CIVIL RIGHTS BILL.

Rejoinder of Hon. Reverdy Johnson to the Speech of Hon. Lyman Trumbull.

DEFENSE OF THE PRESIDENT'S VETO.

Mr. Johnson said that in the discussion of the bill before the Senate, though the question was not strictly a legal one, there were questions of policy to be considered—questions of expedency. The objection which the President makes to the bill, in returning it without his approval relates as well to the expedency of the measure as to its alleged theonsitutionality. The purposes of clothing the President with the voto power were to guard his own department against encroschment by any other; to guard the States against alike influence, and to guard the individual citizens also.

In addition to these objects, one of the purposes of the convention was to guard against inexpedient and ill-considered legislation, looking to what had taken place in the ongress of the Convention was to guard against inexpedient and place in the ongress of the Conventional to what had occurred in the several State Governments, the members of the Convention of 1787 were satisfied that it was just as necessary for the public weal to protect the country against inexpedient legislation, or aimest as necessary as it is to protect it against unconstitutions.

as necessary as it is to protect it against unconstituHoha, legislation

It has been heretofore denied by some, and doubted by
others, whether the Fresident is justified in using the
power except upon constitutional grounds. That princtple was urged by the leading members of the Whigparty at the head of which a lood Mr. Clay, when they
became very much dissausted with the exercise of that
power by the then Fresident of the United states, General Jackson. The fact was called to the attention of Mr.
Madison, and he expressed his opinion on it in a leiter,
written with the ability which always marked his
writings, dated on the 15th of october, 18 4.
Mr Joinson bere quoted from the letter referred to
and continued:—

The honorable member from Illinois (Mr. Trambull)
seems to suppose that he finds as vanid objections to the

The honorable member from Illinois (Mr. Trumbull) seems to suppose that he finds as vaiid objections to the exercise of this power by the President in this instance, in the fact that the bill passed received the votes o more than two-thirds of the members of each House, and he cited in support of that doctrine a speech delivered by the President when he was a member of this body, in 1850 and 1860. The Senator, perhaps, was induced by what he read from that speech to be leve that the President stated the principle to be that a bill passed by a two-thirds' vote could not constitutionally be subjected to the veto power. If he had read the latter part of the same sentence he would have found that the President intended no such thing.

The soundress of the doctrine expressed in that speech cannot be questioned. Mr. Johnson, when he was a member of this body, merely said that the fact that a bill was passed by the majority rendered necessary for the purpose of overruling a veto, was a reason why he should very cautiously apply the power for its exercise, but so far from its being necessary, in the judgment of the Senate, as it certainly was not in the mind of Mr. Johnson at the time, that a bill being passed by that majority placed it beyond the veto power.

The honorable member's (Mr. Trumbuil's) answer to a

mind of Mr. Johnson at the time, that a bill being passed by that majority placed it beyond the veto power.

The henorable member's (Mr. Trumbull's) answer to a question which I put to him shows that, in the judgment of the Senate, the veto power was properly exercised; and a bill which, in that instance, had been passed by more than twe-thirds of both Houses defined not not become a law, as many who had voted for the bill changed their votes under the influence of the President's veto message, Now. Mr. President in order to find out exactly whether it was proper for the President to disapprove of this bill, it becomes necessary to ascertain with precision what the bill is. The honorable member from illinois (Mr. Trumbull) insists upon it that there is no section in it which is not clearly constitutional. He maintains the constitutionality of the first section upon the ground, first, that it is merely declaratory of what a law is; and, second, that if it was not declaratory, it was a law which Congress had a right to make, because, in his judgment, it is in the power of Congress by law to declare who shall be a citizen of the United States.

The honorable member referred to a case reported in 5th Peters, the decision of Cinic Justice Marshall, for the purpose of showing that a titzen of the United States who has been naturalized, and who resided in any state of the United States. The honorable member cierred to a case reported in 5th Peters, the decision of Cinic Justice Marshall, for the purpose of showing that a titzen of the United States with has been naturalized, and who resided in any state of the United States. The honorable member of the propose of the United States, and the act of 1768, which was a right to go into the court. Under the constitution of the United States, where it appeared upon the face of the pleading that the party going into the court below had a right to go into that court. Under the constitution of the United States, where it appeared on the face of the declaration. In the party dea

of a State, and, as such, entitled to go into the courts of the United States.

The Innewsge of the declaration that he was a naturalized dinzen of the United States, residing in the State of Louisiana and the Court came to the concinsion that that averment was equivalent to an averment that he was a citizen of Louisiana in the absence of anything to the contrary. But that is, not the question which the bill presents. He became a citizen under the naturalization laws of the United States, and the authority of Congress to pass such laws could not be doubted. The effect of the exercise of that nower was to remove the disability arising from foreign birth and to give him the capacity of becoming a citizen of one of the States. When the declaration therefore, averred that the original disability, allenage, was removed in that instance by the party having become a citizen under the naturalization laws, the only other question upon which the case before the Court turned, was whether he was a citizen of a different state from the State in which the other party resided, and the Court decided that the averment of a residence in a state of one who was averred to be a citizen of the United States was equivalent to an averment that he was a citizen or a State. I suppose nobody could well have doubted it, or will now doubt the correctness of that decision.

This bill, in its first section, makes all who were born in the United States at any time and who are now

United States was equivalent to an averment that he was a citizen or a State. I suppose nobody could well have doubted it, or will now doubt the correctness of that decision.

This bill, in its first section, makes all who were born in the United States at any time and who are now living, citizens of the United States, and assuce citizens, also of the States in which they may respectively reside, and conters on them all the rights belonging to those who have heretofore been considered citizens of the United States and of the States in which they may reside. Now, Mr. President, you are not to be to d that the only express authority conferred upon the Congress of the United States in relation to citizen-list he authority to be lound in the delegation to the power of converting one who is not a citizen into a citizen—so the authority to be lound in the delegation to Congress of the power to pass uniform laws upon the subject of naturalization. There is not a single word in the Constitution which gives to this department of the Government, or to any other department, the power to declare who statil be a citizen, and what is the effect of the exercise of that power? What was the effect of the exercise of that power? What was the design of the power, and what is the operation of the power is to place the party whose disabilities arising from the fact of allenage and nothing else. The operations of the power is to place the party whose disabilities arising from the fact of allenage and is removed by virtue of the naturalization laws, in the same condition with anybody else; but whether he is to be considered as a citizen of the United States by virtue of the removal of the disabilities consequent upon his taking advantage of the naturalization laws, in the same condition with anybody else; but whether he is to be considered as a citizen of the Dinty whose the view which I shall otherwise present in my own language more clearly to the country than by reading an opinion in the Dred Scott case; not that opinion he was di

of his being a citizen of the United States by virtue of his birth made him a citizen of any State of the United States.

Let me read a sectence or two from his opinion. It will be found in the 19th of Howard. That part of the opinion to which I refer is on page 597, and others. After having stated, and no doabt stated correctly, that at the time of the adoption of the Constitution of the United States there were five States in which persons of color were entitled to the right or suffrage, and in which, therefore, they participated in the deliberations of the States by which that Constitution stasiff was sanctionized, and atterwards in the Conventions of the several States by which that Constitution itself was sanctioned, he came to this conclusion. He says?—

"My opinion is that under the Constitution of the United States every person born on the soil of a State who is a citizen of that State by force of Constitution or laws, is also a citizen of the United States. Now mark the qualification, "It is not the nativity that imparts the character of citizen or alien. There must be added to the fact of nativity the other fact that at the time of his birth he is by the Constitution of laws of the State a citizen of that State, and the two things added, birth and citizenship by the laws of the State, he becomes by virtue of the two a citizen of the State, he becomes by virtue of the opinion it would be appendity removed by subsequent portions of the opinion to which I will call the attention of the Scate, he case the first section of the second article of the Constitution uses the language:—"A natural born citizen." It thus assumes that call the attention of the Scate, he constitution tases the language:—"The Constitution having raccognized the ratio hall persons born within the several States are citizens of the United States; fourth, that it is referred to each state to determine what free persons bode so; third, that all persons born within the several States and thereby citizens of the United States. I shall not

read everything he says in relation tolthree of the alternatives, but only a portion of it. He says if there be the provided to the port of the part of the post of the provided the point within the State which the constitution express; recognizes, and no one denies, then these four alternatives embrace the ontire subject, and it only remains to select the one which is true.

That the constitution itself has defined citizenship of the United States by declaring what persons born within the several states shall, or shall not be citizens of the United States will not be present at contains no say without doubt up ounded. That is to say, the constitution has not stated, or to use the language of his opinion, the Constitution has not stated, or to use the language, may be dispinion, the Constitution wholl we are many to dispinion, the Constitution wholl were many to dispinion, the Constitution wholl were many to dispinion, the constitution wholl were the same who can be supported to the states, and their cetters was a time to the constitution which confers upon Congress the power to do the same thing? Let us see what Justice a truit says about that. 'Has it empowered Congress to enact what free born persons, born within the several States, and the says and the same thing? Let us see what Justice a truit says about that. 'Has it empowered Congress to enact what free born persons, born within the several States, and the same time to the constitution as empowered to congress to declare what the constitution has embled Congress to declare what free persons, born within the several States, shall be citizens of the United States, it must at the same time be admitted that it is an unimited power if this subject is within the Jurisdiction of Congress, it must depend wholve on its discretion.' Then he proceeds immediately all the Constitution apart of what he says:—"Among the powers expressly granted to Congress is the power to prescribe a rule of the removal of disabilities consequent unon foreign birth. It appears, then, t

that it remains at it stood before—a power belonging exclusively to the States respectively.

Now, Mr. President, what is the consequence of that dectrine, if it be true, and I think I may challenge my rived from I linois to disprove it. The authority over citizenship under the Constitution of the United States is not delegated to congress, except in one particular instance, and that not one which intended to make the party in whose is your the power might be exercised a citizen of the United States, merely for the purpose of removing their disabilities which a law of Congress can remove, consequent upon his toreign birth and foreign allenage. That was a question in which the whole were interested. It was a matter of general moment. It related to a common object, for which the Conscitution itself was adopted, and in which foreign nations were concerned; because no one State had the power to legislate upon any subject upon which a foreign citizen might be concerned it was deemed advisable to invest a sower which might otherwise createdifficulties and inquiry to the whole in a Government to which the interess and safety of the whole is committed. But the removal of difficulties under the naturalization laws did not create a citizen of any one State. That power in the words of Justice Curtis, remained as it stood before the Constitution was acopied, exclusively belonging to the States themselves. Now what does this bill propose to so? It says that every man born in the United States, whether born as a slave or not. Is a citizen of the United States.—but applies to all, to whoever was born at any time, though in slavery—is to be considered a citizen by reason of the fact of his being born here, and that fact acone.

The State may have declared at the time of his birth. by reason of the fact of his being born here, and that fact aione.

The State may have declared at the time of his birth, if he was born of a slave mother, that he was a slave. The Constitution and laws of the State which declared it are disputed. They assert that no descendant of a colored mother, whether she was free or not, shall be a citizen by virtue of his birth. And yet my friend from hilmots and the Congress of the United States in passing this bill have declared that those who are born in a state of slavery, and who were never citizens as long as that condition existed, who were prevented from being citizens by the constitution of the State in which they resided, which has never been changed, shall by force of this enactment, he considered as citizens of the United States, and therefore citizens for all purposes.

Now, if the true that whether birth is to give citizens.

force of this enactment, be considered as citizens of the United States, and therefore citizens for all purposes.

Now, if it be true that whether birth is to give citizenship of the United States, depends upon the fact whether the party born is, by the laws or the State in which he is born, a citizen of that State. I should like to know where is the authority to interiere over what a State has done in the past, is doing in the present or may do in the luture, or how it can be accomplished under the constitutional amendment which I will notice after a white. Now, the honoroble member from Illinois (Mr. Trumbull) disposes of the President's objections to the first section of the bill by saying it is merely declatory. Well, I know it is not uncommon for a legislative body, where differences of opinion exist in relation to any proposition, to remove them by decistory legislation. But that is not the purpose of this section. It prolesses to be passed in the carciese of a positive and absolute power to change the law, not to declare what the law was—the power to make a law. It assumes—or otherwise there would be no occasion for it—that birth alone does not confer citizenship and assuming that no citizenship could exist in consequence of birth alone if declares that birth alone, in spite of State Constitutions and State laws, shall confer citizenship.

Now, with all deterence to the opinion of the honora-

Int to chizenship could exist in consequence of birth alone, it declares that birth alone, in spite of State Constitutions and State laws, shall confer clizenship.

Now, with all deference to the opinion of the honorable chairman of the Committee of the Judiclasy Mr. Trumbull, it seems to me to be a proposition as clearly erroneous as any proposition can be in relation to the Constitution. The States were sovereign before the Constitution was adopted, and the Constitution not only according to its very terms, does not profess to confer upon the Government of the United States any such power, but, as far as congress is concerned, professes only to confer on that department of the Government a particular delegated power; and so conscious were the framers of that instrument and the great men of that day, to whom its subsequent perfection was left, that the all went upon the theory that no powers were comferred, except such as were expressly granted, as mightreasomably be implied to carry out the powers not delegated except such as more than the powers not delegated by the Constitution, declared that the powers not delegated by the Constitution and not denied to the States were to be sonsidered as reserved to the States is especially delegated; standing upon a promise that only celegated as remaining within the States, unless the Constitution contained some particular prohibition of any power, what doubt can there be that it the state preserves provision that everything not granted was to be considered as remaining within the States, unless the Constitution was adopted, that that power remains now as applicable and as exclusive as it was before the Constitution was adopted; that that power remains now as applicable and as exclusive as it was before the Constitution was adopted; that that power remains now as applicable and as exclusive as it was before the Constitution was adopted; that that power remains now as applicable and as exclusive as it was before the Constitution was adopted; that the hight of power, and

fectly (lear that no sue (power exists as is attempted to be exercised by the first section

Chairman of the Judiclary committee that it is perfectly clear that no sue power exists as is attempted to be exercised by the first section.

I hold with Mr. Justice Curtis, and his opinion has never been quassioned, that citizenship of the United States consequent upon birth in a State is to depend upon the last whether the Constitution and laws of the State make the party so born a citizen of the State, Now, what is the next section, or what is the remaining provision of the first section? Not satisfied with declaring or assuring that they had the power to declare, that all persons not subjects of any foreign power born in the United States, and having the right of such persons to depend upon the fact of their being citizens, the bill goes on to provide what rights shall belong to them. Now what is that for? Is that declaratory to citizenship which, says the honorable member (Mr. Trumbull), carries with it certain rights? What rights? He read to the Senate from the let of Kent, page 46 a passage which, he will pardon me for saying, has nothing in the world to do with the particular question before us.

The passage which he read merely stated that every nation was bound to protect 1s own citizens. Why, certainly it is, it thus the power. The Government of the United States have no jurisdiction extra ferritoria—because with reterence to foreign nations the States have no jurisdiction extra ferritoria—because with reterence to foreign nations and the General Government, and because that re a ion can only in that way subsist. It is the duty of the 'nited States, as it is the duty of every nation, to protect its own citizens. But how is that made to prove hat a citizen of the United States have no lace at all. That relation subsists, and can only in that way subsist. It is the duty of the 'nited States, as it is the duty of every nation, to protect its own citizens. But how is that made to prove hat a citizen of the United States who is entitled to the same protection of the Government of the United States is to

curriy of persons and property as is enjoyed by white persons. Now, Mr. President, if there be anything that might be considered as true, that was true in the past. In the Constitution and laws, it was that over every one of these rights, or to speak more correctly, over every one of the subjects to which these rights are made to attach, the jurisdiction of the states were exclusive.

that might be constitution and laws, it was that ever ever one of these rights, or is all least it was that ever ever one of these subjects to which these paths are made to attach, the jurisdiction of the states were the subject of the states were the state of the state of the states. The honorable member from Illinois (Mr. Trambull) seems to forget, as I think, what is the real character of our Government and our institutions. This bill, in my opiniou, strikes at all the reserved rights of the States You may look in the statute books, and I am sure the honorable member from Illinois will agree that such is the fact. You may look in the statute books of the United States in vain for the purpose of finding that any thine irom 172 the to the breaking out of this Rebellion, any body ever proposed in Congress by legislation, to regulare, by scutring or otherwise, the rights which are reserved for in this section.

After dwelling further on the section of the further o

ongress there.

I have but one word more, Mr. President, My friend I have but one word more, Mr. Fresident. My friend adverts in rather severe terms to the Fresident. The Fresident states that in his opinion the bill is unconstitutional, and, thinking so, it was his day to interpose his objections. It he had not done so he would have been false to his plighted faith. As to any suspicion of disloyally against him, his whole political course disproves that. In 1861 I was here, but not a member of the Senate, and I heard him, standing in the midst of those who were picting to destroy the Union, in words that burned, denounce their attempts at rebe lion.

at rebe lion.

Mr. Nye (Nevada)-Will the Senator allow me to ask him a question? Mr. Johnson—Certainly. Mr. Nye—Did he not at the same time admit the right

Mr. Nye—Did he not at the same time admit the right of secession?

Mr. Johnson-Certainly not; quite the reverse. The most prominent public men who advocated it was the late iamented President Lincoln, in a speech in 1847.

Mr. Nye—Mi. Stephens certainly did not advocate it.

Mr. Johnson-I am not speaking of Mr. Stephens but of the President of the United States. My friend from Nevada is not often wrong, but he has certainly made a mistake this time. The President, in his own State of Tennessee, again perilled his life in serense of the Union. He wants it restored and should we not come together once more, and glory in the heroic deeds of each other?

Mr. Trumbull-Mr. President, I did not hear perfectly the opening remarks of the Senator. I understood him to say that all persons born in the United States were not citizens.

or say that all persons born in the cuited States were not citizens.

Mr. Johnson—I maintain the opinion of Judge Curtis.

Mr. Trumbull—That was the opinion of a dissentaing ludge But, Mr. President I have the opinion of snotber gentleman, one who stands at the head of the bar of America at the present time I read from a speech delivered less than ninety days ago: from the speech of no less a person than the Senator from Maryland, Mr. Johnson. Johnson.

Mr. Trumbull then read from the speech in question that all free born colored persons were citizens, and, since slavery was abolished, that all colored persons were citizens, and to establish the fact without dispute it was necessary for some legislation by Congress. Mr. Trumbuil next referred to the act of 1790, aliaded to by nim 'esterday. The "enator claimed that that act only provided for punishment of a violation of international law, and he would ask, was a right secured by the Constitution less sacred than one secured by international law? Mr. Trumbull claimed that the act was a complete precedent for the second section of the bill under consideration.

stitution less sacred than one secured by international law? Mr. Trumbuil claimed that the act was a complete precedent for the second section of the bili under consideration.

Mr. Johnson said he was rather surprised that a gentleman so clear-beaded as the senator should have failen into the mistake of supposing that there was any inconsistency in the speech referred to, and the position just assumed by him. He certainly did hold that all persons born here were citizens of the United States. But this did not entitle them to the privileges of curzenship in the State in which they were born. Over the question of State citizenship the States heldicomplete sovereignty, and it was not in the power of congress to concer the right of state citizenship encitizens of the United States. This bill assumed such a right.

Mr. Yates ("IL) said that, under the slavery amendment, he entertained the opinion that freedmen were entitled to the same rights and aprivileges as any other citizen of the United States. The authorities quoted by the Senator from Maryland, only held before the sdoption of the savery amendment. The Senator from Maryland had offered an amendment. The Senator from Maryland had offered an amendment, to the Fleedmen's Bureau bill, which recognized his (Mr. Yates') position as the correct one.

Mr. Trumbuil said the speech of the Senator, from from which he had just read, was delivered on this very bill. That Senator, with thirty others, had voted for an amendment declaring all persons citizens excepting Indians not taxed; but in his speech the Senator went farther than this. Further extracts were then read by Mr. Trumbuil.

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Term —Cash, in United States correctly,
By order of Brevet Brigadier General JAMES A.
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OFFICE OF ASSISTANT QUARTERMASTER, WASHINGTON, D. C., March 14, 1868. AUCTION SALE OF UNITED STATES MILI-TARY HAILROAD MAIERIAL.
Will be sold at public auction at Alexandria,
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2 first-class Loco mouve Engines, 4 feet 8j-inch
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20 Buildings, from 10x12 to 200x40 feet.
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A large quantity of new Shelf Hardware. 1 Herring Safe. 1 Saloon Car, 4 feet 8j-inch gauge, elegantly fin-ished and furnished with black walnut, trimmed with green plush; double trucks, with broad treadwheels.
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SALE OF NAVY POWDERS AT THE NAVY YARD, PORISMOUTH, N. H.
There will be sold to the highest bidders, at Public Auction, at noon, the 12th day of April, by the Ordnance Officer at the Portsmouth Navy Yard, N. H., one hundred and eighty-five thousand nine hundred and sixty, nine (185 950) nounds, NAVY POW dred and sixty-nine (185,969) pounds NAVY POW

DER, as follws:—

181 600 pounds Cannon Powder,

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These Pewders will be divided into lets of one hundred barrels each

Terms, one-half cash in Government funds, and the remainder on the removal of the Powders, for which a reasonable time, but not more than thirty days, will be allowed, the purchasers, however, make every exertion to remove the Powder

31 thm12t

PROPOSALS.

DEGLOSALS, SEALED PROPOSALS, IN M., MONDAY, the 16th day of April. 1808, for the delivery of 6000 head of BEEF CATTLE on the hoof, for the use of captured Indians. The cattle to be delivered to the A. C. S., for indians at Fort Sumner, New Mexico.

The first delivery to be on the 1st day of July, 1866,

and to consist of 500 head of cattle; the subsequent deliveries to be in such numbers and at such times as may be required by the undersigned.

The cattle must be from three to five years old, and must weigh at least 400 pounds net (their weight to be ascertained according to manner laid down in the Subs. Regulations of 1863), and to be of the best

the Subs. Regulations of 1863), and to be of the best marketable quality. No Stags, Bulls, Cows, or heliers will be received.

Whenever, in the opinion of the A. C. S. for Indians, at Fort Sumner, the cattle presented do not rulfil the conditions here set forth, as many as do not will be rejected. Ten per cent of money due contractors will be retained until the contract is fulfilled.

Two responsible persons must sign each bid, guaranteeing that if the contract is awarded to the party or parties therein proposing they will enter into ample bonds for the faithful fulfiment of the contract, and when the parties thus offering as sureties are usknown to the undersured, their ability to reimbuse the loss to the United States, which would accrue in case of failure, must be effect, before a president of the Contract of the contra attested before a magistrate or other officer empowered to administer oaths.

The parties to whom this contract is let will be expected to fill the contract the macives—any sub-letting of the contract will be considered as a failure to comply with the contract, and the contractor will be held

respons ble therefor. responsible therefor.

Endorse on the envelope "Proposals for Beel Cartle, at Fort Sumner, New Mexico" W. H. BELL,

Captain and C. S. and Brevet Major, U. S. A.

Office Furchasing and Depot C. S., District of New Mexico, Santa Fc. N. M., February 7, 1866, 3 1 28t

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