

THE CIVIL RIGHTS BILL.

Senator Trumbull on the Veto.

The Senate took up the President's veto message, and Senator Trumbull, of Illinois, made an able and powerful speech against it, and in support of the bill. We print below a full report of the principal points of this speech. Mr. Trumbull said:

Mr. President I fully share with the President of the United States in the regret expressed that he is unable to sign the bill to protect all persons in the United States in their civil rights, and to furnish the means of their vindication. I regret it on my own account, because of the disappointment; because the just expectations raised when the bill was presented to the President, before its introduction into the Senate, have been disappointed. I regret it on the President's account, because it is calculated to alienate him from those who elevated him to power, and who gladly have rallied around his administration to sustain him in the principles upon which he was elected. But, above all, sir, I regret it for liberty's sake, to secure which to ourselves and our posterity this government was founded.

RIGHTS OF A CITIZEN OF THE UNITED STATES.

But if the bill is unconstitutional and unjust to the whole people, I would not have the President sign it. That its provisions are neither unjust to the whole, nor any portion of the people, nor unconstitutional, I shall endeavor to show by a candid and dispassionate review of the President's various objections. He begins these objections with the very first lines of the bill, which declares that all persons born in the United States, and not subject to any foreign power, except Indians not taxed, are citizens of the United States. The bill originally introduced, did not contain this provision. It was believed by myself and many others, that all native-born persons, since the abolition of slavery, were citizens of the United States. This was the official opinion of Mr. Bates, the Attorney-General of Mr. Lincoln's administration—the opinion adopted by his administration, and acted upon since by all departments of the executive government, including the Secretary of State, who has issued passports to persons of color, recognizing them as citizens. It was the opinion expressed by Mr. Marcy, when Secretary of State, that all persons born in the United States were citizens of the United States; not referring, of course, to slaves, slavery at that time existing in the country.

The President does not object to this declaration in the bill as unconstitutional. He does, however, say that it does not purport to declare or confer any other right of citizenship than federal citizenship. It does not purport, he says, to give the classes of persons any status as citizens of states, except that which may result from their status as citizens of the United States. The power, he adds, to confer the right of State citizenship is just as exclusively with the several states as the power to declare the right of federal citizenship is with Congress.

WHO MAY MAKE CITIZENS.

Now we all know that no State has the authority to make a citizen of the United States. The Constitution of the United States vests with Congress the sole power of naturalization, and it may make a citizen of a foreigner; but no State can make a citizen of the United States of a foreigner. But, it is true, sir, that when a person becomes a citizen of the United States, he is not also a citizen of the State where he may be residing? On this point I will refer to a decision pronounced by the Supreme Court of the United States, delivered by Chief Justice Marshall, the most eminent jurist who ever sat upon the American bench. In the case of Gassé against Ballow, reported in the sixth volume of Peters' Reports, the Chief Justice, in delivering the opinion of the Court, says: "The defendant in error is alleged, in the proceedings, to be a citizen of the United States, naturalized in Louisiana, and residing there. This is equivalent to an averment that he is a citizen of that State. A citizen of the United States residing in any State of the Union is a citizen of that State." This was the only point in the case. This is the opinion of the highest tribunal in the country, pronounced by the most eminent man who ever sat upon the bench in America.

Mr. Reverdy Johnson—will the Senator give me the page?

Mr. Trumbull—Page 761. But, sir, unless this authority is to be disregarded, the President of the United States is mistaken in his law. It is not true that when a man is made a citizen of the United States he is not a citizen of every State. The President next alleges that the right of federal citizenship, thus to be conferred on the several excepted races before mentioned, is now for the first time proposed to be given—by law. Now, sir, this is a mistake—not of the law, but a misapprehension of fact—and it will appear by references, to which I shall call the attention of the Senate in a moment, that the President's facts are as bad as his law.

COLLECTIVE NATURALIZATION.

If the senator from Maryland (Mr. Johnson) wishes to take a note of the authority, he will find it in Lawrence's Wheaton on International Law, and various statutes of the United States on this subject. I read from page 897. There have been in the United States several cases of collective naturalization by the annexation of territories. By the third article of the First Convention of April 30, 1800, with France, for the cession

Louisiana, it is provided that the inhabitants of the ceded territories to be incorporated into the United States should be admitted as soon as possible, according to the principles of the federal Constitution, to the enjoyment of the rights, privileges and immunities of the citizens of the United States. A provision to the same effect is to be found in the sixth article of the treaty with Spain for the purchase of Florida, and in the eighth article of the treaty with Spain for the purchase of Louisiana, and in the eighth article of the annexation of Texas, under a resolution of Congress of March, 1845, on its admission into the Union on an equal footing with other States. "Collective naturalization," says the authority from which I quote, "may also take place of a class of persons native of the country," or otherwise, who, without any act on the part of the individuals, may be made citizens.

In the United States it is incorrect to suppose that aliens, as opposed to citizens implies foreigners. As respects the country, Indians are the subjects of the United States, but they are not therefore citizens nor can they become citizens under the existing naturalization laws; but they can be made citizens by some competent act of the general government, by treaty or otherwise. By these various treaties, resolutions, and acts of Congress it will be observed that Frenchmen, Spaniards, Mexicans and Indians have all been made citizens of the United States—some of the very classes of persons spoken of in this bill, and yet the President tells us that this right of federal citizenship—as if there was such a thing as federal citizenship as contra-distinguished from State citizenship—is now for the first time proposed to be given by law.

A DECLARATORY ACT.

If, says the President, as is claimed by many persons, all who are native born are already, by virtue of the Constitution, citizens of the United States, the passage of the pending bill cannot be necessary to make them such. But is the President to learn now for the first time that principle to be found in the very horn books of the law, that an act declaring what a law is, is one of the most common acts passed by legislative bodies? When there is no question as to what the law is, for their greater certainty, it is the most common thing in the world to pass a statute declaring its object. My opinion is, and such was the opinion of the Attorney General and of the present Secretary of State, which was the opinion of Mr. Lincoln's administration in all its departments and such I believe to be the prevailing opinion in the United States. But some dispute this: hence, for greater certainty it is proposed to pass this law. It is now made an objection to the passage of this law, and a reason given by the President why he cannot approve it, that it is a declaratory act.

THE OBJECTION THAT ELEVEN STATES ARE UNREPRESENTED.

But if such is not the law, says the President, a grave question presents itself. Whether, when eleven of the thirty-six States are unrepresented in Congress, at the present time, it is sound policy to make our entire colored population, and all other excepted classes, citizens of the United States. This is not a standing objection, it is not urged it seems, against all bills; for the President tells us in this message that he has signed some forty bills that have been presented to him. Why is it made an objection to this bill? The President states no objections as applicable to this particular bill. It is a general objection which he makes applicable to all bills. But if there is anything in it, no bill can pass the Congress of the United States until these states are represented. Well, sir, whose fault is it the eleven states are not represented? Whose fault is it that twenty-five loyal States, which have stood by the Union and the Constitution, are to be deprived of their right to legislate? Sir, it is not the fault of the twenty-five loyal States, and if the reason urged by the President is a good one now, it has been a good one for all time. If the fact of some states having rebelled against the government is to take from the government the right to legislate, why, sir, then the criminal is to take advantage of his crime, and the innocent are to be punished for the guilty.

THE PEACE PROCLAMATION.

Within a few days the President has issued a proclamation, not of peace, as the Senator from Nevada (Mr. Stewart) seems to suppose; by no means. Not a proclamation that the rebellion is over. The President does not tell us that Texas, one of the States in rebellion, is in a condition to be represented here. Sir, if we had to wait for the eleven States, must we not wait for Texas? The same principle would require us to wait for Texas, and she has not yet recognized her State government. And those States which have reorganized have not yet been recognized as having a republican form of government entitling them to representatives. The representatives they have chosen from the most of those States that have undertaken to reorganize are persons fresh from the rebel Congress and from the rebel army, men who could not be admitted here—could not take the requisite oath to entitle them to their seats. And are we to wait, and to abstain from all legislation of a general character, are the loyal people of this country to be compelled to wait for necessary legislation, until these States shall be admitted to representation here—when they refuse to send men here except those whose hands are dripping with the blood of loyal men? Are the vice president of the rebel Confederacy and his colleagues, one of the senators in the rebel Congress, to come here and legislate for the loyal people of this country? are the

men who organized the rebel government that carried on a four year's war, as the result of which this nation has had to spend four thousand millions of dollars, and as a consequence of which, more than a quarter of a million of men—patriotic heroes—have laid down their lives upon the battlefield, and in the hospital—are these men to come here to legislate for the loyal people of this country?

HOW STATES ARE REPRESENTED IN CONGRESS.

Sir, these States can only be represented through State organizations. The members of this body can only be elected by State legislatures. Members of the other House can only be elected in pursuance of any representation in either House of Congress, it must be determined whether there is a State government; whether there is a State legislature having authority to elect senators, and having authority to provide laws under which representatives may be elected. There was a time certainly, when there was no such legislature in any of the eleven States. There was a time when the only kind of government in any of them was hostile to the United States, and had sworn allegiance to a government hostile to this. Will anybody pretend that while a State government was in their hands it was entitled to representation in either House of Congress? If not, shall we not inquire whether it has got out of those hands into the hands of loyal men?

Sir, the proposition that no bill is to be passed because certain States are unrepresented, when it is their own fault that they are unrepresented, would be utterly destructive of the government.

THE BILL DOES NOT DISCRIMINATE.

But the President tells us that the bill in effect proposes to discriminate against large numbers of intelligent, worthy and patriotic foreigners, and in favor of the negro.

Mr. Trumbull proceeded to show that the bill on the contrary, provided against discriminating or partial legislation, that being its special object. He added:

AN INTERESTING QUOTATION.

But, Mr. President, perhaps the best answer to this objection, that the bill proposes to make citizens of Chinese and gypsies, and this reference to foreigners, is to be found in a speech delivered in this body by a senator occupying, I think, the seat now occupied across the chamber by my friend from Oregon (Mr. Williams) less than six years ago, in reply to a veto message sent to this body by Mr. Buchanan, the then President of the United States, returning with his objections what was known as the Homestead bill. On that occasion the senator to whom I allude said:

"This idea of poor foreigners, somehow or other, appears to haunt the imagination of a great many. I am constrained to say that I look upon this objection to the bill as a mere quibble on the part of the President, and as being hard pressed for some excuse for withholding his approval of the measure. His allusion to the foreigners in this connection looks to me more like an ad captivum of the more politician or demagogue than a grave and sound reason to be offered by the President of the United States in a veto message upon so important a measure as the Homestead bill."

That is the language of Senator Andrew Johnson. [Laughter.] It is perhaps the best answer, though I should hardly have ventured to use such harsh language in reference to the President of the United States, as to accuse him of quibbling and demagoguing and playing the more politician in sending a veto message to the Congress of the United States. The President also makes some other allusions of the same character to this bill; for instance, he speaks of the impropriety of marriages between whites and blacks; he then goes on to say: "I don't say that this bill repeals State laws on the subject of marriages." Well, then, for what purpose is the suggestion introduced in the veto message? Not surely as an ad captivum argument, to excite prejudice, or as the argument of a demagogue and politician?

THE PRESIDENT'S VETO AND THE PRESIDENT'S ACTS.

The President further says: "If it be granted that Congress can repeal all State laws discriminating between the whites and the blacks on the subjects covered by this bill, why it may be asked, may not Congress repeal in the same way all State laws discriminating between the two races on the subjects of suffrage and office? If Congress can declare by law who shall hold land who shall testify, who shall have capacity to make a contract in a State, then Congress can also by law declare who, without regard to race or color shall have the right to sit as a juror or as judge, to hold any office, and finally, to vote in every State and territory of the United States." Perhaps the best answer, Mr. President, I could give to this would be the answer of Andrew Johnson himself. He undertook to reorganize State governments in the disloyal States. When he did so, to whom did he extend the right of suffrage? To the blacks? No, sir. But he extended the right of suffrage to those authorized to vote under the laws of the States before the rebellion. When urged to allow the loyal blacks to vote, what was his answer? That he had no power; that it was unconstitutional. But he had power to protect them in their civil rights, and he did protect them in their rights.

Then, if it be true that protection in civil rights carries with it the right of suffrage, what becomes of the position he

assumed when he extended civil rights to the negro all through the South, as I shall presently show, by orders issued by his authority, and yet refused to give them the right of suffrage on the ground that he had no constitutional power to do it—that it was a right vested in the States with which he could not interfere. But, sir, the grant of civil rights does not, and never did, in this country, carry with it political rights, or more properly speaking, political privileges. A man may be a citizen of this country without the right to vote, or without the right to hold office.

The right of American citizenship means something. It does not mean in the case of a foreigner that when he is naturalized he is to be left to the mercy of State legislatures. He has a right, when duly naturalized, to go into any State of the United States, and submitting to its laws, reside there, and the United States would protect him in that right. It would protect a citizen of the United States not only in one of the States of the Union, but it will protect him in foreign lands. \* \* Equality of right is the basis of the Commonwealth, as is said by Kent himself. In speaking of these rights, he says that the natural rights of individuals may be said to be included in the right of personal security, the right of personal liberty, and the right to acquire and enjoy property. These rights have mostly been considered and frequently declared by the people of this country, to be natural, inherent and inalienable.

This government which would go to war to protect its meanest citizen or inhabitant in any foreign land, whose rights were unjustly encroached upon, has certainly some power to protect its own citizens in their own country.

THE SECOND SECTION OF THE CIVIL RIGHTS BILL.

I pass from the consideration of this first section of the bill to the second, which is objected to by the President as affording discriminating protection to the colored persons.

Mr. Trumbull read the section, and remarked that it was plainly a remedial measure, whose object and effect was only to place all men upon the same level, as to certain rights.

JUSTIFICATION OF JUDGES—AN IMPORTANT PRECEDENT.

But it is said that, under this provision judges of the court may be punished, and ministerial officers may be punished, who are engaged in the execution of any such statute as this, and this is made an objection to the law. I assert that the ministerial officer and the judge, if he acts viciously and corruptly in the execution of an illegal law, may and ought to be punished, and it is no novel provision to put in a statute book. Very soon after the organization of this government, in the first year of its existence, as long ago as 1790, the Congress of the United States provided for punishing men, who, under the color of State laws, violated the laws of the United States. I will read from the 26th section of an act passed in 1790: "In case any person or persons shall sue for or prosecute any such writ or process, such person or persons, and all attorneys and solicitors prosecuting in such case, and all officers executing any such writ or process and being convicted thereof, shall be deemed violators of the laws of nations and disturbers of the public repose, and shall be imprisoned not exceeding three years or fined \$1,000, at the discretion of the court."

Mr. Trumbull went on to show, by the President's own acts and those of his authorized and special agents, that they had seen and recognized the dangers and injustice against which the Civil Rights bill is intended to provide. He showed that this bill only sought to regulate by civil power what the President had, in numerous instances done and was doing by military arm, and on his own responsibility, without authority or right, except that of force. He showed that the details of the bill were copied from the Fugitive Slave Law, whose machinery was always held to be constitutional; that the seventh and eighth sections objected to by the President, were taken literally from old statutes, which had never before been objected to; and, this done, he reviewed the course of the President, and showed that on almost every occasion he had acted in the spirit of the very bill which he now vetoes.

THE PRESIDENT'S RELATION TO THE BILL.

Mr. Trumbull made the following extraordinary statement:

Congress in the passage of the bill under consideration, sought no controversy with the President. So far from it, the bill was proposed with a view to carry out what men supposed to be the views of the President, and was submitted to him before its introduction into the Senate. I am about to relate private declarations of the President, but it is right that the American people should know that the controversy which exists between him and Congress in reference to this measure is of his own seeking.

Soon after Congress met it became apparent that there was a difference of opinion between the President and some members of Congress in regard to the condition of the rebellious States and the rights to be secured to freedmen. The President in his annual message had denied the constitutional power of the general government to extend the elective franchise to negroes, but he was equally decided

in his assertion of the right of every man to life, liberty, and the pursuit of happiness. This was his language: "But while I have no doubt that now, after the close of the war, it is not competent for the general government to extend the elective franchise in the several States, it is equally clear that good faith requires the security of the freedmen in their liberty and their property."

Feeling the importance of harmonious action between the different departments of the government, and an anxious desire to sustain the President for whom I had always entertained the highest respect, I had frequent interviews with him during the early part of the session. Without mentioning anything said by him, I may with perfect propriety say that acting from considerations which I have stated, and believing that the passage of a law by Congress, securing equality in civil rights when denied by State authorities to freedmen and all other inhabitants of the United States, would do much to relieve anxiety in the North, to induce the Southern States to secure these rights by their own action, and thereby to remove many of the obstacles to an early reconstruction, I prepared the bill substantially as it now returns with the President's objections. After the bill was introduced and printed, a copy was furnished him, and at a subsequent period, when it was reported that he was hesitating about signing the Freedmen's Bureau bill he was informed of the condition of the Civil Rights bill then pending in the house, and a hope was expressed that if he had any objections to any of its provisions, he would make them known to his friends, that they might be remedied if not destructive to the measure; that there was believed to be no disposition on the part of Congress, and certainly none on my part to have bills presented to him which he could not approve. He never indicated to me, nor so far as I know, to any of my friends, the least objection to any of the provisions of the bill till after its passage.

After reciting various acts of the President in the Southern States, Mr. Trumbull said: Is it Congress, by the passing of this bill, or the President, who without laws is arrogating to himself far greater powers by virtue of his war power. He told us in his annual message that the war was over, and whether over or not, no incidental powers are vested by the Constitution in the President either as President or commander-in-chief of the army. The instrument gives Congress power to make all laws necessary and proper for carrying into execution all powers vested by the Constitution in the government of the United States, or in any department or officer thereof. The President is required in carrying out his powers to act in obedience to law, the very thing which he refuses to do.

Finally, Mr. Trumbull said:

But, sir, from out of the mouth of Senator Andrew Johnson I will prove that President Andrew Johnson has violated the spirit of the Constitution, if not the letter, in vetoing the bill. It will be remembered that the bill passed both Houses of Congress by more than a two-thirds majority, the vote in the Senate being, yeas 33 to nays 12; in the House, yeas 111, nays 38. I will read from the remarks of Senator Andrew Johnson on the veto of the Homestead bill by Mr. Buchanan: "The President of the United States presumes—yes, sir, I say, presumes—to dictate to the American people and to the two Houses of Congress, in violation of the spirit, if not the letter, of the Constitution, that this measure shall not become a law. Why do I say this? I ask, is there any difference in the spirit of the Constitution, whether a measure is sanctioned by a two-thirds vote before its passage or afterward? When a measure has been vetoed by the President, the Constitution requires that it shall be reconsidered and passed by a two-thirds vote in order to become a law. But here, in the teeth of the Executive, there was a two-thirds vote in favor of this bill. The vote was thirty-six to two, in this body. The two Houses have said that this measure is constitutional and right. In the other House, reflecting the popular sentiment of the nation, the vote was 112 to 51—ten more than the two-thirds majority which the Constitution requires; and when there is a two-thirds vote for a measure, I say it is against the spirit of the Constitution for the Executive to say, 'No, you shall not have this measure; I will take all the chances of restoring it.' Apply the language to the facts connected with this bill, and then say who has violated the spirit of the Constitution.

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