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SPEECH OF CASSIUS M. CLAY.

Delivered on the Capitol Steps at Frankfort, January 10, 1860,

Obiter Dicta.

Gentlemen, time passes quickly, and of course I cannot go elaborately into the argument upon the other part of that which is claimed to be the decision in the Dred Scott case, that is, that the law of 1787 first passed by the confederation of States, and re-enacted by the House of Representatives at its very first session under the Constitution in 1789 was unconstitutional. That is the dicta of these five Judges. Well, now, gentlemen, just let me state one or two strong points that every man of common sense can understand. It is the practice of all Courts—Courts of Common law and Courts of Equity of the United States, and of all Courts of reasonable justice and common sense on God's earth, from the earliest time to the latest day, that when questions, come up for decision, they decide the main question, and that obiter dicta, that is, words spoken incidentally, and not to the main question, is not law. There are Democratic lawyers that hear me tonight, and and they will bear me out in this statement, and it is right. There are just reasons for it, because the attention of the Judges being bound to the main issue, they must not be held responsible for the incidental questions of the case. Now, that is what Justices McLean and Curtis tell us, and they are, in my opinion, the ablest Judges upon the Bench. I think Justice Curtis the ablest Judge I ever read after, and he tells us that when the Supreme Court decided in the case that it had no jurisdiction there their whole power ceased. That is what this Judge tells us, that is what the Republicans say, that is what every honest man, unbiased by political associations and considerations, must say I say it, gentlemen, that in my humble judgement, the rest of the opinion is not law, and in this I am supported by some of the very ablest judicial minds of the United States. Not only so, but Justice Curtis shows that the Supreme Court has decided again and again that obiter dicta is not law, and is not so to be considered. There are decisions in that report quoted, absolutely made to the effect that these incidental decisions that come in are not part of the law of the land.—Therefore, we say in denial of what the Democratic party has said to-day, that it is not the law of the land. Therefore, we go upon that subject for not changing, rather we deny that it is law, and we appeal to the country to decide between us. We owe no allegiance to it as to a law of the United States, but it is yet open for free discussion by the people of the United States, that they may determine it under the Constitution of the United States. To so much we plead guilty.

The Word Regulate.

Now, as that is an important question, let us dwell yet a while longer upon it.—In the first place, let us see what were the terms of the old Confederation in connection with it. They declared, gentlemen, before they ceded these lands to the United States, that these Territories should belong to the United States, and that the United States should have complete control, both political and practical, over them; that is to say, that they yielded the entire jurisdiction of the Territory, and the United States, under the act yielding these Territories to the United States, achieved as they were by the common blood and treasure, it was the determination of all the States themselves to yield up the entire control of them, and therefore when the Supreme Court undertook to say that that clause of the Constitution which says: "The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property of the United States," does not mean what it says, they are forced to the absurd conclusion, notwithstnding the object had in view in making the cession, that when the land was given, the States did not mean what they said, look to what a forced construction they are given. They deny this positive grant of power to pass laws by Congress to prohibit Slavery in in the Territories, and the assertion that the word "regulation" is not a common term used by legal men when they intend to confer a power. That is the argument of the Supreme Court.

Let us look at that. Four times is the word "regulation" used in the Constitution with regard to grants of power, and thus, so far from being an unusual term, it was a usual one in the disposition of power in the United States. Another clause says that Congress shall have power to "regulate commerce."—Does any Democrat deny that that is a legislative power? What, under it, have they done? They not only "regulate commerce" under it, between foreign countries and this, regulating foreign and domestic trade, but they passed the embargo. Why? Because they had the power to make all needful rules and regulations appertaining thereto. In the Territories they have similar power delegated in somewhat the same words. Not only had they the power to cherish commerce, but they had a right to probibit and destroy commerce itself. Certainly that is a legislative power; and it was exercised under this very term "regulate;" therefore it is absolutely absurd when the Supreme Court and the Democratic party undertake to say that when it was enacted that Congress should have the power to make all needful rules and regulations for the Territory, did not delegate legislative power. So that the very language that they claim would debar a grant of power, is shown by four clauses of the Constitution, to carry with it that very legislative power, it even extending to the taking of life, liberty, and property itself.

Don't they say in the Constitution that they shall have the power? Such was the understanding of the old framers of the Federal Constitution—of the old confederation of the framers of the act of '87, and although the Supreme Court are bound to acknowledge that all the territory acquired previous to the formation of the Constitution, were subject to the control of Congress, they come to the conclusion that the Constitution did not intend to confer the power at all, but that its very exercise was prohibited by the Constitution.

Gentlemen, there was a portion of these lands, when the Constitution was formed, intended to be ceded, and it was known by the framers of the Constitution that it was to be ceded. Georgia and North Carolina afterward ceded their territory for the same reason that Virginia ceded Illinois and Indiana, and therefore how absurd it is to say that the framers of the Constitution, when they allowed Congress to exclude Slavery from the territory which now is formed into the States of Illinois and Indiana, did not give them the power to exclude Slavery from the whole. It is absurd to say that the power existed in one case, but did not in another.

What was the intent and design of the Constitution? What did it do to carry out that design? The two most prominent conclusions on earth, that we can have as to what it was intended to do, is by what they said was to be done and intended to be done, and by what they practically did. Eight and six, or fourteen times, did this Congress carry out the power asserting that Congress had all the power to make "all needful rules and regulations for the Territories," even to the prohibition or enactment of Slavery.

How he Changed an Opinion.

I am going to own up myself. I confess that I always believed, until I read the opiuion of Justice Curtis, I always believed with the old Free Soil party, that under the Constitution of the United States, you could not establish Slavery in any Territory. I do now confess that, after reading the decision of Justice Curtis, that it was so clear, and the argument so irresistible, that they could practice legislation in either way, that I was bound to acknowledge that the power to prohibit also carried with it the power to establish, and the converse that the power to establish Slavery also gave the power to prohibit it. I therefore yielded up my old opinion (I know not what others may do,) because in this dicta of Justice Curtis, if Congress has power simply because there is no limit put upon it, that it has power on either side: that is, it has omnipotent sovereign power, although this is a Government in general of limited powers, inasmuch as the Constitution does not limit Congress from establishing or abolishing Slavery. The power is not denied by the Constitution, therefore it has it. There I am bound to change my opinion upon that subject, and now I agree that Congress has the power to establish or prohibit Slavery, because, as I said, the acknowledgement of the one power compels us to acknowledge the possession of the reverse.

Well, now it is at last brought to this: Congress has the right to establish Slavery, or to abolish Slavery, in the Territories. It is then a matter upon which we appeal to the country for decision. Will you go for Slavery or Freedom? I believe that to be the doctrine of the Republican party, and that is the whole sum and substance of the controversy between us. We say with Washington, Jefferson, Madison, Henry, and Lee, and all the distinguished fathers of the Republic, not that Slavery is a blessing and a Divine institution, and all that, but we admit it to be an evil, morally, socially, and politically, and a weakness in the Commonwealth.

Slavery a weak Institution.

Well, now, gentlemen, it has gone forth in this Commonwealth that I should not be able to speak in Frankfort. Why is it that John Brown spread such consternation through all Virginia? Are we to believe that the Virginians are all cowards? No! There is in Virginia just as gallant blood as flows in the world. It was simply because Slavery was a weak institution from the beginning to this time, that it was what James Madison told South Carolina and Georgia; it is because Slavery is what Mr. Randolph told Mr. Everett. We tell you that it is a source of weakness in the State, and therefore, as patriots and lovers of our country, we say to the several States, enjoy your institution as long as you choose, but so far as we are responsible we go against it all the time. There is the whole front of our offending. It is not right?

The admission of Slavs States.

Another charge made is, that we purpose "to prevent the admission, in any latitude, of another Slaveholding State." I deny that that is the platform of the Republican party as made up in 1856, or as it is to be made up in 1860, and if you will allow me I will refer to the record. I cannot read all of the platform but I give you my word there is no such clause in it. I will read one clause, however:

"*Resolved*, That with our Republican fathers we hold it to be a self-evident truth that all men are endowed with the inalienable right to life, liberty, and the pursuit of happiness, and that the primary object and ulterior design of our Federal Government was to secure these rights to all persons under it exclusive jurisdiction." [Mark me, now, that does not apply to States]; "that our Republican fathers, when they had abolished Slavery in all our National Territory, ordained that no person should be deprived of life, liberty or property, without due process of law, it becomes our duty to maintain this provision of the Constitution against all attempts to violate it for the purpose of establishing Slavery in any Territory of the United States, while the present Constitution shall be maintained."

In that part of the platform I have said, I believe we were in error. For that reason, in the call of the present Convention we leave out all that which has reference to the last sentence which I read. I will read that call to you.

"A National Republican Convention will meet at Chicago, on Wednesday the 13th day of June next, at 12 o'clock noon, for the nomination of candidates to be supported for President and Vice President at the next election.

"The Republican electors of the several States, the members of the People's party of Pennsylvania, and of the Opposition party of New-Jersey, and all others who are willing to co-operate with them in support of the candidates which shall there be nominated, and who are opposed to the policy of the present Administration, to Federal corruption and usurpation to the extension of Slavery into the Territories, to the new and dangerous political doctrine that the Constitution, of its own force, carries Slavery into all the Territories of the United States, to the opening of the African slave-trade, to an inequality of rights among citizens; and who are, in favor of the immediate admission of Kansas into the Union, under the Constitution recently adopted by its people, of restoring the Federal Administration to a system of rigid economy, and to the principles of Washington and Jefferson, of maintaining inviolate the rights of the States, and defending the soil of every State and Territory from lawless invasion, and preserving the integrity of this Union and the supremacy of the Constitution and laws passed in pursuance thereof, against the conspiracy of the leaders of a sectional party, to resist the majority principle as established in this government, even at the expence of its existence, are invited to send from each State two delegates from every Congressional District, and four delegates at large to the Convention."

To prevent the extension of Slavery into the Territories There is the matter at issue.

Gentlemen, neither in the platform of 1856, nor in the call of Convention for 1860, is there any such clause as that the the Vice-President alleges, that no more Slave States shall be admitted into the Union—there is nothing of it. It is not a true allegation and I appeal to the record. I appeal from beinferences and allegations of the Vice-President of the United Sates to the country upon that subject.

The Slave Code Considered.

Before I pass over this, I will say a few words with regard to the power that the slaveholders claim for the protection of slave property under the Constitution of the United States, because that is a vital question. Gentlemen, with all the inconsistency of the Democratic party in 1852 and 1856, they never thought of this thing, that Slavery went under the Constitution, and by virtue thereof into every Territory *per se*. Never was such an expression made use of, but they all admitted that no such power existed in or under the Constitution. Hence, of course it was proper to enact that the people of a Territory were free to legislate Slavery in or out of the Territory. Now, gentlemen, the Democratic party is placed in this attitude, that they knew that under the Constitution, and according to what they now claim to be the decision of the Supreme Court, that every slaveholder has a right to go into the Territory with his property, or deceived the people, to the detriment of the slaveholder, when they left the matter to be decided upon by the non-slaveholders. What right had the Democratic party to say that they should confiscate the property to the tender mercies of the squatters, who make their way from Germany, Ireland, China, Massachusetts, and Kentucky? Mr. Breckinridge, or some of your friends answer me, yes or no, did you intend, when you stood in favor of "Popular Sovereignty," or "Squatter Sovereignty," to confiscate all the the property of the slaveholders of the United States? No sir. You did not think that you had a right to carry Slavery into the Territories. That is the truth of the matter. In my opinion, that is what every Democrat believed—We say that the belief was right. Why? Because all the dicta of all the jurists from time immemorial, from Grotius to Mansfield; all jurists known to civilization and fame, from the earliest days to this, declared that slaves were a peculiar property, unlike other property known to men. What do the best English reports tell us? Before 1760 this was declared, and by the highest courts of the crown outside of the House of Lords. This was declared by Lord Mansfield, with this dicta; which I shall read to you, that I may be understood, in that case when Curran grew so elequent, when he declared that whenever a man stood upon British soil his chains fell from him:

"The state of slavery is of such a nature that it is incapable of being introduced on any reasons, moral or political, but only by positive law, which preserves its force long after the reasons, occasion, and time itself from whence it was created, is erased from the memory; it is of a nature that nothing can be suffered to support it but positive law."

That decision has never been questioned in this country, until this new light of the Democratic party fell upon it in the decision of the Dred Scott case, in 1856. I say all the jurists, all men at home and abroad, who profess the Christian religion, and obey the equally imperative mandate of progressive humanity, concur in the belief that Slavery is contrary to natural law that nothing but positive law can support it. Under our Constitution, we adopted the common law of England, and that was the law of this State, and of others, and it was decided again and again in the courts of Louisiana, and of Kentucky, of Virginia, and of Tennessee, and in the other States of the Union, I believe without exception, that Slavery was local, and could only exist by virtue of positive law, and when a citizen of Louisiana took his slave to France, a despotic government, and brought her back, her application to be declared free was carried to the Supreme Court of Louisiana, and it was declared that inasmuch as she had been carried into free Territory she was free according to all the dicta upon the subject, "once free and always free." It has always been held that slavery was an institution of municipal law, and the moment it was carried beyond the pale of that law, that moment the rights of humanity, and the great reason to which all law appeals, stepped in and gave freedom; all have determined in the same way, every decision has been in the same direction.

The Fugitive Slave Law.

I cannot dwell upon this matter to go all through the able argument of Justice Curtis, but there is no argument which he does not produce, to support the position which I have laid down as being correct, save one. That one is this much talked of and much vaunted Fugitive Slave law. Let me ask you if under the Constitution slavery goes into the Territory of the United States, what do you want with a Fugitive Slave law? Answer me that. Why would you not be protected in your slave property as much in any State of the Union if it is property there and yet you stood in Congress week after week, and month after month, and I might say year after year, contending for the recognition of the rights of the slaveholding community to recover fugitive slaves. It was all absurdity to quarrel about a power which you assert is in the Constution. You cannot prove that the Constitution gives the power. It cannot be done. It is in vain that you struggle against the whole authority and common sense of ages.

You now talk of legislative intervention by Congress to protect Slavery in the Territories. What do you want with it if the Constitution does not give it?—What right have you to it? I therefore deny, on the part of the Republican party, that there is any such power under the Constitution per se to carry Slavery into the Territories of the United States.—That was not the doctrine of the Democracy of 1852 or 1856, and only after the enunciation of the Cincinnati Platform, and the election of James Buchanan, did the Supreme Court screw themselves up to the point that they could say that it was law. Two of the ablest and most distinguished Jurists declaring that it was obiter dicta, and was no law. God grant for our freedom, every man's white and black, that you should say in your Legislative Assemblies and National Conventions, that it is no law. As I live it is no law.

Consequences of the Democratic Claim.

See where it leads. Suppose they have under the Constitution, the right to carry Slavery into the Territories, have you not a right to carry those same slaves into Ohio? You have the right to carry a cow, or a horse, a coat, or a watch, into Ohio, and if under the Constitution Slavery is just as sacred and inviolate as this species of property, how dare Gov. Chase say you shall not bring your slaves and take possession of the hotels of Columbus and the farms now occupied by honest freemen? I tell you why you cannot.—It is because the right you assume does not exist. The Constitution says:

"This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land," &c.

There is the whole substance of the matter. If the Dred Scott decision is right, then there is not one single foot of any but Slave Territory from the Gulf of Mexico to the hills of Maine. If that be true, then indeed there is no conflict going on, in the language of Seward and the Democratic party, between freedom and despotism, but the conflict is ended, and you and I, and all of us, are subject to a despotic power, which is higher than the great dicta of all the learned jurist that have preceded us; higher than the Constitutions of the States and the sovereignty of Conventions; and last, if not least, higher than the Constitution of the United States—the palladium of liberty to us.—If it be so, the conflict is ended, and we are all slaves; we are subject to a despotic power over which we have no control—none on God's earth. There is no appeal to Popular Sovereignty or States Rights; there is one appeal, and that is to revolution; an appeal to arms and the God of Hosts—which God forbid. Therefore, I deny that we are factiously purposing to prevent the admission of any more Slaveholding States.

The fourth charge is that we propose "to repeal the Fugitive Slave Law, and practically refuse to obey the Constitution on that subject. I do not deny that in some of the States there has been an effort made of that kind, but I do utterly deny that there is any such clause in the platform of 1856 or the call of 1860.—Without dwelling further upon that I pass it by, saying that I do not care to avow that I stand on that subject with Daniel Webster, the man whom, of all others in this country, we have styled the expounder of the Constitution—certainly upon constitutional law the highest authority this country or any other has ever seen. Mr. Webster, although he was overpersuaded, flattered with the idea that he would get Southern support by yielding his true born opinion, said what, in his speech of 7th March? He said "that this was a power that belonged not to Congress but to the several States." That is my belief, but the Republican party, desirous of harmony, yielded it, and struck it out of our platform in 1856, and do not propose to incorporate it in the platform of 1860.

Other charges referred to.

Fifth. "To refuse to prevent or punish, by State action, the spoilation of slave property, but, on the contrary, to make it a criminal offense in their citizens to obey the laws of the Union, in so far as they protect property in African slaves." Gentlemen, don t we tell you in our call that we go for protecting the rights of all the States, and so far from hindering you in the return of your property, that we pledge ourselves as a party to defend you against your State or my State, and every State, or against foreign invasion in the Territories. Of course if we are honest in one purpose, we are honest in the other, and we cannot be honest in that avowal if we are dishonest in the first imputation.

Sixth. "To abolish Slavery in the District of Columbia." I need not read our platform again, but I defy any man to find any such a clause in it.

Seventh. "To abolish it in the forts, arsenals, dockyards and other places in the South where Congres has exclusive jurisdiction." There is no such clause as that in the platform of 1856, or the call of 1860.

Eighth. "To abolish the internal and coastwise trade." There is no such clause as that in either.

Ninth. "To limit, harass, and frown upon the institution in every mode of political action, and by every form of public opinion." We make a directly opposite avowal. So far from that, we not only are compelled by the necessity of the case, but we propose in carrying out in good faith this associated brotherhood of confederated States, not to take Emancipationists alone upon our platform, not simply to appoint them to offices, but we propose and invite slaveholders to act in conjunction with us, and to assist us in carrying out the Government which we shall in all probability so soon control.—How can this be true? How can we then intend to harass the instiution by every mode of political action? Why, gentlemen, the thing is impossible in the nature of things, and unless you have proof that we are dishonest, there is no believing that we can or desire to monopolize all the offices in the country. This allegation cannot lie against us, therefore it falls still-born at our feet.

While I have been projecting these notes to-day, I received a copy of *The Cincinnati Gazette*, one of the leading Republican papers in the Union, and probably the foremost paper in the West, and which probably has the largest aggregate circulation—and I find it says that we are willing to go Crittenden, Botts, Bell, or any other slaveholder for President, if he be the choice of the Convention. Does that look like excluding you from the Presidency or any other office? Old John J. Crittenden, a man that I have always loved and admired, a man, who if he had been left unbiassed to his own noble aspirations, would have stood where I stand, where we, of the Republican party stand—by the old Henry Clay Whig ground, against the extension of Slalavery. Let me here read what Henry Clay says upon that subject, a sentiment which Crittenden no doubt has indorsed through a long life. The Democrats have got wonderfully in love with Henry Clay of late. The old man they abused and slandered all his life, but now they come to us and say we will defend old Henry from your assaults. The man who was persecuted for a life-time, the man who went to his grave in sorrow under the imputations made against him by these same Democrats, is now taken up and they call upon the old line Whigs—old Clay Whigs to come out and crush out the Republicans who stand by the doctrine of that same Clay in favor of the non-extension of Slavery. Henry Clay said in the last year of his life, in his last term of public service, in his grey-haired old age:

"Coming as I do from a Slave State, it is my solemn, deliberate and well-matured determination that no power, no earthly power, shall compel me to vote for the positve introduction of Slavery either North or South of that line."

Oh, for shame, Democrats, to claim to be the protectors of the fame and glory of Henry Clay and of his principles, when there, by the last will and testament that he publicly made to the nation, he plants himself fairly and squarely upon the Republican platform. That sentiment I stand here to-night to vindicate, and the followers of Mr. Crittenden would stand up to defend it if they had full bent for their honest inclinations. God grant that he himself may stand up to it, and that they may change, for as God is, I would not sooner vote for any other man than John J. Crittenden, for every word that comes from his mouth is John J. Crittenden himself, the man that says that the ground that is good to stand on is good to fall on. Yet we are accused of all these purposes.

I am pretty nearly through, gentlemen. It is not very often that I get a chance to speak to you, and when I do, I want to say as much as I can. I can't get even to talk to you through the press. I establish a press here and there, and when old Cass. Clay gets away, they jump upon my followers and put it down, and I can't speak through the post-office, for a letter of mine is eight days on an hour's journey, or it never reaches its destination.

The tenth charge or allagation is substantially embraced in the ninth, and it is not necessary that I should comment udon it.

(TO BE CONTINUED)

Venango County---More Oil.

A pump has been put into the oil well on the farm of Hamilton McClintock, on Oil Creek, two miles above the mouth, and the yield of oil is beyond expectation, being near double that of Drake's. A number of persons have visited the well, and all agree that one gallon of pure oil is pumped every minute? The quantity appears to be limited to the capacity of the pump, and no doubts are entertained of the supply holding out. The proprietors are busily engaged in making preparations to barrel the oil, which appears to be the great difficulty in the way.—California and Pike's Peak will have to knock under.

Other wells are being sunk in that vicinity. One, a litle further up the creek, in which our young friend Kim Hibbard is largely interested, has reached the oil and bids fair to equal the best in productiveness. There is no difficulty in obtain in sites by giving per centage of the oil, and there appears to be a general "pitching in" by those desiring to try their luck. —*Venango Spectator.*

"Tickets, Sir?"

A good story is related of a conductor on one of the railroads centering this village, who was a strict church going man, and was always found promptly in his seat on the Sabbath. One Saturday evening his train was in very late, and he did not take his customary sleep, which, however, did not prevent his attending divine service as usual. During the sermon, he unwittingly fell into a troubled sleep, smoothed by the monotonuous voice of the clergyman. All at once he sprang from his seat, thrust his hat under his arm, and giving his neighbor in front a push, shouted, "Tickets, sir!"

The startled neighbor also sprang to his feet, which thoroughly aroused the "conductor," who looking wildly around and seeing all eyes turned towards him, instantly comprehended his position, and "slid out" amid a suppressed titter from the whole congregation.

Twin Children born in Different Years.

The following announcement is from a Scottish paper:—"At Silverbillocks, Gamrie the wife of Charles Witson, of two twin daughters, one born on the 31st December, 1859, and the other on January 1st, 1860."

☞A lawyer engaged in a case, tormented a witness so much with questions that the poor fellow cried out for water. "There," said the Judge, "I thought you'd pump him dry."