Citizenship: State Citizens, General Citizens.

SPEECH

OF

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Delivered in the House of Representatives, January 7, 1858.

The House being in Committee of the Whole upon the President's Message—

Mr. BLISS spoke as follows:

Since the last Congress, the country has been startled by a political opinion of our Supreme Court, known as the Dred Scott decision, that makes it doubtful whether we have not already relapsed into despotism. The President endorses it, and I am informed that the Departments base their official action upon it, and it is for this I now and here arraign it. The irregularity of that opinion; the absurdity of turning a man out of court for want of jurisdiction, and then giving judgment against him on the merits; the anomalous character of its reasoning; its disregard of the rights of the States, the rights of man, and the truth of history; its reckless partisanship and eager malice—form the saddest chapter in modern jurisprudence. I ordinarily feel bound to treat judicial opinions with respect, though they disagree with mine. But, while I remember that the meanest tyrants the world has known have been the sworn expounders of the law, I can have no reverence for men merely as judges; and if they descend from their high calling as protectors of liberty and law, to become their betrayers, their position shall not screen their double treachery from just scrutiny.

This court is itself a Democratic anomaly—a solecism, as Jefferson called it. Its conduct has vindicated the Democratic principle, so strangely departed from in its organization; and I hope for the co-operation of the Democracy here in support of the bill which I hope to introduce for the curtailment of its overgrown powers. Without a show of reason, in face of all law, all authority, a sectional, irresponsible body—a body blind with prejudice, if no worse, representing nothing but a despotic interest, and gathered together, by long and careful labor and sifting, for the express purpose of serving that interest, trusting to their irresponsibility, and callous to the opinion of mankind—this body, to the extent of its power, has overthrown the law of citizenship, and published gross and illegal *dicta* upon the law of Slavery. This decision and this *dicta* have been triumphantly answered by the minority of the court, and by distinguished citizens of the States; yet I feel impelled, as the Representative of a people burning with a sense of outraged justice, to enter their and my indignant protest.

With the reproduction of the novelties of the propagandists, to digest which, for the future shibboleth of the slave Democracy, was this *dicta* uttered, I shall not now meddle. I have before considered these novelties; I may do so again; but my object now is to examine, as fully as your oppressive rules will permit, what I understand to be the decision of the court. I feel especially impelled to this course now, because some gentlemen seem fearful of being suspected of concern for the rights of blacks; and the attention of others seems diverted from this insidious and most dangerous attack, by the enemy's fresh attempts to enslave our own territories, and rob, to enslave those of our neighbors.

And in view of some disclaimers, here and elsewhere, upon one matter I wish to be distinctly understood. Whatever my philosophy in regard to races, it has no business here. However I may deprecate the unwise efforts of some friends of Freedom, I reserve my censures for them, and in their own presence. But here, under the shadow of a despotic interest, a corporation, compared to which, a union of all the banks in America, under a single directory, condensed from a thousand Biddles, would be but a gentle monster, where it so often frightens cowards and scourges slaves, I scorn to say or do aught that may imply a doubt of my living sympathy with the crushed subjects of its power, or with any who manfully withstand it. And I pray not to be suspected of that spurious philanthropy, atheistic Christianity, or false Democracy, that is indifferent to the wrongs of any class. As a Christian, I believe that God is our common Father; that "he has made of one blood all nations of men

to dwell on all the face of the earth;" that Christ is the elder brother as well of the Ethiopian and Saxon as his own race, and that as we treat the least of these his brethren, we treat him. As a Democrat, I believe in the equality of all men before the law, and that human rights pertain to human nature. As a legislator, or dispenser of justice, so far from discriminating against the helpless and weak, if I found one man or class of men more helpless or more subject to popular prejudice, for his or their benefit alone would I favor class legislation or judicial leaning. The strong can protect themselves; the weak need the prop, and the defenceless the shield. And when men tell me here, or through their co-workers in yonder vault, of the dependence of the Africo-American, or of the rapidly-increasing class of Africo-European blood, I would not hence forbid him letters, forbid him property, forbid him all opportunity and manly motive, but would more sedulously guard his rights, more patiently develop his manhood. Let the tyrant slander his victim, and excuse his tyranny by its own effects, but let no Christian or Democrat thus defile the inner sanctum of his faith.

This court has undertaken to outlaw a large class of free American citizens. By its wicked edict they are, for the first time, turned out of the Federal courts; banished the public domain by denying pre-emptions; robbed of their property in inventions by refusing patents; cut off from foreign travel, except as permanent wanderers, without nationality; and deprived of every constitutional guarantee of personal rights. It has hardly been surpassed in atrocity since that celebrated revocation, consigning the Protestants of France to dungeons or exile, or those black enactments outlawing the Catholics of Ireland; and I thank God for putting it into the heads of the weak men who issued it, to attempt to justify their act, to lay bare their nakedness, that the shock given our moral sense by the edict itself may be avenged by our contempt for its patent malice, and the weak and far-fetched reasons which sustain it.

We are told in substance, in this opinion, that the descendants of African slaves cannot be citizens of the United States; that though they may be citizens of each State, yet, by some unwritten understanding, they were intended to be excluded from the operation of the Constitution of the United States; were not in that instrument referred to as either people or citizens; and no State can make them general citizens.

Passing for a time the falsehood of the assumed fact, I will first inquire into the nature of citizenship, and especially that of the United States, and the power of the States over it.

Confusion in the meaning of the term citizen is often created by referring to its use in the old Republics. The words translated citizen were originally used to designate the privileged inhabitants of the chief city and their immediate descendants. Aristotle, the apostle of conservative democracy, defines a citizen to be one born of citizen parents, who has a right to participate in the judicial and executive part of government. He condemns their engaging in servile employments; "For," says he, "it is 'impossible for one who lives the life of a me-'chanic, or hired servant, to practice a life of 'virtue." (Aris. on Gov., b. 3.) The citizens of the Grecian Republics were but a minority of the people of even the ruling city; and though Rome greatly extended citizenship beyond the narrow bounds of Grecian policy, still, until long after the term ceased to have any practical significance, it was confined to a very limited class of the Roman people, scarcely extending beyond the walls of the city. True, within the city, in the days of her earlier glory, Rome was liberal, conferring citizenship upon the emancipated slave as well as his master, yet the *civis* of the Republic, as with the Greek *politēs*, possessed rather the double signification of burgher in reference to the town, and elector in reference to the State, and is only rendered citizen from our want of a corresponding word.

But we use not the word in its legal sense, as one of aristocratic or municipal distinction, to designate the descendants of the original settlers of Boston or Jamestown, or any other original city, nor such other inhabitants of the provinces as have acquired the "freedom of the city." It no longer means electors, or those enrolled in the national or city guards, but is a simple transfer of, or substitute for, the word subject. By the Declaration of Independence, the subjects of King George became citizens of the several States; so by the inauguration of the French Republic, *les sujets* of Louis became *les citoyens* of France. Though in common and loose language we all speak of electors merely as citizens, yet in the most liberal States all citizens—as women and children—are not electors, and sometimes aliens are made electors. The terms are not at all synonymous or convertible, though closely connected.

I speak not now of those native inhabitants subjected to servitude, and upon whose persons may be committed with impunity all the crimes of the decalogue. Upon them, whether of European, Indian, or African descent, society wages eternal war. They are constant prisoners, grinding in the prison house of bondage, and it matters little, while thus subjected, whether we call them citizens or not.

But, with this exception, if it be an exception, citizenship is opposed simply to alienage. As in monarchies, all persons are either subjects or aliens, so in our Republic all are either citizens or aliens. This idea of citizenship is the only one tangible, the only one that will stand a moment the test of criticism; and I defy gentlemen to give me a definition of the term that shall not embrace all the native and naturalized members of the community. It was the only idea known in our better days.

Section two of article three, and section eleven of the amendment to the Federal Constitution, speak of citizen and subject as convertible terms. By the Articles of Confederation, citizenship in the several States was expressly granted to the "free inhabitants" of each State, and it will hardly be pretended that the boon would be extended to the natives of other States beyond its enjoyment at home.

This idea is clearly stated by Chief Justice Gaston, in 5 Iredell, page 253. He says:

"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 'dominion of the King of Great Britain, whatever their color or complexion, were native-born British subjects; those born out of his 'allegiance are aliens." * * *

"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." * * * "British subjects in North Carolina became North Carolina freemen. Foreigners, until made members of the State, remained aliens."

I might occupy my whole time in giving authorities and illustrations upon this point. Citizenship, as well as allegiance, is the incident of birth. The few exceptions, as to children of foreign ministers or temporary sojourners, but confirm the doctrine; and, indeed, until the interests of Slavery demanded a different position, none other was thought of in modern law.

But except by some act of the sovereign power, none but the native born can be citizens. The immigrant from Connecticut would be an alien in Ohio, and the Massachusetts trader enjoy none of the rights of citizens in Georgia, for the citizens of Ohio and the citizens of Georgia would be those only born therein. How, then, do immigrants from one State, or from foreign countries, become citizens? Whence obtain they these "privileges and immunities?" Must each State pass naturalization laws; or is this matter provided for? The Constitution provides for both cases clearly and distinctly. The exclusive power to make rules for the naturalization of aliens to all the States, is granted to Congress, so that, so far as the foreign born are concerned, it alone can determine the manner in which they shall become citizens of the States. But though Congress has no jurisdiction over the citizenship of natives, yet for them too, the provision is equally specific. The citizens of each State are expressly made citizens of all the States, or, which is the same thing, are entitled to all the "privileges and immunities" of citizens within them. Thus the whole ground is covered, and no State naturalization becomes necessary. This would seem so plain that the "wayfaring man * * * need not err therein;" yet this strange opinion, as if to keep up its departure from all show of reason and law, gravely pronounces that the clause to which I have referred does not "apply to a person 'who, being a citizen of a State, migrated to 'another State," (page 422;) that "the provision is confined to citizens of a State who are 'temporarily in another State, without taking 'up their residence therein." If this be its construction, I beg to know, and I am interested in knowing, how a native of Connecticut can become a citizen of Ohio. No other clause in the Constitution can have the effect to make him such; and if this does not, Ohio must act before he can be admitted to the privileges of Ohio citizenship. Supposing—vainly, as it would seem—that the Federal Constitution had decided that point, Ohio has made no provision on the subject; so that, were the Chief Justice himself to migrate to Ohio, and there commence suit in the Federal court against a citizen of Maryland, the fact that he was a native of Maryland, were his opinion law, would be a good plea to his allegation of Ohio citizenship. If not, I should like to have the error of the plea pointed out, and the process explained by which he became a citizen of Ohio.

But the phrase "citizen of the United States" is no less loosely used than the term itself. It is not only employed to mean a person entitled to all the privileges of citizens in the several States—sometimes called a general citizen—but also to designate one as primarily a citizen of the Union, as a single consolidated Government. For the former case we have seen that the Constitution has made ample provision, by making every State citizen a general citizen. But, as we go beyond that, we tread uncertain ground; and I know of no surer indication of our departure from the true idea of this Federation, than the loose habit we all have of speaking of United States citizenship; and I claim no exemption from this indication of the seductive influence of the pervading consolidation tendencies. We sometimes speak of persons as citizens of the United States, residing in a State, or of a double citizenship, held by each; and in the case now under discussion, citizenship of the United States, instead of the State citizenship of the Constitution, is generally spoken of as giving jurisdiction to the Federal courts.

That there is such a thing as citizenship of the United States, in some sense, is clear. The Constitution uses the term, but its meaning must be controlled by the constitutional relation of the States. I can find nothing in the Constitution, or in that relation, that gives color to the idea that there can be any such thing as United States citizenship, in itself considered; that there can be a citizen of the United States who is not a citizen of a State, or a State citi-

zen who is not also a citizen of the United States; or to the idea that the Federation can do anything whatever to constitute, direct, or control citizenship, except as to aliens.

Of course, I speak not now of resident natives of the District of Columbia, or the Territories. They are outside the States, not provided for in the Constitution, which was made for the States, and are citizens of the Union alone, because born within its general and exclusive jurisdiction.

Can it, then, be possible that this grand "National" Government of ours is destitute of so important a power—the power to say who shall be its own citizens, its own people?—that this power is left to its constituent parts, so to speak? These are formidable questions to consolidationists, still more so to strangers to our system; but to American Democrats the answer is easy. That the Federal Constitution, so far as it is an instrument of Government, is a grant by the people of the States of specific and clearly-defined powers, that there is no power where there is no grant, that none are given by implication except what are necessary to execute those expressly granted, and that all others are reserved to the States and the people thereof, are the axioms of their creed. We search in vain for any general Federal authority over citizenship, so that, even in the absence of the guarantee to the citizens of each State, we must inevitably find the power over this subject to be one of those reserved. The States, then, determine who are citizens; and we mean by a citizen of the United States, simply a citizen of one of the States; and when we describe a person as a citizen of the United States, residing in a State, we use a phrase liable to misconstruction; and when we speak of the double relation held by each citizen to his State and the United States, we use language politically loose, unless we mean that the latter relation is held solely through and by virtue of the first.

To the objection that the naturalization powers of Congress authorize a citizenship of the United States without reference to a State, I reply by denying the assumption. The people of the States, that the rule of naturalization might be uniform, authorized Congress to prescribe it, and nothing more. But aliens, naturalized under this rule, immediately became citizens of the State of their domicile; otherwise, how can they avail themselves of the guarantee of general citizenship?

The conclusion, then, is irresistible, this court to the contrary notwithstanding, that *all* "the citizens of each State" are not only "entitled to the privileges and immunities of citizens in the several States," but are, thereby, citizens of the United States.

The folly of the main assumption of the court, that there exists in the States a class of native inhabitants who are not and cannot become citizens, equally appears, whether we say that a State may make or unmake its citizens, or whether the condition of the native born is fixed. It is clear, that if any power can say what natives are citizens, it is the State alone; if no power, then the question must be decided by the general law, the Articles of Confederation, and the Constitution. By the first are included *all* the native born; by the second, the "free inhabitants" of the several States; and by the last, all the citizens of the several States, which last provision must refer back to the first and second. Those naturalized by the Articles of Confederation have all passed away, so that if the States have no control over citizenship, we are driven to the general law, to the inevitable result of nativity.

But the States do possess power over the subject. I will not say that they can unmake, so to speak, a citizen; can change the fact of nativity, or its just effect, for I am no believer in a State's omnipotence, nor will I advocate its power to do wrong; but to confer citizenship upon other than aliens, the States are clearly competent. They are competent, for they have never parted with the power, and all powers not delegated are reserved. They are competent, for from the beginning they have conferred it without dispute; and though bad precedents should be overruled, just ones are law. Slaves, though natives, have not been regarded as citizens; for, by a legal fiction, they are, while their *status* remains, alien enemies, and prisoners of war; and by the African code introduced with the ancestors of these prisoners, they and the descendants of their women became slaves. This *status* and this fiction and this code yield to the breath of sovereignty; and these *quasi* alien prisoners become native-born free citizens.

The reasoning by which the court arrives at the impotency of the States in the premises is so brilliant, that I cannot refrain from giving it, as a specimen of the logic of this our infallible tribunal. The opinion says that, because the power to naturalize aliens is delegated to Congress, "it is very clear, therefore, that no 'State can, by any act or law of its own, * * * 'introduce a new member into the political com-'munity created by the Constitution." If the "new member" means alien, the conclusion is very clear indeed, as well as undisputed; but close on the heels of this truism follows a *non sequitur* that puts all dialectics to blush. "And for the same reason," that is, the reason that the power to naturalize aliens is delegated to Congress, "it," the State, "cannot introduce any person or description of persons who were not intended to be embraced in this new political family," &c. This person or description of persons, by a bold falsification of history, is assumed to be the descendants of African slaves. But admit the libellous assumption of this unwritten and fraudulent intention, how clear the logic! "For the same reason," indeed? Because a State has authorized the Federation to make rules by which aliens may

acquire citizenship, *for that reason* it has parted with all power over the subject, not of alienage, but of citizenship. It has *therefore* no power to say whether its native-born inhabitants shall or shall not be general citizens; though, by the same instrument that grants this power over alienage, all powers not delegated are expressly reserved, and all ITS citizens are expressly made general citizens! I know not what deductions of reason may be clear to eyes filled with slave plantations—to eyes blinded by passion and interest; but if any schoolboy, on any other theme, should so boggle in logic, he would be at once promoted from the forum to the dunce-block.

But, suppose a State change this intention, if it ever existed: its general power over citizenship is clearly reserved, and, under the liberalizing influence of Democracy and Christianity, it may abandon a design it was always ashamed to put on the record. What is to hinder? But it has no power, says the Chief Justice, and *for the reason* that it has delegated to Congress the power to make rules of naturalization. Well, then, we must look to Congress to naturalize these persons. But Congress can only provide for the naturalization of aliens; and these persons are native born. And thus we have a "description of persons" that can never be made citizens; and for the reason, that Congress may naturalize another description of persons!

And is this the new phase of the doctrine of State Rights? I have looked with anxious attention for the protests of those who annually endorse the resolutions of 1798 against this last and boldest in this court's long series of attacks upon the sovereignty of the States. The power of the States over citizenship, as clearly reserved (with the exception named) as any power can be, and the rights of those citizens to general citizenship, guarantied as plainly as language can do it, are impudently denied, and by a reasoning that would disgrace a freshman. And yet these guardians of State sovereignty—men boisterous in defence of a State's right to oppress—clamorously echo the denial. The people of some of the States are believed—I wish there were no doubt of the fact—to be as earnestly devoted to justice, to the doctrines of the Declaration, and the spirit of the Constitution, as others are supposed to be to their opposite. To render fruitless that devotion, State sovereignty, and with it the Constitution, must be overthrown. Well may the colored American view with vengeful joy the madness of his insane tormentors, as he sees them, in their eagerness to destroy every refuge from their hate, pull down upon their own heads the fair fabric of their own constitutional freedom!

But the doctrinal heresy of this opinion does not exceed its gross perversions of history. I do not now propose to wade through the mass of those perversions; to trace the garbled facts and false innuendoes; the appeals to low prejudice and despotic fears; the slanders of the great dead and the miserable reasoning (?) that pervade it. With sorrowful emotions have I been through them all. And I have sometimes imagined the shades of Jay and of Marshall—men with whose national doctrines I have little sympathy, yet men who loved law and revered justice—to be sadly looking o'er with me the dirty page, wondering that they ever should have looked to irresponsible bodies as a check upon popular injustice.

The main historical claim I alone have time to notice: "When the Constitution was adopt-
' ed," says the syllabus, "they (free negroes)
' 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.' "

If this claim be true, it must be susceptible of the most unequivocal proof. Upon so important a question, it will never do to admit a doubt. And the rule excluding these persons must have been clear and explicit; yet such explicit exclusion is not pretended. But the fact is sought to be established by a series of strained inferences and mere guesses. Resort is not had to the law and the testimony. Statutes, constitutions, records, are passed by as unworthy of attention; and the assumption of the exclusion is founded upon the fact alone that the ancestors of its subjects had been enslaved, and they themselves were sometimes unjustly treated—as though Governments had done anything else, in this world of ours, than oppress, directly or indirectly, one class or another of their citizens or subjects.

This, then, is the proposition: "that no per-
' son whose ancestors had been oppressed, and
' who was himself ill-treated by the colonists,
' could have been numbered among the people
' or citizens." I would advise caution to those who propose to accept this proposition, a close examination of the genealogical tree, lest the conclusion might apply where least expected.

But the great birth act of the Republic is in the way of the court, and the audacious sacrilege with which that act is treated, I confess, surprises me. The great principles of justice and natural law upon which it was founded—those principles that alone redeemed our fathers from the charge of criminal rebellion—are limited to a race, to a mere fraction of the human family; and failing in argument to prove this limitation, the court magisterially pronounces it "too clear for dispute." The idea, so sublime yet so simple, that the common Father of mankind has endowed His children with rights which cannot be taken from them—the right to life and the right to liberty—this divine idea, the harmonic chain of human society, before which our fathers bowed in humble contrition for their own inconsistency, yet in fervent hope for its full realization, because of this inconsistency, is shorn of its holi-

ness, is made but the precept of tyranny. That Sentence, that has commanded the homage of mankind, this court would thus sneeringly render: "We hold these truths to be self evident: 'that the superior races, if born of free mothers, 'are created equal; that they are endowed by 'their Creator with certain inalienable rights; 'that among them are life, liberty, and the pur-'suit of happiness; that to secure these rights 'Governments are instituted, deriving their just 'powers from the consent of such races, if free 'and white, among the governed."

But our fathers deserve not this taunt. That they were not wholly consistent is too true—and what human institutions realize the ideal of those who are leading us onward and upward?—but none were more keenly sensible than they of this inconsistency; none could be more anxious to be redeemed from its charge; and not by apostacy to their sublime faith, but by "works meet for repentance." We accordingly find the great and good among them anxiously laboring to carry out the doctrines of the Declaration, and as understood by them, not by this court. Franklin, Jay, Hamilton, and others, became officers of societies for the abolition of Slavery and protection of the free And to illustrate our own apostacy from these truths, in contrast with their former appreciation, I ask attention to the fact that a recent officer of the same society of which Franklin was President, for pursuing its legitimate work—a work that wove the brightest flowers in the chaplet on the brow of the philosopher—was illegally thrown into prison by a Federal judge, while his own State refused him protection, and his own city applauded the outrage! So Washington and Jefferson, and all others whose names posterity holds in reverence, united in condemning Slavery, and especially as a glaring inconsistency with the principles of the Declaration.

But, to be more specific: This court was forced to admit, and thereby admitted away its whole case, that all who were citizens in the several States, at the time of the adoption of the Constitution, became citizens of the United States. (Page 406) So we have only to inquire whether free blacks were then citizens in any of the States.

I assert that the native born among them were then citizens in all the States, because—

1. They were citizens by the general law, by virtue of their nativity, unless excluded by express and unequivocal enactments; and I have been unable to find such exclusion in any of the States.

2. The Articles of Confederation had made them general citizens. "The free inhabitants 'of each of these States, paupers, vagabonds, 'and fugitives from justice, excepted, shall be 'entitled to all the privileges and immunities of 'free citizens in the several States." It would seem that nothing could be more plain than this, and especially when an unsuccessful attempt was made to amend it by inserting "white" before "inhabitants," and especially, also, as the article itself contains exceptions not including negroes. And yet, with characteristic effrontery, this court asserts that "free inhabitants" cannot include free negroes, and for the reason—mark the logic—that the Southern States, in order to throw the chief burden of the war upon the States best able to bear it, procured the adoption of the provision that the quota of land forces should be proportioned to the "white inhabitants" of the States. Because of this apportionment of troops, therefore—no, "therefore" is not sufficiently positive, and the *sequitur* requires a *very strong* connective—"it cannot for a moment be supposed," says the court, that "free inhabitants" can mean other than free white inhabitants! This *sequitur* reminds me of the boy's syllogism: "I gave my knife 'for a ride to Boston; my knife cost fifty cents; 'it is therefore fifty miles to Boston." If any one doubts the conclusion, it can be at once nailed by some authoritative *pronunciamiento*, that "none other can for a moment be supposed." What fools composed the delegations that sought to insert "white" as restrictive of general citizenship, and with others actually procured its insertion as restrictive of their obligations to raise troops! They should have known that it was always understood.

3. They were universally recognised as citizens. The elective franchise, till very recently granted to none but citizens, was conferred upon them in nearly all the original States; was within my own recollection enjoyed in North Carolina, Tennessee, and Pennsylvania, and still is in New York and nearly all the New England States. Their citizenship itself was scarcely, if at all, disputed. South Carolina and Delaware alone refused them the rights of electors,* but I cannot learn that even there the general law upon the subject was doubted or sought to be changed.

The new-fangled idea of this court was clearly unknown in 1809. In that year, Mr. Waln presented to the House an Anti-Slavery petition from the free men of color of Philadelphia. The petitioners expressly spoke of themselves as citizens of the United States; and although the petition caused two whole days of angry discussion, none disputed the fact of citizenship, or claimed for it any different treatment than though it came from whites.

I can only allude to the complaint of Mr. Jefferson against the attack of a British ship of war upon the Chesapeake, and killing and seizing "American citizens"—those citizens being negroes; to the proclamation of Gen. Jackson at New Orleans, calling upon the free colored people, as citizens, to rally in defence of *their* country; the final resolution of Congress admitting Missouri into the Union, overruling one

* In Virginia, Georgia, and Maryland, it is doubtful whether negroes were actually permitted to vote, though there was no constitutional prohibition.

clause of her Constitution against free men of color from other States, because it contravened that clause of the Constitution guarantying general citizenship; or to the former practice of granting foreign passports to free colored as well as white citizens; and cannot allude at all to the thousand other similar instances that challenge attention. They all render absurd the assumption that these persons "were not regarded in any of the States as members of the community," &c.

I have no time to go into further detail; but inasmuch as the Chief Justice has asserted that "it cannot be believed that the larger slave 'holding States regarded them as included in the 'word citizens," I will briefly refer to the acts of Virginia on the subject, which I believe was a tolerably large slaveholding State.

The first action of Virginia upon citizenship I find in 10 Henning, p. 129, 130, in the act of May 3, 1779, "declaring who shall be deemed citizens of this Commonwealth." By that act, it was provided "that all white persons," &c., and "the free white inhabitants of every one of the States," should be deemed citizens, and should enjoy all the rights," &c., of citizens of Virginia. This restriction to "white persons" within the State was so contrary to the general law, and to the spirit of the day, and the restriction to the "white inhabitants" of the other States was so contrary to the Articles of Confederation, that, at the October session, 1783, (11 Henning, 323, 324,) the act was expressly repealed, and it was then enacted that "all free persons born within the territory of 'this Commonwealth * * * shall be deem-'ed citizens of this Commonwealth."

This last act continued in force some forty years, till a race arose that "knew not Joseph," till after the commencement of that grand defection which has culminated in the Dred Scott decision. "It cannot be believed," indeed! If this court would give more attention to facts, and less to despotic interest and instincts, it might be led to believe many things yet hidden from its sight.

There is another fact in the legislation of Virginia, that may throw a little light upon the inquiry, as to whom this large slaveholding State regarded as included in the word citizen. In 9 Henning, 267, 268, I find "an act for regulating and disciplining the militia," passed May 5, 1777, and in force, so far as I find, at the time of the adoption of the Constitution. It begins as follows:

"For forming the citizens of this Common-'wealth into a militia, and disciplining the same 'for defence thereof, *be it enacted by the General 'Assembly*, that all free male persons, hired ser-'vants, and apprentices, between the ages of 'fifteen and fifty years, (except the Governor, '&c.,) shall, by the commanding officer of the 'county in which they reside, be enrolled and 'formed into companies of not less than thirty-'two nor more than sixty-eight rank and file, 'and these companies shall again be formed in-'to battalions," &c.

Here we have it on the record, plain and unequivocal, in the first year of our independence. "All free male persons" are expressly recognised as included in the words "citizens of this Commonwealth." "But this 'cannot be believed,'" our court would say. "'The large slaveholding States' could not so regard them; and as we have decided that 'free inhabitants' means free white inhabitants, so 'free male persons' must mean free white male persons." But, as if anticipating modern judicial acumen, the same act goes on to say, "the free mulattoes in said companies or battalions shall be employed as drummers, fifers, or pioneers." So it *must* "be believed" that "free male persons" means free male persons.

Further, on page 280, I find it provided that the recruiting officers shall not "enlist any 'negro or mulatto into the service of this or 'either of the United States, until such negro 'or mulatto shall produce a certificate from 'some justice of the peace of the county where-'in he resides, that he is a free man."

And in view of the fact that all the States enlisted in the armies of the Revolution their free colored as well as white citizens, and upon the same terms; that they flocked to their country's standard with the same alacrity as the whites; that they fought and bled on every battle-field—the first blood shed in the contest being that of a negro; that ever since, they have been pensioned under the same laws as white soldiers—how intensely mean the bald assumption that they were not a part of the people of the United States! Great are the necessities of despotism, and humiliating the shifts to which it drives its votaries!

If those who fought through the war to establish our liberties, who were electors in nearly every State, and voted for the delegates that adopted the Constitution, who were embraced under the general law of citizenship, and nowhere excluded—if they formed no part of the people or citizens of the country, I should like to know on what rest the claims of any man, when the necessities of despotism demand his exclusion?

I have, I believe, succeeded in showing that United States citizenship, in respect to natives, is a matter exclusively of State regulation; so that the citizens of each State are citizens of the United States; and I have also negatived the assumption that colored natives were nowhere treated and considered as a part of the people, or citizens of the several States, at the adoption of the Federal Constitution. So that, with the undisputed and universal modern law, that makes all native members of the community citizens, which law is nowhere repealed, and is faithfully enforced in many of the States, it plainly appears that a native-born free descendant of African slaves may be a citizen of the United States.

I have thus sought to vindicate the law, the rights of the States, and the rights of an oppressed class. I know that some are disturbed by any allusion to the wrongs of mere blacks. They would get the negro out of politics, not by binding up his wounds, but by passing by on the other side. To such shallow politicians I have only to say, that if you have not the moral instincts that impel you to withstand injustice wherever exhibited, at least have the sagacity to look to your own future. Tyranny always creeps on apace. Its first precedents pander to the public appetites, or flatter the public prejudice. Power after power has been drawn to this tribunal; till, grown strong by acquiescence, and reckless by strength, at last the very political existence of individuals is assailed. Verdant, indeed, would it have been, had its attack not chimed with the vulgar prejudice. But let this become an undisputed precedent, and upon whom will light the next proscriptive edict? and how long before political opinion, rather than complexion, will be cause for outlawry? When will men learn, that though justice may for a time sleep, its exactions are inflexible and its penalties sure?

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