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SPEECH

OF THE

HON. V. E. HOWARD, OF TEXAS,

AGAINST

THE ADMISSION OF CALIFORNIA,

AND THE

DISMEMBERMENT OF TEXAS.

DELIVERED IN THE HOUSE OF REPRESENTATIVES, JUNE 11, 1850, IN THE COMMITTEE OF THE WHOLE ON THE CALIFORNIA MESSAGE.

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SPEECH.

The House being in Committee of the Whole, and having under consideration the President's message in relation to the admission of California—

Mr. HOWARD said:

Nothing, Mr. Chairman, but the deep interest which my immediate constituents and the State of Texas have in these questions, could induce me to claim the attention of the Committee at this late period of the discussion. The time has at length arrived, when the peace and welfare of this country require, not a *compromise*, but justice to the South, and an observance of constitutional requirements and official oaths for their support. The South demands her constitutional rights, and a just share in the benefits of this Government; no other compromise is required, or will secure tranquility to the country.

I am not, sir, about to enter into any abstract speculations upon the nature and character of slavery. I am content to treat that institution as it was regarded by the fathers of the country who framed the Constitution under which we here assemble, as an existing relation of society, drawing to itself certain fixed, and, in theory, firmly established civil and political rights. What the greatest and purest men that the world has ever seen—a Washington, a Franklin, a Hamilton, and a Madison—guaranteed as a *right*, cannot be proved *sinful* by the latter day saints of abolition and free-soil, however men may differ as to its character in other respects. Neither shall I so far follow the hackneyed examples of bad taste, as to participate in the sectional recriminations which have been so freely indulged in by speakers from all sections during this debate; they are beneath the dignity of the subject, and unworthy of the American Congress.

Sir, when our forefathers, the men of the Revolution, framed the present Constitution—the great charter of American liberty—slavery constituted no objection to the Union. If, in the progress of events and opinions, it has become so odious and sinful in the estimation of any considerable section of this country, that the Government cannot be administered in its original spirit, and the letter of the Constitution complied with, let the fact be proclaimed, and the legitimate consequences follow. But it is not in candor and honesty to appropriate the advantages of the compact, and then refuse to abide by its obligations and express stipulations; the performance, like the benefits, must be mutual by all the contracting parties.

It cannot be disguised, that attachment and loyalty to the Constitution are, in some sections of the Union, greatly weakened, and in danger of being entirely destroyed. During the present session of Congress, petitions have been presented from free States asking for a dissolution of the Union, on the ground that the petitioners could not conscientiously remain in a Union, the Constitution of which guaranteed slavery. A very considerable party openly take the ground, that the Constitution is opposed to the divine law in this respect, and must yield to this new rule of political faith. It is a novel revelation, and above the word of God, for the Scriptures, as well as the Constitution, recognise slavery, and pronounce it legal.

It was satisfactory to hear this disreputable doctrine denounced by the distinguished member from New York, (Mr. DUER,) as well as by the eloquent member from Massachusetts, (Mr. WINTHROP,) although the value of their reprobation was very much weakened by certain phrases which they let fall about *habeas corpus* and jury trial. It cannot be necessary to remind gentlemen, as intelligent as they are, that the difference between one who openly and boldly sets the Constitution at defiance, and one who admits its obligation, yet evades it by dexterous legislative devices, as to the remedy, is scarcely worthy the consideration of the casuist.

The truth is, Mr. Chairman, the Constitution, in relation to the restoration of fugitive slaves, has become a dead letter, and so, I believe, it is destined to remain. This condition of things is calculated to awaken the most lively apprehensions. The whole foundation of the American theory of government is the respect and attachment of the people for their written Constitutions. When they cease, the representative republican system of government is at an end. If the people of this country once embrace the opinion that there is a Divine law, or any other rule of government above the sanctions of the Constitution, and the obligations of an oath, an end of republican forms will soon follow.

No one can read the acts of certain State legislatures, prohibiting the restoration of fugitive slaves, opposed, as they are, to the Constitution, the law of Congress, and the decisions of the Supreme Court, without feeling his pride as an American citizen humbled in the dust.

After the close of a brilliant war the Government acquired, by treaty of cession, an extensive and valuable country from Mexico. This acquisition was the result of common blood and treasure, freely expended by all sections of the Union. On obvious principles of equity and justice this public domain, thus belonging as a common fund to the whole country, ought to be open to the citizens of all the States, with their property. If there is such a difference between the institutions and property of the slave and non-slave States, as to make a common occupation by their

citizens repugnant to the interests or feelings of those emigrating from different sections, or inexpedient for any reason, then the time-honored principle of a division of estate, by proprietors who cannot agree to occupy in common, should at once be the rule of adjustment. If it cannot be occupied in common, the territory should be divided by some equitable line of partition.

I am not wedded to any particular line of division. I am free to say that, twelve months ago, I would not have voted for the Missouri compromise line; but the active intervention of the Executive and others in the affairs of California, and which will be continued as to the other Territories if this question is left open, render a settlement, even by this line, desirable at the present time. I would be willing to a division of the Territory by parallels of longitude, and would prefer the bill of the honorable member from Maryland, (Mr. McLane,) which proposes to extend the Texas boundary to the Colorado and the Gulf of California, giving to the State of California the balance of the country. This would fix the institutions of the whole Mexican acquisition, and leave no further territory for the Wilmot proviso and the legislation of Congress.

If there cannot be a division of the country, then the Mexican law ought to be formally repealed. This would not be an establishment of slavery, but would leave the question to stand merely upon the Constitution and non-intervention. Congress has no power to destroy property, or exclude it from a territory; but it may remove obstructions and obstacles If there be any Mexican law excluding the manufactures or mechanic arts of the North, or the slave property of the South, it is the duty of Congress to repeal these laws. I might go further, as a question of right, and maintain that there is a broad and obvious distinction between the power to create, or establish a species of property, and the power to destroy.

Congress ought to settle this matter, and place it beyond doubt. The inclination of my own mind is, that the Mexican law, in relation to slavery, is superseded by the Constitution; yet it is a question in contest, and, as long as it remains in that condition, no one will think of taking slaves into these Territories. No prudent lawyer would advise his client to that course; how, then, can he consistently vote for any settlement which does not secure the right, and place the emigrant beyond the harassment of vexatious lawsuits in relation to this species of property? The present condition of the law is the subject of too much uncertainty to be a safe property rule. It will prevent the emigration of slaveholders, and, in its practical results, exclude the South from any fair partition in the advantages of the common Territories. Let there be a removal of all obstructions, in the shape of Mexican laws, or an acknowledgment of the right on one side of a given line.

THE ADMISSION OF CALIFORNIA.

The first measure of the series is the admission of California as a State, with her constitutional boundaries and inhibition of slavery. This action in California by a handful of men excludes the South from the whole Pacific coast, running through some ten degrees of latitude, and embracing the whole Pacific country of any real value. The justice of permitting a few persons thus to monopolize an empire, which they cannot occupy, to the expulsion of one half of the States of the Union, cannot readily be apprehended. Within reasonable and legitimate boundaries, first ascertained, the people of a Territory, when forming a State, have a right to prescribe their own domestic institutions; but a few men or inhabitants have no right or power to monopolize large tracts of the public domain for an indefinite period of time, which they cannot enjoy, and encumber it with their political institutions. Such a course of action is alike forbidden by justice and the Constitution. In the case of California, it is particularly odious to the States it was aimed at, from the fact that it was accomplished through the instrumentality of political agitations, and the interference of Executive agents and emissaries. I know this has been denied, and I do not now mention the subject with any other view than to produce the proof, furnished by the debates of the California convention, on a proposition to extend her boundaries to the line of New Mexico for the purpose of excluding slavery in all that vast region.

"Mr. Sherwood. The gentleman, (Mr. McCarver,) says he is in favor of a permanent boundary. How is he going to get a permanent boundary by fixing it upon the Sierra Nevada? Is he sure that Congress will not cut us off on the south. If the gentleman has that assurance from a majority of the members of Congress, I should like to see it. I hope he will produce it. In my opinion, if a majority of Congress are determined to settle the question of slavery, they will give us the whole territory. If it is objected to by Mr. Calhoun, or any other gentleman who is in favor of slavery over a part of California, it will be answered that it is too expensive to establish a territorial government on the eastern side of the Sierra Nevada; that that territory is for the most part a desert waste, and may rest with California as a part of the State without being expensive to the people of California; but that it would be quite a burden in thirty or forty years, at an annual expense to the Treasury of the United States of one or two hundred thousand dollars a year—a large portion of which we would have to pay ourselves. In regard to preventing our admission into the Union by extending the boundary to New Mexico, we expressly say to Congress that, if they will not give us that, they may cut us down to the Sierra Nevada. If we cut ourselves down now, gentlemen on the other side will say we have acted very foolishly in not embracing the whole territory, and thus throwing out of the councils of the nation the subject of all the difficulty. If we are admitted into the Union, and become a constituent part of the great Confederacy—a new star in the galaxy of stars—we shall always, I

trust, have the same desire to keep the Union together—to preserve it in spirit and substance—as we had when we were residents of the older States.

"Mr. Semple. I feel under some obligation to repeat a conversation which has a direct bearing upon this matter. There is a distinguished member of Congress, who holds his seat from one of the States of the Union, now in California. With a desire to obtain all the information possible in relation to the state of things on the other side of the mountains, I asked him what was the desire of the people in Congress; I observed to him that it was not the desire of the people of California to take a larger boundary than the Sierra Nevada; and that we would prefer not embracing within our limits this desert waste to the east. His reply was, 'For God's sake leave us no territory to legislate upon in Congress.' He went on to state, then, that the great object in our formation of a State government was to avoid further legislation. There would be no question as to our admission by adopting this course; and that all subjects of minor importance could afterwards be settled. I think it my duty to impart this information to the convention. The conversation took place between Mr. Thomas Butler King and myself.

"Mr. Botts. I have remarked it as a singular fact, that we have reports daily, and almost hourly, of some important information that has been received from some particular source; letters that have arrived, conversations that have occurred; something that some gentleman has heard Mr. Thomas Butler King say. Now, sir, I take it that Mr. Thomas Butler King, nor no other single individual, is the exponent of the wishes of the Congress of the United States. He is but one man on the floor of that Congress. He gives but one vote, and that vote it is not in his power to give whilst he remains in the State of California. No, sir, not even that vote, either directly himself, or indirectly through his friend upon this floor. Sir, I take it that if Mr. Thomas Butler King did know, and had a right to tell us what were the opinions of the Congress of the United States, it would be for us to consider rather what our own opinions are, than those of Congress, upon this subject. Therefore I exclude the whole testimony as totally irrelevant to this matter."

Thus, it seems, that the opinions and discourse of Mr. King, if not that of others, did influence and control the action of the California convention upon this most delicate subject.

It is a great mistake to suppose that the highest interests of California require her immediate admission into the Union. It has been announced in the other wing of the Capitol, that this new State must for a time be supported by the Federal Treasury, having no revneue of her own. It is the first instance of such a pretension, and is of evil example. States ought never to be dependent on the Federal Treasury.

If the report of Mr. Jones be correct, that there never was a surveyor in California, then it is true that there is not a complete title in that country; for it is a notorious fact, that in no part of Spain or Mexico did the final title issue, until after survey and judicial possession. All these titles, on this statement, are inchoate, and must depend for validity on the future legislation of Congress. If the statements of Mr. Jones are accurate, there is not a title in California that will sustain an action of ejectment. They are not legal titles, but mere equities, requiring the action of Congress, which in good faith their owners are entitled to demand. The interests of California require legislative action on these subjects far more than present admission into this Union.

Whatever may be the difference of opinion as to the extent of the power of Congress over the municipal and internal affairs of a Territory when organized, there can be no well-founded doubt that the right to authorize a State or territorial government is exclusively in Congress. Until the Territory becomes a State, the right to govern is in the United States, and not in the people who happen to be present or located on the public domain. In the case of Florida, the Supreme Court of the United States declared, that "perhaps the power of governing a Territory belonging to the United States, which has not, by becoming a State, acquired the means of self-government, may result necessarily from the facts that it is not within the jurisdiction of any particular State, and is within the power and jurisdiction of the United States. The right to govern may be the inevitable consequence of the right to acquire territory. Whichever may be the source whence the power is derived, *the possession of it is unquestioned.*"—(1 Peters, 542.)

I do not admit that under this power Congress has any authority to destroy private property. This cannot be done either in the States or Territories by the Federal Government, because it is restrained by the Constitution. By express provision of the Constitution, it may take private property for public use, first making compensation therefor. It has no power to take or destroy private property to promote any general purposes of public good, or any real or mistaken views of human philanthropy. The Federal Government has no such mission. In the Territories, Congress may remove obstacles to the enjoyment of property, by giving remedies and salutary police regulations, but it can neither exclude nor destroy it. The Federal Legislature is limited in its exercise of power over property. Congress having in itself no authority to exclude or destroy property in the Territories, can delegate no such power to the territorial legislatures. It cannot confer that on another which it does not possess itself. If a Territory is within the power and jurisdiction of the United States, it is exclusively so until it acquires a new sovereign; and this cannot be done unless admitted as a State into the Union. How can there constitutionally be a *State* on the public domain within the limits of the United States, and yet outside of the Union, and beyond the control of this Government? The idea is a solecism, a contradiction in terms. It is not a State, in the American sense, for any purpose, until it is embraced

by the Union. As the power to admit new States is entirely with Congress, there is no other tribunal which can authorize a government to be formed with a constitution preparatory to its admission into the Union as a State. The sovereignty of the Territories must either reside in this Government or the people of the States. If such were not the case, it would be in abeyance, until a territory acquired by the United States was peopled. The Supreme Court has decided that an acquisition of territory is also an acquisition of the sovereignty over it. If this be so, it cannot be a divided sovereignty, partly in the United States and partly in the people of the Territory. It resides exclusively in the United States, and no government erected in the Territories, in time of peace, can have a legal existence, unless it has been established or authorized by Congress.

Previous to the call of the convention at Monterey, there was a provisional government in California, organized by the authority of the United States during war, and which was continued after peace by the consent of the Executive of the United States. It was a government of necessity, with a legal commencement, which could not be superseded without the authority of Congress. It has been destroyed by an illegal and revolutionary movement, without the authority of the United States constitutionally expressed. The action of General Riley, under which the convention was assembled which framed the present constitution of California, has been disavowed by the Secretaries of State and War of the last Administration, the only officers from whom an order could have proceeded to sanction his course. The convention had not even the merit of a spontaneous revolutionary movement proceeding from the people. It had its origin in the proclamation or military order of General Riley, of the 3d of June, 1849. By this order he called a convention, fixed the number of delegates, and the boundaries of districts. Thus were the highest attributes of sovereignty arrogated by this military commandant, at a remote position, in open violation of law and the Constitution.

Although the convention which framed the constitution of California was convened by General Riley without Executive orders, he states in a proclamation of 22d of June, that it was confirmed by instructions subsequently received by the steamer "Panama." Thus was this convention assembled, contrary to law and the Constitution; and to the unauthorized government which it provided, was delivered over the then existing government of California by General Riley, with the remarkable declaration that "whatever may be the legal objections to putting into operation a State government previous to its being acknowledged or approved by Congress, these objections must yield to the obvious necessities of the case; for the powers of the existing government are too limited, and its organization too imperfect, to provide for the wants of a country so peculiarly situated, and of a population which is augmenting with such unprecedented rapidity."

If such action is authorized by the Constitution of the United States, what becomes of the doctrine of the Supreme Court, that the right to govern the Territories is in the United States? I think it quite demonstrable, as a legal proposition, that this action in California is not merely irregular, but that she cannot be admitted into the Union, under her present constitution, without another convention authorized by Congress. I should rejoice to see this action had, the slavery question settled, the limits of California adjusted, and her worthy representatives admitted to their seats.

I proceed to state some of the objections to the present admission of that State.

The Constitution of the United States declares, that "new States may be admitted by Congress into the Union." Now, what is a State, in the sense contemplated by the Constitution of the United States? If Cuba, without any previous sanction of Congress, were to present herself here with a constitution ready formed, would she be a State which could legally be admitted into the Union? It seems to me that the previous assent of Congress would be necessary to the creation of a State out of a foreign country, which had not been under the laws of the Federal Government by virtue of territorial organization

The case of Texas has been cited as furnishing a precedent for a different rule of action; but its authority is clearly the other way. By the joint resolution of annexation, Congress gave consent that Texas might be erected into a State, in order to its admission into the Union, by means of a convention of delegates chosen by the people. This convention was assembled, and the constitution formed by authority of the Congress of the United States, as well as by the legislative department of the Republic of Texas. As the first admission of a foreign State into the Union, it is a strong precedent to prove the necessity of a previous consent in order to legalize the preparatory action of forming a government which is to enter the Union as a State. Obviously, no foreign government has a right to proceed to the election of Senators and Representatives until its admission into the Union. No political organization has any warrant for this until it is inside of the Union; for it is by virtue both of the Federal Constitution, as well as of the membership of the Union, that a State has this privilege.

The admission of Vermont, Kentucky, and Maine are not exceptions to this rule, inasmuch as they were formed out of pre-existing States; and, in that case, the Constitution contemplates that the initiatory step shall be taken by the old States, and that the approbation of Congress should follow; which, in their admission, was the course pursued, the respective laws of admission defining their boundaries.

It is worthy of observation that in no case has a State been admitted without the previous con-

sent of Congress to form a constitution and State government, unless such State had previously been in the condition of a territory, and had her boundaries defined by an act of Congress during her territorial pupilage. It is difficult to perceive how, on principle, it could otherwise be done. A State must have identity, to which definite boundaries are indispensable. These boundaries must be established by the United States, if the State is carved out of the public domain. Who but the proprietor can set up the limits of his own estate, when he parts with a portion of it? The United States have clearly the right to say where shall be the limits of a new State to be erected out of its own territory or domain. Naturally, before any political community enters on any portion of this domain to erect it into a State, the consent of Congress should be had, and, as a general course of legislation, such has been the practice of the Government. The late treaty with Mexico evidently contemplates that the Congress of the United States will move first in this matter, and that, until it does act, these territories will be governed by the authority of the United States. As to the time and method of admission, the language of the treaty is peculiar and quite different from the provisions by which we acquired Louisiana and Florida:

The treaty with France of 1803, for the acquisition of Louisiana, provides that "the inhabitants of the ceded territory shall be incorporated into the Union of the United States, and admitted, as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States."

In the treaty with Spain, of 1819, it was declared that the inhabitants of Florida "shall be incorporated in the Union of the United States as soon as may be, consistent with the principles of the Federal Constitution, and admitted to the enjoyment of all the privileges, rights, and immunities of the citizens of the United States."

The treaty of Guadalupe Hidalgo declares that "Mexicans, who in the territory aforesaid shall not preserve the character of citizens of the Mexican Republic, conformably with what is stipulated in the preceding article, shall be incorporated into the Union of the United States, and be admitted at the proper time (to be judged of by the Congress of the United States) to the enjoyment of all the rights of citizens of the United States, according to the principles of the Constitution; and, in the mean time, shall be maintained and protected in the free enjoyment of their liberty and property, and secured in the free exercise of their religion without restraint."

Here Congress is given a wide discretion by the treaty, which is the law of the case, unless it can be shown that it conflicts with the Constitution. Congress is made by the treaty the exclusive judge of the proper time for the admission of these people into the Union. It is a fair inference from the language used that the commissioners contemplated that Congress would say to them when the proper time for admission had arrived. It was not the people of the ceded territory, but Congress, who were to judge of this matter. The reason for this provision must occur to every one. At the period of the negotiation of this treaty the mines of California were unknown; the mass of the population were Mexicans and *pueblo* Indians, and they were to have a year to determine their citizenship. It was a very unpromising material out of which to form American citizens, capable of working our representative system. Mr. Trist knew their character well, and hence the provision in the treaty which gave to Congress unlimited control over the time of their incorporation into the Union, and made the previous action of Congress a condition precedent to their formation of States in order to an admission into the Union. It is obvious, from the language employed in the treaty, that the commissioners contemplated a territorial government for these countries previous to their admission into the Union. Until admitted into the Union, the treaty expressly guaranties to these people their liberty, property, and religion, which shows that an intermediate territorial government was contemplated by the commissioners.

Admitting, for the sake of argument, that the legal difficulty of the want of previous assent of Congress to the formation of this State could be cured by subsequent legislation, still there is another defect which is radical, and goes to the nullity of the very basis of the California constitution. The delegates who formed the constitution itself were not elected by citizens of the United States with a legal and fixed domicil in California, and a large portion of those who voted for its ratification were laboring under the same disability. The Constitution of the United States, wherever it speaks of federal numbers, looks to citizenship and domicil. The citizens of one State cannot be enumerated in another. Citizens domiciled in one State cannot vote for members of Congress in another. To maintain the reverse would be to overthrow the entire representative theory of the Government, and destroy the State system. The people of Ohio have no power, under the Constitution, to permit the citizens of Kentucky to be enumerated or vote for President or members of Congress in that State. If they had this power, the federal slave basis could be transferred to the free States, and the same federal numbers counted in different States. The exercise of the right of suffrage touching federal rights, under our system, cannot be separated from domicil. People domiciled in the States have no right under the Constitution to participate in the formation of a government for a new State in one of the Territories of this Union, or to vote for members of Congress to represent it. Their political rights, in this respect, are fixed in and pertain to another jurisdiction. That the action of California violated the law and the Constitution in this respect, is evident from the following provisions established by the proclamation of General Riley, on the 3d of June, 1849:

"Every free male citizen of the United States and of Upper California, twenty-one years o age, and actually resident in the district where the vote is offered, will be entitled to the right of suffrage. All citizens of Lower California, who have been forced to come to this territory, on account of having rendered assistance to the American troops during the recent war with Mexico, should also be allowed to vote in the district where they actually reside."

In the first place, this proclamation is a direct violation of the laws of naturalization of the United States. Those citizens of Lower California who had been forced to remove because they had assisted the United States troops, were not thereby naturalized, nor were they embraced in the provisions of the treaty of Hidalgo. Under the laws of Congress on this subject, they were aliens, and yet they have been permitted to vote and aid in excluding the South from this rich and common heritage of the Union. The next objection is, that for citizens of the United States to vote for delegates, citizenship in California is not required, but *mere residence*.

With the exception of the admission of the new States formed out of older States, and the case of Texas previous to admission, there has always been an act of Congress for the territory, fixing boundaries and regulating the right of suffrage.

At the time the convention was called at Monterey, there was no law of suffrage existing in California. The Mexican law, which fixed majority at 25 years of age, and was in other respects greatly restricted, was not pretended to be followed by General Riley. The reason must be obvious. As a purely political regulation, determining the relation between the citizen and his Government, according to the writers on international law, as well as the English and American decisions, this rule ceased on the transfer of California to the United States. The language of the Supreme Court of the United States is: "The same act which transfers their country, transfers the allegiance of those who remain in it; and the law, which may be denominated political, is necessarily changed, although that which regulates the intercourse and general conduct of individuals remains in force until altered by the newly created power of the State."

The right of suffrage is not a natural right; it is a positive institution of society, confided to a certain portion of its members for the good of all. The power to regulate it was usurped by the proclamation of General Riley, and was an ebuse of authority without a parallel in the history of this Government. The convention appears to have been aware of this defect in the very basis of their proceedings, for the constitution which they framed declares the qualification of voters, and provides that "every citizen of California, declared a legal voter by this constitution, and every citizen of the United States, a resident of this State on the day of election, shall be entitled to vote at the first general election under this constitution, and on the question of the adoption thereof." Thus no domicil was required to vote for the adoption of this constitution; nothing but simple residence on the day of election. I maintain that no one has a right to vote on the organization of a State, unless he is domiciled within the territory at the time. I deny the right of strangers and denizens to exclude the South and Southern property from one of the territories by erecting it into a State organization. That can be effected only by citizens of the territory actually domiciled, who are forming a State government under which they are to live. It is not the province of foreigners and strangers without domicil, or any intention of a permanent residence, who, in contemplation of law, still retain their former legal domicil, and have acquired no other. For the rule of law is well settled, that the domicil of origin obtains until a new one is acquired, and it cannot be acquired without an actual change and an intention to abandon the former domicil and acquire another.

Resident is defined: "One who resides or dwells in a place for some time. A. B. is now a *resident* of London." Judge Story informs us that "two things must concur to constitute domicil; first, residence; and secondly, intention of making *it the home* of the party. There must be the fact and the intent."

"If, therefore, a person leaves his home for temporary purposes, but with an intention to return to it, this change of place is not in law a change of domicil, * * * * for it is not the mere act of inhabitancy in a place which makes it the domicil, but it is the fact, coupled with the intention of remaining; there must be *animo manendi*." (Story on Conflict, 42.)

"A person who is a native citizen of one State, never ceases to be a citizen thereof until he has acquired a new citizenship elsewhere." (Story on Constitution, 565.)

If persons merely resident in a State on the day of the adoption of a constitution are allowed to vote, it follows that strangers who do not intend to make it their permanent abode may control its institutions and policy. Under such a rule of suffrage, the citizens of other States on the day of election might be brought into the new State in sufficient numbers, and for the express purpose of controlling its domestic policy. The injustice and illegality of excluding the South from the Territories by such a course of proceeding under the pretence that it was a State action, or people of a Territory settling the question of slavery for themselves, is too manifest for disputation.

There can be no validity in the action of a convention, the delegates to which were chosen, and whose constitution was adopted, by voters who were not citizens of or domiciliated in the State. I undertake to say, that where citizenship was necessary to the jurisdiction of a court in California, not one-fourth of the voters for this constitution could have maintained a suit in the judicial tribunals. It is doubtful whether this portion were there for the purpose of making

it *their home*, and without this intent, as the jurists prove, they could not acquire a domicil. They were there temporarily to dig gold, and with the intent to return as soon as they had collected a certain quantity of the glittering dust. It is no answer, in a legal sense, that many would change this view; the *intent* to *remain* was necessary to domicil and citizenship. Without this intention, they had no right to participate in the formation of a State government, and to prescribe institutions to those who were really resident citizens of the country. Under the rule of their constitution, citizens of other States might have voted on the adoption of the constitution on the day they arrived in San Francisco, and departed for their homes on the following morning.

Sir, it is not true that this constitution here presented was formed by *the people* of California. It is not their sense. It is the work of aliens, and the citizens of other States of the Union, without domicil or citizenship in California. It was a usurpation of political rights clearly opposed to the principles of the Federal Constitution and the spirit of our Government. It is well known that the great mass of the real citizens of California, who were made so by the treaty, or had made themselves such by residence, were entirely overslaughed by this action of adventurers and strangers. The great majority of the *citizens* resided south of 36° 30′, and were unanimous in favor of a territorial government. *Their* wishes were overruled and defeated by a horde of new-comers, the men of a day, whose baggage had scarcely been transferred from the shipping to the shore. It is notorious that the people south of that line were, in the sequel, induced to vote for the State organization only to free themselves from present difficulty, and under assurances that it was the only hope of civil government. Since the agitation here, a portion of them have reiterated their choice for a territorial government.

But, sir, such as the population was, the number, at the time of the formation of the Constitution, was not enough to entitle them to a State government.

The statement of T. O. Larkin, esq., navy agent at Monterey, as to the population of California, is published in the American Quarterly Register and Magazine. "The population of California in July, 1846, was about 15,000, exclusive of Indians; in July, 1849, it is about 35 to 40,000."

The number of inhabitants in a territory to entitle it, under the Constitution, to a member of Congress and to admission under the present federal basis, is 70,680. Before a State can be admitted, or a State government legally formed, it must have this number. It cannot form a State government and then await for the steamboats to bring in the population If a territory could do this, the one hundred who first arrived in a territory might form a State government that would control its institutions and give them a lasting character.

There is still an insurmountable objection to the admission of California under the present Constitution, which has been urged with great ability in another place. It is the absence in her constitution of the recognition of the title of the United States to the public domain within her limits, and the want of a compact not to interfere with the primary disposition of the soil. The usage of the Government demands such a provision. It is the exercise of a high sovereign power, and cannot be had without the call of another convention, because the present constitution of California does not confer it upon the legislature. Without such a stipulation, the United States cannot preserve any title to the public lands and mines of California. The title of one government to lands within another, is inconsistent with the sovereignty of the latter, and can only be maintained, with the consent of the State, in the nature of a compact. Such has been the uniform construction of Congress, of our Constitution, and system of State sovereignties, in regard to this complex subject. This object cannot be secured by the simple legislation of Congress. It must have the form and sanction of a compact, which can be consummated only by the assent of California.

Since the constitution of California must return to the people for further action and new and important provisions, it becomes the duty of Congress to adjust her boundary and curtail the vast extent of this Pacific empire. There is great danger in permitting one State to engross all the ports on the Pacific, especially when the remoteness and isolated condition of that country is considered. To say nothing of the political hazard to our system, arising from combinations among large and disproportionate States, California, with her vast limits, presents other subjects of serious apprehension. She will be tempted to a separate existence by the wide extent and productiveness of her mines. By the still richer treasures that will flow from Eastern and Indian commerce. From all these causes we may look for hostility to the revenue and commercial system of the Union. All the great commercial ports of the Pacific should not be left under one local jurisdiction. San Diego and San Francisco ought to be in different States, for many and cogent reasons of policy. In the progress of events, the Government of the Union will have slight hold upon that extensive and isolated region, with its great mines and western trade, if the country is all embraced by one State government. It is our policy to strengthen the bands of the Union there by the erection of two or more States, the multiplication of seaports, and the creation of commercial rivalries. If you admit California with her present limits, the bay of San Francisco will engross nearly the whole of the foreign and domestic trade of the Pacific.

It is apparent, from the report of Mr. King, that the country possesses much more agricultural power than is generally supposed. Its mines will fill the country rapidly with a large population—a population composed, in a considerable degree, of foreigners, with very little sympathy with our own Government. It is not the part of wisdom to organize this State in such a

manner as to tempt its inhabitants with the advantages of a separate political existence, independent of the American Union.

THE DISMEMBERMENT OF TEXAS.

In opposing the compromise of Mr. Clay, in its present shape, I desire to speak of that illustrious statesman with all respect. By his lofty patriotism and great intellectual exertions during the present session of Congress, he has shown himself, what he has been often termed, the Chatham of America. But I am constrained to say, that the provisions of his bill in relation to Texas are totally inadmissible as a Southern measure, glaringly unjust to that State, and destructive to her highest interest, to her security and prosperity as a slave State.

The Senate bill declares, that all that portion of the territory of the United States acquired from Mexico by the treaty, concluded 2d February, 1848, and not included within the limits of the State of California, nor within the limits of the Territory of Utah, as prescribed in this act, be and the same is hereby erected into a temporary government, by the name of "the Territory of New Mexico," with a provision that Congress may hereafter divide it into two States.

This bill is accompanied by a report, with the following statement: "The committee beg leave next to report on the subject of the northern and western boundary of Texas. On that question a great diversity of opinion has prevailed. According to one view of it, the western limit of Texas was the Nueces; according to another, it extended to the Rio Grande, and stretched from its mouth to its source." The report then states, that the committee had agreed on an amicable adjustment with the following boundary: "The northern boundary of said State shall be as follows: Beginning at on the Rio del Norte, commonly called *El Paso*, and running up that river 20 miles, measured by a straight line thereon, and thence eastwardly to a point where the 100th degree of west longitude crosses Red river, being the southwest angle in the line designated between the United States and Mexico, and the same angle in the line of the territory set apart for the Indians by the United States."

In the first place, the bill and report taken together throw discredit and doubt upon the whole western boundary of Texas. They cast doubt upon a portion of the line which is and has been, for a considerable period, under the quiet jurisdiction of the officers and government of Texas, from the mouth of the Rio Grande to *El Paso*.

The Senate bill, it will be perceived, pushes a free line, down into the immediate vicinity of *El Paso*, on the great military road from the coast of Texas to the Pacific. It opens a highway for our slaves into New Mexico, Utah, and California, with every means and facility for escape from the frontiers. Such a line cannot fail to render slave property in western and northern Texas, and especially on Red river, insecure, and seriously affect its value. The salubrious climate, rich soil, and productions of Texas, together with cheap lands, invite emigration, and offer great inducements to the planter. Her capacities for producing sugar and cotton are almost incalculable. She must receive a large portion of the negroes of the more northern slave States, unless emigration is retarded by an unjust and, to the South, unwise adjustment of this subject. If Texas is true to her own interests, she never will consent to such a boundary, when the resolutions of annexation guarantee slavery to new States to be formed out of her territory south of 36º 30′ north latitude. How can she consent to permit slavery to be abolished within her limits to the 32d degree of latitude, with the inevitable consequences in full view?

This bill further provides: "If the State of Texas shall refuse or decline to accede to the preceding articles, they shall become null and void, and the United States shall be remitted back to all their territorial rights, in the same state and condition as if these articles of compact had never been tendered to the acceptance of the State of Texas." The amount to be paid in case Texas accedes to the proposition is by the bill left blank.

It will be perceived that the Territory of New Mexico is, by this bill, to be created with or without the consent of Texas. It will of course be organized according to its ancient limits, and in derogation of the rights of Texas. It will be claimed that the bill legalizes the present military government in Santa Fé. It will give the appearance of law to a systematic resistance to the jurisdiction of Texas, and before the matter can be adjusted, practically determine the question against the State. It will produce civil war and bloodshed between the people of Santa Fé and the authorities of Texas. It leaves the State no choice between such a calamity and the acceptance of the money which may hereafter be inserted in the bill. It includes country on the east never within the limits of New Mexico, and transfers it to the new territory. It makes no provision as to the future condition of the foreign and hostile tribes of Indians now roaming over northern and western Texas.

In relation to the people of New Mexico proper, which is now situated on the west bank of the Rio Grande, the provisions of the treaty with Mexico are complied with if they are admitted into the Union in any State. They have no claims to their ancient limits, any more than had the people of Louisiana. But this bill transfers territory to them on the south and east, not embraced within the legal limits of New Mexico, as it existed under Mexican rule.

Up to the present time, the action of all the departments of this Government has *admitted* the claim of Texas to the Rio Grande in its fullest extent. Individuals, a few members of Congress, have denied our title; but the *Government* never has taken that position. This compromise bill, if passed, would assert, for the first time, by this Government, a claim to the country

on the east bank of the Rio Grande. It is drawn with the skill of a master in this respect. The 25th section provides:

"Previous to the first election, the governor shall cause a census or enumeration of the inhabitants of the several counties and districts of the Territory to be taken; and the first election shall be held at such time and places, and be conducted in such manner, as the governor shall appoint and direct; and he shall, at the same time, declare the number of members of the council and house of representatives to which each of the counties or districts shall be entitled under this act. The number of persons authorized to be elected having the highest number of votes in each of said council districts, for members of the council, shall be declared by the governor to be duly elected to the council; and the person or persons authorized to be elected having the greatest number of votes for the house of representatives, equal to the number to which each county or district shall be entitled, shall be declared by the governor to be duly elected members of the house of representatives: *Provided*, That in case of a tie between two or more persons voted for, the governor shall order a new election to supply the vacancy made by such tie. And the persons thus elected to the legislative assembly shall meet at such place, and on such day, as the governor shall appoint; but thereafter, the time, place, and manner of holding and conducting all elections by the people, and the apportioning the representation in the several counties or districts to the council and house of representatives, according to the population, shall be prescribed by law, as well as the day of the commencement of the regular sessions of the legislative assembly."

In the first place, the provision is a strong implied recognition of all the counties and districts as now regulated by the present military, and by the former departmental government of New Mexico, which establish a boundary entirely exclusive of the claim of Texas. It authorizes the governor to take a census, to say how many and which of these counties and districts are in the Territory, and name the seat of government in the first instance. It confers on this officer ample power to fix the boundary for all practical purposes in the first instance. After the first session of the legislative council, that body is given the power to establish the seat of government, and the counties and districts, and, as a matter of course, the right to declare the exterior boundary of the Territory. The faculty to do this, both in the governor and legislative council, is clearly granted in the power of apportionment and regulation of the counties and districts. The result of all this is the establishment of a boundary for New Mexico, and a determination of the right against Texas, so far as it can be done by the legislation of Congress. With the Supreme Court of the United States, this law would be conclusive of the whole controversy. That court decided, in the cases of Foster and Elam, Garcia and Lea, and the United States and Reynes—the last case at the present term—that it was controlled on questions of boundary by the action of the political departments of the Government, and would not look beyond that action into the facts and justice of the case. Under the compromise, this firmly established rule would compel the court to decide the question of title against Texas, if it ever was brought before that tribunal. With the court, this bill would be conclusive of the whole controversy.

I will never give any vote here, which will have the effect to deny or prejudice the title to Texas, or place it in any worse condition than it is at present. As a part of the Southern question, there ought to be an unconditional admission of the boundary of Texas, as she asserted it when she came into the Union. The fact need not be disguised, that if California is admitted with her present boundary, the South will be excluded from the whole country west of the Rio Grande, either under the non-action policy of the President, or the non-intervention platform with the Mexican law; unless that law can be repealed, or a division of the Territory effected. On this basis of non-action, non-intervention, or the compromise of Mr. Clay, there is nothing practical in this question, to the Southern States, beyond the boundary of Texas. With all these measures, the practical result to the South is the same exclusion. Why, then, surrender the slave territory of Texas, and place it within the power of free soil?

If the object of the Compromise Committee of the Senate had been merely to settle the controversy, so as to accommodate the people of New Mexico with a separate political existence, it was not necessary to establish the boundary much below 36° 30'. Santa Fé is in 35° 44' 6", according to the observations of Colonel Emory. At 35° 30' there is a natural boundary presented by the configuration of the country; below that line, the valuable gold, silver, and copper mines are to be found on this side the river. Below that line is the country most valuable for slave labor, with exception, perhaps, of the mining district above. Up to about that line, I learn from an intelligent traveller direct from *El Paso* and Santa Fé, who journeyed with Major Neighbors, the Texas commissioner, the people submitted at once to the jurisdiction of Texas. He met with little or no opposition until he arrived at Santa Fé, where there are some four or five hundred Americans, who want offices under a Territorial or State Government.

Let the title of Texas be acknowledged by Congress—placed beyond contest—and I am willing to submit any fair proposition to the people of Texas. I am willing to trust them to pass upon it, whether it meets my own views or not; but I shall oppose any scheme which, in terms or by implication, denies her *title* to the country in question. Congress shall not, even by *inference*, assert a claim to it by aid of any vote of mine, because that would change the present *status* of the legal question.

The Compromise bill is, in legal effect, a present appropriation of the territory, if Texas withholds assent, and a present sale as soon as she assents. Now, sir, although I might be willing to submit a *proposition*, the *title* of Texas being first admitted, I am not willing to go beyond this. The Legislature of Texas has placed all this disputed country in my district, and I do not understand that my mission here is to be fulfilled, on my part, by a *sale* of half my district! The Legislature of the State has been in session since the proposition of Colonel Benton was first made, and took no action upon it. I have seen no development of public sentiment in Texas which looks like an approbation of any of these measures in their present shape. To this proposition for a purchase there are two objections which I will here notice. In denying practically the *title* of Texas, the compensation is offered to her only in the shape of *hush money*, and for the sake of peace. It goes on the hypothesis of buying off an unfounded pretension of title, and places Texas in this odious and humiliating attitude before the world. If the proposition was, in other respects, free from objections, the State, in my opinion, would indignantly reject the offer, clothed in this insolent form. As a Southern measure, it presents the further serious difficulty that it so establishes the boundary as to preclude the idea of a cession, and, of course, substitutes the uncertainty of the Mexican for the certainty of the Texas law on the subject of slavery. It secures the ultimate division of New Mexico into two States, which will be free; and for which there would not be sufficient territory, but for this acquisition from Texas. It thus still further destroys the equilibrium between the slave and free States. It so reduces Texas as to leave room only for three instead of four slave States.

Much has been said, Mr Chairman, as to the large amount proposed to be paid to Texas for this contemplated transfer of territory. The basis of the whole compensation is the payment of her public debt. And here again she is insulted, by being told that she cannot be trusted with the payment of that portion for which her revenues from imports were pledged, but the bill makes a special appropriation of stock to discharge first that portion of the debt. Sir, the power of taxation, property, and the whole revenues of a nation, above the current support of government, are, in contemplation of law, pledged for the public debt. It is a well settled principle of international law, that when one Government incorporates another country with it, the former is bound to the creditors for the whole debt of the latter. This Government is bound to the creditors, but not to Texas, under the articles of annexation. Texas does not call on the Federal Government to pay; she has appropriated the land, by an act of her last Legislature, offering land scrip to her creditors at fifty cents per acre, to be located in any part of her wide and magnificent domain. This is all she is able to do; and a better payment of a revolutionary debt was never made before by any government. It preserves her honor untarnished—her faith spotless and unimpaired. If there is any money obligation pressing upon any one in connexion with this business, it is upon this Government, who took the public imposts from the creditors of Texas by force of annexation. At the time of that event, Texas, with the lowest tariff in the world, was prospering with brilliant commercial prospects; and by this time, with a separate existence, her revenue would have defrayed the current expenses of her Government, and paid the interest on her national debt.

Let me ask, sir, what will be the great gain to Texas, as a State, by the payment of this money? Her creditors are principally non-resident brokers and stockholders, very worthy people, no doubt, who ought to be paid, but whose money would not come into the State. If Texas were to transfer all the public lands north of El Paso to her creditors, more than eighty millions of acres, it would be a magnificent payment. It would pay the debt at ten cents per acre. What, then, does she get for the sale of her civil jurisdiction? If the public domain is worth more than the debt, which is clear, why does not this Government take the public domain within that line, instead of insisting on the transfer of the jurisdiction?

The value of that country, in an agricultural point of view, is greatly underrated. The good land is much more extensive than is generally represented. And from all the information I can obtain, it is nearly, if not quite, as rich as California in mineral wealth. I saw the other day in a paper a statement that those who have been working her placers during the past winter have realized from ten to fifteen dollars per day. Lieutenant Abert, of the engineers, who explored the country, says that not long since two lumps of gold were found below Santa Fé, one of the value of $900, and the other $700. Dr. Wizlezenus, as cientific German miner, who examined the country, thus describes its mineral wealth:

"A third much neglected branch of industry in New Mexico are the *mines*. Great many now deserted mining places in New Mexico prove that mining was pursued with greater zeal in the old Spanish times than at present, which may be accounted for in various ways, as the present want of capital, want of knowledge in mining, but especially the unsettled state of the country and the avarice of its arbitrary rulers. The mountainous parts of New Mexico are very rich in gold, copper, iron, and some silver. Gold seems to be found to a large extent in all the mountains near Santa Fé, south of it in a distance of about 100 miles, as far as Gran Quivira, and north for about 120 miles up, to the river Sangre de Cristo. Throughout this whole region gold dust has been abundantly found by the poorer classes of Mexicans, who occupy themselves with the washing of this metal out of the mountain streams. At present the old and the new *placer*, near Santa Fé, have attracted most attention, and not only gold washes, but some gold mines too, are worked there. They are, so far as my knowledge extends, the only gold mines

worked now in New Mexico. But as I have made from Santa Fé an excursion there for the special purpose of examining those mines. I must refer the reader, in relation to them, to that chapter of my narrative. As to the annual amount of gold produced in New Mexico, I am unable to give even an estimate; but as nearly all the gold of New Mexico is bought up by the traders, and smuggled out of the country to the United States, I believe that a closer calculation of the gold produced in New Mexico could be made in the different mints of the United States than in Mexico itself. Several rich silver mines were, in Spanish times, worked at Avo, at Cerrillos, and in the Nambe mountains, but none at present. Copper is found in abundance throughout the country, but principally at Las Tijeras, Jemas, Abiquiu, Guadelupita de Mora, &c. I heard of but one copper mine worked at present south of the placers. Iron, though also abundantly found, is entirely overlooked. Coal has been discovered in different localities, as in the Raton mountains, near the village of Jemes, southwest of Santa Fé, in a place south of the placers, &c. Gypsum, common and selenite, are found in large quantities in Mexico; most extensive layers of it, I understood, exist in the mountains near Algodones, on the Rio del Norte, and in the neighborhood of the celebrated "Salinas." It is used as common lime for whitewashing, and the chrystalline or selenite instead of window-glass. About four days travelling (probably 100 miles) south southeast of Santa Fé, on the high table land between the Rio del Norte and Pecos, are some extensive *salt lakes*, or "*salinas*," from which all the salt (muriate of soda) used in New Mexico is procured. Large caravans go there every year from Santa Fé in the dry season, and return with as much as they can transport. They exchange, generally, one bushel of salt for one of Indian corn, or sell it for one and even two dollars a bushel."

This vast mineral wealth will be developed by an American population, and especially by slave labor. The richest of these mines are on the east bank of the Rio Grande, commencing about thirty miles south of the city of Santa Fé.

In connection with the boundaries of New Mexico, I feel constrained to notice a speech of the Senator from Missouri, (Colonel Benton,) which I find in the Intelligencer of this morning, which surprises me much. He says:

"This is what Humboldt says of the eastern boundary of New Mexico; and his map illustrates what he says. He places that boundary, as it leaves the Rio Grande del Norte, at about twelve miles below the mouth of the Puerco, in west longitude 104, and in north latitude 29½, and thence northeastwardly to the head of the Rio San Saba, a branch of the Rio Colorado of Texas, in north latitude 32° 15′, and in west longitude 101 This is the line he gives as found in the special maps drawn up by engineers in the service of the King of Spain, and preserved in the archives of the Viceroyalty in the city of Mexico. Further than that he does not trace it; but that is far enough for our purpose. It is enough to show that New Mexico, under the Spanish Government, extended as far east as 101 degrees of longitude, covering the whole course of the Puerco, and entering what is now the county of Bexar, in Texas.

"So much for Humbodlt: Now for Pike. He says, at page 5 of his appendix to the journal of his journey through New Mexico: 'New Mexico lies between 30° 30′ and 44° of north latitude, and 104 and 108 degrees of west longitude, and is the most northern province of the kingdom of New Spain.' * * * * * * * * * *

"I proceed with the possession of New Mexico, and show that it has been actual and continuous from the conquest of the country by Don Juan de Oñate, in 1595, to the present. *

"These are the actual possessions of New Mexico on the Rio Puerco. On the Rio del Norte, as cut off by the committee's bill, there are, the little town of Frontera, ten miles above El Paso, a town began opposite El Paso, San Elizario, twenty miles below, and some houses lower down, opposite El Presidio del Norte."

Such are the statements of the honorable Senator as to the *present* boundaries and present possessions of New Mexico; and if made by one of the younger members on this floor, he would sink down under the imputation of gross ignorance of his subject, or a wilful intention to misrepresent the "truth of history," and do injustice to a just claim. Further on, he says:

"The map of Dr. Wislizenus, which I now produce, agrees with Humboldt and Pike, except in the correcion of slight differences in longitudes and latitudes, which his accurate instruments enabled him to make, and which have no practical consequence in this examination."

Now, the map of Wislizenus does not profess to delineate with accuracy the civil divisions, as the Senator well knows; but, at page 40 of his work, he gives the southern boundary of New Mexico, as it now exists, as follows:

"The settlement of El Paso was commenced about 1680, when Governor Otermin, of New Mexico, and his party were driven from Santa Fé to the south by a revolt of the Indians. Some Indian pueblos, which received them well, already existed in the fertile valley; but this seems to have been the first Spanish settlement.

"El Paso belonged, under the Spanish Government, to the province of New Mexico; at present, to the State of Chihuahua. The latter State claims, as its northern limits, towards New Mexico, as already stated, 32° 30′ latitude north, a line which by Mexicans is supposed to fall near Robledo, our first camp on the river in coming out of the Jornada. El Paso itself, according to my own observations, lies in 31° 45′ 50″ north latitude."

Was it quite candid in the honorable Senator to exhibit the map of the author in opposition to his text?

Upon the subject of the civil divisions of New Mexico, Lieut. Abert procured from the State department in Santa Fé, and published in his report, the following decree circulated by the governor of that department, issued in 1844, and extracted by the departmental assembly, and which has the force of law in Mexican jurisprudence:

"Marino Martinez de Lejuza, brevet brigadier general, and constitutional governor of the department of New Mexico, to its inhabitants, sends greeting, that the assembly of the department has agreed to decree the following:

* * * * * *

"*Southeastern district.*

"Art. 9. This district is divided into two counties, called Valencia and Bernalillo. The capital is Valencia.

"Art. 10. The county of Valencia comprises Valencia, San Fernando, Tome, Socoro, Limitar, Polvaderas, Sabinas, Elames, Casa. Colorada, Ciboletta, Sabino, Parida, Luis Lopez, Belen, Lunes, Lentes, Zuñi, Acoma, and Rito. County seat, Valencia.

* * * * * *

"This decree shall be made known to the governor, that he may carry it into execution.

"JESUS MARIA GALLEGAS, *President.*

"Juan Baptista Vigil y Maris, *Secretary.*

"By virtue of the premises, that this act be published, circulated, and made known to all whom it may concern, for its most active observance and fulfilment.

"Palace of the Government, Santa Fé.

"MARIANO MARTINEZ.

"Jose Felix Jubia, *Secretary.*

"*June* 17, 1844."

Now the most southern of these towns on the east bank of the Rio Grande, Parida, is placed on the accurate map of Abert, north of degree 34, and the most southern on the west side, Luis Lopez, a few miles south of that line. All south of that is left out of the jurisdiction of New Mexico, for the plain reason that this department had no claim to it under the Mexican organization. This decree, although not binding on Texas, would be conclusive without any thing further upon the people of New Mexico; but in their plan of a territorial government, they have expressly ratified it, and do not set up any claim beyond it. They say:

"Sec. 7. Until the legislative power otherwise direct, the territory of New Mexico shall retain the division of counties and districts established by the decree of the department of New Mexico, of June 17th, 1849," (1844.)

This shows that the people of New Mexico not only have no possession, but assert no claim, below the 34th. And yet the Senator claims all below, as far as 29½ degrees, as the present territory and possessions of New Mexico. Mr. Benjamin E. Edwards, a lawyer and excellent Spanish scholar, residing in San Antonio, who examined this subject in the archives at El Paso writes thus in relation to the boundary of New Mexico:

"If it should be decided that New Mexico is entitled to a separate existence, either under a territorial government or otherwise, an attempt will no doubt be made to establish her southern boundary somewhere in the vicinity of El Paso, as it has been laid down on almost all the maps published in the United States, and tacitly recognised by Mexico in the treaty of Guadalupe, where reference is made to Disturnell's map as a correct authority. This, however, is far from being the true boundary of New Mexico, as can be shown by documents in existence in the archives of Chihuahua and El Paso. By these, it appears that the line crosses or leaves the east bank of the Rio Grande at a point in front of the mountain (designated as one of the landmarks) which forms the southern limit of the "Jornada del Muerto." Thence it runs in a direction a *little* north of east to the "Cerro Redondo," a remarkable dome-shaped mountain; thence, almost in the same direction, to the "Sierra Capital," or "Cerro Blanco," which, as its name signifies, is the most prominent peak in that region of country; thence, so far as I could discover, due east to the Pecos. From the Sierra Capital, I could not ascertain that there existed any prominent landmark, though it is probable, if I could have pursued my investigations further, some such would have come to light, as the Mexicans seem to have pursued the same system in public as in private affairs, of making *natural objects* the indications of boundary to land or territory. I have in my possession a copy of a grant of land made within the jurisdiction of the State of Chihuahua in the time of the Emperor, under the colonization law of the "Junta Constitucional" of 1823 This land lies some distance above the line claimed by New Mexico, and has always been acknowledged as belonging to Chihuahua."

The people of New Mexico, in their plan of a territorial government, or rather instructions to their delegate, Mr. Smith, have declared that they are bounded on the east by the State of Texas. Col. Benton admits, that Texas owns territory there which is not in dispute, but says it is a narrow strip, New Mexico extending to the 101 parallel of longitude, and again cites Humboldt, and again his author contradicts him, and shows that New Mexico is the *narrow strip*. According to Black's translation, Humboldt says of New Mexico: "This province is from south to north 175 leagues in length, and from east to west from 30 to 50 leagues in breadth; and in its territorial extent, therefore, is much less than people of no great information in geographical matters are apt to suppose even in that country." And he might have added,

much less than some persons in this country of great pretensions to geographical knowledge "are apt to suppose."

It is but justice to Humboldt to say, that as to latitude and longitude, he followed the Spanish geographers, whom our own engineers of the army on observation found to be extremely inaccurate. For instance, they place Santa Fé on their maps north of 36° 30′, whereas Col. Emory shows that it is nearly a degree south.

Muehlenport, a German, who was 8 years in Mexico, and published his work in Hanover in 1844, gives the 105° 37′, as the eastern boundary of New Mexico. This would extend far beyond the actually inhabited part in the most prosperous days of the province; and it is well known that the Spaniards, as a general thing, did not extend the bounds of their provinces much beyond the line of their settlements. Although the authors disagree about the latitude and longitude of the boundaries of this province, they all concur that it was a narrow territory, confined to the vallies of the Rio Grande and the Pecos. But the Missouri Senator seems to reject as superfluous all law since Tucker's Blackstone, which he produced, flourished aloft, and read the *title* to the Senate, and all geography since Humboldt, which he said he had in French, but would not exhibit in open Senate out of pure mercy to Mr. Clay.

The objects of Col. Benton, in this misrepresentation of history and geography, are quite transparent. He wishes to recommend himself to his new allies, the free soilers, by proving against the fact, that this slave territory is within what was, at the close of the war, a free province, and urge upon the Government to retain *the possession* in opposition to Texas. He also desires to deprive Texas of the *El Paso* country for another motive. The altitudes returned by Col. Frēmont, in his survey of a railroad by the way of the frozen regions to the Pacific, prove that by that route the stationary power will be so great that his favorite route is altogether impracticable. The road must come south, and leave the Rio Grande in the neighborhood of *El Paso*, which is in the United States, the overland key to the Pacific—a southern key which Texas will never place in free-soil hands, not even in the grasp of the Senator from Missouri. The truth is, that so long as Texas holds to her territory, she can dictate the locality of the railroad to the Pacific. This Col. Benton sees clear enough, and therefore offers 15 millions for the territory embracing *El Paso*. But this road is worth more to Texas, not only than 15, but fifty millions. If properly located it will be her road to wealth, greatness, and power.

THE TITLE OF TEXAS.

It is not my purpose to enter again into the argument as to the title of Texas to the source of the Rio Grande. I shall content myself with repeating, briefly, some of the most prominent facts in the history of the title. It rests, 1. On the treaty with Santa Anna, in 1836, which is a good treaty, because ratified by his generals, who were not prisoners of war; and Filisola had power to treat by express authority of his government; and Mexico having taken the benefits of the treaty, could not, under the law of nations, repudiate it.

2. On the act of the Texas Congress of December, 1836, under which her independence was acknowledged by the United States and the other powers, all of which are, by that recognition, estopped from denying her boundary. It was an essential element of her nationality.

3. The convention between this Government and the Republic of Texas of 1838, carried out by the act of the United States Congress of 1839, makes the former boundary between the United States and Mexico the future boundary between the United States and Texas, which is the very boundary of the Texas act of 1836 and the treaty with Santa Anna. The convention declares:

"The treaty of limits, made and concluded on the 12th day of January, 1828, between the United States of America on the one part, and the United Mexican States on the other, is binding upon the Republic of Texas, the same having been entered into at a time when Texas formed a part of said United States; and whereas it is deemed proper and expedient, in order to prevent future disputes and collisions between the United States and Texas, in regard to the boundary between the two countries, as DESIGNATED by that SAID TREATY, that a PORTION of the same should be run and marked without unnecessary delay," &c.

It was then provided that commissioners "should proceed to run and mark that portion of the said boundary which extends from the mouth of the Sabine, where that river enters the Gulf of Mexico, to the Red river."

The convention further provided, among other things, "And that the *remaining* portion of the said boundary line shall be run and marked at such time *hereafter* as may suit the convenience of the contracting parties," &c. This convention was made with reference to the act of the Texas Congress of 1836. It is a clear and express recognition of the whole boundary of Texas of equal dignity with a treaty. The opponents of the Texas title always remember to forget this compact. In the celebrated case of Rhode Island and Massachusetts, it was held that where States once agreed on a line it was binding, and when a river was mentioned in a compact as boundary, it was ruled to mean the river in its whole extent. The rule applies with much greater force in this instance. If there were nothing in the case but this convention, it would be forever conclusive against the United States.

4. Pending the negotiation for annexation, the Secretary of War instructed General Taylor by order of the 15th of June, 1845, which was in substance repeated on the 30th of July:

"The point of your ultimate destination is the western frontiers of Texas, where you will select and occupy, on or near the Rio Grande, such a site as will consist with the health of the troops, and will be best adapted to repel invasion, and protect what, in the event of annexation, will be our western border."

Thus this Government took possession of the Rio Grande country in the name of Texas, asserting it as the frontier of that State.

5. It is well known that Mr. Donaldson, pending the negotiation of annexation, and during the session of the Texas convention which consummated it, gave repeated assurances to the authorities of Texas that the United States would not only recognise, but maintain, the title of Texas. In his letter to this Government of the 11th of July, 1845, he says:

"The boundary of Texas, as defined by her statutes, runs up the Rio Grande from its mouth, in the sea, to its source, cutting off portions of Tamaulipas, Coahuila, and New Mexico. Above the point on the Rio Grande, where it enters New Mexico, there has been no occupancy by Texas; and it is obvious, so far as that region is concerned, no military movement could have taken it out of the category in which it is left by the terms of our joint resolution. So, whatever may have been the success of the attempt to drive the Mexicans from Loredo and other lower points, the difficulty would have remained the same in regard to the extensive Santa Fe region above.

"But, while from such views I encouraged no aggressive movement on the part of Texas to take forcible possession of the Rio Grande, I have nevertheless omitted no opportunity of satisfying all parties here that the United States *would in good faith maintain the claim, and that I had every reason to believe they would do so successfully*."

Such were the solemn assurances and pledges of this Government, through its accredited minister, pending the negotiation. They are a part of the compact, and prove conclusively its intent and meaning. Can this Government disregard them now?

6. It has been said that the United States *conquered* New Mexico, and held it by title of conquest. Such is not the fact. General Kearney, in his first speech to the people of New Mexico, August 15, 1846, at Vegas, as found in Emory's report, declared:

"*Mr. Alcalde and people of New Mexico:*

"I have come amongst you, by the orders of my Government, to take possession of your country, and extend over it the laws of the United States. We consider it, and have done so for some time, a part of the territory of the United States. We come amongst you as friends, not as enemies; as protectors, not as conquerors. We come amongst you for your benefit, not for your injury."

What was this but an assertion of the Texas title, and how else had it been for some time a part of the territory of the United States? The President of the United States admitted, on application of the Governor of Texas, that the United States held the country in subordination to the title of Texas. This appears by his special message of July, 1848, in which it is quoted as follows:

"In answer to a letter from the Governor of Texas, dated on the fourth of January, 1847, the Secretary of State, by my direction, informed him in a letter of the 12th of February, 1847, that in the President's annual message of December, 1846, 'You have already perceived that New Mexico is at present in the temporary occupation of the troops of the United States, and the government over it is military in its character. It is merely such a government as must exist under the laws of nations and of war, to preserve order and protect the rights of the inhabitants, and will cease on the conclusion of a treaty of peace with Mexico. Nothing, therefore, can be more certain than this temporary government, resulting from necessity, can never injuriously affect the right which the President believes to be justly asserted by Texas to the whole territory on this side of the Rio Grande, whenever the Mexican claim to it shall have been extinguished by treaty.'"

Without a violation of all law and justice, this possession cannot now be set up against Texas.

7. The title of Texas was asserted by the declaration of war by Congress, that a state of war existed by Mexico, which consisted only in Mexican soldiers crossing the Rio Grande and committing hostilities near its banks. To deny the title now is to change the character of the war into one of aggression and conquest, and bring unmerited reproach upon the country.

8 Pending the negotiations for peace with Mexico, our commissioner, Mr. Trist, asserted the Texas title, and said: "Until ascertained by a compact or agreement, definitive or provisional, between the United States and Mexico, the boundary between the two republics, when considered by the United States with reference to the national obligation to protect their territory from invasion, *could be none other than that very boundary which had been asserted by Texas herself.*" This assertion was carried into the treaty with Mexico by attaching to the treaty, and making a part of it, a map which conformed exactly to the claims of Texas, and placed New Mexico on the west bank of the Rio Grande. This is absolutely conclusive of the question. It was the intention of Mexico, in this treaty, to redeem her faith pledged to Texas in the treaty of 1836, as appears by the declaration of her commissioners, who negotiated the treaty with the United States in their address to their countrymen.

"The intention (say the commissioners) of making the Bravo a limit, has been announced by the clearest signs for the last twelve years; and it would have been impossible at the present day

to change it. *After the defeat of San Jacinto, in April, 1836, that was the territory which we stipulated to evacuate, and which we accordingly did evacuate, by falling back on Matamoros. In this place was afterwards stationed what was called the army of the north; and though it is true that expeditions and incursions have been made there even as far as Bejar, we have very soon retreated, leaving the intermediate space absolutely free. In this state General Taylor found it, when, in the early part of last year, he entered there by order of his Government.*"

9. Texas being admitted into the Union with certain and specified boundaries, Congress has no more power to legislate upon or disturb them than those of any other State, any further than it is given by the resolutions of annexation. Congress has no more power over the boundaries of a State of the Union than those of a foreign State. This is the settled doctrine of the country, and was asserted even by Col. Benton; in debate in the Senate, on the 14th May, 1844, he said: "The Republic of Texas acts by its name, and passes itself to us in the whole extent of all the limits and boundaries which it asserts to be its own."

In his remarks on the joint resolutions for the annexation of Texas, February 5, 1845, Colonel Benton declared, "In fact, when once admitted as a State, she can never be reduced without her consent. The Constitution forbids it." This was his construction of the compact of the resolutions of annexation.

This compact gave to this Government but one power, that of negotiating the boundary with Mexico. That power would have been extinguished by the treaty in removing the possibility of a question of boundary with Mexico, if the treaty had been silent on the subject. But the treaty *settled* the question by embodiyng an authentic map, which expressly recognises the boundary as asserted by Texas. This right while it existed could only be exercised in a particular manner, that is, by the treaty making-power. It did not pertain to Congress.

10. It is quite preposterous to assert that the United States, while acting as the negotiator and trustee of Texas, could have acquired the subject matter in opposition to the title of Texas, either by the treaty or otherwise. To impute such an intention to this Government is to charge it with an act which a court of equity holds to be the worst species of fraud. It never permits the agent or trustee to buy or deal in opposition to the principal or beneficiary.

It has been asserted that the United States, under this power to settle the boundary of Texas with "other governments," was no more the trustee of Texas than the other States. This proves too much. It maintains, that the Government has a general power over the subject of State boundaries, or that the provisions of the compact of annexation did not enlarge the jurisdiction of this Government over that question of boundary. It in effect denies the special limited authority. It makes the Government a party to acquire, instead of an agent to adjust. It arrives at no practical result, because the power must be exercised according to the law of its creation; and one *party* cannot settle a controversy without the consent of the other. In short, it is quite absurd to suppose that the United States could purchase and succeed to the rights of Mexico to this contested boundary without the consent of Texas. This Government did not relinquish any of the boundary of Maine without the consent of that State, although Great Britain was in actual adverse possession Was any one so obtuse as to assert that the United States could acquire it in opposition to Maine?

11. The resolutions of annexation, *in terms*, fix the boundary with mathematical precision as to *all* the country south of 36° 30', and sufficient north of it for at least one State. They provide for new States, and declare, "And in such State or States as shall be formed out of said territory *north* of said compromise line, (36° 30',) slavery or involuntary servitude (except for crime) shall be prohibited."

This is a declaration that the country north of that line, sufficient for a State, belongs to, and is rightfully included within, the limits of Texas. A title with such a boundary would be sufficiently certain to authorize a recovery in ejectment between private litigants. A surveyor could go upon the ground and set up the metes and bounds. As to all below 36° 30', it is utterly *impossible* that there can be *any* dispute about lines. In his speech of yesterday, Col. Benton says:

"The Missouri compromise line was a curtailment of slave territory; the Texas annexation resolutions were the same."

How could the Texas resolutions be a curtailment of slavery, if the country which she claimed north of 36° 30' was not her territory by right? That the intent was to admit Texas with the boundaries claimed by herself, subject only to the right of adjusting them with others, is further demonstrated by the provision of the resolutions that the State "shall also retain all the vacant and unappropriated lands lying *within its limits*, to be applied to the payment of the debts and liabilities of said Republic of Texas; and the residue of said lands, after discharging said debts and liabilities, to be disposed of as said State may direct." What *limits* had the Republic, but those she set up and asserted by her own political action? It is obvious that the reference is to them and no other, especially when all the provisions are taken together.

Mr. Chairman, Texas is strong in the legal force and justice of her claim. She will be strong in the sympathy and support of the South. for the precedent which would permit Congress to appropriate any portion of her territory to free soil, would open the flood-gates of abolition upon the institutions of every Southern State within the confederacy. I am quite certain that, but for this sectional question, her title never would have been the subject of contest.