The slavery question. Dred Scott decision

[???] *Read and Hand to your Neighbor.* [???] THE SLAVERY QUESTION.

DRED SCOTT DECISION.

TO THE FREE VOTERS OF OHIO.

To the consideration of every man who believes in the duty of patriotism as higher than the obligations of party, and who will not cowardly turn away from evidence offered to show that the duty in question now forbids him to vote with the party styling itself Democratic, the following facts are presented, with the assurance that they cannot be denied:

Jefferson, so often claimed as the founder of Democracy, began to agitate for emancipation before the adoption of the Constitution of the United States He regarded slavery as an evil of the first magnitude; and, though he did not use the very words of the Democratic resolution of 1848, he labored to “prevent the increase” of slavery, to “mitigate, and finally to eradicate the evil.”

The adoption of the Constitution operated no restraint on his efforts, or those of his followers, to hasten the preparation of the heart of the master and the mind of the slave, for the sundering of the bonds of servitude.

It was not then dreamed that the Constitution was a guaranty for slavery any where. It was, by the studied selection of words, unfitted to describe a state of property in man, an instrument eloquent against the perpetuity, though just as to the present existence in certain places, of the evil in question. All the concessions it made to the necessities of the slaveholder were cautiously made, in mere recognition of the necessary right of recapture, of the expedient rule of representation, and of the impossibility to put an immediate period to the slave trade. The very terms of the provision for the redelivery of fugitives from service, show that the relation of master and slave was clearly distinguished from that of the owner and the thing owned. Why provide for the case of an escaping man and not for that of an escaping beast, if the property in the one and the other was identical, as the majority of our federal judges now pretend?

So, as already stated, the adoption of the Federal Constitution operated no restraint on the efforts of Jefferson or his followers for emancipation.

The agitation which attended the addition of Missouri to the Union, grew out of the Jefferson doctrines, although some engaged in it may have gone in a direction not such as he would have

chosen. The question was not then of a territory, which, like that of Kansas in 1854, was without government, and still free from slavery sanctioned by the law. Slavery was in Missouri, and Missouri was already subject to organized government, when the great question, afterwards quieted by compromise, was raised in Congress.

Without deciding who held the right of the question as raised, we content ourselves with the simple statement, that a valid and constitutional compromise of the question was made in 1821. Voters, remember this statement as we proceed.

Down to 1832, the sentiment afterwards so strongly expressed by the Democracy of Ohio, (in the platform of 1818,) "that all constitutional means should be used to prevent the increase, to mitigate, and finally to eradicate the evil of slavery," was a part of National Democracy, just as it was a part of national sentiment. It was not sectional, but general; it was expressed as freely in Virginia as in Massachusetts.

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But, in 1832, the anti-slavery zeal of Wm. Lloyd Garrison, and the cotton-interest zeal of certain Southerners, combined to make the name of Abolitionist edious to the people.

All this time, however, and quite up to 1844, the conservative anti-slavery sentiment of the whole country reposed upon the calm assurance that no more slavery extension was to be thought of. Even the annexation of Texas in 1845, although demanded by Calhoun and his peculiar friends, as a measure favorable to the restoration of the lost equilibrium between North and South, was not regarded by the Democratic party as an actual extension of slavery.

Confident of its own power to withstand the encroachments of Calhounism, and not yet destitute of the manly self-respect and regard to principle which were once the boasted characteristics of Democracy, the Northern division of the Democratic party boldly supported the war with Mexico, which grew out of the annexation of Texas, and fearlessly approached the important territorial question raised by the expected addition to the United States of a part of the Mexican country.

It hailed the Proviso of Mr. Wilmot, forbidding the future extension of slavery, as a practical and a popular measure; as an article of Jeffersonian faith; as a liberty-loving sentiment, and as perfectly consistent with all the obligations of the North to the South, and the latter to the former.

When Mr. Cass invented the doctrine of Squatter Sovereignty, the mass of the Democratic party at the North refused to substitute the ingeniously conceived doctrine for that suggested by the common sense of the early Republicans, and cherished by the affectionate reverence of their

descendants. The few who at the North took the trouble to understand and to advocate the Cass doctrine, never pretended to abandon the doctrines of Jefferson, or to favor the heretical novelties of the visionary Calhoun —novelties since stamped as original and genuine, by a partizan court and degenerate judges.

In 1848, after the publication of the Nicholson letter, (containing the Squatter Sovereignty theory,) the anti-slavery resolution, so often referred to, was, with more than the ordinary care of conventions, added to the Ohio profession of Democratic faith.

The compromise measures of 1850 were never heartily received in Ohio. They were denounced by every leading Democratic press in this State. It was not till 1854 that a Democratic State Convention could be induced to adopt them. Even then a respectable minority stood out against them. And those who submitted to their addition to the party platforms never pretended to abandon the old Buck eye sentiment against the extension of slavery, or to give the least countenance to the Calhoun doctrine, since invested with a seeming sanction by the combination of Mr. Buchanan with a part of the federal court to impose it upon a betrayed people and a perverted Constitution.

When, in 1854, the Kansas Nebraska Act was passed, many Democrats detected its pretense of Squatter Sovereignty as a mere pretense. Of these some left the party, and others remained with it—the former to overthrow, the latter to reform the Democratic organization. Unhappily, other Democrats accepted the pretence of Squatter Sovereignty as true and genuine; and these supported the measure in question, while asserting in unqualified terms their hostility to the extension of slavery into Kansas, their belief in the constitutional incapacity of slavery to establish itself there without the permission of the Territorial Legislature, and their confidence in the predominance of the anti-slavery sentiment in the Territory named.

Mr. Buchanan was forced on the leaders of the party by the misplaced confidence of its masses, who believed that he agreed with them on this great subject. He knew why the masses preferred him to Douglas and to Pierce; he never hinted that that preference was founded in error; he obtained office by concealing his opinions, if he then held those which he now professes; and his first act was one of perfidy to the sentiment which invested him with power. In his inaugural he combined with the Judges to pervert the Constitution and betray the people.

When the Dred Scott case announced the Calhoun doctrine as the true sense of the Constitution, the outraged sentiment of the Northern Democracy should have found expression, in denouncing it as a novelty in Constitutional Law, as the addition of a new term to the federal Constitution— as a doctrine alike inhuman and unchristian. On the contrary, the leaders and organs of the party hastened to show their subserviency to the President, as the dispenser of governmental patronage,

and to the South as the insolent dictator of terms to the whole Union, by indorsing the detestable *dictum* of a divided court, whereby it was falsely declared, that the Constitution makes the property in a slave as high, as sacred, as inviolable, as the property in things.

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Mr. Payne, in accepting his nomination for Governor, declares the doctrines of this case to be in strict accordance with common sense. Mr. Buchanan, in his recent letter to Silliman, declares it a mystery how any man could have doubted them.

Freemen of Ohio! Will you dishonor the dead—will you despoil the living—will you deprive posterity of its inheritance, by sanctioning the fraud thus practiced on the conservative, constitutional, anti-slavery sentiment, by the profession of which the Democratic party achieved success in the late contest! Friends of Squatter Sovereignty! Will you indorse a doctrine which mocks your opinions, which disregards your wishes, which tramples on your rights as members of the Democratic party? If the Supreme Court is right, your doctrine is a delusion. Will you agree that it is so, because degenerate judges, in a pretended decision, not binding on you or on the country, pretend that the doctrines of Calhoun are the true doctrines of those who framed the Constitution? Friends of the Wilmot Proviso! Are you men, and will you sink in your devotion to party the honest convictions of your own minds and the cherished wishes of your own free hearts? Voters of a State dedicated to freedom! Shall slavery subdue you now and forever? Shall the voice of Ohio be silent, when iniquity like this poisons the fountains of justice, and reduces the chief magistracy of the Union to a political vassalage? We will not believe so, till your own votes proclaim to the world that you have lost the sense of shame, and the courage by which the freemen of the new world were once known to the nations.

DEMOCRATIC RESOLUTIONS ON SLAVERY AND STATE RIGHTS.

The Democratic Convention, which assembled at Columbus, January 8, 1848, adopted the following resolutions concerning slavery and State Rights:

"1. *Resolved,* That the people of Ohio now, as they always have done, look upon slavery as an evil, and unfavorable to the development of the spirit and practical benefits of free institutions, and that entertaining these sentiments, they will at all times feel it to be their duty to use all power clearly given by the terms of the National compact, to prevent its increase, to mitigate, and finally to eradicate the evil; but be it further

"2. *Resolved,* That the Democratic party of Ohio do at the same time fully recognize the doctrine held by the early fathers of the Republic, and still maintained by the Democratic party in all the *States,* that to each *State* belongs the right to adopt and modify its own internal affairs, to hold and maintain

an equal and independent sovereignty with each and every *State,* and that upon these rights the National Legislature can neither legislate nor encroach."

The same resolutions, reported by A. P. Edgerton, of Defiance county, were unanimously readopted as part of the Democratic platform by the Democratic Convention of 1850; and again, upon the report of John A. Corwin, of Champaign county, by the Democratic Convention of January 8, 1852; and again, on the report of Mr. Layman, of Washington county, by the Democratic Convention of 1853.

It is worth noticing here, that the Baltimore platform, on which Franklin Pierce was nominated for President, in May, 1852, was diametrically opposed, so far as slavery was concerned, to the Ohio platform, and, immediately after the election of Pierce, an effort was begun to induce the Democracy of Ohio to recede from the high and independent position which had been taken; and, at the Convention of 1853, which was just after the election of Pierce, but before his inauguration, H. J. Jewett, of Muskingum, moved to amend the State Democratic platform by adding the resolution of the Baltimore platform. This motion produced much excitement. F. D. Kimball, of Medina, moved to lay the motion upon the table, which motion was carried. Sanders N. Johnson, of Brown, then moved a reconsideration of this last vote, which motion R. J. Atchison, of Carroll, moved to lay upon the table, which last motion prevailed by a vote per counties of yeas 169 to nays 148. Thus the Democracy of Ohio flatly refused to surrender their anti-slavery faith, or to compromise it by an indorsement of the Baltimore platform.

The next year, January 8, 1854, the same anti-slavery resolutions, reported by G. W. Houck, of Montgomery county, were again adopted by the Democracy of Ohio, in a Convention assembled on the 8th of January, 1854. But the office-holding and pro-slavery faction now succeeded in foisting into the platform, on motion of Conner, of Wayne, a resolution indorsing the Baltimore pro-slavery platform.

The year following, on the 8th of January, 1855, the same resolutions were again affirmed; but now the Retrogressives so far succeeded that the sense and import of the resolutions was practically nullified by two other resolutions in the 4 same platform, one of which declared the Baltimore platform to be a clear and distinct declaration of the political principles of the Ohio Democracy, and the other indorsed the administration of Franklin Pierce.

Once entered on this downward career, it was not easy to stop. The next Convention, January 8, 1856, expunged altogether the old anti-slavery resolutions, and the next August, 1857, denied the State Rights Faith, and indorsed the Dred Scott decision.

It is remarkable that as soon as the anti-slavery platform was corrupted by the indorsement of the Baltimore platform, the Democratic party was defeated, and its history since in Ohio has been a succession of defeats.

A BRIEF EXPOSITION OF POLITICAL DISHONESTY IN OHIO.

We have no doubt that, if the people of Ohio could be made fully to understand the tergiversations of the "Ohio Democracy" on the slavery question, they would rebuke the Dred Scott-Decision party with a more overwhelming majority for Salmon P. Chase than was ever given for a Governor of Ohio.

Judge Warden is doing a good work by expositions of the anti-slavery history of leading Democrats, and of Democratic Conventions, but he cannot reach all the people, nor, indeed, all Republicans.

Every student of political history in Ohio, knows that up to 1852, Democratic platforms were unanimous against slavery as an evil, and not only against its extension, but in favor of its mitigation and eradication.

In order that those who have not access to files of newspapers may be reminded of the position of the party six years ago, we invite the attention of all honest Democrats, and of all Republicans, to a few quotations from Democratic documents, and Democratic newspapers, between 1849 and 1852.

The Democracy of Huron and Erie counties assembled at Norwark, September 15, 1849, and declared—

"That Congress, by prompt and ample action, should provide for the exclusion of slavery from the territories, and all other places under exclusive National jurisdiction;

"That there is no authority in the General Government to legislate upon the subject of slavery as it exists in the States;

"That there should be no further toleration of slavery in the District of Columbia;

"That the influence of the General Government should be kept actively and perpetually on the side of Freedom, thus relieving the American people from all responsibility for the existence or continuance of Slavery."

At a meeting held Feb. 22, 1850, the Democrats of Carroll county, reciting the platform of the convention which nominated Gov. Wood—one of the conventions which adopted the well known "mitigate and eradicate" resolutions—resolved,—

"That we recognize as embodied in the resolutions an express declaration that the Democracy of Ohio will use all constitutional power to prevent the increase, to mitigate and finally eradicate the evil of slavery;

"That in order to carry out said declaration, it is the duty of the Democratic Representatives in Congress to use all endeavors to extend without delay the principles of the Ordinance of 1787 to the territories acquired by the United States under the late treaty with Mexico, and thus constitutionally prevent the increase of slavery;

"That to each State in its sovereign capacity, belongs the exclusive right to legislate upon its own domestic concerns, and that with the institution of slavery in the State where it now exists, Congress has no power to interfere; but that it is the duty of the Government to separate itself from all support of slavery; and by giving its influence in favor of freedom to relieve the American people from all responsibility for its existence or continuance"

A convention of the north-western Democracy, held in Lucas county, May 30, 1851, thus stated its views of the resolutions of the State convention:—

"That the principles indicated by these resolutions, upon which alone, in the judgment of this convention, the question of slavery can be finally and permanently adjusted, are these: 1st. Abstinence from all interference with the internal legislation of any State, whether upon the subject of slavery or any other municipal concern; and, 2d, the disconnection of the General Government from all support of slavery, and the exercise of its legitimate influence upon the side of freedom."

The convention of the Democracy of Cuyahoga county, in 1849, which nominated Henry B. Payne for the Senate, resolved,—

"That we are unalterably opposed, to the extension of slavery into territory that is now free; and while we adhere to the belief that it cannot obtain a legal existence in the territories of California and New Mexico without express statutory 5 enactments; yet as it may gain a foothold there by the connivance of executive authority in defiance of law, we are in favor of ingrafting on every act for the government of said territories the principles of the Jefferson Proviso."

And the Plaindealer of September 9. 1819, published the above resolution, and fully indorsed it by saying that "nothing illustrates better the distinctiveness of the old standard Democracy from any and all other parties than the plain, practical and pointed straightforwardness of these resolutions. They are the principles of our candidates."

With such indorsements of the platform of the State convention, the Democratic party succeeded in placing the new constitution in the hands of its friends. Reuben Wood was re-elected Governor, and in his Inaugural he held certain first rate anti-slavery doctrines—doctrines which Ohio "Democracy," in 1857, repudiates. First, as to the extension of slavery, he said—

"The Democratic party ever has and ever will oppose either the diffusion or the extension of slavery into any free territory of the United States, by every legal and constitutional means, and would rejoice if any mode, not doing violence to others, could be devised to overthrow and eradicate the evil."

Second, as to the abolition in the District of Columbia, he held—

"That Congress, having by the constitution authority to legislate for the District of Columbia in all cases whatsoever, may there abolish it, (slavery.) I entertain no doubt. Congress is by the constitution the local legislature of the District, and all cases within the sphere of legislation are embraced within the terms 'in all cases whatsoever,' as used in that instrument. Congress appears to me to possess the same legislative power over slavery within the ten miles square, that may be exercised by the Legislatures of the slave States over it within their respective jurisdictions; and that it has been considered in those States a proper subject for legislation, their history furnishes the clearest evidence. I have ever viewed the abolition of slavery in the District, not only as a matter of expediency, but of absolute right to the colored race."

Third, as to the Fugitive Slave Law, Gov. Wood said:

"A law that makes *ex parte* evidence conclusive of the master's right to recapture and return his slave —that denies a jury trial here or elsewhere; that provides for the appointment of swarms of petty officers to execute it; that gives a double compensation to find every claim in favor of the master, and pays the expenses from the public treasury, can never receive the voluntary coöperation of the people."

Such were the expressions of a man whom the Democracy of Ohio indorsed five years ago—a Democracy which, according to its platform for 1857, denies State sights—denies the power of

Congress over slavery in Territories, and would permanently commit the national government to slavery at the expense of freedom.

It is not surprising that honest men, real Democrats, are deserting the ranks, for which Payne & Lytle are the standard bearers. The wonder only is that all men who respect free labor—who believe in political honesty—and who cherish a faith that the American government is an instrument for other purposes than the spread of the negro oligarchy, do not repudiate and denounce the Douglas influences, which, with Federal aid, are now striving to commit Ohio to an indorsement of doctrines which become the fire-eaters of South Carolina.

The Cincinnati Enquirer, on the 30th of October, 1850, referring to the constitutional compact relating to fugitives from service, said:

"Our own opinion is that the government of the United States has nothing to do with enforcing that agreement. It is a matter left entirely with the State. * * * We do not think that the general government has any right to send its officers into the States to carry out what good faith requires the States alone to do." The Enquirer further contended that "this is the Democratic, not the Federal reading of the Constitution."

The Sandusky City Democratic Mirror, commenting on the article of the Enquirer, observed: "We agree with the Enquirer that this is the Democratic and not the Federal reading of the Constitution." What follows, then? That the Fugitive Act is a usurpation, unconstitutional, void for want of power in Congress to pass it—a nullity under the tenth amendment, which reserves undelegated powers to the States and the people.

The Ohio Statesman taking apparently the same view of the act; in answer to an interrogatory of the State Journal, and in reference to a declaration by its editor, that "he could not have voted for it without essential modification," declared emphatically "we would *not have voted for the law with or without essential modification.* "

The Cleveland Plaindealer characterized the act as one "of infernal origin."

"Whether constitutional or not," it said, "it is so manifestly in conflict with the spirit of the age, that it cannot stand."

The Youngstown Ohio Republican, said: "The Democratic press of the State are opposed to the law. * * * Some of our brethren regard it as unconstitutional, while others consider it clearly constitutional

but unjust in its provisions, oppressive in its character, impolitic and unworthy of this progressive age, and all manifest a willingness for its repeal."

The Holmes County Farmer described the law as "an outrage upon the Declaration of Independence, contrary to the Constitution of the United States, repugnant to the common sympathies of mankind, and entirely unnecessary and uncalled for."

The Sandusky County Democrat declared: "Our Representatives sold themselves and betrayed us, and that willfully, when they enacted it," and pronounced it "a law abhorent to God, nature and humanity, which cannot and will not stand."

The Hillsboro' Gazette said: "It is monstrous in every feature, and has no redeeming provision. * * * It is wholly odious, and ought not, and if the North will it, cannot stand."

The New Lisbon Ohio Patriot, then edited by Wm. D. Morgan, characterized it as "a bill of abominations," observing that "the monstrosity of its provisions does not consist so much in those portions which simply comply with the constitutional requirements of the act of Congress, as in the detail which gives every advantage on the side of bondage;" and significantly adding that "if it be wrong for the slave to struggle for his freedom, the American people, in the infancy of their existence, set an example which the fugitive finds easy to hold up in extenuation of his crime."

The Defiance Democrat proclaimed that "humanity, social order and the better feelings of our nature, demand the repeal of this blood-thirsty law."

Wholesome extracts these, and decided. Why did the so called Democratic papers of Ohio change their tune, and in defiance of their anti-Slavery record, sing praises to the machinations of Douglas? Why have they delighted in the Dred Scott decision, and in the abuse, within our State, of the very principles they so forcibly declared in the quotations we have made? Let the secrets of Federal influence answer; but, meantime, let it be borne in mind that administration newspapers are now full of misrepresentations designed to turn the attention of the people away from the real issues of the present campaign. They cry "Congo"—(a new nick-name to supply the place of the worn out "woolly-head")—and they ring the changes on "negro equality," and other false issues, which no more belong to Ohio Republicans to-day than they did to Ohio Democrats when the black laws were repealed, or when their State Conventions resolved to *eradicate* the evils of slavery.

We ask the people to take heed to the principles of the Republican party as declared in its platforms, and contrast its consistency with the inconsistency— the preposterous maneuvering of the politicians who now, calling themselves Democrats, beg for support.

We have exhibited in this article what can only be characterized as the dishonesty of Democratic leaders on the slavery question. In other articles, from the reports of investigating committees, through sworn testimony, we have demonstrated the administrative dishonesty of Democratic leaders. Now we ask whether political dishonesty and administrative dishonesty are not legitimate associates?

The platform of the 6th of August is deceptive. Henry B. Payne is making sophistical speeches—dodging real issues wherever he goes. Democratic papers follow his bright example.

The platform of the 12th of August is square. Gov. Chase stands squarely on it. His friends challenge analysis of his administration. No political dishonesty, no administrative dishonesty, can be shown against the Republican party of Ohio. It shirks no responsibility—dodges no issue. Let the record of political inconsistency—of administrative injustice to the State—stand against the candidates who, denying the inconsistency and defending the injustice, have the boldness and badness to ask the people of Ohio for their suffrages.

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THE DRED SCOTT DECISION.

In the Supreme Court of the United States — December Term, 1856.

We desire, in as condensed a form as possible, to lay before the people of Ohio the points decided by the Supreme Court of the United States, in what is popularly known as the "Dred Scott Case." The statement of the case and the opinion of the Judges make a volume of about 250 pages. The *facts* are briefly as follows: In 1834, Dred Scott, the plaintiff, was a slave belonging to Dr. Emerson, a Surgeon in the U. S. Army. In that year, Emerson took Scott to Rock Island, Illinois, a military post, and held him there till May, 1836. He then moved with his slaves, etc., to Fort Snelling, in the present Territory of Minnesota; and held Scott there till 1838. In 1836, Scott married Harriet, a slave of Maj. Taliaferro, who, about the time of the marriage, sold her to Dr. Emerson. This was at Fort Snelling. The marriage was by the consent of Dr. Emerson. Two children, Eliza and Lizzie, were the fruits of that marriage. Eliza, 14 years old, was born on a steamer on the Mississippi, north of Missouri, and Lizzie, 7 years old, was born in Missouri. In 1838, Dr. Emerson moved to Missouri, taking Scott and family with him. Afterwards, he sold Scott and his family to John F. A. Sandford.

Dred Scott claimed that by being taken to a free State, and retained there two years, and afterward by being taken to the territory made free by the Compromise Act of 1820, he thereby became and was free. The case was tried in the Circuit Court of the United States for Missouri, and from thence was taken to the Supreme Court at Washington. It was twice elaborately argued. The opinion of the

court was pronounced by Chief Justice Taney. Two of the Judges, McLean and Curtis, dissented, and delivered dissenting opinions.

We copy from the syllabus, the following as among the points decided:

"A free negro, of the African race, whose ancestors were brought to this country and sold as slaves, is not a 'citizen' within the meaning of the Constitution of the United States."

"When the Constitution was adopted, they were not regarded in any of the States as members of the community, which constituted the State, and were not numbered among its people or citizens. Consequently, the special rights and immunities guaranteed to citizens do not apply to them. And not being citizens within the meaning of the Constitution, they are not entitled to sue in that character in the courts of the United States, and the Circuit Court has not jurisdiction in such a suit."

"The only two clauses in the Constitution which point to the race, treat them as persons whom it was morally lawful to deal in as articles of property, and to hold as slaves."

"The clause in the Constitution authorizing Congress to make all needful rules and regulations for the government of the territory and other property of the United States, applies only to territory within the chartered limits of some one of the States when they were colonies of Great Britain, and which was surrendered by the British Government to the old Confederation of the States, in the treaty of peace. It does not apply to territory acquired by the present Federal Government, by treaty or conquest, from a foreign nation."

"The United States, under the present Constitution, cannot acquire territory to be held as a colony, to be governed at its will and pleasure. But it may acquire territory which, at the time, has not a population that fits it to become a State, and may govern it as a Territory until it has a population which, in the judgment of Congress, entitles it to be admitted as a State of the Union."

"During the time it remains a Territory, Congress may legislate over it within the scope of its constitutional powers in relation to citizens of the United States—and may establish a Territorial Government—and the form of this local Government must be regulated by the discretion of Congress—but with powers not exceeding those which Congress itself, by the Constitution, is authorized to exercise over citizens of the United States, in respect to their rights of persons or rights of property."

"The territory thus acquired, is acquired by the people of the United States for their common and equal benefit, through their agent and trustee, the Federal Government. Congress can exercise no

power over the rights of persons or property of a citizen in the Territory which is prohibited by the Constitution. The Government and the citizen, whenever the Territory is open to settlement, both enter it with their respective rights defined and limited by the Constitution. Congress have no right to prohibit the citizens of any particular State or States from taking up their home there, while it permits citizens of other States to do so. Nor has it a right to give privileges to one class of citizens which it refuses to another. The territory is acquired for their equal and common benefit—and if open to any, it must be open to all, upon equal and the same terms."

"Every citizen has a right to take with him into the Territory any article of property which the Constitution of the United States recognizes as property."

"The Constitution of the United States recognizes slaves as property, and pledges the Federal Government to protect it. And Congress cannot exercise any more authority over property of that description than it may constitutionally exercise over property of any other kind."

"The act of Congress, therefore, prohibiting a citizen of the United States from taking with him his slaves when he removes to the Territory in question to reside, is an exercise of authority over private property which is not warranted by the Constitution—and the removal of the plaintiff, by his owner, to that Territory, gave him no title to freedom."

"The plaintiff himself acquired no title to freedom by being taken by his owner to Rock Island, in Illinois, and brought back to Missouri. This court has heretofore decided that the *status* or condition of a person of African descent depended on the laws of the State in which he resided."

"It has been settled by the decisions of the highest court in Missouri, that, by the laws of that State, a slave does not become entitled to his freedom, where the owner takes him to reside in a State where slavery is not permitted, and afterwards brings him back to Missouri."

Such are some of the points passed upon by the court. We venture the assertion, that more palpable falsifications of history, and outrageous perversions of well settled and long recognized law, were never before condensed within so small a compass. Let us sum up these monstrosities:

1st. Colored persons were not, when the Constitution was formed, and cannot at any time be citizens; and cannot prosecute their rights in the courts of the United States.

2d. Our Revolutionary Fathers held the doctrine, that colored men had " *no rights which white men were bound to respect.* "

3d. The Declaration of Independence meant " *all white men,* " when it said " *all men are created equal.* "

4th. The Constitution recognizes the doctrine that it is " *morally lawful* " to deal in blacks as articles of property, and to hold them as slaves.

5th. The clause in the Constitution which authorizes Congress "to make all needful rules and regulations" for the government of the territories, only applies to the territory we held at the formation of that instrument.

6th. All citizens of the United States have the same right to take slaves into any of the territories of the United States, and hold them there as such, as they have to take their horses or oxen, no matter what laws may exist prohibiting it.

7th. Congress has no power to pass laws prohibiting slavery in any of the territories of the United States.

8th. The people of the territories have no power, through their legislature or otherwise, to pass laws restricting or prohibiting slavery therein.

9th. The provisions of the Ordinance of 1787, of the Compromise Act of 1820, and of all the numerous laws passed by Congress and the territories, from the organization of our government to the present time, in any manner restricting or prohibiting slavery in any of the territories, are all unconstitutional, null and void.

10th. Slaves do not become free by being taken by their masters into the free States, either for transit or for residence.

We propose to examine these propositions, and we promise to demonstrate that they are false, both in their law and in their assumption of facts.

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In his opinion, referring to the colored race, Judge Taney utters the following atrocious sentiments:

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

axiom in morals as well as in politics, which no one thought of disputing, or supposed to be open to dispute; and men in every grade and position in society, daily and habitually acted upon it in their private pursuits, as well as in matters of public concern, without doubting for a moment the correctness of this opinion."

Judge Taney quotes the following sentence from the Declaration of Independence:

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

And adds the following:

"The general words above quoted would seem to embrace the whole human family, and if they were used in a similar instrument at this day would be so understood. But it is too clear for dispute, that the enslaved African race were not intended to be included, and formed no part of the people who framed and adopted this declaration; for if the language, as understood in that day, would embrace them, the conduct of the distinguished men who framed the Declaration of Independence would have been utterly and flagrantly inconsistent with the principles they asserted; and instead of the sympathy of mankind, to which they so confidently appealed, they would have deserved and received universal rebuke and reprobation."

"The unhappy black race were separated from the white by indelible marks, and laws long before established, and were never thought of or spoken of except as property, and when the claims of the owner or the profit of the trader were supposed to need protection."

"This state of public opinion had undergone no change when the Constitution was adopted, as is equally evident from its provisions and language."

And yet, the Constitution was formed *fifteen years after* Lord Mansfield decided the celebrated Somerset Case; a decision, the effects of which the eloquent Irish Orator, Curran, described, when he said, "The stranger and the sojourner, when he sets his foot on British earth trod a ground which was holy and consecrated by the genius of universal emancipation;" that "no matter in what language the slave's doom may be pronounced, no matter what complexion, incompatible with freedom, an Indian or an African, sun may have burnt upon him, the moment he touched the sacred soil of Britain, he stood redeemed, regenerated, and disenthralled."

In France, Montesquien, Voltaire, Abbe Raynal, Rousseau, etc., had denounced slavery as fundamentally inconsistent with the social law. And in 1794, five years after the adoption of our Constitution, the French National Convention, as one of its first and most important acts, due to the spirit of the age, abolished slavery forever in all the French colonies.

So much for the views and acts of two of the most civilized and christian nations of Europe. At home, in this country, slavery was denounced by all our great leading public men. Washington, Jefferson, Patrick Henry, Madison, Morris, Hamilton, Franklin, Adams, Jay, &c., all spoke strongly against it. Jefferson trembled when he thought of the sin of slavery, and that God is just. In 1774, in the Virginia convention he said: "The abolition of slavery is the greatest object of desire in these colonies, where it was unhappily introduced in their infant state." In the original draft of the Declaration of Independence he said, the slave trade was "a cruel war against human nature." Mr. Webster said: "There was then no diversity of opinion between the North and South on the subject of slavery. It will be found that both parts of the country held it equally an evil—a moral and political evil." In 1791, Jonathan Edwards, the eminent Divine, said: "If you judge the future by the past, within fifty years from this time it will be as shameful for a man to hold a negro slave, as to be guilty of common robbery or theft." And, in the very convention that formed the Constitution, James Madison, the father of that instrument, said: " *We intend this Constitution to be* THE GREAT CHARTER OF HUMAN LIBERTY *to the unborn millions who shall* 10 *enjoy its protection; and who should never see that such an institution as slavery was ever known in our midst.* "

Yet, with this record, Chief Justice Taney says, at that time the civilized and enlightened portions of the world maintained that the colored race " *had no rights which white men were bound to respect.* " What monstrous calumny and wicked perversion of history!

In reply to the assumption that colored men were not citizens at the formation of the Constitution, it is well to remember that, of the thirteen original States, only *three,* South Carolina, Virginia and Delaware, had restricted even the right of suffrage to the basis of color; while in all the others, either under royal charters, or independent Constitutions, the only restrictions refer to age, residence or property. Six of the States, Massachusetts, New Hampshire, New York, New Jersey, Maryland and North Carolina, had formed Constitutions before the Federal Constitution went into effect. *In all of these* the free, native born inhabitants, though of African descent, possessed the elective franchise, and of course were citizens. In the Maryland Constitution, adopted Aug. 14, 1776, the bill of rights says: "Elections ought to be free and frequent, and *every man* having property in a common interest with, and an attachment to the community, *ought to have the right of suffrage.* " It simply provides that " *all free men,* " having a certain amount of property, "shall have a right of suffrage." In North Carolina

the Constitution, adopted Dec. 18, 1776, says: " *All persons* possessed of a free hold in any town in this State," &c.. shall be entitled to vote.

In the Supreme Court of North Carolina, Jndge Gaston, one of the most eminent of the public men of that State, said: "According to the laws of this State, all human beings within it, who are not slaves, fall within one of two classes. Whatever distinctions may have existed in the Roman laws between citizens and free inhabitants, they are unknown to our institutions. Before our Revolution, all free persons born within the dominions of the King of Great Britain, whatever their color or complexion, were native born British subjects—those born out of his allegiance were aliens. Slavery did not exist in England, but it did in the British colonies. Slaves were not in legal parlance persons, but property. The moment the incapacity, the disqualifications of slavery, was removed, they became persons, and were then either British subjects, or not British subjects, according as they were or were not born within the allegiance of the British King. Upon the Revolution, no other change took place in the laws of North Carolina than was consequent on the transition from a colony dependent on a European King, to a free and sovereign State. Slaves remained slaves. British subjects in North Carolina became North Carolina freemen-Foreigners, until made members of the State, remained aliens. Slaves, manumitted here, became freemen, and therefore, if born within North Carolina, are citizens of North Carolina, and all free persons born within the State are born citizens of the State. The Constitution extended the elective franchise to every freeman who had arrived at the age of twenty-one, and paid a public tax; and it is a matter of universal notoriety, that, under it, free persons, without regard to color, claimed and exercised the franchise, until it was taken from free men of color a few years since by our amended Constitution."

In his dissenting opinion, Judge Curtis says:

"On the 25th of June, 1778, the Articles of Confederation being under consideration by the Congress, the delegates from South Carolina moved to amend this fourth article, by inserting after the word "free," and before the word "inhabitants," the word "white," so that the privileges and immunities of general citizenship would be secured only to white persons. Two States voted for the amendment, eight States against it, and the vote of one State was divided. The language of the article stood unchanged, and both by its terms of inclusion, "free inhabitants," and the strong implication from its terms of exclusion, "paupers, vagabonds, and fugitives from justice," who alone were excepted, it is clear, that under the Confederation, and at the time of the adoption of the Constitution, free colored persons of African descent might be, and by reason of their citizenship in certain States were, entitled to the privileges and immunities of general citizenship of the United States."

The whole current of authority and facts stamp the opinion of the court as erroneous. Judge Curtis adds:

"I can find nothing in the Constitution which, *proprio vigore,* deprives of their citizenship any class of persons who were citizens of the United States at the time of its adoption, or who should be native born citizens of any State after its adoption; nor any power enabling Congress to disfranchise persons born on the soil of any State, and entitled to citizenship of such State by its Constitution and laws. And my opinion is, that, under the Constitution of the United States, every free person born on the soil of a State, who is a citizen of that State by force of its Constitution or laws, is also a citizen of the United States."

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In concluding this branch of the subject, it may be well for our opponents to consider the force of the following remarks of Judge McLean:

"On the question of citizenship it must be admitted that we have not been very fastidious. Under the late treaty with Mexico, we have made citizens of all grades, combinations, and colors. The same was done in the admission of Louisiana and Florida. No one ever doubted, and no court ever held, that the people of these Territories did not become citizens under the treaty. They have exercised all the rights of Citizens, without being naturalized under the acts of Congress."

We have read and carefully considered the proposition that the clause, giving to Congress the authority to govern Territories, etc., only applies to the Territories then belonging to the United States. We affirm that there is not a single reason given for such an opinion which has a shadow of plausibility. We can see the *design* which the pro slavery Judges and politicians have in view. They wish to evade the force of that direct grant of power to Congress, "to make all needful rules and regulations," etc., for the government of Territories, when it is applied to those more recently acquired tracts of land, in which the question of slavery or freedom is now pending. But the Supreme Court of the United States, through Judge Marshall, has substantially settled this question. In the Atlantic Ins. Co. *vs.* Canter, (1 Peters, 507; 7 Curtis, 685,) this learned and great Jurist said: "In the mean time, Florida continues to be a Territory of the United States, governed by virtue of that clause in the Constitution, which empowers Congress to make all needful rules and regulations respecting the Territory, or other property belonging to the United States."

Now, as Florida was *not* a part of our territory at the formation of the Constitution, but was acquired by our government more than a quarter of a century afterwards, it is clear that, if it was governed

by virtue of this clause of the Constitution, it was *not* confined in its operation to the territory then in the possession of the United States. This effectually disposes of that part of the case.

But the proposition that Congress has no power to restrict or prohibit slavery in the Territories, is the monster error, and the prolific father of the brood which we now propose to examine. For the first time since the organization of our government, this grand heresy has found favor with the Judiciary of the Commonwealth. In the face of a series of acts by Congress, from 1789 to 1818, affirming and exercising this right; in the face of the recognition of its correctness by all the departments of the government, the majority of the Judges have yielded to the political pressure upon them, and have in this year, 1857, and the sixty-eighth of our existence under the Constitution, for the first time, found that,from the beginning, every body has been going wrong on this subject. Washington sat as President of the Convention that framed the Constitution; yet he served as President of the Republic eight years, and repeatedly signed bills, based upon the heresy upon the heresy that Congress had the right to prohibit slavery in the Territories. Madison was the leading spirit in the construction of the Constitution; yet he too lived and died in the delusion that he knew *something* of the instrument he had made. He supposed, and acted on the theory, that slavery could rightfully be prohibited in the Territories by Congress; and, as President of the United States, repeatedly acted upon that presumption. Jefferson, the Father of Democracy—the leading spirit of the Revolution—the author of the Declaration of Independence, served eight years as President, and, like Madison and Washington, was the victim of the same great delusion. He drew up the famous ordinance of 1787, by which slavery was forever prohibited in all the territory north-west of the Ohio River. He also pressed the expediency of a measure by which it was to be banished from all the Territories of the Union. He supposed, and the people of the United States supposed he knew something of the genius and spirit of our government. But he was sadly mistaken. Washington, and Jefferson, and Madison, and all the great and glorious Fathers of the Republic have turned out to be charlatans, and humbugs, ignorant even of what they themselves meant by their own words; and leading astray an entire nation for nearly three-fourths of a century! Is it possible that these things are so?

The Supreme Court have arrived at this extraordinary conclusion by taking for granted that which is not true, that the Constitution expressly, and in two separate instances, recognizes the right of property in man; in other words, sanctions and sustains the system of human slavery. Now Mr. Madison, and the men who wrote that instrument, did not intend to do anything of the kind. He thought they had made a Constitution which not only did not sanction slavery, but he was extremely solicitous that the terms *slaves* and *slavery,* should not appear in this work of their hands. He expressly says, they intended to make such an instrument that the unborn millions " *should never see that such an institution as slavery was ever known in our midst.* " It was, to use his strong expression, " *to be the* GREAT CHARTER OF HUMAN LIBERTY." Yet we are now 12 told by Judge Taney, that such

an instrument, prepared by such men, and for such a purpose, "recognizes slaves as property, and pledges the federal government to protect it;" that it treats the colored race, "as persons whom it was morally lawful to deal in as articles of property, and to hold as slaves."

Upon the question of the power of Congress to prohibit slavery in the Territories, the opinion of Judge Curtis is perfectly unanswerable and overwhelming. Our limits will not permit so full extracts from it as we desire, but we cannot refrain from quoting a few passages:

"But it is insisted, that whatever other powers Congress may have respecting the territory of the United States, the subject of negro slavery forms an exception.

"The Constitution declares that Congress shall have power to make ' *all* needful rules and regulations' respecting the territory belonging to the United States.

"The assertion is, though the Constitution says all, it does not mean all—though it says all, without qualification, it means all except such as allow or prohibit slavery. It cannot be doubted that it is incumbent on those who would thus introduce an exception not found in the language of the instrument, to exhibit some solid and satisfactory reason, drawn from the subject matter or the purposes and objects of the clause, the context, or from other provisions of the Constitution, showing that the words employed in this clause are not to be understood according to their clear, plain and natural signification.

"The subject-matter is the territory of the United States out of the limits of every State, and consequently under the exclusive power of the people of the United States. Their will respecting it, manifested in the Constitution, can be subject to no restriction. The purposes and objects of the clause were the enactment of laws concerning the disposal of the public lands, and the temporary government of the settlers thereon until new States should be formed. It will not be questioned that, when the Constitution of the United States was framed and adopted, the allowance and the prohibition of negro slavery were recognised subjects of municipal legislation; every State had in some measure acted thereon; and the only legislative act concerning the territory—the ordinance of 1787, which had then so recently been passed—contained a prohibition of slavery. The purpose and object of the clause being to enable Congress to provide a body of municipal law for the government of the settlers, the allowance or the prohibition of slavery comes within the known and recognized scope of that purpose and object.

"There is nothing in the context which qualifies the grant of power. The regulations must be 'respecting the territory.' An enactment that slavery may or may not exist there, is a regulation respecting the territory. Regulations must be needful; but it is necessarily left to the legislative

discretion to determine whether a law be needful. No other clause of the Constitution has been referred to at the bar, or has been seen by me, which imposes any restriction or makes any exception concerning the power of Congress to allow or prohibit slavery in the territory belonging to the United States."

The first Congress under the Constitution had fourteen members, including Mr. Madison, who were members of the Convention that framed the Constitution. On the 7th of August, 1789, this Congress passed a law, recognizing and legalizing the ordinance of 1787, by which slavery was prohibited in this North Western territory. It provides that:

"'Whereas, in order that the ordinance of the United States in Congress assembled, for the government of the territory north-west of the river Ohio, *may continue to have full effect,* it is required that certain provisions should be made, so as to adapt the same to the present Constitution of the United States.' It then provides for the appointment by the President of all officers, who, by force of the ordinance, were to have been appointed by the Congress of the Confederation, and their commission in the manner required by the Constitution; and empowers the Secretary of the Territory to exercise the powers of the Governor in case of the death or necessary absence of the latter.

"Here is an explicit declaration of the will of the first Congress, that the ordinance, one article of which prohibited slavery, "should continue to have full effect." Gen. Washington who signed this bill, as President, was the President of that Convention."

Judge McLean, in his dissenting opinion, discusses the power of Congress to prohibit slavery in the Territories, with much ability. We copy a few paragraphs, and ask for them the candid attention of the reader:

"On the 13th of July, the ordinance of 1787 was passed 'for the government of the United States territory north-west of the river Ohio,' with but one dissenting vote. This instrument provided there should be organized in the territory not less than three, nor more than five States, designating their boundaries. It was passed while the Federal Convention was in session, about two months before the Constitution was adopted by the Convention. The members of the 13 Convention must therefore have been well acquainted with the provisions of the ordinance. It provided for a temporary government, as initiatory to the formation of State governments. Slavery was prohibited in the territory.

"Can any one suppose that the eminent men of the Federal Convention could have overlooked or neglected a matter so vitally important to the country, in the organization of temporary governments for the vast territory north-west of the river Ohio?

"But if it be admitted that the word teritory, as used, means land, and nothing but land, the power of Congress to organize a temporary government is clear It has power to make all needful regulations respecting the public lands, and the extent of those 'needful regulations' depends upon the direction of Congress, where the means are appropriate to the end, and do not conflict with any of the prohibitions of the Constitution. If a temporary Government be deemed needful, necessary, requisite, or is wanted. Congress has power to establish it. This court says, in McCulloch *vs.* The State of Maryland. (4 Wheat. 316.) 'If a certain means to carry into effect any of the powers expressly given by the Constitution to the government of the Union be an appropriate measure, not prohibited by the Constitution, the degree of its necessity is a question of legislative discretion, not of judicial cognizance.'

"If Congress should deem slaves or free colored persons injurious to the population of a free Territory, as conducing to lessen the value of public lands, or on any other ground connected with the public interest, they have the power to prohibit them from becoming settlers in it. This can be sustained on the ground of a sound national policy, which is so clearly shown in our history by practical results, that it would seem no considerate individual can question it. And, as regards any unfairness of such a policy to our Southern brethren, as urged in the argument, it is only necessary to say that, with one fourth of the Federal population of the Union, they have in the slave States a larger extent of fertile territory than is included in the free States; and it is submitted, if masters of slaves be restricted from bringing them into free territory, that the restriction on the free citizens of non-slaveholding States, by bringing slaves into free territory, is four times greater than that complained of by the South. But, not only so; some three or four hundred thousand holders of slaves, by bringing them into free territory, impose a restriction on twenty millions of the free States. The repugnancy to slavery would probable prevent fifty or a hundred freemen from settling in a slave Territory, where one slaveholder would be prevented from settling in a free Territory.

'It is refreshing to turn to the early incidents of our history, and learn wisdom from the acts of the great men who have gone to their account. I refer to a report in the House of Representatives by John Randolph, of Roanoke, as chairman of a committee, in March, 1803—fifty-four years ago. From the Convention held at Vincennes, in Indiana, by their President, and from the people of the Territory, a petition was presented to Congress, praying the suspension of the provision which prohibited which prohibited slavery in that Territory. The report stated 'that the rapid population of the State of Ohio sufficiently evinces, in the opinion of your committee, that the labor of slaves

is not necessary to promo?e the growth and settlement of colonies in that region. That this labor, demonstrably the dearest of any, can only be employed to advantage in the cultivation of products more valuable than any known to that quarter of the United States; that the committee deem it highly dangerous and inexpedient to impair a provision wisely calculated to promote the happiness and prosperity of the northwestern country, and to give strength and security to that extensive frontier. In the salutary operation of this sagacious and benevolent restraint, it is believed that the inhabitants will, at no very distant day, find ample remuneration for a temporary privation of labor and of emigration.' (1 vol. State Papers, Public Lands, 160)

"The judicial mind of this country, State and Federal, has agreed on no subject within its legitimate action, with equal unanimity, as on the power of Congress to establish Territorial Governments. No court, State or Federal, no judge or statesman, is known to have had any doubts on this question for nearly sixty years after the power was exercised."

"The prohibition of slavery north of thirty-six degrees thirty minutes, and of the State of Missouri, contained in the act admitting that State into the Union, was passed by a vote of 134, in the House of Representatives, to 42. Before Mr. Monroe signed the act, it was submitted by him to his Cabinet, and they held the restriction of slavery in a Territory to be within the constitutional powers of Congress. It would be singular, if in 1804 Congress had power to prohibit the introduction of slaves in Orleans Territory from any part of the Union, under the penalty of freedom to the slave, if the same power, embodied in the Missouri Compromise, could not be exercised in 1820."

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"If Congress may establish a Territorial Government in the exercise of its discretion, it is a clear principle that a court cannot control that discretion. This being the case, I do not see on what ground the act is held to be void. It did not purport to forfeit property, or take it for public purposes. It only prohibited slavery; in doing which, it followed the ordinance of 1787."

Judge Curtis, in discussing the same question, makes the following points:

"If power to regulate commerce extends to an indefinite prohibition of the use of all vessels belonging to citizens of the several States, and may operate, without exception, upon every subject of commerce to which the legislative discretion may apply it, upon what grounds can I say that power to make all needful rules and regulations respecting the territory of the United States is subject to an exception of the allowance or prohibition of slavery therein?

"While the regulation is one 'respecting the territory,' while it is, in the judgment of Congress, 'a needful regulation,' and is thus completely within the words of the grant, while no other clause of

the Constitution can be shown, which requires the insertion of an exception respecting slavery, and while the practical construction for a period of upwards of fifty years forbids such an exception, it would, in my opinion, violate every sound rule of interpretation to force that exception into the Constitution upon the strength of abstract political reasoning, which we are bound to believe the people of the United States thought insufficient to induce them to limit the power of Congress, because what they have said contains no such limitation."

We conclude this part of the discussion by citing another passage from Judge Curtis's opinion. If there is any possible escape from his conclusions, neither the Supreme Court Judges nor the apologists of slavery propagandism have yet been able to find it.

"Without going minutely into the details of each case, I will now give reference to two classes of acts, in one of which Congress has extended the ordinance of 1787, including the article prohibiting slavery, over different Territories, and thus exerted its power to prohibit it; in the other, Congress has erected Governments over Territories acquired from France and Spain, in which slavery already existed, but refused to apply to them that part of the Government under the ordinance which excluded slavery.

"Of the first class are the act of May 7th, 1800, (2 Stat. at Large, 58,) for the government of the Indiana Territory; the act of January 11th, 1805, (2 Stat. at Large, 309,) for the government of Michigan Territory; the act of May 3d, 1809, (2 Stat. at Large, 514,) for the government of the Illinois Territory; the act of April 20th, 1836, (5 Stat. at Large, 10,) for the government of the Territory of Wisconsin; the act of June 12th, 1838, for the government of the Territory of Iowa; the act of August 14th, 1848, for the government of the Territory of Oregon. To these instances, should be added the act of March 6th, 1820, (3 Stat. at Large, 548,) prohibiting slavery in the territory acquired from France, being northwest of Missouri, and north of thirty-six degrees thirty minutes north latitude.

"Of the second class, in which Congress refused to interfere with slavery already existing under the municipal law of France or Spain, and established Governments by which slavery was recognized and allowed, are, the act of March 26th, 1804, (2 Stat. at Large, 283,) for the government of Louisiana; the act of March 2d, 1805, (2 Stat. at Large, 322,) for the government of the Territory of Orleans; the act of June 4th, 1812, (2 Stat. at Large, 743, for the government of the Missouri Territory; the act of March 30th, 1822, (3 Stat. at Large, 654,) for the government of the Territory of Florida. Here are eight distinct instances, beginning with the first Congress, and coming down to the year 1848, in which Congress has excluded slavery from the territory of the United States; and six distinct instances in which Congress organized governments of Territories by which slavery was recognized and continued, beginning also with the first Congress, and coming down to the year 1822. These acts were severally signed by seven Presidents of the United States, beginning with General Washington,

and coming regularly down as far as Mr. John Quincy Adams, thus including all who were in public life when the Constitution was adopted.

"If the practical construction of the Constitution contemporaneously with its going into effect, by men intimately acquainted with its history from their personal participation in framing and adopting it, and continued by them through a long series of acts of the gravest importance, be entitled to weight in the judicial mind on a question of construction, it would seem to be difficult to resist the force of the acts above adverted to."

The argument of Judge Curtis on the following point is complete and unanswerable:

"Nor, in my judgment, will the position, that a prohibition to bring slaves 15 into a Territory deprives any one of his property without due process of law, bear examination.

"It must be remembered that this restriction on the legislative power is not peculiar to the Constitution of the United States; it was borrowed from *Magna Charta;* was brought to America by our ancestors, as part of their inherited liberties, and has existed in all the States, usually in the very words of the great charter. It existed in every political community in America in 1787, when the ordinance prohibiting slavery north and west of the Ohio was passed.

"And if a prohibition of slavery in a Territory in 1820 violated this principle of *Magna Charta,* the ordinance of 1787 also violated it; and what power had, I do not say the Congress of the Confederation alone, but the Legislature of Virginia, or the Legislature of any or all the States of the Confederacy, to consent to such a violation? The people of the States had conferred no such power. I think I may at least say, if the Congress did then violate *Magna Charta* by the ordinance, no one discovered that violation. Besides, if the prohibition upon all persons, citizens as well as others, to bring slaves into a Territory, and a declaration that if brought they shall be free, deprives citizens of their property without due process of law, what shall we say of the legislation of many of the slaveholding States, which have enacted the same prohibition? As early as October, 1778, a law was passed in Virginia, that thereafter no slave should be imported into that Commonwealth by sea or by land, and that every slave who should be imported should become free. A citizen of Virginia purchased in Maryland a slave who belonged to another citizen of Virginia, and removed with the slave to Virginia. The slave sued for her freedom and recovered it; as may be seen in *Wilson* v. *Isabel,* (5 Call's R. 425;) see also *Hunter* v. *Hulsher,* (1 Leigh 172;) and a similar law has been recognized as valid in Maryland, in *Stewart* v. *Oaks,* (5 Har. and John. 107.) I am not aware that such laws, though they exist in many States were ever supposed to be in conflict with the principle of *Magna Charta* incorporated into the State Constitutions. It was certainly understood by the convention which framed the Constitution, and has been so understood ever since, that, under the power to regulate

commerce, Congress could prohibit the importation of slaves; and the exercise of the power was restrained till 1808. A citizen of the United States owns slaves in Cuba, and brings them to the United States, where they are set free by the legislation of Congress. Does this legislation deprive him of his property without due process of law? If so, what becomes of the laws prohibiting the slave trade? If not, how can a similar regulation respecting a Territory violate the fifth amendment of the Constitution?"

No fact is better understood among those who are familiar with the law than this, that property in a slave is a different thing, and rests upon a different basis than that of property in cattle, horses, &c. Courts have frequently decided that a slave is *not* property beyond the operation of the local law which makes him such. The laws of nations do not recognize such a thing as property in man. In the case of Prigg *vs.* The State of Pennsylvania, the Supreme Court of the United States say: "The state of slavery is deemed to be a mere municipal regulation, founded upon, and limited to, the range of the territorial laws." If this be so, slavery can exist *nowhere,* except under the authority of law. And in that same Prigg case, the Court say: "It is manifest from this consideration, that, if the constitution had not contained the clause requiring the rendition of fugitives from labor, every non-slaveholding State in the Union would have been at liberty to have declared free all runaway slaves coming within its limits, and to have given them entire immunity and protection against the claims of their masters."

The Supreme Court of Appeals of Kentucky said: "Slavery is sanctioned by the laws of this State, and the right to hold them under our municipal regulations is unquestionable. But we view this as a right, existing by positive law, of a municipal character, without foundation in the law of nature, or the unwritten common law." This is the uniform statement of all who have written or spoken on this subject.

If, then, the only basis for slavery is a law, or municipal regulation authorizing it, the absence of such law or regulation insures to the slave his freedom. Hence, it has been held that slavery cannot exist in the territories till it is authorized by law. If the master bring his slave to a free State, where slavery is prohibited, it is a still stronger case in behalf of freedom. It has heretofore been decided by the courts both of the free and the slave States, that a slave becomes free by being taken by the master to a free State. Freedom once attaching, it follows that it continues, after a return to the service of the Master in a slave State; as it is a well settled rule of law that a free person cannot, by any voluntary act of his, make himself a slave. Our Declaration of Independence speaks of certain " *inalienable rights,* " and among them is *liberty.* It cannot be 16 alienated by any act of the possessor. If freedom attaches, by being brought by the master to a free State, it follows as a legal and logical conclusion that slavery does not and cannot again attach by a forcible or voluntary return to a slave State.

It is to our mind clear, that the decisions lately made in the slave States, and which we understand to be now confirmed by the United States Court, are based upon the hypothesis that slaves *do not* become free by being taken, either in transitu, or for residence, to a free State. They virtually decide that the slaveholders may drive their gangs of manacled negroes to a market through Ohio, and we have been laboring under a mistake when we supposed we could prevent it. We believe the free States will continue to maintain their ground. We have declared that slavery shall not exist in Ohio, and we trust our people are prepared to stand by and support that declaration.

It is not necessary to quote the opinions of courts upon this subject in former years, in contrast to the views now maintained. It is apparent to all that a great change has taken place, and that the slave power has been rapidly aggressive. Chief Justice Gamble, of Missouri, says: "In this State it has been recognized from the beginning of the government as a correct position in law, that a master who takes his slave to reside in a State or territory where slavery is prohibited, thereby emancipates his slaves." Yet this is now overruled. All of the doctrines and opinions which favored liberty, and restricted slavery, are now cried down by the advocates and apologists of slavery propagandism, and their defenders are sneered at and ridiculed as "Abolitionists." We of the free States have witnessed this encroachment quite as long as good neighborhood requires, and the time has come for us to take our stand, and raise our voice against it.

The case of Dred Scott marks an important era in the history of this aggression. While the real and only point legally decided was, that the plaintiff, Scott, was not a citizen of Missouri, and that, therefore, the court had no jurisdiction of the case, the Judges have taken the occasion to favor the public with their views upon all the leading political questions of the day connected with the slavery issue. Judge McLean, in his opinion, says: "Nothing that has been said by the court, which has not a direct bearing on the jurisdiction of the court, against which they decided, can be considered as authority. I shall certainly not regard it as such." Neither do we, nor will the American people. But the doctrines announced, startling, novel, extraordinary and monstrous as they are, may properly be considered as settling these questions, so far as the present court is concerned. And they become of still greater moment when we find them taken up by the President, and the party of which he is the head, as articles of political faith, and, as such, transferred to their platforms throughout the free North. That they will be rebuked and repudiated by the people, we do not permit ourselves to doubt.

Freemen of Ohio. —You will soon be called upon to pronounce your verdict upon this case. The Slave Democracy have indorsed this decision, and defend its atrocious sentiments. You are called upon by them to reject all the views you have so long entertained, and have so often expressed, and to bow in meek submission to the arrogant demands of the slave power. *Will you do it?* We ask you to read this Dred Scott decision, and consider well what it requires. Compare it with the doctrines of the

Washington, and Jefferson, and Madison, and all the great and good Fathers of the Republic; and, on the second Tuesday of October, vote under a solemn conviction of your responsibility, as a free American citizen, to your country, to freedom, and to God.