THE MEMPHIS DAILY APPEAL.

BY M'CLANAHAN, TROUSDALE & DILL. MEMPHIS, THURSDAY, MAY 17, 1860. VOLUME XI.—NUMBER 117.

Daily Appeal.

SPEECH OF HON. JEFF. DAVIS,

OF MISSISSIPPI,

Delivered in the U. S. Senate, on Monday, May 14, 1860, on his resolutions relative to the rights of property in the Territories.

Mr. Davis. Mr. President, among the many blessings for which we are indebted to our country, is that of tolerating to us a written constitution, a fixed standard to which, in the progress of events, everything may be referred and measured. But for this, the wise men who formed our government dared not have hoped for its perpetuity; for they saw floating down the tide of time wreck after wreck, marking the short life of every republic which had preceded them. This fixed rule, however, to check, to restrain, and to direct their prosperity, they might reasonably hope the government they founded should last forever; that it should secure the great purposes for which it was ordained and established; that it should be the shield of their posterity equally in every part of the country, and equally in all time to come. It was this which mainly distinguished the formation of our government from those confederacies or republics which had preceded it; and that it was for the purpose of regulations which have been read, and which I had the honor to present to the Senate, are little more than the announcement of what I hold to be the clearly expressed declarations of the Constitution itself. To that fixed standard it is sought, at this time, when we are drifting far from the initial point, and when clouds and darkness hover over us, to bring back the government, and to test our condition to-day by the rules which our fathers laid down for us in the beginning.

The differences which exist between different portions of the country, the rivalries and the jealousies of to-day, though differing in degree, are clearly of the nature of those which preceded the formation of our Constitution. Our fathers were aware of the different interests of the navigating and planting States, as they were then regarded. They sought to compose those difficulties, and by compensating privileges from one to the other bestow a fraternal, equal and just participation in those which, like the gentle showers of heaven, should fall twice blessed—blessing him that gives and him that receives. The mutual action and reaction between the different interests of the country constituted the bond of union and the motive of its formation. They constitute it to-day, if we are sufficiently wise to appreciate our interests and sufficiently faithful to observe our trust. Indeed, with the extension of territory, with the multiplication of interests, with the increased distance from time to time of the products of this great country, the bonds which bind the Union together should have been increased. Nationally they have increased, because the free trade which was established in the beginning has now become more valuable to the people of the United States than their trade with all the rest of the world.

I do not propose to argue questions of natural rights and inherent powers; I plant myself upon the Constitution; that Constitution which you have all sworn to support; that Constitution which you have solemnly pledged yourself to maintain while you hold the seat to which you have severally come; to which you are bound in its spirit and in its letter, not grudgingly, but willingly, to render your obedience and support as long as you hold office under the Federal Government. When the tempter entered the garden of Eden and induced our common mother to offend against the law which God had given to her through Adam, he was the first teacher of that higher law which sets the will of the individual above the solemn rule which he is bound, as a member of a community, to obey. Proceed the effect of the introduction of that teaching of the higher law in the garden of Eden, and the fall consequent upon it, came sin into the world, and from sin came death, and banishment and subjugation, as the punishments of sin, founded upon that first great law which was given by God to fallen man.

But if he overstepped, shall we talk about natural rights? Who is to define them? Where is the judge that is to sit over the court to try natural rights? What tribunal is there that will fix the date, by which you will determine the breadth, the length, and the depth of these things called the rights of nature? Shall it be when Cain fell, when Cain fled from his with thorns, and the man had to earn his bread with the sweat of his brow; or shall it be when there was equality between the sexes, when Eve lived in the garden, when all his wants were supplied, and when thorns and thistles were unknown on the face of the earth? Shall it be then? Shall it be otherwise? Shall it be before the flood, when, for the first sin committed after the waters retired from the face of the earth, the doom of slavery was fixed upon the unworthy descendants of Ham? If, after the flood, and after that date, how idle, then, is all this prating about natural rights as standing above the obligations of the Constitution. The Constitution is the law of every American. It is the plighted faith of our fathers; it is the hope of our posterity. I say, then, I come not to argue against those who place above the Constitution, and to plead the cause of law and order under the Constitution, and to plead it to those who have sworn to abide by that obligation.

One of the fruitful sources, as I hold it, of the errors which prevail in our country, is the idea that it is a Government of the people, and that the Government of the United States was formed by a mass. The Government of the United States is a compact between the sovereign members who formed it, and if there be one feature common to all the colonies planted upon the shores of America, it is that desire for community independence. It was for that the Puritan, the Huguenot, the Catholic, the Quaker, the Protestant, left the shores of Europe, and, by the light of the fires or persecution, which threw shadows cast towards the land of America, they sought and found this refuge of civil and religious freedom. Whilst they existed as separate and distinct colonies they were not fortunate towards each other. They were jealous, opposite religions. They did not like the Quakers; the Puritans drove out the Quakers; the Catholics. Persecution, spread through the colonies of every sect save their own, except, perhaps, [illegible] in the smallest, too, [illegible] of the Catholic colony of Maryland; but the rule was persecution. Therefore, I say the common idea, and the only common idea, was community independence. Each independent of each independent people to do as they pleased in their domestic affairs.

The Declaration of Independence was made by the colonies, and not by the people. The recognition of their independence was not for the colonies united, but for each of the colonies which had maintained its independence and so, when the Constitution was formed, its delegates were not elected by the people en masse, but they came from each one of the States; and when the Constitution was formed, it was referred, not to the people as a mass, but to the States generally, and severally by them ratified and approved. But if there be anything which enforces this fact, it is the amendment. It is the unequal dates at which it received this approval. From first to last, nearly two years and half elapsed; and the Government went into operation and was in full force, I believe more than a year, before the last ratification was made. Is it, then, contended that, by this ratification and adoption of the Constitution, the States sacrificed the sovereignty which they had previously gained? Can it be that men who braved the perils of the ocean, the privations of the wilderness, who fought the war of the revolution, who, in the face of their success, when all was smoking and peace around them, came submitly forward to lay down that community independence for which they had suffered so much and so long? Reason forbids it; but if reason did not furnish a sufficient answer, the action of the States themselves forbid it. The great State of New York—great then, as she is now—manifested her wisdom in not receiving merely that implication which belongs to the occasion, which was accepted by the other States, but she required the positive assertion of that retention of her sovereignty and power over all her affairs, as the condition on which she ratified the Constitution itself. I read from Elliott's Debates, page 327. Among her resolutions of ratification is the following:

"That the powers of Government may be reassumed by the people whenever it shall become necessary to their happiness; that every power, jurisdiction and right, which is not, by the said Constitution, delegated to the Congress of the United States, or the departments of the Government thereof, remains to the people of the several States, or to their respective State governments to whom they may have granted the same."

North Carolina, with the Scotch caution, which subsequent events have so well justified, in 1788 passed the same resolution.

"*Resolved*, That a declaration of rights, asserting and securing from encroachments the great principles of civil and religious liberty, and the inalienable rights of the people, together with amendments to the most ambiguous and unexceptionable parts of the said Constitution of government, ought to be laid before the next Congress and the convention of the States that shall or may be called for the purpose of amending the said Constitution, for their consideration, previous to the adoption of the Constitution aforesaid on the part of the State of North Carolina."

And in keeping with this, North Carolina withheld her ratification, she allowed the Government to be formed with the number of States which was required to put it in operation, and still she remained out of the Union, asserting and recognizing the independence which she had maintained against Great Britain, and which she had no idea of surrendering to any other power, and the last State which ratified the Constitution after it had in fact gone into effect. Rhode Island, in the third of her resolutions, says:

"III. That the powers of Government may be reassumed by the people whenever it shall become necessary to their happiness. That the rights of the States respect vely to nominate and appoint all State officers, and every other power, jurisdiction and right, which is not by the said Constitution clearly delegated to the Congress of the United States, or to the departments of Government thereof, remain to the people of the several States, or their respective State Governments to whom they may have granted the same."

Here, the use of the phrase "State Governments" shows how utterly unwarrantable the construction has been, to say that the reference here was to the whole people of the States—to the people of all the States—and not to the people of either of the States severally.

I spoke, however, Mr. President, but a moment ago, of the difference of policies, products and population, constituting the great motive for the Union. It, indeed, was its necessity. Had all the people been alike—had their institutions all been the same—there would have been no interest to bring them together; there would have been no cause or necessity for any restraint being imposed upon them. It was the fact that they differed, which rendered it necessary to have some law governing their intercourse. It was the fact that their products were opposite—that their pursuits were various—that rendered it the great interest of the people that they should have free trade existing among each other; that free trade which Franklin characterized as being between the States, such as existed between the counties of England.

Since that era, however, a fire then unknown in the United States, has come to be cultivated in such amounts, to enter so into the wearing apparel of the world, so greatly to add to the comfort of the poor, that it may be said to-day that the little fibre, cotton, wraps the commercial world, and hands it to the United States in bonds to keep the peace with us which no government dare break. It has built up the Northern States. It is their great manufacturing interest to-day. It supports their shipping abroad. It enables them to purchase in the market of China, when the high premium is to be paid on the skilled dollar would otherwise exclude them from that market. These are a part of the blessings resulting from that increase and variety of product which could not have existed if we had all been alike; which would have been lost to-day unless free trade between the United States was still preserved.

And here it strikes me as somewhat strange that a book recently issued has received the commendation of all the leading Republican Senators of the manufacturing and commercial States, though, apart from its falsehood and low abuse of Southern States, institutions and interests, the great feature which stands prominently out from it is the arraignment of the South for using their surplus money in buying the manufactures of the North. How the manufacturing and commercial people can be truly represented by those who would inculcate such doctrines as these, is to me passing strange. Is it vain boasting which renders you an silence—a pretension to the world that we buy our buckets, our rakes, and our shovels from you? No, there is too much good sense in the people for that; and therefore I am left to seek to understand the motive, unless it be that deep-rooted hate which flashes you blind to your own interest when that interest is entwined in the balance with the denunciation and detraction of your brethren of the South.

The great principle which lay at the foundation of this fixed standard, the Constitution of the United States, was the equality of rights between the States. This was essentially it was necessary; it was a step which had to be taken first, before any progress could be made. It was the essential requisite to the very idea of sovereignty in the States; it was a compact voluntarily entered into between sovereignty and it is that equality of right which we assert under the Constitution to-day. But more, when the States met they transferred their forts, their armies, their rigor to maintain drilled and navies, to the Federal Government. It was the disarrangement of the States, under the operation of a league which made the warlike operations, the powers of defense, common to them all. Then, with this equality of the States, with this disarrangement of the States, if they had been nothing in the Constitution to warrant it, I say the protection of every constitutional right would follow as a necessary inference. But, Sir, I need not be detailed by any one who could understand the theory of such a Government.

We claim protection, first, because it is our right; secondly, because it is the duty of the General Government; and, thirdly, because we have alliced into a compact together, which deprives each State of the power of using all the means which it might employ for its own defense. This is the general theory of the right of protection. What is the exception to it? Is there any exception? Is there who has a right to make it? Does the Constitution discriminate between different kinds of property? Did the Constitution attempt to establish the institutions of the different States confederated together? Was there a single State in this Union that would have been so unfaithful to the principles which had been laid down in their political position, and which had prompted them at a still earlier period, to seek and dare the temptations of the wilderness, is there any State, which, if it assembled to-day, would allow the Federal Government to attempt to discriminate between her institutions and those of her confederate States?

But if he overstepped that this is argument, and that you need authority, I happen to draw it from the very fountain; from the spring before it has been polluted; from the debates in the Federal Convention of the Constitution by those who at least, it will be admitted to-day, understood what they were doing. Mr. Randolph, it will be recollected, introduced a project for a Government, consisting of a series of resolutions. Among them one was proposed to give Congress the power "to call forth the force of the Union falling to fulfill its duty under the articles thereof." That was to give Congress the power to coerce the States; to bring the States into subjection to the Federal Government. Now, sir, let me ask whether that was treated as a joke? Did it refer to one whose wisdom, as we take a retrospective view, seems to be marvelous. Not conspicuous in debate, at least and among the names which first occurred, he was the man who, shoes all others, laid his finger upon every danger, and indicated the course which that danger was to take. Mr. Mason I refer to.

"Mr. Mason observed, not only that the present Confederation was deficient in not providing for coercion and force against delinquent States, but argued very cogently that enlightened could not, in the nature of things, be executed on the States collectively; and, therefore, that it was necessary to have a system which could directly operate on individuals, and would punish those only whose guilt required it."—*Elliot's Debates*, vol. 5, page 132.

Mr. Madison, who has been called sometimes the father of the Constitution, upon the same question, said:

"A union of the States containing such an incorporation as would provide for its own destruction. The use of force against a State would look more like a declaration of war than an infliction of punishment, and would probably be considered by the party attacked as a dissolution of all previous compacts by which it might be bound."

Mr. Hamilton, who, if I were to express a judgment by way of comparison, I would say was the master intellect of the age in which he lived, whose mind seemed to penetrate profoundly every question which he grappled, and who seldom left anything to be said upon a subject after he had once taken part in debate—Mr. Hamilton, in speaking of the various powers necessary to maintain a government, came to clause four:

"4. Force, by which may be understood a coercion of laws, or coercion of arms. Coercion has not the force, except in few cases. In particular States, this coercion is nearly sufficient; though be held in most cases, not entirely so. In the United States it is, in general, a measure of war, not differing from that which is lawful among independent nations. Suppose, for instance, Massachusetts is now feeling this necessity, and making provision for it. But now can this force be exerted on the State collectively? It is impossible. It amounts to a war between the parties. Foreign powers, also, will not be idle spectators. They will intermeddle; the war will increase, and a dissolution will ensue."

The consequence was, the proposition was lost. In support of the proposition of Mr. Randolph, which I have suggested, the argument upon the proposition to give power to restrain the slave trade shows that northern and southern men, arguing and presenting different views, yet concurred in this, that there could be no power to restrain a State from importing what she pleased. The Senator from Vermont [Mr. Collamer], looks somewhat surprised at my statement, will refer to the authority. Mr Rutledge said:

"Religion and humanity had nothing to do with the question. Interest alone is the governing principle with the nations. The true question at present is, whether the Southern States shall or shall not be parties to the union. If the Southern States think that their interest, they will not oppose the increase of slaves, which will increase the commodities of which they will contribute the carriers.—*Elliot's Debates*, vol. 5, p. 457.

"Mr. Pinckney. South Carolina can never resolve the plan if it prohibits the slave trade. In every prospect of things, she must stand out. Her ground that State has expressly and wisely provided that of meddling with the importation of negroes. If the States be all left at liberty on this subject, South Carolina may perhaps, by degrees, do of herself what is wished, as Virginia and Maryland already have done."—*Ibid.* p. 457.

"Mr. Sherman is for leaving the clause as it stands. He disapproved of the slave trade; yet, as the States were now possessed of the right to import slaves, as the public good did not require it, he thought it best to leave them, and as it was expedient to have as few objections as possible to the proposed scheme of Government, he thought it best to leave the matter as we find it."—Page 457.

"Mr. Baldwin had conceived national objects alone to be before the convention; not such as the present question. He was for giving Congress the power."—*Ibid.*

Georgia was decided on this point. That State has always hitherto supposed a general government to be the result of the central States, who without have a vortex for everything; that her distance would preclude her from equal advantage; and that she could not prudently purchase it by yielding national powers. From this it might be understood in what light she would view an attempt to abridge one of her favorite prerogatives.

"If left to herself, she may probably put a stop to the evil. As one ground for this conjecture, he took notice of the act of Congress which, he said, was a remarkable stake of people who carried their ethics beyond the mere equality of men, extending their humanity to the claims of the whole animal creation."—*Ibid.*

"Mr. Gerry thought we had nothing to do with the conduct of the States as to slaves, but ought to be careful not to give any sanction to it."—Page 457.

"Mr. King thought the subject should be considered in a political light only. If two States will not agree to the Constitution, as stated on one side, he could affirm with equal belief, on the other, that great and equal opposition would be experienced from the other State. He remarked on the exemption of slaves from duty, while every other import was subject to it, as an inequality that could not fail to strike the commercial sagacity of the Northern and Middle States."—Page 460.

Here, as will be observed, everywhere was recognized and admitted the doctrine of community independence and State equality—no interference with the institutions of a State; no interference even prospectively, save and except with their consent; and then it followed that at one time it was proposed to exempt from the power to prohibit the further introduction of Africans those States which insisted upon retaining the power; and finally it was agreed that a State should be fixed beyond which, probably, none of them desired to retain it. These States were acting in their sovereign capacity; they possessed the power to do as they pleased; and that was the view which they took of it. I say, then, how are we, their descendants, those holding under their authority, to assume a power which they refused to adopt, upon principle eternal and lying at the foundation of the Constitution itself?

If, then, there be no such distinction or discrimination; if protection be the duty (and who will deny it?) with which this Government is charged, and for which the States pay taxes, because of which they surrendered their armies and navies; if general protection is the general duty, I ask, in the name of reason and constitutional right—I ask you to point me to authority by which a discrimination is made between slave property and any other. Yet this is the question now fraught with evil to our country. It is this which has raised the barricade threatening to sweep our political institutions before it. This is the dark spot which some already begin to fear may blot out the constellation of the Union from the political firmament of mankind. Does it not become us, then, calmly to consider it, justly to weigh it; to hold it in balances from which the dust has been blown, in order that we may see where truth, right, and the obligations of the Constitution require us to go?

It may be pardoned to one who, from his earliest youth up, has been connected with a particular party, who has always believed that party essential to the safety of the country most securely rested with that party, who has seen to the triumph of Democracy the triumph of the Union, and who has believed for years past that the downfall of Democracy would be its destruction. It may be pardoned, I say, under such circumstances as these, to seek a person as that, to refer even in this connection to that feature of the particular party which I am discussing, which has been brought forward by the recent action of that party. States met together to consult as brethren, to see whether they could agree on a platform upon the creed, and well upon the candidate. Upon that division had entered into our ranks. After days of discussion we saw that party convention broken. We saw the enemies of Democracy waiting to be invited to its funeral, and jestingly looking into the blank faces of those of us to whom the telegraph brought the sad intelligence. I hope this is, however, but the wake of the morning. I have faith in the Democracy, and that it still lives. I have faith in the patriotism and in the good sense of the Democracy that they will, in due time, assert the truth, boldly pronounce it, meet the issue, and I trust in the good sense and patriotism of the people for their success.

In this connection it may be permissible to review our present party condition. For a long time two parties divided the people of the United States. The controversy was mainly upon questions of expediency—questions of constitutionality. They divided men in all of the States. The contest was sometimes won by one, and sometimes by the other. The Whig party lives now but in history, yet it has a history of which any of its members may be proud. It love its high, but not successful, part of standing the tide of popular impulse, and those failed to attain the highest power. Differing from them upon the points at issue, I offer the homage of my respect to those who, although what they believed to be true, go down sooner than had success in the abandonment of principle. With the disappearance of that party, and perhaps for the very reason that caused its disappearance, up rose political organizations who strode so far beyond progressive Democracy, that Democracy took the place now left vacant by the old Whig party, and became the reservoir into which all conservatism was poured. Therefore it is that so many of those men, eminent in their day, eminent for their services, eminent in their history, have approved of the Democratic party. In the present condition of the country, as the only conservative element which remains in our politics. In the midst of this radicalism, of this revolutionary tendency, it becomes not the regret of a partisan merely; it is the sadness of an American citizen that the party on which the conservative hopes of the party hang has been threatened with division, and possibly may not hereafter be united. Thanks to a sanguine temperament, thanks to an abiding faith, thanks to a confidence in the providence which has so long ruled for good the destiny of my country, I believe it will resolve, and resolve upon sound and safe principles. At least, I hope so.

From the postulates which I have laid down result the fourth and fifth resolutions. They are the two which I expect to be opposed. They contain the assertion of the equality of rights of all the people of the United States in the Territories, and they declare the obligation of the Congress to see their rights protected. I admit that the United States may acquire eminent domain. I admit that the United States may have sovereignty over territory; otherwise the sovereign jurisdiction which we obtained by conquest or treaty would not pass to us. I deny that their general Federal Government, under the existing constitution, can have eminent domain; I deny that it can have sovereignty. I consider it as the mere agent of the States—an agent of limited power; and that it can do nothing save what which the Constitution empowers it to perform; and that, though the treaty or the deed of cession may direct or convey, it cannot enlarge or expand the powers of the Congress; that it is not sovereign in any essential particular. It has functions to perform, and those functions I propose now to consider.

The power of Congress over the Territories—a subject not well defined in the Constitution of the United States—has been drawn from various sources by different advocates of that power. One has found it in the grant of power to dispose of the Territory and other public property. That is to say, because the agent was authorized to sell a particular thing, or to dispose of it by grant or barter, therefore he has sovereign power over that and all else which the principal might have had if he had been present and acquired. The property, besides the land, consisted of forts, of ships, of armaments, and other things which belonged to the Federal Government. Land was a commodity, and were turned over to the Government of the Confederation, and transferred to the Government of the United States, and of this, therefore, with the land transferred, the Federal Government had the power to dispose; and of territory thereafter acquired, of arms thereafter made or purchased, of forts thereafter constructed, of custom-houses, or docks, or lights, or buoys; of all these, of course, it had power to dispose. It had the power to create them if it made, of necessity, it has had the power to dispose of them. It was only necessary to confer the power to dispose of those things which the Federal Government had not then, of those things which came to it from the States, and over which they might signify their will for its control.

I look upon it as the mere power to dispose of, for considerations and objects defined in the trust, the land held by the United States, none of which then was within the limits of the States, and the other public property which the United States received from the States after the formation of the Union. I do not agree with those who say the Government has no power to establish a temporary and civil government within a Territory. I stand half way between the extremes of squatter sovereignty and of congressional sovereignty. I hold that the Congress has power to establish a civil government; that it derives it from the grants of the Constitution—not the one which is referred to, and I hold that the power is limited and restrained, first by the Constitution itself, and then by every rule of popular liberty and sound discretion, to the occasion and exigency which the occasion may have required. The Congress has power to defend the Territory, to repel invasion, to suppress insurrection; the Congress has power to see the laws executed. Further, it may have a civil magistracy—territorial courts. It has the power to establish a federal judiciary. To that federal judiciary, from time to time, may be given jurisdiction to decided questions with regard to the laws of the United States, and the Constitution of the United States. These combined, give power to establish a temporary government sufficient, perhaps, for the simple wants of the inhabitants of a Territory, until they shall acquire the population, until they shall have the means and the interest which will justify them in becoming a State. I am sustained in this view of the case by an opinion of the Supreme Court of the United States in 3 Howard, 212, in the case of Pollard's lessee vs. P. Hagan, (3 Howard, 222, 223, (in which the court say:

"Taking the legislative acts of the United States, and the States of Virginia and Georgia, and their deeds of cession to the United States, and giving to each separately, and to all jointly, a fair interpretation, we must come to the conclusion that it was the intention of the parties to invest the United States with the eminent domain of the country ceded, both national and municipal, for the purposes of temporary government, and to hold it in trust for the performance of the stipulations and conditions expressed in the deeds of cession and legislative acts connected with them."

This was a question of land. It was land being between high and low water, over which the United States claimed to have and to exercise authority because of the terms on which Alabama had been admitted into the Union, in that connection, the court say, in the same case:

"When Alabama was admitted into the Union, on an equal footing with the original States, she succeeded to all the rights of sovereignty, jurisdiction, and eminent domain which Georgia possessed at the date of the cession, except so far as this right was diminished by the public lands remaining in the possession and under the control of the United States for the temporary purpose provided for in the deeds of cession and the legislative acts connected with it. Nothing remained to the United States, accordingly in the terms of the agreement, but the public land; and if an express stipulation had been inserted in the agreement, granting the municipal right of sovereignty and ordinary jurisdiction to the United States, such stipulation would have been void and inoperative; because the United States have no constitutional capacity to exercise municipal jurisdiction, sovereignty or eminent domain, within the limits of a State or element, except in the cases in which it is expressly granted."

Another case arose, not long afterwards, in which, not land, but religion was involved, where suit was brought against the municipality of New Orleans because their would not allow a dead body to be exposed at a place where, according to the religionists of those interested, it was deemed they had a right thus to expose it. On that the Supreme Court say, speaking of the ordinance for the government of Louisiana:

"So far as they conferred political rights and secured civil and religious liberties (which are political rights) the laws of Congress were all suspended by the State constitution; nor is any part of them in force, unless they were adopted by the constitution of Louisiana as laws of the State."—*Permoli vs. First Municipality*, 3 Howard, 610.

Thus we find the Supreme Court sustaining the proposition that the Federal Government has power to establish a temporary civil government within the limits of a Territory; but that it can enact no law which shall have beyond the temporary purposes for which such government was established. In other cases the decisions of the court run to the same line; and in 1859 the then Attorney-General, most learned in his profession—and in what else is he not learned, for he may be said to be a man of universal acquirements?—Attorney-General Cushing then foretold what came have been the decision of the Supreme Court on the Missouri compromise, anticipating the decision subsequently made in the case of Dred Scott; that decision for which the venerable justices have been so often and so violently arraigned. He foretold it as the necessary consequence from the line of precedents decreeing from 1828, affirmed and reaffirmed in different cases, and now bearing on a case similar in principle, and only different in the mere reference to the subject involved from those which had gone before. As connected with the decision which has agitated the peace of the country, as the anticipation of that decision before it was made, viewing it as the necessary consequence of the decisions which the court had made before; if it be the pleasure of the Senate, I ask my friend from South Carolina to read for me a letter of the Attorney-General, being an official answer made by him in relation to the military reservation which was involved in the question before him.

Mr. Chesnut read from the opinions of the Attorneys General, volume 7, page 575:

"The Supreme Court first determined that the United States never held any municipal sovereignty, jurisdiction, or right of soil in the territory of which any of the new States have been formed, except for temporary purposes, and to execute the trusts created by the deeds of cession."

"By the force of the same principle, and in the same line of adjudication, the Supreme Court would have had to decide that the provision of the act of March 6, 1820, which undertakes to determine in advance the municipal law of that portion of the original province of Louisiana which lies north of the parallel of 36 deg. 30 min. north latitude was null and void ab initio, if it had not been anticipated by a different act of Congress. (Comp. 17, Stat. at Large, p. 848, and X Stat. at Large, p. 289.) For an act of Congress which prescribed right, and without consent or compact, to impose on the municipal power of any new State or States limitations and restrictions not imposed on all, is contrary to the fundamental condition of the confederation, according to which there is to be equality of right between the old and new States in all respects whatsoever."

Mr. Davis. It was not long after this official opinion of the Attorney-General before the case arose on which the decision was made which has so agitated the country. Equitable, indeed, was it for the public peace that land and religion had been previously decided—those questions on which men might reason had been the foundation of judicial decisions before that which, it seems, drives all reason from the mind of man, came to be presented, the question whether the Congress of the United States could decide what might or might not be property in a Territory. The case being that of an officer of the army sent into a Territory to perform his public duty having taken with him his negro slave. The court, however, in giving their decision in this case—or their opinion, if it suits gentlemen better—have gone into the question with such clearness, such precision, and such amplitude, that it will relieve me from the necessity of arguing it any further than to make a reference to some sentences contained in that opinion.

And here let me say, I cannot see how those who agreed on a former occasion that the question of property in slaves was a fit subject for the exercise of judicial power, can now say that it is improper for the judiciary to decide the question