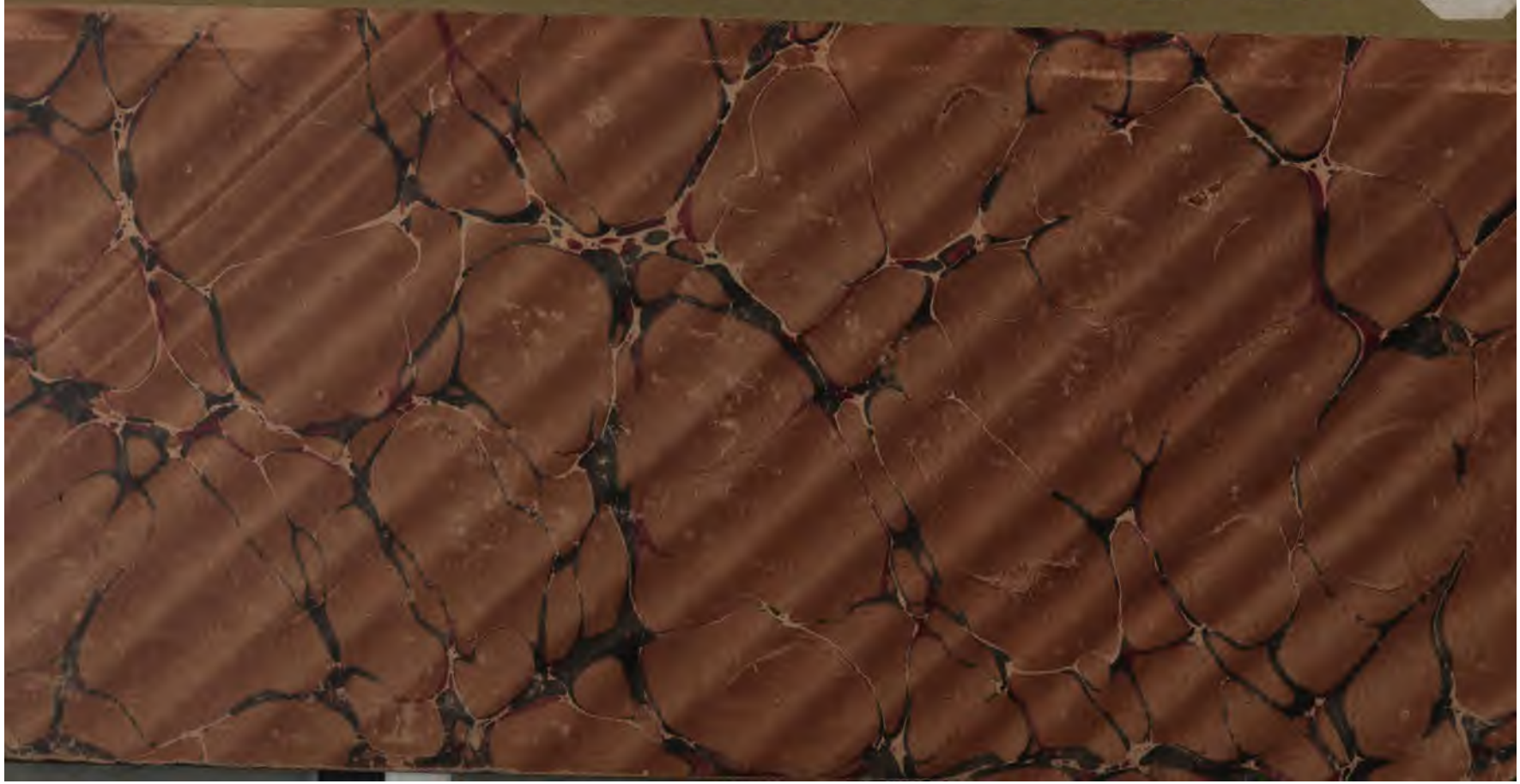
Hoar. Remarks on the Resolutions Introduced by Mr. Jarvis and Mr. Wise. 1836



REMARKS

BY

SAMUEL HOAR, OF MASSACHUSETTS,

ON

THE RESOLUTIONS INTRODUCED

BY

MR. JARVIS, OF MAINE, AND MR. WISE, OF VIRGINIA,

DELIVERED

IN THE HOUSE OF REPRESENTATIVES,

THURSDAY, JANUARY 21, 1836.

WASHINGTON:

NATIONAL INTELLIGENCER OFFICE.

1836.

REMARKS.

The House having under consideration the following resolution, offered by Mr. JARVIS, of Maine:

Resolved, That, in the opinion of this House, the subject of the abolition of slavery in the District of Columbia, ought not to be entertained by Congress. *And be it further resolved*, That, in case any petition praying the abolition of slavery in the District of Columbia be hereafter presented, it is the deliberate opinion of the House that the same ought to be laid on the table, without being referred or printed.

And the following resolution, submitted by Mr. WISE, as an amendment thereto, viz:

"*Resolved*," and insert, That there is no power of legislation granted by the constitution to the Congress of the United States to abolish slavery in the District of Columbia; and that any attempt by Congress to legislate upon the subject of slavery will be not only unauthorized, but dangerous to the union of the States.

Mr. HOAR addressed the House as follows:

Mr. SPEAKER: The resolutions on your table present for the consideration of the House a dry constitutional question. Not only has this question been discussed by several gentlemen who have addressed the House, but the subject of slavery, as it exists in the States, its bearing on the union of the States, the relation which the several States and the General Government bear to each other, as far as this subject is concerned, have been freely and warmly debated. I propose to offer some remarks on the constitutional question, and to answer some of the observations respecting the conduct of the Governments of the Northern States, which have been made in the course of the discussion of these resolutions.

Before I enter on the consideration of the question whether Congress can constitutionally abolish slavery in the District of Columbia, I wish to express my views on the subject which seems to have caused the principal alarm and apprehension in the minds of gentlemen from the Southern portion of the Union. It has been observed, by a number of the members from that part of the country, that the abolition of slavery in this District is an "entering wedge" to the abolition of slavery in the States in which it exists. This seems to be a very favorite expression with many of the gentlemen who have addressed the House against these petitions. Notwithstanding the very high authority in its favor, the figure does not seem to me in the least degree appropriate. By an "entering wedge," gentlemen are understood to mean, in this case, a method of passing the boundary between right and wrong, in a manner almost imperceptible at first, and advancing gradually to the completion of the wrongful purpose. It is difficult to imagine a more clearly defined limitation of power than is afforded by the constitution on this subject. The "hitherto shalt thou come, and no further," is as clearly marked here as in any other part of that instrument. If the wedge shall ever be used, it will be introduced head foremost.

There is no section, clause, nor expression in the constitution which would seem to suggest or countenance the idea, that it was intended by its framers to give to Congress the power to abolish slavery in the States. If the exist-

ence of slavery is recognised, the control of it is left, by the framers of the General Government where they found it, with the States, where it exists. Among the numerous political heresies started in different parts of the country, I *may* have heard the doctrine that the General Government does possess the power to abolish slavery in the States, alluded to as one entertained by "some people," and "somewhere;" but, as far as I can recollect, *I have never heard* any person, from any part of the country, assert or pretend that Congress possesses this power. Whether slavery be right or wrong, in itself, the subject is exclusively for the consideration of the State Governments within the limits of the States where it exists. The Southern States cannot, therefore, for a moment, admit the power in the General Government to interfere with this subject in the States, without yielding their claim to independence. No Northern State can wish them to make this admission; because, by parity of reasoning, their own State powers would be merged in the power of the General Government.

Far different are the provisions of the constitution in regard to this District. To Congress is given the power "to exercise exclusive legislation, in all cases whatsoever, over" this District.

This language is as comprehensive, as plain, as unambiguous, as any which could have been used to confer the power in question. If gentlemen, denying the existence of this power, were called on for proof of the existence of any other power in Congress, they would find it difficult, as far as the mere form of expression is concerned, to name one more indisputably conferred. It then is incumbent on those who deny the existence of this power to show that, notwithstanding the universality of this expression, it was the intention of the framers of the constitution to except from the grant the power in question. This seems to be conceded. It is not pretended, and indeed cannot be pretended rationally, that the language used is not sufficient to convey the power. It is said, however, that though the language used would, by its usual import, convey *all* power of legislation, or rather *exclusive* power of legislation, yet it cannot be supposed that it was intended to confer on Congress unlimited power over the inhabitants and property within the District. It is said that this is not "an unlimited, absolute, despotic power of legislation over this District"—*(Mr. Leigh.)* "That private property cannot be taken for public use, and much less for private use, without compensation"—*(Mr. Pickens.)* That "the local Legislature of this District can pass no law which the States are, by the constitution, prohibited from passing; that there are great leading principles in the nature of society, and of government, which prescribe limits to our legislation; and that, fortunately, here the constitution speaks too plainly to be misunderstood, declaring that private property shall not be taken for public use, without just compensation"—*(Mr. Wise.)*

Comprehensive and strong as is the language of the constitution above cited, I do not contend, Mr. Speaker, that it was its design to confer unlimited and despotic power on Congress over this District. I have not very critically examined all the exceptions which have been mentioned in the course of this debate, because most of them are irrelevant to the present question. Those which have been urged as having a bearing on the present question, will be carefully examined.

If slavery cannot be abolished in this District, without violating the principle which prohibits Government from taking private property for public use, without compensation, slavery here must remain undisturbed. In determining the question, however, whether this great rule of legislation would be violated by granting the prayer of these petitions, it will be well to advert to

a rule which seems almost a mere truism, viz: "That the intention of the parties to a contract, or of the Legislature in passing a law, is to govern the construction." The intention, then, of the framers of the constitution is here the object of inquiry. The authors of this instrument knew well the force of the language they employed. They were exceedingly cautious in guarding all points where danger was apprehended. It will not be said that there is any more direct expression, used in any part of the constitution, declaring the sense of the parties to this instrument, and indicating an intended exception to the general grant, than has been above mentioned.

I shall not much insist on the proposition that though slaves be *property*, they are also *persons*, and, as persons, their rights may be abridged or enlarged, as justice and the good of the whole may seem to require. It might be urged that the Government of any State, consistently with all the rights of individuals, might extend the property of a free parent, in the labor of his child, one year, or five years, beyond the common-law age of freedom; or abridge, to the same extent, that property in the parent, and give it to the child.

It is to be observed that these resolutions equally embrace all other modes of abolishing slavery, as well as the immediate and universal emancipation of the slaves. Some of the arguments also are founded on the supposed embarassment to Southern members of the Government, coming to this District, with their families, while resident here for the discharge of public duties. It is very apparent that all these difficulties may be easily avoided.

In order to solve the question, then, "how did the parties to this instrument regard the point now in issue, when the constitution was made?" inquiry should be made, what was the practice of the several Governments with which the parties recently had been, or then were, connected.

That the Government of Great Britain possessed this power, probably will not be doubted. That Government has recently exercised the power in relation to her West India possessions. But I do not rely on this, except to show that the stretch of power which Parliament had exercised towards the colonies induced the framers of the constitution to guard vigilantly against conferring dangerous powers on Congress. A more important inquiry is, what was in fact the understanding and the practice of the parties themselves on this subject at this time? The answer to this inquiry, it is believed, must settle this question.

Several years before the United States' constitution was made, (as early as 1780,) one State in the Confederacy had wholly *abolished slavery* within its limits. Several others had passed laws by which the same end has since that time been gradually attained. Each of these States adopted such means as, to its own Legislature, seemed advisable. No special power was granted to any one of the State Legislatures by the people, nor was such power ever asked. The language used in the State constitutions, or charters, neither was, nor could be, more clear or explicit in conferring the power under which they acted, than that above quoted from the constitution of the United States.

It is said that the constitutions of the present slaveholding States give no power to their respective Legislatures to abolish slavery in those States, and that new power must be given to enable these Legislatures to accomplish that purpose.

Conceding that the gentlemen who have made this remark are better qualified to give a true construction of the constitutions of their respective States than I am, and that these constitutions, in fact, give to the Legislatures of those States no such power, I still contend that the fact (if it be such) has but little effect on the present question. It is perfectly undeniable that the South-

ern members of the United States' convention who framed the constitution, knew as well, when that instrument was formed, as any one now knows, what the views and what the practice were in the Northern States of the Confederacy on this subject. They then knew that, in the Northern part of the country, it was clearly and fully believed, and indeed was doubted by no one, that language no more plain and explicit than the clause now under consideration did confer the power on the several Legislatures to abolish slavery, without any other consent of the owners of the slaves than that which they gave as members of the community, when they formed their respective constitutions, or when they entered into their respective societies. Having this knowledge of the views and the practice of the Northern States, the Southern members at that time did not disagree with the Northern in opinion on this subject; or, if they in fact entertained a different opinion, they gave no notice of this difference, which, as far as the present question is affected, would be the same thing.

It probably will not be denied by any one, that the result of this inquiry will be the same, whether it is supposed that the same opinion was entertained by the members from the North and the South on the construction then given to the State constitutions at the North, or that there was a difference of opinion on this point at that time, and the difference was concealed, or not expressly notified by the Southern members of the Confederacy.

Suppose, for the sake of stating clearly the argument, (what no person would seriously impute to the sages who represented the Southern portion of the country in the convention, on account of its disingenuousness,) that, having assembled for conference apart from their Northern associates, they should have held this language: "It is understood at the North, that the power to "abolish slavery is vested in their State Legislatures, and given them by "language no more comprehensive or strong than that by which this consti- "tution gives the power intended to be conferred on Congress over the future "seat of Government. At the South, this is understood differently. We "believe that the people of the respective States must give the power of "abolishing slavery in so many words, or by other and more precise language; "or we believe that the liberation of the slaves would be a violation of the "great rule, that private property cannot be taken for public use without "compensation. It is not necessary for us to state our opinion on this sub- "ject to them. It is not necessary for us to state to the people of the North, "that we think their ideas of justice and propriety on this subject too much "resemble the principles and the practice of the British Government, which "we unitedly condemn. When they shall attempt to act in the government "of the district to be ceded on the same principles on which they now act "in their respective State Governments, we may then urge our objections "to their principles and their measures."

This is as favorable a statement of the case as the history of the transactions in question will warrant. On this statement, considering the North and the South as two parties to the constitutional compact, the South are bound to adopt the Northern exposition by every system of law which men hold sacred, whether moral, honorary, municipal, or international.

It is believed that no part of this statement of facts is questionable. The views of the Northern States on the subject of slavery, and the power to control it by the State Legislatures, were as well known at the South then as now—as well known as that there were Northern States in existence. If the difference of opinion on this subject then existed, as no limitation to this comprehensive language was introduced into the constitution, certainly the limita-

tion cannot now be introduced by implication. But it is not easy to perceive any good reason for believing that such a difference of opinion did then exist. The idea of this implied limitation of power comes nearly half a century too late.

An objection to the existence of the power in Congress to legislate on this subject has been mentioned by several gentlemen in the course of this debate in this House, founded on the construction of the constitutions of the States of Virginia and Maryland.

It is thus stated by a gentleman from South Carolina, (Mr. PICKENS.) That gentleman observes: "I take higher ground, and contend that, accord- "ing to the bill of rights of Maryland, and the constitution of Virginia, these "States themselves could not have ceded absolute and unrestrained power "over private property of any kind in this District." "If Virginia and Mary- "land had attempted to cede absolute power over this subject, they would "have violated the rights of their own citizens."

A gentleman (Mr. LEIGH) whose high intellectual and moral worth tends strongly to give a currency to his opinions, even on questions of doubt and difficulty, in an argument published in the newspapers, observes: "The argu- "ment for the power of Congress I understand to be this: that the grant to "Congress of the power of exclusive legislation, in all cases whatsoever, over "the District, vests in Congress all powers which the Legislatures of Virgi- "nia and Maryland may rightly exercise within their respective jurisdictions." Undoubtedly, sir, Virginia and Maryland neither *did* cede, nor *could* cede, *absolute* power, nor *any* power over *persons* of any description, nor *private* property of any description, in this District. If they could do this, the absurdity stated by the gentleman from South Carolina would follow. A State Government might cut up its territory, and sell that and its citizens, to any Government, savage or civilized, on earth. This proposition rests on a principle no less clear and certain than that Government is a trust not transferrible—an agency without power of substitution. Precisely so far as either of these States should attempt to convey any power of legislation of any kind to the General Government, so far would that State Government attempt to alienate its trust or agency. So, sir, with great deference, I contend that the power which Virginia and Maryland might have exercised over this District is not the measure of the power which Congress may exercise here. All that Virginia and Maryland could do, and all they professed to do, as to power over the District, was to relinquish each its own power. Most manifest it is, that no State in the Union could transfer any portion of its power to the United States, or to any other Government. Unless it be true that a relessor of property, after a release, made without condition or reservation in the instrument of release, still retains dominion over the property released, no more reference is to be made to the constitutions, or laws, or usages of Virginia or Maryland, than to the constitutions, laws, and usages of any other State in the Union. All the power which Congress possesses is derived through the constitution of the United States, from the people of the United States—equally, and no more than equally, with the rest, from the people of Virginia and Maryland. It is a contradiction to say that Congress shall exercise exclusive legislation, and yet that the laws or constitutions of either of these States limit that power of legislation, or are in any way binding on Congress. The above cited provision of the constitution of the United States, it is contended, is "the only source," if not "the only measure," of the power of Congress.

The act of cession of Virginia contains this proviso: "*Provided*, That "nothing herein contained shall be construed to vest in the United States any

"right of property in the soil, or to affect the rights of individuals therein." The author of the argument above cited (Mr. LEIGH) contends that the word "therein" refers to both members of the sentence, and that the sense is the same as if it had been written "any right of property in the soil *therein*, or to affect the rights of individuals therein."

If this be the true construction, the citizens of Alexandria have still the right to be represented in the Legislature of Virginia, and have still all the rights which they ever enjoyed as citizens of that State. If nothing in the act of cession affects the rights of any individual in the ceded territory, those rights remain wholly unchanged by the act, and Congress for many years has been exercising an unwarranted power in every act of legislation over this District.

The resolutions under consideration deny all power in Congress to interfere with slavery in this District.

It has been said, "if we are deprived of the free use of our property, we are, in effect, deprived of our property."

The South claims to hold its slaves as property, with all the incidents and rights pertaining to other property. Be it so: what is the power of Congress over the trade of the country in all sections of the Union? Not a bale of broadcloth, not a hogshead of sugar, not a cask of wine, no article of necessity nor of luxury, can be introduced into the country, but by observance of the rules prescribed by Congress. An excise is imposed and collected on the sale of such articles of domestic growth, and at such times and places as Congress chooses to proscribe. Acts of Congress have long since been passed to facilitate the sale and transfer of slaves within this District; and yet it is contended that Congress has not the constitutional power to prohibit the making this ten miles square the factory of slave-dealers from the Southern and Western sections of the Union. Heretofore Congress has legislated on the subject of the transportation of slaves from one State to another, prohibiting with much particularity certain proceedings with them, considered injurious to the community. [Act 1807, ch. 77, (or 67,) secs. 8, 9, 10; act of 1820.]

Mr. Speaker, the Northern States are required to interpose, by legislative enactments, to suppress the efforts of the abolitionists, and to deliver up to the officers and Governments of the South, for trial and punishment at the South, Northern citizens, who have never left the limits of their respective States, for a violation of a law enacted by a Southern Legislature. Charges of a grave character are made against the whole Northern section of the Union, collectively, imputing to that portion of the country insincerity in their professions of regard for the peace and the welfare of the South, because they have not complied with these requests.

A case is brought into notice by a gentleman from Tennessee, (Mr. PEYTON,) which he considers and urges as a case supporting this heavy accusation against the North, and as a violation of the law of comity, which every independent State or nation is bound to observe towards a neighboring State. The case stated is this: A grand jury of Alabama prefers an indictment against a citizen of New York, who has never entered the limits of the territory of Alabama, for the commission of an alleged crime in violating a law of the last-mentioned State. The Governor of Alabama demands of the Governor of New York the surrender of the supposed culprit to the Government of Alabama, to be tried by the courts of the last named State, by the laws of the same State, and for a violation of a law enacted by a State into whose territory the offender never entered until transported there for trial and punishment.

The bare statement of such a claim would seem to be sufficient to place it in

its true light, but for the character and standing of those who thus come forward in its support. It is because the Chief Magistrate of one of the States in the Union and an honorable member of this House urge this claim on the North, and especially because a refusal by one Northern Governor to comply with this request is made a ground of criminating the whole Northern section of the country, that gives it a claim to notice.

What is the great fundamental principle of our Governments? Is it not that the people shall govern themselves? In the case above stated, the law is enacted by a Legislature wholly foreign to him who is claimed as its subject. The legislator is in no way nor degree amenable to him, or to those who are said to be subject to the law; nor have the latter, in any way or degree, given to the former any authority or power to control their conduct.

To allow this principle would indeed introduce a strange state of things. The highest judicial tribunals of the State of New York cannot officially understand the laws of another State, until they are proved as facts in the particular case in which they are to be applied; and yet the most uneducated adult person in the State of New York would be exposed to be seized, transported a thousand miles from his home, tried for a breach of one of those laws, which the judges of his own State cannot know, and, it may be, condemned to fine, imprisonment, or death, for doing an act which, if judged by the laws of his own State, is perfectly innocent. Mr. Speaker, if this be not slavery, I will acknowledge the obligation to any one who will inform me what slavery is.

There are many provisions of the constitution manifestly repugnant to the claim set up in this case, but it cannot be necessary further to examine the subject.

It is said that the abolitionists wish to abolish slavery in this District, in order that they may have a proximate and convenient position in which to carry on their future operations against the South. The petitioners are represented as saying, "give us whereon to stand, and we will move the [southern] world." Any person casting his eye on a map of the country, and noticing the length of line by which Virginia and Maryland are now bounded by non-slaveholding States, will probably think they must be miserable engineers to suppose this little spot of ten miles square can afford much aid to the accomplishment of their plans. The abolition of slavery in this District would probably have very little effect on the slaves, or on slavery, in any of the States.

Another ground of complaint, urged by several gentlemen in the course of the debate, is this: It is said that the essays of the abolitionists have for their object the excitement of uneasiness and discontent among the slaves, and that their tendency is to produce insurrection and servile war. They further allege that the writing and printing of the essays, being carried on within the limits of independent States, and being injurious to the slaveholding communities, the latter communities have a right to complain of the proceeding, and to demand the suppression of those publications, as libellous and seditious in their nature, by the punishment of their authors.

This complaint deserves serious attention. It presents for consideration questions of great and acknowledged difficulty. That a person standing on one side of the line between two States, may, in various ways, inflict an injury on a person on the other side of the line, and that the guilty party is justly punishable; that, in many cases which may be imagined, he ought not to be protected, and would not be protected, in any well-ordered State, would seem not to be questionable. Although this case has been stated in the

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I have thus far, Mr. Speaker, proceeded on the supposition that the abolitionists are wholly in error in their theory; and I do not intend at present to discuss the question, whether slavery is a blessing or a curse, nor whether the abolitionists be fanatical or rational. Suppose, then, that there is an opaque body at the North, "radiating darkness" on the regions of the South, and producing unreasonable discontent in a portion of the inhabitants: what ought to be done? A band of furies in Paris, in the reign of Robespierre, were hurrying a victim to their common gallows, (the lantern post,) and were about to execute on him what (in some sections of our country) is called Lynch law, on account of some real or supposed heretical opinion on the subject of government, when the object of their rage saved his life by proposing the pertinent question to those who held him in custody, whether they expected to see any better, after they should have suspended him at the lantern post, than before?

What, Mr. Speaker, is the antagonist principle, or the appropriate corrective of speculative error? Is it physical force? Will you enact a bill of pains and penalties for absurd reasoning, or hypocritical cant? Will you punish, as criminal, false inferences in regard to facts, in newspapers or pamphlets? The practice would be new in this country. A late King of France tried an experiment there, within a few years, on the freedom of the press; the result need not be stated. It is universally admitted that, in this country, there are newspapers in great numbers so conducted that their statements scarcely afford the slightest presumption in favor of their truth; yet, for the sake of the incalculable benefit to be derived on the whole from a free press, the immense evil is tolerated, and probably will be tolerated. The slander of individuals depends on different principles, and will be punished by grand juries and traverse juries. Seldom, however, I believe, will an attempt be successfully made to punish, by indictment, any one for any writing professing to have in view the advancement of the public good, on account of its seditious nature or tendency. I do not mean to assert that a case never has occurred in which this has been judiciously done, nor that it can never be done hereafter; but it does seem that a careful examination of the cases in which this has been attempted will not lead to a conclusion very favorable to them.

What, then, is to be done? It is asked, when was fanaticism put down by reasoning? I answer, that it has, probably, been put down by reasoning as often as by force. If honest but mistaken men are to be opposed, let the sword lie still in the scabbard, and take up the pen. Southern gentlemen will not distrust their own power to meet argument with argument, when truth is on their side. I am quite sure that some of the Southern gentlemen will admit the inexpediency and injustice of sending a man to become cool within the walls of a prison, merely because he has been a little too much heated in debate. If mere fanaticism is in question, the most effectual antidote is neglect. If, in two centuries, there has been but one insurrection among the slaves of the South, it is difficult to believe that gentlemen have not overestimated the danger to be apprehended from that source, in consequence of any essays to be sent from the North. The Southern States can make such provision, as to them shall seem expedient, for the punishment of any person, from whatever quarter of the world he may come, who shall be found attempting to instigate their slaves to insurrection and rebellion. If any such person shall suffer, having been fairly tried for his offence, he will probably suffer with little more sympathy than others excite who suffer for their crimes.

I have no more of an inclination than I have of a right to dogmatize on this threadbare subject. Perhaps my views are wholly wrong. It may appear, within some few months, that Northern legislators will find no difficulty

in accomplishing what is required of them; or, if they should meet difficulties, some Southern statesman may suggest a method of obtaining their object, which, upon examination, will be approved by the public voice. If so, all freemen will rejoice that, at length, that great desideratum in legislation is supplied—a method of effectually suppressing the licentiousness of the press, without infringing its liberty.

It is readily granted that it is scarcely possible for man to inflict a greater evil on his fellow-man than is inflicted by the malicious or thoughtless dissemination of falsehood. But can human tribunals so distinguish between the different classes of writers, as to send one class to the penitentiary, and give due rewards to the other? That this can in no instance be done, is not affirmed. The experience of the world thus far, however, would seem to apply to this case generally the mandate—"let both grow together until the harvest."