

PAYMENT FOR SLAVES.

SPEECH OF MR. J. R. GIDDINGS, OF OHIO,

ON THE

BILL TO PAY THE HEIRS OF ANTONIO PACHECO FOR A SLAVE SENT WEST OF THE MISSISSIPPI WITH THE SEMINOLE INDIANS IN 1838.

Made in the House of Representatives, Dec. 28, 1848, and Jan. 6, 1849.

WASHINGTON:
PRINTED BY BUELL & BLANCHARD.
1849.



SPEECH.

Mr. GIDDINGS said, he had not intended to participate in this debate; but, from the favor with which the bill had been regarded in Committee, and the majority in favor of its engrossment, he apprehended that gentlemen had not carefully examined the facts of the case, nor did he think they had fully considered the principles involved in the passage of the bill. There are (said he) certain great and fundamental truths which lie at the foundation of our Government. We profess to "*hold these truths to be self-evident, that all men are created equal;*" yet the bill before us admits one man to be the property of another; that one man may rightfully hold another subject to his will, may scourge him into obedience, and compel him to labor for the benefit of his master. We profess to believe that all men "*are endowed by their Creator with the unalienable right to the enjoyment of life, liberty, and the pursuit of happiness;*" yet the bill before us admits the claimant to have rightfully held the liberty and happiness of his fellow-man at his entire disposal. Now, if we pass this bill, our professions will be in direct contradiction to our practice. If we really hold to these doctrines, it is certain that we must oppose this bill; and it is equally certain that if we pass this bill, we shall, by such act, deny these truths. We each of us *deny* these doctrines, or we *hold* to them. We cannot do both. To say that we hold to them, and at the same time support this bill, would be placing our *professions* in direct contradiction to our *actions*. The inconsistency would be too obvious to deceive any one. Tell me not that you hold to the undying truths contained in our Declaration of Independence, and at the same time sit here to estimate the value, in dollars and cents, of the body and mind of your fellow-man. Those who founded our Government declared their ulterior object. That object was to "*secure all men* (residing within our jurisdiction) *in the enjoyment of life, liberty, and the pursuit of happiness.*" Are we to-day (said he) carrying out these objects? Here, sir, are two hundred and thirty American statesmen legislating for the benefit of *slavery*. There is no evading this plain and obvious fact. No subterfuge can

hide it from the People. The powers of Government were instituted by our patriotic fathers for the express purpose of securing to all for whom we legislate the blessings of liberty. We are now sitting here to compensate the oppressor of his fellow-man for his inability to continue his power over the victim of his barbarous cupidity. The members who vote for this bill will give unmistakable evidence of their approbation of slavery, and their willingness to sustain it.

Before I proceed further, I will give a synopsis of the facts involved in the case. The claimant, in 1835, residing in Florida, professed to own a negro man named Lewis. This man is said to have been very intelligent, speaking four languages, which he read and wrote with facility. The master hired him to an officer of the United States, to act as a guide to the troops under the command of Major Dade, for which he was to receive twenty-five dollars per month. The duties were dangerous, and the price was proportioned to the danger. At the time these troops were massacred, this slave Lewis deserted to the enemy, or was captured by them. He remained with the Indians, acting with them in their depredations against the white people, until 1837, when, General Jesup says, *he was captured by a detachment of troops under his command*. An Indian chief, named Jumper, surrendered with Lewis, whom he claimed as a slave, having, as he said, captured him at the time of Dade's defeat. General Jesup declares that *he regarded him as a dangerous man; that he was supposed to have kept up a correspondence with the enemy from the time he joined Major Dade until the defeat of that officer; that, to insure the public safety, he ordered him sent West with the Indians; believing that if left in the country he would be employed against our troops*. He was sent West; and the claimant now asks that we should pay him a thousand dollars as the value of this man's body.

The Committee on Military Affairs were unable to unite in a report upon the case. Five *slaveholders*, representing slave property on this floor, and constituting a majority of the committee, have reported a bill for the payment of this amount to the claimant. Four Northern mem-

bers, representing *freemen only*, have made a minority report against the bill. This report, as I think, is sustained by irrefutable arguments.

The majority of the committee assume the position that slaves are regarded by the Federal Constitution as *property*, and that this Government and the people of the free States are bound to regard them as such, and to pay for them as we would for so many mules or oxen taken into the public service. The minority deny this doctrine. They insist that the Federal Constitution treats them as *persons* only, and that this Government cannot constitutionally involve the people of the free States in the guilt of sustaining slavery; that we have no constitutional powers to legislate upon the relation of master and slave. There are several other points on which the committee differ, some of which I intend to notice; but I propose first to examine for a few moments that of the constitutional power. It is due to myself and to the country that I should call public attention distinctly to the fact, that these questions are forced upon us by Southern gentlemen, against the wishes and remonstrance of every member of the committee from the free States. Involving as it does the great fundamental principles of our Government, a distinguished member from the North [Mr. Rockwell, of Connecticut] introduced a resolution to close the debate in *one hour* from the time we went into Committee. I thought it unbecoming Northern members to attempt thus to stifle debate on so important a matter, forced upon us by the South. I therefore called for the yeas and noes on that resolution, and now hold the floor by a sort of legislative fraud, having voted for the engrossment of the bill with the sole object of obtaining the floor.

Sir, at the formation of the Constitution, slavery was condemned in the severest language by the delegates who framed that instrument. It is true they had been regarded in England as property. In 1749, Lord Hardwicke had decided that trover lay for a slave in the British courts. That was the *last* decision of the kind made in England or in civilized Europe. One hundred years have elapsed since that decision. Its doctrines have been a thousand times discarded, contemned, and overthrown, by the statesmen and jurists of that nation; but here, in an American Congress, we now hear this barbarous doctrine revived.

In 1772, Lord Mansfield boldly assailed the doctrine laid down in this Hall to-day, and exhibited its absurdity in one of the ablest opinions to be found on record. From that period this doctrine of property in man has found no supporters under the Government of England. With all our refinement as a nation, with all our boasted ad-

herence to liberty, on this subject we are three-quarters of a century behind our mother country.

When Sir Warren Hastings was on trial in the House of Peers in 1787, Mr. Sheridan, speaking on this subject, in his own peculiar and fervid eloquence, declared that "allegiance to that Power which gives us the *forms* of men, commands us to maintain the *rights* of men; and never yet was this truth dismissed from the human heart—never in any time, in any age—never in any clime where rude man ever had any social feelings—never was this unextinguishable truth destroyed from the heart of man, placed as it is in the core and centre of it by his Maker, *that man was not made the property of man.*" This was the language of British statesmen sixty-two years since. To-day we have before this branch of the American Congress the report of a committee avowing that, under this Federal Government, in the middle of the nineteenth century, "*man is the property of his fellow-mortal.*"

These sentiments of the British statesmen and jurists inspired the hearts of our American patriots in 1776, when they declared it to be a "SELF-EVIDENT TRUTH THAT ALL MEN ARE CREATED EQUAL." When they framed our Constitution, they declared their object was "*to establish justice, and to secure to themselves and their posterity the blessings of liberty.*" This subject of holding property in *men* did not escape their attention, nor have they left us ignorant of their views in regard to it. Mr. Madison, the father of the Constitution, has left to us a clear and explicit account of their intentions. He informs us, that on

"Wednesday, August 22, the Convention proceeded to consider the report of the Committee of Detail, in relation to duties on exports, a capitation tax, and a navigation act. The fourth section reported was as follows:

"No tax or duty shall be laid by the Legislature on articles exported from any State, nor on the migration nor importation of such persons as the several States shall think proper to admit; nor shall such migration nor importation be prohibited."

"Mr. Gerry thought we had nothing to do with the conduct of the States as to slavery, *but we ought to be careful not to give any sanction.*"

Our people think, with Mr. Gerry, that "*we have nothing to do with slavery in the States.*" We are determined that we will not be involved in its guilt. With Mr. Gerry, we intend "*to be careful to give it no sanction.*" No, sir; we will not sanction your slavery by paying our money for the bodies of slaves. This is the doctrine which we hold, and which we expect to maintain; yet the members of this body are now engaged in legislating upon the price of human flesh. If we pass this bill, we shall give our most solemn sanction to that institutoin which Gerry and his compa-

triotis detested. Will the members from Pennsylvania, the successors of Franklin and Wilson, lend their sanction to slavery, by voting the moneys of the People to pay for slaves?

But Mr. Madison tells us that "Mr. Sherman (of Connecticut) was opposed to any tax on slaves, as making the matter worse, *because it implied they were property.*"

I understand that *some* gentlemen from the North admit that slaves are *property*. Mr. Sherman and the framers of the Constitution would do no act by which it could be *implied* that they were property.

Mr. Madison also participated in the discussion himself; and, as he informs us, "DECLARED THAT HE THOUGHT IT WRONG TO ADMIT THAT THERE COULD BE PROPERTY IN MEN." And the report of the committee was so amended as to exclude that idea.

In that assemblage of illustrious statesmen, no man expressed his dissent from these doctrines of Gerry, of Sherman, and of Madison. These doctrines are: 1. That we "*should have nothing to do with slavery, but ought to be careful not to give it any sanction.*" 2. That "*we should do no act by which it can be implied that there can be property in men.*" 3. "That it would be WRONG FOR US TO ADMIT THAT THERE CAN BE PROPERTY IN MEN." Such were the views of those who framed the Constitution. They intended to express their views in such language as to be understood. Will this House stand by them?

The gentleman from South Carolina [Mr. Burt] declared that he would leave us no room to escape this issue—"no *loophole at which to get out;*" that we must say by our votes either that there is property in men under the Federal Constitution, or that there is *not*. I am most happy to meet the gentleman on that point, and am prepared to submit the question to those who framed that instrument, to Mr. Madison. His decision is left on record. The only question is: Have the Representatives of the people here the firmness and the independence to maintain the Constitution? There stands the record of their intentions. "He who runs may read" No man can fail to understand the intentions of those who framed our political compact. Those intentions constitute the very spirit of the Constitution, which we are sworn to support. The people of the free States are aware of the objects and intentions of those patriots. They know their rights under the Constitution; they hold the indisputable right to be free and entirely exempt from the corroding stain of slavery. So perfectly were these principles understood in the early days of the Republic, that after the war of the

Revolution no man asked pay for his slaves that were taken from him or killed in the public service. In the year 1830, the Register of the Treasury declared that no instance of the payment for slaves during the Revolution was to be found on record. No, sir; Madison and Jefferson, and their cotemporaries, were then living. They well understood the principles on which the Union had been formed. They respected the rights of the *free* as well as of the slave States, and no man then attempted to involve the people of the North in the support of slavery. I believe the first attempt to make this Government pay for slaves was in 1816. This was twenty-seven years after the adoption of the Constitution, and forty-two years after the declaration of American independence. It is an important historical fact, that shows clearly the opinions then entertained on this subject.

After the close of the late war with England, a bill was pending in this House, providing for the payment of property lost or destroyed during that war. When the section providing for the payment of horses, carts, &c., *impressed* into public service and destroyed, Mr. Maryant, from South Carolina, moved to amend the bill so as to embrace *slaves*. The motion was opposed by Mr. Yancy and Mr. Robertson, and was negatived by a large majority. (See National Intelligencer, December 28, 1816.) This was a motion so to amend this bill as to pay for slaves if killed in the public service, when they had been *impressed*. I have heard Northern members express the opinion, pending this bill, that we ought to pay for slaves, if lost, when they were *impressed* into the service. Sir, such was not the case thirty-five years since. Our predecessors then spurned the proposition. Where now is the feeling, the spirit, which animated them? We have no record of the speeches, but every member will see that the case proposed was the strongest case that could be imagined. It was where a slave was taken against the will of the master, and *pressed* into the service, and killed by the enemy. Yet they rejected the proposition by a large majority. The claim before us is of incomparably less force. Here the master hired the slave, at a high price, to go with the troops as a guide, and of course took upon himself all risks.

The next case was that of D'Auterive. He had claims against the United States for wood and other necessaries furnished the army, and for the loss of time and the expense of nursing a slave who was wounded in the service of Government at New Orleans. This case is more interesting from the fact, that there was at that time an attempt, as on the present occasion, to break down

that well-known principle in our Constitution, that "slaves are *persons*, and not *property*."

The Committee on Claims at that time (1828) was composed of four Northern and three Southern men. At its head was an honorable Southern man, [LEWIS WILLIAMS, of North Carolina,] who served his country longer in this body than any other that ever sat in this hall. For more than a quarter of a century he was a distinguished member of this House. There are few, very few, now present, that had the pleasure of serving with him; but his cotemporaries can attest to his great abilities and deserved influence. That committee reported in favor of allowing compensation for the articles furnished to the army, but said, expressly, that "*slaves not being property*, they could not allow the master any compensation for his loss." This was the unanimous report—Mr. Williams of North Carolina, Mr. McCoy of Virginia, and Mr. Owen of Alabama, uniting in the report. Mr. Williams had been contemporaneous with Madison and Jefferson, and he did not hesitate to avow the doctrines of the Constitution, and to maintain them. Here is the record of his opinion and of the views of his associates. When the bill came up in Committee of the Whole, certain Southern gentlemen suddenly became excited, worked themselves into a passion, threatened a dissolution of the Union, and all that sort of thing. In short, they manifested that spirit of dictation and intimidation which we have so often witnessed on more recent occasions. They made a strenuous effort to reverse the decision of the Committee on Claims; but, after some two weeks' discussion, gave it up, laid the subject on the table, and there the matter ended.

This discussion was thirty-nine years subsequent to the adoption of the Constitution, and more than fifty from the Declaration of Independence. The principle that slaves were *persons*, and not *property*, was reaffirmed, upon full discussion, without the light which we possess on the subject. The Madison Papers were not then published. The views of Gerry and Sherman and Madison, in the Convention, and the action of that body in relation to this matter, were unknown to them. Should we now reverse that decision, and overturn the practice, we shall sin against greater light than they possessed.

The next and only remaining instance in which the question of appropriating the treasure of the nation to pay for slaves was in 1843. "A bill for the relief of the people of West Florida," intended to provide for the payment of slaves taken by the army of General Jackson from the inhabitants of that Territory, in 1814, came up for discussion. The slaves had been taken, against the consent of

their owners, by the military power of the nation. I think there were about ninety, taken from different individuals. The proposition was distinct in its character. The object of the bill was to pay for human flesh. I myself opened the debate, and stated, as the principal grounds of my opposition to it, that slaves were not regarded as property under the Federal Constitution. My venerable and lamented friend, now no more, (John Quincy Adams,) sustained my positions. Several Southern gentlemen spoke in favor of the bill. The Journal is now before me, and shows the bill to have been rejected, by a vote of *one hundred and thirteen to thirty-six*. This was done by a Whig Congress. Not one of that party from the free States voted for the bill.

I have now given a history of our legislation on this subject. There was a bill passed this body, "*sub silentio*," on one of those days when there is, by the rules of the House, no discussion, by which payment was made for a slave. My friend from Pennsylvania [Mr. Dickey] has stated the facts in regard to it. I knew that such a bill was pending, and so did Mr. Adams; and we had mutually agreed to oppose its passage; but it slipped through unnoticed, and, therefore, constitutes no precedent.

In 1843, a bill passed this body to pay over moneys obtained by the Government from Great Britain, and held in trust by us, to be paid to the owners of slaves lost on board the "Comet and Encomium." This bill also passed the Senate, and became a law. At the last session we passed two bills to pay over moneys held in trust for the same purpose. These cases were not to take the treasure of the people of the free States to pay for slaves, but to pay over money that did not belong to us, but which we held for the use of those who claimed it. But from the dawn of the Revolution to this day, being more than seventy years, this House has expressed but one opinion on this subject. They have at all times *refused to tax the people of the North to pay for the slaves of the South*. We have never regarded them as property. But an attempt is now making to change the essential elements of our Government. Statesmen, now, in the high councils of the nation, deny that "*all men are created equal*;" that "*they are endowed by their Creator with the unalienable right to their lives and their liberties*;" or, that "*Governments are instituted among men to secure the enjoyment of those rights*." It is now urged that this Government was instituted for the purpose of *robbing men of those rights; of disrobing a portion of our race of their humanity, and reducing them to the state of brutes, and making them the property of others*. Will Northern members assist to commit this outrage upon the honor of the nation and constitutional

rights of the Northern States? Is there a member from the free States who will vote to tax his constituents to pay for Southern slaves? If so, let them place their names on record in favor of this bill, and let that record descend to coming generations, as a lasting memento of the principles which guide them.

I have now referred to the history of our legislation on this subject. The action of our committees was well commented upon by my friend from New Hampshire, [Mr. Wilson.] I wish, however, to add a few words on this point. I am not aware that any committee of this House ever reported in favor of paying for slaves, until the first session of the 27th Congress—being more than sixty-five years from the formation of the Government.

In 1830, my predecessor, the Hon. E. Whittlesey, reported upon the case of Francis Larche. This was the case alluded to by the gentleman from South Carolina, [Mr. Burt.] I understood him to say that the slave of Larche was *not impressed*.

MR. BURT. The gentleman is mistaken. The statement which I made was this: that no case could be adduced in which a refusal to pay for a slave had been made, on the ground that he is not property. The gentleman is totally mistaken.

MR. GIDDINGS. I certainly understand the gentleman now, and I refer particularly to the case of D'Auterive, which was rejected on this identical point. The committee say, in express language, that "*slaves have never been placed on the footing of property.*" And they rejected the claim distinctly on that point.

But to return to the case of Larche. The Committee on Claims of the Senate (vide Rep. H. R. 401, 1st session 21st Congress) say, in distinct language, that "the cart, horse, and negro man Antoine, belonging to the petitioner, were *impressed*, and sent to the lines of the American army, on the 1st day of January, 1815, where the negro man was killed by a cannon ball from the British batteries."

The gentleman from South Carolina [Mr. Burt] assures us that he was *not impressed*. I can hardly suppose that he was authorized thus distinctly to deny the accuracy of that report, in a matter of fact. However that may be, it is certain that the committee understood that the man was *impressed*. They therefore acted upon that hypothesis: and with that belief the committee unanimously reported against the bill. No stronger case can be imagined. The horse, cart, and negro, were *impressed*, as the committee reported and believed. The petitioner was paid for the *property*—that is, the horse and cart—but the claim for

the slave was *rejected*. Yet, sir, they had not the advantages of knowing the sentiments of the framers of the Constitution which we possess. They were unconscious that the members of the Convention declared, that "*they ought to be careful to give no sanction to slavery;*" that they should do nothing by which "*it could be implied that slaves were property;*" "*that it was wrong to admit that there could be property in man.*" I repeat, that to the best of my knowledge, (and I have bestowed much labor upon the subject,) no report was made in favor of paying for slaves from the public Treasury during the first half century which this Government existed under the present Constitution.

If wrong on any of these points, I ask gentlemen to correct me here, before the country. Let them expose my errors in the presence of this House, where I can meet them; where, with *truth* on my side, I stand prepared to defend my positions. Let gentlemen stand forth in this hall and meet my facts and argument like men, like statesmen, and not shrink away in silence, and then set their letter-writers to assail me—to pour forth their miserable abuse upon my humble self. Why, sir, suppose they destroy *me*, they will leave my doctrines, my principles, untouched. *They* will remain while eternity shall last.

But to resume the history of this subject. In the 27th Congress, the claim of James Watson for slaves was committed to the Committee of Claims, of which I was myself chairman. The friends of the claim, by some means, learned that that committee had always reported against the payment for slaves. They therefore obtained the transfer of that case to the Committee on Indian Affairs, who reported a bill to pay for the slaves claimed by Watson. That report, made seven years since, was the first in favor of paying for slaves as property, so far as my knowledge extends, ever made to this body. During the same session, a report from the Committee on Territories was made of the "bill for the relief of the people of West Florida," to which I have already alluded, and which was rejected by the House.

MR. BURT. Will the gentleman allow me the floor a moment?

MR. GIDDINGS. With pleasure.

MR. BURT. I stated in Committee the other day, in reply to the interrogatory of the gentleman from Ohio, that Mr. Whittlesey, in his report on Larche's case, quoted the report of the Senate. I stated further, that Mr. Williams, to whom the gentleman from Ohio alluded, made a report in the Senate, on this case of Larche, saying that there was no evidence that the slave had been impressed at all. I stated further, that I had examined the Senate files in that case; and there

is no evidence there, except the depositions of one or two men, (in the absence of any order,) that he was impressed at all.

Mr. GIDDINGS. Here is the historical record, the documentary proof, on which we are bound to act. I ask the gentleman from South Carolina if he intends to overthrow it by his sidebar testimony?

Mr. BURT. What is it?

Mr. GIDDINGS. That this man was impressed.

Mr. BURT. I do, sir. There is no evidence of the fact.

Mr. GIDDINGS. Then I leave the gentleman to take issue with the history. The documentary evidence is, that this slave was *impressed*; that he was taken to the American lines, and was there "killed by a cannon shot from the enemy's batteries."

At the period to which I was referring when interrupted, I had been placed at the head of the Committee on Claims, by the then Speaker of this House, [Hon. John White, of Kentucky,] of whom, though a slaveholder, I can never speak except with profound respect. There were at that time many claims for slaves before that committee. It was then our settled policy to make no reports on those cases, lest we should stir up *agitation* on this delicate question.

In this Hall, before the House, I was interrogated by a slaveholder [Mr. Wise, of Virginia] on this subject. I was asked distinctly whether our committee *would report in favor of paying for slaves*? I answered, that we would follow the established practice on that subject. He replied, that my answer was evasive, but that the established practice was not to pay for slaves. It so happened, that on the 21st March, 1842, I introduced certain resolutions declaring the rights of the people of the free States to be exempt from the support of the slave trade. For this I was censured and driven from my seat. Another member was added to the Committee on Claims; and then, sir, during my absence, *just eight days after I left the committee, this case was urged upon the members, who were most of them inexperienced in their duties, and unacquainted with the precedents. I left this Hall on the 22d March, and on the 1st day of April following a bill was reported by a slaveholding member of that committee, to pay for this man Lewis.* This was the first case of the kind that ever received a favorable report from that particular committee; and that report was obtained in the manner just stated. It was in the sixty-seventh year of American independence, and the fifty-third of our Constitution. This is the history of this subject, and of this bill. It was reported seven years since by a Whig committee. We are yet to see whether this House can be induced to pass it.

Sir, we have the power to overturn the practice of this body from its first formation; we may overthrow its established and time-honored principles; we may defeat the objects of those who framed the Constitution; we may subvert the essential elements of that sacred compact which we are sworn to support; we may attempt to change the law of our existence—to deface the work of God, and declare his image to be *property*; we may do all this at the bidding of the slave power; we may humble ourselves in the presence of those who hold the rod of terror over us; but there is a superior Power that will hold us to a strict account of our stewardship. Sir, the eyes of the people are upon us; they are watching our actions. The concentrated rays of intelligence now brought to bear upon all our doings, render it impossible for us to deceive them. No evasion, no subterfuge, will screen those who would render *Northern freemen* subsidiary to the support of *Southern slavery*.

To this day there has been in this Hall sufficient independence and patriotism to reject all propositions of this humiliating character. As I have said, we are now driven to legislate by Southern slaveholders, under the lash of the South.

Mr. BURT. I hope the gentleman from Ohio will allow me this opportunity to disclaim utterly and indignantly any such imputation.

Mr. GIDDINGS. Withdraw it, then.

Mr. BURT. I venture to appeal to this whole Committee, who heard my remarks.

Mr. GIDDINGS. I thought, when the gentleman said he would hold Northern gentlemen to this point, whether a slave was property—"that he would leave no loophole for us to escape"—I thought it looked somewhat like the language of intimidation; it smacked somewhat of the plantation, of the crack of the whip. And I took it unkind in the gentleman from Connecticut, that, under such circumstances, he should attempt to stifle debate, to seal the lips of Northern men.

This bill is pressed upon us at this particular time, when Southern men are holding Conventions, and manufacturing their usual mock thunder of dissolving the Union, in consequence of our agitation. We hear it rolling along the heavens. It affords amusement to our school-boys, who crack their jokes and sing ditties in regard to it.

Sir, when I reflect that I am now constrained to sit in this Hall to legislate upon the price of human flesh as *property*, I feel humbled. Before the nation, before Heaven, I protest against this degradation. By what rule shall I arrive at the *value* of this man? He is said to be very intelligent and learned, reading and writing four languages. In this respect he has, probably, few

equals in this Hall. I mean no offence by this comparison, either to gentlemen now present, or to the negro who is absent. I regard the moral qualities of a man as the proper criterion by which to graduate my respect. In this light, I know not whether the comparison be unjust to him or to those who estimate *his value at precisely a thousand dollars*. I would be as willing to enter into an inquiry as to the value of the body of the honorable member reporting this bill, as I am to estimate the value of a man who, as a linguist, probably has not a dozen equals in this body. If we are to judge of him by the report of the committee, if placed in this body, he might have reflected honor upon our country and our race. The splendor of his genius might have soared far above the grovelling intellects now engaged in figuring up his value in dollars and cents. His name might have been placed in future history beside that of Wirt, of Henry, of Burke, and of Sheridan; or perhaps his philanthropy might have placed him on the roll of fame with Adams and Wilberforce. And yet we are now sitting here to inquire as to the value of this immortal mind, to estimate its price in "glittering dust." My soul shrinks from the impious sacrilege with loathing and disgust. But this ethereal, immortal intellect, was bound in the chains of bondage, shut out from that sphere of usefulness and of action in which God designed it to move; and we are now asked to compensate this claimant for committing this wrong to mankind, this crime against God. I am anxious to see how Northern members estimate their fellow men. What price do they put upon their constituents? Let their votes give the answer.

On a former occasion, I cited the opinion of an eminent jurist (Judge McLean) on this subject. In the case of *Groves vs. Slaughter* and others, (15 Peters's Reports, 449,) this question came distinctly before the Supreme Court of the United States. The Constitution of Mississippi had prohibited the introduction of slaves into that State after a certain day. Slaves were taken there and sold on a credit after the time allowed by the Constitution of that State. Suit was commenced on the note given in consideration of the slaves. The defence set up was, that the contract was illegal and void under the Constitution of that State, which prohibited the sale therein of slaves from without the State. The reply to this was, that slaves were *property*, and therefore the State of Mississippi had no power to prohibit their introduction into the State, as the power to regulate commerce between the States belonged only to Congress. In deciding the law, Judge McLean said:

"By the laws of certain States slaves are treated

as property; and the Constitution of Mississippi prohibits their being brought into that State by citizens of other States, for sale or as merchandise. Merchandise is a comprehensive term, and may include every article of traffic, whether foreign or domestic, which is properly embraced by a commercial regulation. But if slaves are considered in some of the States as merchandise, that cannot divest them of the leading and controlling quality of persons, by which they are designated in the Constitution. The character of the property is given them by the local law. This law is respected, and all rights under it are protected by the Federal authorities; but the Constitution acts upon slaves as persons, and not as property."

But one member of that Court dissented from these views. It may therefore be regarded as an authority, so far as the Judiciary are concerned.

If the doctrine contended for by the friends of this bill be correct, if slaves be property, slave markets may be opened in Boston, and Massachusetts will have no power to prohibit there the revolting scenes which are witnessed in this city. If the doctrine contended for by Southern men be correct, no State can exclude slave markets from its territory, or consecrate its soil to freedom. It well becomes Southern gentlemen to examine this subject before they base themselves upon the principle that slaves are property. Let that be established, and Congress will have power to prohibit the internal slave trade at its pleasure.

I now proceed to another branch of the case. With great propriety the gentleman from New Hampshire inquired, at what *time* the liability of Government to pay for this slave commenced? The question has not been answered, nor do I think it can be answered. The undertaking was hazardous in the highest degree. The troops were all killed but two or three, by the enemy, and those were supposed to be dead. This man alone escaped unhurt. This danger was foreseen, and the master put a price upon the services to compare with the risk. Did this contract bind the Government to pay for the master's loss, admitting the slave to have been *property*? Was it any part of the compact that the Government should insure the property? It strikes me that no lawyer would answer in the affirmative. The law of bailment is surely understood by every tyro in the profession. The bailee for hire is bound to exercise the same degree of care over the property that careful men ordinarily take of their own property. If, then, the property be lost, the owner sustains such loss. Now, conceding this man to be property, the Government would not have been liable, had he run away, or been killed by accident, or died of sickness. Yet, sir, when property is lost or destroyed by the act of God or the common enemies of the country, no bailee is ever holden responsible—not even

common carriers, and that is the highest species of bailment. Had this officer, acting on his own responsibility, agreed to take this negro through the country for hire, (admitting the man to have been property, and governed by the same rules of law as though he had been a mule or an ass,) and he had been captured by the enemy, no law would have held such bailee liable. But, sir, an entirely different rule of law prevails where the owner of a chattel lets it to a bailee for wages. Had this man been a mule or an ass, and the officer had hired him of the owner for wages, to ride through that country, or to work in a team, or in any other manner, and he had been captured by the enemy, the bailee would not have been liable, upon any rule of law or of justice; nor would he have been liable if lost in any other manner, except by neglect of the bailee.

The gentleman from South Carolina [Mr. Burt] said he would place this case upon *strictly legal principles*. Sir, I meet the gentleman on that proposition. I, too, for the sake of the argument, am willing to submit it on principles of law; and I believe that no jurist, or even justice of the peace, would hesitate to reject the claim on those grounds. All must admit that the liability of the Government concerning this man ceased when he was captured by the enemy; up to this point the Government was not liable. I understood the author of this bill [Mr. Burt] to argue, however, that we became liable under the contract of bailment. That contract was ended when the man was captured. The claimant then failed to perform his part of it. The stipulation on the part of the master was, that the negro should pilot the troops from Fort Brooke to Fort King, the place of their destination, at the rate of twenty-five dollars per month. He was captured when only half the distance was accomplished. Here the master ceased to perform his compact; it was beyond his power to do so. The contract then ceased to exist; and from that time forth the claimant had no demand on us, either in equity or in law.

I now enter upon another view of this case. It is shown, by the testimony of General Jesup, that this man was supposed to have kept up an understanding with the enemy, from the time he united with Dade's command until the massacre of that unfortunate battalion; that while he was with the enemy, which was more than two years, he *united in committing depredations upon the frontier settlements; in short, that he was one of the enemy*. Our army was sent there to protect this claimant, and his wife and children and neighbors, against this very man, who, in company with others, murdered the people of Florida, and destroyed their property. This expenditure of blood and treasure by the United States was occasioned in

part by this very negro, for whom the master now claims compensation. With his extraordinary intelligence, with a knowledge of the wrongs which he and his people had suffered at the hands of those who claimed them as *property*, he must have thirsted for vengeance. He could have felt no attachment, no respect, for a people at whose hands he had received nothing but abuse and degradation. It was natural that he should have sought revenge; and it was natural that his master should become his victim, if within his power. But our army was sent there to protect the people against their slaves who were with the Indians, and their effective allies. It was under these circumstances that Lewis was captured, with other enemies. General Jesup says that he would have tried and hanged him, if he could have found time. This, under martial law, he might undoubtedly have done. And the gentleman who reported this bill admitted that in such case this claim would never have been presented. Suppose he had been slain in battle: I think we should never have heard of this claim. But why had General Jesup a *right* to hang him? Because he was an *enemy, dangerous to the people and to the Government*. But who will for a moment hesitate to say that he had the same power, yea, greater power, to send him out of the neighborhood, than he had to slay him in battle, or to hang him. Humanity surely would dictate that he should be sent out of the neighborhood, rather than his life should be sacrificed. Has the claimant's loss been greater than it would have been had the negro been slain or hanged? Not at all. He had been taken in arms, had committed depredations upon the people; he had occasioned much loss of blood and treasure to the nation. Could General Jesup have left him in Florida, consistently with his duty? I think not.

Here another important question arises. Had the claimant any right to keep an enemy so dangerous within any civilized community? Is there a member of this body who will rise in his place and assert that any master possesses the right to retain such a foe on his plantation? Has any man the right to keep a rabid dog, or other animal, and suffer him to go at large in the community? I am now arguing the legal question. I am considering this man as property, the same as though he were an ass or a mule. And I lay it down as clear and indisputable law, that, had such mule or ass killed the people, and destroyed their property, as this man had done, any member of the community might either have shot him, or chased him out of the neighborhood with impunity.

I therefore meet the gentleman who reported this bill on every point involved in this case, le-

gal, equitable, or constitutional, and I can find no merits in it.

But, sir, as I am for the moment engaged in a legal examination of the case, I desire to follow it a little further. This man was guilty of treason against the United States, or he was an enemy to our Government. I think it doubtful whether slaves can commit treason, as they owe no allegiance to our Government. But if he was not a traitor, he was surely an enemy to the country. Now, sir, whether traitor or enemy, and the master, knowing the fact, "had harbored him," "adhered to him," or "given him aid and comfort," would not the master have been guilty of the crime of misprision of treason against the United States, and punishable under our laws? Of this I think there is no doubt. And yet we are called upon to pay him a thousand dollars for taking away a man thus dangerous to himself, who, if he had remained with him, would probably have subjected him to the gallows. Let gentlemen reflect and vote as men, as intelligent statesmen.

Another question arises in this case, which, to me, is equally fatal to the claim. A state of war existed. General Jesup was the commanding officer in Florida. He was the agent of the Government; and whatever the Government might do to insure the safety of the people, their agent for the time being could accomplish under the martial law. By the term "martial law," I mean the *war power*, which is the most dangerous, the most indefinite, the most unlimited, exercised among nations. I do not refer to the rules and articles of war, but to that vague, indefinite, undefinable power which knows no limits. It is that power which, in time of war, may do anything in the power of man to accomplish; may command any sacrifice of the people, or of any portion of them, in order to secure the safety of the Government, and of the subjects generally. It is that power which authorizes the military commander, in short, to do whatever he deems necessary for the security of the public; by which, suspected men were arrested and imprisoned in Connecticut and New York during the Revolution; by which, others were ordered to leave the country; and by which, others were shot down, their dwellings burned, and their estates confiscated. It is the power exercised in South Carolina, during the Revolution, by Sumter, and by Marion, and their compatriots. It was by virtue of this power that Jackson, at New Orleans, suspended the writ of *habeas corpus*—adjourned the Legislature of Louisiana—ordered old men and boys, not liable to do military duty by law, on to the lines, to defend the city—*sent all foreigners out of the city*, as he regarded them dangerous, as this man was supposed to be—suffered no com-

munication between the city and country—ordered a portion of the slaves also into service, and sent the others back into the interior. Many of those slaves were killed, but we have at all times refused to pay for them. But does any one deny these unlimited powers? Not at all. If General Jackson had the right to send freemen and slaves away from the scene of danger, had not General Jesup the same power? Most assuredly he had. But the best illustration of this tremendous power is said to have occurred at Fort Erie, at the time the British attacked it in 1814. A lieutenant commanded a *picket guard* at the west of the fort, perhaps a mile distant. A beautiful plain extends in that direction some half or three-fourths of a mile, bounded by a dense forest. He was posted in this forest. As the British column advanced, the brave lieutenant, with his little band, retreated in front of them, keeping up his fire in gallant style, in order to retard their progress, and give notice to our men in the fort, and time for them to prepare to receive the enemy. An officer who had command of a heavy park of artillery on that wing of the fort, as the British column emerged from the forest, and he saw its force, opened a tremendous fire upon it. Our little guard and their brave commander were directly between the fort and the advancing column of the British army. They of course fell beneath the same fire that cut down the hostile column. As the story is related, General Brown was informed of the fact, and sent peremptory orders to the officer to cease his fire. To this order he paid no attention, but kept up such a shower of grape and canister, that the British column was broken and scattered before they reached the fort, so that not a man scaled its walls. But the whole of our picket guard, with their commander, were sacrificed; not a man survived. For this conduct the officer was arrested, and, on trial, showed conclusively that the sacrifice of our own guard of thirty men was *necessary to save the fort* and those in it. They, sir, were freemen. Their lives were surrendered for the safety of the army. These five Southern gentlemen who reported this bill now insist that the widows and orphan children of those men shall contribute a portion of their substance to pay for a Southern slave, who, for the safety of his own master as well as others, was sent out of the neighborhood. If there be a Northern man in this body willing to lend his vote to consummate such an insult to the honor of the free States, let him stand forth and avow it. Were it not chilling to the feelings of humanity, I would give another illustration of this indefinite and unlimited power. I refer to the execution of those lads on board the sloop of war Somers, a few years

since, when several midshipmen and apprentices were hanged by order of a lieutenant, without trial, in order to secure the safety of the ship and crew. Shall we now tax the fathers and brothers of those young men to pay for this slave?

But, sir, to come more immediately to the precise case before us, I refer gentlemen to the Southampton riots in 1832. The newspapers of that day informed us that slaves, and indeed colored freemen, were shot down in the streets, others sent to prison, and others sent out of the neighborhood. Shall Northern men be taxed to pay for them? Certainly, if you pass this bill, we must expect to open the Treasury to the slaveholders in all these and in ten thousand other cases. By virtue of this same power exercised at Southampton, General Jesup, in order to secure the safety of the people of Florida, sent this man Lewis with the Indians west of the Mississippi; and now the master, instead of paying the expense of arresting this man—instead of refunding to this Government and to the people of Florida the losses he has occasioned by bringing this slave among them—instead of paying for the property this man destroyed—he comes here and demands that we should pay him a thousand dollars for preventing Lewis from *killing more people and destroying more property*.

I have now stated my own views in regard to the powers of General Jesup to send this man out of the neighborhood. If he possessed these powers to deal with him as with any other enemy, no man will urge that we are in law or justice bound to pay for him. Admitting, however, for the sake of the argument, that General Jesup had no right to deal with him as an enemy, but that he was bound, under the order of the War Department, to deliver him over as a slave; that he disobeyed this order, and sent him West upon his own responsibility, and in violation of his duty; in such case, I ask, is there a member on this floor who for a moment would suppose the People bound to pay for a slave taken by General Jesup, in violation of his duty and of positive orders from the War Department?

Every member must be aware that the rules which control a public agent are the same as those which govern in private life. Suppose I employ a man to act as my agent. While he confines himself to the business on which he is authorized to act, I am bound in law and in justice by his contract. Suppose I employ my friend on my right to go and purchase a horse for me: he makes a contract for the horse in my name; I am bound by it, and must perform it. But suppose he purchase a *farm* in my name: no man would suppose me obligated to take the farm.

Military officers are the agents of Government,

to do all things pertaining to their office, and which come within the line of their duties. Gen. Jesup was an agent to send out of Florida all enemies of the country; but he was not our agent to send the friends of Government west of the Mississippi. If he has done so, the act is his, not ours. It was unauthorized, and he alone is liable. Now, I understand the gentleman from South Carolina [Mr. Burt] to urge that he was an enemy, and dangerous to the country. I admit the fact, and say that he should be *treated* as an enemy. But if he were not an enemy, then there is no claim on the Government.

But the committee are not content with urging that he was an enemy to the country, and dangerous: they suddenly change the argument, and say that he was taken for *public use*. An *enemy to the nation* is taken for *public use*! Well, sir, the argument is ingenious. It never found a place in the mind of Grotius or Puffendorf, or of any writer upon the law of nations or the rights of government. But the point was adopted by the argument of the gentleman from South Carolina, and perhaps I ought to notice it. For *what* use was he taken? *To* what use was he applied? The gentleman admits the right to shoot or to hang him. Would not that have been as much a "taking for public use" as it was to banish him? The *use* of sending him out of the country was the preservation of the lives and property of the people. That would have been equally attained by shooting or hanging the negro. But the reply to this is, that he was *property*. Well, I repeat, suppose he had been a rabid dog or a vicious mule, killing people and destroying their property, and General Jesup had shot or chased him out of the country, to prevent him from killing his master or others, would the Government have been liable? I will not argue the point further.

Again: it is said that, by the act of hiring, we admitted the slave to be property, and that the Government is now *estopped* from denying that fact. We are bound to treat all arguments on this floor with respect. But to suppose that this obscure lieutenant, who, perhaps, never read a commentary on the Constitution, and who, I dare say, never dreamed that he was affecting, or doing anything to affect, our rights or our duties: I say, to suppose that his acts would *estop* Congress from maintaining the Constitution, or that such acts would have any weight whatever with this body, is a proposition which I will not detain the House to examine. He was our agent for the purposes of doing his military duty; but we never authorized him to legislate for us, or to give construction to our constitutional rights. Why, sir, I may hire out my son or apprentice or my hired servant; but would that be an admission that they

were my *property*? Or suppose I agree that the gentleman from South Carolina [Mr. Burt] shall attend the Speaker to a given place: does that imply that I hold him as property? No, sir; the only fact implied is, that I have a right to receive the wages when the labor or duty is performed, according to my contract. In this case, the claimant agreed that Lewis should accompany the troops, and the officer agreed to pay the master twenty-five dollars per month. The claimant might have made the same arrangement in regard to any freeman as he did in regard to Lewis; and when the labor was performed, he would have the same right to the money. But, in such case, would the Government be obligated to pay him for the body of such freeman? No doubt the obligations would rest upon the hirer that now rest on the Government, and no more.

But the gentleman from South Carolina [Mr. Burt] says, that the act of 1815, levying direct taxes, recognises slaves as property. That law provides, "that such tax shall constitute a lien upon the real estate, and upon all slaves of individuals upon whom said taxes shall be assessed." My presumption is, that this bill was drawn by some Southern man, who did not reflect that slaves were less property under the Federal Constitution than they were under the laws of the slave States. The gentleman does not pretend that, at the passage of that law, the question whether slaves were persons or property, was raised, or discussed, or thought of. I need not say that a bill passed *sub silentio* constitutes no precedent. In our courts of justice, the judge takes no notice of questions not made by the parties, nor do the proceedings of a court form any authority on points not raised nor discussed by counsel, nor examined by the court.

The case of Depeyster, to which I referred, was a stronger case than that of the law of 1815. My friend from Pennsylvania, [Mr. Dickey,] as well as myself, stated that that case passed when no one knew it. I knew that my lamented friend [Mr. Adams] and myself both intended to oppose its passage, and we were both watching it; but it got through when we were unconscious of it. Does any man—I will not say lawyer—suppose that its passage constitutes any precedent showing that slaves are *property*? Yet this law of 1815, so far as we know, received no more attention (or at least that part of it relating to slaves) than did the act for the relief of Depeyster. It can therefore constitute no precedent.

The force of a precedent consists in the respect which we pay to the *judgment* of a former Congress. It is therefore necessary, to give a precedent any force whatever, that the *judgment* of the tribunal should have been exercised upon the

question, whether it be a judicial or legislative precedent. Thus, in each case that I have cited as precedents, either in this House or in committees, the questions now under consideration were discussed, and deliberation had, and a *judgment* given upon the point before us. Now, sir, let me say, with all due respect, to Southern gentlemen, that I challenge them to produce an instance in which this House, or the Supreme Court of the United States, or any respectable court of any free State, has decided *slaves to be property under the Federal Constitution*, in any case where that question has been raised, discussed, or examined. I desire to see gentlemen come to a definite issue on this subject. I wish to meet them fairly and distinctly. They must admit that the framers of the Constitution intended to exclude from that instrument the idea that there could be property in man. To that point I intend to hold them. And I call upon them to meet the record of Mr. Madison, to which I have referred. Let them deny that record, or carry out the intentions of the framers of that instrument.

The gentleman from South Carolina [Mr. Burt] says he "should like to know what was contemplated by that clause in the Constitution which stipulates for the surrender of fugitive slaves, unless it be that their owners hold property in them?" I answer, that clause *means just what it says*. It gives to the holder of slaves the right to pursue and recapture them in a free State, precisely as it gives me the right to pursue and retake my apprentice or my son in any State to which he may escape. It no more admits the slave to be *property*, than it admits the apprentice or the minor to be property. I am tired of hearing this clause of the Constitution quoted to prove almost every doctrine advanced by Southern men. Its provisions are of the most plain and obvious character. It merely provides for the recapture and return of slaves, and nothing more.

But my hour has nearly expired. My constituents hold slavery to be a crime of the deepest dye. The robbing a man of his money or property, or the seizing of his ship upon the high seas, we regard as grievous offences, which should exclude the perpetrator from human associations for the time being. But we look upon those crimes as of small importance, when compared with that of robbing a man of his labor, his liberty, his social, his intellectual enjoyments; to disrobe him of his humanity, to degrade and brutalize him. On this account we protest solemnly against being involved in the wickedness and in the crimes of that institution. To-day we are asked to pay our money for the liberty of our fellow-man. We hold that he was endowed with that liberty by his Creator; that it is impious, and in the highest degree

criminal, for a man, or for a Government, to rob any portion of our race of their God-given rights. As the representative of a Christian and a moral constituency, I deny the right of Congress to involve them or me in the support of such crimes. By our compact of Union, no such power is delegated to Congress. By the passage of this bill, we shall become slave dealers ourselves—traders in humanity. The people of our State shrink from the foul contagion. With Mr. Gerry, we hold that “*we have nothing to do with slavery in the States, but we will be careful not to give it any sanction;*” with Mr. Madison, we hold that “*it would be wrong to admit that there can be property in man;*” and with the signers of the Declaration of American Independence, we hold that it is a “*self-evident truth, that all men are created equal.*” We believe our rights to enjoy these doctrines unmolested by this Government are as clear and indisputable as are the rights of the slave States to deny them in theory and in practice. We claim no superiority of privileges under the compact. We admit them, under the Constitution, to enjoy their slavery unmolested by Congress or by the free States. Its blessings and its curses, its horrors and its disgrace, are theirs. We neither claim the one, nor will we share in the other. We will have no participation in its guilt. “It is the object of our perfect hate.” Southern gentlemen may continue to misrepresent us, by saying that we seek to interfere with that institution in the States; but, thank God, we have at last obtained access to the public ear. The people of the free States now understand that all our efforts, politically, are based upon the constitutional right of being exempt from its support. For years I have made it a practice, when I have spoken in this Hall, to guard against misrepresentation, by avowing my doctrines. I am aware of the efforts now making by Northern presses, letter-writers from this city, and editors who pander to the spirit of servility, to misrepresent my views, and assail my motives. Sir, let me say to those men, before Heaven, If they will come up to the work, unite their influence, and separate this Government from the support of slavery and the slave trade, and leave that institution where the Constitution placed it—with the States in which it exists—with gratitude to God, and with love and good

will to all my fellow-men, I will retire from these halls to the obscurity of private life.

Sir, I may, on the present occasion, disabuse myself of the imputation that I wish to embarrass the friends of the incoming Administration. Those who have done me the honor to observe my course in this Hall for the last ten years, must do me the justice to say, that my efforts here have been against existing evils. I desire to see every member of every party lend his influence to support the Constitution of my country and the rights of humanity. Sir, I war upon no party. I wish to see the people of the free States purified from the support, the crimes, the contagion of slavery. I would oppose any member or any party who seeks to uphold the slave trade or slavery by Congressional laws, or lends his influence to continue within this District, or on the high seas, a commerce in human flesh. I know that the sympathies, the consciences, and the judgment of the people are with me. Recent events have demonstrated the power of truth. Its omnipotence is irresistible. It is rolling onward. No political paltering, no party evasions, no deceptions, no dodging of responsibility, will satisfy the people. No; gentlemen must come up to the work; they must take their position upon the line of the Constitution, and maintain the rights of the *free* as well as of the slave States, or they will be overwhelmed by the indignation of a free and virtuous people. Gen. Taylor and his friends will have an opportunity of gaining immortal honors, and of deserving and receiving the gratitude of the American people. Let them at once abolish slavery and the slave trade in this District, and upon the high seas; let this Government cease to oppress and degrade our race; let us cease to legislate for slavery; let the powers and influence of Government be exerted to promote human liberty, to elevate mankind in his moral and physical being; and the honors of men, and the blessings of Heaven, and the gratitude of this and of coming generations, shall be theirs. But if their influence be exerted to maintain this commerce in human flesh now carried on this District, and upon the high seas—to involve the people of the North in these transcendent crimes—then the opposition of good men, the curse of Heaven, and the execrations of posterity, will be their reward!

71.2009.084.07628

