation of our army.

The enemy's courts and legislatures derive their right to ordain and enforce laws from a government at open war with our own, — one which we refuse to recognize, and we might as well acknowledge the independence of the seceding States, and surrender our army and navy to the insurgents, as to subject ourselves or to allow others to be subjected to their laws, their courts, or their jurisdiction. A public enemy has no right, either by courts instituted by him, or by any civil, military, or judicial

officers appointed by him, to exercise authority in any locality which is held by our military power. But all persons and all subjects who are found there, are under our military control, whether that control be exercised by soldiers in the field, or by military governors, who may call to their aid military tribunals, or may even allow civil tribunals to proceed under military authority.

The only limitations to the jurisdiction of such military power over persons and property, are such as are derived from the laws of war; though in the United States further limitations may be prescribed by laws of Congress.

Hence, aliens residing in belligerent districts, non-combatants, whether neutral, friendly or hostile, persons engaged in hostility, persons belonging to the invading country, and accompanying the army, are alike within the jurisdiction of a military government, and of military courts duly established therein.