KANSAS AND THE SUPREME COURT.

SPEECH

OF

JOHN P. HALE, OF NEW HAMPSHIRE.

Delivered in the United States Senate, January 19 and 21, 1858.

The Senate proceeded to the consideration of the motion to refer so much of the President's message as relates to Kansas affairs to the Committee on Territories.

Mr. HALE. Mr. President, in addressing myself to the Senate, on this occasion, permit me to say that I am not one of those who think that the introduction of this subject into the debates of the Senate was either premature or ill-timed. I believe that it was appropriately introduced; that its introduction was expected by the public; and, considering the extraordinary position of the President of the United States, I should think that those who differed from him widely upon the measure which is so prominent would have been derelict in their duty if they had failed to challenge at the very outset the doctrine promulgated in his message. I may excuse myself—and I can only speak for myself, though it is not impossible that some friends who sympathize with me may have been governed by the same motive—when I say that thus far I have refrained from throwing myself prominently before the Senate and before the country on this question, for the reason that I believed there was a greater curiosity in the land to know what other men thought, and what they would say, than there was to know what so humble an individual as myself would say.

Amongst those gentlemen for the expression of whose sentiments the public waited with deep and earnest and anxious solicitude, prominent stood the Senator from Illinois, [Mr. DOUGLAS;] and however I may animadvert upon his position in some respects, I must do him the credit to say that in that emergency he fully met the public expectation, and frankly and ably met the issue which the President had tendered to him. So far I accord with him; and as I accord with him on one other point, I may as well mention it at once, and then go on to the divergence. I agree with him in opposing this Lecompton Constitution, in opposing the recommendation of the President to force it on the necks of an unwilling people; I agree with him there entirely and fully; but I am not opposed to the Lecompton Constitution, I am not opposed to the President's attempt to force it on the necks of that people, I am not opposed to this attempt to substitute force for reason, because it is contrary to the principles and policy of the Nebraska bill, but because it is in exact conformity with them, part of the original programme, carrying it out, if not in letter, in spirit exactly. Sir, if there has been a controversy between that distinguished Senator and the President of the United States, I think the palm of victory must be awarded to the President, and that notwithstanding he was out of the country, away over in England, discharging the high diplomatic duties which his country had devolved on him, I think when he undertakes to bring in the Federal army to force this Constitution on the people of Kansas, he shows that he understands the Nebraska bill just exactly as well as if he had been here, part and parcel of it at the time it was passed. That is the reason why I am opposed to this measure. I was opposed to the bill; I have been opposed to it in its origin, in its progress, in its consummation, and in its effects. I was opposed to the planting of the seed, to its swelling and bursting into life, to its spreading foliage, and I am opposed to the ripe fruit which we are about to gather from it. Having said that, I come back to say what the object of the bill was.

I have but one rule by which to judge of the objects of a public act, and that is, by reading it; and thus seeing what its purport, meaning, object, and intent is, as embodied in the bill itself. I do not go to the motives of individual gentlemen who voted for the bill, and ask them what it means; and if I were in a court of law, and the construction of the Kansas-Nebraska act was up, and I could bring the affidavit of every man that voted for it, and they should swear that it was not their intention to introduce Slavery into any Territory or State, that would not be received by the court; it would not begin to raise a presumption as to what the intention of the act was. But, sir, you must look to the act itself, to the history of the times in which it was passed, and to the state of things to which it was made to apply, in order to get at its object.

The Kansas-Nebraska bill on its face professes to be a very harmless affair. The gist of it is comprised in these few lines:

> "It being the true intent and meaning of this act not to legislate Slavery into any Territory or State, nor to exclude it therefrom, but to leave the people thereof perfectly free to form and regulate their domestic institutions in their own way, subject only to the Constitution of the United States."

We begin to understand something of the great popularity of this bill at the South. It is because Congress most graciously condescends to inform the slave States that they do not mean to abolish Slavery in those States—"it being the true intent and meaning of this act not to" "exclude Slavery from any State." The Representatives of those States must have breathed more freely, as Mr. Webster said on another occasion, when they were assured that Congress did not mean to abolish Slavery in their States. We had said so individually, over and over again; but I take it the public mind must have been put at rest when it was embodied in a solemn legislative enactment, that the Congress of the United States did not mean to abolish Slavery in any State. The act goes further, and assures us of the free States that Congress did not mean to legislate Slavery into our States. Sir, this was gracious and gratuitous. I do not know how gentlemen may receive it; but I tell the Congress of the United States, that when they

declare that they do not mean to legislate Slavery into New Hampshire, and when the Supreme Court of the United States say they mean to adjudicate that it is there or is not there, I will fling it in their face, with the contempt that such a gratuitous offer deserves. I shall have something to say about the Supreme Court by and by; and lest I should shock the sensibilities of some men who look with great reverence on that tribunal, I shall preface my remarks, in regard to it, with some extracts from the writings of Jefferson, as a sort of breaking-up plough, before I come with a sub-soil one. I shall come to that, however, presently.

I aver here that the object of the Nebraska bill was to break down the barrier which separated free territory from slave territory; to let Slavery into Kansas, and make another slave State, legally and peacefully if you could, but a slave State anyhow. I gather that from the history of the times, from the character of the bill, from the measure, the great measure, the only measure of any consequence in the bill, which was the repeal of the Missouri restriction. I know gentlemen say they did not mean it, but I cannot deal with individuals. I must deal with the act and with the Government; I must deal with the purport of the act, and the policy of the Government in passing it. I know no other rule by which to judge of an act, but to examine the natural and legitimate consequences that are to follow from it. In discussing this matter, I may say some things that have been said by others, and possibly some that have been said by myself before; but the difficulty is, that these obnoxious doctrines are pushed at us so frequently that in meeting and resisting them, it sometimes becomes necessary to travel over ground which has been occupied before.

I say, then, sir, that the rule by which to judge of the intent, the object, the purpose of an act, is to see what the act is calculated to do, what its natural tendency is, what will in all human probability be the effect. Before the passage of the Kansas-Nebraska act, there stood upon your statute-book a law by which Slavery was prohibited from going into any territory north of 36° 30′. The validity and constitutionality of that law had been recognised by repeated decisions of the courts of the several States. If I am not mistaken, I have a memorandum by me, showing that it had been recognised by the Supreme Court of the State of Louisiana. So far as I know, the constitutionality of that enactment was unquestioned, and the country had reposed in peace for more than a generation under its operation. By and by, however, it was discovered to be unconstitutional, and it was broken down. The instant it was broken down, Slavery went into Kansas; but still, gentlemen tell us they did not intend to let Slavery in; that was not the object. Let me illustrate this. Suppose a farmer has a rich field, and a pasture adjoining, separated by a stone wall which his fathers had erected there thirty years before. The wall keeps out the cattle in the pasture, who are exceedingly anxious to get into the field. Some modern reformer thinks that moral suasion will keep them in the pasture, even if the wall should be taken down, and he proceeds to take it down. The result is, that the cattle go right in; the experiment fails. The philosopher says: "Do not blame me; that was not my intention; but it is true, the effect has followed." I retort upon him: "You knew the effect would follow; and, knowing that it would follow, you intended that it should follow."

But, sir, we are not without the book on this subject, if we are compelled to go to the avowed declarations and sentiments of the gentlemen who advocated the bill. An honorable Senator, who usually sits before me, but who is not now in his seat—I mean the Senator from South Carolina, [Mr. Evans,] and I may say of him, what I would not say if he were present, a man in whose heart and in whose lips there is no guile and no deceit, a man who could not utter a falsehood if he tried—in 1856 delivered a speech on this question, in which he divulged and laid open, as his own character is, the purpose he had in voting for the bill. He was speaking for the South, and no man of all the South controverted him, and said nay. I will tell you what he said—I shall not use his very words, but I will state his argument fairly. He referred to a declaration of the honorable Senator from Massachusetts, [Mr. Wilson,] and said the Abolitionists had avowed that it was their intention to abolish Slavery in the Territories and in the District of Columbia, and he apprehended that their purpose was to abolish it everywhere when they could, and that they would, when they got into power, abolish Slavery, not only in this District and in the Territories, but in the States. He said that that consummation was to be reached by an amendment to the Federal Constitution authorizing Congress to do this, which requires the assent of three-fourths of the States; and in this view of the controversy, one slave State was as good as three free States; and, therefore, as a guarantee against the encroachments of the Anti-Slavery spirit, they wanted Kansas for a slave State. That is the argument of the honorable Senator from South Carolina. It is the truth—no more true after he said it than it was before; no more palpable to any man who would not see after the avowal, than it was before.

That was the purpose; but the bill itself says its object was to leave the people "perfectly free." It seemed to intimate that we had a kind of freedom in this country before, but it was an imperfect sort. They were mere tyros, those old men of the Revolution, those gray-headed sages of the Federal Convention, hoary and venerable with age, ripe with experience, honored and venerated for their lives of fidelity and of valor; they had but an imperfect notion of freedom. It was reserved to the new lights of this latter day to discover and proclaim to the world what perfect freedom was, and the illustration was to be made in Kansas. I shall trace the history of it presently. It seemed to be implied that there never had been perfect freedom in the formation of any Constitution before. I stand here, sir, amid the representatives of thirty-one States, a majority of whom, I think, have emerged from a Territorial condition to one of State sovereignty; and I ask the Senators from each and every one, if, in the formation of your State Constitutions, your people did not enjoy perfect liberty? Was any restraint imposed upon you? In the case of California, it was said that her Constitution was formed under the *prestige* of a military proclamation issued by General Riley; but I ask the Senators from California, called as that Convention was, whether, when the delegates got together, they did not exercise perfect freedom, and form and submit to Congress just exactly

the Constitution which the popular sense of the State demanded? I ask the Representatives of those States carved out of the Northwestern Territory, where the great ordinance of Freedom, which is attempted to be stricken down, was in force, whether, when they came to deliberate upon the high question of the formation of a State Constitution, preparatory to their admission into the Federal Union, they were not perfectly free? Was any restraint imposed upon Ohio, that giant State of the West? Did she inscribe Freedom upon her Constitution, contrary to the wishes of her people, at any one's behest? Was it so in Illinois? Was it so in Indiana? Has any State of this Union, anywhere, formed a Constitution, and presented it to Congress, without the exercise of perfect freedom? If there be any, let them speak. No, sir; it is not true. Our fathers knew what perfect freedom was, and they exercised it. I have inquired as to the new States, and no man gainsays me. Now let me ask, how was it in the old States? Were their Constitutions formed under restraint, or were the people of each and every one of these confederated States perfectly free in the formation of their Constitutions? No one will deny that they enjoyed perfect freedom.

Having stated what I believe to have been the object of the bill, I propose to inquire how perfect freedom has been carried out in Kansas. Another term became popular about the same time, about which I have a word to say, and I will carry it along with *perfect freedom*—and that is "popular sovereignty." What has been the history of the application of "perfect freedom" and "popular sovereignty" to Kansas? The people of Kansas were to have the real, the unadulterated, the genuine "perfect freedom." They were to illustrate the great doctrine of popular sovereignty as it never had been illustrated on this continent before. What was the first step? In the first place, you made a code of laws for these sovereigns. You would not let them begin under their own laws. To start with, you piled upon them every law that Congress, in its wisdom or folly, had ever made, from the beginning of the Government to the passage of that act, except, as Mr. Benton well said on another occasion, a little short act, not as long as your finger, made expressly for them, and the only one in the whole nine volumes that was made for them, and that was one abolishing Slavery. That act you excepted; but you piled upon them every other law you had passed, without distinction, except those which were locally inapplicable. You made a Governor for them; you appointed their marshals, their attorneys, and all their officers; you made their laws, and sent the men to administer them. Thus you started them on the great career of developing and illustrating popular sovereignty.

What was the next chapter? You left to them on paper the poor privilege of voting; and having been flattered into the idea that they were a community of popular sovereigns, I suppose they came together with high hopes of manifesting that sovereignty at the first opportunity which presented itself; and that was when an election came off for members of the Territorial Legislature. When that came, what did they find? Did a mob go over from Missouri? No, sir. I will not do them that discredit. There was not a mob, but an army there—an army with flags flying, drums beating, with tents and all the paraphernalia and equipments of an army. They went over, took possession of the Territory, drove the popular sovereigns from the ballot-box, substituted the cartridge-box for the ballot-box, elected their own men, and then went back over the river, singing their songs of triumph, and proclaiming through the columns of the public papers in the State of Missouri the great victory which they, by their prowess, had achieved. This was the second illustration of popular sovereignty in the history of Kansas.

If I understand the history of the times, I am not speaking of matters in regard to which there is any dispute or controversy. About some things there may have been some doubt, some cavil, some controversy; but I believe the truth of the statement will not be disputed, that at the first election in Kansas for members of the Territorial Legislature, the legal voters were forcibly expelled, and illegal voters took possession of the ballot-boxes. It is wide of my argument to say in how many election precincts this was done. If it was done in one, that is enough for my argument. I believe it was done in a majority of them; but if it was done in one, all that I endeavor to maintain is maintained by this argument. I believe the fact which I have stated will not be controverted. These men elected a Legislature, and they elected their own friends, as was natural. Having got possession of the ballot-box, they were not going to elect their antagonists. The Legislature came together, and what did they do? How did they carry out "perfect freedom?"

It is said now, that the controversy was narrowed down to the question whether they should have domestic Slavery in Kansas or not. For the purpose of my argument, I am willing to concede that. How was "perfect freedom" illustrated on that question? The first Legislature passed an act making it a penal offence, punishable by imprisonment in the penitentiary, for any man to deny that it was right to hold slaves there. This was a glorious chance for "perfect freedom" and "free discussion"—was it not? I can imagine an assembly of the people called together, and they are about discussing the question of what policy shall be inaugurated there, what policy shall be started in their laws; and the great question, which it is said is the only one that divides them, is brought into consideration, and one man gets up and argues in favor of Slavery. He says that it is right; that it is a divine institution; that it is one of those things which can be proved by the Bible, and by the Constitution, and by every other book that is worth quoting. He delivers an eloquent, able, and forcible speech, demonstrating the propriety, the expediency, the policy, and the righteousness of Slavery. After he has set down, having electrified the audience and convinced their understanding, some man on the opposite side gets up. He says: "Mr. President, I do not believe that Slavery is right." His antagonist gets up and calls on the marshal to arrest him, and put him in custody, for he has committed a State-prison offence the moment he opens his mouth, because he has denied that it is right to hold slaves in Kansas; and that, by your authority, by the Federal authority, is declared to be a penitentiary offence.

This Legislature undertake to regulate the right of suffrage there, and they make the right of suffrage dependent on the taking of a test oath to support acts which I think—as we are now satis-

fied a majority of the people of that Territory hold to be—wrong and abhorrent. But, sir, they cannot exercise the poor right, not of a sovereign, but of a citizen. They cannot go to the ballot-box and deposit a ballot for any officer there until they have taken these odious test oaths. That is the third chapter of popular sovereignty and perfect freedom in Kansas. I think the people of Kansas, by their experience thus far, have become convinced that they do not want any more perfect freedom; but they would like a little of that imperfect kind which the people used to enjoy before the passage of this act.

The Legislature thus imposed upon them by the people of Missouri, against their will, was imposed by force, and not by fraud. I exempt them from that. They were no vulgar rascals that went over there. It was a conquering army. Having gone over, and thus elected a Legislature, and thus made a code of laws which made the annunciation of the great and eternal principles of Liberty a penitentiary offence, the Government was set in motion. What was the history of that Government? One of lawless violence. Your marshal, appointed by the President of the United States, summoned together what he called a *posse*—not from Kansas, but from Missouri, by his written handbills sent over to Missouri—and with that *posse* goes into the city of Lawrence to execute some process. After the process is executed, he turns over his *posse*—he got them together for a very innocent purpose—to Mr. Sheriff Jones, and then the law is executed by rifling the houses of Kansas; robbing them even of the clothing of females and children; the Lawrence hotel is sacked and plundered, the press taken and thrown into the river, and the town set on fire; the inhabitants driven from their homes, houseless wanderers at midnight, without a place to lay their heads, and the flames of their burning dwellings literally painting hell on the sky. These facts, just as notorious as the sun in the heavens, were perpetrated in Kansas, all known to you, sir; all known to the President of the United States; all known to the friends of popular sovereignty and perfect freedom here, in this body, and not a single one of them has a word of condemnation for them. If there is one that lisps a single syllable of blame, he pours out twice as much condemnation upon the victims as he does upon the perpetrators of this outrage.

Well, sir, we go on. This is but a specimen, and is not the whole history. I have not time to go over the whole of it. A second Legislature is elected, under the operation of these test oaths, and all these disqualifications. A second time the farce of an election is gone over, and that Legislature, that is to be elected, is about to take the initiatory steps for forming a State Constitution; and still, up to the second election, it is a State-prison offence to deny that it is right to hold slaves in Kansas. A second election is had under all these disqualifications, a second chapter of "perfect freedom" and "popular sovereignty!" That Legislature met. They took measures for calling a Convention of the people, and, to their credit be it said, they repealed two of the most obnoxious, the most odious, the most indefensible of their statutes—the one that made it a criminal offence to deny that it was right to hold slaves in Kansas, and the other imposing test oaths. Those, I believe, were all the alterations that were made. They make provision according to law for taking the sense of the people and calling a Convention. I must hurry over these particulars. The Convention is called. It meets in September to frame a Constitution. Was it a Constitution that was to be framed and imposed upon the people of Kansas without their consent, and against their will? There were some factious Abolitionists and Black Republicans that did undertake to intimate such a thing, that this Convention might form a Constitution embodying Slavery in it; and that it might be forced on the necks of the people by Federal power and Federal patronage without their consent. But, sir, when that suggestion was made, how was it met? It was met on the part of these gentlemen by an indignant denial. I had not the pleasure of listening to the speech made by the honorable Senator from Michigan [Mr. STUART] the other day; but I understand that he embodied in his speech a written pledge, which the leading gentlemen on that side of the question published and signed their names to, and sent it out to the country, denying the imputation, and pledging themselves that the Constitution that they were about to form should be submitted to a popular vote.

Under that pledge they were elected; but there were certain preliminaries which were to be gone through with—a census and a registry to be taken and made in the various counties—before they were qualified to vote. The Territory of Kansas was divided, if I am not mistaken, into thirty-four counties; and we have the authority of Governor Walker for saying—it has never been controverted, and the honorable Senator from Ohio [Mr. PUGH] called upon the President for information on that fact, which was charged by Governor Walker, and I have never heard it denied—that in fifteen out of those thirty-four counties, steps were not taken by the Government, by which the people could come to the polls. The census and registry were omitted. So says Governor Walker in his letter.

Such as it was, the Convention came together, elected under a pledge of many of its members to submit the Constitution to the people. They met in September. They took the initiative: they appointed their committees; they laid out the work; and then they adjourned. I am not disposed to deny that that was proper; I suppose it was; but there are some astonishing and curious coincidences about this Convention. They adjourned to a period subsequent to the time when the people of Kansas were to vote for the election of a Territorial Legislature and a Delegate to this Congress. They adjourned to November. The election took place in October; and then, for the first time, as the test oaths had been repealed, the people of Kansas, without distinction of parties, went to the polls; and the result was, that your Pro-Slavery Democracy found themselves in a minority of less than one-third. The people spoke, nay, they thundered at the polls; and they returned, by an overwhelming majority, a Free State Legislature and a Free State Delegate to the Congress of the United States.

After this expression of public opinion on behalf of the people of Kansas, in November, this Convention, which was pledged to submit their Constitution to the people, had ascertained that, if they did submit it to the people, the people would reject it; and therefore, inasmuch as popular sovereignty and perfect freedom were very good things to talk about, but very inconvenient

when you come to submit them to a practical test at the polls, by a people that had already pronounced their opinions, it was thought that the safest and most convenient way was to violate their pledges, break their promises, and not submit it to the people. They did not have the courage or manliness to do that right out, but they adopted a subterfuge. They undertook to adopt a mode by which the forms of a submission should be had, while the substance was wanting. I will read to you an extract from a newspaper, and I think that will show you how it was understood by the friends of Slavery at that time. I read an extract from a letter published in the *Mississippian* of November 27th last, in which the writer says:

"Thus you see that whilst by submitting the question in this form, they are bound to have a ratification of the one or the other; and that while it seems to be an election between a Free State and Pro-Slavery Constitution, it is, in fact, but a question of the future introduction of Slavery that is in controversy; and yet it furnishes our friends in Congress a basis on which to rest their vindication of the admission of Kansas as a State under it into the Union, while they would not have it sent directly from the Convention.

"It is the very best proposition for making Kansas a slave State, that was submitted for the consideration of the Convention."

Yes, sir, that is what they thought in the slave States; that this Convention had adopted the very best mode that could be possibly devised for making a slave State of Kansas—and I agree to his judgment that it was; because there was no legal way left by which a man could vote against Slavery. He voted for the "Constitution with Slavery," or the "Constitution without Slavery." But there is one remarkable fact, and I call the attention of the Senate to it, and it may explain the vote that was given: if they had adopted the Constitution without Slavery, it would have been a more stringent Pro-Slavery Constitution, than it would if they had voted for the Constitution with Slavery; and I will tell you why. If they had voted for the Constitution with Slavery, they would have left the seventh article entire; and the seventh article contains a provision for the future emancipation of slaves. This article says, in granting powers to the Legislature, in regard to Slavery:

"They shall have power to pass laws to permit the owner of slaves to emancipate them, saving the rights of creditors, and preventing them from becoming a public charge."

This seventh article, if that were voted in, gives the Legislature a right to provide for the future emancipation of slaves; but if that were voted out, it left in the schedule the only provision on that subject; and in the schedule the provision is:

"If, upon such examination of said poll-books, it shall appear that a majority of the legal votes cast at said election be in favor of the 'Constitution with no Slavery,' then the article providing for Slavery shall be stricken from this Constitution by the President of this Convention, and Slavery shall no longer exist in the State of Kansas, (except that the right of property in slaves now in this Territory shall in no manner be interfered with.")

If they had voted out the Slavery clause, this provision, that the right of property in slaves should in no manner be interfered with, was left the permanent law. If they voted in the Slavery article, they voted a provision by which the Legislature might emancipate slaves; and then further in the schedule they have a provision, that in all future alterations of their Constitution, no alteration shall be made to affect the right of property in slaves. That was the doing of this Convention, and that is called by Mr. Buchanan a submission to the people. Somehow, when I come to speak of Mr. Buchanan, I almost invariably call him Van Buren. I do not know why. There must be something similar in their characters. When you come to speak of it as Mr. Buchanan does, it seems to me that you cannot by any possibility vindicate it at all.

But I wish to speak of this provision in the Constitution, that no amendment shall be made in reference to slaves. I know we are living in a day of new lights. New doctrines are constantly propounded, and some rampant Democrats of the new-light order laugh at such a constitutional provision as that. They say, no matter if it be in there; it is idle; a majority of the people can come together and alter the Constitution just as they please, or form a new one, notwithstanding that provision. I am not going to controvert that doctrine; but I will say that the State which I have the honor in part to represent used to be considered tolerably good Democratic authority; and in our State we have never believed, and have never acted upon the belief, that a mere majority could come together and amend our State Constitution; because our fathers inserted in the old Constitution a provision that it should require a vote of two-thirds to amend it. The doctrine that a mere majority can alter the Constitution, never found favor there. We had, a few years ago, a Convention called to revise our Constitution, and the late President of the United States presided over it. They submitted a great many amendments, and the people voted on them and rejected them all. They then met together again, and submitted two specific amendments. The people came together, and, by a two-thirds vote, agreed to adopt one of those amendments; and thereupon it was adopted, and is part of our Constitution. As to the other provision, the people voted by an immense majority, lacking a few hundred only of two-thirds, to adopt the amendment; but it was not adopted, and forms no part of the Constitution. So, sir, Democratic as we have been, we have never held in our State, and never believed, and we have never had a man there who contended, that a mere democracy of numbers could uproot and overturn and eradicate and destroy the fundamental principle of our Constitution.

Let me call your attention to another illustration. We have a provision in the Constitution of the United States, by which an equal vote is secured on this floor to every State. Delaware with her ninety thousand people, and New Hampshire with her three hundred thousand, stand here voting equally with New York, with her three millions, and with Ohio and Pennsylvania with their two millions each. It may be that these little States do not send such able men as those great ones. All the preponderance which Pennsylvania or New York can claim, on account of the pre-eminent talent of the gentlemen whom they send to represent them, they are entitled to; but when we come to the sober matter of voting, our little States, with our handful of men, stand equal with the great Empire State of the Union; and our fathers, in their wisdom, or their folly—I do not know what modern Democracy will call it—have provided, that in that feature the Constitution never shall be amended. Now, sir, I put it to you—I ask you if a mere democracy of numbers came together, in these United States, and undertook to make a new Constitution, and to strike out that great, radical, fundamental

principle, securing the equality of the States on this floor, if this Union would survive that act a day? No, sir; not a day. This Federal Congress never will assemble after that amendment to the Constitution shall be made. Do not talk to me about what numbers can do. There are some things numbers can do, and some things they cannot do. They cannot amend the Constitution of the United States in that behalf in which its framers said it should never be amended. Our fathers thought the equality of States on this floor was the great fundamental principle on which the Constitution should rest, and therefore they have said, that in that respect it shall never be amended. The framers of the Lecompton Constitution, in their wisdom, have thought that Slavery is the great corner-stone on which they can best erect an edifice of republican Government, and they have said, that in that respect it shall never be altered and never be amended. Now, sir, if a mere democracy of numbers may come together and blot out that feature of this State Constitution, I stand here in behalf of one of the smallest States of the Union, and I ask you what security, what guarantee have we, that that same mad spirit, miscalled reform, will not undertake to strike down also this great fundamental principle of the Federal Constitution? I profess to be a good deal of a Democrat myself, and I am willing to carry out the Democratic principle as far as anybody; but I believe that even Democracy itself, sometimes, on extraordinary occasions, requires a little check. The fathers of the Federal Constitution thought so. They thought equality of States was the great vital point which the hand of amendment should not touch. The framers of the Lecompton Constitution thought that their great fundamental corner-stone was Slavery, and they said that it should not be touched. With this I leave that point.

Now, sir, what had the people of Kansas—sent into the wilderness to build themselves new homes, to subdue the forest, to carry the arts of civilization, of science, of learning and religion, and found and build there a new empire, under the guarantee of perfect freedom—a right to expect? Had they not a right to expect, that when a Constitution was formed, they were to be heard upon it? Had they not a right expect it, when the delegates whom they elected had pledged themselves that they should have it; when the President had sent out his Governor with instructions that they should have it; and when, as the President of the United States says, he and all his friends were pledged to it?

I will read from his message:

"The act of the Territorial Legislature had omitted to provide for submitting to the people the Constitution which might be framed by the Convention; and, in the excited state of public feeling throughout Kansas, an apprehension extensively prevailed that a design existed to force upon them a Constitution in relation to Slavery against their will. In this emergency, it became my duty, as it was my unquestionable right—having in view the union of all good citizens in support of the Territorial laws—to express an opinion on the true construction of the provisions concerning Slavery contained in the organic act of Congress of the 30th May, 1854. Congress declared it to be 'the true intent and meaning of this act, not to legislate Slavery into any Territory or State, nor to exclude it therefrom, but to leave the people thereof perfectly free to form and regulate their domestic institutions in their own way.' Under it, Kansas, 'when admitted as a State,' was to 'be received into the Union, with or without Slavery, as their Constitution may prescribe at the time of their admission.'

"Did Congress mean by this language that the delegates elected to frame a Constitution should have authority finally to decide the question of Slavery; or did they intend, by leaving it to the people, that the people of Kansas themselves should decide this question by a direct vote? On this subject, I confess I had never entertained a serious doubt; and, therefore, in my instructions to Gov. Walker, of the 28th of March last, I merely said, that when 'a Constitution shall be submitted to the people of the Territory, they must be protected in the exercise of their right of voting for or against that instrument, and the fair expression of the popular will must not be interrupted by fraud or violence.'"

I will not read much longer, but I wish to read this extract:

"The friends and supporters of the Nebraska and Kansas act, when struggling on a recent occasion to sustain its wise provisions before the great tribunal of the American people, never differed about its true meaning on this subject. Everywhere throughout the Union, they publicly pledged their faith and their honor that they would cheerfully submit the question of Slavery to the decision of the *bona fide* people of Kansas, without any restriction or qualification whatever."

Then the President, after this avowal, goes on to say that that has been fairly done. Sir, it would be insulting to the intelligence of the Senate and of the country, to argue the question whether it has been fairly done, any longer. This omission to submit the Constitution to the people of Kansas is not accidental. I am sorry to find, as I have found out this session, that the omission to put it in the original bill was not accidental. We have a little light on this subject from a gentleman who always sheds light when he speaks to the Senate—I mean the honorable Senator from Pennsylvania, [Mr. BIGLER.] He says that this was not accidental, by any means. He has spoken once or twice about a meeting that was held in the private parlor of a private gentleman. There was a good deal of inquiry and anxiety to know what sort of a meeting that was. The gentleman who owns the house said he did not know anything about it. That is not strange. The hospitable man let his guests have the use of any room they chose. The honorable Senator from Pennsylvania said this meeting was "semi-official." I do not know what kind of a meeting that was. I have heard of a semi-barbarous, a semi-civilized, and a semi-savage people; I have heard of a semi-annual, and semi-weekly; but when you come to semi-official, I declare it bothers me. What sort of a meeting was it? Was it an official meeting? No. Was it an unofficial meeting? No. What was it? Semi-official.

I have never met anything analogous to it but once in in my life, and that I will mention by way of illustration. A trader in my town, before the day of railroads, had taken a large bank bill, and he was a little doubtful whether it was genuine or not. He concluded to give it to the stage-driver, and send it down to the bank to inquire of the cashier whether it was a genuine bill. The driver took it, and promised to attend to it. He went down the first day, but he had so many other errands that he forgot it, and he said he would certainly attend to it the next day. The next day he forgot it, and the third day he forgot it; but he said, "to-morrow I will do it, if I do nothing else; I will ascertain whether the bill is genuine or not." He went the fourth day, with a like result; he forgot it; and when he came home, he saw the nervous, anxious trader, wanting to know whether it was genuine or not; and he was ashamed to tell him he had forgotten it, and he thought he would lie it through. Said the trader to him, "Did you call at the bank?" "Yes." "Did the cashier say it was a genuine bill?" "No, he did not." "Did he say it was a bad one?" "No." "Well, what did he say?"

"He said it was about middling—semi-genuine." I have never learned to this day whether that was a good or a bad bill. They used to say, in General Jackson's time, that he had a kitchen cabinet as well as a regular one. This could not be a meeting of the kitchen cabinet, because it sat in a parlor. It was semi-official in its character also.

Again, sir, there is another thing remarkable about this meeting. The Senator says: "It was semi-official, and called"—it was a called meeting; it was not a mere accidental gathering of a few gentlemen, coming in to pay their respects to the distinguished Senator in his hospitable mansion; it was "semi-official, and called." For what? "Called to promote the public good." Yes, sir; a semi-official meeting, called to promote the public good. And what did it do? The honorable Senator from Pennsylvania says:

"My recollection was clear, that I left the conference under the impression that it had been deemed best to adopt measures to admit Kansas as a State, through the agency of one popular election, and that for delegates to the Convention. This impression was the stronger, because I thought the spirit of the bill infringed upon the doctrine of non-intervention, to which I had great aversion; but with the hope of accomplishing a great good"—[the meeting was called for the "public good"]—"and as no movement had been made in that direction in the Territory, I waived this objection, and concluded to support the measure. I have a few items of testimony as to the correctness of these impressions, and with their submission I shall be content."

Then he goes on to say:

"I have before me the bill reported by the Senator from Illinois, on the 7th of March, 1856, providing for the admission of Kansas as a State; the third section of which reads as follows:

"'That the following propositions be, and the same are hereby, offered to the said Convention of the people of Kansas, when formed, for their free acceptance or rejection; which, if accepted by the Convention, and ratified by the people at the election for the adoption of the Constitution, shall be obligatory upon the United States and the said State of Kansas.'

"The bill read in place by the Senator from Georgia, on the 25th of June, and referred to the Committee on Territories, contained the same section, word for word Both these bills were under consideration at the conference referred to;"—[two bills under consideration at this semi-official meeting!]—"but, sir, when the Senator from Illinois reported the Toombs bill to the Senate, with amendments, the next morning it did not contain that portion of the thrid section which indicated to the Convention that the Constitution should be approved by the people."

The result of this semi-official meeting, called for the public good, was, that the bills came into the Senate the next morning minus the clause submitting the Constitution to the people. It was stricken out; but the honorable Senator does not impugn anybody, nor his motives, because he says:

"Who struck the words out, or for what purpose they were omitted, is not for me to answer."

If it is not for him, it is not for me; but I thought he had given a clue to the reason why they were struck out when he said the meeting was called for the public good. Undoubtedly they were struck out for the public good. Who struck them out seems to be a mooted question, as uncertain of an answer as that old question, "Who killed cock-robin?" I did not see the Senator when he delivered the speech. If I had, I should have watched him closely; and it is possible that by some gesture, or some shake of the head, he would have determined who that "who" was; but we are left in the dark. We do not know who it was.

You see, then, that this was not accidental. A semi-official set of patriots, friends of popular sovereignty, and disciples of perfect freedom, called for the public good, in a private room, met together, and for peculiar reasons—that is what the Senator said—they determined to strike out of their bill the only redeeming feature in it, and that was the submission to the people of the question whether they would have Slavery in the Constitution or not. In that secret conclave, that semi-official meeting for the public good, these patriots put their heads together to strangle at the birth the only thing there was in their bill which ought to commend it to the real genuine friends of perfect freedom and popular sovereignty. Well, sir, I am learning something every day; but I did not know, till that speech was made, that when we met here in official meeting, and matured bills and put them in shape, they were to be committed to the tender mercies of a semi-official meeting, to strangle and choke out of them everything that was worth the keeping the breath of life in. They struck down, then, that great principle of popular sovereignty—a principle inestimable to freemen, formidable only to—semi-official patriots. [Laughter.] So that this was not accidental; it was purposely done; and this, too, was done in the name of popular sovereignty!

Mr. President, I wish to say a word about that subject. Popular sovereignty, according to the idea of some gentlemen, if it ever existed in this country, had been in a state of catalepsy, until the Nebraska bill brought it into life. I have seen some specimens which I thought were genuine popular sovereignty, and some that I thought were spurious. I will tell you one. In January, 1775, the people of that little State, of which I have the honor to be one of the representatives on this floor, met together—not in a private parlor, but in a public hall—and they inaugurated liberty and law in the shape of a written Constitution, in which they ignored the existence of the King of Great Britain and his Parliament, and formed a Constitution for that State, in defiance of legal authority, eighteen months before the Declaration of American Independence, and before any other State on this continent had a Constitution. I have heard that honor claimed for Virginia. I have heard it claimed for South Carolina. Anybody who will read the history of the times, will find, that in January, 1775, eighteen months before the Declaration of Independence, the people of the State of New Hampshire, in the exercise of a real, genuine, unadulterated popular sovereignty, came together, ignored both the King and the Parliament, and spoke out, in the form of a written Constitution, the great doctrines of popular liberty regulated by a written Constitution. That I call of the genuine kind.

Again, when the delegates of these thirteen old States met together in conclave, and on the 4th of July published their ever-memorable and immortal Declaration, in which they avowed that they held the people of Great Britain, as they held the rest of mankind, "enemies in war, and in peace friends," there was popular sovereignty of the genuine and the real kind. It was a popular sovereignty to which those men pledged their lives, their fortunes, and their honor, to sustain; and for the sincerity of their convictions, and the intensity of their devotion, they shed their blood like water, and never gave over until that great doctrine was embodied and made perpetual in the organized form of a written Constitution.

There is another instance of popular sovereignty in the history of the country from which

come, that I have always looked upon with admiration the most profound. I refer to the revolution which brought Charles I to the block. The Commons of England, by a resolution, blotted out the House of Lords, and resolved that the Commons of England had the right of sovereignty in them, Kings and Lords to the contrary notwithstanding; and they determined to bring Charles I to trial. Passing by all the organized forms of law, ignoring the House of Lords, ignoring all the organized forms in which justice had been accustomed to speak in her established tribunals, the old Commons of England came together, and resolved that they, and they only, were the sovereigns of England; that the House of Lords was a useless appendage; that the machinery of their judicial tribunals was not made for such an occasion, nor fitted for such an emergency, and they resolved themselves into a great high court, and they determined, in the exercise of that sovereignty thus organized, to summon before their bar the King on his throne. Yes, sir, they said that the King on his throne should come down from his high estate, from his elevation of regal sovereignty, and, face to face, before the assembled Commons of England, he should plead like a criminal to the popular sovereignty of England. I have here a sketch of the address that the old President read to the King when he came in. They were assembled in the great hall. Old President Bradshaw with his crimson robes sat on his high seat, and around him were the Commons. At last the great doors of the hall were thrown open, and in marched the King of England. No hat was taken from the head; no man rose to do him reverence. There was no indication that anything but a common criminal stood before a high court. The old President rose and said:

"Charles Stuart, King of England, the Commons of England, assembled in Parliament, being deeply sensible of the calamities that have been brought upon this nation, (which is fixed upon you as the principal author of it,) have resolved to make inquisition for blood: and, according to that debt and duty which they owe to justice, to God, the kingdom, and themselves, and according to the fundamental power that rests in themselves, they have resolved to bring you to trial and judgment; and for that purpose have constituted this high court of justice before which you are brought."

Oh, sir, that was judgment; there was nothing semi about that. The King undertook to cavil with them, and ask them by what authority they tried him; and the President replied, "By the authority of the people of England." The King cavilled for several days. He undertook to play the king; he undertook to set off regal sovereignty against popular sovereignty; and anybody that reads Hume's History of England, and takes it for the truth, will read that the King maintained that to the last. It was not so. When regal sovereignty and popular sovereignty thus came in conflict in England, the King endeavored to play the king for a little while, but at last he cowered and quailed, and became a poor suppliant criminal before the Commons of England. They tried him; and at last they came to a conclusion, and pronounced a sentence on him, which I will read, for it is very brief. After reciting the charges that the people of England had brought against him, the President said:

"For all which treasons and crimes this court doth adjudge that he, the said Charles Stuart as a tyrant, traitor, and murderer, and a public enemy, shall be put to death, by the severing of his head from his body."

And they carried it out. They carried it out right speedily, too; for I think in about three days the proud King of England, the successor of the imperious Elizabeth, of the bloody Mary, of the cruel and tyrannical Henry VIII, of the lion-hearted Richard, of the Norman conqueror William, the descendant of that long line of Kings, bowed his head upon the scaffold; and it was severed from his body in vindication of the great doctrine of popular sovereignty in England. The shadow of that great event has rested upon the British throne ever since. God bless those old Commons for it. Liberty is safer to-day in the country from which we came, and the country in which we are, on account of the fidelity with which those old Commoners maintained, carried out, vindicated, and executed, the great doctrine of popular sovereignty. Sir, they wrote it in the blood of Kings on the eternal page of history, where all nations may read it; and as long as English history lasts, all time will not efface it.

When I contemplate that sublime exhibition of popular sovereignty, and compare it with your poor, pitiful bantling, the Kansas-Nebraska act, the only object of which was to oppress the weak and hold the humble in subjection to their masters, I confess, sir, Young America notwithstanding, I prefer that old popular sovereignty of the Commons of England, two hundred years old, to the modern specimen which you are to-day illustrating in Kansas. Let me hear no more of popular sovereignty until we get something of the genuine about it.

It was not my fortune to be in the Senate the other day, when the honorable Senator from California [Mr. BRODERICK] spoke. I believe he joins with me in repudiating this attempt. I think that he is in error in one thing, and he will pardon me for telling him so. He lays it to Mr. Buchanan, and he says Mr. Buchanan is the guilty cause of it. Sir, I speak of Mr. Buchanan, as I am going to do, under a sense of duty. I have no unkind feelings towards him, certainly. In the course of my duty, as I performed it according to my convictions, I had occasion in the last Congress to say something of General Pierce, not unkindly I hope. I told him what he did not believe at the time, but what he has since found out to be true. I told him that you were using him, and that when you had used him, you would throw him away; that you had no more idea of again making a President of him, than you had of one of those pages. He did not believe me. I think he does now. I thought you would be a little more generous to him than you were. I thought you would go to the Convention, and resolve to have a majority of two-thirds to nominate, and that you would pay him the poor compliment of running him up to a majority of one; but the fact was, you felt so awfully doubtful, whether, if you undertook to run him up to a majority, he might not get the requisite vote, and be nominated, that you said, it is a dangerous experiment, and we will not try it; and Pierce went without even that empty compliment. I told him this on the floor of the Senate, and he and his friends had no more sense than to get offended at it.

Now, what I am about to say of Mr. Buchanan, I hope he will not get offended at. I shall be sorry if he does; but I tell you, Mr. Buchanan is not to blame. Mr. Buchanan is not a man to shape events; he is not a man to control the current of public opinion—he nor Pierce either, nor both together. They are not the men to give

direction to the current of human events. They are mere vanes, placed on high places, showing the direction and the strength of that current which is bearing our national ship to her destiny—that is all. The policy which Mr. Van Buren is carrying out—there it is again—I mean Mr. Buchanan—was indicated in this country long ago. I have before me a document published in 1844, containing the correspondence in relation to the annexation of Texas. Our Secretary of State, Mr. Upshur, in a letter to Mr. Murphy, our minister in Texas, said:

"The establishment, in the very midst of our slaveholding States, of an independent Government, forbidding the existence of Slavery, and by a people born, for the most part, among us, reared up in our habits, and speaking our language, could not fail to produce the most unhappy effects upon both parties."

That is the policy; the establishment of a free State is a calamity; it produces unhappy effects! That was said in reference to Texas. In no sense can Texas be said to be in the midst of our slaveholding States, that will not apply with equal or greater force to Kansas. You have the doctrine, then, that the establishment of a free State, prohibiting the existence of Slavery, produces unhappy effects; and to that policy, that the establishment of a free State is an evil, the Government has adhered with a tenacity like death, and with a directness of purpose that is not equalled by the mode in which the needle points to the pole. There is no variation of the needle there to be calculated. The means by which this policy was to be effected, was indicated by an article in the Richmond *Enquirer*, which said that the deserting Democrat who opposed the Administration on this vital measure would have nothing to expect. There is a simple policy, and a simple mode of carrying it out. A free State is an evil, and the public patronage is to be used to prevent it! That is it; it is very simple; and anybody who wants to get the true clue to this whole matter, anybody who wants to get hold of the thread to lead him out of the labyrinth in which we are now lost, will find it in this simple avowal of policy, that a free State produces unhappy effects, and that the Federal patronage must be used to prevent it. In other words, the representatives of the people are to be paid with the people's money to prevent the establishment of free States. That is a fair and honest translation of it.

This brings me to another part of my subject, in answer to a question which the honorable Senator from Illinois [Mr. DOUGLAS] propounded, when he asked if he was to be read out of the party for a difference on this point. I have great regard for the sagacity of that honorable Senator, but I confess it was a little shaken when he asked that question; is a man to be read out of the party for departing from the President on this great cardinal point? Why, sir, he asks, is a man who differs from the President on the Pacific railroad to go out of the party? Oh no, he may stay. If he differs on Central America, very good; take the first seat if you please. You may differ with the President on anything and everything but one, and that is this sentiment, which I shall read; Mr. Buchanan shall speak his own creed. On the 19th of August, 1842, in the Senate, Mr. Buchanan used this language:

"I might here repeat what I have said on a former occasion"—[you see it was so important he must repeat it]—"that all Christendom"—[mark the words]—"is leagued against the South upon this question of domestic Slavery."

All Christendom includes a great many people. If that be true, and if you have got any allies, it is manifest they must be outside of Christendom, because Mr. Buchanan says all Christendom is against you; but still he leaves you some allies, and you will see—it is as plain as demonstration can make it—that your allies are not included in Christendom. Where are the allies? I will read the next sentence:

"They have no other allies to sustain their constitutional rights except the Democracy of the North."

There is a fight for you: all Christendom on one side, and the Democracy of the North on the other. That is not my version; it is Mr. Buchanan's. That is the way he backs his friends; for he went on, after having made this avowal, to claim peculiar consideration from Southern gentlemen, and intimated that he might speak a little more freely, having previously endorsed them so highly as this. Well, sir, when all Christendom was on one side, and the Democracy of the North on the other, and the Democracy of the North growing less and less every day—a small minority in the New England States—how could the Senator from Illinois be so unkind, or how could he doubt, if, on this vital question, he deserted the Democracy and went over to Christendom, as to how the question would be answered whether he was to be read out of the party? Read out, sir! That question was settled long ago. On this great vital question he is out of the party.

I would not say anything unkind to that Senator, nor would I say anything uncourteous in the world; but my experience in the country life of New England does present to my mind an illustration which I know he will excuse me if I give it. A neighbor of mine had very valuable horse. The horse was taken sick, and he tried all the ways in the world to cure him, but it was of no avail. The horse grew worse daily. At last, one of his neighbors said: "What are you going to do with the horse?" "I do not know," was the reply; "but I think I shall have to kill him." "Well," said the other, "he does not want much killing." You see, in ordinary times, and on ordinary questions, a little wavering might be indulged; but when it is on one question, and a great vital question, and all Christendom is on the one side, and the Northern Democracy on the other, to go over from the ranks of the Democracy to swell the swollen ranks of Christendom, and then ask if he is to be read out! I leave that point.

I have said nearly as much as I propose to say on this part of the subject, and I come now to another branch of it. The tribunal which holds its session under us, seeing the unequal nature of this contest—seeing all Christendom on one side, and the Democracy on the other, with a magnanimity and chivalry which is uncalculating and generous—have thrown themselves into the breach on the side of the Democracy. I mean the Supreme Court of the United States. I believe they have a rule in that court—and my honorable friend from Kentucky [Mr. CRITTENDEN] will correct me if I am wrong in it—by which they will not allow anybody arguing a case before them to speak disrespectfully of any other branch of the Government. That is so. I believe we have not got any such rule here, and I am going to say of the Supreme Court that which truth and justice demand of me to say. I shall hold them as our fathers held the King of

Great Britain—"enemies in war, and in peace, friends." I was brought up with a hereditary respect for courts, but I have got rid of it. I began to get rid of it before I came here, but the process has been going on very fast ever since. The Supreme Court of the United States, in a decision which they have recently made, have come down from their place, and thrown themselves into the political arena, and have attempted to throw the sanction of their names in support of doctrines that can neither be sustained by authority nor by history; and I propose to show it. To prove that I do not speak altogether without the book on this subject, I wish to read to you from the opinions of Thomas Jefferson on this very Supreme Court, to show you that I am not the first man who has entertained doubts upon this point. Mr. Jefferson, in a letter to Judge Roane, dated Poplar Forest, September 6, 1819, says:

"In denying the right they usurp of exclusively explaining the Constitution, I go further than you do, if I understand rightly your quotation from the *Federalist*, of an opinion that 'the judiciary is the last resort in relation *to the other departments* of the Government, but not in relation to the rights of the parties to the compact under which the judiciary is derived.' If this opinion be sound, then, indeed, is our Constitution a complete *felo de se*. For intending to establish three departments, co-ordinate and independent, that they might check and balance one another, it has given, according to this opinion, to one of them alone the right to prescribe rules for the government of the others, and to that one, too, which is unelected by, and independent of, the nation. * * * * *

"The Constitution, on this hypothesis, is a mere thing of wax, in the hands of the judiciary, which they may twist and shape into any form they please. It should be remembered, as an axiom of eternal truth in politics, that whatever power in any Government is independent, is absolute also; in theory only at first, while the spirit of the people is up, but in practice as fast as that relaxes. Independence can be trusted nowhere but with the people in mass. They are inherently independent of all but moral law. My construction of the Constitution is very different from that you quote. It is, that each department is truly independent of the others, and has an equal right to decide for itself what is the meaning of the Constitution in the cases submitted to its action, and especially where it is to act ultimately and without appeal. I will explain myself by examples, which, having occurred while I was in office, are better known to me, and the principles which governed them."

Again, on the 28th September, 1820, in writing to Mr. Jarvis, from Monticello, he says:

"You seem, in pages 84 and 148, to consider the judges as the ultimate arbiters of all constitutional questions—a very dangerous doctrine indeed, and one which would place us under the despotism of an oligarchy. Our judges are as honest as other men, and not more so. They have, with others, the same passions for party, for power, and the privilege of their corps. Their maxim is, '*boni judicis est ampliare jurisdictionem*,' and their power the more dangerous, as they are in office for life, and not responsible, as the other functionaries are, to the elective control. The Constitution has erected no such single tribunal, knowing that, to whatever hands confided, with the corruptions of time and party, its members would become despots."

Again, writing to Thomas Ritchie, on the 25th of December, 1820, he says:

"The judiciary of the United States is the subtle corps of sappers and miners constantly working under ground to undermine the foundations of our confederated fabric. They are construing our Constitution from a co-ordination of a general and special Government to a general and supreme one alone."

Again, in a letter to Archibald Thweat, dated Monticello, January 19, 1821, he says:

"The legislative and executive branches may sometimes err, but elections and dependence will bring them to rights. The judiciary branch is the instrument which, working like gravity, without intermission, is to press us at last into one consolidated mass."

In a letter to Mr. Hammond, dated the 18th of August, 1821, Mr. Jefferson says:

"It has long, however, been my opinion, and I have never shrunk from its expression, (although I do not choose to put it into a newspaper, nor, like a Priam in armor, offer myself its champion,) that the germ of dissolution of our Federal Government is in the Constitution of the Federal judiciary—an irresponsible body, (for impeachment is scarcely a scare-crow,) working like gravity by night and by day, gaining a little to-day and a little to-morrow, and advancing its noiseless step, like a thief, over the field of jurisdiction, until all shall be usurped from the States, and the Government of all be consolidated into one."

I might stand here and read to you for a long time extracts from Jefferson, of the same character. Indeed, I have marked some others, which I may possibly, if I have this speech printed, embody in it.

I have another authority, which, I have no doubt, will sound with more force to some, as Mr. Jefferson does not belong to Young America. This is in the same book, and the extract is to be found in the Appendix to the Congressional Globe, vol. 29, page 347. Mr. TOOMBS said:

"The only difficulty on this point has arisen from some decisions of the Supreme Court of the United States. It is true, they have talked vaguely about the doctrine of the general sovereignty of the Federal Government. I attach but little importance to the political views of that tribunal. It is a safe depository of personal rights; but I believe there has been no assumption of political power by this Government which it has not vindicated and found somewhere."

It was the opinion of that distinguished Senator, that no assumption of political power by this Government had ever occurred which the Supreme Court had not vindicated and found somewhere. I think, if that honorable Senator were to review this subject now, with the increasing light of history, he would find, at least, one exercise of power by this Government which the Supreme Court of the United States have not vindicated, and have not found somewhere, though I think almost anybody else can find it everywhere; and that is the power which was exercised prior to the Constitution, and under the Constitution down to the present time, and in force while I speak, on your statute-book, to prohibit Slavery in the Territories. That is an assumption of political power which the Supreme Court of the United States have not found anywhere. While, as the distinguished Senator from Georgia says, there is no assumption of political power by the Government which that Court have not vindicated, I tell him, whenever this Government has undertaken to act in the slightest degree in the exercise of its constitutional authority to limit or restrain Slavery, the Supreme Court have not found a place anywhere where it could be vindicated or sustained.

Mr. TOOMBS. That was true when uttered, but it is not so now.

Mr. HALE. The honorable Senator says it was historically true when it was uttered, but it is not true now. Well, it was not uttered a great while ago. They must have had a very sudden conversion, for the speech is not three years old.

Mr. TOOMBS. The Dred Scott decision has been made since that.

Mr. HALE. The Senator admits everything I said. I have not put before the Senate the position of these two illustrious names, one dead and the other living—Jefferson and Toombs—because I want to invoke the sanction of their names to cover my opinion; but I want to throw them out, so that those who are not advised upon the matter may not think that I am the first man who has ever attempted to lift that silver veil with which this "veiled prophet"—the Supreme Court—hides the hideousness of its

features. Having said thus much, I come to the work. It is that very Dred Scot case that I am coming to.

There are two positions, and but two, in this decision, which I am going to examine. The Supreme Court of the United States have declared that the right to hold slaves, and to trade in slaves, was universally recognised in England and this country at the time of the American Revolution and the adoption of the Federal Constitution. That matter is so distinctly set forth, that I will send to the Chair an extract, and ask the Secretary to read it.

The Secretary read it, as follows:

"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. They not only seized them on the coast of Africa, and sold them or held them in slavery for their own use, but they took them as ordinary articles of merchandise to every country where they could make a profit on them, and were far more extensively engaged in this commerce than any other nation in the world.

"The opinion thus entertained and acted upon in England, was naturally impressed upon the colonies they founded on this side of the Atlantic. And, accordingly, a negro of the African race was regarded by them as an article of property, and held and bought and sold as such, in every one of the thirteen colonies which united in the Declaration of Independence, and afterwards formed the Constitution of the United States. The slaves were more or less numerous in the different colonies, as slave labor was found more or less profitable; but no one seems to have doubted the correctness of the prevailing opinion of the time."

Mr. President, in the remaining remarks which I propose to submit to the Senate, I shall confine myself to two points or positions assumed in a paper which I hold in my hand, called "A report of the decision of the Supreme Court of the United States, and the opinions of the Judges thereof, in the case of Dred Scot *versus* John F. A. Sandford," protesting, however, that I refrain from an examination of any more at this period, solely for the want of time. The first of these points is the affirmation by the Supreme Court of the United States, that property in slaves is of the same right as all other property. The other is, that the right to hold and to traffic in this property, at the time of the American Revolution, and at the time of the adoption of the Federal Constitution, was so universally acknowledged and recognised in the country from which we came, and in this country, that no man thought of disputing it. An extract to that effect, from the opinion of the Court, has already been read from the desk by the Clerk. To these two points I shall confine my remarks, contending, in the first place, that the legal proposition asserted by the court is unsound and untrue, and not supported by principle or authority; and that what purports to be a statement of facts, is not supported by the truth of history.

The first proposition to which I have alluded is more distinctly and more fully expressed in the Constitution which has been framed by the Lecompton Convention, and I will read the statement as it is there expressed:

"The right of property is before and higher than any constitutional sanction, and the right of the owner of a slave to such slave and its increase, is the same and as inviolable as the right of the owner of any property whatever."

I think the Lecompton Convention have the advantage of the Supreme Court in one respect; they are a little more explicit. I have a higher respect for the Lecompton Convention than I have for the Supreme Court; because the Lecompton Convention have placed this principle distinctly on paper, and there is no mistaking what they mean, while the Supreme Court have decided the same thing, but have not quite so explicitly expressed it to the apprehension of the common ear. Now, sir, I undertake to maintain that the principle thus asserted is not true; and on this point I shall ask the attention of the Senate to some authorities; but, before coming to the authorities, let me state what I believe on this subject.

I do not stand here to decide that legally there is such a thing as property in slaves. I am not discussing the moral question, but the legal one; and I do not stand here to deny that there is, in the States tolerating Slavery, legal property in slaves; for, in the free States, we have a qualified property in the labor of human beings. In the State in which I live, criminals, if tried and found guilty, are sent to the penitentiary for the public good, and any individual may contract with the warden having the custody of the prisoners for their labor; and, if the Legislature see fit, he may take the prisoners anywhere within the jurisdiction of the State, and his right in the labor of those convicts is recognised, and will be protected by the State and by its authorities. But, if the man thus using the labor of convicts in the State of New Hampshire should cross over the Connecticut river, and undertake to quarry marble in the Green Mountains of Vermont, he would find that his property ceased the moment he got over the river, and that the right which he had acquired in New Hampshire would not extend beyond the territorial limits of the State imposing the servitude. Just exactly and precisely that is the right which the owner of a slave has to his property. He has a right to the property within the jurisdiction which imposes the servitude; but the moment the slave goes beyond that, he is free. I do not rest this on my own assertion.

There is another right of property—a general property—and that is a property in inanimate things, and in the brute creation. A man has a property in a horse—a horse in Maryland, for instance; he goes with that horse from Maryland to Virginia, to Delaware, to any and to every State in the Union, traversing the Confederacy from one end to the other, and wherever and whenever he arrives in any one of the States, his right to property in the horse is recognised universally. More than that, sir: he may go outside the limits of the Union; he may go into the British, the Mexican, or the South American, possessions on this continent; he may go into the possessions of the savage tribes; and wherever he finds a community of men, civilized or savage, there his right of property in the horse will be recognised. Nay, sir, he may take that horse across the Atlantic, he may traverse all the kingdoms of Europe, civilized and savage and semi-savage, and everywhere he will find his right of property recog-

nised. He may go, if he pleases, to the frozen regions of the north pole and may come down from there till he pants beneath the vertical rays of the tropical sun, and the horse is his; and the tribunals of the countries where he goes will vindicate his right. Why? Is it because each and every of these States has a statute, declaring that a man shall have property in a horse? No, sir. I apprehend there is no such statute in any one of them. The reason is, because, by the universal consent of mankind, a horse is the subject of property; and when the horse was made he was made to be property, and man was made to own him. It rests upon no statute and upon no speculation of philosophy. It goes back to the earliest period of recorded time. When the Almighty created this broad earth, and gave it to man for a home, He gave it to him to cultivate; He filled the land with cattle, and the sea with fish, and the air with fowls; then He made man, and He gave him this commission: "Have thou dominion over the fish of the sea, and the fowls of the air, and the cattle, and over every creeping thing that creeps on the earth." But man, sir, immortal man—made in the image of God—He never said, "have thou dominion over him." No; He reserved that last great work, man, for His own peculiar worship.

That is the distinction. It is a distinction that has been recognised by every writer who has ever written upon the subject. It has been acknowledged by every court where civilization has instituted courts. It has been acknowledged by no States more freely, more readily more decisively, than by the slaveholding States of this Union, as I shall show by reference to decisions in Virginia, Maryland, and Louisiana. More, sir: the doctrines of the locality of Slavery, and the distinction between slave property and other property, has been recognised, without a dissenting voice, by the unanimous, uncontradicted concurrence of every member of that court called the Supreme Court of the United States.

The first authority to which I ask the attention of the Senate on this point, is the opinion of the Supreme Court of the United States, in the somewhat famous case of Prigg *vs.* the Commonwealth of Pennsylvania, to be found in 16 Peters, 594; 14 Curtis, 421. The court say:

"By the general law of nations, no nation is bound to recognise the state of Slavery as found within its territorial dominions, where it is in opposition to its own policy and institutions, in favor of the subjects of other nations where Slavery is organized. If it does it, it is as a matter of comity, and not as a matter of international right. The state of Slavery is deemed to be a mere municipal regulation, founded upon and limited to the range of the territorial laws."

The court then proceed to quote several cases recognising this principle. Judge McLean, in his opinion in the Dred Scott case, 19 Howard, 140, after quoting that authority, proceeds to say:

"There was some contrariety of opinion among the judges on certain points ruled in Prigg's case, but there was none in regard to the great principle, that Slavery is limited to the range of the laws under which it is sanctioned."

That, then, was the deliberate, solemn opinion of the court, collectively and individually. The same doctrine is recognised in Jones *vs.* Vanzandt, 2 McLean, Circuit Court reports, page 596, where the learned Judge says:

"Slavery is local in its character. It depends upon the municipal law of the States where it is established; and if a person held to Slavery go beyond the jurisdiction where he is so held, and into another sovereignty where Slavery is not tolerated, he becomes free; and this would be the law of these States, had the Constitution of the United States adopted no regulation upon the subject."

This would have been the law of the States, had there been no regulation in the Constitution of the United States to the contrary; and more than that, the framers of the Constitution, each and every one of them, so understood the law. They understood the law to be, at the time of the adoption of the Federal Constitution, that a person held to service or labor by virtue of the local law of the State in which he was held, and going into another State, became free; and to prevent the operation of that general principle, they inserted this provision:

"That no person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor is due."

Why this negative introduced into the Constitution, declaring that a man should not be free by going from one State to another, if the men who framed that instrument had not understood that the law was so? Then, here is the decision of the Supreme Court of the United States, and the decision of the Circuit Court, over which Judge McLean presides. I will now read a decision from Martin's Louisiana Reports. In Lunsford *vs.* Coquillon, 2 Martin, new series, 401, the Supreme Court of Louisiana decided, according to the head note:

"If the owner of a slave remove her from Kentucky to Ohio, *animo morandi*, she becomes free, *ipso facto*."

In the course of the opinion, the court say:

"We conclude that the Constitution of the State of Ohio emancipates, *ipso facto*, such slaves whose owners remove them into that State with the intention of residing there; that the plaintiff having been voluntarily removed into that State by her then owner, the latter submits himself, with every member of his family, white and black, and every part of the property brought with him, to the operation of the Constitution and laws of the State; and that, as according to them, Slavery could not exist in his house—Slavery did not exist there, and the plaintiff was accordingly as effectually emancipated, by the operation of the Constitution, as if by the act and deed of her former owner."

The same doctrine is also found in another opinion of that same court—the Supreme Court of the State of Louisiana—only that this case is a great deal stronger. I read the case of Mary Louise *vs.* William C. Marot *et al.* The abstract of the case is:

"The fact of a slave being taken to the Kingdom of France, or other country, by the owner, where slavery or other involuntary servitude is not tolerated, operates on the condition of the slave, and produces immediate emancipation."

The court held, in that decision, that, by taking a slave from Louisiana to France, where Slavery was prohibited by law, the slave, *ipso facto*, became free; and when he came back into Louisiana, the master could not reduce the slave again to Slavery. In another part of a recent decision, the Supreme Court of the United States have undertaken to say that the condition of Slavery was only in a state of catalepsy while the slave was in a state of liberty; and that when he came back to a slave State, he could be again reduced to Slavery; but such is not the doctrine of the court of Louisiana, and such has not been the doctrine of other courts.

I have also a case from the Court of Appeals of the State of Maryland, (4 Harris and McHenry, 418,) where it appears that the petitioner stated his claim to freedom to arise under the laws of the State of Pennsylvania for the abolition of Slavery; and in that case the court of Maryland held, that by taking a slave out of Maryland, and carrying him into Pennsylvania, he became free. He came back and resided in Maryland, but the court gave validity to the abolition of Slavery by the fact of his master carrying him into Pennsylvania, and he became free. All these decisions proceed on the assumption that Slavery is local in its character.

Now, sir, I have a case from the State of Virginia, which I think is stronger than any of those which I have read. In Hunter *vs.* Fulcher, (1 Leigh, 171,) I find this decision:

"By statute of Maryland of 1796, all slaves brought into that State to reside are declared free. A Virginia-born slave is carried by his master to Maryland; the master settles there, and keeps the slave there in bondage for twelve months, the statute in force all the time; then he brings him as a slave to Virginia, and sells him here. Adjudged, in an action brought by the man against the purchaser, that he is free."

So that you will see it is not the free States who alone have offended in this matter by abolishing your title to slaves when they come into their territory; but as long ago as 1796, the State of Maryland manumitted the slave of every man who came to reside there with his master. A planter went from Virginia into Maryland, and resided there with his slave until the slave became free; and then went back into Virginia, and understook to reduce the slave to his possession again; but the highest court in Virginia held that by going into Maryland, the slave became free, and by going back to Virginia he did not again return to a state of servitude. That is the doctrine of Virginia.

Let me state one other authority. I have a still stronger case. It is Fulton *vs.* Lewis, 3 Harris and Johnson, a case in the Court of Appeals in Maryland:

"At the trial, the following facts were admitted in evidence: John Levant, a married man, being a native and resident of the Island of St. Domingo, removed from that place in July, 1793, flying from disturbances which then existed there, endangering the lives and property of the inhabitants, and brought with him into this State three negroes, of whom the petitioner (now appellee) is one, who he then and before owned as a slave. That in May, 1794, he sold the petitioner, as a slave, to William Clemm, who sold him as such to the defendant, (the appellant) That said Levant arrived at Baltimore in August, 1793, and continued to reside there until some time in 1796, when he returned to the West Indies. The defendant thereupon prayed the direction of the court to the jury, that if they believed the facts, the petitioner was not entitled to his freedom. This opinion the court [Scott, C. J.] refused to give, but directed the jury that upon these facts the petitioner was free. The defendant excepted; and the verdict and judgment being against him, he appealed

to this court, where the case was argued before Chase, Chief Justice, and Buchanan, Nicholson, Earle, Johnson, and Martin, Justices.

"Glenn, for the appellant, contended that the act of 1783, chapter 23, under which the petitioner claimed his freedom, meant only a voluntary importation of slaves, and not an importation arising from absolute necessity, produced by causes over which the owner, as in this case, had and could have no control."

But the judgment was affirmed, and the slave went free. Notwithstanding he came into Maryland by a tempest, by the act of Providence, and not by the voluntary act of his master, so stringently did the State of Maryland construe this right of property in slaves as a local right, that they determined that even when the act of God, contrary to the consent of his master, brought the slave there, he became free; and so they gave him his freedom.

In the opinion delivered by Judge Curtis, in the Dred Scott case, he read a dissenting opinion from the late ruling in the State of Missouri. That dissenting opinion was pronounced by Judge Gamble, who said:

"In this State [Missouri] it has been recognised, from the beginning of the Government, as a correct position in law, that the master who takes his slave to reside in a State or Territory where Slavery is prohibited, thereby emancipates his slave."

Judge Curtis goes on to say:

"Chief Justice Gamble has also examined the decisions of the courts of other States in which Slavery is established, and finds them in accordance with these preceding decisions of the Supreme Court of Missouri to which he refers.

"It would be a useless parade of learning for me to go over the ground which he has so fully and ably occupied."

In the opinion delivered by Judge McLean, in the Dred Scott case, he declares:

"There is no nation in Europe which considers itself bound to return to his master a fugitive slave, under the civil law or the law of nations. On the contrary, the slave is held to be free where there is no treaty obligation, or compact in some other form, to return him to his master. The Roman law did not allow freedom to be sold. An ambassador, or any other public functionary, could not take a slave to France, Spain, or any other country of Europe, without emancipating him. A number of slaves escaped from a Florida plantation, and were received on board of ship by Admiral Cochrane; by the King's Bench they were held to be free."

He mentions, also, a case that was decided as late, I think, as 1823, in the Court of King's Bench, which is found in 3 Dowling and Ryland, page 679—Forbes *vs.* Cochrane. Lord Chief Justice Best, in delivering the opinon in that case, says:

"The right of Slavery is not a general right; it is a local right; it is spoken of by every writer that has ever written upon the subject as a local right."

Judge Best had not read the Lecompton Constitution, nor the Dred Scott decision. He could not say now what he said then, that every writer that had ever written on this subject had treated it as a local right. In the same opinion, says the learned judge:

"Slavery is a local law; and if a man wishes to preserve his slaves, let him attach them to himself by ties of affection, or make fast the bars of their prison; for the moment they get beyond his local limits, they have broken their chains and have recovered their liberty."

That same judge goes further, and says:

"I go further; if a slave, acting upon his newly-acquired rights of a free man, had determined to vindicate the rights of his nature, and had said, 'I will not be forced back into a state of slavery,' and his death had ensued upon his resistance, it would have been murder in every individual who had contributed to that death."

The same judge, speaking of the slave, says:

"Whatever he may owe to the local law is got rid of the moment he gets beyond the local limit."

Speaking of an assertion that Mansfield was said to have made, that an action might be maintained on a contract for the sale of a slave in England, Chief Justice Best says:

"I can only say that I have searched with all the industry of which I am master, and that I can find no such decision."

This was a suit brought for the recovery of certain slaves that escaped from Florida to Admiral Cochrane, and the judge expressed some doubts, or, at least, said it was not proved that Slavery existed in Florida; but he says:

"If it did prevail there, it is a local law; it is an anti-Christian law, and it cannot be extended beyond the limits of its own State, nor be recognised in a country like this, where the courts of justice are regulated according to the law of nature and the revealed law of God."

That was the opinion of the Court of King's Bench, in England, as late as 1822. I have shown you, by these quotations and these opinions, that up to the rendering of the opinion in the Dred Scott case, it was the law of these States severally, it was the law of the Supreme Court of the United States, it was the law of the highest judicial tribunal in England, that the moment a slave escapes from the territorial limits of the jurisdiction which imposes the state of servitude upon him, that moment he becomes free; and that in the exercise of the rights of freedom which he acquires by stepping out from beyond the local limits of the jurisdiction which impose slavery upon him, he is a man—to all intents and purposes a man; and if an attempt is made by anybody claiming the right to reduce him to slavery, to take him, and he resists and dies, the death of that slave is murder in every man who contributed to bring about that result.

Sir, these are the great settled principles of the law, and they are not to be shaken to-day by any judicial assumption or any legal quackery on this subject. They stand immovable and immutable as the eternal foundations of truth. While civilized society maintains its tribunals and its organization, these principles will stand, and the Supreme Court of the United States will find that, like the waves of the ocean, they toss themselves against the rock-bound shores; but they toss themselves in vain, only to fall back whence they came. These are positions which cannot be shaken. They rest not only upon law, but upon humanity, upon reason, upon every conviction which belongs to human nature and to a common manhood.

Having disposed of that part of the case—and I think I have gone far enough, so that any schoolboy in the free States, who has been to our common schools long enough to read, may confute and refute and confound forever the gross assumption of this court—I now proceed to the other point to which I proposed to address a few remarks; and that was, that at the time of the adoption of the Federal Constitution, Slavery was so universally acknowledged and practiced upon, that nobody thought of questioning it. The Supreme Court say:

"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."

The "opinion" here alluded to was, "that the negro might justly and lawfully be reduced to slavery for his benefit;" and they add:

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

How is that? I believe the Supreme Court have not decided that the Revolution did not take place in 1776 or that the Declaration of Independence was not made about that same time; but at the commencement of the eighteenth century, about the year 1704, this opinion was rendered by Lord Holt, in the case of Smith *vs.* Gould, reported in 2 Lord Raymond's Reports, 1274, which was an action of trover for a negro. Lord Holt, speaking for the whole court, says:

"This action does not lie for a negro more than for any other man, for the common law takes no notice of negroes being different from other men."

And in Salkeld's report of the same case, (2 *Salkeld*, 666,) the same learned judge says:

"Men may be the owners of property, and therefore cannot themselves be the subject of property.

That was one hundred and fifty years ago. Then we come down to 1772, and we find Lord Chief Justice Mansfield deciding the Somerset case. I will read that decision:

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

That was the law of England in 1772. Going back to the commencement of the century, and coming down to 1772, we find the same doctrine held. In the opinion I have already read of Chief Justice Best, he says, that with the best industry he could give to the subject, he had never found that a contract for the sale of a slave was allowed in England. These were the doctrines of the courts. I have another authority, which I do not propose to put in as a judicial authority, but I propose to put it in to answer that part of the opinion of the Supreme Court in which they say this doctrine has never been questioned by anybody. I show you that it had been questioned by the judicial tribunals; it had been questioned by Lord Holt; it had been questioned by Lord Mansfield; and in 1790, immediately after the adoption of the Federal Constitution, the great orator of Ireland, (John Philpot Curran,) speaking before a British court, said:

"I speak in the spirit of the British law, which makes

liberty commensurate with, and inseparable from, the British soil; which proclaims, even to the stranger and the sojourner, the moment he sets his foot upon British earth, that the ground on which he treads is holy, and consecrated by the genius of universal emancipation. No matter in what language his doom may have been pronounced; no matter what complexion incompatible with freedom an Indian or an African sun may have burnt upon him; no matter in what disastrous battle his liberty may have been cloven down; no matter with what solemnities he may have been devoted upon the altar of Slavery; the first moment he touches the sacred soil of Britain, the altar and the god sink together in the dust; his soul walks abroad in her own majesty; his body swells beyond the measure of his chains that burst from around him; and he stands redeemed, regenerated, and disenthralled, by the irresistible Genius of UNIVERSAL EMANCIPATION."

And yet, sir, in the face of these glowing declarations, of these sublime enunciations, of these eloquent tributes to the great principle of Liberty, your Supreme Court have come down from their bench, gone into the political arena and commenced their career by declaring that the right to hold and to trade in slaves, at the time of the adoption of our Constitution, was so universally recognised and practiced upon, that no man thought of questioning it. I have shown you that it was questioned in England; that there were men high in position there, occupying exalted places in the kingdom of Great Britain, who had questioned the rightfulness of the traffic in slaves, and the right to hold slaves. I beg Senators to bear in mind the exact question which I am arguing. I am not introducing these instances here for idle declamation. I am now introducing them as part of an Anti-Slavery discourse; but I am introducing them to prove to the Senate, to the country, and to the world, that when they undertake to say that the right to hold and to traffic in slaves was unquestioned, they state that which cannot be sustained by history.

Now, sir, how was it in this country? The Supreme Court say that this right was so well understood in this country, so universally acceded to, that even the great and sublime truths which are embodied in the Declaration of Independence, which, if they were uttered to-day, would be held to embrace all mankind, did not embrace them at that time, because the opposite sentiment, that it was right to hold slaves, was so universal, so unquestioned, and so unquestionable, that nobody thought of questioning it. I have been at some little pains to ascertain what the views of some of the men in this country, about the time of the Revolution, and about the time of the adoption of the Federal Constitution, were. I begin with North Carolina. I took that State first, because a distinguished Senator from that State [Mr. BIGGS] was in the chair yesterday, and I did not know but that he would be to-day; and I wanted to compliment him by putting his own State first. The first Provincial Congress of North Carolina, held at Newbern on the 24th of August, 1774, resolved—

"That we will not import any slave or slaves, or purchase any slave or slaves imported or brought into this province by others, from any part of the world, after the 1st day of November next."

That authority is to be found in the American Archives, fourth series, first volume, page 735. Again, the Continental Congress of the United States, October 20, 1774, formed an association or agreement, consisting of fourteen articles; the second article of which is:

"That we will neither import nor purchase any slave imported after the 1st day of December next, after which time we will wholly discontinue the slave trade, and will neither be concerned in it ourselves, nor will we hire our vessels, nor sell our commodities nor manufactures, to those who are concerned in it."

By the fourteenth article, they resolved:

"And we do further agree and resolve, that we will have no trade, commerce, dealings, or intercourse whatsoever, with any colony or province in North America which shall not accede to, or which shall hereafter violate this association, but will hold them as unworthy of the rights of freemen, and as inimical to the liberties of this country."

That is to be found in the same volume, on page 915. Those men who would not agree that they would neither import nor purchase any slave after the 1st day of December, were not worthy of social or business intercourse, and unworthy of the rights of freemen, and inimical to the liberties of the country. That agreement, or convention, as it is called, of the Continental Congress, made in 1774, was signed by all the members, including George Washington and Patrick Henry, from Virginia, and two Rutledges from South Carolina.

I come now to another State, Georgia. The Provincial Congress of Georgia, held at Savannah, on the 18th of January, 1775, resolved:

"That we will neither import nor purchase any slave imported from Africa, or elsewhere, after the 15th day of March next."

George Washington, in a letter to Charles Pinckney, Governor of South Carolina, on the 17th of March, 1792, says:

"I must say that I lament the decision of your Legislature upon the question of importing slaves after March, 1793. I was in hopes that motives of policy, as well as other good reasons, supported by the direful effects of Slavery, which at this moment are presented, would have operated to produce a total prohibition of the importation of slaves, whenever the question came to be agitated in any State that might be interested in the measure."

In a letter to John F. Mercer, dated September 9, 1786, George Washington says:

"I never mean, unless some particular circumstances should compel me to it, to possess another slave by purchase, it being among my first wishes to see some plan adopted by which Slavery in this country may be abolished by law."—*Sparks's Life of Washington*, vol. 9, p. 159.—Note.

In a letter to Robert Morris, dated April 12, 1786, he says:

"I hope it will not be conceived from these observations that it is my wish to hold the unhappy people who are the subject of this letter in Slavery. I can only say, that there is not a man living, who wishes more sincerely than I do, to see a plan adopted for the abolition of it; but there is only one proper and effectual mode by which it can be accomplished, and that is by legislative authority; and this, as far as my suffrage will go, shall never be wanted."—*Sparks's Writings of Washington*, vol. 9, p. 159.

In a letter to the Marquis de Lafayette, of the date of April 5, 1783, he says:

"The scheme, my dear Marquis, which you propose as a precedent, to encourage the emancipation of the black people in this country from the state of bondage in which they are held, is a striking evidence of the benevolence of your heart. I shall be happy to join you in so laudable a work; but will defer going into a detail of the business until I have the pleasure of seeing you."—*Sparks's Writings of Washington*, vol. 8, p. 414, 415.

I have some other authorities. In the Convention which framed the Constitution of the United States, Col. Mason, of Virginia, an illustrious name in an illustrious Commonwealth, then and now, said:

"Slavery discourages arts and manufactures. The poor despise labor when performed by slaves. They prevent the emigration of whites, who really enrich and strengthen a country. They produce the most pernicious effect on manners. Every master of slaves is born a petty tyrant. They bring the judgment of Heaven on a country."

Again, Mr. Mason is reported to have said:

"He held it essential, in every point of view, that the General Government should have power to prevent the increase of Slavery."

That is to be found in the third volume of the Madison Papers, page 1391. Again, Mr. Gerry, of Massachusetts, afterwards Vice President of the United States, (page 1394 of the same volume,) said:

"He thought we had nothing to do with the conduct of the States as to slaves, but ought to be careful not to give any sanction to it."

Mr. Madison (page 1429) "thought it wrong to admit in the Constitution the idea that there could be property in men."

But there is another very important fact in the history of that Convention. They finally adjourned on the 17th day of September, 1787. On the 13th day of September, 1787, after the discussions in the Convention had been listened to, after the suggestions of Colonel Mason, of Virginia, of Madison, and of other men of that day, who thought Slavery ought not to be countenanced and allowed in the Constitution, there came up the clause fixing the enumeration that was to be made to establish the ratio on which Representatives were to be chosen. As it read then, it fixed the number, and said, "including those bound to servitude." You will find on page 1569 of the third volume of the Madison Papers, that Mr. Randolph, of Virginia, moved to strike out the word "servitude," and insert "service" in its stead; and it was done unanimously, said Mr. Madison, because the word "servitude" implied the condition of slaves, and "service" described the obligations of free persons. So you find that those held to service are described in the Constitution, because the Convention unanimously thought that did not describe the condition of Slavery; and, therefore, they put "service" instead of "servitude." These were the opinions of some of the men who were in the Convention that framed the Constitution.

At the risk of being tedious, for I am not here to-day to make myself popular, but instructive. [laughter,] I will read a somewhat extended extract from another Southern author. I would send it to the Secretary to read, but I am afraid he would not emphasize it properly, [laughter,] and I will read it myself. I read from Jefferson's Notes on Virginia, in which he treats on Slavery. It is a very curious coincidence, that when Jefferson comes to speak of Slavery, he speaks of it in the same relation that Col.

Mason did; and the whole article on Slavery is put in under the head of "manners." I am not going to be drawn off into that field. Mr. Jefferson says:

"There must, doubtless, be an unhappy influence on the manners of our people produced by the existence of Slavery among us. The whole commerce between master and slave is a perpetual exercise of the most boisterous passions, the most unremitting despotism on the one part, and degrading submissions on the other. Our children see this, and learn to imitate it; for man is an imitative animal. This quality is the germ of all education in him. From his cradle to his grave, he is learning to do what he sees others do. If a parent could find no motive either in his philanthropy or his self-love for restraining the intemperance of passion towards his slave, it should always be a sufficient one that his child was present. But generally it is not sufficient. The parent storms; the child looks on; catches the lineaments of wrath; puts on the same airs in the circle of smaller slaves; gives a loose rein to his worst of passions; and thus nursed, educated, and daily exercised in tyranny, cannot but be stamped by it with odious peculiarities. The man must be a prodigy who can retain his manners and morals undepraved by such circumstances. And with what execration should the statesman be loaded, who, permitting one half the citizens to trample on the rights of the other, transforms those into despots, and these into enemies, destroys the morals of the one part, and the *amor patriæ* of the other. For, if a slave can have a country in this world, it must be any other in preference to that in which he is born to live and labor for another; in which he must lock up the faculties of his nature, contribute as far as depends on his individual endeavors to the evanishment of the human race, or entail his own miserable condition on the endless generations proceeding from him."

"With the morals of the people, their industry also is destroyed, for, in a warm climate, no man will labor for himself who can make another labor for him. This is so true, that of the proprietors of slaves a very small proportion indeed are ever seen to labor. And can the liberties of a nation be thought secure, when we have removed their only firm basis—a conviction in the minds of the people that these liberties are the gift of God?—that they are not to be violated but with his wrath? Indeed, I tremble for my country, when I reflect that God is just; that his justice cannot sleep forever; that, considering numbers, nature, and natural means only, a revolution of the wheel of fortune, an exchange of situation, is among possible events; that it may become probable by supernatural interference The Almighty has no attribute which can take side with us in such a contest."

So says Mr. Jefferson; and yet the Supreme Court say that it was unquestioned, and nobody thought of questioning it at the time of the American Revolution, and of the adoption of the Federal Constitution. These Notes of Jefferson on Virginia, by the way, were first published, I think, in 1780 or 1782, during the Revolution, and before the adoption of the Federal Constitution. The record does not stop there. Mr. Jefferson was not the only man who entertained these sentiments on this subject at that time and subsequently. I will read an extract from the preamble of the act of the Legislature of Pennsylvania which abolished Slavery in 1780, and you will find that that is not "semi" on the subject. The Legislature of Pennsylvania, in 1780, declare:

"And whereas the condition of those persons who have heretofore been denominated negro and mulatto slaves has been attended with circumstances which not only deprived them of the common blessing they were by nature entitled to, but has cast them into the deepest afflictions, by an unnatural separation and sale of husband and wife from each other and from their children; an injury, the greatness of which can only be conceived by supposing that we were in the same unhappy case. In justice, therefore, to persons so unhappily circumstanced, and who, having no prospect before them wherein they may rest their sorrows and their hopes, have no reasonable inducement to render the service to society which they otherwise might, and also in grateful commemoration of our own happy deliverance from that state of unconditional submission to which we were doomed by the tyranny of Britain: *Be it enacted*, That no child hereafter born shall be a slave," &c.

Patrick Henry, in a letter to Robert Pleasants, dated January 18, 1773, says:

"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 for Slavery. If we cannot reduce this wished for reformation to practice, let us treat the unhappy victims with lenity. It is the furthermost advance we can make towards justice; it is a debt we owe to the purity of our religion, to show that it is at variance with that law which warrants Slavery. I know not where to stop. I could say many things on the subject, a serious view of which gives a gloomy perspective to future times."

Again, John Jay—(of whom Webster said, that when the ermine fell on him, it touched nothing less pure than itself,) whose name and whose principles live to-day, in the second and third generations, son and grandson, and, I believe, even to the fourth also, maintaining, in their purity, the same principles which illustrated the life of their illustrious ancestor; individuals whom it is my pride to number amongst my personal and dearest friends—said:

"The State of New York is rarely out of my mind or heart, and I am often disposed to write much respecting its affairs; but I have so little information as to its present political objects and operations, that I am afraid to attempt it. An excellent law might be made out of the Pennsylvania one, for the gradual abolition of Slavery. Till America comes into this measure, her prayers to Heaven will be impious. This is a strong expression, but it is just."

John Jay said, in 1780, that until America comes into this measure for the abolition of Slavery, she cannot, in the penitence of her stricken soul, look up to Heaven, and say, "Our Father," without being guilty of impiety. Such was the opinion of John Jay.

The record does not stop there. William Pinkney, of Maryland, in 1789, the very year of the adoption of the Federal Constitution, when the Supreme Court say there was such a perfect Dead Sea in the public heart and public morals on this subject, in a speech in the Maryland House of Delegates, said:

"Sir, iniquitous and most dishonorable to Maryland is that dreary system of partial bondages which her laws have hitherto supported with a solicitude worthy of a better object, and her citizens by their practice countenanced.

"Founded in a disgraceful traffic, to which the parent country lent her fostering aid from motives of interest, but which even she would have disdained to encourage, had England been the destined mart of such inhuman merchandise, its continuance is as shameful as its origin.

"Wherefore should we confine the edge of censure to our ancestors, or those from whom they purchased? Are not we equally guilty? They strewed around the seeds of Slavery; we cherish and sustain the growth. They introduced the system; we enlarge, invigorate, and confirm it."

I shall not detain the Senate longer by reading from the records and from our history what were the opinions of the men of that day; and yet this Supreme Court have solemnly decided all this history out of being; have judicially declared—no sir, not judicially, but politically. They have decided that Slavery and the slave trade, in the very day and time that Pinkney, and Jay, and Jefferson, and Madison, and all the great men who illustrate and adorn and embellish our history, were pouring forth imprecations and denunciations against the system, was so unquestioned and unquestionable, that nobody thought of questioning it. The Supreme Court go further—I could forgive them almost anything else—and, as I understand it, they heap reproach on our revolutionary history and our revolutionary men. The Chief Justice, speaking of the Declaration of Independence, says:

"It then proceeds to say: 'We hold these truths to be self-evident: that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among them are life, liberty, and the pursuit of happiness; that to secure these rights, Governments are instituted, deriving their just powers from the consent of the governed.'

"The general words above quoted would seem to embrace the whole human family, and, if they were used in a similar instrument at this day, would be so understood. But it is too clear for dispute, that the enslaved African race were not intended to be included, and formed no part of the people who framed and adopted this Declaration"

Sir, the men who framed the Declaration of Independence, the men who fought the battles of Liberty, and the men who wrote our Constitution, understood the meaning of language quite as well as the Supreme Court; and if I were put on oath, I should say a little better. They knew the circumstances in which they were placed; they knew the crisis in which they were called to live and to act; they knew that the experiments which had been made from the beginning of time up to that day, of free government, had been a failure; they knew that every effort and every attempt that oppressed man had made had failed; and they felt that to them, at that time, and at that day, was committed, by the Arbiter of national destiny, the great question, to solve for themselves, for their posterity, for all coming time, the great problem whether man was capable of self-government. They went into that contest, fully understanding the character of the strife by which their position was to be maintained; fully sensible of the character of the contest upon

which they had entered. They went into it, as has been well said on another occasion, poor in everything but faith and courage They were without arms, without wealth, without even a name amongst the nations of the earth, rebel provinces; but they were strong in faith, strong in hope, strong in patriotic impulse, and strong in their reliance on the Most High; and they went, taking their lives, their fortunes, and their honors, in their hand. They threw themselves into the world's Thermopylæ of that day, and they declared that they held certain great truths to be self-evident, and that among these truths was, that all men were entitled to life, liberty, and the pursuit of happiness. Why? Not because it was written in the musty folios of speculating philosophers; not because it was found in the writings of patriots of other days; not because their fathers had vindicated on the field of battle their right to be free; not because the old British Commoners had brought King Charles to the block; not because their old Puritan ancestry, on the battle-fields of Naseby and of Marston Moor, had written in their own blood, on their own country's soil, their determination to be free. No, sir, none of all these; but they said that man was entitled to be free, because he was endowed by his Creator with that right. They stopped nothing short of the throne of eternity. They ignored all human reasons, all human platforms, and all human authority, and with uncloud'd eye fixed their gaze upon the eternal throne, and laid the foundation of the institutions which they wrote out, upon the eternal justice of God.

That, sir, is what the revolutionary fathers did; and when the contest was over, when the dust and the blood of battle had disappeared, and victory stood upon the flagstaff of their banner, these old men issued a Declaration to the world. It was issued in 1783, the very year the war was over. "Let it be remembered," say they, "finally, that it has ever been the pride and boast of America, that the rights for which she contended were the rights of human nature." They contended for no class, no condition. They contended for humanity. No matter, in the language of the Irish orator, what complexion, incompatible with liberty, an Indian or an African sun may have burned upon him, when he stands erect in the image of his Maker, a man, then say the fathers of the Revolution, "There stands one for whom we have fought; there stands a man who was involved in the great issues which led to the revolutionary war, and which we have vindicated with our blood." They continue, further:

"If justice, good faith, honor, gratitude, and all the other qualities which ennoble the character of a nation, and fulfill the ends of Government, be the fruits of our establishments, the cause of Liberty will acquire a dignity and lustre which it has never yet enjoyed, and an example will be set which cannot but have the most favorable influence on the rights of mankind."

There is the idea; true to their principles, true to the avowals of public sentiment with which they went into that contest. Peace came in 1783; and in 1784 Thomas Jefferson, the immortal author of that immortal Declaration, began his labors in the Continental Congress, moving that all the territory we then owned, and all the territory that we might thereafter acquire, should be forever free from what he considered the contaminating and blighting influences of human Slavery. Those who are laboring with me in this great contest may take courage from the perseverance with which Jefferson adhered to his policy. In 1783–'84–'85, and '86, the measure failed, but finally, in 1787, it partially succeeded, and the ordinance was passed prohibiting Slavery from all the territory which we then owned. Yet, sir, in view of all this history, written as with a sunbeam upon the very walls of the room in which this tribunal now assembles, they stand up in 1857, to declare to the world that the slave trade and Slavery were so universally recognised and acknowledged, that nobody questioned the rightfulness of the traffic, and nobody supposed it capable of being questioned. Not content with overturning the whole line of judicial authority to be found in every nation of Europe, and in every State of this Union, and of their own solemn recorded decision, they go on to make the avowal; and then go further, and undertake to tear from that chaplet which adorns the brows of the men of the Revolution the proudest and fairest of their ornaments; and that was the sincerity of the professions which they made in regard to the rights of human nature. It is true, the court in their charity undertake to throw the mantle of ignorance over these men, and say they did not understand what they meant. Sir, they did understand it, and the country understood it. There was a jealousy on the subject of Liberty and Slavery, at that time, of which we are little prepared to judge at the present day. It is found beaming out on the pages of the writings of all these men.

If the opinions of the Supreme Court are true, they put these men in the worst position of any men who are to be found on the pages of our history. If the opinion of the Supreme Court be true, it makes the immortal authors of the Declaration of Independence liars before God and hypocrites before the world; for they lay down their sentiments broad, full, and explicit, and then they say that they appeal to the Supreme Ruler of the universe for the rectitude of their intentions; but, if you believe the Supreme Court, they were merely quibbling on words. They went into the courts of the Most High, and pledged fidelity to their principles as the price they would pay for success; and now it is attempted to cheat them out of the poor boon of integrity; and it is said that they did not mean so; and that when they said all men, they meant all white men; and when they said that the contest they waged was for the right of mankind, the Supreme Court of the United States would have you believe that they meant it was to establish Slavery. Against that I protest, here, now, and everywhere; and I tell the Supreme Court that these things are so impregnably fixed in the hearts of the people, on the page of history, in the recollections and traditions of men, that it will require mightier efforts than they have made or can make to overturn or to shake these settled convictions of the popular understanding and of the popular heart.

Sir, you are now proposing to carry out this Dred Scott decision by forcing upon the people of Kansas a Constitution against which they have remonstrated, and to which there can be no shadow of doubt a very large portion of them are opposed. Will it succeed? I do not know; it is not for me to say; but I will say this: if you force that—if you persevere in that attempt—I think, I hope, the men of Kansas will fight. I hope they will resist to blood and to death the attempt to force them to a submission against which their fathers contended, and to which they never would have submitted. Let me tell you, sir, I stand not here to use the language of intimidation or of menace; but you kindle the fires of civil war in that country by an attempt to force that Constitution on the necks of an unwilling people; and you will light a fire that all Democracy cannot quench—aye, sir, there will come up many another Peter the Hermit, that will go through the length and the breadth of this land, telling the story of your wrongs and your outrages; and they will stir the public heart; they will raise a feeling in this country such as has never yet been raised; and the men of this country will go forth, as they did of olden time, in another crusade; but it will not be a crusade to redeem the dead sepulchre where the body of the Crucified had lain from the profanation of the infidel, but to redeem this fair land, which God has given to be the abode of freemen, from the desecration of a despotism sought to be imposed upon them in the name of "perfect freedom" and "popular sovereignty."

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