Speech of W. P. Fessenden on the Message of the President transmitting the Lecompton Constitution.

SPEECH

OF

MR. FESSENDEN, OF MAINE,

ON

THE MESSAGE OF THE PRESIDENT TRANSMITTING THE LECOMPTON CONSTITUTION.

Delivered in the United States Senate, Februarv 8, 1858.

The President's message, transmitting the Lecompton Constitution, being under consideration, and Mr. DOUGLAS having intimated a desire to take up a resolution of inquiry relative to certain proceedings in Kansas, which motion was objected to and waived—

Mr. FESSENDEN proceeded to address the Senate, as follows:

Mr. PRESIDENT: I was perfectly willing to give way for the purpose of allowing the Senator from Illinois to introduce his motion, in order that the Senate might pass upon the question whether or not any more information was to be afforded to us, officially, than we have already received. I was suspicious that it was not the desire of the majority of the Senate that the resolution of the Senator from Illinois should pass, and that the information sought for should be obtained. I had no idea that its passage would be permitted; but yet I was willing to make the experiment. If, as a matter of fact, it had appeared to me probable—if I had supposed there was any reason to believe—that an investigation would be had with regard to the allegations that have been made, of fraud in one stage or another of this proceding in Kansas, I should probably have been willing, very willing, to waive any remarks on the general question until that information was obtained. The inquiry, however, that I put to the honorable Senator from Missouri, [Mr. GREEN,] the other day, as to the intentions of the Committee on Territories, and the answer I received from him, satisfied me that we should have no other information afforded to this body, officially, than that which we now have; and, therefore, I see no reason why I, or any other Senator who desires to do so, may not as well proceed to comment on this message of the President now, as to defer remarks until we have a report on the subject from the Committee.

Mr. GREEN. I thought I remarked—I know it was my intention to do so—that the committee had never considered that point, and that I was not authorized to speak for the committee; but that, as far as I was concerned, I would undertake to carry out whatever instructions the Senate gave me.

Mr FESSENDEN. I understood the answer of the Senator to say exactly that; and strange as it may seem to him, that answer satisfied me of what I have just stated, that we should have no more official information on the subject. Other Senators may draw a different conclusion, but such was mine. I was remarking that, under the circumstances, I saw no reason why any Senator might not as well proceed now to comment on this message of the President, and on the various topics connected with it, as to wait until we shall have a formal report from the committee on the subject.

I think, sir, that the message has been drawn with care and with design. It is an argument presented to the country—intended as an argument which should affect and influence the minds of the people in reference to the great question which is soon to be tried before this body, and decided, so far as we are able to decide it. I deem it, therefore, not unimportant that the views of some gentlemen, to some extent, should be expressed with reference to that message, and that the country should understand that, although the officer highest in position entertains certain opinions which he has expressed on this subject, others, who are in a less degree, perhaps, the representatives of the people, entertain different opinions, take a different view of the facts, and have something to say with reference to the statements that have been made. In the comments which I propose to make, I do not design to go much further than to make a statement of the case, as I understand it. Whether, with the impressions prevailing on my mind, I shall be able to make a fair statement of it, will be determined by the result. I certainly shall endeavor to do so.

The message which we have received, transmitting the Lecompton Constitution to us, is certainly, in some respects, a singular one; and whatever demerits it may have, there is one thing about it which is observable, and which I

trust may in some manner relieve the difficulties which seem to have pressed on the mind of my respected friend from New York, [Mr. SEWARD.] In his remarks on the army bill, he deemed it to be a matter of consequence that troops should be raised in order to quell the disturbances in the Territory of Utah, and seemed to be of the impression that other questions were in such a state of forwardness towards a settlement, that the Government could not need the increase of force for which it asked with reference to any other subject than the Territory of Utah. Now the President tells us very distinctly, in his message, that he has need of troops, and may continue to need them, not only for the Territory of Utah, but also for certain purposes in the Territory of Kansas; for he says, distinctly, that in case the Constitution should be accepted, and Kansas become a State, he will then be able to withdraw the troops from Kansas, and use them where they are more needed--distinctly referring to the Territory of Utah. We may infer, then, that if the Lecompton Constitution should not happen to be acceptable to Congress, troops are still to be kept in Kansas for the purposes for which they have been used there heretofore. I cannot believe that the honorable Senator from New York can in any manner justify the keeping of those troops in Kansas, or can in any manner believe there is any necessity for keeping them there, in the existing state of things.

The President clearly intimates that he will be obliged to keep the troops there if the Lecompton Constitution should not prove acceptable, and Kansas be not admitted with it. That is his conclusion; for if, as he says, he can withdraw them in case Kansas becomes a State, it is implied that he cannot withdraw them unless Kansas becomes a State. That is the clear inference. That is singular, for the reason that, at the present time, we know the fact that the Territory of Kansas is under the control of what is called a Free State, and what gentlemen choose to call an Abolition, Legislature. There is no difficulty in Kansas now. Those who are denounced as "rebels," but who are in fact the Free State party of Kansas, and a majority of the people of Kansas, have control of the Government of Kansas at the present time. If this Constitution should not be adopted, and Kansas should not become a State under it, what is the result? That the power is in the hands of the rebels; for rebellion, as it has been called, has things all its own way.

I see no necessity on the part of the President to keep troops there for the purpose of aiding in establishing the Government, which is going on so much according to the will of those whom he has been accustomed, and desired, to control by the use of the troops. It is a very singular declaration on the part of the President. What? That unless Kansas be admitted as a State under this Constitution, he will be obliged to keep troops there—for what purpose? For the purpose of controlling the Free State Government of Kansas; for the purpose of controlling the majority who now have the Government in their own hands. Is that the game that is to be played? Is Kansas, while it remains a Territory, still to be held under military domination, simply for the reason that those whom he has heretofore chosen to denounce as rebels are now in the possession of the Government, and will continue so unless Kansas becomes a State under this Constitution? It is a very singular declaration to put forth to the country, and yet such is the plain inference from the message he has communicated to us.

Sir, I admit that this message is entitled to be treated with respect, for the reason that it comes from an officer who is always to be spoken of with respect, so far as those associated with him in the Government are able to do so.

Mr. SEWARD. As the honorable Senator is passing to another point, I wish to make an explanation. I think the honorable Senator from Maine has probably fallen into some error, by not considering the effect of all I have said in regard to the army question. I will state it once more, in order to remove a misapprehension from his mind. I stated, in my last speech on that subject, that I spoke with great diffidence on that point, because I was not half convinced myself. I began with that remark. I stated that my difficulty arose in not knowing the future in Kansas, and the future operations in Utah. If I knew what was to be done in regard to Kansas, and if I knew what was to happen in Utah, I should see my course as clear as others; but, on examination of the whole subject, I came to the conclusion that there would be such a state of things in Kansas as would oblige the President to withdraw the troops. That state of things I considered in the first place to be the admission of Kansas as a State during the present session of Congress; or, in the next place, the leaving of Kansas where she is, without bringing her in as a slave State under the Lecompton Constitution. I had no belief then, and I have not now, that an Administration would be so infatuated as to endeavor to keep an army there, though such an inference may be drawn from the President's message. On the other hand, I have my own mode of reasoning, which brings me to the conclusion that there are to be disasters in Utah which to-day do not appear so distinctly to the vision of other persons, and I was obliged to decide on the question then when I spoke.

Under these circumstances, and having these opinions, I certainly should give my support to the measure which I proposed, which was the employment of an additional number of men with reference distinctly to their operation in Utah, and their being disbanded when that difficulty was through. What circumstances may change the case, I do not know. I stated at the same time, most distinctly, that the President would never obtain my vote, nor the vote of any other person, if I had any influence with him, to retain an army in Kansas, the use of which was to maintain the Lecompton Constitution, or to maintain Federal authority in the Territory, against the will of the people. That is my position now. If that should be the state of the case, (as the Senator thinks it will be,) I shall vote with him. If, on the other hand, the state of the case should

be as I think it will be, then I shall expect the honorable Senator to vote with me, because I believe we have precisely the same views on this point, differing only in the importance we attach to the developments already made.

Mr. FESSENDEN. The honorable Senator predicates his supposition, then, upon utterly rejecting the President's assurance of what he means to do. The President intimates, quite distinctly, that unless Kansas be admitted as a State, with the Lecompton Constitution, he will be obliged to keep the troops in Kansas. Now, I know the Senator does not mean to vote for the admission of Kansas under the Lecompton Constitution, and therefore what is his inference? He must either take it for granted that Kansas is to come in under that Constitution, and that therefore the troops are to be withdrawn, (in which case no more are needed;) or else that it is not to come in, and if not, that the President does not mean to perform what he has promised in relation to that matter. I take it for granted that Kansas is not to be admitted under this Lecompton Constitution, and I also take it for granted that the President then will, if he has army enough, keep troops in Kansas with a design to control the Free State people there, as he has done before. I do not understand with what object the Senator can vote for an increase of the army to relieve him from the necessity (if such a necessity might exist) of withdrawing those troops for the sake of quelling disturbances in Utah The Senator must reconcile it to himself. He undoubtedly acts from the best motives, and is the best judge of his own actions.

But, sir, I proceed to speak of the message itself. I was remarking that it was entitled to be treated with all the respect due to the eminent position of its author. In times past, we have been accustomed to receive these messages, and to believe the author, in sending them to Congress, intended to perform that part of his constitutional duty which enjoins on him "from time to time" to "give to the Congress information of the state of the Union." A message from the President of the United States should import absolute verity; and heretofore, whatever else we may say about them, we have been accustomed to believe that Presidents of the United States, in communicating a message to Congress, in undertaking to give information to Congress, would at least tell the truth; at any rate, that they would not set at defiance known and recorded facts, nor make an argement all on one side; ignoring facts quite notorious with reference to one position, and stating that which was not supported by fact in regard to the other. And yet, sir, with all the respect which I entertain for the officer who occupies so eminent a position, and notwithstanding all the impressions I have with reference to his constitutional duty when making a communication to Congress, I am compelled to say, under the circumstances, that the President has been guilty in this message not only of ignoring well-known facts, but of stating as facts matters which he must have known, if he examined the documents, could not be true. What excuse he has for this, before the country, it is not for me to say.

I have to remark next in regard to the tone of this message. The tone of a message from the Chief Magistrate of the Union, to accord with his character and position, should, in my judgment, be dignified, plain, and impartial; it should not be denunciatory; yet, from the beginning to the end of this message, we hear from the Chief Magistrate of the United States strong denunciations, in severe language, of what he admits to be a majority of the people of the Territory of Kansas; while he has not one word to say—nothing save excuse and palliation—not even that, but rather approbation, implied approbation—for all that has taken place there in opposing the efforts of the people of Kansas to obtain a Free State Constitution. I think the language of the message in that particular is unworthy a man who has been chosen by the suffrages of his fellow-citizens to fill one of the few great places of the world.

It is a little, singular, too, when we consider his education, that, with reference to this controversy, he has no sympathy whatever for the object which the people of Kansas, those whom he admits to be a majority, declare themselves to have in view. He was born and educated in a free State. He has seen all the advantages of free institutions. He has seen his native State of Pennsylvania grow to be one of the very first in rank in the Union, and to retain that rank; to be one of the first in wealth, one of the first in power, stretching out its arms on every side, towards commerce, and manufactures, and agriculture—growing with a rapidity unprecedented, its people enjoying all, not only of the comforts but of the elegances of life, simply from the fact that its people have been left to labor, to carry out the cardinal doctrine on which our institutions were founded—that the capital of the country is the labor and employment of the free people of the country. Notwithstanding all that, and notwithstanding all that he has witnessed of the enormous growth of the free States under free institutions, we have not one word in the message, from the beginning to the end, except denunciation of those who are attempting to extend the benefit of the same institutions to the Territory of Kansas. There is no sympathy for them. He exults, his tone is that of exultation, when he speaks of the fact that the Territory of Kansas, which he calls a State, although it is not yet a State, is now as much a slave State as Georgia or South Carolina. His tone is that of gratification, that instead of being a free State, like his own, and instead of joining the sisterhood of the great free States of this Union, it has placed itself on the very different level of the slave States of this Union, and is bound from this time henceforward, as he thinks, to the car of Slavery. The tone in which he speaks of this is to my mind incomprehensible, and it shows that, for some reason or other, he has chosen to forget the land of his birth and education, with all its manifold advantages and blessings.

Sir, he treats the question as of no importance to any except the slave States of the Union. It is of trifling importance, he says—not precisely in those words, for I do not undertake to quote his

language—but it is of little importance comparatively to the few thousands in Kansas; as if the institutions under which they are to live were of no consequence to them! Who should be interested but the thousands who are to live there, to receive the benefit or suffer the evils which are to flow from the institutions established there? It is of consequence to the slave States of the Union, he says. Is it none to the free States? He does not intimate that it is. It is of no comparative importance, he thinks, because there are but a few thousand people in Kansas, forgetting, as he does, the many thousands and hundreds of thousands who may be there in a very short period of time, covering its plains, and tilling its valleys until they smile. It is not enough to say that the question is of very little comparative importance, as connected with them, but it is of great importance to the slave States of the Union. They have much feeling about it; they are to be consulted about it; but he does not intimate that the free States, the millions of people who live under Constitutions unlike those which have been forced upon Kansas, can feel any interest in a question whether that great Territory is to be opened to them and their descendants, freed from a competition with that kind of labor which, in my judgment, has cursed so large—yes, the largest portion of the area of the States of this Union. Sir, these remarks, this tone, this want of sympathy, this exultation, this entire forgetfulness of the great and much the largest portion of the people of this country, in the President's message, are to me mysterious, coming from a man born and educated, as the President has been, under institutions like those with which he is so familiar.

Again, the President very clearly intimates that difficulties must arise, in case we refuse to admit Kansas as a State under the Lecompton Constitution. He warns us, in covert but very clear terms, that the people of the slave States will be excited on the subject; that they will not be willing to submit to it; and that, therefore, with a view to check all the agitation which may arise from the rejection of the Constitution which has thus been submitted, he counsels that, for peace sake, we should adopt it. Sir, I should have expected from the Chief Magistrate of this Union, sworn to support the Constitution and execute the laws, that at the time when he stated the danger that there might be excitement, he would have intimated an opinion, a wish, that such excitement should not arise; that he would have warned the people of the slave as well as of the free States, against disobeying the laws of the country. What is the proper tribunal, I should like to know, to settle this question? Is it not Congress? If Congress chooses to settle the question adversely to the views of the President, and say that Kansas shall not be admitted under the Lecompton Constitution, I beg to know why he should not counsel the people of the slave States to submit to the majority, who have the constitutional right to decide, and have decided? Why does he warn us that we must pay regard to these threats of overturning the Constitution, of dissolving the Union, and avoid agitation, because we have been threatened, and not give one word of warning to the people from whom he anticipates it—not tell them that they will be compelled to bow to the will of the majority, that they will be compelled to obey the laws of the land? Why, sir, it is the strangest thing to me, that a Chief Magistrate of the country, holding this position, should not say, as one of his great predecessors said before him, that the Constitution should be preserved; that the Union should be preserved; that when the action of Congress was legal, no matter upon what subject, the power of the Federal Government should be brought to bear on any people, or any portion of people, whatever, who undertook to make any agitation which endangered the safety of the Union of these States; but we hear nothing of that from the present President.

Strange to say, too, he is all the time talking of law; he tells us that the people must obey the laws; that the course of things in Kansas has been legal on the one side and illegal on the other; and he is very ready to read lectures to that people and to us on the subject of obeying the law, while he conveys no intimation to anybody, that if the laws are broken, or attempted to be broken, in one region of country, there will be any interference from him, or even any words of reprobation from him.

Now, sir, as to the facts stated; let us look a little at what the President has stated in his message. He has made all the intimations of which I have spoken; but what has he gone on to say? He charges, substantially, that the majority (for he admits it to be a majority by saying more than once in his message that the people of Kansas, unless he had prevented them by military force, would have overturned the Government; thus admitting that they had the power as well as the will to subvert the Territorial Government there established) had a design, and have had from the beginning, to subvert the Government by force. Is there any proof of this? What proof does he adduce? The desire to establish the Topeka Constitution, as it has been called; and on the strength of that fact he even charges Governor Robinson with having, in the very first sentence of the message which he communicated to the Topeka Legislature, expressed the same design; when, if you come to look at it, (I will not trouble the Senate with reading it,) there is not a single word, not a single idea, not a single intimation, in that clause of Governor Robinson's message which has been referred to by the President, intimating any design or wish of the kind. I deny, here, the whole foundation of the President's charge and argument on that point. There never has been a design to establish the Topeka Constitution by force. No such design has ever been avowed, and no such design has ever been attempted to be carried into execution.

I know very well that the honorable Senator from Illinois, [Mr. DOUGLAS,] in the speech which he made at the beginning of this session, stated that, if he had not believed it was the intention of the people of Kansas to carry that Constitu-

tion into effect by force, and establish a State Government under it by force, he would not have been disposed to interfere, for they had undoubtedly as good a right to petition, in that form, as another portion of the people had to petition in another form; but I should be glad to have gentlemen point me to the proof, in any part of the proceedings in the Territory of Kansas, showing that that people ever designed or expressed the intention to establish that Constitution and a State Government under it by force. The very first step they took disproves it. They sent it here to Congress, and petitioned to be admitted under it as a State. They chose a Legislature; and that Legislature met, but passed no laws; it adjourned. It avowed, then, that its design was not a forcible one—not to establish a State Government by force; but to establish it by the weight of opinion in the Territory, under an application to Congress to be admitted under it; and yet this has been alluded to over and over again, more than once on this floor, and by the President himself and by other officials, as establishing the fact, that there was rebellion existing in Kansas. Sir, the adoption of that Topeka Constitution, and the choice of State officers under it, and all they ever did, no more go to make out rebellion against the constituted Government, than would a town meeting called to pass resolutions on the same subject.

What is rebellion? It is a desire and an attempt to overturn a Government by force. Rebellion does not consist in words; you must have forcible acts. It is not enough to express abhorrence of a Government; it is not enough to express detestation of the officers who carry on the operations of Government; it is not enough to call town meetings; it is not enough to frame a Constitution and submit it to the people for adoption; it is not enough even to pass laws under it, so long as there is no design to put them forcibly in execution. The people of Kansas have done no more than this. On that ground, Senators on this floor, and others, elsewhere, have repeatedly charged, and the President echoes the cry, that here is rebellion existing in Kansas; and the people are denounced as rebels against the constituted authorities. Leaving out of the case the fact that the Territorial Government was a usurping Government in the beginning, (as it was,) and granting it to be a legal one, I will aver that there has been nothing done in reference to the Topeka Constitution, from the beginning to the end, on which any man who values his opinion as a constitutional lawyer could predicate the idea of rebellion. I said so the other day, and I say it again; and the charge is not proved by long, labored, quotations from letters of Governor Walker. Governor Walker seems to be very good authority with the President on one point, and no authority whatever with him on other points. When Governor Walker tells him that a great majority of the people of Kansas are opposed to this Constitution, he does not believe him, for he does not refer to the fact. When Governor Walker tells him there was fraud in the arrangement made in reference to the State officers, that should be corrected, he does not believe a word of it, nor do gentlemen here. When Governor Walker tells him of the great frauds that were committed at various precincts which have been spoken of by the Senator from Massachusetts [Mr. WILSON] and others, he does not believe a word of it. But he does refer to Governor Walker's letters, and makes many extracts from them, to establish the fact of rebellion; but they produce no such convictions—they prove nothing of the kind. Take them from the beginning to the end, and they make out no forcible resistance. They are nothing but statements; there is no fact on which to predicate them. The country might understand, from the statements thus made in detail, that the President really believed there was a dangerous rebellion in Kansas, and that unless he interfered with the troops of the United States, the Government would be overturned!

It has been remarked by my honorable friend from Massachusetts, [Mr. WILSON,] that it will be observed that these letters of Governor Walker were written immediately after his arrival in the Territory. Who was Governor Walker? A friend of the Administration, a leading Democrat, a Southern man, with all his prejudices excited against the Free State people of Kansas, all his feelings and wishes in favor of adding to the strength of the slave States, by making Kansas also a slave State. He went there with these impressions; he carried them with him; he began his administration with them; he carried them, I am happy to say, not to the end. On arriving there, whom does he meet? His associates are the very persons who have been practicing these iniquities in Kansas. His suspicions are awakened, his mind is excited, and he looks upon all these demonstrations as actually constituting a rebellious disposition on the part of the people of Kansas!

What are the proofs that he gives? They amount to nothing. As I remarked on a former occasion, one is that the people of Lawrence undertook to form a city government for municipal purposes. They had a right to do so; they did so; and they put that government in operation, not to be enforced on those who were unwilling, but to be enforced with the consent of those who agreed that it should be done, under the very strong necessities of the case. He looked upon it as rebellion; he denounced it as rebellion; and they denounced him in their turn. He did not undertake to prevent them, and did not prevent them.

Again, another reason was the formation of a military organization. For what avowed purposes? For the purpose of protecting the polls—a legal purpose, a constitutional purpose—a right which arose from the constitutional right of the people to bear arms for their own protection, which cannot be taken away from them. Governor Walker said he believed that such was not the design! Has there been any evidence that it was not the design? It was the design avowed, the only one; and yet this is all the proof we have, coming from these statements, to establish the charge made by the President of the United States, that there was rebellion in Kansas which called for the use of the military power.

Sir, there are some things which the President forgot to state—he forgot to state that the Government of Kansas was a usurping Government. Did he not know that fact? The honorable Senator from Illinois, in his speech, which we all remember, excused the President, or attempted to excuse him, for not knowing and understanding what was the absolute meaning and intent of the organic act of Kansas, or a certain portion of it, on the ground that he was absent from the country at the time of its passage. He was absent from the country at the time some of the events happened, of which I am speaking Does any gentleman here undertake to deny that the first Legislature was forced the people of Kansas by a foreign invasion? The proof is in the record—it is in the record taken by the House of Representatives. Was not the President familiar with that? Ought he not, as a statesman, to have been familiar with that? Can he give any excuse for not knowing it? Is it enough for the President of the United States to come into office, and say he does not know some of the leading facts which have taken place within a very short period before his election and inauguration? No, sir, it is no excuse; and the President of the United States ought not to, and shall not, avail himself of it before the people of the country. He does not appear to know the other facts which I have stated, with reference to the disclaimer of the people who framed the Topeka Constitution, from the beginning, of any intention to subvert by force the established Government of that Territory.

His next allegation is a very singular one, and it calls for more particular notice. He avers that the sense of the people was taken on the question whether they would have a Convention or not; and he holds them accountable, therefore, for not voting on that question. Mark you, he is now communicating information to Congress. This is one of the items which he communicates, that the sense of the people of Kansas was taken on the question of a Convention! What opportunity did they have to express that sense? Could they express their sense on a Convention under the force of the test oath that was applied to them? Is it not matter of notoriety, is it not upon the book, is it not matter of record, that, coupled with the right to vote on the question of calling a Convention, was prescribed an oath to be taken by every person who should offer himself as a voter on that occasion? What was that oath? It was stated by the Senator from Missouri the other day. It was an oath to support the Constitution of the United States; to support the organic act of the Territory; and, beyond that, to support the fugitive slave law. Now, sir, who in any country—I will not say in any free country, but who in *any* country—ever before heard of a *test oath* as a prerequisite to the right to vote? I have heard of an oath administered at the polls to show a person's qualification—that he comes under the description of persons who are allowed to vote—but I believe this is the first time in the history of any country where the people are allowed to exercise the right of suffrage at all, in which an oath has been prescribed by way of test to support certain measures of Government and certain laws, as a prerequisite to the right of suffrage.

Is it not well known—does not the whole country understand—that throughout the free States there is the greatest abhorrence of the fugitive slave law; that in many of those States that act has been held to be unconstitutional; that a large portion of the people not only consider it unconstitutional, but a much larger portion consider it oppressive and unjust, and derogatory to their rights? Is not that well understood? And yet, when people from the free States with these feelings and impressions present themselves in Kansas, and show that they are qualified under the organic act of Kansas and the laws of the Territory to exercise the right of suffrage as persons, they find that the so-called Legislature which ordered the calling of a Convention have prescribed that no man shall vote, if challenged, unless he takes an oath to support that very law, which they knew perfectly well could not be taken without a violation of the conscience and honor of those who presented themselves.

Is this taking the sense of the people of Kansas? Is this the mode in which the President would allow the people of Kansas to express fairly their views on the point, whether a Convention should be called or not? This was the only mode presented to the people of Kansas, and this is held out by the President to the people of the country as sufficient to entitle them fairly to express their opinions on the subject thus submitted to them. That is information communicated to the country!

I pray Senators who hear me, as they are already familiar with it, and those who are hereafter to consider it, to remember the fact, that the President further states, for our information, that the act passed for the election of delegates was fair in its provisions Why does he not take the testimony of Governor Walker and Mr. Stanton on that subject? What fairness was there in it? It provided for a census and apportionment. As has been stated, in that census and apportionment, one-half the people of the Territory were excluded.

Mr. COLLAMER. That objection applies not to the law, but to the execution of the law.

Mr. FESSENDEN. I know that. He states, however, that they had a fair opportunity to act. I am speaking of the result, and inquiring whether there was any such fair opportunity as to entitle him to consider the people of Kansas bound by the result which followed? I may have expressed myself incorrectly, and I am obliged to my friend for suggesting that this evil was not in the law. The law may have been fair on the outside. That is the argument; that all these laws have been fair, and a fair opportunity has been presented! My question is with reference to the opportunity; what kind of opportunity was presented to the people of Kansas to settle that question? Although a census and apportionment were provided for, it is perfectly notorious—and we have testimony by which the President is bound, because it is the testimony of his own officials, of Governor Walker and Secretary Stanton; we

have their testimony to the fact—that one-half the Territory of Kansas was entirely neglected and unprovided for. I will not say one-half the people, because, perhaps, the counties thus omitted might not have been so populous as the rest; but the President undertakes to say, sneeringly, that it is no objection that a few scattered people in the remote counties did not vote. Sir, it has been shown that a very large and important portion of the Territory was not included in the census; and we know, moreover, as a fact which cannot be contradicted, and has not been, that even in the counties where the census was taken, a large number of the people were omitted; they were not registered; there was comparatively a very small number registered; in fact, not one-half the people of the Territory. That matter was so conducted as not to present to the majority of the people of the Territory an opportunity of being heard on the election of delegates; and yet the President undertakes to say to the Senate, and to the House of Representatives, and to the world, in this manifesto which he has put forth, that here was a fair opportunity presented for the people of that Territory to select delegates of their own peculiar shades of opinion to carry out their own will and desire! It is a very curious kind of information he communicates. I stated that, in many respects, he had forgotten facts notorious, and in other things he had stated as facts things notoriously untrue; and I think I am borne out by the record in the assertions I have thus made. Why should he speak of the comparatively few voters omitted? Did he know how many there were? Has there been any census taken of those voters in the Territory? Not at all. Whence does he derive his information? It is a statement without book; an assertion without authority; an allegation without proof. What right has he to come before the country, and thus make an assertion which is not upheld by any evidence from any quarter?

He makes another allegation, which is well worthy the serious notice of the country. It is in a very few words, and I will read it:

"The question of Slavery was submitted to an election of the people of Kansas, on the 21st of December last, in obedience to the mandate of the Constitution. Here, again, a fair opportunity was presented to the adherents of the Topeka Constitution, if they were the majority, to decide this exciting question 'in their own way,' and thus restore peace to the distracted Territory; but they again refused to exercise their right of popular sovereignty, and again suffered the election to pass by default."

Fair opportunity to decide the question of Slavery! Why, sir, the President makes this allegation on the whole facts before him—with the Constitutions before him, which were submitted to the people. Calmly and deliberately, in an argument presented to the people of this country, he comes before them and says, in his official character, as communicating information relative to the state of the Union, that the question of Slavery was fairly submitted to the people of Kansas on the 21st of December. Did not the President know that it was but a choice between two slave Constitutions—two Constitutions, both of which recognised and established Slavery in that Territory? The facts are familiar to all of us in the Senate. I hope they are equally familiar to the country. One of those Constitutions authorized Slavery in the ordinary form, providing that slaves might be brought into the Territory and held there, but it allowed the people to change that Constitution and that provision; the other prohibited the introduction of slaves into the Territory, but it provided for the perpetuity of the Slavery that already existed there. Those there were to remain slaves, and their children were to remain slaves to the remotest ages, and the people were prohibited from changing that provision at all.

Is it not the height of assumption—I will not use a stronger word with reference to the President of the United States—to put upon paper, and send here, and before the country, the broad assertion that the question of Slavery was submitted to the people of Kansas? Sir, that question never has been submitted to the people of Kansas. Nothing has been submitted to that people but a choice between two slave Constitutions, and, for my life, I am unable to tell which was the worst of the two. Will any gentleman undertake to demonstrate to me the contrary? Is there any possibility of disputing the assertion, and did he not know it? Had he not read those Constitutions? Had not his attention been called to them? Does he never read a newspaper? Is he not aware of what is transpiring before the country every day, and is admitted as a fact before and by the people of the country? It is a matter of astonishment to me, that a man occupying that eminent position, speaking to the country in a State paper, speaking in the face of papers which are to go upon the record, and by which his truth, or his neglect of it, may be adjudged, could hazard his fame on an assertion so utterly destitute of foundation, so entirely opposed to fact, as this assertion.

He follows it up by the remark that they had a fair opportunity to settle the question of Slavery. They could only vote, not to reject both these Constitutions, or one or the other, but they could vote to choose between the two, provided they would previously take an oath that they would support the Constitution which might have the majority of the votes. A man opposed to Slavery, believing it to be wrong, believing it to be unwise, believing it to be a curse to the people among whom it exists, is presented with two Constitutions, and told that he may vote for one of them, provided he will take an oath to support that which he believes in his secret soul to be wicked, and at any rate he believes to be disastrous to the community in which it is established; and this is submitted on the word of the President, on these facts, as a presentation fairly of the question of Slavery to them, not only with reference to the question presented, but to the mode in which they were to act upon and determine it. I think it requires a wonderful degree of courage in any man, especially a man holding the position which the President of the United States holds, to make an assertion thus unfounded in fact.

But, sir, he offers us some remedies; he offers the people of Kansas remedies. He tells us that,

after all, if they do not like the Constitution, there is no difficulty in getting rid of it; that is to say, that the Constitution may be changed. Does he not know, do we not know, is there a man among us who does not understand, that when that Constitution is once fastened on the people of Kansas, it is next to impossible to get rid of it for a series of years, although a majority may exist against it, except by violence? What have we witnessed? We have seen the votes of two thousand five hundred people—for Secretary Stanton says that is about the number—or, at most, three thousand people—in favor of Slavery, outweigh and override the votes of ten thousand, or twelve thousand, or fifteen thousand people; I do not know how many, but four, or five, or six times as many. We have seen this result over and over again, produced by the act of their officials. How easy is it for unscrupulous men to control the polls, having the authority which has been exercised by those men there heretofore, and is exercised now! If Mr. John Calhoun and his associates can get majorities as he has obtained them recently, how easy will it be for them, when in possession of all the forms of law of which the honorable Senator from Georgia [Mr. TOOMBS] has spoken, and in possession of the Government, to control it still!

Let us look at the operation of it for a moment. A Legislature is to be elected. The judges of the election have control of the polls; the individuals desirous of producing a certain result have control of the election; they record the votes; they return the votes; they make any number of them, as they have made any number of them. What chance is there, then, to obtain a Legislature which will submit the question of a change of the Constitution to the people? And if it is submitted to the people, with the same men having control of the polls who had it before, or men actuated by the same principles, what opportunity presents itself for a fair vote of the people on it? The only remedy is revolution; and the President knew it when he suggested the idea of changing the Constitution as a remedy. The only remedy is the last resort to arms and physical force; and what chance would the people of Kansas have then? The Governor or the Legislature calls upon the Chief Magistrate of the nation, and states to him that there is domestic insurrection in Kansas. The troops of the United States, of which my friend from New York is so ready to vote an increase, are under the control of the President, and at his command are marched to Kansas for the purpose of suppressing that insurrection. What is the result? What opportunity, I ask again, would the people of Kansas have under those circumstances to rid themselves, by a change of their Constitution, of that which had been thus forced upon them? None.

But the President makes another very singular suggestion, one which shows his great regard for law, and his great knowledge of the principles of law. He suggests, as a remedy to the people of Kansas, that after they have come into the Union as a State, they will then have the power to punish those who have committed these frauds. It is very much like shutting the stable door after the steed is stolen, if you can do it; but this is the first time I have ever heard it suggested by the Chief Magistrate of the nation, that an *ex post facto* law could be passed, and persons punished for committing frauds for which there was no punishment at the time they were committed. What, sir, here are frauds committed in the Territory of Kansas, and the President tells us that it is very easy to get along with them, because, after you are admitted as a State, you may punish the persons who have committed these frauds! I should like to know of my honorable friend from Louisiana, [Mr. BENJAMIN,] with all his acuteness and knowledge of legal and constitutional principles, in what mode he would set about to do it? If you could do it, it would afford but a very poor satisfaction, after the whole evil for which the frauds were committed had been consummated.

The whole argument of the President is founded on the idea that all the proceedings in Kansas have been legal on the one side and illegal on the other. I propose to examine that position. If you read the message of the President carefully, you will see that that is the outline of the whole. It was the argument of the honorable Senator from Georgia, [Mr. TOOMBS.] the other day, that here was legality on the one side and illegality on the other; and that, having these two to choose between, of course he must sustain that which was legal. How does the President undertake to establish it? In the first place, he asserts that the organic law establishing the Territory was in itself an enabling act. I suppose that I might as well leave this point to the examination of the honorable Senator from Illinois, [Mr. DOUGLAS.] He will deal with it, I have no doubt, when the time comes; but I think he must have been as much surprised as I was, when he found the President asserting, in plain and unmistakable language, that there was no need of an enabling act from Congress, because the Kansas organic law itself provided one. The idea is new. I never heard it suggested until it was hinted at by the honorable Senator from Missouri on a previous occasion, and he did not seem to make much of it; but the President has taken it up. I should like to know of any Senator here, whether the idea, as thus presented, is not one that comes upon him by surprise, on the authority from which it emanates on this occasion.

Now, I wish to read this clause of the message for another purpose, because there is something remarkable about it:

"That this law recognised the right of the people of the Territory, without any enabling act from Congress, to form a State Constitution, is too clear for argument. For Congress 'to leave the people of the Territory perfectly free,' in framing their Constitution, 'to form and regulate their domestic institutions in their own way, subject only to the Constitution of the United States,' and then to say that they should not be permitted to proceed and frame a Constitution in their own way, without an express authority from Congress, appears to be almost a contradiction in terms."

Be it remarked that, in order to establish this position, the President is obliged to interpolate

words into that clause of the organic act, which are not found in it originally. Those words are: "in framing their Constitution." There are no such words in the act. Undoubtedly, if that clause had provided that the people might, in framing their Constitution, have arranged their institutions to suit themselves, the idea might be supported; but the words are not in the original provision. He assumes that they are. He makes the interpolation, and then draws his own inference from that interpolation thus introduced into the organic act.

Mr. BROWN. If the Senator from Maine will allow me, I will, in that connection, show that the author of the Kansas bill puts precisely the same interpretation on it which the President does. In the report made to Congress on the 12th of March, 1856, by the Senator from Illinois, I find this language:

"Is not the organization of a Territory eminently necessary and proper, as a means of enabling the people thereof to form and mould their local and domestic institutions, and establish a State Government under the authority of the Constitution, preparatory to its admission into the Union?"

I read from page 4 of the report, in which it is stated to be eminently proper and necessary for two purposes: first, to enable them to regulate and mould their institutions to suit themselves; and, second, to form a Constitution, preparatory to their admission into the Union. If the author of the bill put that interpretation on it in a report made to Congress, I see no great harm in the President putting the same construction on it. I think it was the true interpretation.

Mr. FESSENDEN. It makes no difference to me what construction the Senator from Illinois put on that act at any time. I do not, however, agree with the Senator from Mississippi, that the language he has read carries any such idea with it; but I shall leave it to the Senator from Illinois, if he chooses, to settle that question with the Senator from Mississippi, and with the President. What I have to do is to comment on what the President says. I say that it is a new idea, never before suggested in my hearing, (and I believe I have heard this controversy from the beginning,) that the organic law was to be construed as an enabling act, until it comes authoritatively, for the first time, from the President of the United States.

I do not blame him in one sense; it was necessary to his argument; without it, that argument fails; but, in another sense, I do blame him for it, and that is this: in undertaking to quote the language of a clause in a law of Congress, I think he should not interpolate words into it which are not there, and hold out the idea that those words actually exist, or are clearly and distinctly implied, when there is nothing in the act itself to authorize anything of that description. Let me read this clause. It has been read some thousands of times before, but perhaps it cannot be read too often—I mean the clause following:

"It being the true intent and meaning of this act, not to legislate Slavery into any Territory or State, nor to exclude it therefrom, but to leave the people thereof"—

Here the President inserts "in framing their Constitution," but "in framing their Constitution" is not there—

—"perfectly free to form and regulate their domestic institutions in their own way, subject only to the Constitution of the United States."

It is very plain that it was not intended that this should be an enabling act; because, if it had been so intended, it would have been so specifically stated. The words "in framing their Constitution" would have been inserted. At any rate, some particular portion of that act would have been found, in which the authority was specifically given to the people of Kansas to frame a Constitution under it, and under that Constitution to ask admission into the Union; but nothing of that kind is found. Is it possible, can anybody believe, that the Congress of the United States, in framing a law to organize a Territory, and intending by that law to confer on the people of the Territory the power to frame a Constitution, and under that Constitution to come into the Union, would have left it to be inferred from language which, in fact, conveys no such idea? The idea is preposterous. Again, we all know that nothing of the kind was ever suggested in any debate that took place on that occasion. Nobody supposed that under that organic act there was authority conferred to frame a State Constitution, preparatory to admission into the Union. There is nothing in the terms of the provision which I have read, nothing in the terms of the act anywhere, which could lead to the conclusion that any such authority was either given or intended to be given in any manner whatever.

I should like to ask any man, and the President of the United States particularly, who contends that this is an enabling act, of what benefit in that clause are the words, "subject only to the Constitution of the United States," if the clause was intended to say, and only to say, to the people of the Territory of Kansas, "you are at liberty, when you frame a Constitution, preparatory for admission into the Union, if you choose, to frame your domestic institutions in your own way?" Of what benefit, let me ask, is it, to add at the end of the sentence, "provided you do not in any manner contravene the provisions of the Constitution of the United States?" Must not the State Constitution, when framed, come before us? Must it not be presented to us for our action, and if there is a provision in it contrary to the Constitution of the United States, have we not power to reject it? The very fact that the words "subject only to the Constitution of the United States" are left in the act, goes to prove most conclusively, beyond all dispute, that the object was not to confer on the people of Kansas that authority when they were forming their Constitution, but to confer on them that authority to be exercised while they were a Territory, and with reference to their Territorial institutions alone. The people of a Territory may very well be thus limited while they remain a Territory. While they are acting under their organic law, framing institutions to regulate themselves at that time, confining themselves to that, it may be very good sense to say, that while you are thus a Terri

tory, you shall frame no institutions that are contrary to the Constitution of the United States; but if it was conferring on them the authority to form a Constitution, of what use is it to say—are not the words thrown away, as perfectly inoperative—"subject to the Constitution of the United States?" that is, you may make a Constitution, but it must be such a Constitution as does not contravene the Constitution of the United States. That very clause shows that it was not intended as an enabling act.

It was not considered to be an enabling act. I should like to ask the honorable Senator from Georgia, if he considered it an enabling act, why he so soon afterwards introduced a bill into this body, which was passed by the Senate, to enable the people of Kansas to form a State Constitution? Was that construction put on it at the celebrated meeting at the house of the Senator from Illinois, when that enabling act was agreed upon, to be reported to Congress, and to be carried through Congress, if possible? Was it supposed that the organic act itself contained an enabling act, rendering that unnecessary, and that under it the people of the Territory of Kansas might go forward and form a State Constitution, preparatory to being admitted into the Union? It was not the construction placed on it by the Democratic party, by the friends of the bill; and the honorable Senator from Georgia thinks the friends of the bill are those who alone are competent to understand and construe it, and that nobody else can understand it properly. I point his attention, therefore, to his own construction, and I ask him if he considered that clause of the organic act on which I have been commenting, and on which the President commented, and into which he interpolated the words of which I have spoken, as an enabling act, authorizing the people of Kansas to frame a State Constitution?

Mr. TOOMBS. I will answer the question with pleasure. I did not then, do not now, and never have so considered it. Nor do I consider an enabling act necessary. I think it oftentimes a convenient mode. I act with or without it, according to the circumstances of the case.

Mr. FESSENDEN. I am very happy to get that admission from the Senator from Georgia. It is made with his customary frankness and clearness. Having admitted it, I propose to ask him another question. If it was not an enabling act, where does he get the legality of all these proceedings of the Legislature of Kansas? If they had no authority conferred on them by Congress to call a Convention for the purpose of framing a Constitution, preparatory to the admission of that Territory into the Union as a State, where does the legality of their action come from?

Mr. TOOMBS. The Territorial Legislature.

Mr. FESSENDEN. What authority had they? They had no such authority conferred on them. They might call a convention to petition; they could not make it binding. Unless Congress confers the authority on a particular Legislature to do that very act, what authority has that Legislature more than another? What can they do but petition? What can they do but recommend? The authority is not given them; they must derive it from somebody. True, they have power to legislate; but this is not a proper subject of legislation, unless the authority is conferred on them to make it binding. My answer to the whole of the President's argument on that point, and to the argument of the Senator from Georgia on that point, is, that if this is not an enabling act, (which the Senator from Georgia admits it is not,) then there is no more legality in the act of the Legislature of Kansas, in calling a Convention, than there is in the act of the people of Kansas calling the Topeka Convention. They can do it in the one form or the other, provided they do it peaceably: and yet on that the whole argument is predicated. The President, or the person who drew this message, whoever he may have been, saw the difficulty. It was a part of his object to show and to convince the country that here was legality on one side and illegality on the other; and therefore he interpolates the words of which I have spoken into this provision of the organic law, and says, after that interpolation, that the organic law is itself an enabling act. If correct in that, he is correct in his conclusion. The Senator from Georgia says he is not correct. I agree with the Senator from Georgia, and therefore, as I think, the conclusion does not follow. There is no legality in it; that is to say, there is no binding legality.

What right had the Legislature to act conclusively on that subject—to say, "We appoint a place of meeting at such a time; the people of Kansas may come and vote at such a time; and we prescribe a test oath to those who may choose to vote on the question of calling a Convention?" Who gave them authority to make that test oath, and apply it to the people of Kansas? Where did they get it? It is precisely as much rebellion as was the formation of the Topeka Constitution, against the constituted Government, although done by the Legislature. This Legislature—having no such authority conferred on them, not having the right to call a Convention given them by the original organic law—undertake to say that at such a day, and such an hour of the day, the people of Kansas shall vote on the question of whether a Convention shall be called to make a Constitution, and only such persons as take a particular kind of oath shall be allowed to vote. Where did they get the authority to make any such rule? From the organic law? No, says the Senator from Georgia; no, say I; and no, must every man say who is not at liberty to do as the President has—and that is, to interpolate into that clause the words, "in framing their Constitution," and thus to make out the argument. The whole foundation of his argument fails; and therefore his allegation, that here has been legality on one side and illegality on the other, fails. I aver that the Topeka Constitution is as legal as that—as legal in its form, as legal in its inception, as legal in all the steps that have been taken with regard to it, in every particular; as much within the purview of the power of the people under that clause in the organic law, as the action of the Legislature.

I deny the legality of the first Legislature, as I stated; and I deny, too, the assertion of the honorable Senator from Georgia, that it has ever been admitted or recognised by Congress. I say it has never been recognised in any shape or form. The Senator appealed to the fact that at the last session of Congress, in the general appropriation bill, we made a provision for the payment of the Legislature of Kansas. Congress, at the previous session, refused to make that appropriation. When we made it at the last session of Congress, it applied only to a future Legislature. It applied to the one now in existence. It could not go into operation until the beginning of the fiscal year, last July, going forward to next July. The first Legislature had become defunct; it had ceased to perform its functions; a new one was to be elected, and, that fact being known, Congress made provision for its payment—not for the last one; that has not been made to this day; and under a law of Congress, which the chairman of the Committee on Finance well understands, the President cannot apply money thus appropriated for the service of the current year, from last July until the next July, to the payment of a preceding debt for a Legislature whose term of office had expired.

But admitting the legality of the Legislature, usurping though it was, and admitting also that it had been recognised by Congress, nothing follows, except that its action was advisory. So was the action of the Topeka Legislature. The people were not bound by one more than the other; one was not more rebellious than the other; one had as much force as the other, because the substratum, the authority from Congress to the Legislature to call a Convention, and prescribe rules for that Convention, was wanting.

If I am right in this position, the only question that remains is, does it fairly represent the people of Kansas? Does the vote, taken under these circumstances at that particular period of time, represent the will of the people of Kansas, fairly expressed? I have commented on that It is a question of fact, and it is a question of fact for us to settle; and we are not precluded by the assertion that here is legality on one side and illegality on the other. Have the people of Kansas, by any act of theirs, under any circumstances, at any time, manifested clearly to the Congress of the United States their desire that the Lecompton Constitution should be accepted, and that they should come into the Union as a State under it? That is the question submitted to us as the tribunal to decide it. What have we against it? What have we to reply? To what facts can we appeal, as an answer to any allegation that it was so? We have in the first place the admitted unfairness and dishonesty of the whole proceedings from the beginning. I have adverted to them, and they are matter of history. If it was supposed that they would fairly represent the will of the people of Kansas, (and it was designed they should,) why not submit the whole Constitution fairly to them? Why present to them two slave Constitutions, and bid them take their choice between those two? Why accompany those two with an oath to support one or the other, both being abhorrent to a large portion of the people of Kansas? Why place the question in that form? If it was the will of the people, if they had any idea that a majority of the people of Kansas would sustain it, why not submit the question fairly to the people of Kansas, without any of those restrictions? It is not a sufficient answer to satisfy my mind, to say that all legal forms have been complied with. Why was it not done?

Another answer is made in the thunder tones of the last vote of the people of Kansas, when, the question being submitted to them by the Legislature now existing in that Territory, they threw a majority of over ten thousand votes against that Constitution! Is that no answer? Shall we not receive it as proof?

The honorable Senator from Georgia, on this particular matter, said, in answer to the inquiry which I now make, why the present Legislature might not repeal the Convention law, or might not order a new vote to be taken on the Constitution, to ascertain what is the will of the people of Kansas, that its power was exhausted What power was exhausted? Where do they get any power on the subject? He admits that they had no power from the Congress of the United States. There was no enabling act; no power to frame a Constitution had been conferred on them, from any quarter whatever; and yet he says the power was exhausted The power that they assumed was exhausted; but, if it is in the power of a legal Legislature of Kansas to call a Convention, and have the action of the people on a portion of the Constitution, is it not in the power of another Legislature of the same Territory of Kansas to call a meeting of the people, in due form, to pass upon another question connected with the same subject, and the whole subject? If he had shown us where the power was derived from, if he had shown that the Congress of the United States had ever conferred any power on the Legislature of Kansas to act on that question, it would be one thing; but denying that, and admitting that no such authority was conferred, he yet says, in answer to a question put by the honorable Senator from Wisconsin, [Mr. DOOLITTLE,] the power was exhausted. I should like to have him, or some other Senator, show me, and show the country, whence was the derivation of this power; and to answer the question decisively, if they had none conferred on them, how they could exhaust that which they never possessed? and why the existing Legislature has not the same right and authority to put the question to the people of Kansas, that the previous Legislature had?

The President and the honorable Senator from Georgia agree on one point, and that is, as to who are the people; and I agree with them. The people, in the language of this law, and as we understand it with reference to suffrage, are those people who are legally qualified to vote. Such questions, I also agree with them, are not to be settled in mass meeting and without form, but are to be settled in due form by those who have the authority to exercise the right of suffrage. But this statement, which was argued at such

length, and which nobody would ever think of denying, avoids the true question at issue. The question at issue is, whether a fair opportunity has been accorded to this very people to exercise the right of suffrage on this question; and that the President and the Senator from Georgia, who undertakes to defend the message, have not discussed at so much length. They assume it; they take it for granted; we deny it. What is the argument to sustain it? Simply that, in ascertaining the will of the people, in the form prescribed, at the time prescribed, with reference to the Lecompton Constitution, all the forms of law prescribed by the Legislature have been complied with. I dislike, exceedingly, to hear, as the sole answer to such allegations, that the thing was formally done.

The honorable Senator from Georgia is an eminent lawyer, and he knows that to be no answer in courts of law. It is no answer to an allegation of fraud, to say that the forms have been complied with; and, as a matter of history, we know that there is no more dangerous mode of attacking the liberties of a people, than under the forms of law. It has been well remarked that, for hundreds of years, Rome was a tyranny, exercising at the same time the forms of republican institutions. Tyrants always keep up the forms as long as they are able, when defrauding the people of their rights, because in that manner they are able to prevent, perhaps, that outbreak which would follow a resort to absolute physical force. Charles the First lost his head for tyrannizing under the forms of law; James, his son, lost his throne for the same reason; and our ancestors wrested this country from Great Britain for attempting to tyrannize over them under the forms of law. Yet this is the only answer that is made—"here is a legal form." The Legislature thus forced on the people of Kansas assumed to appoint a time for a Convention to provide a mode of voting; and that Convention assumed to make a Constitution. They assumed to put it to the people; they prescribed their own forms, and followed out their own manner of doing it; and now, when we come forward and say, that from the beginning to the end they designed to defraud and did defraud the people of Kansas, the answer is, "We cannot go into that subject, for it was all done under legal form." My reply is a very simple one: that fraud vitiates everything.

What were these forms? Let us enumerate them in distinct order, so that they may be understood by the people. A Legislature was forced on the people of Kansas, in due form, by a Missouri invasion. Does the honorable Senator from Missouri (I do not see him in his seat) want proof of that? The proof is found in the records of the committee of the House of Representatives that investigated the subject. Nobody has undertaken to deny it. The Legislature acted without legal right, as I have demonstrated, but in due form, in appointing a Convention, but they prescribed a test oath, which rendered it unavailing. My honorable friend from Vermont, who sits beside me, [Mr. COLLAMER,] informs me that I am mistaken on that point, and he says the test oath has been repealed. A portion of it might have been repealed, but the whole of it was not.

Mr. COLLAMER. That portion requiring an oath to support the fugitive slave law had been repealed.

Mr. FESSENDEN. That was part of the test oath. That may have rendered it more odious; but still the objection lies to the principle, that no Government in the world, such as ours, acting under a republican form, has a right to establish any test oath at all, with reference to the exercise of the right of suffrage, or go any further than adopt such measures as are necessary to show that a man is qualified to vote. That was the next step.

A census was taken, in due form, not including one-half of the people of the Territory. Next, the members of the Convention forfeited their pledges. What were those pledges? If we may trust to what has been cited here, and not contradicted, a large proportion of the members of the Convention pledged themselves to submit the whole Constitution to the people. These pledges were broken; and I heard a very singular excuse given for this the other day, by the honorable Senator from Mississippi, [Mr. BROWN,] who said that their constituents had released them from their pledges—that they had been released by the people to whom they had given them. I should like to know how or in what form that release was given. They held themselves out to the people, on paper, pledging their honor that, if elected delegates to the Convention, they would submit the Constitution to the people. They refused to do so—they forfeited their word after they were elected. Having been elected, they refused to perform their promise. It is charged on them, and the excuse is, that those to whom they made the promise released them from the obligation of keeping it. I should like to ask the honorable Senator from Virginia, [Mr. MASON,] with his high sense of honor, (and I believe it is higher with no man,) whether he could be excused from an obligation thus given in writing, by any individuals who might come to him, and say, "We do not hold you to it; party purposes require a little different disposition." Honorable men never would make such an excuse for breaking their word of honor thus given. So long as there was a single voter who threw his vote for me, or might have thrown his vote for me, on my written word or my spoken word that I would act in a particular manner, I should deem myself base if I could retain the office thus bestowed on me, and at the same time refuse to redeem the pledge that I had made.

The next step that was taken under the forms of law was to present two slave Constitutions, (as I have before stated,) and tell the people of Kansas they might take their choice between them, provided they would swear to support the one which might get the majority of votes.

The last step in this proceeding, under the forms of law, was to return six or seven thousand votes as cast on the Constitution on the 21st of December, when it is satisfactorily shown that no more than two or three thousand were thrown.

Does any Senator ask me where I get my authority for this? I get it from the same authority to which the President appeals to show that there was rebellion in Kansas—Governor Walker and Secretary Stanton. They say it, and nobody undertakes to dispute it.

Now, all these forms having been complied with, pledges having been forfeited, the question not submitted, and a cheat in the vote, we are told that legality is all on one side, and illegality on the other, and we are bound to take the result; in other words, that this is a legal ratification. That is the principle laid down, and it amounts to this: that because it has never been submitted, therefore it has been legally adopted—a logical conclusion to which I am entirely unable to give my assent.

What is the reply which is made to the allegation of fraud? The honorable Senator from Georgia makes it. His reply is, that it must be investigated in the proper place. What is the proper place? Is not this the tribunal? Where is the question to be settled, if not here? Are not we the tribunal to settle the question whether Kansas shall be admitted as a State under this Constitution? Are not we the tribunal to settle whether the matter has been fairly submitted to the people of Kansas, and whether they have adopted the Constitution? It comes before us for action. If a better tribunal than this can be found to settle the question definitely, I wish the honorable Senator had pointed it out.

The votes on the Constitution are returned to Mr. John Calhoun. He is the man who forfeited his pledge; he is the man who broke his word; he is the man who promised to submit this Constitution to the people of Kansas, and refused to do so. The votes are to be returned to him; he declares them; he claims no power to go behind the returns; and he is the person to make a conclusive return on this subject. When we wish to inquire into the truth of these allegations, and judge whether this Constitution does fairly express the will of the people of Kansas, is it enough to reply, "the question has been settled by Mr. Calhoun, and he is the proper tribunal; and the Congress of the United States, in deciding whether or not Kansas is to come into the Union as a State, has no right to inquire whether a fraud has been committed or not, or whether the will of the people of Kansas has been expressed or not?" I reply again, that the Senator from Georgia, for he is an eminent lawyer, well knows the principle that fraud vitiates everything, no matter what. It vitiates the record of a court of law. It sets aside a judgment. This is claimed as a judgment of the people of Kansas; a judgment that is conclusive by virtue of the decision that has been made there by a person who is a party to the whole thing. It is claimed as a judgment. We ask to go behind it, and inquire into it. It is said we are precluded. On what principle? Not on the principle of law, for if fraud will vitiate the record of a court, and enable any proper tribunal to inquire into it, I wish to know why fraud will not vitiate an election, as has always been held from the foundation of the Government to the present time, when that election is brought before the very tribunal which is appointed by the Constitution to settle the question?

My conclusion, then, Mr. President, on all this matter, is, simply, that the President of the United States, in sending this communication to us, his written argument, has deliberately chosen to omit the most important facts in the case, as well known to him, or which should have been as well known to him, as any man; for he cannot plead ignorance. They are facts apparent on the record—palpable, plain, unmistakable. He has omitted to state them, and he has stated others which are disproved by the record accompanying the message. It has been shown over and over again, beyond all power of contradiction, and I take it few men can be found with hardihood to deny it, that the vote of December 21st, on the Constitution, does not express the will of the majority of the people of Kansas. The attempt is merely to estop us, and to say that, by virtue of the success of these fraudulent practices, the people of Kansas have no right to inquire into the matter. Sir, I deny the principle. It exists neither in law, nor in equity, nor in legislation, nor anywhere where truth and justice prevail. Therefore, what I have to say in reference to that matter is, that considering the question in that point of view, this Constitution presents itself to my mind as an outrage, deliberately planned, followed up remorselessly, and perhaps, from the indications we have had, designed to be carried through and imposed on the people of Kansas. All I have to say is, that it will meet with my resistance, feeble as it may be, here, so long as I am authorized to act on it, under the forms of the Constitution of the United States.

Sir, I have considered this question so far wholly with reference to the simple point whether, in the exercise of what is called popular sovereignty in Kansas, there has been any adoption by the people of that Territory of the Constitution thus presented. That is only one branch of the remarks which I intended to present to the Senate, and the Senate will pardon me if, on this occasion, I go a little further, and treat of what I believe to be still more important, at any rate, as important, and, as affecting my mind as materially, with reference to the whole subject. I have presented the question on the ground of popular sovereignty. The party to which I belong have rejected the idea of popular sovereignty in the Territories, from the beginning. We do not reject the idea that the people have a right to rule. We admit it in our principles and our practice; but we have rejected the idea that Congress had a right to change the whole form in which it had been accustomed to exercise authority over the Territories of the United States, and lay those Territories open to Slavery when they were free, under the name of giving the people the right to prescribe their own institutions in their own way. Since this doctrine of popular sovereignty has been forced on us—since it has been adopted, to a certain extent—we have been compelled to yield to it. We were in hopes, that even in the exercise of that principle, of the right which it was said the

people had to frame their own institutions, Kansas would be a free State. We sympathized with it, in the hope that it would be available. We took it as the shipwrecked mariner takes the first plank on which he can lay his hand in order to escape death. The boon was apparently held out, if it was a boon, to the people—the right to settle what their institutions should be by their own popular vote. We rejected it when offered, because we believed it was a breaking down of the landmarks which Congress had adopted with reference to the Territories, and establishing a principle that would carry civil war and Slavery into the Territories. Our predictions in that particular have been verified.

Why have we rejected it; why have we repudiated it in regard to the Territory of Kansas?—because in the remarks which I have to make I confine myself to that. I answer for myself when I say that I repudiated it because, to me, the circumstances under which it was introduced were such as to lead to the conclusion that, in my mind, it would make no difference even if the whole people of Kansas had adopted a Constitution which recognised Slavery. I expressed my sentiments on that subject on a former occasion very distinctly; and if I may be excused for doing so, although I am ordinarily averse to attempting to repeat myself, I wish to refer to what I said when the Kansas-Nebraska bill was under consideration, as the ground which I hold at the present time. I said then:

"If gentlemen expect to quiet all these controversies by stopping what my constituents now consider, and very well consider, an act of gross wrong, under whatever pretence it may be, whether on the ground of the unconstitutionality of the former act, or any other, after having rested so long satisfied with it, let me tell them that this, in my judgment, is the beginning of their troubles. I can answer for one individual. I have avowed my own opposition to Slavery, and I am as strong in it as my friend from Ohio, [Mr. WADE.] I wish to say, again, that I do not mean that I have any of the particular feeling on the subject which gentlemen have called 'sickly sentimentality;' but if this matter is to be pushed beyond what the Constitution originally intended it; if, for political purposes, and with a political design and effect—because it is a political design and effect—we are to be driven to the wall by legislation here, let me tell gentlemen that this is not the last they will hear of the question. Territories are not States, and if this restriction is repealed with regard to that Territory—it is not yet in the Union, and you may be prepared to understand that, with the assent of the free States, in my judgment, it never will come into the Union, except with exclusion of Slavery."—*Appendix to Congressional Globe*, vol 29, p. 322.

I took the ground then, that if the Missouri restriction were repealed, and this Territory, which had been dedicated to Freedom, thrown open to the incursions of Slavery, for the purpose, as I believed then, and believe now, of making a slave State of it, it was not the last of my opposition; that if it presented itself in my day with a Constitution allowing Slavery, I should oppose its admission as a State. I am willing to go further now, and say that, viewing it as I did at the time, and as I do now, to be an outrage, to be a breach of compact, to be a repeal of that restriction for the purpose of making slave States out of Territory which was before dedicated to Freedom, I hold myself at liberty to contest it, now and at all times hereafter. Establish Slavery in that State, if you please, by force or fraud, for nothing but force or fraud can do it; and the result with regard to myself is, that on that subject, I hold the liberty to agitate, I shall hold the liberty to agitate, and I will agitate, so long as a single hope remains that Slavery may be driven from the Territory thus stolen, robbed, from Freedom. I have no hesitation on that point; I am perfectly willing to avow it now and before the country. While I say now, as I have said before, that with regard to the slave States of this Union, I would not, if I could, interfere with their institutions; while I hold that under the Constitution of the United States we have no right to interfere with them directly, and that under the laws of morality we have no right to do indirectly that which we have no right to do directly; and while I am willing they should enjoy all the benefit they can get from their institution, undisturbed by me, here, henceforth, and forever, as long as they may choose to embrace it; with regard to this Territory, which has once been dedicated to Freedom by a solemn compact, and which has been stolen from Freedom by the repeal of the Missouri compromise, and where Slavery has now been forced on the people by a series of outrages such as the world never saw—a man can hardly imagine the gross character of these outrages—I hold myself free from all obligation. Force it there if you will; force in this Constitution if you please; but I hold myself absolved, so far as the Territory is concerned, from all obligation to receive it.

I was commenting on the idea of what was called popular sovereignty, and was about to say that I considered it at the time, and now consider it, a mere pretext. It was a mere excuse for the repeal of the Missouri restriction. It was designed, in my judgment, and I stated it deliberately, for the purpose of making Kansas a slave State. This was denied; it was denied indignantly on this floor. I have been myself rebuked for undertaking to question the motives with which the act was done. Sir, I appeal to the recorded speech of the honorable Senator from South Carolina, [Mr. EVANS,] who stated, in substance, subsequent to the passage of the act, that it was designed to make Kansas a slave State. I appeal to the speech made by a Northern man, I regret to say a Representative from Pennsylvania, in the other House, who said, substantially, that it was designed to give Kansas to Slavery, as a sort of offset to what we obtained in California, south of the line of 36° 30′. I appeal, moreover, as proof conclusive, to the facts which took place at the time; to the nature of the bill; to the want of necessity for the passage of any such act for any other purpose; and to the peculiar provisions of the bill, which so hemmed in Kansas, and hedged it about with slave territory, that, apparently, it was impossible for the people of the free States to make their entrance into it.

What else could have been meant by the repeal of the Missouri restriction? I know some gentlemen said, "it is a matter of feeling with us; we do not think anything will come of it." It was answered with the manifest reply, "will you set the country in a blaze from one end to the

other, merely upon a point of honor; for a thing that you do not intend or wish to avail yourselves of?" If it could be rendered more manifest by anything that could be appealed to, it was proved by every after transaction with reference to the matter; it was proved by the forcible invasion; it was proved by that series of outrages to which I have referred; and now, at this day, nobody undertakes to deny what we then charged.

I say, therefore, that this popular sovereignty idea was a pretence. It was held up to the people for a short time, as, in fact, the main thing to be accomplished by the bill. The honorable Senator from Georgia, the other day, undertook to say, here in his place, that he was familiar with that provision, and that it was not introduced for any such purpose, but simply for the purpose of excluding a conclusion; that is to say, that there were some gentlemen who held there was danger, if you repealed the compromise, that the old French and Spanish laws would be reinstated, and that Slavery thereby would be established in Kansas, and that this clause was put in merely for the purpose of negativing that conclusion. That is not so, because, if you appeal to the bill itself, the very next provision settles that matter, namely:

"*Provided*, That nothing herein contained shall be construed to revive or put in force any law or regulation which may have existed prior to the act of the 6th March, 1820, either protecting, establishing, prohibiting, or abolishing Slavery."

That is the clause which affects the question to which the Senator from Georgia alluded.

It is proved by another fact. The honorable Senator from Illinois, in his speech which he made on the night the bill was passed, the last night, the memorable night, declared that this clause (which was not an amendment, but came in as one of the changes of the committee who reported the bill, and was moved by him) was the main feature of the bill, and the removal of the Missouri restriction was only an incident. I dare say the Senator remembers it. He said that the great object of the compromises of 1850, as they were called, the leading idea of the compromises of 1850, for which he contended, was to give the people the power of deciding what their institutions should be in the Territories; and he went so far on that occasion as to contend that they should be allowed not only to establish but to exclude Slavery; that is to say, that no provision should exist which would not give the people of the Territory both powers. I have his speech before me.

Mr. DOUGLAS. I did not intend to interrupt the gentleman from Maine; but he said a moment ago that the object of that bill was to make a slave State of Kansas, and that nobody denies it. I must say to him, that I interpose my positive denial. It was not the object to make it a slave State; it was not the object to make it a free State; but it was the object to leave the people of Kansas perfectly free to do as they pleased in the management of all their domestic institutions, Slavery included. I do not desire to say any more than that at this time.

Mr. FESSENDEN. We use language in debate which the Senator is aware is perfectly understood; but, if taken literally, goes perhaps further than it should. When I say that nobody denies it, I do not mean that everybody admits it. I mean to say, simply, that the matter is palpable, from after circumstances as well as from what took place at the time; and from the absence of any other reasonable motive, and from what has taken place since, in the progress of affairs toward making it a slave Territory, no reasonable, unprejudiced mind, not connected with the transaction, can deny, on any good, logical ground, that such was the object with which the Missouri compromise line was repealed.

But, sir, I was replying to the idea that this clause was intended, as was suggested by the honorable Senator from Georgia, as a mere exclusion of a conclusion. The framer of that bill, in his speech on that occasion, said that the idea of popular sovereignty was the principal thing aimed at in the bill; and that the removal of the Missouri restriction, instead of being the principal thing, as contended by the Senator from Georgia, was merely an incident necessary in order to effect the object of conferring popular sovereignty. That is the idea. I stated that it was a pretence. I so considered it. We so considered it. We so considered it on our side of the House, and so stated it. But I now go further, and say that what I then considered to be a pretence for the repeal of the Missouri compromise, I now consider to have been a delusion and a snare; and I am willing to give my reasons for this opinion as briefly as I can.

It was held out to the country as the main feature of that bill, that a great boon was to be conferred on the people of the Territories; that whereas, by the operation of the Missouri restriction, they had been excluded from the power of deciding what their own domestic institutions should be, by the repeal of that restriction this power was conferred on them. Upon whom? What was understood at the time? That it was conferred on the people of the Territories, as the people of the Territories, and acting with regard to their own Territorial institutions. That idea was boldly proclaimed by the Senator from Illinois. That idea was proclaimed as boldly by Southern gentlemen on this floor, on the occasion of the Kansas debate. It was denied by nobody, if I recollect, except the honorable Senator from Mississippi, [Mr. BROWN,] and a hint of dissent was given by an honorable Senator from Virginia; but, with these exceptions, according to my recollection, no one here denied it. Southern men and Northern men all agreed that, by the repeal of the Missouri compromise, it was intended to confer on the people of the Territories, as people of the Territories, the power and right to settle their own institutions in their own way; to say whether they would have Slavery or not. It was so presented to the people on the stump, in the years 1854 and 1855, throughout all the Northern States.

Mr. BENJAMIN. If the Senator from Maine will permit me, I will make a remark here. I intend hereafter to make a more formal answer to his argument; but on the proposition he is

now stating, I beg leave to call the gentleman's mind to the fact, that when that particular subject in the discussion of the Kansas bill was under consideration, it was distinctly stated that the supporters of that bill, North and South, entertained different views as to the rights of the people of a Territory to exclude slaves from a Territory; and for that reason the clause was added to the section of the bill which gives power to the people of the Territory, "subject only to the Constitution of the United States," the intent being to leave that particular power subject to construction by the courts of justice. We carried out that intent by providing, in another clause of the bill, for an appeal to the Supreme Court of the United States on every question touching Slavery, whether the amount in contest was two thousand dollars or not. The gentlemen from the South who supported the bill contended that it was not in the power of Congress to confer on the people of a Territory the right to exclude slaves, because our right to carry our property into the Territories was guarantied by the Constitution. Gentlemen from the North denied it; and on that particular question this very clause was inserted into the bill, of a grant of power subject only to the provisions of the Constitution of the United States, referring to that contested question which, by common consent, was to be submitted to the Supreme Court, and has been decided, in the Dred Scott case, in conformity with the views then entertained by gentlemen from the South.

Mr. FESSENDEN. I remember that controversy very well, and I know that something of that sort was said, but the matter was not questioned as a matter of argument. Gentlemen did not seem disposed to discuss it. Nobody, as I said before, started the idea, then so monstrous, then so new, now established, as the Senator says, (if he considers it established,) by the opinion of the Supreme Court; nobody dwelt upon it. That clause means nothing more; it is substantially in all the Territorial bills; not in the same language, but to the same extent; that is to say, that they shall have all power of legislation in the Territory, subject to the provisions of the Constitution of the United States; but it was not contended then, in argument, that the Constitution of the United States, by its own force, carried Slavery into the Territories, and protected it there. It was hinted that a different opinion prevailed; but the gentleman from North Carolina [Mr. BADGER] disavowed it. The gentleman from Maryland, [Mr. PRATT,] if I remember aright, offered an amendment, which he subsequently withdrew, giving expressly to the people of the Territories power to exclude or admit Slavery, at pleasure. The language of the act, as my friend from Ohio [Mr. WADE] says, carries the same idea with it.

But the point to which I was directing my attention was simply this: that at that time it was not pretended but that the people of the Territories had power, or were intended to have power, under that clause, to legislate upon the whole subject—subject, however, as of course everything of that kind must be decided to be, to the Constitution of the United States. I am speaking of what the idea was then; and I was endeavoring to illustrate my position, that it was intended as a snare and a delusion. Why? It was so presented here: it was so presented in the country; it was so argued through the free States. Was it the design of gentlemen who placed it in that condition to have two grounds on which they might sustain the Democratic party—South, on the point that there was no constitutional power; North, on the point that there was constitutional power—and thus vibrate in the scale, on the one side or the other, according as they might catch votes, as they assumed this or that doctrine? Was that the calm, settled intention of that bill? It makes out my position of its design to establish Slavery there, much more strongly than any argument I have used.

But what is the result, after it was thus argued? When the Cincinnati Convention met, we had an entire change of doctrine. The Cincinnati Convention intimated a different opinion; and the Democracy of the North, which had talked so much about popular sovereignty before, which universally in the Senate had claimed that the people of the Territories had the right, as Territories, to settle the question of Slavery in their own way; the Democracy of the North, when they met in Cincinnati, yielded to the doctrine promulgated there, that it was only to be settled when they came to form a State Constitution, because that is the clear inference from the platform there adopted.

You have gone still further, and now assume the doctrine that the Constitution by its own force not only carries Slavery into the Territories, but protects it in the Territories until a State Constitution is formed. Is that the doctrine? Is that what is now assumed by the Supreme Court? Suppose it to be so, I should like to know what new power was given to the people of the Territories by this famous clause in the Kansas bill granting popular sovereignty. Did they not have that power before? Was it necessary to repeal the Missouri compromise in order to give the people of the Territory of Kansas a right to prohibit or establish Slavery, by their State Constitution, as they saw fit? The Missouri compromise provided nothing further than that Slavery should not be carried into territory north of 36° 30′. Suppose, without the act, the people of Kansas, when they came to form a State Constitution, should have provided that Slavery might exist in that State, legalized and authorized it, and sent that Constitution to Congress, and it was admitted; would not that have been a repeal of the Missouri compromise? What was gained, then, in any form, I should like to ask, by this famous provision introduced into this bill, and which has been called a stump speech?

Mr. DOUGLAS. I will answer the Senator from Maine. There was on the statute book an act prohibiting the introduction of slaves there "forever;" not confined to the Territory only, but extending forever; and it is useless to disguise the fact that there was a large political

party in this country who claimed that "forever" was to apply to a State as well as a Territory, and hence they resolved that they would never admit another slave State into this Union, whether the people wanted it or not.

Mr. FESSENDEN. How resolved it?

Mr. DOUGLAS. Resolved in county meetings, in Congressional Conventions, in State Conventions, against any more slaveholding States, whether the people of the proposed State desired Slavery or not. The Democratic party took the ground that the people of each Territory, while a Territory, should be left free, without any Congressional intervention, to fix their institutions to suit themselves, subject only to the Constitution of the United States; and that, when they came into the Union, they should come in with just such a Constitution as they desired, subject only to the same restriction. Here was an act on the statute book which purported to invade both these rights. The Kansas-Nebraska bill repealed that prohibition or restriction of Slavery, leaving the people perfectly free to do as they pleased, both while a Territory and when they formed a State Constitution, subject only to the limitations of the Constitution of the United States. I repeat, therefore, the object of that bill was to remove all restrictions, and make the principle general, universal, that the people should fix all their institutions, Slavery not excepted, both while a Territory and a State, subject only to the limitations of the Constitution.

The Senator now comes forward and says that since that time the Supreme Court of the United States, in the Dred Scott case, has decided that the Missouri restriction was unconstitutional, and that, therefore, Congress could not delegate to a Territorial Legislature the power to prohibit Slavery; and hence, he says, this act conferred no new rights on the people of the Territory. His argument goes too far. If that be the true construction, it shows that the only effect of the Kansas-Nebraska bill was to take an unconstitutional and void statute from the statute book.

You assume the correctness of the Dred Scott decision for the purpose of your argument. I do not blame you for assuming that, for it is a decision by the highest judicial tribunal on earth, the tribunal authorized by the Constitution of the United States to decide it. They have decided it, and we are bound by the decision, whatever may have been our individual opinions previously. That decision establishes the fact that the Missouri restriction was unconstitutional and void; the fact that Congress cannot prohibit Slavery in a Territory; the fact that the dogma of the Wilmot Proviso was void, and would have been a nullity if it had been imposed on the Territories. If that be so, was it not wise to remove that void legislation which remained on the statute book only as a snare, or as a scarecrow, and which ought not to be there, because it was in violation of the Constitution of our country? I ask, was it not wise to remove it, and to say plainly, in clear and explicit language, that our true intent was to leave the people of a Territory, while a Territory, and also when they become a State, perfectly free to make their laws and establish their institutions upon all questions, Slavery not excepted, to suit themselves, subject only to the limitations of the Constitution of the United States?

Mr. FESSENDEN. The honorable Senator, probably on account of my unfortunate mode of expressiou, did not exactly comprehend what I meant to say. I am very glad, however, to hear him now give the old original construction to this provision of which we have been speaking. He says now that the intention was to confer on the people of the Territories, while Territories, the power to settle all questions, including Slavery, in their own way, subject to the Constitution of the United States.

Mr. DOUGLAS. Of course. If the Constitution prohibited the exercise of that power, you could not confer it. If the Constitution of the United States prohibited you from passing the Missouri restriction, you had no right to pass it. If the Constitution allowed you to give the people of the Territory the right to prohibit Slavery while a Territory, this act conferred the power. In other words, the Kansas-Nebraska act conferred all the power which it was possible, by any legislation or any human effort, to give to the people of a Territory under the Constitution of the United States on the subject of Slavery. We could give no more, for we gave all we had—all that the Constitution did not prohibit.

Mr. FESSENDEN. I am not quarrelling about that at all. I was saying that this was a delusion and a snare. Why? Because it did precisely what the honorable Senator says it did. It professed to hold out to the people of the Territories that they had a right which they could exercise to exclude Slavery, if they saw fit, or to admit it, if they saw fit, subject to the Constitution. It was so stated and so argued to the country.

Mr. BENJAMIN. I dislike very much to interfere with the course of argument of the Senator from Maine; but it is a historical truth, which cannot now be shaken, that during the discussion of that bill, and during the preliminary meetings of its friends, which were made public, the fact was divulged, that its supporters differed in relation to that constitutional power; that some from the North contended that the people of the Territory had the power, if we gave it to them; that Congress had the power to give to them authority to exclude slaves from the Territory, whilst a Territory; and that, on the other hand, the representatives of the people of the South determinedly resisted that pretension, and said, from the beginning, they would never agree to any act which in any manner might imply the concession of a right in Congress, or in the people of a Territory under Congress, to exclude them with their property from territory which was common soil, belonging to the people of the whole United States.

The fact I have just stated cannot be contested, for the reason that there is a special clause in the bill providing for the submission of that very question to the Supreme Court of the Uni-

ted States. Senators from the North, who took the opposite view of the question, said, "very well; we differ on this constitutional question, but there is a tribunal in this country which can settle all these disputed points of jurisdiction without the necessity of resorting to force or bloodshed; let that supreme tribunal decide, and we will submit." The people of the South never asked for anything else; never sought any other solution of the question. Now, it is obvious that since the decision of the Supreme Court of the United States in the Dred Scott case, it is decided that from the origin all this agitation of the Slavery question has been directed against the constitutional rights of the South; and that both Wilmot provisoes and the Missouri compromise lines were unconstitutional. An attempt is made to go back on the interpretation of the Kansas act, and then, when that fails, to question the authority of that tribunal whose right to decide in the last resort has never before been questioned in this country.

Mr. FESSENDEN. Mr. President, I am not aware of any such provision in the Kansas-Nebraska act, in regard to referring this question to the Supreme Court of the United States, as the Senator has referred to. If there is any such provision, he can find it. I know it was proposed, but it was not admitted at the time. But whether there is such a clause or not, would make no difference. Congress can confer no power upon the courts of the United States, except under the Constitution. If they would have it under the provisions of the Constitution, very well; if they would not have it, it cannot be conferred by Congress.

But I do not wish to be drawn off from the point I was arguing. I do not undertake to say that there were not gentlemen at the South, then members of the Senate, who held, or might have supposed and might have intimated, an opinion that there was no power on the part of the people of the Territories to exclude Slavery, until they came to form a State Constitution. That might have been so. What I was arguing was, that the idea held out to the country at the time was that the people of the Territories had the control of the subject, and would continue to have it while a Territory. I say it was so presented to the people in 1854 and 1855, at the polls, throughout the free States. I do not know how it was presented throughout the Southern States. I know that gentlemen on this floor, Senators from Southern States, avowed the doctrine that the people would have power to act on it as they chose, to exclude Slavery or admit Slavery.

The point I was making, however, was one totally distinct from that; and it was, that no sooner had the people been induced to believe that such was the intention, no sooner had this pretence been made available, for the purpose of reconciling the people of the free States to the repeal of the Missouri restriction, than the Cincinnati Convention met and repudiated the whole doctrine of territorial popular sovereignty. Whatever the Senator from Illinois may now say with regard to his construction of that clause, what it meant in the beginning, the Democratic Convention of this country, in nominating a President, especially repudiated that doctrine before any decision of the Supreme Court of the United States, and averred substantially that the people of a Territory had no right whatever to exclude Slavery until they came to form a State Constitution.

Now, the Senator from Illinois has not even attempted to answer the question which I put to him, which was this: if the doctrine of the Cincinnati Convention is true—not the doctrine of this bill, as he asserts, but if the doctrine of the Cincinnati Convention is true—that the only power which the people of the Territories have to interfere with Slavery is when they form a State Constitution, what was gained by that celebrated provision thus inserted in the Kansas-Nebraska bill? I say the people had it before. Suppose the Missouri restriction had continued up to the present day, providing that Slavery should not exist north of a certain line, 36° 30′; and at the present day, while that restriction was in operation, the people of Kansas should assemble and adopt a State Constitution, by which they should authorize the introduction and sale of slaves, and then should send that Constitution to us, and we should admit them on that Constitution: should we not repeal the Missouri restriction *pro tanto?* Certainly we should. I say, then, that under this resolution of the Cincinnati Convention, which was the creed of the Democratic party, North and South, no power whatever was conferred on the people of the Territories in regard to that particular matter of popular sovereignty. They had none that did not exist before. No boon was conferred.

Therefore, I say that I believed it was not only a pretence at the time, but it was a fraud and a snare; and when the people of the free States were deluded into the idea that by the repeal of the Missouri compromise line they were to have the power given to the people of the Territories to establish or reject Slavery, as they pleased, the snare was, that the Democratic party was to put it to them next, that they should not have the power to admit or reject Slavery, as they pleased, except when they came to form a State Constitution, and Slavery had overrun them; and that when, by such proceedings as the present, they have been bound hand and foot, and cast into the burning fiery furnace of Slavery, then they might have the privilege of doing—what? Simply what they could do before—form a Constitution to suit themselves; send it to Congress; and if Congress adopted it, then repeal the Missouri restriction. It went nothing further than that, and that was the point I made; and to that point no answer has been given.

I was endeavoring to illustrate the idea that there was an intention in this matter—an intention demonstrated from the absence of all possible motive except to force Slavery into the Territory—from the nature of the provisions surrounding the Territory with slave States; from the proceedings that have taken place since in the Territory; and from the principle which was adopted as a cardinal point in the creed of the great Democratic party, viz: that the people

should not have the power to reject or exclude Slavery until they came to form a State Constitution, and, in the mean time, that everybody from the slave States might carry slaves there when and how they pleased, to be there recognised and protected by the Constitution of the United States. Sir, had that doctrine been announced at the time the clause was inserted, had it been expressed in words, that we intended to leave the people perfectly free, only when they form a State Constitution, to establish or reject Slavery, as they please, would it not have been laughed to scorn, as conferring no new advantage on the people of the Territories—nothing that they had not before? Certainly it would.

The Senator from Georgia said this measure had been before the popular forum, and the popular forum had decided in its favor. How has it decided? It has decided under these pretences, these delusions, these frauds, practiced upon it with regard to what was the absolute meaning of that clause. What privilege was conferred on the people by it? No other than that which I have spoken of; and it is idle to talk of the matter having been settled by the great tribunal of public opinion. There has been no such opinion expressed, because there have been no points except the two I have mentioned, before the people, one of which was abandoned when it had served its purpose, and the other carried in such a manner as to force Slavery on the people of Kansas, without any power left in the people to act on the subject, directly or indirectly.

I desire, before concluding, to advert to one other position which was taken by the Senator from Georgia, and which has been alluded to again to-day—that this matter has been settled by the judicial forum. It is said that it has been carried to the Supreme Court of the United States, and settled there. Does the honorable Senator from Louisiana, as a lawyer, undertake to tell me that the question has been settled by a judicial decision in that court? Did that question ever arise and present itself to the mind of the court with reference to any necessity of the case? To what extent does the honorable Senator, or any body else who is a lawyer, undertake to say that the decision of the court is binding? It is binding so far, and so far alone, as it can issue its mandate. Its opinion is of force only upon the question which settles the cause. Am I bound to recognise opinions that may be advanced by any set of judges, in any court, simply because, after they have decided a cause, they undertake to give their opinions? They may be bad men, they may be weak men, but their mandate in the cause before them must be obeyed; and I will go as far and as readily as any man to obey the mandate of any court to which I am bound to render obedience; and I am bound to render obedience to the Supreme Court of the United States; but when they undertake to settle questions not before them, I tell them those questions are for me as well as for them. When they undertake to give opinions on collateral matters which are not involved in their decision, and which they are not called upon to decide, I tell them they are men, like myself and others, and their opinions are of no value, except so far as they enforce them by sufficient and substantial reasons; and if they give bad reasons or bad logic, I would treat them as I should anybody else who would try to convince my judgment in such a way. I have good authority on this point; and it is authority that I present for the special benefit of those who are disposed to read us lectures lately on the subject of bowing to the opinion of the court. I have a law book in my hand, from which I wish to read one or two passages. The Supreme Court of one of the States of this Union, in giving the opinion which I hold in my hand, in speaking of the action of the Supreme Court of the United States, says:

"The disregard of this court to the known will of the makers of the Constitution, as to the rule of construction, is equally exhibited in a number of other cases; especially in the cases of Cohen *vs.* Virginia, and Worcester and Butler *vs.* Georgia, in which it held that a State might be sued, notwithstanding the clear manifestation of the will of the makers of the Constitution, in the amendment of it to which I have heretofore referred, that the Constitution was not to be so construed as to make a State sueable.

"But are not the decisions of the Supreme Court of the United States to govern this, as to the rule of construing the Constitution? They are not, any more than the decisions of that court are to be governed by the decisons of this.

"The Supreme Court of the United States has no jurisdiction over this court, or over any department of the Government of this State."

I wish to read another passage showing the opinions entertained by the learned court which gave the decision before me:

"But say that I am wrong in this opinion; still, I deny that the decisions of the Supreme Court referred to are precedents to govern this court.

"Those decisions were mere partisan decisions—to be overruled in the court which made them as soon as a majority of the members of the court should be of different politics from the politics of the members who made the decisions. The doctrine that a decision of the Supreme Court of the United States is to dictate a man's politics to him, is a doctrine avowed by a few in this country. Such a doctrine would be an easy means of perpetuating a dynasty of principles, however false and wicked. All that would have to be done, would be to start with men of those principles. Their decisions would do the rest. Whatever they said the Constitution meant, the people would have to vote it to mean. Parties, on constitutional questions, could not arise.

"But are these mere political decisions, and made by partisan judges?"

Then the court go on to review the history of the judges of the Supreme Court of the United States, beginning with Judge Marshall, to show that they are mere partisans. There is another little extract I should like to read.

Mr. STUART. What court is it, from the opinion of which the Senator is reading?

Mr. FESSENDEN. I will give my authority after I have read what the court say:

"Now, partisan decisions may do to bind the political party which the makers of them happen to belong to. They certainly bind no other party. And this has been the uniform practice of all parties in this country. The Supreme Court said a bank is constitutional; yet, bank charters have been vetoed by three several Presidents: Madison, Jackson, Tyler."

The same Court say they received a mandate from the Supreme Court of the United States, but treated it with contempt. Sir, that is the opinion of the Supreme Court of Georgia, delivered in the case of Padelford & Co. *vs.* the city of Savannah, in the fourteenth volume of Georgia Reports, page 438.

If these are mere party decisions, let us understand it. It seems that when the decisions are one way by the Supreme Court of the United States, gentlemen of the South say, "the judges are partisan judges; they cannot settle constitutional questions for us; those are political matters." When, however, they undertake extra-judicially to give opinions not called for by the point before them; to lay down doctrines at variance with the whole history and precedents of the country from its very foundation, to overturn the decisions of their own predecessors, greater men than ever they can hope to be, and to reverse all the decisions of the legislative department of the Government, on questions of a political character and description, on their own mere say-so, we are told all this is law.

Sir, I was perfectly aware, from the course of proceeding, what this decision would be. When I saw the dictum, or the dogma, if you please to call it so, laid down in the Cincinnati Platform, that there was no power in the people of a Territory to exclude Slavery, and when I saw that that question had been brought to the Supreme Court of the United States, and that the Supreme Court, after hearing the argument, had adjourned from one day before the election of President over to another day after the election of President, I knew what the strength of the Slavery party was; and I felt what the decision was to be; and I felt, as well, and I do not hesitate to say it here, that had the result of that election been otherwise, and had not the party triumphed on the dogma which they had thus introduced, we should never have heard of a doctrine so utterly at variance with all truth; so utterly destitute of all legal logic; so founded on error, and unsupported by anything like argument, as is the opinion of the Supreme Court.

I should like, if I had time, to attempt to demonstrate the fallacy of that opinion. I have examined the view of the Supreme Court of the United States on the question of the power of the Constitution to carry Slavery into free territory belonging to the United States, and I tell you that I believe any tolerably respectable lawyer in the United States can show, beyond all question, to any fair and unprejudiced mind, that the decision has nothing to stand upon except assumption, and bad logic from the assumptions made. The main proposition on which that decision is founded; the corner-stone of it, without which it is nothing, without which it fails entirely to satisfy the mind of any man, is this: that the Constitution of the United States recognises property in slaves, and protects it as such. I deny it. It neither recognises slaves as property, nor does it protect slaves as property.

Fortunately for my assertion, the Supreme Court, in making that the very corner-stone of their decision, without which the whole fails, state the clauses on which they ground these assertions. On what do they found the assertion that the Constitution recognises Slavery as property? On the provision of the Constitution by which Congress is prohibited from passing a law to prevent the African slave trade for twenty years; and therefore they say the Constitution recognises slaves as property. Will not anybody see that this constitutional provision, if it works one way, must work the other? If, by allowing the slave trade for twenty years, we recognise slaves as property, when we say that at the end of twenty years we will cease to allow it, or may cease to do so, is not that denying them to be property after that period elapses? Suppose I yield to the court all the force they demand, and admit that here is a distinct recognition that this is property, because we recognise that the African slave trade may exist for twenty years; yet, when we say that after that period has elapsed that protection shall no longer exist, do we not say that after that period of time it no longer is property, and ceases to be at the expiration of twenty years? Certainly, if the argument will work the one way, it must work the other. If you derive the power under the Constitution, because for twenty years it is property, you lose it when the twenty years elapse, by the same method of argument.

Mr. MASON. That is an assumption.

Mr. FESSENDEN. That is my argument, and it is my answer to the assumption of the Supreme Court of the United States. If it is an assumption on my part, it is certainly an assumption on theirs. But I leave it to every fair man, on every principle of logic. It depends on that, does it? That died twenty years after the Constitution went into operation. Did not the recognition die with it? Does the Constitution recognise it after the twenty years have elapsed? The power is gone. So far as you draw any recognition from that clause, it ceased with the expiration of the period.

Again, the court say it is protected as property by the provisions that persons held to service, escaping from one State into another, shall be delivered up. Are they not spoken of as "persons?" Are they spoken of as property? Is there anything said about their being property? Does not that provision of the Constitution apply just as well to white apprentices, held under the laws of the different States for a term of years, as it does to slaves? Will you pretend that, by the Constitution of the United States, white persons, held as apprentices for a term of years, are property? Certainly, no such position can be maintained. Your argument, if it works at all, must go the whole length, and you must find that the word "person" means property, and may be regularly and legally construed as property. I have not time now to pursue this topic.

Then, sir, to sum up the substance of my argument, I wish to say again, that what I consider this original scheme to have been was to assert popular sovereignty in the first place with a view of rendering the repeal of the Missouri compromise in some way palatable; then to deny it, and avow the establishment of Slavery; then to legalize this by a decision of the Supreme Court of the United States, and claim that it had become established. I sincerely believe that decision of the Supreme Court of the United States was a part of the programme. It was to be had, if having it would avail; but if not, it would never have been had.

Mr. President, the natural result of all this should have been foreseen. The honorable Senator from Illinois, at this day, interposes his strong arm to stay the tide of Slavery which is setting over Kansas Territory contrary to the express will of her people. He claims to do so, not from any sympathy he has with the general subject, but simply for the purpose of carrying out what he says is the original intent and meaning of his favorite bill. From what I have said, I think it is perfectly obvious that he might have foreseen what the result would be. He has gone on, according to the dictates of his own conscience; first breaking down the barrier which kept Slavery out of Kansas; next protecting and defending every outrage that has been perpetrated in Kansas with a view to force Slavery on that people, up to the time of this last great outrage, when it was attempted to place a Constitution, in the shape it was, before the people, and then send it to Congress; and now he stays his hand here. Why, sir, with what a vain hope! Does the honorable Senator think he can take the prey from the tiger, and not himself be torn? When was Slavery ever known to stay its march over a free country, unless forced to do so; and when it had seized it when was it ever known to let go its hold? It is a part of the system to pay nothing at all for involuntary servitude; and if the service is voluntary, experience has shown that it must be unlimited, unquestioning, eternal. To hesitate is to lose all; to stop, is to die. The experience of greater men than the Senator from Illinois, and of many smaller ones, might have taught him that lesson.

Sir, I say that he and the friends who stood by him, in repealing the Missouri compromise at the time it was repealed, should have known what the result was to be, should have known that as the design was to force Slavery into Kansas, so Slavery would never leave Kansas unless it was driven out by force. They should have understood what the result was to be; and it is not enough for them to say now, that they do not, and did not understand it. Well might they quote the language of the greatest poet of this century, and say:

"The thorns which I have reaped are of the tree
I planted; they have torn me, and I bleed.
I should have known what fruit would spring from such
a seed."

But, sir, what is to be the remedy for all this? What is promised us? The President tells us we are to have peace when this Constitution is adopted, and Kansas comes into the Union as a slave State. He speaks contrary to all philosophy. Have we ever had any peace for the last four years on this question? Has this country been a peaceful country during that time? The initiation was only then; and when this matter was initiated, when the Missouri compromise was repealed, did you not witness in this country an excitement which would not die? And yet we are told now, consummate the iniquity, carry out the cheat, repudiate popular sovereignty, get a decision from a Slavery court that the Constitution (shame to it, if so) not only recognises, but protects Slavery on free soil, force Slavery on the people of Kansas, by presenting them two Constitutions and telling them to choose one of them, for they shall go no further, and then we shall have peace!

Sir, let me tell the President of the United States, and all others, that the opposition to Slavery in this country is now a sentiment, an idea—not to Slavery as it exists in the States, not a desire to interfere with your institutions anywhere; but a determination, if possible, to arrest its progress over the free territories of this country, because it is believed to be a curse. Although that sentiment was covered up in the ashes of the compromise of 1850, buried so deep that it seemed as if it would never again spring into life, you yourself exhumed it; you added fuel to the sparks that were buried; you kindled that sentiment into a flame; you have been heaping combustible material on it from that day to the present, until at last you are in a fair way to make it a conflagration. Upon you be the consequence, if it be so. It is not for the President to cry "Peace!" at the consummation of an outrage, when the very beginning of it excited the detestation of the community in which he was born and bred.

But, sir, we go further than that. That is to be the consequence on the one side. What is to be on the other? We are told that we are to have a crisis, and the Union is to be dissolved. I expressed my opinion on that topic four years ago. We have had resolutions in the newspapers from the State of Alabama, that if Kansas shall not be admitted under the Lecompton Constitution, it would be time to look about and see how this Union could hold together. We have had it started in one or two other of the States of the South. We have had it from the honorable Senator from Mississippi, [Mr. BROWN,] and from other Senators. They tell us that then will be a crisis; the moment the people of this country get divided into parties, North and South, on a question that is important to them, and the people of the North triumph at the polls under the Constitution, then the time has arrived, the crisis has come, when the Union is to be dissolved! Sir, if I did not think it was to be a very serious matter in some respects, I could laugh at this idea. At any rate, it reminds me of a story familiar to all of you, probably, though I never saw it until yesterday.

This disposition, which gentlemen have on all occasions, to get up a crisis whenever anything looks against their peculiar view of a subject, and to inform us that the time has arrived, with the idea that people can be frightened from their propriety, is illustrated by a story which I saw in the newspapers, something like this: A celebrated general in the last war is said, in one of the battles on the advance to the city of Mexico, to have rode up to Captain Duncan, who was in charge of a battery, and, with a very grave and sober face, told him: "Captain Duncan, fire; the crisis has arrived." Duncan turned to his men, with matches all lighted and ready, and gave the order to fire. An old artilleryman walked up to him, and said: "Captain, I do not see any enemy within range of our guns; what

shall we fire at?" "Fire at the crisis," was the response; "did you not hear the General say the crisis has come? Fire at that." [Laughter.] So it is with gentlemen, I think, in reference to this matter. They are always charged and ready to fire at the crisis. I believe it has arrived half a dozen times within my recollection.

What I wish to say on that point is, that I look on it with great seriousness, but without a particle of apprehension. We in the free States have rights under the Constitution of the United States, and we have determination enough to enforce and sustain them. We are not to be driven from the position we have assumed by any threats of a disruption of the Union. We have no particular pretentious exclamations to utter with regard to our great attachment to it. Let that attachment be proved by our works. We will stand by the Union of this country so long as it is worth standing by; and let me say to gentlemen, that the moment the time arrives when it is to be used as an argument to us, "you must yield on a question which you consider vital to your interest and your rights, or we shall take measures to dissolve the Union," my answer is, that if we do yield, the Union has ceased to have any value for me. So long as I stand upon American soil, a freeman, with equal rights with others, and power to enforce them according to my ability, unrestricted, unrestrained, and unterrified, too, this Union is valuable to me; but when the hour comes when that privilege no longer exists, when I hold my rights by the tenure of yielding to weak fears, I am willing to see any consequences follow, so far as I am concerned, or so far as my people are concerned. Let not gentlemen indulge themselves with the hope that all these resolutions passed by Southern Legislatures about dissolving the Union, and all these mass meetings held for the same purpose, and all intimations thrown out here to the same effect, are to produce any possible result, so far as the determination of Free State men is concerned on this question.

The Senator from Mississippi spoke of compromises that had been made, and said he wanted no more compromises. Sir, I want no more compromises on this matter. There is no room for compromises. I agree with him that there have been compromises enough. As addressed to a Northern man, (if the Senate will allow me to quote poetry again, and I shall not trouble them much in that way,) it means this, and this only:

> "Northward it hath this sense alone,
> That you, your conscience blinding,
> Shoul bow your fool's nose to the stone,
> When Slavery feels like grinding"

Sir, I wish to be ground no more under such compromises. The question that is presented to the people of this country is a simple question: Shall Slavery, with all its blighting and all its political power, be extended over the free Territories of the Union? Not by my consent. Never will I compromise upon one single point, so far as I am individually concerned, that will allow what I consider to be a death blow to all the free principles of our institutions to be extended over one solitary foot of free soil beneath the circuit of the sun.

Subsequently, on the same day, in reply to Mr. DAVIS, of Mississippi, Mr. FESSENDEN said:

My physical ability is not very great at any time, and what I have is well nigh exhausted by the length of time during which I have been obliged to trespass on the Senate. In what I have to reply, therefore, to the Senator from Mississippi, I must necessarily confine myself to a very brief period. I may take occasion hereafter to review what the Senator has now said, in detail. And although I have wearied the patience of the Senate very much to-day, I suppose it will not preclude me from wearying it as much at another time, if I see fit to do so. I am, therefore, not particularly alarmed by the threat of the Senator that he will proceed, at some future occasion, to treat of what has been said on this side of the Chamber to-day, and in which I suppose he referred to me, as I have said the principal part of it.

But I rise for the purpose of saying that I do not recognise his authority, in the style which he chooses to assume, to lecture me on the sentiments that I choose to advance before the Senate. In the first place, I have not attacked the institution of Slavery in the States where it is established—I have preached no crusade against it. I have expressly disavowed the intention to interfere with it, not because I have any fear of avowing such sentiments, (if I entertained them,) nor because I should hesitate to do so in the presence of the honorable Senator from Mississippi. Sir, when the day comes that I shall shrink from stating in this Senate and before the country every sentiment that I entertain—every feeling of my heart—with reference to these matters which so much agitate this country, under the fear of man, or what man can say or man can do; whenever such considerations shall induce me to hesitate, I will not stay in this body a single hour. I should disgrace the noble State from which I come, and which trusts me here, if I hesitated to speak my opinions as well upon this subject as any other. I will not use the offensive phrase which has been used here sometimes with reference to the demeanor of gentlemen towards this side of the Chamber, when we express our opinions on this subject; but I will say to the Senator from Mississippi, most distinctly, and to every other Senator, that while I intend to treat them with all that respect and courtesy which are due from me to them, as having the same rights here, and occupying the same position, they must accord to me the right to speak the sentiments which I entertain, unawed by any comment or any consequences that may be intimated from any quarter whatever.

The Senator chooses to place me in the attitude of advocating disunion sentiments. I have not sung pæans to the Union or the Constitution. I do not pretend that my life has been so illustrated by distinguished services to the country as the honorable Senator from Mississippi seems to suppose his has been. I accord to him all the glory and the merit which he may claim for

himself. I attack not him. I respect his character and respect his services; but, sir, I wish him to understand distinctly, that whatever may be his superiority over me in those particulars, or in any other particulars, on this spot we are his peers. I am the equal of any man in my rights on this floor, and I will exert those rights wherever I choose, within the rules of order, let the consequences be what they may in regard to me; and if the time comes when I cannot make my hand keep my head, then anybody is welcome to take it. Sir, I have avowed no disunion sentiments on this floor, neither here nor elsewhere. Can the honorable Senator from Mississippi say as much?

Mr. DAVIS. Yes.

Mr. FESSENDEN. I am glad to hear it, then.

Mr. DAVIS. Yes. I have long sought for a respectable man who would allege the contrary.

Mr. FESSENDEN. I make no allegation. I asked if he could say as much. I am glad to hear him say so, because I must say to him that the newspapers have represented him as making a speech in Mississippi, in which he said he came into General Pierce's Cabinet a disunion man. If he never made it, very well.

Mr. DAVIS. I will thank you to produce that newspaper.

Mr. FESSENDEN. I cannot produce it, but I can produce an extract from it in another paper.

Mr. DAVIS. An extract, then, that falsifies the text.

Mr. FESSENDEN. I am very glad to hear the Senator say so. I made no accusation. I put the question to him. If he denies it, very well. I only say, that with all the force and energy with which he denies it, so do I. The accusation never has been made against me before. On what ground does the Senator now put it? On the ground that I assert that I am opposed to the extension of Slavery over free territory, and have asserted that the repeal of the Missouri compromise, and the events which have followed it, have been an outrage on the rights of the free States and on the Territory of Kansas, and that I will continue to agitate that subject, so far as that Territory is concerned, so long as I have the power to agitate upon it with any effect. Is that disunion? Does that prove his allegation?

Mr. DAVIS. Does the Senator ask me for an answer?

Mr. FESSENDEN. Certainly; if the Senator feels disposed to give one.

Mr. DAVIS. If you ask me for an answer, it is easy. I said your position was fruitful of such a result. I did not say you avowed the object—nothing of the sort; but the reverse.

Mr. FESSENDEN. I am very happy, then, to be corrected in that particular. I understood the Senator to charge me distinctly with disunion sentiments, as undermining the Constitution of the United States.

Mr. DAVIS. As sentiments that had that effect.

Mr. FESSENDEN. That is a matter of opinion, on which I have a right to entertain my view as well as the Senator his. That I am undermining the institutions of the country by attacking the Supreme Court of the United States! I attack not their decision, for they have made none; it is their opinion. My belief is, my position is, that that very opinion, if carried into practice, undermines the institutions of this country. Sir, the institutions of this country stood firm; they stood upon the doctrines of Freedom, not of Slavery. When the Supreme Court of the United States lay down the doctrine that the Constitution of the United States recognises Slavery, I do not deny it. The position I assumed was, that the Constitution of the United States does not recognise slaves as property; does not protect them as property. It recognises Slavery as an institution existing in the States; it provides for certain contingencies; those contingencies I neither repudiate nor deny, nor attempt to cavil at; but I do deny the position which is assumed by the Supreme Court of the United States, applied to property as recognised by the Constitution beyond the limits of those States.

I assume, as I have always assumed, that in the Territories no State has any right. There is no such thing as the right of States in a Territory. The rights, if they exist, are the rights of the people of the States—personal rights; and when an individual, a citizen of a State, leaves that State with a design to go to another, and passes beyond its limits, he loses every right which he had as a citizen of that State, for he ceases to be its citizen. It being a personal right, if you wish to put it on that ground, and wish to divide this Territory according to the interest the people have in it, in proportion to numbers, now much, I ask, would the slaveholders of the Union be entitled to? How much would the half a million of slaveholders, with their wives and children, be entitled to out of the Territories of the United States, when put against the more than twenty millions of free people, who have the same rights with themselves? And yet the doctrine is taught here, that because in some of the States of the Union Slavery exists, therefore we are to take the number of States, and on the ground of State rights claim that the territory is to be equally divided, with equal privileges.

Sir, it is a personal privilege. So far as you may be a slaveholder, and desire to go to the Territories, you have all the privilege which belongs to you as an individual. If the Constitution enables and authorizes you to carry slaves there, take them there and try it. I deny the fact. It never was so held until very recently, when individuals of the Supreme Court gave that opinion. When Mr. Calhoun broached the doctrine in the Senate of the United States, it was received with derision, and it died. It hardly had an existence long enough to have it said that it lived; and when Mr. Calhoun, at a later day, said, as he did say, that if the Supreme Court should decide that the doctrine was not a true one, that decision would be entitled to no respect, to no observance, pray, was not he uttering sentiments undermining the Constitution of the United States and our institutions? He said

then, in a supposed case, what I say now. He said that if the Supreme Court established the doctrine that the Constitution did not carry Slavery into the Territories, that opinion of theirs would be entitled to no respect. I say they have decided according to his wish, and that decision is entitled to no respect; for it is opposed to all the precedents of this Government, and opposed to all the doctrines which lie at the foundation of our institutions, and opposed to the previous decisions of that court.

Now, the Senator says we are aggressive. Pray, who began the aggression? Was not this country at peace after the compromise of 1850? Was not the country quiet? Who reopened the agitation? Who introduced the torch of discord among the people of these States? Those who advocated the repeal of the Missouri restriction. You opened it at a time of profound peace, not we; and we warned you then, that if you insisted on it, these flames would be kindled again, and God only knew how long they would burn. That aggression has been going on in Kansas from that day to the present. It has not ceased even now; and this issue is presented here in such a shape that the Senator from Illinois is compelled, from a sense of justice and duty, and regard to his own honor, to oppose the further perpetration of the outrages that have taken place there.

You say that you make no aggressions on us; you attack none of our interests. Look at the attack made on them at this very session. The fishing interest is an important matter in this country, protected by the Government of the United States. Has there been no attack on that? Has not the honorable Senator from Georgia given notice of a bill to repeal all the navigation laws of the United States? Has he not put that question before a committee? Is that no attack on the interests of the North? I am speaking of their interests. I do not feel disposed to argue that matter now, but I regard it as only the beginning. I know not how far it will go. I did not allude to it in the speech which I made; but if the Senator asks me for proof of any desire on the part of the Southern people to attack the interests of the North, all I have to say is, look at your policy. You have broken down our manufactures as far as you could. Some of you are now seeking to break down our commerce, and you ask us what you have done, and when will we cease our aggressions? Sir, we have been on the defensive from the beginning. We were on the defensive in 1854, when the Missouri compromise line was repealed. We have been on the defensive ever since; we stand on it to-day. If the consequences are injurious to you, blame yourselves for that; we have had no hand in them; we warned you from the beginning.

Mr. President, I did not think I could be drawn out to the extent to which I have been, but I felt it my duty to repel the imputation that I thought was made on me by the honorable Senator from Mississippi. What my sentiments may lead to, I do not know. They are such sentiments as I honestly entertain, such as I have an undoubted right to express, and I do not feel called upon to resign my seat here, although the honorable Senator from Mississippi intimates that the opinions which I have advanced must be the product either of malice or of ignorance—and I would rather be accused of the latter than the former. I beg him and the Senate to understand that I believe I know enough to express clearly the sentiments I do entertain, and to uphold my right to express them.

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