SPEECH

OF

HON. HORACE MAYNARD,

OF TENNESSEE,

DELIVERED

IN THE HOUSE OF REPRESENTATIVES,

APRIL 11, 1860.

The House having under consideration the bill for the admission of Kansas into the Union—Mr. MAYNARD said:

Mr. SPEAKER: We come to the discussion of Kansas affairs now under very different circumstances from those under which we discussed them two years ago. For more than three years, there had reigned within the limits of that unhappy Territory, anarchy and civil war. We had heard all over the country of Kansas "outrages," of Kansas "wrongs," of contests between "border ruffians" and the emissaries of "emigrant aid societies;" of "bowie knives" and "Sharpe's rifles;" of the wounds of "bleeding Kansas," and the defloration of her "virgin soil." It is about two years since Congress passed what may be termed an enabling act, to allow Kansas to come into the Union under what is known as the Lecompton constitution, if she chose so to do; or, if she did not, to frame a constitution to suit herself, and come in under its provisions.

The effect of that legislation upon the affairs of Kansas, every gentleman will bear me witness, has been to bring quiet and peace to her borders. Since the passage of that law we have heard nothing of these outrages; nothing of the turbulent proceedings that had disgraced her before that time; and if there were anything else wanted to justify the wisdom of Congress in that legislation, the effect produced by it is certainly that additional justification. Consequently, we are now permitted to consider our obligations towards Kansas coolly, carefully, deliberately, without any of the necessity which everybody supposed to be resting upon us during the last and the previous Congress. We are now permitted to inquire whether she comes here and applies for admission to the Union as a State under such conditions that we are constrained to grant the application.

In the first place, has she a sufficient population to give her, under the last apportionment, a representation in Congress—I mean has she a population of ninety-three thousand four hundred and twenty persons? The act of the last Congress provided, that when that fact should be ascertained by a census legally taken, she should then, if she chose, be permitted to elect delegates to a convention who might frame for her a constitution, and not before.

It was suggested by the gentleman from Ohio (Mr. PENDLETON) yester-

Printed by Lemuel Towers.

day, that the taking of that census was devolved by the act upon the Federal authorities. I do not think so. Such is not the language of the act. Besides, if the Federal Government had undertaken to make such a census, I care not how fairly, nor with what amount of pains it might have been done, if the result had demonstrated a population in the Territory of less than ninety-three thousand four hundred and twenty persons, pray tell me—and the question is certainly pertinent—pray tell me what do you suppose we should have heard about fraud; about Executive interference, and abuse generally of Executive power; of frauds at the Oxford precinct; of frauds at Kickapoo; of frauds at the Delaware Crossing; of frauds at Lecompton; of frauds at Leavenworth; of frauds without limit and without number? It was right, it was proper, that the Territory itself should take the census under her own legislation.

Mr. PENDLETON. Do I understand the gentleman to say that I admitted yesterday that the census should be taken by the Federal authority?

Mr. MAYNARD. I understood the gentleman not only to admit it, but to assert that it should have been taken by the Federal authority; and that, not having made an appropriation for this purpose, Congress had waived the necessity of a census.

Mr. PENDLETON. On the contrary, I am well aware that, at the time the conference bill was passed, during the discussion of this feature of the bill, the question was raised whether the census should be taken by the Federal authority or the Territorial authority. The opponents of the bill then asserted that it must be by the Federal authority. The friends of the bill, on the contrary, asserted that it need not be taken by the Federal authorities.

Mr. MAYNARD. I am very glad that I misunderstood the gentleman, or that he has better considered the matter and corrects his statement.

Mr. PENDLETON. No, sir; I made no such statement yesterday. I have not changed my position.

Mr. BARKSDALE. I understand that this census was not ordered, even by the Territorial Legislature of Kansas, until after the convention had been held.

Mr. MAYNARD. I certainly wish to do the gentleman from Ohio no injustice, and I will quote from his remarks as published in the Globe. He says, speaking of the refusal of Congress to make an appropriation for the taking of a census in Kansas in conformity with the President's recommendation—

"I cannot believe that the Congress of the United States would insist upon a census as a condition precedent to the admission of a State, when they refused to appropriate the necessary amount of money for taking it."

However that may be, it seems that a census has been taken by the authority of the Territory. It seems—no doubt to the surprise of the people there, as it was certainly to my surprise, for I frankly admit that, from information derived from an official and anti-Lecompton source, which I deemed perfectly reliable, I had supposed Kansas to contain a population much larger than the representative ratio—it seems that, upon taking the census, instead of ninety-three thousand four hundred and twenty people, she has barely sixty thousand.

A VOICE. The exact number is seventy-one thousand.

Mr. MAYNARD. I am told the census shows she has seventy- thousand. I think there is no reference to a census having been ta[illegible] of the population of that Territory, in the report of the committee upon [illegible]s sub-

ject. We heard nothing about it in debate, until the fact was brought out yesterday by a question of the gentleman from Mississippi, (Mr. BARKSDALE,) and I am not familiar with its details.

I am satisfied, by the argument addressed to the House yesterday by the Delegate from Kansas—not from the expression of his opinion to that effect, but as a fair inference to be derived from his argument—that she has not a sufficient population to entitle her to admission. Two things in the gentleman's speech were made very clear to my apprehension: one, that Kansas had not the requisite population under the legislation of the last Congress; the other, that the Delegate regarded her admission to the Union as a foregone conclusion, no matter what obstacles or objections might be interposed.

To pass on. There is another objection in my mind to the admission of Kansas under the present application and with the present constitution. During the last Congress, it will be remembered that Minnesota and Oregon both made application to be admitted as States. It will perhaps be remembered that I, and those with whom I act on political questions, opposed the admission of both those States. I opposed the admission of Minnesota with two Representatives, because I did not believe she had a population to entitle her to them. I also opposed Oregon because I did not believe she had a population sufficient to entitle her to one Representative; and I do not believe at this day she has, in point of fact, fifty thousand people within her limits.

We opposed the admission of both those States upon another ground—that their respective constitutions permitted aliens, resident within their limits, to have the privileges of sovereignty by conferring upon them the elective franchise. It will be recollected that my colleague, the predecessor of the gentleman now sitting before me, (Mr. QUARLES,) who for several years had honorably occupied a position upon the very important Committee on Territories—a position which has been taken away from us under the present organization of the House, and given to a member of the dominant party, so that our voice is not heard in the deliberations of that committee—it will be recollected, I say, that my colleague then presented a minority report on the subject of the admission of Oregon, in which he discussed this question with his usual exhaustive ability; which report I prefer, for the sake of convenience and brevity, to adopt as a portion of my argument; and I will take the liberty to append it to my remarks.—(Appendix A.)

I do not propose to reargue the question. Suffice it that the position then assumed by us was this: that aliens, unnaturalized foreigners, ought not to enjoy the elective franchise, and cannot, under the Constitution, which was made for the benefit of *citizens;* that they ought not, therefore, thus to participate in the government of the country. And again, that this action of individual States, conferring upon aliens the right of suffrage, is an indirect mode of conferring upon them the privileges of naturalization, in utter defiance of the Constitution, which grants this power to Congress alone. I know that is said we have nothing to do with the right of suffrage in the several States. To a certain extent that is true, but not to every extent. We have the right, so far as affects the common interest of the Confederacy, to demand that none but citizens of the country, native or naturalized under the laws of Congress, shall be permitted to participate, directly or indirectly, in the conduct of the General Government. Indeed, I think we may go further.

Let me put a case about which I think there will be no question. Suppose the Territory of New Mexico, for instance, should apply for admission as a State, with a constitution limiting the right of suffrage exclusively to persons of Spanish origin and of pure Castilian blood, what would be the effect of such a provision? It would be not only to establish an aristocracy, but indirectly to establish an order of nobility. Will anybody pretend for a moment that we could not inquire into a provision of that kind, and prevent the admission of the Territory coming to us with such a feature in her constitution? The case of conferring the right of suffrage upon an alien enemy, a savage, a Pagan, a Hindoo, or a Hottentot, will readily occur. The framers of the Constitution obviously intended that Congress should have the sole power of determining who should be citizens of the Confederacy, permitted to take part in its government.

I do not propose to reargue this question. I argued it in my humble way upon the Oregon bill at the last session of Congress; and I do not desire at this time either to repeat the argument or to fortify the position I then assumed. I will merely call the attention of the House to the support accorded to the Representatives from Tennessee then upon this floor in opposition to the Democratic party; to the response which their action on this subject received from their political friends at home. They met in State convention at Nashville, on the 29th of March, 1859, directly after the adjournment of the last session of Congress. The sixth section of the platform adopted by them upon that occasion is as follows:

"That we are in favor of a reasonable extension of the period of probation now prescribed for the naturalization of foreigners, and a more rigid enforcement of the law upon that subject; the prohibition of the immigration of foreign paupers and criminals; and the prevention of all foreigners not naturalized from voting at elections."

"And the prevention of all foreigners, *not naturalized*, from voting at elections." That, sir, was one of the positions on which the Opposition party of Tennessee went before the people last summer, and on which seven out of the ten of her Representatives were returned to this House.

Without going into this question, or arguing it further, I will call the attention of the House to the provisions of the Kansas constitution, to show that it is obnoxious to the same objection as the constitutions of Minnesota and Oregon.

Mr. NIBLACK. Will the gentleman allow me to ask him a question?

Mr. MAYNARD. Certainly, sir.

Mr. NIBLACK. Permit me to inquire of the gentleman whether Tennessee, at one time, did not permit negroes to vote?

Mr. MAYNARD. She did up to the year 1834.

Mr. NIBLACK. Why, then, attempt to debar other States from regulating their suffrage, when Tennessee has done as the gentleman has stated?

Mr. MAYNARD. The fact that Tennessee, in anticipation of the Dred Scott decision, struck that obnoxious provision from her constitution, I think ought not, certainly at this late day, to be brought up in judgment against her, or any of her Representatives. She decided, in advance of the Supreme Court, that negroes were not citizens, and treated them accordingly.

Mr. NIBLACK. The fact that Tennessee did permit negroes to vote is a recognition of the principle that the States have the right to adjust this question each for itself.

Mr. MAYNARD. By no means. It is evidence that her people formerly supposed free negroes to be citizens within the meaning of the Federal Constitution. But this opinion she long ago abandoned. I find, in the eleventh section of the act passed by the Territorial Legislature of Kansas, providing for the formation of a constitution for State government, the qualifications of persons entitled to vote in the several elections. Let me call your attention to it:

"That all *white* male citizens of the United States, and *all* those *who shall have declared, on oath, their intention to become such*" * * * * "who shall be over the age of twenty-one years, and who shall have been *bona fide* inhabitants of the Territory of Kansas, *for the period of six months* next preceding each of the respective elections, provided for by this act," * * * * "shall be entitled to vote at the several elections," &c.

Such were the parties entitled to vote—aliens who had been in the country but six months, provided they had declared on oath somewhere, and to somebody, their intention to become citizens. What else?

"That any person having the qualifications of an elector aforesaid shall be eligible to become a delegate to the convention provided for by this act."

So it is a legal possibility that this constitution, now presented to us, was framed by a convention which had not amongst its members a single citizen of the United States, either native or naturalized.

Let us look at their handiwork—the constitution itself.

The fifth article, upon the subject of "suffrage," provides as follows:

"Every white male person"—

Negroes, it seems, are not favorites in Kansas, although they may be with her friends elsewhere—

"Every white male person of twenty-one years and upwards, belonging to either of the following classes—who shall have resided in Kansas six months next preceding any election, and in the township or ward in which he offers to vote at least thirty days next preceding such election—shall be deemed a qualified elector: First, citizens of the United States; second, persons of foreign birth who shall have declared their intention to become citizens, conformably to the laws of the United States on the subject of naturalization."

So that her members of Congress, who are to be chosen by electors having the same qualifications as are requisite for electors of the most numerous branch of the State Legislature, may be chosen by aliens in six months after their landing in the country, and, of course, before they shall be naturalized as citizens. Looking at the qualifications required for members of the Legislature, we find that—

"No person shall be a member of the Legislature who is not, at the time of election, a qualified voter of, and a resident in, the county or district from which he is elected."

Hence it appears that aliens unnaturalized may be representatives in the Legislature of Kansas, and, by virtue of their position, send representatives of the State to the Senate of the United States. What I say is this: that if the period of probation of foreigners, before naturalization, is too long, if six months' residence is sufficient, then change your naturalization laws. If it is right to admit them to citizenship the moment they land upon our shores, change your rule, and make them citizens at once; clothe them with the character of our nationality; administer to them the oath of fealty to the Constitution, so that you have the power over them to pun-

ish them for treason, should they be guilty of that crime; so that you have the highest obligation you can impose upon their conscience to be true and loyal to your country and her interests. Then if any State chooses to extend the term of their probation, she undoubtedly has the power to do so; and several of the States have exercised this power. Tennessee, for instance, by the same constitution which excluded free negroes from the ballot-box, postponed aliens in the enjoyment of the electoral privilege for a period of six months after their naturalization. Other States, South Carolina and Massachusetts particularly, have enlarged this civic quarantine to one and two years; but this is wide of the present debate.

I do not, therefore, propose to consume any further time upon this question, knowing, as I do, that a large number of gentlemen upon the one (the Democratic) side of the Chamber are, by their previous congressional action, committed against the principle, and believing, as I must, that the principle has very little weight with gentlemen upon the other (the Republican) side.

I heard it suggested during the last Congress, when we were passing upon the application of Minnesota and Oregon—may I hope the suggestion was not true? I certainly will not vouch for it—that our friends upon this (the Democratic) side of the Hall were very much influenced in their action, if not in their judgment, by the fact that upon the admission of those respective States, there stood ready a Democratic delegation to take their seats in both Houses of Congress. I hope that none acted upon that consideration. I am not prepared to assert that they did, but certainly if they did, they have been most woefully disappointed. Minnesota now has a Republican representation in this House, and in the Senate her delegation is neutralized by the opposite politics of her Senators; while in Oregon, such is the state of opinion that the Democratic gentleman now representing her upon this floor, is here barely by the skin of his teeth, with a majority, if I mistake not, of less than fifty, and one of her places in the Senate is ominously vacant.

If any such consideration now presents itself to gentlemen upon the other (the Republican) side, if they propose to admit Kansas for the purpose of any present partisan advantage, either in congressional or presidential contests, let me suggest that honesty in the long run is the best policy in politics, as in everything else; that in the turn of the wheel they may fare no better than their Democratic opponents have done in the case of Minnesota.

But the great object I had in addressing the House at this time, on this question, was to interpose a plea in behalf of the Cherokee nation of Indians. There was a time when their rights were very much regarded by this body; when the outrages alleged to have been perpetrated upon them furnished a theme for the highest style of eloquence. If you will refer to the history of that tribe all along during the administration of General Jackson, you will find a full verification of my remark. It happens to me to be a resident of the territory which was formerly occupied by that interesting people. By successive treaties from 1785 down to the year 1835, they ceded first one portion, and then another portion, of their territory, until they finally abandoned the whole, and went upon their mournful exodus beyond the Father of Waters, and took up their residence on the soil they now occupy. I need not tell you, Mr. Speaker—for these are things which have passed before your own eyes, and within your earlier recollection—that this tribe of Indians is peculiarly interesting in its history and

its character; that it has numbered many of the most distinguished individuals of the race of red men.

There was, for example, George Guess, the Cadmus of the western continent, who, unaided and untaught, by the mere force of his individual genius, invented letters, and instructed his people in the art of writing — reducing to grammatical order their language, said to be wonderful in its flexibility, softer and more delicious than the Tuscan. There have been the Rosses, the Ridges, the Boudinots, and many other men, who, if they had lived among a mightier people, and had brought to bear their talents, their ability, and their statesmanship on a wider field of action, would have made no mean figure in the history of the world.

As I have said, by the treaty of 1835, they ceded to the United States all that was left of their territory on this side of the Mississippi. As soon as that treaty was made, they commenced their preparation for their long last journey to the West, to meet those of their tribe who had gone before them, under the previous treaty of 1828. It happened to me to visit the territory recently occupied by the Cherokees after they had left it, and before the white men had taken possession of it. It was in the early spring, about the time of the blossoming of the peach trees. I found a deserted, an abandoned, a desolate country. The Indians had taken their movables; but much of their wealth they had, of course, left behind. There were their farms, their houses, their fields, their orchards; and

> "One rose of the wilderness left on its stalk,
> To mark where a garden had been."

They were a civilized people—not of the highest type of civilization, to be sure, but still they had risen from a savage state to a civilized, and had been treated with by the United States as such. It was indeed a goodly land —a land of fountains and hills, of valleys and water-courses—and I could well understand the great reluctance, the despairing regret, with which they had left it; and also the eagerness with which the white man pressed upon it, as, according to the Delegate from Kansas, he is pressing on the lands they occupy now.

That exodus is a part of the history of the country. We all recollect how the treatment of the Indians by the people of Georgia was made matter of grave accusation, not only against Georgia, but against the Government of the United States; and nowhere was there a louder note of indignation than in that portion of the country whose Representatives are now so urgently pressing on us the importance of admitting Kansas under her present constitution. Were you or your fathers sincere then? I know that several of the gentlemen who have addressed the House on this subject have come into public life since the date of those events, and cannot be supposed to recollect much about them. But there are men of bald heads, and of white hairs, who do recollect, who do know, all about them. I ask you whether you were sincere then? And if you were, I appeal to you now, as honest and sincere men, to listen to what I have to say in behalf of these people.

Let me call attention to the treaties, the agreements, the bargains, the guarantees, under which they were induced to leave their beautiful homes, their almost paradisiacal residence, so graphically described in the pages of our national historian, Mr. Bancroft. (Appendix B.) I say, let us look at the guarantees, the solemn pacts, the treaty obligations which this Government assumed towards them before they were induced to leave

the land which had been the homes of their fathers—back, back to a time whereof, literally, the memory of man runs not to the contrary.

I will not weary the House by reference to all the treaties that have been made between the Cherokees and the United States. They have been numerous. But I will ask attention to a portion of the eighth article of the treaty of 1828:

"The Cherokee nation, west of the Mississippi, having by their agreement, freed themselves from the harassing and ruinous effects consequent on their location amidst the white people, and secured to themselves and their posterity, under the solemn sanction and guarantee of the United States, as contained in that agreement, a large extent of unembarrassed country," &c.

That was the motive, the reason, which induced those of the tribe who first removed to leave the bones of their ancestors, and to seek a home in the wild region of the West, so remote at that time that it was not supposed the wave of our advancing civilization would be likely to disturb them, much less to submerge them.

I invite the attention of gentlemen to the final treaty of 1835; for I hope that, whatever may be your prepossessions, you will not knowingly lend yourselves to the commission of wrong, even to a comparatively feeble tribe of Indians. In the second article of that treaty, commonly known as Schermerhorn's treaty, made at New Echota, occurs this provision:

"And whereas it is apprehended by the Cherokees that in the above cession there is not contained a sufficient quantity of land for the accommodation of the whole nation on their removal west of the Mississippi, the United States, in consideration of the sum of $500,000, therefore hereby covenant and agree to convey to the said Indians, and their descendants, by patent, in fee simple, the following additional tract of land, situated between the west line of the State of Missouri and the Osage reservation: beginning at the southeast corner of the same, and running north along the east line of the Osage lands, fifty miles to the northeast corner thereof; and thence east to the west line of the State of Missouri; thence with said line south fifty miles; thence west to the place of beginning; estimated to contain eight hundred thousand acres of land; but it is expressly understood that if any of the lands assigned the Quapaws shall fall within the aforesaid bounds, the same shall be reserved and excepted out of the lands above granted, and a *pro rata* reduction shall be made in the price to be allowed to the United States for the same by the Cherokees."

These are the "neutral lands" spoken of by the Delegate from Kansas. By the fifth article of the same treaty it is provided:

"The United States hereby covenant and agree that the lands ceded to the Cherokee nation in the foregoing article shall, in no future time, without their consent, be included within the territorial limits or jurisdiction of any State or Territory. But they shall secure to the Cherokee nation the right, by their national councils, to make and carry into effect all such laws as they may deem necessary for the government and protection of the persons and property within their own country, belonging to their people or such persons as have connected themselves with them: *Provided always*, That they shall not be inconsistent with the Constitution of the United States and such acts of Congress as have been, or may be, passed, regulating trade and intercourse with the Indians; and also that they shall not be considered as extending to such citizens and Army of the United States as may travel or reside in the Indian country by permission, according to the laws and regulations established by the government of the same."

Mark this language: "Shall not be included within the territorial limits or jurisdiction of any State or Territory, in all future time, without their consent." What was the object of this people? It was that they should have an opportunity, by settling in the remote region of the West, to occupy a tract of country where they should not be disturbed by the presence

of the white man; where they should not be liable to the annoyances and vexations, and the harrassing legislation which had troubled them in Tennessee and Georgia. You remember these disturbances very well. Every lover of music will remember, in connection with the notes of "Sweet Home," the imprisonment there of its gifted composer — Howard Payne. You remember that even the missionaries of the cross were forbidden to carry on their labors among them. And, Mr. Speaker, it is a very significant fact, showing how the times change, and we change with them, that the same body of Christian people who sent Worcester and Butler as missionaries to the Cherokees, have, within the last year, withdrawn their missionary labor from another Indian tribe in the Southwest, for the sole reason that the people of that tribe are the owners and holders of slaves.

Mr. STANTON. Will the gentleman permit me to ask him a question? I want to know from him how this constitution affects the Indians differently from the Lecompton constitution; and whether he did not vote for the admission of Kansas under the Lecompton constitution?

Mr. MAYNARD. I will answer that question; and when I come to answer it, I will clothe myself in sackcloth, and cry *peccavi!* (Laughter.) I believe I will answer it now.

A VOICE. Now is the time.

Mr. MAYNARD. Mr. Speaker, we have had strifes and contentions over this hapless Territory; and they have been very bitter, and without example. We have had constitution after constitution presented to us. First we had the Topeka constitution; then the Lecompton constitution; then we had the Crittenden-Montgomery amendment; and then we had the conference bill. We fought them inch by inch. Gentlemen on this (the Republican) side were eloquent in their denunciations of Lecompton and the conference bill. They were opposing it at every point; and yet the rights of the red man were never heard of. They were crowded out of view by the superior rights of the black man. I never heard a *caveat* in their behalf, except by a Senator from my own State, (Mr. BELL,) upon the passage of the Kansas-Nebraska bill, and, if I am not mistaken, by one of the Senators from Texas.

Now, I ask the gentleman from Ohio, (Mr. STANTON,) I ask the chairman of the Committee on Territories, (Mr. GROW,) I ask every member on the other side of this Chamber, why was it that you stood by here, and saw the Lecompton constitution come in, without interposing for the Indian's protection? Was it that you could see nothing but the negro? Was it that the Indian had lost all your sympathy? Why was it, that when you introduced your Crittenden-Montgomery amendment, for which you all voted, you did not even as much as whisper a word in behalf of the red man? Has the Indian no rights—I will not say natural rights, but rights guarantied and secured—which white men are bound to respect? I confess, and I confess it very frankly, that the interference by Kansas with the rights of the Cherokee Indians was not known to me, and I did not even suspect it, until during the present session of Congress. Neither the Committee on Territories, nor the Committee on Indian Affairs, who are especially charged with such questions, intimated anything of the kind. Had it come to my knowledge, I should have offered the same amendment to the Lecompton bill that I am about to offer to this.

I was about remarking when interrupted that among the notable men of the times in which we live, is John Ross, Principal Chief of the Cherokee Nation; a man who belongs to that class of noble and heroic characters,

the founders of States and the law-givers to an unsettled and rude population. Though long acquainted with him by reputation, though having for years known and admired his character, I never chanced, until within the last few weeks, to make his personal acquaintance; and it was then that I learned for the first time—and to my surprise and indignation—that the territory that is proposed to be incorporated into the State of Kansas embraces, not merely these eight hundred thousand acres of "neutral lands" included in that part of the treaty which I have read, but also a portion of the other lands belonging to that nation. "Why," said he to me, "it is just putting us in the same condition, and renewing in our midst the same struggle and strife that for years we had with the people of Georgia, and to escape which we removed to the West."

But, asks my friend from Ohio, (Mr. PENDLETON,) are not all the Indian tribes in the same condition as the Cherokees? No, no, no; they have not all left their old hunting grounds; they have not all abandoned the graves of their fathers, and the lands where they hunted and roamed as the Cherokees have done, and they are not all, as the Cherokees are, by the adoption of the Christian religion, by the establishment and endowment of schools, by the enactment of written laws, and by their judicial administration, entitled to be ranked with the civilized people of the world.

After the Cherokees had removed beyond the Mississippi, we all know, from the history of the times, that the old controversy growing out of the question of removal—a controversy which was not only carried on by the chiefs, but went down to the very humblest of the people—continued to work its unhappy consequences in their new home, and resulted in a diminution of the numbers of the tribe. But the first article of the treaty of 1846, to which I call the attention of the House for a moment, provided that "all the lands now occupied by the Cherokee nation shall be secured to the whole Cherokee people for their common use and benefit, and patents shall be issued for the same." Since the ratification of that treaty of 1846, harmony and quiet have prevailed among them, and they have increased until they now number, as I learn, something more than twenty-five thousand; and live in the hope that the time may not be far remote when they shall be admitted as one of the members of this Confederacy. Sir, the question, whether or not the red man is capable of the highest civilization, has never been settled; possibly it never may be; certainly not if the policy that is sought to be perpetuated by this bill should obtain, and if he is to be overrun by the white population—settlers who are crowding in upon him in defiance of his rights. These rights have been warmly urged by the gentleman from Missouri, (Mr. CLARK,) both in his report and in his speech. What says the Delegate from Kansas? That the objection to the admission of his Territory, based upon the rights of the Indians, is a mere technicality—a mere sticking in the bark! A more striking illustration of the doctrine that might makes right, than was afforded by this part of his speech, cannot well be conceived.

Having stated what I consider the rights of the Cherokees, as guarantied by the treaties of 1828, 1835, and 1846, I will examine the provisions of the bill, to see whether those rights are invaded.

In the first section are defined the boundaries of the proposed State of Kansas, which boundaries unquestionably include the eight hundred thousand acres of "neutral lands," as well as a long, if not very wide, portion of the main reservation, or, rather, grant. Thus we propose directly to violate our treaty guarantee, by including within the "territorial limits" of

Kansas the very lands that we pledged ourselves should never be so included, in all future time, without their consent. Appended to the section is an illusory, a deceptive proviso, as follows:

Provided, That nothing contained in the said constitution respecting the boundary of said State shall be construed to impair the rights of person or property now pertaining to the Indians in said Territory, so long as such rights shall remain unextinguished by treaty between the United States and such Indians, or to include any territory which, by treaty with such Indian tribes, is not, without the consent of said tribe, to be included within the territorial limits or jurisdiction of any State or Territory; but all such territory shall be excepted out of the boundaries, and constitute no part of the State of Kansas, until said tribe shall signify their assent to the President of the United States to be included within said State, or to affect the authority of the Government of the United States to make any regulation respecting such Indians, their lands, property, or other rights, by treaty, law, or otherwise, which it would have been competent to make if this act had never passed.

Mr. Speaker, that proviso can possibly have no effect to relieve these people from the inconvenience of being included within the territorial limits of one of the States. The position was taken yesterday, by the gentleman from Illinois, (Mr. McClernand,) that the treaty would be superior, and of course would be the paramount law. Undoubtedly; but by the action of this bill, *ipso facto*, the treaty is violated. The spirit, the intent, the life of the treaty with the Cherokees was, that they should have secured to them a permanent residence to all time; never to be brought within the boundaries of any State; so that they might not be subjected again to the troubles they had felt by being within the limits of Georgia, and so tempting the cupidity of her citizens or stimulating her State pride to remove them as intruders unwelcome within her borders. It is mockery for us to say that the treaty is the supreme law, while in the very act of violating it.

What are we doing now? We first throw a State line around the Indians, like the coil of a lasso, and then, by this illusory proviso, declare that they are not, in legal contemplation, included within the designated limits of the State, and that its jurisdiction is not to be exercised over them until they shall "signify their assent." Gentlemen here very well know what that language means. It means, to turn white men loose upon them and make the country too hot for them; to place them in an attitude where they would be forced to give their "assent;" to tell them, as we did in 1835, "Stand and deliver or perish;" to remit them to the same heritage of evil from which we promised to protect them when we induced them to leave their ancient home in the East. If I did not misunderstand the Delegate from Kansas, already some seven hundred white families have gone upon those "neutral lands," and taken up their abode there.

Mr. Clark, of Missouri. I ask the permission of the gentleman to call his attention to a letter from the Commissioner of Indian Affairs, in reference to the encroachments that are being made upon those lands. I ask the gentleman to have the letter read. It is a short letter.

Mr. Maynard. Very well; let it be read.

The Clerk read the letter, as follows:

Department of the Interior,
Office Indian Affairs, *March* 13, 1860.

Sir: Your communication, at the instance of a meeting held by the settlers upon the Cherokee neutral lands, in Kansas Territory, bearing date February 28, 1860, has been received and duly considered by this office.

It is stated, in your letter above referred to, that the settlers, in whose behalf you write, made their settlements upon what was supposed at the time to be the reser-

vation set apart for the New York Indians, and that they were not aware, until recent surveys, their locations were upon the Cherokee lands. The excuse offered, in a legal point, is entitled to but little consideration. The Cherokee lands, as well as the New York tract, were alike secured to those tribes originally by solemn treaty obligations, which should have been sufficient to protect them from trespass by all law-abiding citizens. So far from that, not only those two reservations, but almost every reservation in Kansas Territory, have been either settled or trespassed upon by the whites. This increased disregard of law and treaty stipulations induced Congress, on the 12th day of June, 1858, to pass an additional act, more stringent, if possible, than the intercourse act of 1834, requiring the Commissioner of Indian Affairs to remove all persons from any tribal Indian reservations who may be found thereon in violation of law. This act is to be found on page 332, United States Statutes at Large, volume 11. Hence it will be perceived that no discretion is left to me as to the course to be pursued.

However much my sympathy may be invoked in behalf of those who are regarded almost as my neighbors, still the law is imperitive, and must be obeyed.

Whether these lands are needed for the use of the Indians or not, forms no consideration for delaying the execution of the law. It is unpleasant to me to occupy a position antagonist to what the hardy pioneer regards as his legal or equitable claims, or claims based upon supposed rights; but they cannot expect me to deviate where both law and official duty command.

It is proper, also, that I should say, that no treaty with the Cherokees, for the purchase of the tract in question, is anticipated. The Senate of the United States have intimated that no treaty involving the payment of money from the Treasury will receive the assent of that body.

The large amount of vacant lands in Kansas and elsewhere would seem to fully justify this determination. It is unnecessary for me to attempt to disguise the fact that I should exceedingly regret a collision between the citizens and the authorities of the United States, and sincerely hope that the settlers upon the Indian lands will avoid so great a calamity; but, as at present advised, unless they obey the notice, the strong arm of the Government will be employed to enforce it, however formidable they may be in numbers.

Yours, respectfully, A. B. GREENWOOD,
Commissioner.

CHARLES W. BLAIR, Esq., *Fort Scott, Kansas Territory.*

Mr. MAYNARD. Take the facts there disclosed in connection with what was said last evening by the Delegate from Kansas; turn then, if you please, to that Indian people settled there, with no protection or security but the guarantees of our treaties, and I ask if they may not well be alarmed, if they may not well be apprehensive of a repetition of all the evils their race has ever felt in the presence of the white man? Shall we, by our legislation, put the State of Kansas in a position where any portion of her people will have an inducement or a temptation or an opportunity to invade the rights of these Indians further, and then, in sheer mockery, provide that they shall not disturb them without this assent? Surrender, and not a drop of blood shall be spilled; they accept your faith, and you bury them alive. Is this the spirit in which we keep our plighted troth in dealing with an ancient friend, and a people powerless to protect themselves against our aggressions?

It is well known, I suppose, that the Cherokees are slaveholders, and have been for many years. I understand there are now about two thousand slaves belonging to the people of the nation. Whether that is right or wrong is a question upon which I shall, in this discussion, express no opinion. How far this tribe are indebted for their civilization to the fact that they have held an inferior race in subjection, is a social problem which I shall not now consider. I confine myself to the fact that, under their laws, they hold this species of property, and hold it under a guarantee which we ought to respect. I will not stop to inquire what will be their condition, what will be the security of this prop-

erty, when included within the limits of the free State of Kansas. It is simply remitting the Indians to the old "border ruffian" quarrel. I submit whether it is right, whether it is just, whether it is fair, to subject these inoffensive people, at the hazard of their nascent civilization, to the same strifes from which we have ourselves so recently escaped. In this view of the case—for I do not wish to consume the time of the House unnecessarily, and I am aware other gentlemen desire to participate in the discussion—I will embrace this opportunity to make the motion that "House bill No. 23, for the admission of Kansas into the Union, be recommitted to the Committee on Territories, with instructions to amend it by limiting the boundaries, so as to exclude all lands belonging to the Cherokee nation of Indians."

Thus much I think gentlemen on this (the Republican) side owe to themselves; they owe it to the American character; they owe it to this tribe of Indians, weak and feeble though they are, barely numbering thousands where we number millions. Do not attempt to evade responsibility, and to give repose to your conscience by comparing your action with that of the Democrats—by showing that, if you have disregarded the rights of the Indians, so have your political antagonists. This is not an issue between you and them; nor yet between the North and the South. It is a question of national honor—of public faith between the United States and the Cherokees. It is not enough, when they complain, to say to them that they were included in the provisions of the Kansas and Nebraska bill. It is not enough to tell them that they were embraced and not provided for within the limits of the Lecompton constitution. That might do very well as an *argumentum ad hominem* for the members of the House; but it is no answer to the people who are to be affected and oppressed by this legislation.

APPENDIX A.

The following is the portion of Mr. Zollicoffer's minority report, alluded to as expressing the deliberately-considered views of the southern Opposition in the last Congress, on the question of alien suffrage:

"There is a single point in the constitution of Oregon against which he feels it his duty to enter his solemn protest. He alludes to the clause allowing unnaturalized aliens to vote for members of the Legislature. He regards this clause as violative of the fundamental principle of the Constitution of the United States. It cannot be doubted that such alien electors are thereby to be regarded as at once introduced as a component part of the sovereign power *controlling the Federal Government*. They thereby become, according to all practical usage, electors of Representatives in Congress—electors of those who choose United States Senators, and hold the power to determine the electors of President and Vice President of the United States. Thus, to the body of aliens so introduced into the body-politic is given a direct or indirect power of control over every department of the Federal Government. This, he respectfully but earnestly submits, is subversive of the very foundation idea of the Government itself.

"The Constitution of the United States was established by *the people or citizens of the United States* for their *own* benefit, and that of those who are to come after them, and not for the benefit of unnaturalized foreigners, owing no allegiance to the Government, and not bound to defend it. It was ratified by the States; and they are bound to observe and respect its principles. The first clause in the Constitution is the following declaration:

"'We, *the people* of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defence, and secure the blessings of liberty *to ourselves and our posterity*, do ordain and establish this Constitution for the United States of America.'

"The undersigned would call attention to the words 'the people.' The Supreme Court, in the Dred Scott decision, interpreting this clause of the Constitution, expressly declares:

"'The words "the people of the United States" and "citizens" are synonymous terms, and mean the same thing. They both describe the political body who, according to our republican institutions, form the sovereignty, and who hold the power and conduct the Government through their representatives. They are what we familiarly call the sovereign people; and *every citizen* is one of this people, and a constituent member of this sovereignty.'

"That is, the Constitution, where it says 'the people,' means 'the citizens,' and that 'every citizen' is a 'constituent member of the body politic,' who 'form the sovereignty,' 'hold the power and conduct the Government through their Representatives.' But does this exclude 'unnaturalized foreigners?' Unquestionably it does. The court continues:

"'The Constitution has conferred on Congress the right to establish a uniform rule of naturalization, and this right is evidently *exclusive*, and has always been held by this court to be so. Consequently, no State since the adoption of the Constitution can, by naturalizing an alien, invest him with the *rights and privileges secured to a citizen of a State under the Federal Government*,' &c.

"Again, says the court: 'The word "citizen" excludes unnaturalized foreigners, the latter forming *no part of the sovereignty*, owing it *no allegiance*, and are therefore under *no obligations to defend it*.' The undersigned believes, with the Supreme Court, that the citizens of the United States are the body politic, 'the sovereignty,' and that 'unnaturalized foreigners,' who form *no part* of the sovereignty, owe it no allegiance, and are under no obligations to defend it, cannot possibly be admitted to 'hold the power and conduct the Government through their Representatives' without violence to the Constitution.

"He believes with John C. Calhoun that 'alien' and 'citizen' are correlative terms, and stand in contradistinction 'to each other;' that 'the effect of naturalization is to remove alienage;' that 'to remove alienage is simply to put the foreigner in the condition of the native born;' that 'whatever difference of opinion there may be as to what other rights appertain to a citizen, all must, at least, agree that he has the right of petition, and also to claim the protection of his Government. These belong to him as a member of the body politic, and the possession of them is what *separates* citizens of the lowest condition from aliens and slaves. To suppose that a State can make an alien a citizen of the State, or, to present the question more specifically, can confer upon him the *right of voting*, would involve the absurdity of giving him *a direct and immediate control over the action of the General Government, from which he has no right to claim the protection, and to which he has no right to present a petition*.' (See speech in Senate, April 2, 1832.)

"It will be seen that Mr. Calhoun held that the 'right of voting' appertains to citizenship. The Supreme Court expressed the same sentiment in other words; that is, that the citizens form the sovereignty, hold the power, and conduct the Government. For the right of voting is the power to 'conduct the Government.' Mr. Jefferson said, 'a republic' is '*a government by its citizens in mass*,' (see letter to John Taylor;) and again, that 'the true foundation of republican government is *the equal right of every citizen* in his person and property, and in their *management*.' (See letter to Mr. Kercheval.) These are but various forms for expressing the same fundamental principle. So general has become this concurrence of opinion among the most accredited expounders of the Constitution, that Webster, in his dictionary, defines a 'citizen' to be, 'in the United States, a person, native or naturalized, who has the *privilege of exercising the elective franchise*, or the qualifications which enable him *to vote for rulers*, and to purchase and hold real estate;' elsewhere he says 'the right to vote for Governors, Senators, and Representatives, is a franchise enjoyed by *citizens*, and *not belonging to aliens*.' Mr. Madison said (see The Federalist, p. 248:) 'The definition of the right of suffrage is very justly regarded as a *fundamental article of republican government*. It was incumbent on the conventions, therefore, to define and establish this right in the Constitution.' And this they accordingly did in the second section of the first article, as follows:

"'The House of Representatives shall be composed of members chosen every second year by *the people* of the several States; and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature.'

"Here the words 'the people' of the several States are, as the Supreme Court has declared, equivalent to 'the citizens of the several States, and therefore unquestiona-

bly *exclude all but citizens*. The word 'qualifications,' in the last clause of the section, excludes even a portion of the citizens; such portion as may be excluded for want of a freeholder, or other 'qualification requisite' in the several States. In some of them, at the time the Constitution was framed, all citizens not possessing a 'freehold' were excluded; while in others other qualifications were requisite for electors of the most numerous branch of the Legislature. In some, all citizens were allowed to vote; in none, however, was the right granted to *unnaturalized foreigners*. Such a thought as allowing aliens to take part in the election of members of Congress, never seems to have occurred to the convention. The word 'qualifications' was unquestionably intended to limit, to restrict, to confine the body of voters to *such portion* of the citizens as were allowed to vote in the several States, while the words 'the people of the several States' absolutely excluded all others; because the aliens were 'no part of the sovereignty, owing it no allegiance, and under no obligations to defend it.'

"Upon this point, fortunately, we are not left to conjecture. The whole debate in convention on the adoption of this section of the Constitution is before us, and it throws a flood of light upon this question. Here is its substance. Gouverneur Morris moved to strike out of this section the clause relating to 'qualifications,' and to insert instead that none but 'freeholders' should vote. The debate then turned wholly upon this precise issue. Mr. Wilson opposed the motion of Mr. Morris, on the ground that it would be 'hard and disagreeable to *exclude* from voting' those who vote for representatives in the State Legislatures. Mr. Ellsworth said 'the *people* will not readily subscribe to the national Constitution if it should subject them to be *disfranchised*.' Colonel Mason said, 'eight or nine States have extended the right of suffrage *beyond freeholders*. What will *the people there say if they should be disfranchised?*' Mr. Butler 'opposed abridgment.' Mr. Dickinson supported the amendment, advocating 'restriction of the right' of suffrage 'to freeholders.' Mr. Madison said 'the right of suffrage is certainly one of the *fundamental articles of republican government*, and ought not to be left to be regulated by the Legislature.' Whether the constitutional *qualification ought to be a freehold*, would with him depend much on the reception such a change would meet with by the people, &c. In several of the States a freehold was *now the qualification*.' Dr. Franklin was opposed to 'the elected *narrowing the limits* of the electors.' Mr. Mercer objected to the footing on which the *qualification* was put. Mr. Rutledge opposed 'the idea of *restraining* the right of suffrage to the freeholders.'"

"Thus the whole body of debaters saw in the word 'qualification' nothing but *restriction, limitation, narrowing the limits of the electors*. The final conclusion was to narrow the limits only where the States had themselves expressly done so—that is, everywhere to let those citizens vote for Representatives in Congress who were permitted to vote for members of the most numerous branch of the State Legislature. But the idea of letting *aliens* vote is not only excluded absolutely by the first clause of the section confining the right to the '*people*' or *citizens*, but from the whole tenor of the debate, it is manifest that it did not enter the brain of any solitary member of the convention.

"The undersigned does not mean to assert that Congress can look into the constitution of a State asking for admission further than to see that it is republican, and not in conflict with that of the United States; or that the General Government can regulate the right of suffrage in the States. Far from it. It is the right of every State to determine who of its *own citizens* shall vote for every office; and in regard to offices strictly municipal, the States may, constitutionally, if they choose, permit aliens to vote. But whilst the States may confer upon aliens *rights of citizenship in matters pertaining exclusively to the State*, they cannot constitute the *status* of of citizenship, they cannot convert *aliens* into *citizens*, that power having been conferred by the Constitution upon Congress alone; and they cannot, therefore, give to aliens the *rights of citizenship in matters pertaining to the Federal Government*. But to give to aliens the right to vote for members of the State Legislature, as is the case in the Oregon constitution, gives them incidentally a power of control over every department of the General Government, and therefore it is our duty to resist this innovation upon the rights of the General Government at the very threshhold. As the people framed, and the States ratified, the General Government as it is constituted, they are bound by every consideration of good faith to stand by it in its letter and spirit. Whilst the rights of the States as they have been reserved should be sedulously maintained, those rights which have been conceded to the General Government should not be ruthlessly ignored. Especially is this truth with regard to those elemental principles upon which rests its self-preservation. The General

Government stands between us and all foreign innovation or invasion. It was established by the *citizens* of the United States for their *own benefit* and the benefit of those who are to become citizens by birthright or naturalization. In all the elective governments, in all ages, from the time of Grecian republics down to our time, the right of suffrage has been held to belong to none but citizens. This fundamental principle of self-preservation having been fully granted to our General Government, it is unwise and unsafe to ignore it, and give thoughtlessly the destinies of such a government into the hands of those who 'owe it no allegiance,' have 'no right to claim its protection,' or even to present to it 'a petition.'

"When a State has once been admitted into the Union, with such provision as that pointed out in the Oregon constitution, the undersigned would not counsel coercion by the Federal Government to bring about a change. But when a Territory asks to put on the garb of State sovereignty, and to be admitted into the Union, is, in his judgment, the precise point of time at which to make this issue. Such proposed State should be required to conform, to use the language of Mr. Madison, to the 'fundamental articles of republican government'—particularly that great first article which regards a 'republic,' to use the language of Mr. Jefferson, as a 'government *by its citizens in mass*.' In this particular, the Oregon constitution is not only not 'republican,' but is in direct conflict with the Constitution of the United States. For this, and the foregoing reasons, the undersigned is constrained to withhold his assent from the bill admitting Oregon into the Union.

"F. K. ZOLLICOFFER."

(B.)

The following description by the great historian of the region originally occupied by the Cherokees, will be recognized as exquisitely truthful by every one familiar with Eastern Tennessee, and the country surrounding. Can the most callous read it without an emotion of sympathy?

"The mountaineers of aboriginal America were the Cherokees, who occupied the upper valley of the Tennessee river, as far west as Muscle Shoals, and the highlands of Carolina, Georgia, and Alabama—the most picturesque and most salubrious region east of the Mississippi. Their homes were encircled by blue hills rising beyond hills, of which the lofty peaks would kindle with the early light, and the overshadowing ridges envelop the valleys like a mass of clouds. There the rocky cliffs, rising in naked grandeur, defy the lightning, and mock the loudest peals of the thunder-storm; there the gentler slopes are covered with magnolias and flowering forest trees, decorated with roving climbers, and ring with the perpetual note of the whip-poor-will; there the wholesome water gushes profusely from the earth in transparent springs; snow-white cascades glitter on the hill-sides; and the rivers, shallow, but pleasant to the eye, rush through the narrow vales, which the abundant strawberry crimsons, and coppices of rhododendron and flaming azalea adorn. At the fall of the leaf, the fruit of the hickory and the chestnut is thickly strown on the ground. The fertile soil teems with luxuriant herbage, on which the roebuck fattens; the vivifying breeze is laden with fragrance; and daybreak is ever welcomed by the shrill cries of the social night-hawk and the liquid carols of the mocking-bird. Through this lovely region were scattered the little villages of the Cherokees, nearly fifty in number, each consisting of but a few cabins, erected where the bend in the mountain stream offered at once a defence and a strip of alluvial soil for culture. Their towns were always by the side of some creek or river, and they loved their native land; above all, they loved its rivers—the Keowee, the Tugeloo, the Flint, and the beautiful branches of the Tennessee. Running waters, inviting to the bath, tempting the angler, alluring wild fowl, were necessary to their paradise. Their language, like that of the Iroquois, abounds in vowels, and is destitute of the labials. Its organization has a common character, but etymology has not yet been able to discover conclusive analogies between the roots of words. The 'beloved' people of the Cherokees were a nation by themselves. Who can say for how many centuries, safe in their undiscovered fastnesses, they had decked their war-chiefs with the feathers of the eagle's tail, and listened to the counsels of their 'old beloved men?' Who can tell how often the waves of barbarous migrations may have broken harmlessly against their cliffs, where nature was the strong ally of the defenders of their land?"—*Bancroft*, vol. 3, p. 246.