THE SUPREME COURT AND DRED SCOTT.

"An opinion not binding authority, unless the case called for its expression."—*Carroll* vs. *Carroll*, 16 *Howard's S. C. Reports.*

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SPEECH

OF

HON. DANIEL W. GOOCH, OF MASS.

Delivered in the U. S. House of Representatives, May 3, 1860.

Mr. CHAIRMAN: I listened with much interest to the able and eloquent speech of the gentleman from North Carolina [Mr. SMITH] last evening, in which he urged us, and more especially the men from Massachusetts, to accept the opinions given in the Dred Scott case by six of the judges of the Supreme Court of the United States, in relation to the constitutionality of the Missouri compromise, as a judicial decision of that question, binding upon us and the people of the whole country. I was wholly unable to agree with him in his premises or conclusions. He assumed that that question was legitimately before the court for decision, and came to the conclusion that the opinion expressed by the majority of the judges, in relation to it, ought to be regarded as binding authority by the Congress of the United States and all good citizens. I also listened to the speech of the gentleman from Alabama, [Mr. CURRY,] a few weeks ago, which attracted marked attention, and will be remembered by the Committee, in which, in speaking on this subject, he said:

"To this claim of sovereign power over the Territories as derived from any source, I might, as against the Republicans, have conclusively interposed the decision in the Dred Scott case, wherein the act of Congress prohibiting slavery in the Territory was solemnly adjudged to be unconstitutional and void. The decision was full and proper and essential. So satisfactory and grateful was it to the South, there is danger of forgetting one of the old State-rights landmarks. The Supreme Court is not to be regarded as the ultimate arbiter for the decision of all constitutional questions. Besides, the fact that the Judiciary can only take cognizance of technical cases—and there are many political questions that cannot be drawn within its authority—it should never be elevated above the sovereign parties to the Constitution, who, as sovereign and independent States, having formed the compact, have the unquestionable right to judge of its infraction. The Judiciary, as well as the Executive or Legislature, may usurp dangerous powers, and is alike subject to the ultimate right of judgment by the parties to the Constitution."

The gentleman from Alabama [Mr. CURRY] seems to say, I fear these judges, even when they decide in my favor; and when, towards the close of his speech, he said, "History is full of instances of judicial subserviency, and political opinions often control judicial conduct," I felt assured that he had serious apprehensions that the judges who had expressed the opinions in the Dred Scott case, already referred to, or others, sitting in their places, might, when times and the fortunes of political parties had changed, express other political opinions, perhaps less satisfactory and grateful to the South.

I do not wonder at his apprehensions, and I commend to the court and the country the notice which he here gives, that the South will not recognise the validity of the decision of any political question by that court, unless it shall be like the decision in the Dred Scott case, satisfactory to them. An opinion or a decision of the Supreme Court of the United States, obtained by any party, or for any purpose which impairs in the slightest degree confidence in the wisdom, integrity, impartiality, and freedom from sectional or political bias, of that high tribunal, is purchased at an awful price.

Mr. Chairman, I deny the assertion of these gentlemen, that the act of Congress prohibiting slavery in the Territories has been adjudged to be unconstitutional and void. I know that, in the Dred Scott case, six of the judges expressed or concurred in the opinion that that act was unconstitutional; but it was the mere expression of opinion, and no part of the decision. There is or may be, as every lawyer and every intelligent man knows, a wide difference between the opinions of the judges in stating the reasons for their conclusions—the arguments from the bench—and the points and principles of law adjudicated in the decision of the cause. It is not always true that the argument from the bench is sound in all its parts, more than the argument at the bar; and he who mistakes the argument for the decision, and confounds what is said with what is adjudicated, may find that he has learned more bad law than good. The decision of a court may be correct, and many of the reasons given for that decision unsound, many of the opinions expressed erroneous. It is by no means a new or strange thing for the judges of a court to express opinions on questions not involved in the decision of the cause before them. The maxim has long obtained, that it is the office of a good judge to amplify the jurisdiction of his court; and

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some judges seem to think it their office to amplify each cause before them for adjudication, by expressing their opinions upon as many questions of law as possible in its decision. But we must remember that men are constantly expressing opinions on all questions, even when they can give no good reason for the opinions they entertain, and no reason at all for expressing them. And in this respect, many judges seem very much like the rest of mankind.

The decision in the Dred Scott case has been characterized as an ambitious one, and, I think, justly; for, having within its reach but one negro, and not an inch of land, it assumed to subjugate a race, and conquer for slavery a Territory with boundaries as extended as the future expansion of this Republic.

Mr. Chairman, we are not obliged to grope our way in the dark through the seven long opinions which the judges have given in the Dred Scott case, in order to learn what was adjudicated. The Supreme Court, in determining as to its own and the adjudications of other tribunals, has decided the principles which shall govern itself and all others in ascertaining what has been adjudicated, and is to be relied upon as binding authority. I refer to the case of Carrol *vs.* Carrol, 16 Howard, in which Mr. Justice Curtis states the *unanimous* opinion of the court thus:

"If the construction put by the court upon one of its statutes was not a matter of judgment, if it might have been decided either way without affecting any right brought into question, then, according to the principles of common law, an opinion on such a question is not a decision. To make it so, there must have been an application of the judicial mind to the precise question necessary to be determined to fix the rights of the parties, and decide to whom the property in contestation belongs; and therefore this court, and other courts organized under the common law, has never held itself bound by any part of an opinion in any case which was not needful to the ascertainment of the right or title in question between the parties."

And again, in the same opinion:

"Any opinion given here or elsewhere cannot be relied on as binding authority, unless the case called for its expression."

Let us now apply these principles to the Dred Scott case, and see if the court did decide the act of Congress prohibiting slavery in the Territory to be unconstitutional and void. The court says that there are two leading questions presented by the record:

"1st. Had the Circuit Court of the United States jurisdiction to hear and determine the case between the parties? and 2d. If it had jurisdiction, is the judgment which the court has given erroneous?"

It is apparent, that if the court decide the first question in the negative, the second ceases to be any question at all. If a court has no jurisdiction, it can give no judgment; and if it has given judgment, it must be erroneous. And when the Supreme Court decided that the Circuit Court had no jurisdiction of these parties, it decided the whole case; everything to which there could have been an application of the judicial mind; all that was needful to the ascertainment of the rights in question between these parties in the Federal courts. The plea in abatement, which had been overruled by the Circuit Court, set forth that Dred Scott was not a citizen of Missouri, because he was a negro of African descent. The demurrer admitted the fact that he was a negro; and the plea and demurrer raised the question, can a negro be a citizen, within the meaning of the Constitution of the United States? The Supreme Court said that this question was before it for decision. Of course, the constitutionality of the Missouri compromise could not be involved in this question. The opinion of the court upon this question is given in these words:

"And, upon a full and careful consideration of the subject, the court is of opinion that, upon the facts stated in the plea in abatement, Dred Scott was not a citizen of Missouri within the meaning of the Constitution of the United States, and not entitled as such to sue in its courts; and, consequently, that the Circuit Court had no jurisdiction of the case, and that the judgment on the plea in abatement is erroneous."

Now, as there is only one thing that a court, however "*peculiar or limited its jurisdiction*" may be, can do with a case over which it decides that it has no jurisdiction, (viz: dismiss it,) it would seem that an order to that effect from the Supreme Court to the Circuit Court was all that was needful to forever end the case of Dred Scott and Sandford in the Federal courts.

And had the Supreme Court in this case adhered to the principle which it decided in Carrol *vs.* Carrol, and ended this case, when it had decided all that it had the right or power to decide in relation to these parties, I should then have turned my attention to the opinion of the court on this point, and devoted my hour to the consideration of some of the well-settled principles of law, and well and commonly-known facts of history, which had been ignored or denied, in order to reach the conclusion that a negro cannot be a citizen of the United States. And I must now ask the attention of the Committee for a moment to an extract from the opinion of the court on this point:

"It becomes necessary, therefore, to determine who were citizens of the several States when the Constitution was adopted. And, in order to do this, we must recur to the Governments and institutions of the thirteen colonies, when they separated from Great Britain, and formed new sovereignties, and took their places in the family of independent nations. We must inquire who, at that time, were recognised as the people or citizens of a State, whose rights and liberties had been outraged by the English Government; and who declared their independence, and assumed the powers of Government to defend their rights by force of arms.

"In the opinion of the court, the legislation and histories of the times, and the language used in the Declaration of Independence, show, that neither the class of persons who had been imported as slaves, nor their descendants, whether they had become free or not, were then acknowledged as a part of the people, nor intended to be included in the general words used in that memorable instrument.

"It is difficult at this day to realize the state of public opinion in relation to that unfortunate race, which prevailed in the civilized and enlightened portions of the world at the time of the Declaration of Independence, and when the Constitution of the United States was framed and adopted. But the public history of every European nation displays it in a manner too plain to be mistaken.

"They had for more than a century before been regarded as beings of an inferior order, and altogether unfit to associate with the white race, either in social or political relations; and so far inferior, that they had no rights which the white man was bound to respect; and that the negro might justly and lawfully be reduced to slavery for his benefit. He was bought and sold, and treated as an ordinary article of merchandise and traffic, whenever a profit could be made by it. This opinion was at that time fixed and universal in the civilized portion of the white race. It was regarded as an axiom in morals as well as in politics, which no one thought of disputing, or supposed to be open to dispute; and

men in every grade and position in society daily and habitually acted upon it in their private pursuits, as well as in matters of public concern, without doubting for a moment the correctness of this opinion.

"And in no nation was this opinion more firmly fixed or more uniformly acted upon than by the English Government and English people."

I will also ask the attention of the Committee to the opinion of Lord Mansfield in the celebrated Somerset case:

"The state of slavery is of such a nature that it is incapable of being introduced on any reasons, moral or political; but only positive law, which preserves its force long after the reasons, occasions, and time itself, from whence it was created, is erased from memory. It is so odious, that nothing can be suffered to support it but positive law. Whatever inconveniences, therefore, may follow from a decision, I cannot say this case is allowed or approved by the law of England, and therefore the black must be discharged."

After having listened to the extract which I have just read from the opinion of the court in the Dred Scott case, you would hardly have expected to find such language and such opinions in the decision of an English court made more than four years before the Declaration of Independence—more than fifteen years before the adoption of the Constitution of the United States. This decision was made in 1772; and from that day to the present no man has trod the soil or breathed the air of England, without experiencing God's noblest gift to man—freedom. Mr. Hargrave, in opening this case, says:

"The air of England is deemed too pure for slaves to breathe in it. The laws, the genius and spirit of our constitution, forbid the approach of slavery; will not suffer its existence here."

Even the counsel for the claimant of the slave, Mr. Dunning, in contending for the right to hold slaves in England, felt that he was opposing the popular will, and rested his case, not on its right or justice, but solely on what he contended to be the law. He says:

"For myself, I would not be understood to intimate a wish in favor of slavery, by any means; nor, on the other side, to be supposed maintainer of an opinion contrary to my own judgment. I am bound by my duty to maintain those arguments which are most useful to Captain Knowles, the claimant of the slave, as far as consistent with truth. And if his conduct has been agreeable to the laws throughout, I am under a further indispensable duty to support it."

Such was the public sentiment of England on that question at that time, that even the counsel for the claimant of a slave felt called upon to disclaim any wish in favor of slavery, and apologize for the position he occupied.

The Supreme Court of the United States did not remember, or, rather, remembered to forget, the decision in this case, the opinions therein expressed by court and counsel, and the authorities referred to and cited, all bearing directly on the question which it was then considering both historically and judicially. But strange as this may seem, it sinks into insignificance when we remember that it is a matter both of law and history, that in five of the thirteen original States, viz: New Hampshire, Massachusetts, New York, New Jersey, and North Carolina, negroes, descendants of African slaves, were, at the time of the ratification of the Articles of Confederation, and at the time of the adoption of the Constitution of the United States, citizens—yea, more, if they possessed the other necessary qualifications, were voters, on the same terms as other citizens; and many of them might and probably did vote for this very Constitution under which, according to the construction of the Supreme Court, given in those parts of the opinion I have read, they were entitled to "no rights which the white man was bound to respect." And this conclusion was reached, not by the construction of any of the provisions of the Constitution, but by such monstrous perversions of history and law as are found in the extract to which you have just listened. And yet we are told here, day after day, and month after month, that this opinion, which would forever deprive of all the rights and privileges of American citizens a whole race of men whose ancestors lived in the country at the very time of and before the Revolution, participated in the battles which secured our independence, voted for the adoption of the institutions under which we live, is a decision of the Supreme Court of the United States, and that no good citizen will question its correctness, or fail to adopt its doctrine as the rule for his guidance in deciding all questions affecting the rights of the black race. That a negro cannot be a citizen, within the meaning of the Constitution of the United States; that he has no rights which a white man is bound to respect; that he may justly and lawfully be reduced to slavery, for the white man's benefit, have come to be political and judicial truths, in the contemplation of which the modern Democrat finds his richest consolation.

Mr. Chairman, when I read this opinion—it purports to be the opinion of the court—it seems to me that, by some strange mistake, the argument of some astute attorney, especially distinguished for his ability to ignore and reject all law and fact which make against him, has been substituted for the opinion of the court, and is being used to impose upon the people. It has all the characteristics of the argument of the lawyer, made without law or fact, and against law and fact, not one characteristic of the opinion of the impartial judge.

I regard that opinion, sir, as one of the most direct and positive falsifications of the well-known facts of history to be found in the English language, and the greatest libel upon the men who framed the institutions under which we live, ever published to the world. Had such opinions or intentions been imputed to those men whilst living, they would have repudiated them with scorn and contempt.

But these assertions of the Supreme Court, as to the opinions and intentions of the signers of the Declaration of Independence and framers of the Constitution of the United States, can never touch or tarnish their reputation, or deceive their descendants. They have, almost without exception, placed themselves on record as hostile to American slavery. Patrick Henry expressed the opinion and wish of the men of that time, when, eighty years ago, he said:

"I believe a time will come when an opportunity will be offered to abolish this lamentable evil. Everything we can do is to improve it, if it happens in our day; if not, let us transmit to our descendants, together with our slaves, a pity for their unhappy lot, and our abhorrence of slavery."

I might quote, from the writings of almost every distinguished man of that time, language

equally strong in condemnation of slavery, and earnest in the wish for its abolition; but it is so familiar, that every man recalls it almost without an effort of the memory. These men had done and suffered for their country, and the cause of human liberty, the noblest things the world's history has yet recorded. Slavery was at that time an existing fact in most of the States, for which these men were not directly responsible. They laid the foundations of the Federal Government on the fundamental principles of man's right to freedom and ability for self-government. Instead of making, or intending to make, a Government which should provide for the existence of and be responsible for slavery, they recognised its existence only as necessity compelled, and would not permit the term slave or slavery to have a place in the Constitution, hoping and believing that the great principle of man's right to freedom, on which all the institutions they were then making rested, would effectually and forever abolish it from the land. With what surprise and indignation would these men have listened to the announcement that, when seventy or eighty years had passed away, the judges of the court which they were then establishing, as the highest tribunal in the land, would proclaim to the world that, under that Constitution, the black man had no rights which the white man was bound to respect, but might justly and lawfully be reduced to slavery, for the white man's benefit, and held as a slave, in every inch of the territory over which the United States had exclusive jurisdiction. These men had done one generation's work, and, when they left it to their children to free the land from the evils of African slavery, they felt that they were asking of them no more than such fathers had the right to ask of children for whom they had provided such an inheritance. We have received and enjoyed the inheritance, but the wishes of the fathers we have neglected and disregarded. Let us not add to our ingratitude by attempting to blacken their memories.

But the Supreme Court says that the question as to the jurisdiction of the Circuit Court is presented on the face of the bill of exceptions taken by the plaintiff at the trial, and that therefore, when that court found Dred Scott to be a slave, which it did, as a slave cannot be a citizen, it then became the duty of that court to dismiss the case, for want of jurisdiction, notwithstanding its previous decision, on the plea in abatement, that the court had jurisdiction; and that this was a new and second error, which it was the duty of the court to examine and correct.

Mr. Justice Curtis says that—

"Since the decision of this [the Supreme] Court, in Livingston *vs.* Story, (11 Pet., 351,) the law has been well settled, that, when the declaration or bill contains the necessary averments of citizenship, this court cannot look at the record, to see whether those averments are true, except so far as they are put in issue by plea to the jurisdiction."

The question of jurisdiction of the Circuit Court had been raised by the pleadings, and decided; and, having been once raised and settled, could not be again raised in the same trial. There would never be an end of a case, if a question, which had been once raised and decided, in its progress, could be raised again and again, whenever either of the parties might offer to produce testimony bearing upon it. Whenever a party in the trial of a cause, by plea in abatement or otherwise, raises a question, the court understands that he is ready to offer all his proofs, be heard, and receive the judgment of the court. It is as necessary that there should be a final determination of the questions raised in the progress of the trial, as it is that there should be a final determination of the case when it has been finished. If the defendant relied upon the facts stated in the bill of exceptions to show that the Circuit Court had not jurisdiction, he should have set them forth in his plea in abatement, and he would then have had the benefit of them in the decision on that plea. As he did not deem it advisable to do so, he could afterwards use them only as affecting the merits. Had the judgment of the Circuit Court, on the plea in abatement, been correct, its judgment for the defendant would not have been erroneous, even if the facts set forth in the bill of exceptions did show that it had not jurisdiction; and the only error of the Circuit Court, as to jurisdiction, if any, is to be found in its judgment on the plea in abatement. It is of course true, that, if the judgment on the plea in abatement is erroneous, the judgment on the merits in favor of the defendant, and everything done in the case after the decision on the plea in abatement, is also erroneous; but it is so, not because of any new or second error subsequently made, but because of the error in the judgment on the plea in abatement, which affects and renders erroneous all subsequent proceedings. And the decision of the Supreme Court, that the judgment of the Circuit Court on the plea in abatement was erroneous, and its mandate to the Circuit Court to dismiss the case for want of jurisdiction, would necessarily vacate all proceedings of the Circuit Court after the judgment on the plea in abatement. But the Supreme Court says, in this opinion, that the want of jurisdiction may appear on the record without any plea in abatement, and then refers to cases where it appeared by the record that the court had no jurisdiction of the subject matter, and cites cases in which the declarations did not contain the necessary averments of citizenship to show jurisdiction.

No one will question that the court is bound, in such cases, to take notice of want of jurisdiction at any stage. But such cases furnish no authority for the action of the court in this case. And when the Supreme Court of the United States attempts to sustain its action by precedent, and the cases cited and referred to fail altogether to do so, I suppose that it is but fair to conclude that precedents are not to be found, especially if the attempt is made after a dissenting judge has cited the authorities which establish the opposite doctrine. The careful reader of the opinion of the court in this case, and the dissenting opinion of Mr. Justice Curtis, is almost made to believe that the opinion of the court was prepared with especial reference to the positions taken by Mr. Justice Curtis, and for the purpose of dissenting from them. The internal

evidences go far to give credibility to the report, that the opinion of the court was revised after it had been read from the bench, and after the dissenting opinion of Mr. Justice Curtis had been placed on file.

But, Mr. Chairman, it is immaterial to the purpose for which I am principally considering this case, whether the effect of the conclusion of the Supreme Court, that the facts stated in the bill of exceptions showed Dred Scott to be a slave, should be to dismiss the case, or affirm the judgment of the Circuit Court in favor of the defendant. Whichever way that may be, the Supreme Court did decide, on the facts stated, that Dred Scott was a slave. In this opinion seven of the judges concurred, two dissented, and six expressed or concurred in the opinion that so much of the Missouri compromise as prohibited slavery in the Territory was unconstitutional and void. I propose now to inquire whether it was necessary for the court to pass upon the constitutionality of the Missouri compromise, in order to made the decision which it did make in relation to Dred Scott.

And lest some of the worshippers of this decision should be shocked at such an inquiry, let me state that this case had been once tried before the Supreme Court of the United States, and, although the argument had been pressed at the bar, that that act was unconstitutional, still the court did not deem it necessary to adjudicate upon it, and the opinion of the court was agreed upon, and reduced to writing, without an allusion to that question, and may now be found among the opinions of the judges, still bearing indubitable marks of having been prepared as and for the opinion of the court. And it was not until two of the judges dissented from the opinion of the majority of the court, that Dred Scott was a slave, and proposed to publish their opinions, that the majority felt it to be necessary to express opinions in relation to the constitutionality of the Missouri compromise.

It was then that the court ordered the case to be reargued, for the purpose of ascertaining whether it could be made to appear that that act was unconstitutional; and even then, three of the same judges were unable to concur in the opinion that that act was unconstitutional. The agreed statement of fact, so far as it relates to Dred Scott, is as follows:

"In the year 1834, the plaintiff was a negro slave belonging to Dr. Emerson, who was a surgeon in the army of the United States. In that year, 1834, said Dr. Emerson took the plaintiff from the State of Missouri to the military post at Rock Island, in the State of Illinois, and held him there as a slave until the month of April or May, 1836. At the time last mentioned, said Dr. Emerson removed the plaintiff from said military post at Rock Island to the military post at Fort Snelling, situate on the west bank of the Mississippi river, in the territory known as Upper Louisiana, acquired by the United States of France, and situate north of the latitude of 36° 30′ north, and north of the State of Missouri. Said Dr. Emerson held the plaintiff in slavery at Fort Snelling, from said last-mentioned date until the year 1838.

"In the year 1836, the plaintiff, at said Fort Snelling, with the consent of said Dr. Emerson, who then claimed to be his master and owner, married.

"Before the commencement of this suit, said Dr. Emerson sold and conveyed the plaintiff to the defendant as a slave, and the defendant has ever since claimed to hold him as a slave.

"It is agreed that Dred Scott brought suit for his freedom in the Circuit Court of St. Louis county; that there was a verdict and judgment in his favor; that on a writ of error to the Supreme Court, the judgment below was reversed, and the same remanded to the Circuit Court, where it has been continued to await the decision of this case."

It is wholly unnecessary to refer to that part of the agreed statement of fact which relates to the wife and children: first, because the court dismissed the case, for the reason that it found Dred Scott to be a slave; second, because, being a slave, he could not hold the legal relation of husband or father; and consequently nothing was, or could have been, decided as to the rights or *status* of the alleged wife and children. And, for the purpose for which I am considering it, and for all other purposes, they may be regarded as wholly out of the case.

Now, as this case had been decided by the Supreme Court of Missouri, let us consider the grounds on which that court rests its decision:

"The States of this Union, although associated for some purposes of government, yet, in relation to their municipal concerns, have always been regarded as foreign to each other. The courts of one State do not take judicial notice of the laws of other States. They, when it is necessary to be shown what they are, must be proved like other facts. So of the laws of the United States, enacted for the mere purpose of governing a Territory. These laws have no force in the States of the Union; they are local, and relate to the municipal affairs of the Territory." "Their effect is confined within its limits, and beyond those limits they have no more effect, in any State, than the municipal laws of one State would have in any other State." "Every State has the right of determining how far, in a spirit of comity, it will respect the laws of other States. Those laws have no intrinsic right to be enforced beyond the limits of the State for which they were enacted. The respect allowed them will depend altogether on their conformity to the policy of our institutions. No State is bound to carry into effect enactments conceived in a spirit hostile to that which pervades her own laws." "It is a humiliating spectacle, to see the courts of a State confiscating the property of her own citizens by the command of foreign laws. If Scott is freed, by what means will it be effected, but by the Constitution of the State of Illinois, or the Territorial laws of the United States? Now, what principle requires the interference of this court? Are not those Governments capable of enforcing their own laws; and if they are not, are we concerned that such laws should be enforced, and that, too, at the cost of our own citizens? States, in which an absolute prohibition of slavery prevails, maintain that if a slave, with the consent of his master, touch their soil, he thereby becomes free. The prohibition in the act commonly called the Missouri compromise is absolute." "Now, are we prepared to say that we shall suffer these laws to be enforced in our courts? On almost three sides, the State of Missouri is surrounded by free soil. If one of our slaves touch that soil, with his master's assent, he becomes entitled to his freedom. If a master sends his slave to hunt his horses or cattle beyond the boundary, shall he thereby be liberated? But our courts, it is said, will not go so far. If not go the entire length, why go at all? The obligation to enforce to the proper degree, is as obligatory as to enforce to any degree. Slavery is introduced by a continuance in the Territory for six hours as well as for twelve months, and so far as our laws are concerned, the offence is as great in the one case as in the other. Laws operate only within the territory of the State for which they are made, and, by enforcing them here, we, contrary to all principle, give them an extra-territorial effect."—15 *Missouri Reports.*

Here we find that this court decided that Scott was still a slave, not because the laws of the Territory and the laws of Illinois did not entitle him to his freedom whilst he remained in the Territory and in that State, but because the State of Missouri would not recognise or give any force or effect to those laws. According to this decision, the master may take his slaves from the State of Missouri into every country and under the jurisdiction of every Government on earth—still his

status as free or slave is not changed thereby, when he is again brought into the State of Missouri. The Supreme Court of the United States says that the question of Dred Scott's right to freedom must be determined by the laws of Missouri as interpreted by her courts, and states the case thus:

"As Scott was a slave when taken into the State of Illinois by his owner, and was there held as such, and brought back in that character, his *status*, as free or slave, depended on the laws of Missouri, and not of Illinois."

Now, if his *status* as free or slave depended wholly upon the laws of Missouri, and not at all upon the laws of Illinois, notwithstanding his previous residence of two years in Illinois, for the same reason his *status* as free or slave depended wholly upon the laws of Missouri, and not at all upon the laws of the Territory, notwithstanding his previous residence of two years in the Territory, and it is wholly immaterial to the decision of this case, what the laws of Illinois and the Territory in regard to the existence of slavery were. The Supreme Court of Missouri says: "Laws operate only within the Territory of the State for which they were made; and by enforcing them here, we, contrary to all principle, give them an extra-territorial effect;" and therefore that court decided that it would not regard them at all in the decision of the case of Dred Scott. Now, if the laws of Illinois and the Territory were not considered at all in the decision of this case by the Supreme Court of Missouri, and in the opinion of the Supreme Court of the United States, the *status* of Scott as free or slave depended wholly upon the laws of Missouri as interpreted by her highest court, on what principle and for what reason did it become necessary for the Supreme Court of the United States to inquire or decide as to the constitutionality of the Missouri compromise? If they had found that act to be constitutional, would they have found Dred Scott to be a free man? Would it have made the slightest difference in their decision of the case? Does not the Supreme Court of the United States substantially say this is a question which the laws of Missouri, interpreted by her courts, must settle; and as her courts decide the question, so it must be, no matter whether that court has given to this and similar questions the same decisions which this court would have given, had the question been before it for decision as an original question, without its being bound by any adjudications of Missouri? Does not that court rest its decision on the ground that it was enough for it to know that by the laws of Missouri, interpreted by her courts, Dred Scott was a slave, no matter into what countries or under the jurisdiction of what Governments he had been taken by his master, no matter what acts his master had done to him, or permitted him to do, inconsistent with his right to hold him as a slave; no matter that his master had consented to his contracting marriage—a relation that none but a free man can assume—the laws of Missouri, interpreted by her courts, make him a slave, and that court had no right or power to decide otherwise? Whatever may be said as to the correctness of these positions, no man will question or deny that they are the positions taken in the opinion of the Supreme Court of the United States. And now I ask again, on what principle and for what reason did it become necessary for the Supreme Court of the United States to decide as to the constitutionality of the Missouri Compromise?

Again: it will be remembered, that whilst the Supreme Court of Missouri denied that the laws of Illinois or the Territory prohibiting slavery had any force or effect in Missouri, still it did not deny or question the constitutionality of the Missouri compromise. That court admitted the constitutionality of the Missouri compromise, and found Dred Scott to be a slave under the laws of Missouri. Six of the judges of the Supreme Court of the United States expressed the opinion that that act was unconstitutional, and found Dred Scott to be a slave under the laws of Missouri; and say that they did so because they could not go behind or question the interpretation which the Supreme Court of Missouri had given to her laws, in this and similar cases; because it was a question the decision of which belonged to the courts of Missouri, and not to the courts of the United States. And here we see that the Missouri compromise was, in the opinion of the Supreme Court of Missouri, constitutional, and Dred Scott a slave. It was, in the opinion of six of the judges of the Supreme Court of the United States, unconstitutional, and Dred Scott a slave. It could be decided either way without affecting in the slightest degree the rights in question between Dred Scott and Sandford, and therefore could not be decided at all in the adjudication of that case. The case did not call for the expression of any opinion on that question, and therefore any opinion expressed cannot be relied upon as binding authority, and could not, even if all the judges had concurred in the opinion. And if the judges who gave expression to this opinion intended that it should be a decision of the question, then they stand convicted of attempting to do that which, by their own rule, laid down in Carrol *vs.* Carrol, binding on themselves and all inferior tribunals, they had no right or power to do.

And now that we have seen that this case did not call for the expression of any opinion as to the constitutionality of the Missouri compromise, and that the court had no right or power to make any decision in relation to it, the question at once presents itself, why did the Supreme Court of the United States—or, rather, six of its judges—give opinions on the constitutionality of the Missouri compromise, in the decision of this case? I might find an answer to this question outside of the recorded opinions of the judges, satisfactory to myself, and a large portion of the people of the country. But as I find in their recorded opinions an answer, I will ask the attention of the Committee, and the people of the country, to the reason there assigned. Mr. Justice Wayne says:

"The case involves private rights of value, and constitutional principles of the highest importance, about which there had become such a difference of opinion, that the peace and harmony of the country required the settlement of them by judicial decision."

We have already seen that the private rights

could be settled without any decision of this question. It was the peace and harmony of the country, the great political question which the repeal of the Missouri compromise had raised, on the one side and the other of which question the people of the whole country had arrayed themselves, and proposed to settle by the decision of that final arbiter of all political questions in this country, the ballot-box, that six of these judges felt called upon to decide, in the adjudication of this case. By some strange delusion, they seemed to consider themselves authorized to dictate to the people what political questions they might discuss and decide, and to take from them such other questions as would, in their judgment, disturb the peace and harmony of the country. They seemed to foresee and feel the force and power of the different contending political opinions in the land, and also the inability and weakness of the incoming Administration, and felt called upon to place in the hands of the man who was to administer the Government for the coming four years a prop on which to rest his feeble and tottering policy of slavery extension. He has relied upon it with a blind devotion, and, during his whole term of office, scarcely sent to Congress a message, without communicating to us that the Supreme Court had decreed all the Territories to be forever open to slavery—evidently, to him, a pleasing fact. Whether this opinion of the six judges of the Supreme Court has strengthened his administration, or afforded essential aid to the extension of slavery, the sequel will demonstrate.

Mr. Chairman, it will be an unfortunate day for the reputation of the Supreme Court, as well as for the country, when that court shall feel itself called upon or authorized to turn aside from its true and well-defined sphere of action, to give aid and comfort to the action or doctrine of any political party; when it shall feel it to be its duty or privilege to engraft upon its decisions approval or condemnation of political platforms already made, or furnish, for those not fully completed, such plank as political conventions have not been able to agree upon.

It is a significant fact, that nearly or quite one-half of the people of this country, immediately upon the promulgation of the opinions in the Dred Scott case, cried out in indignation at the action of that court, after having bowed in silent obedience to its decisions for more than seventy years. Was it because it was, as we were told by a Democrat the other day, a lightning flash shot from the judicial bench into one of the great political parties of the land? I know that there are at the present time those who wish to make the Supreme Court of the United States the repository and dispenser of the lightning which is to strike, down not only those who appear as parties in the court, and bring themselves within its legitimate power, but the "legions" of the people, in the exercise of those great rights, powers, and duties, which they have not received from man, and cannot be divested of by man.

Mr. Chairman, I am not one of those who believe that the Supreme Court of the United States has the power to break down or destroy the rights and liberties of the people of this country. It can break down and destroy its own moral power, influence, and high position, in the estimation of the people, but the rights and liberties of the people, never. It can decide the rights of individual litigants before it, but it can never promulgate from the bench decisions of political questions, in which the people will acquiesce. The people of this country know their rights; and when any branch of the Government, executive, legislative, or judicial, shall attempt to encroach upon them, it will soon be made to feel that its power is limited and defined, and can be exercised only within proper limits. Why is it, sir, that that high tribunal, the Supreme Court, has held such an exalted place in the estimation of the people, that they start back with horror from its first act showing a departure from the line of duty? Simply because that court, by its wisdom, integrity, and impartiality, for more than seventy years had caused the people to almost believe it infallible. But, sir, whilst confidence is a plant of slow growth, it may be uprooted in an hour, so that root, stock, branch, or leaf, shall never be seen more.

Mr. Chairman, the gentleman from Alabama, [Mr. CURRY,] in the speech to which I have before referred, says:

> "The proposition of the Senator from New York, [Mr. SEWARD,] to put the Supreme Court on the side of freedom, is fearfully admonitory of the influence of popular excitement on the Judiciary."

And other gentlemen have used language which carried with it the implication that the Republican party wished some change or revision of the powers or duties of this court. I, sir, know of no man in the Republican party who wishes any change or revision of the powers or duties which the Constitution of the United States has conferred on that tribunal. Men of all parties, and even the judges themselves, feel that some legislation is necessary to equalize and facilitate the business of the court. When the Senator from New York spoke of putting that court on the side of freedom, he simply recognised a fact, which many seem to forget. Vacancies sometimes occur on that bench, which must be filled by the proper constitutional authority. And it is the theory of our Government, that the will of the people (some men term it "influence of popular excitement") is supreme, and that there is no branch of the Government, executive, legislative, or judicial, which they cannot in time either directly or indirectly reach and control. It may require a longer or a shorter time; but we were told the other day, and truly, that a decade, a century, was but a span in a nation's history.

The Senator from New York has been guilty of believing and saying that he was willing to trust the people, present and to come, to place in office those who would appoint, as judges of the Supreme Court, men who would correct any and all errors of their predecessors on the bench. I know that at the present day the man who has confidence in the wisdom and integrity of the people, and their ability for actual self-government, has come to be regarded in some quarters

as so great a fanatic, that he must not ask the people to have any confidence in him.

Sir, eight of the nine judges of that court are known or fully believed to be, to-day, in full communion with the Democratic party and its leading politicians. I have no doubt that if a Republican President were called upon to nominate a man for that bench, he would select from the men of the country one who is not committed to the Democratic party. But, sir, I hope that the day will never come when the Republican party, or any other party, shall again have eight of the nine judges of that court.

Mr. Chairman, the question of slavery in the Territories of the United States is not an adjudicated one, and is not so regarded by the people of the country. The Republican party do not so regard it. The Democratic party do not so regard it. The resolutions which were presented by the majority and minority of the committee on resolutions in the Convention at Charleston, only three or four days ago, show the differences of opinion on this question in the Democratic party. Whilst seventeen of the committee were ready to resolve the question adjudicated, fifteen of the committee reported to the Convention the following resolution:

"That inasmuch as differences of opinion exist in the Democratic party as to the nature and extent of the powers of a Territorial Legislature, and as to the powers and duties of Congress, under the Constitution of the United States, over the institution of slavery within the Territories—

"*Resolved*, That the Democratic party will abide by the decision of the Supreme Court of the United States over the institution of slavery within the Territories."

There are indeed differences of opinion on this question in the Democratic party. The Southern portion of the party say that the Supreme Court has already decided that all the Territories are forever open to slavery. The Northern portion, knowing that the people of the free States will never accept such a doctrine from court or convention, seek to evade the direct question by the resolution which I have just quoted, hoping that they may again deceive the people with the cry of popular sovereignty. The Republican party intend, in the coming election, to refer this question to the American people, believing that they are the proper arbiters of all political questions, and denying that the Supreme Court has, or can, decide the great political questions of the day.

One portion of the Democratic party says to the people, this question has been placed beyond your reach or control by the Supreme Court, and nothing is left for you but to bow in silent obedience to its decision; the other portion of the Democratic party—the popular-sovereignty part, whose party cry in the free States has been, the people of the Territories shall regulate their domestic institutions in their own way—propose to submit this question, not to the people of the country or the Territories, but to nine judges of the Supreme Court, sitting as a board of referees, with power to make a final decision of a political question, which the Democratic party has tried to agree upon in convention, and failed.

If the popular-sovereignty portion of the Democratic party shall eventually prevail, I shall watch with some interest to see whether the Supreme Court will consent to sit as referee, to decide this question for the Democratic party. Perhaps the "peace and harmony" of the party may require its settlement by judicial decision. But, for the reputation of the court, I hope that it will not feel bound to accept. If it does, I hope that it will not incorporate its award into a judicial decision in which the rights of private parties are adjudicated.

But, Mr. Chairman, let the Democratic party frame the issue as it may, the Republican party has the power to submit and will submit this question to the people. If the people prefer that the Supreme Court, sitting as a court, or as a board of referees, shall decide the great political questions of the day, and say to the people, it is our province to decide, yours to bow in silent obedience to our decrees, they will vote for the men and doctrines of the Democratic party. But if the people shall still think that they are capable of self-government, that free institutions and free society are not a failure, they will vote for the men who still propose to leave the decision of political questions to the people.

In conclusion, I will say to the Democratic party, frame your platform as you please; present it, with your candidates for office, to the people, for acceptance or rejection. We will do the same. If we are beaten, we will acquiesce, live in obedience to the Constitution and the laws, and see to it that the Union is preserved. You, by presenting your candidates and platform of principles to the people, for acceptance or rejection, pledge yourselves anew to the same course. We intend to act in good faith, and will not question that you intend to do the same. We propose to submit our principles, and the reason for their adoption, to every portion of the American people where free speech is tolerated, and the rights of the citizen under the Constitution respected. And if we are still excluded from any part of our common country, we have only to say to you, perform your constitutional obligations, and we will present the principles of our party to the people of every State in the Union, and secure for them the support of more or less of the voters of every community in the land. We propose to appeal to the reason and judgment of the people, not to their fears, prejudices, or passions. We hold that threats are poor arguments, and that he who addresses them to any portion of the American people fails to appreciate his audience.