SPEECH

OF

HON. ALEXANDER H. STEPHENS,

OF GEORGIA,

ON THE

ADMISSION OF MINNESOTA AND ALIEN SUFFRAGE;

DELIVERED

IN THE HOUSE OF REPRESENTATIVES, MAY 11, 1858

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SPEECH.

The House having under consideration the bill for the admission of the State of Minnesota into the Union—

Mr. STEPHENS said:

Mr. SPEAKER: My time will not allow me to answer all the objections that have been made to the admission of Minnesota. I do not think it necessary, however, to consume time, or to exhaust my feeble strength in answering all the objections that have been raised. Many of them are of small import, while some of them are grave, important, and go to the very foundation principles of our Government. This latter class of objections are not new; they are not novel; they involve principles coeval with our institutions. In reply to them, I must be brief in the forty minutes allotted to me. They involve two inquiries. The first question in reference to them is, whether they be well taken in *fact;* and the second is, whether, if well founded, they amount, in themselves, to a good and valid ground for the rejection of a State.

The gentleman from Virginia [Mr. GARNETT] objects because of the State boundaries violating the stipulation between Virginia and the United States in the cession of the Northwest Territory. In point of fact, I do not consider that objection well taken; but if it were good, it ought to have been taken when the enabling act was passed last Congress, fixing the boundaries of Minnesota. That portion of the old Northwestern Territory now included in the State of Minnesota was included then, and the objection should have been taken then, if at all. There is, however, but a small portion of the old cession of Virginia included in this State. Twenty-odd thousand square miles of that cession, it is true, have been added to the ninety-odd thousand square miles constituting the main body of Minnesota. This was for convenience. Only a small portion, therefore, of the original Virginia cession has been taken off and added to the large extent of country that makes the State of Minnesota, for the public convenience. There has been no injury resulting anywhere, and no breach of faith, in my judgment.

It was stated, also, that the number of delegates who formed the State constitution was larger than that ordered in the enabling act. That objection has been well answered by the gentleman's colleague, [Mr. JENKINS.] The act of Congress provided that as many delegates should be chosen as there were representatives in the Territorial Legislature. Well, sir, the people of Minnesota construed that to embrace their Senators or Councilmen as well as Representatives in the lower House. The bill admitted of a doubt. I do not conceive that that objection has much force in it.

But I must pass on to notice the other objections of a graver character. It was stated by the gentleman from Ohio, [Mr. SHERMAN,] who opened this debate, and has been repeated by several other gentlemen, that the constitution of Minnesota is violative of the Constitution of the United States—in this, that it permits aliens to vote, or other than citizens of the United States to vote, in State elections.

Mr. Speaker, before arguing the point whether this clause of the constitution of Minnesota does or does not violate the Constitution of the United States, let me ask right here this question: suppose it be true that that feature of their constitution does violate the Constitution of the United States, or is inconsistent with it: is that a good ground for her rejection? I put it strongly and broadly in the fore front of the argument—suppose that be conceded: is it a legitimate ground of objection to the admission of a State that a provision of its constitution is inconsistent with the Constitution of the United States? I say, sir, not. I say it as a State-rights man, advocating the principles of the State-rights school. We can only look into the constitution of a new State applying for admission, to see that it is republican in form, and that it legally and fairly expresses the will of the people. If there be conflicts, the Constitution of the United States points out how those conflicts are to be settled. After coming into the Union, such clause, if it be in, will of course have to yield to the supreme law of the land. Sir, the case of Minnesota, if this be true of her constitution, will not be a singular one.

The constitution of Illinois declares that no man shall be eligible to a Federal office who has been elected to and has accepted a judgeship in that State within two years after the expiration of the term for which he accepted it. A Senator from that State, now holding a seat in the other wing of the Capitol, [Mr. TRUMBULL,] was elected to that body during the term of a judgeship of a State court, which he had been elected to and had accepted. In the Senate of the United States, the question was raised as to his eligibility, and as to whether the constitution of Illinois could, under the Constitution of the United States, impose such a qualification; in other words, whether the qualifications for Senators set forth in the Constitution of the United States were not absolute and binding, and did not supersede the provision of the constitution of Illinois. The Senate so determined; and that Senator now holds his seat in the face, in the teeth, and against that constitutional provision of his own State.

Whether that decision of the United States Senate was right or wrong, I will not now stop to inquire, or to express an opinion.

I cannot take up my time in citing other analogous cases. Many instances might be adduced from decisions of the courts. It is enough for me to affirm that the Constitution of the United States declares that "this Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding." I say, therefore, in answer to all that has been said in reference to the constitution of Minnesota being in violation of the Constitution of the United States, that even conceding the point for argument's sake, (which I do not concede in fact,) this would not be a just and valid ground on which to reject her admission. It is a question which can be properly decided when it arises, if ever, by the proper judicial tribunal before which it may arise. We, on the question of admission, can only look into a constitution to see that it is republican in form.

Mr. TRIPPE. I desire to ask my colleague whether he concurs in the Green amendment to the Kansas bill, which asserts the right of Congress to inquire into the constitution of any State applying for admission into the Union, in order to see whether it is consistent with the Constitution of the United States?

Mr. STEPHENS, of Georgia. My time is short, and I want to argue other questions; but I will say to my colleague that there was nothing in the original Green amendment which did not meet my cordial and hearty approval. There was nothing in it which inquired into a constitution. It was altogether negative in its character.

Mr. TRIPPE. If my colleague will allow me, I think that right was directly asserted in the Green amendment.

The SPEAKER. The Chair desires to suggest that the constitution of Kansas is not before the House.

Mr. TRIPPE. The same principle involved in the amendment to the Kansas bill, to which I have referred, is contained in this bill.

Mr. STEPHENS, of Georgia. I cannot discuss that question now. There were words added to the original Green amendment that I considered liable to objection; but, being negative, were not insuperable with me. Now, Mr. Speaker, I lay down this proposition, that there is nothing, in my judgment, in the constitution of Minnesota, inconsistent with the Constitution of the United States.

The gentleman from Ohio, [Mr. SHERMAN,] who led off in this debate, argued that there was no clause in the constitution of Minnesota by which the present elected members of the Legislature could be prevented from holding for life. Well, sir, suppose the gentleman was correct—but I do not concede the fact: the constitution would not therefore be anti-republican. I would not vote for such a constitution if I were there. But, sir, what constitutes a republican form of government? It is, as I understand it, a division of the three great branches of government—the executive, the judicial, and the law-making powers. That division is certainly in this constitution. Several of the States have made the judiciary elective, or holding office for life. Does that make their constitutions anti-republican? The Constitution of the United States does this. If the judiciary can hold office for life, why not the executive? and why may not representatives as well, if the people see fit to make such a constitution? It would not cease to be republican in consequence. It might and would be, in my judgment, a very bad constitution; but I say that of that we cannot rightfully judge.

I now come to the main question in this debate—the alien suffrage clause, as it is called, in this constitution. I have said that it was no new question. It is a grave and important one, but it is coeval with the Government. Mr. Speaker, if there was any subject which was seriously watched and guarded, in the formation of the Constitution of the United States, above all others, it was that the Federal Government should not touch the right of suffrage in the States. The question of who should vote in the several States was left for each State to settle for itself. And so far as I am concerned, I say for myself that there is nothing in the doctrine of State-rights that I would defend and stand by longer, and fight for harder, than that which denies the right of the Federal Government, by its encroachments, to interfere with the right of suffrage in my State. The ballot-box—that is what each State must guard and protect for itself; that is what the people of the several States never delegated to this Government, and of course it was expressly, under the Constitution, reserved to the people of the States. Upon the subject of alien suffrage, about which we have heard so much lately, I wish in this connection to give a brief history. I state to this House that the principle was recognized by the ordinance of 1787, which was before the Government was formed.

It was recognized by the act of 7th August, 1789, soon after the Government was formed, one

of the first acts signed by Washington—an act making provisions for carrying out that ordinance.

It was recognized in the territory South in the cession by North Carolina, on the 2d April, 1790.

It was again recognized in the bill creating a government for the Territory of Tennessee, on the 26th May, 1790.

It was recognized in the act of settling the limits of the State of Georgia, and creating the Mississippi Territory, on the 7th April, 1798.

It was recognized in a supplemental act to the last, on the 10th May, 1800.

It was recognized in the division of Indiana Territory, on the 3d February, 1809.

It was recognized in an act for Illinois Territory, on the 20th May, 1812.

It was recognized in the act organizing the Michigan territorial government: the date of this I do not recollect.

But I cannot take up my time by referring to other instances in their order. I know that in some cases voting in the Territories was restricted to citizens. This was the case in the Territories of Missouri, Iowa, Wisconsin, Utah, and New Mexico; while alien suffrage was again recognized, in express terms, in the Territories of Oregon, Minnesota, Washington, Kansas, and Nebraska.

Of the Presidents of the United States who, in some form or other, gave the principle their sanction either in the Territories or States, may be mentioned Washington, the elder Adams, Jefferson, Madison, Jackson, Polk, Fillmore, and Pierce.

Reference, sir, has been made in this debate to a speech made by Mr. Calhoun on this subject, in the Senate, in 1836, on the act providing for the admission of Michigan, upon which comments have been made by several gentlemen. The views of that distinguished statesman have been presented as authority on their side. I have simply this to say about that speech: I cannot find it in the Globe. I cannot find it in the debates of the day.

Mr. RICAUD. I think it is in his published speeches.

Mr. STEPHENS, of Georgia. I have seen it in his published works, but I cannot find it in the published reports of Congress. It is stated to have been made in 1836, on the bill authorizing Michigan to form a constitution. Michigan was admitted with alien suffrage in her constitution, on the 3d March, 1837; and Mr. Calhoun does not appear to have made any objection to her admission on that ground. I find speeches made by him upon that bill, but none objecting to this clause. I find he offered a substitute for the bill admitting Michigan without objection to the alien suffrage clause in her constitution. Still, it is stated that this speech of his was made the year before, on the occasion referred to, and I do not wish to be understood as questioning it. That was on Congress conferring the right. He did not raise any objection to the admission of the State as far as I can find, because of alien suffrage being allowed in her constitution.

Again: on the 26th of July, 1848, the Clayton compromise bill for the organization of certain territorial governments passed the Senate. The fifth section of the act provides—

"That every free white male inhabitant, above the age of twenty-one years, who shall have been a resident of said Territory at the time of the passage of this act, shall be entitled to vote at the first election, and shall be eligible to any office in said Territory; but the qualification of voters, and of holding office, at all subsequent elections, shall be such as shall be prescribed by the Legislative Assembly: *Provided*, That the right of suffrage, and of holding office, shall be exercised only by citizens of the United States, and those *who shall have declared on oath their intention to become such, and shall have taken an oath to support the Constitution of the United States and the provisions of this act.*"

On the engrossment of this bill, the vote was—

"YEAS—Messrs. Atchison, Atherton, Benton, Berrien, Borland, Breese, Bright, Butler, Calhoun, Clayton, Davis of Mississippi, Dickinson, Douglas, Downs, Foote, Hannegan, Houston, Hunter, Johnson of Maryland, Johnson of Louisiana, Johnson of Georgia, King, Lewis, Mangum, Mason, Phelps, Rusk, Sebastian, Spruance, Sturgeon, Turney, Westcott, and Yulee—33.

"NAYS—Messrs. Allen, Badger, Baldwin, Bell, Bradbury, Clark, Corwin, Davis of Massachusetts, Dayton, Dix Dodge, Felch, Fitzgerald, Greene, Hale, Hamlin, Metcalfe, Miller, Niles, Underwood, Upham, and Walker—22."

Mr. Calhoun was on the committee which reported this provision, and he does not appear as having objected to it. And though he may have made that speech in 1836, yet it is equally certain and true that twelve years afterwards he voted for the very principle he had previously opposed. His vote for the principle in 1848, in my opinion, is a sufficient answer to his speech against it in 1836. This is, therefore, Mr. Speaker, no new question.

The same principle, as I have said, was incorporated in the same words, I think, in the bill for the organization of Washington Territory in 1853, and in the Kansas-Nebraska bill in 1854.

The gentleman from Tennessee [Mr. MAYNARD] put this question to some gentleman the other day: whether, if this bill should pass, Minnesota might not confer the right of voting upon an alien enemy? By no means, sir; the person of foreign birth, who is entitled to vote under this constitution, has first to *purge himself of his allegiance* to other Powers. He must have declared his intention to become a citizen of the United States, and sworn to support the Constitution of the same. This is the condition precedent. By no possibility, therefore, could *an alien enemy* legally vote in Minnesota.

Now, Mr. Speaker, the decision of the Supreme Court of the United States has been read and commented on by the gentleman from Maryland, [Mr. DAVIS,] who led off in this discussion, and whose speech I listened to with a great deal of interest—an argument as well got up and made on that side of the question as I think it possible for ingenuity, ability, and talent, united with eloquence, to present. He rested his argument mainly on the decision of the Supreme Court in the Dred Scott case, where Judge Taney says that the words "people of the United States," in the Constitution, are synonymous with "citizens." After reading that part of the decision, the gentleman quoted an article in the Constitution which says that "the House

of Representatives shall be composed of members chosen every second year by *the people* of the several States;" and his argument was, that as the Supreme Court had defined that the word "people" was synonymous, in the Constitution of the United States, to "citizens," therefore members of this House could be elected by none but "citizens of the United States." That was the gentleman's argument; but I am far from concurring with him in it. His argument rests upon the assumption that the Constitution of the United States, in the clause quoted, intended to define the class of voters in the several States, and to limit suffrage. I think that it will take me but a moment, by recurring to that clause of the Constitution and comparing it with others, to show that the object of that clause was simply to point out the mode of the election of the members of this House in contradistinction from the mode of electing Senators, and not the class of voters. The House was to be elected by the people by a popular vote, by the masses; while the Senate was to be elected by the State Legislatures. That is all that is meant in that clause. The Constitution is in these words:

"The House of Representatives shall be composed of members chosen every second year by the people of the several States,"—

There the gentleman stopped. What follows?

—"and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature."

There, coupled with what the gentleman read, is the right which I say that the people insisted upon beyond all others—the reserved right that the General Government should never interfere with suffrage in the States; not even for members of this House. Immediately after the words he read, sir, without a semicolon separating them, is the express declaration that the States shall fix the qualification of electors or voters. Who shall say to each State in this particular, thus far mayest thou go, and no further? Who shall say to the sovereignties where they shall stop? The States, over this subject, have never parted with any of their sovereignty. It is their right, therefore, to fix the qualifications of voters unrestrictedly and absolutely. If they say an alien may vote, it is their right to do so.

The other clause of the Constitution to which I referred, showing what was meant in the first part of the one read by the gentleman, is in these words:

"The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof."

The first clause the gentleman read the other day refers simply, as it clearly appears, to the manner of the election, the mode of the election, the constituency of those elected—to distinguish them from the constituency of the Senators. The one was to be the people, contra-distinguished from the Legislatures of the States; this was one of the points of difficulty in forming the Federal Constitution. It was finally determined that the House should represent the people and the Senate should represent the States.

I will refer briefly to the same authority on that point. I read from Yates's Minutes of the Debates in the Federal convention, the fourth resolve:

"That the members of the first branch of the national Legislature ought to be elected by the people of the several States was opposed; and, strange to tell, by Massachusetts and Connecticut, who supposed they ought to be chosen by the Legislatures; and Virginia supported the resolve, alleging that this ought to be the democratic branch of the government, and, as such, immediately vested in the people."

Again, Mr. Pinckney moved:

"That the members of the first branch, (that is, this House,) be appointed in such manner as the several State Legislatures shall direct."

Mr. Madison said:

"I oppose the motion."

Mr. Mason said:

"I am for preserving inviolably the democratic branch of the Government. True, we have found inconveniences from pure democracies; but if we mean to preserve peace and real freedom, they must necessarily become a component part of a national Government. Change this necessary principle, and if the Government proceeds to taxation the States will oppose your power."

The idea that prevailed at the formation of our Constitution was, that representation and taxation should go together. It was mainly upon that ground that the men of that day went to the war with the mother country; it was because the colonies were taxed and not allowed representation; and if you trace the history of this Government down, you will find this great American idea running throughout—that taxation and representation should go together. Whoever pays taxes should vote—that is the idea.

Great confusion seems to exist in the minds of gentlemen from the association of the words citizen and suffrage. Some seem to think that rights of citizenship and rights of suffrage necessarily go together; that one is dependent upon the other. There never was a greater mistake. Suffrage, or the right to vote, is the creature of law. There are citizens in every State of this Union, I doubt not, who are not entitled to vote. So, in several of the States there are persons who by law are entitled to vote, though they be not citizens. If there be citizens who cannot vote, why may there not be individuals, who are not citizens, who may nevertheless be allowed to vote, if the sovereign will of the State shall so determine? In all the States nearly there are other qualifications for voting, even with the native-born, besides citizenship. Residence for a certain length of time. Virginia, for instance, requires of all citizens of other States native-born citizens of Maryland or North Carolina, a certain term of residence. They shall not vote in Virginia unless they have been there twelve months. In Alabama, I think, the provision is the same.

Why, sir, in my own State, where we have universal suffrage, as it is called, no man can vote unless he has paid his taxes, and resided in the county six months. There are thousands of citizens in Georgia, and I suppose in every other State, who are not entitled to the right of suffrage under our Constitution and laws. Citizenship and suffrage by no means go together in all cases. My time will not allow me to enlarge on that idea

I will only refer briefly again to what was said in the Federal convention on the subject of the States retaining the control over the subject of suffrage, showing how vigilantly this was watched and guarded by the State-rights men. Gouverneur Morris had proposed to restrain the right of suffrage to freeholders. This gave rise to a long debate. Mr. Ellsworth said:

"The qualification of electors stood on the most proper footing. The right of suffrage was a tender point, and strongly guarded by most of the State constitutions. The people will not readily subscribe to the national Constitution if it should subject them to be disfranchised. The States are the best judges of the circumstances and temper of their own people."

Again, he says, (I read from the Madison Papers:)

"Ought not every man who pays a tax to vote for the Representative who is to levy and dispose of his money? Taxation and representation ought to go together."

I barely refer to this to show that I am sustained in my view by the highest authority. This subject of the qualification of electors, and who should determine it, was mooted at the settlement of the Government; and it was left to the State Legislatures, under State constitutions.

Now, sir, a few moments on the decision of the Supreme Court of the United States. Judge Taney, in my judgment, fully confirms everything I have said. He says:

"The words 'people of the United States,' and 'citizens,' are synonymous terms, and mean the same thing. They both describe the political body who, according to our republican institutions, form the sovereignty, and who hold the power and conduct the Government through their Representatives. They are what are familiarly called the sovereign people; and every citizen is one of this people, and a constituent member of this sovereignty. The question before us is, whether the class of persons described in the plea in abatement [Dred Scott was a negro] compose a portion of this people, and are constituent members of this sovereignty. We think they are not; and were not intended to be included under the word 'citizens' in the constitution, and can therefore claim none of the rights and privileges which that instrument provides for, and secures to citizens of the United States."

It was the first words of this clause of the decision the gentleman from Maryland relied on, but he did not pursue the argument far enough.

The object of the Chief Justice was to show that persons of the African race descended from those who were bought and sold as slaves, were not in the original body-politic, and could not, by State laws, incorporated into that body-politic. But now mark what immediately follows that part of his decision:

"In discussing this question, we must not confound the rights of citizenship which a State may confer within its own limits, and the rights of citizenship as a member of the Union."

Here is the distinction. By naturalization, Congress can confer citizenship throughout the Union. What are the rights created by that? Three in all. The right to hold land is one; the right to sue in the Federal courts is another; and the right to claim the protection of this Government, or the right of passport abroad, is the other. No State can confer these rights throughout the Union; but each State may confer them within her limits. Each State may confer upon an alien the right to hold lands. No man can question that; but if Indiana or Georgia confers this right upon an alien, he cannot go into South Carolina and hold land there by virtue of that. If he were naturalized he could. So each State may give the right to an alien to sue in its own courts; but, therefore, he does not acquire a right to sue in any other State court or the Federal courts. Each State may guaranty her protection within her limits, but not throughout the Union. She cannot pledge the protection of the common Government.

But the court goes right on with this language:

"It does not by any means follow, because he has the rights and privileges of a citizen of a State, that he must be a citizen of the United States. He may have all the rights and privileges of a citizen of a State, and yet not be entitled to the rights and privileges of a citizen in any other State; for, previous to the adoption of the Constitution of the United States, every State had the undoubted right to confer on whomsoever it pleased the character of citizen, and to endow him with all its rights; but this character, of course, was confined to the boundaries of the State, and gave him no rights or privileges in other States beyond those secured to him by the laws of nations and the comity of States. Nor have the several States surrendered the power of conferring these rights and privileges by adopting the Constitution of the United States. Each State may still confer them upon an alien, or any one it thinks proper, or upon any class or description of persons; yet he would not be a citizen in the sense in which that word is used in the Constitution of the United States, nor entitled to sue as such in one of its courts, nor to the privileges and immunities of a citizen in the other States. The rights which he would acquire would be restricted to the State which gave them."

I ask, then, if the constitution of Minnesota, according to this Dred Scott decision, has an iota, or a single clause in it, so far as alien suffrage is concerned, which Chief Justice Taney has not said she has a right under the Constitution of the United States to put in it? This is a right none of the States have ever surrendered. Every State in this Union has the right of fixing the *status* of all its constituent elements absolutely, as each State may determine for itself, and also the right of determining who may and who may not vote at elections for public officers under her authority. What part of the constitution of Minnesota, then, is in violation of the Constitution of the United States? Why, then, should she not be admitted?

Let me say, in conclusion, that the constitution of Illinois has such a clause. Is not she an equal in this Union? Why not rule her out? Indiana has such a clause. Why not rule her out? Michigan has such a clause. Why not rule her out? Wisconsin has such a clause. I have the Journal here. When Wisconsin was admitted, in 1848, Mr. Calhoun was in his seat and he did not even call the yeas and nays on it. And yet we are told that this is a great and a dangerous example we are setting, if we admit Minnesota on an equal footing with Illinois, Indiana, Michigan, Wisconsin, and all of the States. Deprive her of this great right, would she be their equal? Are Illinois and South Carolina now equal? Are Indiana and Massachusetts now equal? Why, then, if you deny Minnesota the power that Illinois and Indiana have, will she be equal to them? Things equal to one another are equal to each other. If those in the Union now are equal, will not Minnesota be unequal if you deprive her of this right? If you put upon her a condition you have never

put upon these others, will not you make her unequal? and if you bring her in, would she be upon an equal footing with her sister States? If she confers suffrage upon those born abroad, who purge themselves of their foreign allegiance and swear to support the Constitution of the United States, she has the right to do so. Any State in the Union now has the same right, if any see fit to exercise it. The several States cannot confer citizenship of the United States upon any body or class of persons; but every State, in her sovereign capacity, has a right to say who shall vote at elections in that State. Let us, then, drop this objection; let us admit Minnesota, and let her come in clothed with all the sovereignty that the other States possess. My time is out.

One word about the amendment I have offered. I thought that by this time Minnesota would be entitled to three members. The enabling act entitled her to one, with additional Representatives, according to her population under the last apportionment. The information I have received since I offered my amendment has led me to believe that her population at this time would not entitle her to three members, but will to two; and therefore I withdraw my amendment, and hope the House will pass the bill as it came from the Senate. I call for the previous question.