SPEECH

OF

HON. SAMUEL S. BOYD,

DELIVERED

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JUDGE BOYD remarked:

FELLOW-CITIZENS,—We have passed through a severe contest, and achieved a signal victory. It was an American contest, and a constitutional victory. In no other land beneath the sun could a similar result have been brought about by similar means. It is not necessary to search the records of ancient history to shew how these struggles of opinion have hitherto been conducted.—This truth is strikingly illustrated by the conflicts which have convulsed modern Europe, and are still shaking the foundations of society with a half-smothered violence. These are but struggles of opinion, and yet they have caused seas of blood to flow. Witness the sad scenes of sanguinary strife in glorious Italy, in Germany, Hungary, and indeed throughout central Europe! Behold the melancholy spectacle of France, the so-called Republican France, marching her armies and lending the voice of her cannon to assist Despotism in crushing the holy aspirations of the Roman people for that freedom which was to them a birthright—the brightest inheritance from past ages of glory! This is the shame-spot on the civilization of the nineteenth century. The newest-born of Democracies turning her scarcely recovered powers with brutal ferocity, against the oldest of Republics, and crushing with the horrible engines of destruction, the kindling sparks of Liberty, reawakening in the ancient temple of Freedom!

But the agitation which has affected this country throughout its length and breadth, is thus far peaceable, and the only true Republic on earth, the only government under which genuine liberty —liberty regulated by law—is enjoyed, is still unstained with the blood shed in domestic strife.

True, there are Northern fanatics and Southern ultras, but their designs are yet unattended by success. Many who are acting with these men are ignorant of the fact that the agitation which they are mutually inflaming, had its origin in British designs upon the prosperity of this country, and the integrity of the Union. This is the truth, however. In 1833, England emancipated her slaves in her West India Colonies; and in 1835 she commenced by her emissaries the work of abolitionism here. And from that day to the present, the war of opinion in reference to the institution of slavery has been going on. She has pursued it with an eye that never slept, and a hand that never wearied in the cause. She has kept constantly before her the single object, of controlling by all and every means the manufacturing industry of the world, and adding that conquest to her boasted commercial supremacy over the seas. The attitude of Mississippi on this subject has been the same throughout. Her position has been to maintain the Constitution unchanged; her cause has been triumphant, and danger from this source—imminent danger—has disappeared forever.

To understand fully our condition, it is necessary to bear in mind the nature of the danger we apprehended. It was that the Constitution did not afford the South a sufficient protection on this vital interest; or rather, that its guarantees in our favor would not be respected or enforced; that the legislative powers of the Government might be turned from their proper, constitutional channels, and perverted to our great injury and perhaps ultimate destruction. Upon these points, Mississippi spoke in language not to be misunderstood. The grounds taken by her in her preliminary Conventions of May and October 1849, were that she never would consent to the exercise of the powers

of the General Government to her oppression, or in any way to the prejudice of her interest in slave property. She would never submit to the abolition by Congress of slavery in the District of Columbia, nor to the prohibition of the internal slave trade between the States. She would not tolerate any action which would affect slavery in the different States of the Republic. She asserted that she would not submit to any of the anti-slavery provisos that had been proposed at different times in Congress as a portion of the governmental law to be given to the territories. Again and again she took and reiterated the position, that she would not permit any change in the organic law on this subject, and would insist to the last, that all her rights in this respect under that instrument should be secured and respected. By a reference to the resolutions passed at those Conventions, these facts will appear beyond dispute. This was all that was asked. Respect for the organic law as it is, and a rigid enforcement of the laws under it.

We are then solemnly called on to determine, what has been done by the General Government—not by mobs or lawless individuals—to violate any of these declarations of the rights and wishes of the people of Mississippi. To consider this question was the sole object of the Convention to meet in November next; to deliberate upon the relations between the Federal Government, and the government and people of the State of Mississippi. That Convention was not called upon to say whether the speculative opinions entertained in this or that section of the nation were correct; nor whether the views of distinguished statesmen, Webster and Clay, or Cass and Dickinson, were orthodox; nor whether the Northern or Southern ultras were right or wrong in their reasonings; but to determine the point whether Congress had by any of its acts violated the national compact of Union. The language of the act calling the Convention directs its members "to consider the (then) existing relations between the Government of the United States and the Government and people of the State of Mississippi, to devise and carry into effect the means of redress for the past and obtain certain security for the future, and to adopt such measures for vindicating the sovereignty of the State and the protection of its institutions, as shall appear to them to be demanded."

Such, and such alone, is the duty which, by repeated instructions from the people, your Delegates will be bound to perform in the coming Convention, and such is, in fact, our duty in this hour of patriotic conference and re-union.

To understand fully the groundwork of dissatisfaction and complaint, it is absolutely indispensable to examine in detail, the five measures of compromise passed at the last session of Congress, and to ascertain their true character when squared by the Constitution. Three out of the five were confessedly Southern measures, and the other two, it will be easy to show, involve no violation of the Constitution.

The first one in the list of grievances complained of, was the Bill "to suppress the slave trade in the District of Columbia." This act prohibited the bringing into the District of any slave whatever, "for the purpose of being sold, or for the purpose of being placed in depot to be subsequently transferred to any other State or place, to be sold as merchandize." And for any infraction of this law "by the owner or by the authority or consent of the owner, such slave thereupon became liberated and free." It is asserted that by this act, Congress usurped, and actually exercised the power of emancipating a slave. This is a great error, and one so often committed, that it seems proper to examine it minutely.

In the first place, the Act in question is not an act directed to the subject of slavery. Its sole object is the punishment of an offence, and it comes under the head of crimes and misdemeanors, and not of emancipation, or intermeddling with property. It is penal in its nature, and the penalty for a violation of it is the loss of the slave. The slave so emancipated or made free, does not obtain his freedom by virtue of this legislation of Congress, but by the act of his master himself. The crime of the master is punished by the loss of his slave, but the loss thus incurred is not the result of the law. By no means: this law might remain in force forever, and the relation of master and slave in the District be in no way affected by it. The loss would be the same to the master, and be traceable to the exercise of the same kind of power by Congress, if the penalty had been a sale of the slave. It would have been only a different method of exercising an admitted power. An illustration that cannot be misunderstood, is found in the passage of all those Acts of Congress within the District, which provide for the capital punishment of slaves. In all such cases, no one supposes that the property is taken from the owner by the law, or lost to the master by force of the statute.

But another view of the matter is quite as satisfactory. It may be confidently asserted that the whole operative part of this act is derived from Maryland, and not from the United States Government. The District of Columbia was ceded to the United States in 1791. By the articles of cession, it was stipulated "that the jurisdiction of the laws of this State over the persons and property of individuals residing within the limits of the cession

aforesaid, shall not cease or terminate until Congress shall by law provide for the government thereof under their jurisdiction, in manner provided by the article in the Constitution before recited."

The eighth Section, Article 1st, of the Constitution, authorizes Congress, "to exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States and the acceptance of Congress, become the Seat of Government of the United States."

After the cession, and before any legislation on the subject, Maryland in 1796 passed a law, "prohibiting the introduction into that State," by land or water, of "any negro,mulatto, or other slave, FOR SALE, OR TO RESIDE *within this State; and any person brought into this State as a slave, contrary to this act, if a slave before, shall thereupon cease to be the property of the person or persons so importing or bringing such slave within the State, and shall be free.*"

Inasmuch as the Act of 1791 did not expressly provide for future legislation by Maryland, Congress expressly adopted the act of 1796 just referred to, by a law passed in 1801, during the administration of Mr. Jefferson. That enactment provided that "*the laws of the State of Maryland as they now exist*, shall be and continue in force in that part of the said District which was ceded by that State to the United States." It will thus be clearly perceived, that there was a law of Maryland in force in the District from 1796 to 1850—the date of the Compromise Acts—by which it was unlawful to bring into the District any slave either "FOR SALE OR TO RESIDE," and that the penalty of this act was the freedom of the slave. And the Supreme Court of the United States have twice given their deliberate sanction to this view of the law and its penalty—once in 1835, and again, as late as 1844.

Now the Act of Congress which we are considering, did not alter the law of Maryland as to the crime or penalty, except to render it lawful to introduce slaves into the District, for the use of the inhabitants, or to reside there. Congress did but re-enact the Maryland law, which was and is in force whether re-enacted or not, and repeal the prohibition contained in that law against residents of the District introducing slaves for their own use. That provision pressed severely on them. It was repealed by Congress; and this is the only part of the act which derives its force and sanction from Congress. The rest comes from Maryland. If the act of 1850 should be declared void to-morrow, the Maryland law—a much more oppressive one—would still be in force. The former is the least obnoxious of the two. It is but an affirmation of the old law, leaving out that which was most objectionable in it. Congress has not abolished slavery by the legislation referred to in the District of Columbia; and when at the late session a direct attempt was made to effect that object, it received but five votes, and was, in connection with what has been actually done, a virtual acknowledgment that no power existed in the legislative department to accomplish that end.

As to the total absence of such power in Congress there can be no reasonable doubt. And that the consent of Maryland cannot give it is equally clear. If it exists at all, it must be by virtue of the Constitution alone, for Congress has no powers not traceable to that source, and the consent of all the inhabitants in the District, cannot add one jot to the constitutional functions of Congress. The right to destroy property in slaves is not a legislative power. No legislature even of the States, can exercise it. It belongs to the people in their highest capacity, and unless granted by their Constitutions, has no existence at all.

But if this act were as objectionable as it is contended, what would be the remedy? Not nullification or secession! Every injury inflicted under it, would furnish a case for the action of the judiciary, to which the judicial power of the Government expressly applies. Nor until that, and an effort at repeal, and every other proper and lawful means of redress had been exhausted, could State interposition be appealed to. This is the extreme medicine of the Constitution, and ought to be applied only where all other remedies fail, and when the disease would otherwise prove fatal. He is a bad adviser in civil contests, who takes a final position which he cannot maintain. He thus gives a double strength to his adversary; and the Southern man who makes a precedent where none exists, may possibly be patriotic, but he is certainly not very wise. The time may not be distant, when the acts of such men may produce more difficulty and embarrassment to the South, than all the covert designs and secret machinations of our avowed foes.

We have thus gained one of the chief points always contended for by Mississippi, that Congress shall not abolish slavery in the District of Columbia.

The next feature in the Compromise, was the Fugitive Slave Bill. Is any person here dissatisfied with it?—Would any one vote for its repeal? Did any deny the power of Congress to pass it? These are questions to be put to every Mississippian, and they cover the whole controversy on this point. Nothing was said in either of our Conventions in May and October, 1849, on

this subject—why I know not—yet it was the turning point on which all the agitation had hinged. It was the *Experimentum Crucis* of the Constitution! In one essential particular, it was of more importance to us than all the other measures of compromise put together. It is the precise point, in which the non-slaveholding States are made to feel and acknowledge the pressure of the organic law; to feel that slavery is their institution as well as ours; a basis of their constitution as well as ours; a thing recognized, guaranteed and protected by that highest law—the fundamental law, common to both sections of the Union.

This bill was passed by Southern men for the defence of the South. It was for the protection of the South, but to be executed by the North. Every letter and line of it was prepared by its friends, without hindrance from any quarter, and with that single object. Indeed so anxious were the Senators from the non-slaveholding States, to leave the whole matter to their Southern colleagues, that they allowed it to run through all its stages, even to the final passage, without even voting on it; leaving it throughout, with those who were most interested in its terms and execution. The defects of the act of 1793 were all remedied by it, and the duty of enforcing it, was placed in the hands of Federal, and not State officers. Admitting it were true that the laws, so framed and passed, cannot be executed, the blame does not fall on Congress; it cannot be said that the law-making power has failed to perform its duty, and its whole duty. It may be said that the people of the North have been, in some instances, remiss, or even criminal on this subject, but no censure will lie on Congress. In regard to all the other acts of the Compromise, there might be some differences of opinion among us; but this was the act of acts; the only one of them all by which the people—all the people—of the several states, were made to feel the national obligations of the Constitution upon them. Wherever that law goes, non-intervention ceases! It requires an active, and not a passive patriotism! It makes personal action, and not inaction, the national duty, of every man, woman and child in the Republic! Doubtless the law may be and has been obstructed. It is not self-executing, and cannot be so. No law can execute itself, and every law that may be enforced may also be resisted. And this law has been resisted even unto blood! But all this has found no sanction in the social systems or organizations of the free states. It has proceeded from secret machinations, treasonable combinations, or lawless mobs; and these may exist anywhere, and under any government.

If the day should ever come, when a solemn and deliberate intention is evinced by the non-slaveholding states to deny the obligation of this law, and to render it nugatory, or to deny us in effect the full benefit of the express guarantees of the Constitution in our favor, then I say it will be time for us to take counsel together and to consider soberly and unitedly the proper mode and measure of redress. Should such a contingency arise in my day, I for one shall not be found wanting in my duty to my country. The Constitution that will have ceased to protect us, will no longer be worthy of support.

But no such design has been exhibited by the States, or the people. Just enough of outbreak and restlessness has been manifested, to arouse them from their apathy, and compel them to their duty. And there is no sufficient reason to doubt of the result. They may be willing, when the times are quiet and untroubled, to allow our fugitives to find an asylum in their midst. They might even not object to giving them "aid and comfort," in a quiet and peaceable manner. But when such a course comes to involve them in the harboring a band of outlaws and murderers; when they are called on to resist the highest law of the land, and commit treason on their behalf, they will no longer remain passive. If they cannot relieve themselves from this reproach as communities, they will take the short method of driving them beyond their borders, and sweeping them away as with the besom of destruction! No state can afford to risk the consequences of a contrary course. And the result has already begun to show itself. You will see it in the recent action of Indiana, in incorporating into her constitution by an overwhelming majority, a prohibition against all future emigration of colored persons. The National and State Judiciaries, too, have hitherto been faithful. In Michigan, Vermont, Pennsylvania, New York and Massachusetts, they have sustained your rights, and have set forth and illustrated the obligations of the law and the duties connected with it, in a manner that it would be difficult for Southern jurists to surpass. I have heard of but one judge in the U. States, who has ventured the assertion that the law is not constitutional, and ought not to be enforced. And this opinion is without weight, for it partook of the indiscriminate phrensy of the inebriate politician, rather than the deliberate wisdom of the Judge. The fugitive slave law is a wise, just and constitutional law, and will, I doubt not, be finally faithfully executed. Meanwhile, you have all the assurance that can be required, that no violation of it can occur, without bringing down upon the offenders, the full powers of the Federal and State Governments.

A conspicuous portion of the platform of the South, at the opening of this controversy was, that we would not permit anti-slavery provisoes to be affixed to any bills for the government of the territories acquired from Mexico. Have any such provisoes been attached to those bills?—Was there any thing enacted in either of them, to prevent a Southern man going there with his slaves? None—emphatically, none! Congress had carefully abstained from the exercise of any such power. And this was what we insisted on in our May and October Conventions. I am aware it has been insisted on high authority, that the law of Mexico prohibiting slavery, prevails in the territories acquired from her by war and treaty, and that it so prevails in virtue of the Law of Nations. I shall undertake to prove the contrary, and as the point is somewhat difficult, you will pardon me for asking your special attention.

No one will contend that one nation can make laws that shall of themselves, or by their own inherent force, be binding on any other nation. No government can rightfully usurp the legislative functions of another. The laws that bind a people, must proceed from the law-making power which they have established for themselves. The principles of the Laws of Nations contended for, do not, when properly understood, conflict with this view. They are not the result of direct enactment, but rather a Code of conventional rules adopted from time to time, to meet the exigencies of society, in those relations that are not provided for by direct municipal regulations.—They form the rules of action and guidance for nations in their intercourse with each other, whether in peace or war. Their operation in every particular State, depends not absolutely on their intrinsic force, but may always be

referred to silent acquiescence or adoption. As anciently known and recognized, they have sprung up from immemorial time, among nations having regal or despotic powers, and of a homogeneous character. I mean by this, that their governments were of such a character, that each and all of them might accede to the National Code, without violating any principle of their separate governments. This indeed flows as a corollary, from the fact that their effect in each particular state is derived from adoption. For the adoption of any law, is the creating it, as to the people by whom and over whom, it is adopted. Examining now, this alleged principle in its application to our country and government, and admitting its existence within certain limits, you will see why it cannot be applied to the prejudice of the Southern States, on the question of slavery in conquered, or otherwise acquired territory.

I take these two positions.

First. The principle of the Law of Nations on this head is based upon, and limited by considerations of humanity, that apply to the conquered people—and not to the conqueror, otherwise than as he identifies himself with them.

And second. That under our government and constitution, no such principle can be acquiesced in, adopted or enacted, because there is no power in any or all of the departments of the General Government to create or destroy slavery anywhere.

When one nation conquers another in war, a new relation springs up between them. The political existence of the one is destroyed or merged in the other. But the force of arms is not directed against the municipal regulations of any people; it has no other object than to beat down the uplifted arm of the belligerent, and silence or overcome his resistance. When this is done, a new state of things arises; a new sovereign is acquired by the conquered, and a new people by the conqueror. New duties—of obligation, on the one hand, and protection, on the other—immediately commence. Doubtless the conqueror may by the exercise of his law-making power, wherever that may be lodged, repeal all the old municipal laws, and establish others in their stead; but until he does so, they remain from necessity, the nature of the case, and the claims of humanity. It is not to be tolerated that a civilized and organized community, forced to yield to a superior military force, should be deprived of all rules of ordinary government, for the guidance of its people in the various relations of society, and be thrown back to a state of barbarism. Hence those and such like rules remain in force until repealed. But their only object is to save the conquered race from anarchy. It is for *their* benefit, and not for the benefit or to the prejudice of the conqueror. Should any of the subjects of the conquering power go into such territory, doubtless their conduct in what was to be done or transacted by themselves, or in reference to any relations of contract or obligation there created, would be subject to the same regulations as the resident or native citizen; because there would be no other law there, under which any rights could be acquired. This is the extent, and shows the limit of the principle. It excludes all idea of the political power remaining after the conquest; it confines the operation of it to the territory. Thus understood, this principle can have no application to slavery, or any other relation actually and lawfully existing under the laws of the conqueror, and wholly independent for its creation upon the foriegn law.

An illustration will suffice for this part of the argument. Supposing slavery to be forbidden in Mexico by the Mexican law. Then it would be impossible for a Mexican or an American, since the conquest of those territories to go there, and establish or create that relation described in our Constitution as "the relation of service or labor under the laws of a State." Not because such a relation cannot exist there, but because there is no method of creating it by any law there in force. The same may be said of every other contract or relation of society, concerning which their laws differ from ours, or else make no provisions whatever upon the subject. Marriage, legitimacy, bond-service and every species of contract, come under the same principle. A different case is, however, presented, when it is contended that these foreign laws act back on the conqueror, and destroy rights, relations and contracts lawfully subsisting among his people. If, without seeking to establish these relations under the territory or its laws, a subject of the conqueror goes there to enjoy his pre-existing rights — rights existing under his own laws—no rule of law or reason can, or will allow such rights to be annulled, such relations to be destroyed, or such contracts avoided. A citizen of America may go to the territories acquired from Mexico, with his wife and children, his servants, whether bound for a term of years by contract, or held for life to service and labor under the laws of a State, without fear that he will be divorced, his offspring bastardized, and his relation of master destroyed by any fancied rule of national law. I will pursue this part of the subject no further.

My second position is, that there is no power in the Government to adopt or assert such a principle of the Law of Nations, if it exists elsewhere. Ours is a Constitutional Government, and no municipal law can be binding on our citizens anywhere, unless it can be traced in some way to the Legislative power. There is no legislative power in the General Government, but what is granted by the Constitution; and that—*all of it*—is "vested in a Congress of the United States, which shall consist of a Senate and House of Representatives." Treaties are a part of our Supreme Law, but they are chiefly operative by furnishing rules of national intercourse, and are not designed to prescribe municipal regulations for the government of the citizen: at all events, they cannot be employed to create rules of action which are forbidden to the legislative power, or are not within its scope. They may therefore be thrown out of the view in this enquiry, since there is no pretence that our treaty with Mexico either could or did abolish

slavery in the territory. The American negotiator refused even to listen to such a proposal.

Looking then to the legislative power under our Constitution, and that alone, it may be confidently asserted that such a right, as that claimed to prohibit slavery in those territories does not exist; and if this is admitted, then the legislative power cannot adopt a law existing there which does prohibit it, for that would be in substance and effect, the enactment of a prohibition. This must be so, unless the local law has effect there, in and of itself, which has been already disproved. Could our own people have passed such laws there, had they found the territory vacant? No one contends for this, until they are in the act of forming a Constitution, and then they can act as they please on the whole subject. How then can the vanquished Mexican pass laws against his conqueror, which our own citizens could not do?

It is not denied that other Governments differently constituted, might be bound by a different rule. But ours is limited by the Constitution, and cannot directly or indirectly exceed the grants of power there given. There are, and must be therefore, many principles of the Laws of Nations, which have not, and cannot be made to have any bearing upon us as a nation. This very point has been clearly stated by Chief Justice Taney, in reference to the duties levied by our army at Tampico, while that port was in possession of our troops. He declared that conquest, under the laws of nations, made the subjugated territory a part of the property of the conqueror. But that under our Constitution, neither the Army nor the Executive could add to the boundaries of the Union, by subjecting neighboring provinces to our sway; but that the treaty-making power alone extended to such a case.

Gen. Washington gave a similar intimation in 1794, when urged by Mr. Hamilton and Mr. Randolph, to give certain positive assurances and guarantees as President, to Great Britain, concerning indemnity to be allowed by our government under Jay's Treaty, for British vessels taken by French privateers, contrary to established rules. He considered that anything beyond a mere expression of opinion, would be an interference with the proper prerogatives of the Legislative department, and declined to comply with their request. He said:

"Although the usage of Nations may be opposed to this practice, the difference may result from the difference between their Constitutions and ours, and from the prerogatives of their Executives. The powers of the Executive of this country are more definite and better understood, perhaps, than those of any other country; and my desire has been and will be, neither to stretch nor relax them, in any instance whatever, unless compelled to it by imperious circumstances."—Vol. 10, Spark's Life, &c., pp. 419—422.

In fact the whole idea in reference to this point, so prejudicial to us, has derived its force from the recognition of Governments, whose Executive possessed a portion of legislative power. It comes from the civil law writers, who define Law to be that which the King or Prince wills—"*Quicquid placuit regi, habuit vigorem legis*"—and Liberty the right to do that, which is not forbidden by law or the will of the Prince. Thus in 1774, Lord Mansfield declared:

"No question was ever started before that the King had a right to a legislative authority, over a conquered country; it was never denied in Westminster Hall; it never was questioned in Parliament."

So Lord Coke in the time of James the First asserted:

"If a King come to a Kingdom, by conquest he may, at his pleasure, change and alter the laws of that Kingdom, but until he doth make an alteration of those laws, the ancient laws of the Kingdom remain."

And again Lord Mansfield used the following language, which has been ever since adopted, to state the proposition:—"The laws of a conquered country continue in force, until they are altered by the conqueror."—They were adopted or silently acquiesced in *by the legislative power of the King*, and that rendered them subject to the important corollary stated by Lord Mansfield in his Sixth Proposition:

"If the King, and when I say the King, I always mean the King, *without the concurrence of Parliament*, has the power to alter the old and introduce new laws, in a conquered country, *the legislative power* being subordinate to his own authority in Parliament, *he cannot make any new change contrary to fundamental principles.* He cannot exempt an inhabitant from that particular dominion, as for instance, *from the laws of trade, from the power of Parliament, or give him privileges exclusive of his other subjects, and so in many other instances.*"

You will thus see that these limitations on the Laws of Nations, so clearly set forth by the most learned Judge of his day, are sufficient to prevent the application of them to the question of slavery in the territories. Because it would be indirectly legislating out of existence a "fundamental principle" of our Constitution, and destroying by the law-making power one of its bases. By keeping in mind, that there is no legislative power in our Government but what belongs to Congress, the application of these principles and reasonings will be readily made. You will especially observe how idle a thing it is, to require Congress to repeal the alleged Mexican laws, which never could have had any existence against us.

The erroneous views entertained on this subject have been more injurious to the South, than any direct doc-

trine of Abolitionism. It was owing to their existence that the Clayton Compromise bill was lost, at a moment when the whole difficulty could and would have been settled satisfactorily to us all. To the same cause we trace two other of the most pernicious opinions, with which we have had to contend, and the existence of which is still felt. I speak, *first*, of the idea that positive legislation was necessary to authorise the introduction of slaves into the Mexican territories; and *second*, of the mischievous heresy of Non-Intervention, as understood in the non slaveholding States. This doctrine has placed our chief pecuniary interest beyond the pale of the Constitution; has isolated us from the protection of law, and given countenance to the prevalent idea, that the citizen of the North has no duty under the law enacted for our benefit but a passive one, when our safety requires a constant, bold and active one on his part, by which alone the integrity of the Republic can be maintained.

Thanks be to God, that the scales are falling from the eyes of those blind leaders of the blind, who have inculcated these notions, and our rights are again placed under the Constitution, as they were in the beginning.

The action of the Nashville Convention on this subject was decisive and important, and as it seems to be misunderstood in this and other particulars, I crave your attention to an examination of it, somewhat in detail. You are aware that I was associated with the three Judges of the High Court of Errors and Appeals, to represent the State at large in that assembly. The honor was conferred without solicitation on my part, and my election was the first notice I had of the intention of the legislature. So far as concerned me, no pledges were asked or required. Having no political aspirations, and wholly regardless of that popularity which is, however remotely, connected with office or place, and being deeply interested in the result of the questions then agitating the public, and with the conviction that the integrity of the Republic was in imminent jeopardy from ultraism in both its sections, I entered this Council of Southern men, with a full determination to use my humble abilities with fidelity to the State, to allay all unnecessary heat and excitement, to obtain a united, firm and just exposition of our rights under the Constitution, and to insist on their remaining untouched by the action of the General Government. I confess I had fears—many fears—that rash counsels might prevail, or that there might be a successful effort to commit us to extreme opinions. Every thing looked threatening, and it appeared to me the only chance of safety lay in a firm adherence to the Constitution.

I never hesitated to meet Southern men in council, and thought if we could not agree among ourselves, it would be hopeless to expect others to unite with us. There had been Conventions in other parts of the country in reference to other great interests—the iron-mongers, the woolgrowers, the manufacturers and the abolitionists, had all endeavored to push forward their peculiar views by that sort of concert ensured by meetings and conventions. It is the American way of obtaining objects of general moment, and the interests of the slave States were important enough, and in peril enough, to warrant a resort to it. I had no hesitation on the subject, and cheerfully consented to act as a delegate.

The first thing done after the organization, was to appoint a Committee on resolutions and propositions, consisting of two members from each State, (except Texas, which had but one delegate,) to whom was to be referred every resolution and proposition which might be the subject of debate. This arrangement, it is evident, lodged the whole power of the Convention in the Committee, and here it remained necessarily until it reported. Having been on that Committee, it is proper I should speak of its action, on certain points of great interest. A series of resolutions was referred to the Committee, as soon as it was organized. They had been offered by a gentleman from Alabama, and are chiefly what were finally passed, and constitute the first thirteen of the published Resolutions of the Convention. I am unable to say who was their author, but my belief is that they were prepared by Mr. Rhett, who was not a member of the Committee, but who was the author of the Address subsequently adopted. I judge so from their similarity in expression, and from a statement in the original Address, which was stricken out in its progress. It is as follows: "*In the resolutions we have adopted, and submit to your approbation*, you will perceive that we recommend you to assent to the admission of California *as a State*, on certain conditions."

It is important to notice that the series of resolves as passed, relates almost wholly to the territorial questions, and as soon as they were passed, the same gentleman who had offered them, notified the Committee that an Address had been prepared, which he doubted not would meet with their sanction, and requested the chairman to specify a time for calling them together to take action upon it.—Some objection was made, as another Committee had been appointed to frame an Address. The Committee was however called together, the Address read, and pushed forward to its final passage, with great zeal. Without particularizing or stating the grounds of my belief, which have since been much strengthened, I came to the conclusion; *First*—That that there was a design to keep open the agitation on the subject of slavery, particularly in the territories, and

Secondly, to commit the Convention to an ultimatum of some kind on this subject; to cause them to take a final step leading ultimately to separate State action or Secession; or as it was sometimes phrased, to "equality in the Union or Independence out of it!"

To prevent either of these results became from that time my sole purpose. My first attempt was to amend the address so as to conform to the thirteen resolutions already agreed upon, and then it was my intention, if successful, to add a series of resolutions filling up the gap left by the Committee, and covering the whole ground of slavery under the Constitution. For two days I labored alone and faithfully to secure the passago of such amendments, but without success. Although it was evident that the address, as it stood, could not be adopted by the Convention save by a bare majority of States, and a minority of members, still its friends were so wedded to it that all effort at change became hopeless. And yet this address, intended to speak for nine Southern States, contained such expressions as these!—

"You have waited until the Constitution of the United States *has been virtually abolished*, or what is worse, *is only what the majority in Congress think*

proper to make it. That great principle on which our system of free government rests,—of so dividing the powers of government, that to a common government only those powers should be granted, which must affect all the people composing it equally in their operation, whilst all powers over all interests, local or sectional, should be reserved to local and sectional governments,—*is uprooted* from their Constitutions."

"The power to emancipate the slaves in the District of Columbia is thus *claimed and exercised by Congress.*"

"Fugitive slaves are put," by the Constitution, "on the footing of fugitive criminals, and are to be delivered up *by the State* authorities."

"*Although the Constitution requires* that fugitive slaves, like fugitives from justice, should be *rendered up by the States* to which they may have fled," &c. &c.

"This (slavery) alone sets apart the Southern States as a peculiar people, with whom independence as to their external policy is the condition of their existence; *they must rule themselves or perish.*"

"But if our view of its provisions is correct, instead of 'a compromise,' it is *a comprehensive system of emancipation!*"

Besides these extraordinary and unjust expressions of opinion, there is a sin of omission in regard to the address, which cannot be too severely reprobated. In undertaking to explain the compromise bill as it relates to Utah and New Mexico, not one word is said about the Wilmot proviso being omitted from its provisions. Such a thing appears wholly irreconcileable with any just notion of candor and fair dealing.

Having failed in obtaining any amendments to the address, I again endeavored to do the next best thing, by drafting a series of resolutions having the effect of preventing any injurious inferences from it, and at the same time of setting forth our whole claim of right under the Constitution. Here allow me to introduce and read the 19th, 20th, 21st, 22d, 23d, 24th, 25th and 27th resolutions of the Convention, as follows:

19. *Resolved*, That the whole legislative power of the United States Government is derived from the Constitution and delegated to Congress, and cannot be increased or diminished but by an amendment of the Constitution.

20. *Resolved*, That the acquisition of territory by the United States, whether occupied or vacant, either by purchase, conquest or treaty, adds nothing to the legislative power of Congress, as granted and limited in the Constitution.

21. *Resolved*, That the adoption of a foreign law existing at the time, in territory purchased, ceded, or granted, is the exercise of legislative power, and cannot be done unless the law is of such a character as might rightfully be enacted by Congress under the Constitution, without reference to its pre-existence as a foreign law.

22. *Resolved*, That the alleged principle of the law of Nations, recognizing, to some extent, the perpetuation of foreign laws in existence within a territory at the time of its acquisition by purchase, conquest, or treaty, *cannot* under our Constitution and form of government, go to the extent of continuing in force, in such territory, any law that could not be directly enacted by Congress, by virtue of the powers of legislation delegated to it by the Constitution.

23. *Resolved*, That no power of doing any act or thing by any of the Departments of our Government, can be based upon the principles of any foreign law, or of the laws of nations, beyond what exists in such Department under the Constitution of the United States, without reference to such foreign law or the laws of Nations.

24. *Resolved*, That slavery exists in the United States independent of the Constitution. That it is recognized by the Constitution in a threefold aspect, first as property, second as a domestic relation of service or labor under the law of a State, and lastly as a basis of political power. And viewed in any or all of these lights, Congress has no power under the Constitution, to create or destroy it anywhere; nor can such power be derived from foreign laws, conquest, cession, treaty, or the laws of nations, nor from any other source but an amendment of the Constitution itself.

25. *Resolved*, That the Constitution confers no power upon Congress to regulate or prohibit the sale and transfer of slaves between the States.

27. *Resolved*, That is the duty of Congress to provide effectual means of executing the 2d section of the 4th article of the Constitution, relating to the restoration of fugitives from service or labor.

These, as you will see, forever put to rest the two preposterous ideas shadowed forth in the Address. *First*, that the Mexican laws prohibiting slavery were still in force in the territories, and must be repealed by an express act; and *Secondly*, that Congress has any power to establish or abolish slavery, either below or above 36° 30′, N. L. I found at first a serious opposition to these resolutions from several gentlemen, whose subsequent course as secessionists explains their motives of action. I cannot doubt that this opposition was owing solely to the fact, that they destroyed all pretence for agitation or complaint in regard to the recognition of slavery by Congress below 36° 30′, as well as to any alledged force in the ancient laws of Mexico.

My propositions were accordingly declared a string of truisms, and they asserted that we did not meet to enunciate mere axiomatic truths! If you, fellow-citizens, and the people of the South shall concur in this view, I shall consider it the highest compliment of my life. For it will be asserting that my efforts were successful in placing the rights of the South under the Constitution, in reference to the whole subject of slavery everywhere, upon grounds so simple that they admit of no dispute!

These resolutions, with those already spoken of, and some others relating to Texas, constitute the whole action of the Convention; and by them, and them alone, should it be judged, and not by the address promulgated. I am satisfied to be judged of now and hereafter, in respect to my fidelity to the South and the Union, by the spirit and sense of the resolutions above quoted. But the address, no earthly power could or can induce me to sign or approve. I resisted it in every stage of its progress, and now hope it is placed in a position where it will be powerless of mischief!

Before proceeding to show that the Address was not concurred in by the Convention, I desire to refer briefly to the 11th Resolution.

This resolution was not intended as a proposi-

tion of the line of 36° 30′ as an *ultimatum*, or as a measure desired by the Convention in any event. It was merely an indication of a willingness to acquiesce in that line being run, not as an extension of the Missouri compromise, but merely as a dividing line of property; the one party to take what was above, and the other what was below, as his own separate property, without any legislation by Congress on either side as to slavery. It was therefore neither a proposition, nor the Missouri compromise, nor intended as an *ultimatum*. The first part of it shows that it was not even a thing to be acquiesced in, unless "in the event that a dominant majority shall refuse to recognize the great constitutional rights we assert, and shall continue to deny the obligations of the Federal Government to maintain them." The phrase, "AS AN EXTREME CONCESSION," was inserted at the request of a gentleman from South Carolina, after the Committee had discussed and abandoned the word "*ultimatum*," and was intended to indicate that we considered we had a full right above as well as below °36 30′, and the concession was, in being willing to divide the property and take half in absolute ownership, instead of an undivided interest in the whole, liable to be interfered with by anti-slavery restrictions. And in that direction, and with that view, it was as far as we were willing to go. We would accede to it, but would not propose it; nor could we do so consistently with the principles avowed in the resolutions already referred to.

The action of Congress upon this subject has prevented the contingency suggested from arising, as they have not refused "to recognize the great constitutional rights we assert, nor continued to deny the obligations of the Federal Government to maintain them." On the contrary, Congress has abandoned the right to pass the Wilmot proviso, to abolish slavery in the District, to prevent the transportations of slaves from State to State for sale; has reversed the principle of the Missouri compromise greatly to our advantage in regard to New Mexico and Utah, the whole of the last and much of the first being above 36.30, and now open to slavery; and has given us a law fully to execute the constitutional provisions for the delivery up of our fugitives from labor and service. This is the result of the action of the last Congress, if you are satisfied to regard it as "*a settlement, a final settlemsnt, in principle and substance, of the exciting subjects embraced in the compromise measures!*"

The twenty-fourth of this series of resolutions, analyzes the constitutional features of slavery as it exists in the States. It places it on three grounds, —a fourth, that of a personal relation, being included in the second. They are as follows:

First, as property. In this aspect no one can rightfully maintain that Congress can create or destroy it.

Second, as a personal and domestic relation "of service or labor under the laws of a State." This, to us the most important, least objectionable and strongest view, has not been sufficiently noticed. The maddest fanatic on earth would hardly claim any authority in Congress to regulate the domestic relations existing under the laws of the separate States, or to take any action in reference to them that would tend, however remotely, to affect them within the limits of the Union. The Government was formed for no such purpose; the necessity for it grew out of no such interests or concerns. It was established solely to act upon affairs of a general nature, affecting all the people alike, such as commerce, navigation, war, peace and revenue. The grades and divisions of the social relations were not in jeopardy, either under the colonial rule or the Articles of Confederation. It was not with a view to touch them in any way or any where, that "the more perfect union" of the Constitution was required or formed. The enormity and injustice of the attempt to wrest the powers of the government in a different direction, cannot be more effectually shown than by this consideration. We have too often been led off, and wasted our strength in considering other phases of slavery; but this is its strongest defence, and most interesting character. We are unjust to oursevles when we forget it. The nearer we bring it to what it really is, a part of our social arrangement, and domestic, household life; the more favorably before the world do we place it, and the stronger under the Constitution. Could we relieve it entirely from any other condition, and cause it to be looked on no longer as a mere means of safe or profitable investment, we should do more for the safety and prosperity of the South, than by any achievement made since the Declaration of Independence. Our enemies would be disarmed, and our section of the Union be covered by an abounding prosperity we have never dreamed of, in the release of large amounts from a precarious and over-crowded staple production, to be employed in increasing a thousand-fold the spread of the mechanic and manufacturing arts among us, accompanied with all that diversity of persuit, which constitutes the source of the greatest prosperity, wealth and happiness of States and nations.

Thirdly, as a basis of political power under the Constitution. It needs no argument to show that Congress cannot change the source from which all its powers flow, nor displace one stone from the foundations of the Republic. Congress is the creature, and the Constitution the creator; and the former cannot succeed in any war upon the latter.

These are the sentiments of the Nashville Convention as unanimously expressed in the 24th Resolution, and I trust they are satisfactory to you, and will be so to the country.

The "Texas Boundary Bill" was incorporated with the New Mexican territorial bill, and they became a law in their united condition. The State of Mississippi in neither of its conventions, had expressed any opinion on this measure. [Judge Boyd here read that portion of the Nashville resolutions upon this subject, and briefly commented on their meaning. The 18th of them contained an important admission, applying equally to the whole subject. The language used was that the right of the people of Texas "is clear and unquestionable, and *cannot be strengthened by any mere legislative construction or guarantee.*" This, he said, was a clear constitutional principle. These legislative acknowledgments are of no importance to our rights, and may be prejudicial by encouraging the idea that they are really within the reach and control of legislation. He then proceeded to examine the Boundary Bill as follows:]

The purchase from Texas of her claim was certainly very far from being a denial of her rights. And, considering the amount paid, the acknowledgment of those rights would appear sufficient to satisfy the most fastidious. She was not forced to abandon it, but sold it voluntarily for what she considered a fair equivalent. The bill leaves the right of the people of Texas to form at the proper time, with the consent of that State, four new slave States out of its territory, clear and unquestionable, neither strengthened nor weakened "by any mere legislative construction or guarantee"—a right that is as fully acknowleged by leading statesmen at the North as at the South.

The assertion so often made, that a portion of Texas slave territory has been surrendered to free-soilism, is wholly untrue. I humbly hope I have already proved that the right to slavery exists in New Mexico under the territorial government, and is not in the least degree affected by any of the ancient laws of Mexico. It is unnecessary to repeat the argument. It may be briefly said, that until New Mexico shall form a constitution prohibiting slavery, no part of that territory has been, or can be surrendered to free-soil influence. Of her right to do that, no southern man dare to make a question. Is it necessary to go into any labored defence of the right of Texas to settle her disputed boundary as she did? That right was the absolute and necessary result of the ownership of co-terminous boundaries, and must be so, if she had a right to any boundaries at all. The claim of Texas as against the Federal Government, appears to me was well made and unanswerable, however it may have been against Mexico. But the people of New Mexico and the Federal Government took a different view, and in this condition of affairs, there were but two ways of adjusting the difference. Resort must be made to either negotiation or war. The first was wisely adopted, and the result was satisfactory to the authorities and people of Texas. He who claims to be a State Rights man, and denies the right of Texas to accede to this peaceful settlement, besides the horrible alternative which he alone leaves her, presents the singular anomaly, of insisting on the perfect right of a State to secede with all her territory and to dispose of it as she pleases, and yet of denying her just authority to sell a part, in adjusting a disputed boundary, and to prevent a resort to arms!

After the purchase of Florida from Spain, Alabama and Mississippi from Georgia, and the Mexican Territory from Mexico, it seems late in the day to question the constitutional adjustment of the boundary of Texas, in consideration of an equivalent satisfactory to her! Under the Constitution of the United States, she had a much more extensive power than this; and quite large enough to include it—I mean, the power to assent to forming a new State out of her territory. Her most distinguished Senator has since declared, that Texas had but a claim to this part of her territory, and that she had greatly weakened it, by treating with New Mexico as having an equal claim with her.

By this settlement the South actually gained a virtual repeal of the principle of the Missouri Compromise. Because all that part of Texas ceded to the Federal Government above 36 30, was freed from the restriction contained in the resolutions of annexation, and left at liberty to come into the Union as a free or a slave state according as the people willed. And something more than this was done by it in our favor. For if, as is contended, while a part of Texas it was all slave territory, then by incorporating it into and with New Mexico, without any restriction, it caused a part at least of the latter to be slave territory: and no distinction being made in the territorial bill, as to the source from which the country was acquired, in regard to the rights of the inhabitants, the door of New Mexico was actually opened to slavery instead of free-soilism!—The Texas Boundary Bill violated no rights of the South, but on the contrary was conformable to established precedents, and greatly beneficial to all parties concerned in it.

I now proceed to show that the Address of the Nashville Convention was not approved of by that body. When first reported from the Committee, several gentlemen were prepared to suggest various alterations. In fact so many propositions were made that its friends perceived it was in danger of being greatly modified or entirely defeated. At this stage, General Pillow made a few suggestions so reasonable, that they were at once concurred in by the Convention. Their character may be seen by comparing the extracts I have read from the original address, with that published in the final proceedings. Having produced a temporary calm, and a more conciliatory state of feeling among the members, the General proceeded to make a master stroke, by which the huge and rampant monster was to be deprived of sting and venom, and reduced to the harmless ferocity of "a sucking dove." I would you could have seen how gently and soothingly, how pleasantly and courteously, how without any apparent interest or anxiety, but only as if it were a mere matter of course, he executed the difficult task. Indeed it was done so handsomely, with so little shock to the nerves, that I doubt if the surrounding friends were conscious of the change produced upon their idol!

Without heat, but calmly, deliberately, and with an air of indifference, as if he were only about to correct a mere verbal error, he handed to the chair the following amendment to the last clause of the Address, stating that it would harmonize matters much to pass it, and would probably sa-

tisfy the Tennessee delegation, which, by the way, comprised nearly half of the assembly. Here it is; read it and ponder over it: and see if men ever certified further to their own folly, than those who concurred in adopting this Address, and putting it forth to the world after it was so amended.

"It is proper to state to you, that while we are unanimous in approving the resolutions accompanying this address, the Delegates to this Convention *are not entirely unanimous in approving all the arguments contained in it, particularly such as relate to the compromise bill pending in the* United States Senate, though none are in favor of that bill, unless it be amended in conformity with our resolutions, *or in such manner as shall substantially secure to the South the right asserted in them.*"

If you now take out from the address, "all the arguments contained in it, particularly such as relate to the Compromise bill," it will be a little difficult to tell what there is left to quarrel about! And this was what the delegates did not approve of, while the "resolutions accompanying it were unanimously approved by them!" It is but fair to judge them by what they did, and not by what they did not assent to. This will enable you to understand the discrepancy between the 11th resolution and that part of the Address, which requires a distinct recognition of slavery below 36.30. That was inserted in the Address, before the clause was stricken out, which proposed to admit California as a State, and related to that point. But after Pillow's amendment was adopted, no one cared to make any further effort to amend the address, considering it from beginning to end, of no moment whatever. Why should we quarrel about its terms, when we had inserted in it a declaration, that we did not concur in it ourselves? I had prepared a minority report, as a member of the committee, protesting against the general idea, running through the whole of that unjust document, and insisting that it was unworthy of a Convention of States to be engaged in deliberating upon any bill pending in Congress, or setting it forth, whatever might be its character, as a grievance. The absurdity of such a course has since been shown, because this very bill was defeated in the Senate, and thus was knocked away the whole foundation of the Address. My friend who held my protest, (I left two days before the adjournment,) very properly withheld it, doubtless deeming, as I did, that it was inhuman to carry the war into the hallowed precincts of the grave! The thing was dead, and that was, or ought to be, the end of it!

Fellow citizens, I am not competent to pronounce an opinion upon the military capacity of Gen. Pillow, nor do I know whether he follows correctly Vauban and Turenne in strategy, castrametation, or sapping and ditching and the other arrangements of war, but I cheerfully here bear testimony to his great skill and consummate address as a tactician in State affairs. He is fairly entitled to add the civil wreath to the laurels gathered on many fields of battle!

The last subject of examination is the admission of California. No doubt there were irregularities in the various steps preceding it; but they were irregularities only, when compared with precedents, and do not rise to the dignity of constitutional infractions. All of them but one existed in reference to Tennessee, Texas, Michigan, Florida and Arkansas. In these, or some of them, there was no previous census taken under authority of Congress, no act authorizing the formation of a Constitution, and foreigners were not prohibited from voting. The boundaries, too, of Texas were, and are, more extensive than those of California.

I have said there was one difference between some of these cases, and that of California; and this was, that California had no previous territorial government. Let us see whether this creates a constitutional difficulty. There is no express power given in the Constitution to acquire territory at all. If it exist, it is as an incident to some other power, and has been referred both to the war and treaty-making power. Hence arises the further incident, that if territory can be acquired, it must of necessity be governed, at least so far as to secure and carry out the expressly granted power to dispose of it as property. Now, it is evident, that where this necessity does not exist, the incidental power does not arise and need not be enforced. This was the precise attitude of California, when she applied for admission. Congress had criminally neglected, for two years, to provide any government, for the countless thousands of emigrants marching to the gold regions, from every part of the country. In that situation, exercising the privilege that belonged to them as American citizens, they met in Convention, formed a Constitution, eminently republican in its character, and then applied to be admitted as a State. The objection, that they had not passed through the process of a territorial government, is wholly without foundation. The Constitution made no such preliminary step necessary, or proper.

This question of irregularities, admits of another satisfactory answer. Congress, under the Constitution, is the sole judge of the admission of States into the Union. She has the sole authority to admit, and her action on the subject, under a government of constitutional law, is conclusive evidence that all pre-requisites have been complied with. When she assents to the admission, the question is forever closed. The principle is general, and applicable to all tribunals of exclusive and final jurisdiction.

No one doubts, that, if Congress had declared in advance, that the people of California might meet together, as they did, and form a Constitution exactly as they formed it, the proceeding would have been forever relieved from the charge of irregularity. Is not a ratification by Congress, of any act of which it has exclusive control, as valid and binding on all the world, as a direct authorization? Hear what Mr. Calhoun said, in 1837, in reference to Michigan:

"My opinion was, and still is, that the movement of the people of Michigan, in forming for themselves a State Constitution, without waiting

for the assent of Congress, was revolutionary, as it threw off the authority of the United States over the territory; *and that we were left at liberty* to treat the proceedings as revolutionary, and to remand her to her territorial condition, *or to waive the irregularity, and to recognize what was done as rightfully done, as our authority alone was concerned.*"

There was another circumstance, connected with the admission of California. It was quite certain that she could not be remanded to a territorial condition. If any one thing was settled, it was, that she would come in as a State, whether desired by the South or not. The outgoing and incoming administrations, had both urged a final adjustment of this exciting subject; and the opinion of all sections in Congress, had settled down, that California should come in. It became then, a question, whether this act should be consummated alone, leaving all other difficulties connected with the subject of slavery unsettled, or that all these sources of strife and danger should be closed with it, and forever put at rest. What was the proper course, and the duty of the patriot, under such circumstances, it is unnecessary to point out to an intelligent people.

It is true, her Constitution prohibited slavery; but that was a rightful exercise of power. Mr. Calhoun declared in 1847, that "*no other condition is imposed by the Federal Constitution on a State, in order to be admitted into this Union, except that its Constitution shall be republican.*" California came within the rule, and was rightfully admitted.

It has been urged that this anti-slavery clause derived its force and effect from the assent of Congress, and was, therefore, an indirect enactment by Congress. This is wholly incorrect. Unless that stipulation makes the Constitution anti-republican, Congress has nothing to do with it. None of the provisions therein contained, derive their force from the act of admission. They operate solely, by the authority of the people of the State. All other clauses in that, and every other Constitution, are liable to the same objection. There is hardly one, in any State Constitution, that Congress can enact. The error consists in supposing that Congress acts on the Constitution, when her sole action is on the State in admitting her. It is nearly the same case as that of the power of the President in approving a law. When so approved, it does not derive its power from him, but from Congress, in whom the whole legislative power is vested.

Fellow-citizens: There is one authority, in favor of the admission of California, which has never been quoted so far as I know, and in the existence of which you would hardly believe! I allude to Mr. Rhett. In the first draft of the Nashville Address and Resolutions, as I have before shown, a distinct proposition to admit California, as a State, was contained, if at the same time Congress would declare that slavery should exist below 36° 30'; thus demanding of Congress to do, that which the whole South has a thousand times over declared, in every possible form of announcement, would be unconstitutional! I do not think, that after this, any one should be heard to assert, that the admission of California was unconstitutional!

I look upon these measures of compromise as "a final settlement" of the whole question of slavery under the Constitution. At this hour, that interest stands on better grounds than it has occupied since the passage of the Missouri compromise, because it is put back where it stood when the Constitution was formed, and the legislative power of the government cannot create or destroy it anywhere. The whole South, and nearly all her distinguished champions, were ready to accede to the policy of the Clayton compromise bill in 1848, altho' it legalized, in its first section, the Wilmot proviso, for the avowed purpose of asserting the naked power of Congress, in a case where it could have no practical effect whatever! The feature that redeemed it in our eyes, was that it provided a judicial decision of our rights in the territories. The compromise of 1850 contains the same provision, and three other most important and additional guarantees in our favor.

First—That the territories may come in, "with or without slavery, as they may choose."

Second—That no citizen there should be deprived of his property, any property, but by the judgment of his peers.

Third—That fugitives from service from a State or *territory*, should be surrendered; the only territories to which it could apply, being Utah and New Mexico.

The man who was satisfied with the first and not with the last of these compromises, is rather a factionist than a statesman or patriot!

I have stated that the war of opinion waged against the interests of the slave States, had an origin further back than the formation of anti-slavery societies in the North. Abolitionism is but one link in the chain forged by Great Britain, to bind these States again in a condition of virtual colonial vassalage.

Before the revolution, her policy was to increase the productive power of her colonies, and to compel them to receive from her, in exchange for their raw materials, the products of her mechanic and manufacturing arts. To such an extent was this design prosecuted, that heavy penalties were imposed by Parliament on many branches of industry, and it

was made a criminal offence to manufacture a hat or a hob-nail in her American possessions. With the same general purpose of monopolizing the trade and commerce of her distant subjects, her navigation laws were framed, and she encouraged the importation of the cheap labor of the African slave, against the petitions and remonstrances of the colonists!

With the Declaration of Independence this state of things was suddenly changed. Thrown on their own resources, the colonies began to produce for themselves all those articles, which the industrial arts yield for the comfort and happiness of man. This tendency was increased by the protracted war of the revolution, and at successive stages, by the non-intercourse acts, and the second war of our independence. Our commerce was ruined, but our manufacturing interests were finally established, and they were placed on still surer foundations by the ample protection afforded by the revenue bills, passed at the close of the war, to meet the debt incurred in its prosecution.

Great Britain was no indifferent spectator of this important change. She commenced the very year of our Independence—1776—by an act in Parliament, for the Suppression of the Slave Trade, and has continued her efforts in that direction, till she has incorporated that, as a new crime into the law of nations, the practice of which for centuries had been a source of profit to her highest nobility, and even royalty itself had not scorned to share in its guilty gains. Her boasted town of Liverpool, is built up on the bones, and cemented with the blood of thousands of those unoffending Africans, stolen by her citizens from their native forests, and butchered with every appliance of cruelty, in the baracoons of the coast, or the fetid holds of her Slave-Ships!

By constant exertions in the same direction, she has induced other nations by treaty, to concur in her views, until there are upwards of thirty European and American States, who have declared the trade piracy. Her last effort in this way, if public rumor be true, is a project to join with France and Spain, in some arrangement for the protection of Cuba, coupled with a stipulation for the more effectual suppression of the Slave Trade, and the gradual abolition of slavery in the Island. Whether the report is true or false, the fact of its extensive circulation shows how generally her policy on this subject is understood.

In 1823, she took another important step, by commencing the work of the gradual abolition of slavery in the West India Colonies, under the lead of Mr. Canning. In 1833 the final act was passed, and immediately afterwards her missionaries appeared in the U. S., and began the work of agitation, by starting organized associations to promote the abolition of slavery. This was the origin of aggressive abolitionism in the U. S.; and the first emissary sent over had his expenses paid by the London Anti-slavery Society,——a society which was, and is connected in object, design and association with the East India Company.

This is one object of her policy. Another is shown by her regulations respecting Navigation, Manufactures and Agriculture. For years Great Britain had shaped all her laws on these subjects, to the protection of these interests by duties and bounties; but she has been gradually, as America rose into competition with her, changing them to re-acquire her ancient position. To this, she has sacrificed the protection of her commercial marine, her navigating power and her agriculture. By a course of legislation still in progress, she has legislated all those powerful interests into a decline; until one of her most accomplished writers has lately declared, that for ten years past nothing has increased with her but poor-rates, crime and emigration. Her experiment is full of peril, and the hour of retribution may not be as far off, as some of her statesmen seem to suppose! The inventions of Watt, Awkright and Whitney, gave to her a command of the manufacturing industry of the world, but the raw materials were not, as formerly, within her control. To attain this end, she attempted to counteract the effect of our revenue and tariff laws, passed in and prior to 1826, by countervailing duties and bounties. It was this sudden turn in her tactics, that opened the eyes of New England to her real designs, and caused, more than aught-else, the change which took place among her politicians, and people, on the subject of a protective tariff.

Without stopping to specify details, you will find that Great Britain has so regulated all this class of legislation for a long series of years, as to afford to herself a cheap labor, cheap food, and an abundant supply of the materials used in manufactures, at the lowest possible cost.—The means have been of secondary importance! To this end all her Acts have tended, and by them she hopes to be able to supply herself with those indispensable requisites of prosperity from her own resources. And this is the way it is to be completed. Just before she lost her North American Colonies, she commenced the establishment of an empire in the East Indies. The Portuguese were driven out; the Dutch plundered and brought to terms, and the French vanquished; and the successive wars of devastation and plunder carried on by the infamous Clive, by Warren Hastings, Wellesly and Cornwallis, placed her in possession of an immense domain in the Indian Seas, reaching over powerful and populous kingdoms, of vast fertility, range of climate, and production.

If you desire to hear further of the means she used for the acquisition of this unparalleled dominion, peruse the

dry, business-like and cool ferocity of the official despatches, from Clive and Wellesly down to Gough and Torrington—shameless and bloody as the ledger of Pandemonium: or turn to the glowing and hardly exaggerated pages of Burke and Sheridan, and read till your soul sickens at the horrid recital of the violation of all laws, human and divine,—the riot of fraud, rapine and butchery, the saturnalia of demons in human shape, in the accursed pursuit of the hellish greed of gain! And remember this is the spot to which British anti-slavery philanthropy has directed, and is directing all its thoughts! It is to establish here the fields, which are to furnish her mechanic and manufacturing arts with the raw material for their various operations, hitherto chiefly supplied from slave labor in this and other lands. For this, well might she afford to lose her slaves in the West India Colonies, and the twenty million pounds sterling their emancipation cost her; if, at the same time, she could destroy African slavery, in this country and elsewhere, and substitute for it the cheap labor of her East India subjects, amounting to over one hundred millions, costing no outlay of capital to procure, and but small compensation to pay them! Such is the work in which many of our citizens, seduced by false and hollow pretensions of philanthropy, are assisting, by destroying the labor of the South, ruining the cotton, sugar and rice-growing regions, and transferring the culture of those staples to the plains of British India!

Such a work has once before been accomplished by the same influence, but on a smaller scale. It is large enough, however, to furnish an example and a warning. In the French Assembly, in 1789, an infuriated member rushed to the Tribune, and declared that color should make no difference between men. British emissaries soon appeared on the spot, inflaming the already exaggerated minds of the French. Their Colonies were declared free. These same foreign sympathizers hastened home, fitted out an expedition, loaded with every implement and engine of destruction and slaughter, and started for St. Domingo. The work of ruin was soon accomplished, and that island—hitherto the most productive in the Carribbean Seas, and having a monopoly of the indigo culture—became a barren waste. In a few years, that trade, with nearly all other, was wholly destroyed, and the British secured to themselves a like monopoly of it for their possessions about Calcutta, where it had hitherto been grown with indifferent success!

The same lesson of philanthropy is now forced on the attention of our country, on a more dangerous and extensive scale. And to the disgrace of the age in which we live, some of our own countrymen are engaged in teaching it, by arraying the North against the South! Such is the object of the principles boldly avowed by Lord Aberdeen in the Texas negotiation, as the settled policy of Great Britain. Where is the American, North or South, in view of these things, that will longer lend his aid, directly or indirectly, to the production of such results!—Nothing but an adherence to our Constitution and Union can save us; because it is by our Constitution alone that these designs can be prevented, as it is only by its destruction, that this war of opinion can ever be brought to bear upon our interests. Agitation will not long continue, after it is understood to be our final determination, that none of the powers of government can touch the institution of slavery by any hostile action. And this is the position in which the Compromise measures of 1850 have placed it, and thereby have recommended themselves to your acquiescence! By such a course, we prevent the designs of foreign and domestic foes alike, and save the country from civil war, and the Union from dissolution. Nothing from without or within can successfully assail us while the Constitution is maintained unimpaired, and the Union preserved in all its integrity!

Fellow-citizens, wearied as I am, and as I fear you are, by this long discussion, I cannot leave you, without saying a few words about the modern doctrine of State secession. I shall examine merely the question of right, and not of power, and consider of it is a remedy for any grievance that may arise under our Constitution, and the action of the General Government. You know full well, the difference between a power and a right. All men have the power, but none the right, to do wrong. The power of an individual to commit suicide is undoubted; but not so of the right. You need no teacher to tell you, that whatever you have the right to do, no one can have a like right to hinder you in doing. The same proposition is true in regard to States and nations. In the first place, then, if the right of secession is claimed, it must be either as a granted, or reserved right. No one pretends there is any special grant, nor would you expect to find it there, since all the grants run in the other direction, *from* and not *to* the States or people. The next inquiry is, do you find it among the powers "reserved to the States respectively or to the people"? The answer is brief and conclusive. A reservation necessarily implies the pre-existence of that which is reserved. The States were about dividing out the powers of government, a part to their separate State Governments, and a part to the General Government, and they expressly reserved out of the existing mass all the residue. If they were not at that time in being, they were not and could not be reserved. A right to break a contract not yet made, or to destroy a government not yet formed, did not belong to a State before she became a party to such contract or government. The point is not less clear, by regarding the Constitution as the work of the States in their highest sovereign capacity, or of the States as separate sovereignties, each acting for itself. However sovereign the parties may have been, they cannot, on that account, reserve to themselves rights that were not then in being!

There is but one other possible source of the power claimed; and that is in the nature of the contract or constitution itself! All contracts may be limited as to duration by express terms: but if nothing is said on the subject, then the nature of the contract, its general object and scope, will alone determine the point. The American compact of the Constitution grew out of the old "Articles of confederation," adopted by the revolted Colonies. That great instrument of union characterized itself as "Articles of Confederation and PERPETUAL UNION!" And each State pledged itself to abide by the decision of Congress in all matters submitted to it by the confederation. The Union thus formed was found defective in practice, but it was avowedly made to endure forever. To amend its defects, a Convention met at Philadelphia in 1787, and framed the present Constitution—not "Articles of Confederation," but "a Constitution!" It was presented to the States and the people of the States; ratified and adopted by them, and became their supreme law. They declared that they ordained and established it, among

other things, "to form a MORE PERFECT UNION and to secure the blessings o liberty to themselves, *and to their posterity!*"

No such right of secession could have been admitted even under the old confederation, because inconsistent with the chief end and object, the avowed and declared intent and scope of those *articles of perpetual Union*. Still less can it exist under a Constitution, which formed "*a more perfect Union*"—more perfect in all its parts for the people themselves and their posterity forever! This result will not be affected, whether the constitution be considered as a compact between sovereigns, or a government of the people. A sovereign as such, whether king, State or people, has no inherent right to do wrong, no right to violate his contracts at pleasure. He can not rightfully disregard his own solemn compacts, nor break up his constitutions of government, nor set aside the great moral rules of action laid down for the observance of nations.

There is another view of the nature of our Constitution equally decisive of the point. By that instrument, the people of the United States, each acting within their own limits, and for themselves, and in their highest capacity, formed a general government. They gave it certain powers over several classes of subjects, requiring uniformity of rule and action; they divided it into departments, commensurate with those powers, and then declared that their constitution, and the laws passed in pursuance thereof, and treaties made under the authority of the United States, should be "*the supreme law of the land, anything in the constitution and laws of any State to the contrary notwithstanding.*" It was thus made wholly national in its operation, and bore directly on the citizens, without regard to State lines or State authority. It established personal relations between the government and the people, all of the people alike, within the boundaries of the Union. The people of each State for themselves, did this. It is their government, and each gave up to every other the same kind of right that it received from them; that is, to share in making laws that should operate, not only over themselves, but over the people of all the other States. It was this mutuality of grant and action, that made the contract of government irrepealable at the option of one party to it. The interest of each under it being exactly alike, and the right of judgment in each precisely similar, and of equal force, furnished an unanswerable reason why no one singly could break it up, or destroy its force over itself or others. The principle is universal; that where all stand on the same footing, as to their interest in a common subject of contract, and all have the same regulating power, a majority must govern, unless the contract itself points out some other method. This is the precise case of our general government; and to the majorities, as arranged and expressed in the different portions of the Constitution, all the questions growing up under it must be submitted for settlement. There is no other recourse but one, and that is force; and that is revolution—naked, open, undisguised revolution; that rises above all governments, all laws and constitutions, and furnishes a law unto itself!

It may be said these doctrines savor of consolidation, and the destruction of the States. I think not. There is no higher State right, than that which each State has guaranteed to her citizens, the right to have a general government, with supreme legislative, executive and judicial powers, over all subjects embraced in the Constitution. Any doctrine of consolidation that goes no further than this, is not only not objectionable, but is conservative and useful. It is the consolidation of which Washington spoke in the letter, accompanying the Constitution, addressed to the President of Congress. It is the "consolidation of the Union," which he there declared the Convention had kept steadily in view, as the main object of their labors. It is the perfection of that "unity of government," which he states in his Farewell Address, "makes us one people."

There are some historical facts on this point, that should make the secessionist pause, ponder and reflect much, before he allows his thoughts to ripen into action.

The very first resolution passed in the Convention that framed the constitution, declared that "*a national government* ought to be established, consisting of a supreme legislative, judicial and executive." This designation of powers was substantially carried out in the Constitution.

During the debates upon the 3d section of the 3d article, which defines treason, Luther Martin, of Maryland, endeavored to obtain an amendment. He was opposed throughout to all those features of the new government, which had a national, rather than a federative character. The subject has never been since presented in a more forcible manner than by him. He presented the following amendment:

"Provided that no act or acts done by one or more of the States against the United States, or by a citizen of any one of the United States, shall be deemed treason, or punished as such; but in case of war being levied by one or more States against the United States, the conduct of each party toward the other, and their adherents respectively, shall be regulated by the laws of war and of nations."

Here was the doctrine of secession presented in its clearest view, and most imposing form. But mark well, and remember the result. This proposition found no favor in the Convention, and was at once voted down. Mr. Martin would not yield

his convictions; he refused to sign the Constitution; he reported his objections to the Legislature of Maryland, and resisted its ratification when it came before the people.

The same view was urged on the people of New York, by Mr. Yates and Mr. Lansing; and on Virginia, by Patrick Henry and George Mason. They averred that the rights of the States were engulphed by the new government; that its action on the citizen was direct, without reference to State boundaries; and they feared a consolidated despotism would be the inevitable result. None of these opponents of the Constitution, with all their ability, and ingenuity, ever made the discovery, nor thought once of the idea of secession, by which all their objections would at once have been obviated! This is strange, and fatal—entirely so—to the notion of its actual existence.

The ratification of the Constitution was not conditional, because there was no mode provided for re-submitting any conditions, either to a Convention, or to the other States. The subject was much discussed at the time, and many proposals made of a conditional ratification. They were, however, abandoned; and the suggestion of Mr. Hancock followed, of recommending several amendments to Congress, to be submitted to the people, and to be incorporated into the Constitution, according to its own provisions. This was done, and most of the amendments subsequently adopted. Mr. JEFFERSON has borne witness to the fact, that by this course, all the essential objects desired by the Republican party were obtained, and nothing of alteration or addition further was necessary.

The testimony of the statesmen who formed the Constitution, and put the Government in motion under it, is worthy of profound consideration; and that testimony is emphatic.

In 1786, when the defects in the Articles of Confederation were glaringly manifest, General WASHINGTON addressed a letter to Mr. Jay, in regard to the condition and wants of the country. Listen to his language!

"I do not conceive we can long exist as a nation, without having lodged somewhere, *a power, which will pervade the whole Union, in as energetic a manner, as the authority of the State Governments extends over the several States.*"

Can anything more clearly foreshadow the coming Constitution?

Again: During the same year, he was applied to, to use his influence in putting down the insurrectionary movements in Massachusetts and New Hampshire. The insurgents were in open rebellion, and defying the public authority. Hear the Father of his Country, once again uttering his words of wisdom!

"*Influence is not Government.* Let us have a Government, by which our lives, liberties and property will be secured, or let us know the worst at once. If they have real grievances, redress them, if possible, or acknowledge your inability to do it at the moment. *If they have not, employ the force of the Government against them at once.*"

You can fancy you hear him say to his countrymen—If I had the influence to put down a thousand revolutionary movements, it would only show I could create as many more. No, no! Rebellions must be first put down by the government, or your government is not worth having. The government that cannot protect you from the violence of the wildest surges of faction, is not entitled to your confidence! I will not interfere.

The opinion of Mr. Jefferson is just as decided. In 1787, and alluding to the old confederation, he wrote thus:

"It has been so often said, as to be generally believed, that Congress have no power by the confederation to *enforce anything;* for example, contributions of money. *It was not necessary to give them that power expressly; they have it by the law of nature. When two parties make a compact, there results to each a power of compelling the other to execute it.*"

The Virginia and Kentucky resolutions of 1798 and 1799, are referred to in vain to support the doctrine of secession. It requires a perversion of their whole import and language, to deduce the modern idea of nullification from them; but sesession can not even by such means find any countenance in them. They recommended nothing but a protest, and united expression of opinion by the parties aggrieved, so as to produce a repeal of the obnoxious acts of Congress, or an amendment of the Constitution. Every State in the Union responded to them, and not one of them even hints at any thing being contained in them looking, however remotely, towards secession.

Mr. Madison, who drew the celebrated report upon them, and ought to have known their meaning, as well as any man living, bore the strongest testimony to their true character. In 1833 he reviewed the whole ground, with all the power and vigor of his best days, and proved by a train of argument wholly unanswerable, that secession was an "*extra and ultra-constitutional remedy.*" Human language could not be more exact and emphatic! It seems as if the design had been in this case, as in that before cited from Washington, to furnish a maxim, so pointed, so brief, and so true, that it would be indelibly impressed on the memory of his countrymen, and thus to furnish them with an ever-present and sufficient protection, hanging like an amulet or charm around their necks, against the insidious arts and wily devices of "sedition, privy conspiracy and rebellion"! And in the last moments of his glorious life, he embodied that idea into a parting legacy to the whole American Peo-

ple! Great father of the Constitution! bend down from the abodes of bliss, and hear a humble worshipper in the Temple reared by your hands, vow fidelity to the Union, and swear to observe your last request and dying injunction to your countrymen!

Mr. Jefferson concurred with the opinion of Mr. Madison. The evidence of this was furnished during the sitting of the Virginia Convention in 1830, and given to the world in the papers of the day, and nothing more is required to show a perfect uniformity of views between these two founders of the Republic. Their joint opinion is contained in Mr. Madison's letter to Mr. Everett in 1833.

Do you desire to hear General Jackson's views regarding nullification and secession? I refer you not to the page of history, but to your own memory, for his course in regard to South Carolina, in 1832 and 1833. He there assumed that historic position, which he will ever hold in the annals of our country! On other occasions he was great, often very great, but here he was sublime! He appears to have summoned into action all the wonderful powers of his inmost soul, and concentrating them into one grand effort of indomitable will, to have placed his iron heel upon the kindling sparks of Rebellion, and crushed them out forever! This was the crowning act of his glorious life! There he stands! Behold him, as he will remain, in the minds of men forever! Proud, resolute, defiant, God-like,—the champion of the Union under the Constitution, the very Genius of America! This is his fame that can never die! The glory of that day's doing will be remembered to the latest ages, preserved by tongue of eloquence and the voice of song, long after the laurels gathered in war shall have perished, and the brass and the marble, that chronicle his military deeds, shall have crumbled into dust! But for the patriotism, the wisdom, the justness and the firmness of his successor in these times of trouble, our whole country would raise one supplicating cry—

"Oh, that the present hour would lend
Another despot of the kind!
Such chains as his were sure to bind!"

But his spirit is with us; the crisis is past; the Union is saved!

Fellow Citizens: You are engaged in a great and good work. The principles of civil liberty and regulated government, are entrusted to your keeping, and depend on you for protection. You will be false to yourselves, if you do not, by a noble effort of patriotism, raise yourselves to a full level with the dignity and importance of the occasion. You cannot, if you would, act an humble or obscure, or unobserved part. You are on an elevated stage, and whatever you do, must be done in the face of the whole world. Around you the expectant Nations stand, waiting the result with breathless anxiety! Above you, the Past—our own, glorious Past—the heroes and statesmen, who achieved our Independence and framed our government, are leaning from the realms on high, to cheer you in the rugged path of duty so often trod by them on earth! And beyond—far away in the distant future—the coming ages, the countless millions of those that will succeed us, stretch forth their hands from the bosom of Time, and call on us! They entreat, they beseech, they implore us to be true to ourselves, true to the great trust committed to our care, true to the memory of our sires and the hopes of our posterity!

You must, you will resolve—*but why speak of it as a thing to be done,*—you have resolved; you, and I, and all of us have resolved; we have come up here to day to declare the resolution publicly and before all men, that, not relying on our own strength, but seeking the aid of that good Providence, which has hitherto favored and protected us as a nation, so far as it depends on us in our day and generation, the Constitution shall be preserved inviolate, and the Union be perpetuated forever;

"'Till, wrapt in fire, the realms of æther glow,
And Heaven's last thunder shakes the world below"