The Daily Post.

SATURDAY MORNING::::::::::OCT. 29.

SENATOR DOUGLAS' REPLY.

THE WEEKLY POST of next week will contain Judge Douglas' reply to Attorney General Black's observations upon his essay on Popular Sovereignty, published in Harper's *Magazine*, complete. It is one of the most able political papers we have ever read. Persons at a distance, who may wish for copies will please send in their orders by mail at once. We will furnish them at the rate of $3 per hundred. It is a document which should be widely circulated among the people.

THE RESPONSIBILITY.

In view of the evidence which is presented on every hand, it is perfectly useless for the Republican party to disavow, as the *Gazette* has done, the responsibility of such outbreaks as that which has occurred at Harper's Ferry. The logical result of the doctrines avowed by Seward, and other leaders of the Republican party, has been carried out in this attempt at a servile insurrection. It is idle now for the Republican editors to repudiate the expressed sentiments of the very men who formed the party. They cannot repudiate their great champions. Such men as Giddings and Lovejoy were leading members of the Convention, which met in this city on February 2d, 1856, to organize the Republican party. They were then admitted into full fellowship, and their party must now be responsible for their doctrines and the results to which they lead. If Republicanism and Abolitionism are so co-mingled that neither the men nor the doctrines can be separated, all who belong to either party must be responsible for the joint property. Republicanism seems to be the seed and Abolitionism the fruit. The Republicans profess that their designs are only to prevent the spread of slavery in territory now free, while the genuine, true-blue Abolitionists seek to abolish it in the States.—The short career of the Republican party has already demonstrated the impossibility of confining anti-slavery doctrines within certain prescribed limits. One system of political ethics for the States and another for the territories, will not work. The barrier is but an imaginary one, which fanaticism o'erleaps in spite of any effort to prescribe its sphere of action. In practice, the anti-slaveryism of the Republican party cannot be confined to the territories. Men will pursue an idea to its natural and legitimate results. Curtis, the well known Republican lecturer, has said: "The Republicans are only another wing of the anti-slavery army, differing from Abolitionists, not in principle but only in method." The practical results of these doctrines—the irrepressible conflict doctrines of Mr. Seward—are obvious. Is the country ready to adopt and sustain such doctrines? Has the time come when the irrepressible conflict is to commence? If it does commence now or hereafter, the Republican party and it alone must answer to the world for the direful consequences.

THE NEWS.

The details of the work of the next census will not be commenced before June, 1860. It is announced that the appointment of Assistant Marshals to take the census, will not be made before next spring.

Twenty-four of the forty-two organized counties of Kansas give a majority for the Constitution of 3,753 votes. The total vote of the Territory will not exceed 10,000.

A stirring letter from Mazzini to the King of Sardinia has been circulating through Italy, where it has created a great sensation. A translation of its most important passages has been furnished us by our Italian correspondent. After alluding to the fact that his country had sacrificed 50,000 men in the late war, and that ten times that number would be forthcoming if necessary, Mazzini alleges that the intriguers who surrounded the King never desired the unity of Italy. He claims that the Franco-Sardinian alliance was unnecessary, reproaches the King with having accepted the peace of Villa Franca, and invites him to *dare* to ally himself with the people, and give them full scope in their efforts to attain liberty and independence.

The Pennsylvania railroad is now doing a very heavy freight business, and for the last few weeks has been greater than ever before experienced. Several extra trains have been put in requisition, and there are still many cars along the line, waiting for their turn to be hauled to their destination.

Daniel Lock, a plasterer of London, who earned 30s. a week, before the strike, recently committed suicide by taking laudanum. In his possession was found a piece of paper, upon which was written: "What Cato did and Addison approved must be right. The strike—the ruinous strike. God protect my unfortunate family."

The New Orleans *Delta* says its faith is pinned to the Popular Sovereignty doctrine, and can see neither peace for the country nor prosperity for the territories, by a resort to any other mode of determining in favor of, or in opposition to, the establishment of slavery in the territories.

A correspondent who was on board the Great Eastern during her late trial trip, writes that he has been officially informed that the directors have determined to sail for Portland on the first of November, providing the Board of Trade do not insist upon such repairs or modifications of the engines as to render it impossible.

George May, a brother of the gallant Capt. May, who was married, recently, to Miss Lizzie Palmer, of New York city, and went to Paris to pass the honeymoon, died recently in that city of aneurism.

The Ohio *State Journal* states that John Brown, of Ossawattamie, is the father of twenty-two children.

The New York *Times* gives an account of the preparations now making for Prof. Lowe's balloon ascension. The balloon, it is said, will require 800,000 feet of gas to fill it, and, that the fluid may be accurately measured, a large metre has been stationed within the enclosure. It is 3 feet 2 inches in diameter, 7 feet 6 inches long, weighs four or five tons, and is capable of registering 100,000 feet an hour. This is the first time a metre has been employed to inflate a balloon. It is expected that the ascension will be made in about two weeks. The place selected is Reservoir Square, the site of the late Crystal Palace.

A Mistake.

The Jackson *Mississippian* in speaking of the Western elections, says:

"Now, what is the result? The Republicans have carried every one of them by largely increased majorities."

Not by a good deal, Mr. *Mississippian*! The Republicans have Ohio by 13,000 majority, when they had 20,000 in 1858. They have Iowa, probably by about 1,000, when they had 3,000 in 1858. Their strength is rapidly diminishing in the West, instead of increasing.

Popular Sovereignty in the Territories.

JUDGE DOUGLAS

IN

REPLY TO JUDGE BLACK.

IS SLAVERY A FEDERAL OR LOCAL INSTITUTION?

Since the Attorney General persists in his denial that the territories can legislate for themselves upon the subject of slavery, there is no alternative left to him but the assumption that Congress possesses sovereign power over that question in the territories as claimed by the Republicans in their Philadelphia platform, and by Mr. Buchanan in his letter to Mr. Sanford. Surely the power to legislate upon that and all other rightful subjects of legislation exists somewhere. Every "right of property, private relation, condition or *status*, lawfully existing" in this country, must of necessity be a rightful subject of legislation by *some* legislative body. Where does this sovereign power of legislation for the territories reside? It must be in one of two places—either in Congress or in the territories. It can be nowhere else, and must exist somewhere. The Abolitionists insist that Congress possesses sovereign power over the territories for their government, and, therefore, the North having the majority, should prohibit slavery. The Democrats contend that Congress has no rightful authority to legislate upon this or any other subject affecting the internal polity of the people, and that "the legislative power of the territories extends to all rightful subjects of legislation, consistent with the Constitution." All powers which are federal in their nature are delegated to Congress. Those which are municipal and domestic in their character are "reserved to the States respectively, or to the people,"—"to the States," in respect to all of their inhabitants, and "to the people" of the territories prior to their admission as States. To which class of powers does the question of slavery belong? Is it a federal or municipal institution? If federal, it appertains to the federal government, and must be subject to the legislation of Congress. If municipal, it belongs to the several States and territories, and must be subject to their local legislation. The Constitution of the United States has settled this question. A slave is defined in that instrument to be "a person held to service or labor in one State, *under the laws thereof*;" not under the laws of the United States; not "by virtue of the Constitution of the United States;" not by force of any federal authority but "in one State, under the laws thereof." So the fugitive slave law of 1793, which was modified and continued in force by Congress in 1850 as one of the compromise measures of that year, recognizes slavery as *existing in the territories under the laws thereof*, as follows:

"That when person held to labor in any of the United States, or *in either of the Territories on the North West, or South of the river Ohio*, UNDER THE LAWS THEREOF, shall escape into any other of said States or Territories, &c.

The Supreme Court of the United States have decided that "the state of slavery is deemed to be a mere municipal regulation, founded upon, and limited to the range of the territorial laws." (16 Peters, 611.) Being "a mere municipal regulation," the right to legislate in regard to it would seem to belong to that legislative body which is authorized to legislate upon all rightful subjects of municipal legislation. Can Congress take cognszance of a "mere municipal regulation" in a territory, which, in the language of the Supreme Court, "is founded upon and limited to the range of territorial laws" The Republicans in their Philadelphia platform, say yes; the Democrats, in their Cincinnati platform, say no! What says Judge Black? Where, Mr. Attorney General, does this sovereign power to legislate upon the "municipal regulation" of slavery reside? Is it in Congress or in the territories? If in Congress, has it not been *delegated* to the territory in the organic act under the general grant of "legislative power" over "all rightful subjects of legislation consistent with the Constitution?" If in the territory, has it not been *recognized* by Congress in the same act? Whichever be the source of the power, the conclusion is irresistable that the territories possess the full power, subject, of course, to the Constitution, as in all other cases. If, however, slavery exists in the territories, by force of the Constitution of the United States, as is contended, it is the imperitive duty of Congress to provide for it adequate protection. I can respect the position of those who, so believing, demand federal legislation for the protection of a constitutional right; but what are we to think of those who, while conceding the right, refuse to comply with a constitutional obligation from motives of political expediency? There can be no exception to the rule that a right guaranteed by the Constitution must be protected by law whenever legislation may be essential to its enjoyment.

HAVE CITY CORPORATIONS LARGER POWERS THAN FEDERAL TERRITORIES?

Not content with having stripped the Territories of all power to enact laws for the protection of life, liberty, and property, and for the regulation of their internal polity, all of which appertain to sovereignty, the Attorney General doubts, or pretends to doubt, the people below the size of ordinary city corporations. He says: "Indeed, there is, probably, no city in the United States, whose powers are not larger than those of a federal Territory. What are the powers of an ordinary city corporation? To levy taxes *for municipal purposes*—to provide for the collection of the revenue—to sell private property for the non-payment of taxes—to execute the title, and transfer the possession to the purchaser, in case of forfeiture—to imposes fines and penalties, and inflict punishments for the violation of corporation ordinances. These are some of the powers usually exercised by city corporations. Are not these powers all attributes of sovereignty? Surely he will not deny that they are, since other writers have argued that nothing short of sovereign power can deprive a man of his property. How do these sovereign powers become vested in the city corporations? Probably his answer would be that the several States, within whose jurisdiction these cities are situated, as political sovereignties have the undoubted right to delegate a portion of their sovereign power to those municipal corporations. The answer is satisfactory thus far; but it must be remembered that some of these cities are situated in the Territories, beyond the jurisdiction of any sovereign State, and that their municipal governments exist solely by virtue of territorial authority. Where do the city corporations in the Territories get the sovereign power to lay out and open streets through private property—to condemn the land and divest the owner of his title without his consent and against his protest? Where do they get the power to impose taxes upon the adjoining lands to pay the cost of grading and paving the streets, and to sell the lands, and transfer the title and possession to the purchaser for the non-payment of taxes? These things are being done constantly in Leavenworth, Omaha, Santa Fe, and indeed, in all the territorial cities. Where do they get the power? for surely it pertains to sovereignty. From the Territorial governments? We are told that they "have no attributes of sovereignty about them." It is not satisfactory to tell us that these city governments have "larger powers than those of the Federal Territories," by whose authority they were created and hold their existence, unless we are informed from what source they derive those "larger powers." Does the creature possess larger powers than the creator? Does the stream rise higher than its source?

Here, again, the Attorney General is driven into a position where he is compelled to abandon his ground, that the Territories "have no attribute of sovereignty about them," and acknowledge that they have legislative powers at least to the extent of creating city corporations, and delegating to them the sovereign power of taxation for municipal purposes, and divesting the title to private property for non-payment of taxes, or pronounce the whole system of territorial legislation unconstitutional and void, and deny their power to make laws upon any subject whatever, and finally to fall back on the abolition platform, and assert that Congress possesses sovereign power over the Territories for their government in all cases whatsoever.

DO THE CITIZENS OF THE STATES FORFEIT THEIR INHERENT RIGHT OF SELF-GOVERNMENT BY REMOVING INTO THE TERRITORIES OF THE UNITED STATES.

Who are the people of the Territories that they "have no attributes of sovereignty about them?" They are emigrants, mostly, from the several States of the Union. It is conceded that the people of each State possess the inherent right of self-government in respect to all of their internal affairs. The question then arises, if citizens of Virginia possess this inherent right while they remain in that State, whether they forfeit it by removing to a territory of the United States? They certainly do not forfeit it, unless there is something in the Constitution of the United States which divests them of it. Is there anything in the Constitution which deprives the citizens of the several States of their inherent right of self-government the moment they remove to a Territory? The only provision which has any bearing upon this subject is the 10th amendment, which provides that all powers not granted to Congress nor prohibited to the States are "reserved to the States respectively, or to the people." Inasmuch as the right to govern the people of the Territories, in relation to their internal polity, is not delegated to Congress, it is necessarily follows that it is "reserved to the people" until they become a State, and from that period to the new State, in the same manner as to the other "States respectively." This right of self-government, being a political right, cannot be exercised by the people until they are formed and organized into a politicl community. By the Constitution it is the right and duty of Congress to organize the people of the Territories into political communities, and consequently, the people of the Territories cannot exercise the right of self government until Congress shall have determined that they have people enough to constitute a political community—that they are capable of self-government—and may safely be intrusted with legislative power over all rightful subjects of legislation consistent with the constitution. When Congress shall have determined all these questions in the affirmative, by organizing the people of a territory into a political community, with a legislature of their own election, the inherent right of self-government attaches to the people of the Territory in pursuance of the organic act, and "extends to all rightful subjects of legislation consistent with the Constitution." If this conclusion be not correct, it necessarily follows that people of the States forfeit all their inherent power of self-government the moment they cross the State line and enter a Territory of the United States. By what authority are these inherent rights divested? There can be no other power or paramount authority than the Constitution of the United States. Does that instrument forfeit or divest the right of the people to exercise the inherent power of self-government anywhere, except in the District of Columbia and such other places as are expressly provided for in the Constitution? On the contrary, it expressly recognizes and reserves the right not only "to the States respectively but to the people." Where then, is the authority for saying that the people of the several States forfeit and become divested of all their political rights and inherent powers of self-government the moment they cross a State line and enter a Territory of the United States? It certainly cannot be found in the Constitution.

THE JEFFERSONIAN PLAN OF GOVERNMENT FOR THE TERRITORIES.

Despairing, however, of being able to make the Attorney General comprehend the distinction between independent sovereign States, which have the power to make their own constitutions and establish their own governments and dependent colonies or territories, which have the right to govern themselves in respect to their internal polity, in conformity to the organic law by which they were established, I will proceed to notice his contradiction of my positive statement that the Jeffersonian plan of government for the Territories was adopted by the Congress of the Confederation on the 23d day of April, 1784. He has truly a summary mode of disposing of important historical facts when they stand in the way of of his line of argument, which is peculiar to himself. Are the people of the United States prepared to believe that their learned Attorney General would be so reckless as to deny a well-known historical fact which appears of record, even when referring to the journal for the day on which it had stated the event to have taken place? However this may be, the truth remains as stated in *Harper*, that the Jeffersonian plan was adopted by Congress on the 23d day of April, 1784, the assertion of Judge Black to the contrary notwithstanding. By reference to the fourth volume of the printed journals of the Congress of the Confederation, on page three hundred and seventy-eight, will be found the following entry:

"Congress resumed the consideration of the report of a committee on a plan for a temporary government of the Western Territory.

"A motion was made by Mr. Gerry, seconded by Mr. Williamson, to commit the report by striking after the words 'but not of voting,' the following clause:

"'That measures inconsistent with the principles of the confederation, and necessary for the preservation of peace and good order among the settlers in any of the said new States until they shall become a temporary government as aforesaid, may, from time to time, be taken by the United States in Congress assembled.'

The precise language of this amendment should be carefully noted. It confers, and at the same time defines and limits, *the only power* which it was deemed wise and safe at that day to permit Congress to exercise over the Territories of "New States" as they were then called to wit: 1st, that they should only exercise such powers as were "necessary for the preservation of peace and good order among the settlers;" and 2d, that even those powers should only be exercised by Congress over the settlers "until they shall assume a temporary government as aforesaid."

So it appears that from the day that the Territory was organized under a temporary government, with a legislature elected by the resident inhabitants, the power of Congress, even "for the preservation of peace and good order among the settlers," ceased; and, the people thereof were left perfectly free to form and regulate their domestic institutions in their own way, subject only to "the principles of the confederation," which conferred on Congress no power over the domestic concerns and internal polity of the people, neither in the States nor in the Territories.

Now let us see whether it be true, as asserted by Judge Black, that this Jeffersonian plan "was *rejected by Congress* and never afterwards referred to by Mr. Jefferson himself."

On the next page, three hundred and seventy-nine, of the same volume of the journal, will be found the following entry:

"The amendment of Mr. Gerry being adopted, the report as amended was agreed to as follows:—Here the journal contains the entire Jeffersonian plan, the substance of which, was enacted in invariable in *Harper*. On the next page, the rejection of the Jeffersonian plan, will be found the following entry:

"On the question to agree to the report as amended, it was agreed in the affirmative:

N. Hampshire—Mr. Foster	Ay.	Ay.
	Blanchard	Ay.
Massachusetts—Mr. Gerry	Ay.	Ay.
	Partridge	Ay.
Rhode Island—Mr. Ellery	Ay.	Ay.
	Howell	Ay.
Pennsylvania—Mr. Mifflin	Ay.	Ay.
	Montgomery	Ay.
	Hand	Ay.
Virginia—Mr. Jefferson	Ay.	Ay.
	Mercer	Ay.
	Monroe	Ay.
Connecticut—Mr. Sherman	Ay.	Ay.
	Wadsworth	Ay.
New York—Mr. De Witt	Ay.	Ay.
	Paine	Ay.
New Jersey—Mr. Beatty	Ay.	Ay.
	Dick	Ay.
Maryland—Mr. Stone	Ay.	Ay.
	Chase	Ay.
North Carolina—Mr. Williamson	Ay.	Ay.
	Spaight	Ay.
South Carolina—Mr. Read	No.	No.
	Beresford	No.

"So it was resolved in the affirmative."

Thus it appears by the journal that the Jeffersonian plan of government for the Territories, instead of having been "rejected by Congress," was actually adopted by a vote of ten States out of the eleven, and by the voice of twenty-two members out of the twenty-four present.

The importance of destroying the authority of this measure, and of the almost unanimous vote of the States and of the members of Congress by which it was adopted, is apparent when we consider that even the Attorney General of the United States would feel some delicacy in charging Thomas Jefferson and his illustrious associates with devising a scheme of "legislative robbery"—a *project* "to license a band of marauders to despoil the emigrants crossing their territory,"—a measure for "the confiscation of private property" and seizing it "for purposes of lucre or malice!" It will be observed that this error in respect to the rejection of the Jeffersonian plan is not corrected by Judge Black in his appendix.

CONFISCATION OF PRIVATE PROPERTY—POWERS OF A CONSTITUTIONAL CONVENTION IN A TERRITORY.

In respect to the painful apprehensions which afflict the Attorney General, that if we concede to the Territories all the rights of self government in respect to their internal polity, they may confiscate all the private property within their limits, and "may order the miners to give up every ounce of gold that has been dug at Pike's Peak," I have only to say that the Supreme Court of the United States in the Dred Scott case, have decided that under the Constitution of the United States a man cannot be deprived of life, liberty or property in a Territory without due process of law; nor can private property be taken for public uses in a Territory without just compensation; and that I approve of the decision.

In regard to his declaration "that no such power is vested in a territorial legislature, and that those who desire to confiscate private property of any kind *must wait until they get a constitutional convention*, or the machinery of a State government in their hands," I have to say that I am not aware that the people of a Territory, when assembled by their representatives in a "constitutional convention, *without the consent of Congress*, for the purpose of subverting the territorial government established by Congress, (as was the case with the Topeka and Lecompton conventions,) has any higher or greater power than when assembled in their legislature in pursuance of the constitution and the act of Congress. Judge Black frequently refers to what he calls "a constitutional convention" of a Territory, (which is nothing more nor less than a body of men assembled under the authority of a territorial legislature, without the consent of Congress, to form a constitution to take the place of an organic act passed by Congress,) as having full and complete sovereign power over the question of slavery and every other subject pertaining to their internal polity, when he denies the same power to the people and legislature of the Territory by whose authority alone the convention has any legal existance or power. What authority can any such "constitutional convention" have except that which it derives from the Legislature which called it into existance, or from the people of the Territory by whom the delegates were elected? If neither the people nor the territorial legislature possess any sovereign power, how can they impart sovereignty to a constitutional convention of their own creation? Suppose, then, the people of a Territory shall "wait until they get a constitutional convention or the machinery of a State government into their hands," without the consent of Congress, as they did at Topeka, and again at Lecompton, in Kansas, what power will they have to "confiscate private property," or to decide the slavery question, or to perform any other act of sovereignty, when we are told that the Territories "have no attribute of sovereignty about them?" I can understand how the territorial legislatures can exercise legislative power over all rightful subjects of legislation in pursuance of the act of Congress and the Constitution; but I confess my inability to comprehend how they can call "a constitutional convention" without the consent of Congress, and subvert the organic law established by Congress, and exercise all the sovreign powers pertaining to a sovereign State, *before* the Territories become States, and when "they have no attribute of sovereignty about them."

DOES SLAVERY EXIST IN THE TERRITORIES BY VIRTUE OF THE CONSTITUTION?

Judge Black says that "The Constitution certainly does not establish slavery in the Territories, nor anywhere else." It must be admitted that my article in Harper's Magazine has had the happy effect of drawing from the Attorney General a declaration as unexpected as it is gratifying to the great body of the democracy, which, if approved and concurred in by "nineteen-twentieths" of the party, as he asserts, will tend in a great measure to restore harmony to its counsels and unity to its action. It is to be presumed that he has not used this language in any equivocal or technical sense, amounting to a mere quibble or play upon words; but that he wishes to be understood as declaring that slavery does not derive its legal existence or validity from the Constitution of the United States, but that the owners of slaves possess the same rights, and no more, under the Constitution, in the several Territories as in each of the States of the Union; and that those rights are not affected *by virtue* of anything in the Constitution, except the provision for the rendition of fugitive slaves, which is the same in the States and Territories.

With this understanding I do not feel disposed to quarrel with Judge Black for his gratuitous assertion that "nobody ever said or thought" that the Constitution established slavery "in the Territories, or anywhere else," nor with Mr. Buchanan for his statement in his Lecompton message to Congress that—

"It has been solemnly adjudged to the highest judicial tribunal by some of the ablest judges, that Kansas *by virtue of* the Constitution of the United States is a slave State, therefore, at this moment as much a slave State as Georgia or South Carolina. *The enacting clause, extended to other subjects, recognizes slavery as a subject of sovereignty. It is the duty of the nation to which it is referred*, and is inadmissable when contrary to its policy or prejudicial to its interests. But it contributes so largely to promote justice between individuals, and to produce a friendly intercourse between the sovereignties to which they belong, that it has been and will continue to be, practically used as *a part of the substance of our laws*. It is truly said that "Christianity," Mormonism, Mohammedanism, Paganism, or any other religion, exists in the Territories *by virtue* of the Constitution; and that therefore Kansas is a slave State in the same sense that Georgia and South Carolina are Christain States, or Mormon States, or Mohammedan States, or Pagan States; that "the Constitution does not establish Christianity," nor Mormonism, nor Mohammedanism, nor Paganism in the Territories; but that "Christianity," and of course Mormonism, and Mohammedanism, and Paganism, "exists there *by virtue* of the Constitution," because when a Christian, or Mormon, or Mohammedan, or Pagan "moves into a Territory, he cannot be prevented from taking his religion along with him, nor can he afterwards be legally molested for making its principles the rule of his faith and practice."

After this luminous exposition of the distinction between being *established* by and *existing by virtue* of the Constitution, I shall, of course, have no more to say upon the subject except to remark that it is beyond my comprehension.

"THE AXIOMATIC PRINCIPLE OF PUBLIC LAW.

Having repudiated the heresy that the Constitution establishes slavery in the territories or anywhere else; and demonstrated that the President did not mean anything when he argued in his special message to Congress that Kansas was as much a slave State as Georgia or South Carolina by virtue of the Constitution of the United States, the Attorney General kindly proceeds to expound, for my benefit, the axiomatic principles of public law as he understands them.

He says:

"It is an axiomatic principle of public law that a right of property, a private relation, condition or *status*, lawfully existing in one State or country, is not changed by the mere removal of the parties to another country, unless the law of that country be in direct conflict with it. For instance: a marriage legally solemnized in France is binding in America; children born in Germany are legitimate here if they are legitimate there; and a merchant who buys goods in New York according to the laws of that State, may carry them to Illinois and hold them there under his contract. It is precisely so with the *status* of a negro carried from one part of the United States to another; the question of his freedom or servitude depends on the law of the place where he came from, and depends on that alone, if there be no conflicting law at the place to which he goes or is taken.

IS IT APPLICABLE TO THE QUESTION OF SLAVERY?

Reserving, for the present, the question how far this "axiomatic principle" is accurately stated, and what limitations have been adjudged to be applicable to it by the Supreme Court of the United States, I will first inquire whether "IT IS PRECISELY SO *with the status of a negro carried from one part of the United States to another.*"

Instead of interposing my individual opinion in opposition to that so boldly expressed by the learned Attorney General, I will quote the language of an eminent American jurist, whose authority is every where acknowledged. Upon this precise point Judge Story, in his Conflict of Laws, p. 105, says:

"*But we know that no such general effect has so practically been attributed to the state of slavery.* There is a unanimity of opinion among foreign jurists and foreign tribunals in giving no effect to the state of slavery of a party, whatever it may have been in the country of his birth or that in which he had been previously domiciled, *unless it is also recognized by the laws of the country where the actual domicile*, and where he is found, and it is sought to be enforced."

After citing various articles, Judge Story proceeds: "In Scotland the like doctrine has been solemnly adjudged. The tribunals of France have adopted the same rule, even in relation to slaves coming from and belonging to their own colonies. This is also the undisputed law of England." It is unnecessary to burden these pages with the long list of authorities cited by Judge Story to prove his assertion that "there is a uniformity among foreign jurists and foreign tribunals" that the law is precisely the reverse of what Judge Black states it to be in respect to slavery. But if he attempts to escape the force of this uniform current of foreign authorities I will test his respect for the Supreme Court of the United States by citing the case of Prigg *vs.* The Commonwealth of Pennsylvania, (16 Peters, p. 611,) in which the court says:

"By the laws of nations, no nation is bound to recognize the state of slavery, as to foreign slaves found within its territorial dominions, when it is in opposition to its policy and institutions, in favor of the subjects of other nations where slavery is recognized. If it does, it is a matter of comity, and not a matter of international right. *The state of Slavery is deemed to be a mere municipal regulation, founded upon and limited to the range of territorial laws.*"

The same doctrine has been held not only by the highest judicial tribunals in most of all the Northern States, but by the Supreme Court of Lousiana, Mississippi, Kentucky, Missouri, North Carolina, and, indeed, nearly, if not all of the Southern States. But I am willing to rest the whole case upon the authority of the Supreme Court of the United States, and to exhort the Attorney General, in his own classical language, only substituting his name for mine, to cease "fighting the judiciary," and treat the courts with "decent respect." "We are called upon to make a contest, at once unnecessary and hopeless, with the judicial authority of the nation. We object to it. 'We will not obey Judge Black when he commands us to assault the Supreme Court of the United States. We believe the court to be right, and Judge Black wrong.'"

If, however, the learned Attorney General shall not be turned from the error of his ways by these words of wisdom from his own pen, I will make another effort to save him, by commending to his especial attention the following paragraph from his own pamphlet:

"In former times a question of constitutional law once decided by the Supreme Court was regarded as settled by all, except that little band of rebald fiddels who meet periodically as Boston to blaspheme the religion, and plot rebellion against the laws of the country."

CAN THE LAWS OF ONE COUNTRY OPERATE IN ANOTHER WITHOUT ITS CONSENT?

Having shown that Judge Black's "axiomatic principle of public law" in respect to the operation of the laws of one State or country within the jurisdiction of another, as defined and expounded by the highest judicial tribunals in this country and Europe, has no application to, and does not include, slavery; but that, on the contrary, "*the state of slavery is deemed to be a mere municipal regulation, founded upon and limited to the range of the territorial laws;*" and in the language of the Constitution itself, exists "*in one State* UNDER THE LAWS THEREOF," and *not by virtue* of the Constitution of the United States, nor of any federal authority, nor of any foreign law, nor any international law, I will proceed to examine how far Judge Black has accurately stated the "axiomatic principle of public law," or the law of the comity of nations, by which "a right of property, a private relation, condition, or *status*, lawfully existing in one State or country, is not changed by the mere removal of the parties to another country, unless the law of that other country be in direct conflict with it."

I shall pursue this inquiry out of respect for the great learning displayed by the Attorney General in his philanthropic purpose of enlightening me upon the subject, and not because it has any bearing on the question at issue, if the decision of the Supreme Court of the United States is to be taken as conclusive evidence, in opposition to the opinion of Judge Black, as to the law of the case. Of course, I express no opinion of my own, since I make it a rule to acquiesce in the decisions of the courts upon all legal questions. In order to have stated the general principle fairly and accurately, Judge Black should have added that whenever the foreign law, or the law of one State is to be enforced in another, it derives its validity from the *consent* of the State or country where it is to be enforced, and *not* from the sovereignty of the State or country from which it came.

The brief space allotted to this reply, already too long, will not permit me to cite, much less quote, the long list of authorities, American English and Continental, upon this point. It may be safely assumed as an incontrovertable principle, that the laws of one country can have no force in any other country without its consent, expressed or *implied*, and that such consent will be implied, and the tacit adoption of the foreign laws, by the government of the country where they are to be enforced, will be is no local law to the contrary, and the foreign law does not contravene its own policy. The whole doctrine of the law of comity of nations, as applicable to the question how far the local law of one State of this Union could be enforced beyond the territorial limits of such State, was fully discussed and deliberately determined in the case of the Bank of Augusta vs. Earle, 13 Peters, p. 519, in which Chief Justice Taney, delivering the opinion of the court, said:

"It would be impossible to enumerate here the instances in which, by the general practice of civilized countries, the laws of the one will, by the comity of nations, be recognized and executed in another, where the rights of individuals are concerned. The laws of contracts made in foreign countries are familiar examples; and the courts of England have long expounded and executed them according to the laws of the place in which they were made—yet slavery was not repugnant to the laws or policy of their own country. *The comity thus extended to other nations is no longer heard of amongst us. It is the law of the nation by which it is enforced*, and is inadmissable when contrary to its policy or prejudicial to its interests. But it contributes so largely to promote justice between individuals, and to produce a friendly intercourse between the sovereignties to which they belong, that it has been, and will continue to be, practically used as *a part of the substance of our laws*. It is truly said that "Christianity," Mormonism, Mohammedanism, Paganism, or any other religion, exists in the Territories *by virtue* of the Constitution; and that therefore Kansas is a slave State in the same sense that Georgia and South Carolina are Christain States, or Mormon States, or Mohammedan States, or Pagan States; that "the Constitution does not establish Christianity," nor Mormonism, nor Mohammedanism, nor Paganism in the Territories; but that "Christianity," and of course Mormonism, and Mohammedanism, and Paganism, "exists there *by virtue* of the Constitution," because when a Christian, or Mormon, or Mohammedan, or Pagan "moves into a Territory, he cannot be prevented from taking his religion along with him, nor can he afterwards be legally molested for making its principles the rule of his faith and practice."

After this luminous exposition of the distinction between being *established* by and *existing by virtue* of the Constitution, I shall, of course, have no more to say upon the subject except to remark that it is beyond my comprehension.

"THE AXIOMATIC PRINCIPLE OF PUBLIC LAW.

Having repudiated the heresy that the Constitution establishes slavery in the territories or anywhere else; and demonstrated that the President did not mean anything when he argued in his special message to Congress that Kansas was as much a slave State as Georgia or South Carolina by virtue of the Constitution of the United States, the Attorney General kindly proceeds to expound, for my benefit, the axiomatic principles of public law as he understands them.

He says:

"It is an axiomatic principle of public law that a right of property, a private relation, condition or *status*, lawfully existing in one State or country, is not changed by the mere removal of the parties to another country, unless the law of that country be in direct conflict with it. For instance: a marriage legally solemnized in France is binding in America; children born in Germany are legitimate here if they are legitimate there; and a merchant who buys goods in New York according to the laws of that State, may carry them to Illinois and hold them there under his contract. It is precisely so with the *status* of a negro carried from one part of the United States to another; the question of his freedom or servitude depends on the law of the place where he came from, and depends on that alone, if there be no conflicting law at the place to which he goes or is taken.

IS IT APPLICABLE TO THE QUESTION OF SLAVERY?

Reserving, for the present, the question how far this "axiomatic principle" is accurately stated, and what limitations have been adjudged to be applicable to it by the Supreme Court of the United States, I will first inquire whether "IT IS PRECISELY SO *with the status of a negro carried from one part of the United States to another.*"

Instead of interposing my individual opinion in opposition to that so boldly expressed by the learned Attorney General, I will quote the language of an eminent American jurist, whose authority is every where acknowledged. Upon this precise point Judge Story, in his Conflict of Laws, p. 105, says:

"*But we know that no such general effect has so practically been attributed to the state of slavery.* There is a unanimity of opinion among foreign jurists and foreign tribunals in giving no effect to the state of slavery of a party, whatever it may have been in the country of his birth or that in which he had been previously domiciled, *unless it is also recognized by the laws of the country where the actual domicile*, and where he is found, and it is sought to be enforced."

After citing various articles, Judge Story proceeds: "In Scotland the like doctrine has been solemnly adjudged. The tribunals of France have adopted the same rule, even in relation to slaves coming from and belonging to their own colonies. This is also the undisputed law of England." It is unnecessary to burden these pages with the long list of authorities cited by Judge Story to prove his assertion that "there is a uniformity among foreign jurists and foreign tribunals" that the law is precisely the reverse of what Judge Black states it to be in respect to slavery. But if he attempts to escape the force of this uniform current of foreign authorities I will test his respect for the Supreme Court of the United States by citing the case of Prigg *vs.* The Commonwealth of Pennsylvania, (16 Peters, p. 611,) in which the court says:

"By the laws of nations, no nation is bound to recognize the state of slavery, as to foreign slaves found within its territorial dominions, when it is in opposition to its policy and institutions, in favor of the subjects of other nations where slavery is recognized. If it does, it is a matter of comity, and not a matter of international right. *The state of Slavery is deemed to be a mere municipal regulation, founded upon and limited to the range of territorial laws.*"

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