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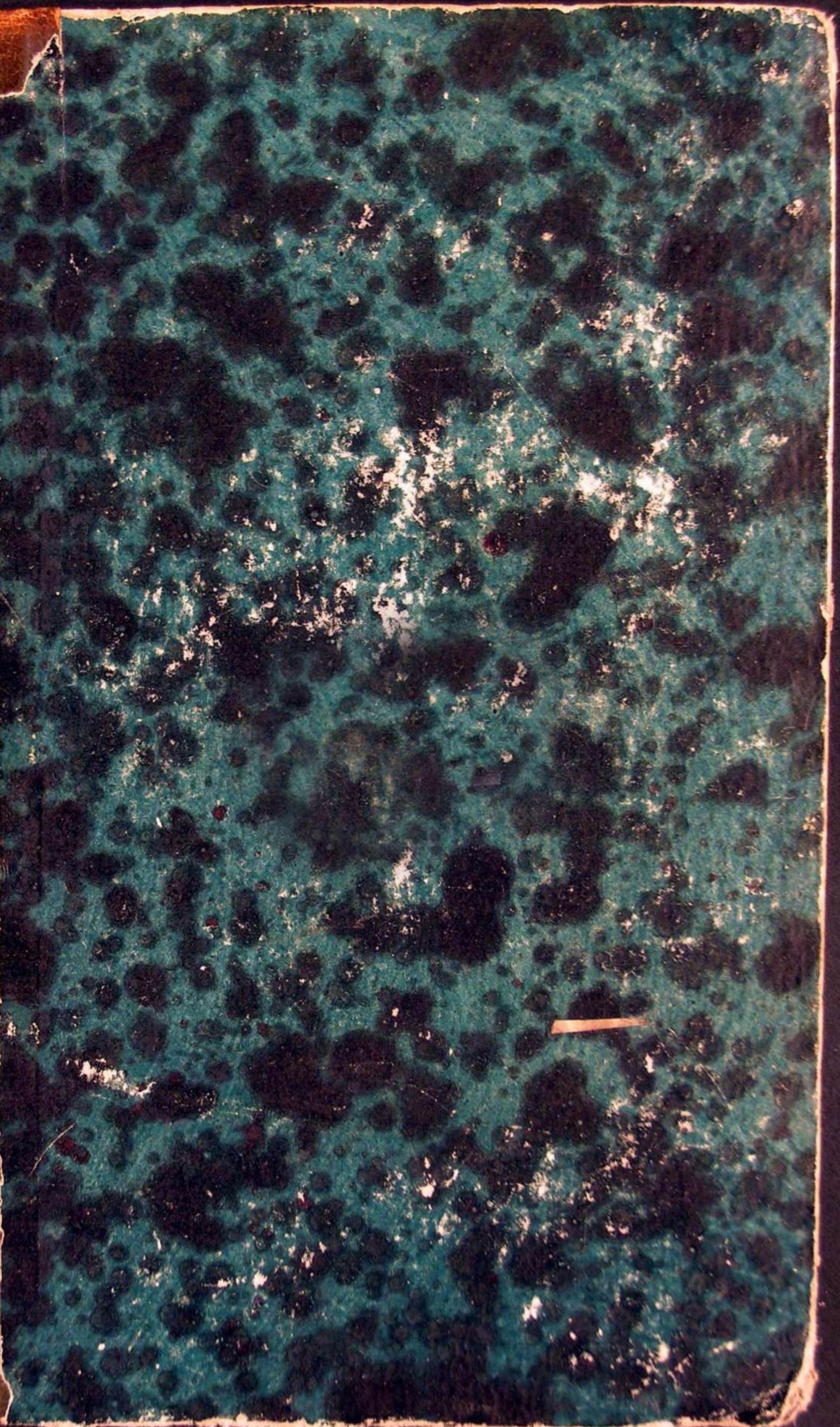
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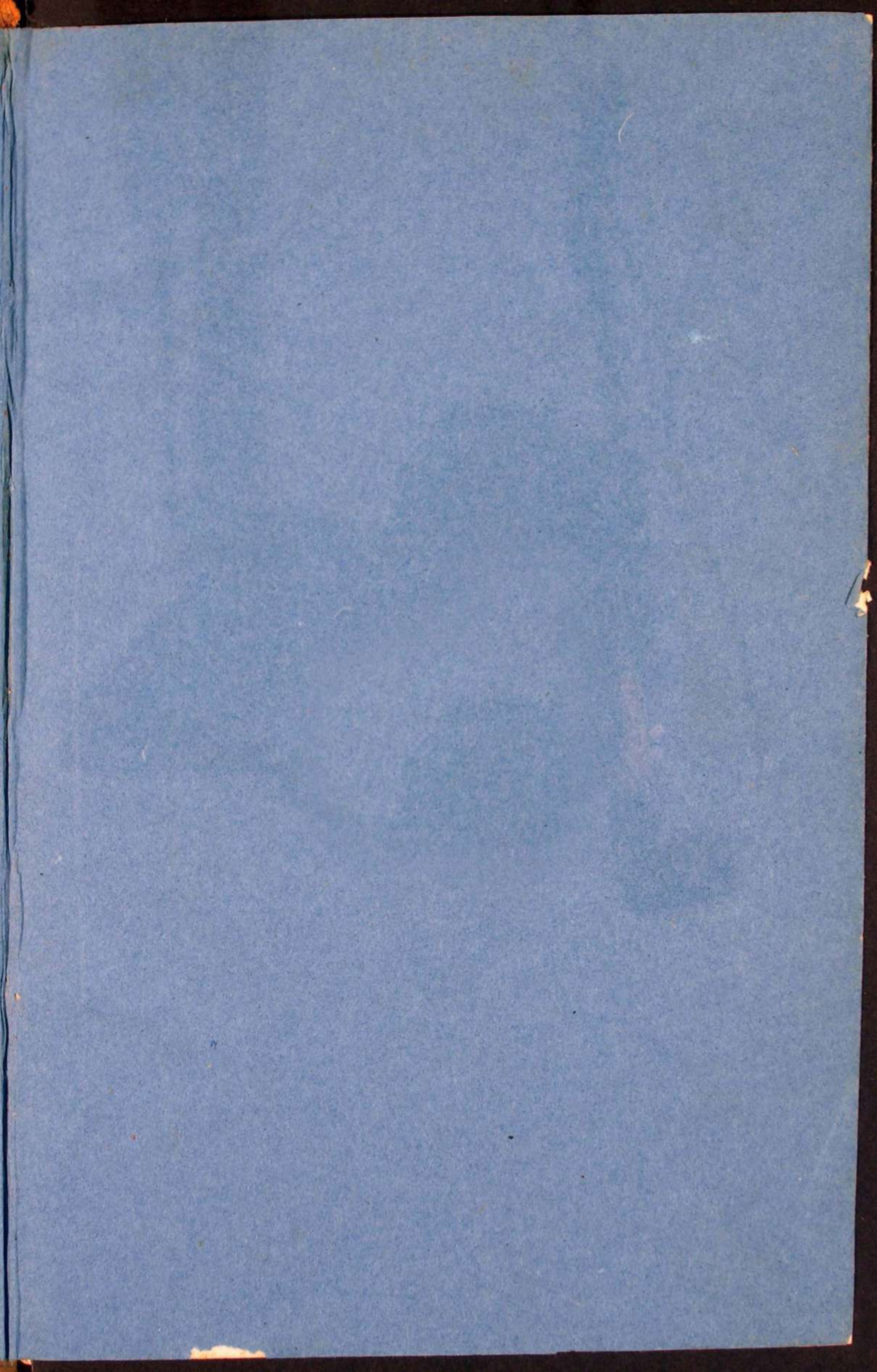
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Piezas que contiene este Volumen.

- Speech of the hon. Henry Clay.  
The first book of the Iliad of Homer.  
Jenerife en 1492. Drama historico.  
List of the animals in the gardens of the Zoologi-  
cal Society. (1833)  
Letter to the Rev. D.<sup>r</sup> Priestley; in which the  
author attempts to prove, by one prescripti-  
ve argument, that the divinity of Jesus-  
Christ was a primitive tenet of christia-  
nity.  
Letter to a member of Parliament &c.  
Lettres d'un militaire sur les changemens  
qui s'annoncent dans le systeme politique de l'  
Europe (1787)  
Mis ocurrencias con el Duque del Parque desde que  
pisé las islas Canarias hasta su regreso á la  
Peninsula (1812)



Objeciones satisfactorias al folleto dado á luz  
por D. José Alvarez de Toledo. (1812.)

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# S P E E C H

MR. CLAY'S COMPROMISE RESOLUTIONS  
OF THE  
SUBMITTED JANUARY 29TH. 1850.

## HON. HENRY CLAY,

### OF KENTUCKY,

#### On taking up his Compromise Resolutions on the Subject of Slavery.

DELIVERED IN SENATE, FEB. 5TH & 6TH, 1850.



(As Reported by the National Intelligencer.)

NEW YORK

STRINGER & TOWNSEND, 222 BROADWAY,

1850.



S P E E C H



## MR. CLAY'S COMPROMISE RESOLUTIONS.

SUBMITTED JANUARY 29TH. 1850.

PREAMBLE.—It being desirable for the peace, concord, and harmony of the Union of these States, to settle and adjust amicably all questions of controversy between them arising out of the institution of Slavery, upon a fair equality and just basis—therefore—

First—RESOLVED, That California, with suitable boundaries, ought, upon her application, to be admitted as one of the States of this Union, without the imposition by Congress of any restriction to the exclusion or introduction of Slavery within those boundaries.

2d—RESOLVED, That as Slavery does not exist by law, and is not likely to be introduced into any of the territory acquired by the United States from the Republic of Mexico, it is inexpedient for Congress to provide, by law, either for its introduction into, or its exclusion from, any part of the said territory; and that appropriate territorial Governments ought to be established, by Congress, in all of the said territory not assigned as the boundaries of the proposed State of California, without the addition of any restriction or condition on the subject of Slavery.

3d—RESOLVED, That the Western boundary of the State of Texas ought to be fixed on the Rio del Norte, commencing one marine league from its mouth, and running up that river to the Southern line of New Mexico, thence with that line Eastwardly, and continuing in the same direction, to the line as established between the United States and Spain, excluding any portion of New Mexico, whether lying on the East or West of that river.

4th—RESOLVED, That it be proposed to the State of Texas, that the United States will provide for the payment of all that portion of all the legitimate and bona fide public debts of that State contracted prior to its annexation to the United States, and for which the duties on foreign imports were pledged by the said State to its creditors, not exceeding the sum of ——— dollars, in consideration of the duties, as pledged, having been no longer applicable to that object after the said annexation, but having thenceforward become payable to the United States, and upon the condition also that the said State shall, by some solemn and authentic act of her Legislature, or of a convention, relinquish to the United States any claim which it has to any part of New Mexico.

5th—RESOLVED, That it is inexpedient to abolish Slavery in the District of Columbia, while that institution continues to exist in the State of Maryland, without the consent of that State, without the consent of the people of the District, and without just compensation to the owners of slaves within the District.

6th—RESOLVED, That it is expedient to prohibit within the District the trade in slaves brought into it from States or places beyond the limits of the District, either to be sold therein, as merchandise, or to be transported to other markets without the District of Columbia.

7th—RESOLVED, That more effectual provision ought to be made by law, according to the requirements of the constitution, for the restitution and delivery of persons bound to service or labor, in any State, who may escape into any other State or Territory of this Union.

8th—RESOLVED, That Congress has no power to prohibit or obstruct the trade in slaves between the slaveholding States, and that the admission or exclusion of slaves brought from one into another of them, depends exclusively upon their own particular law.

NEW YORK

STRINGER & TOWNSEND, 333 BROADWAY.

1850



## S P E E C H .

Mr. CLAY.—Mr. President, never on any former occasion have I risen under feelings of such painful solicitude. I have seen many periods of great anxiety, of peril, and of danger in this country, and I have never before risen to address any assemblage so oppressed, so appalled, and so anxious; and sir, I hope it will not be out of place to do here, what again and again I have done in my private chamber, to implore of Him who holds the destinies of nations and individuals in His hands, to bestow upon our country His blessing, to calm the violence and rage of party, to still passion, to allow reason once more to resume its empire. And may I not ask of Him too, sir, to bestow on his humble servant now before him the blessing of his smiles, and of strength and ability to perform the work which now lies before him? Sir, I have said that I have seen other anxious periods in the history of our country, and if I were to venture, Mr. President, to trace to their original source the cause of all our present dangers, difficulties, and distraction, I should ascribe it to the violence and intemperance of party spirit. To party spirit! Sir, in the progress of this session we have had the testimony of two Senators here, who, however they may differ on other matters, concur in the existence of that cause in originating the unhappy differences which prevail throughout the country, on the subject of the institution of slavery.

Parties, in their endeavors to obtain the one ascendancy over the other, catch at every passing or floating plank in order to add strength and power to each. We have been told by the two Senators to whom I have referred, that each of the parties at the North, in its turn, has moved and endeavored to obtain the assistance of a small party called abolitionists, in order that the scale in its favor might preponderate against that of its adversary. And all around us, every where, we see too many evidences of the existence of the spirit and intemperance of party. I might go to other legislative bodies than that which is assembled in Congress, and I might draw from them illustrations of the melancholy truth upon which I am dwelling, but I need not pass out of this capitol itself. I say it, sir, with all deference and respect to that other portion of Congress assembled in the other wing of this capitol; but what have we seen there? During this very session one whole week has been exhausted—I think about a week—in the vain endeavor to elect a doorkeeper of the House.

And, Mr. President, what was the question in this struggle to elect a doorkeeper? It was not as to the man or the qualities of the man, or who is best adapted to the situation. It was whether the doorkeeper entertained opinions upon certain national measures coincident with this or that side of the House. That was the sole question which prevented the election of a doorkeeper for about the period of a week. Sir, I make no reproaches—none, to either portion of that House; I state the fact; and I state the fact to draw from it the conclusion and to express the hope that there will be an endeavor to check this violence of party.

Sir, what vicissitudes do we not pass through in this short mortal career of ours? Eight years, or nearly eight years ago, I took my leave finally, and, as I supposed, forever, from this body. At that time I did not conceive of the possibility of ever again returning to it. And if my private wishes and particular inclinations, and the desire during the short remnant of my days to remain in repose and quiet, could have prevailed, you would never have seen me occupying the seat which I now occupy upon this floor. The Legislature of the State to which I belong, unsolicited by me, chose to designate me for this station, and I have come here, sir, in obedience to a sense of stern duty, with no personal objects, no private views, now or hereafter, to gratify. I know, sir, the jealousies, the fears, the apprehensions which are engendered by the existence of that party spirit to which I have referred; but if there be in my hearing now, in or out of this Capitol, any one who hopes, in his race for



and elevation, for higher honors and higher elevation than that which he may occupy, I beg him to believe that I, at least, will never jostle him in the pursuit of those honors or that elevation. I beg him to be perfectly persuaded that, if my wishes prevail, my name shall never be used in competition with his. I beg to assure him that when my service is terminated in this body, my mission, so far as respects the public affairs of this world and upon this earth, is closed, and closed, if my wishes prevail, forever.

But, sir, it is impossible for us to be blind to the facts which are daily transpiring before us. It is impossible for us not to perceive that party spirit and future elevation mix more or less in all our affairs, in all our deliberations. At a moment when the White House itself is in danger of conflagration, instead of all hands uniting to extinguish the flames, we are contending about who shall be its next occupant. When a dreadful *crevasse* has occurred, which threatens inundation and destruction to all around it, we are contesting and disputing about the profits of an estate which is threatened with total submersion.

Mr. President, it is passion, passion—party, party, and intemperance—that is all I dread in the adjustment of the great questions which unhappily at this time divide our distracted country. Sir, at this moment we have in the legislative bodies of this Capitol and in the States twenty odd furnaces in full blast, emitting heat, and passion, and intemperance, and diffusing them throughout the whole extent of this broad land. Two months ago all was calm in comparison to the present moment. All now is uproar, confusion and menace to the existence of the Union, and to the happiness and safety of this people. Sir, I implore Senators, I entreat them, by all that they expect hereafter, and by all that is dear to them here below, to repress the ardor of these passions, to look to their country, to its interests, to listen to the voice of reason—not as it shall be attempted to be uttered by me, for I am not so presumptuous as to indulge the hope that anything I may say will avert the effects which I have described, but to listen to their own reason, their own judgment, their own good sense, in determining upon what is best to be done for our country in the actual posture in which we find her. Sir, to this great object have my efforts been directed during the whole session.

I have cut myself off from all the usual enjoyments of social life, I have confined myself almost entirely, with very few exceptions, to my own chamber, and from the beginning of the session to the present time my thoughts have been anxiously directed to the object of finding some plan, of proposing some mode of accommodation, which would once more restore the blessings of concord, harmony and peace to this great country. I am not vain enough to suppose that I have been successful in the accomplishment of this object, but I have presented a scheme, and allow me to say to honorable Senators that, if they find in that plan any thing that is defective, if they find in it any thing that is worthy of acceptance, but is susceptible of improvement by amendment, it seems to me that the true and patriotic course is not to denounce it, but to improve it—not to reject without examination any project of accommodation having for its object the restoration of harmony in this country, but to look at it to see if it be susceptible of elaboration or improvement, so as to accomplish the object which I indulge the hope is common to all and every one of us, to restore peace and quiet, and harmony and happiness to this country.

Sir, when I came to consider this subject, there were two or three general purposes which it seemed to me to be most desirable, if possible, to accomplish. The one was, to settle all the controverted questions arising out of the subject of slavery. It seemed to me to be doing very little if we settled one question and left other distracting questions unadjusted, it seemed to me to be doing but little if we stopped one leak only in the ship of State, and left other leaks capable of producing danger, if not destruction, to the vessel. I therefore turned my attention to every subject connected with the institution of slavery, and out of which controverted questions had sprung, to see if it were possible or practicable to accommodate and adjust the whole of them. Another principal object which attracted my attention was, to endeavor to form such a scheme of accommodation that neither of the two classes of States into which our country is so unhappily divided should make any sacrifice of any great principle. I believe, sir, the series of resolutions which I have had the honor to present to the Senate accomplishes that object.

Sir, another purpose which I had in view was this: I was aware of the difference of opinion prevailing between these two classes of States. I was aware that, while one portion of the Union was pushing matters, as it seemed to me, to the greatest extremity, another portion of the Union was pushing them to an opposite, perhaps not less dangerous extremity. It appeared to me, then, that if any arrangement, any satisfactory adjustment could be made of the controverted questions between the two classes of States, that adjustment, that arrangement, could only be successful and effectual by extracting from both parties some concessions of principle at all, but of feeling, of opinion, in relation to matters in



controversy between them. Sir, I believe the resolutions which I have prepared fulfil that object. I believe, sir, that you will find, upon that careful, rational, and attentive examination of them which I think they deserve, that neither party in some of them make any concession at all; in others the concessions of forbearance are mutual; and in the third place, in reference to the slaveholding States, there are resolutions making concessions to them by the opposite class of States, without any compensation whatever being rendered by them to the non-slaveholding States. I think every one of these characteristics which I have assigned, and the measures which I proposed, is susceptible of clear and satisfactory demonstration by an attentive perusal and critical examination of the resolutions themselves. Let us take up the first resolution.

The first resolution, Mr. President, as you are aware, relates to California, and it declares that California, with suitable limits, ought to be admitted as a member of this Union, without the imposition of any restriction either to interdict or to introduce slavery within her limits. Well now, is there any concession in this resolution by either party to the other? I know that gentlemen who come from slaveholding States say the North gets all that it desires; but by whom does it get it? Does it get it by any action of Congress? If slavery be interdicted within the limits of California, has it been done by Congress—by this Government? No, sir. That interdiction is imposed by California herself. And has it not been the doctrine of all parties that when a State is about to be admitted into the Union, the State has a right to decide for itself whether it will or will not have slavery within its limits?

The great principle, sir, which was in contest upon the memorable occasion of the introduction of Missouri into the Union, was, whether it was competent or not competent for Congress to impose any restriction which should exist after she became a member of the Union. We who were in favor of the admission of Missouri contended that no such restriction should be imposed. We contended that, whenever she was once admitted into the Union, she had all the rights and privileges of any pre-existing State in the Union, and that among these rights and privileges one was to decide for herself whether slavery should or should not exist within her limits; that she had as much a right to decide upon the introduction of slavery or its abolition as New York had a right to decide upon the introduction or abolition of slavery; and that, although subsequently admitted, she stood among her peers, equally invested with all the privileges that any one of the original thirteen States had a right to enjoy.

And so, sir, I think that those who have been contending with so much earnestness and perseverance for the Wilmot proviso ought to reflect that, even if they could carry their object and adopt the proviso, it ceases the moment any State or territory to which it was applicable came to be admitted as a member of the Union. Why, sir, no one contends now, no one believes, that with regard to those Northwestern States to which the ordinance of 1787 applied—Ohio, Indiana, Illinois and Michigan—no one can now believe but that any one of those States, if they thought proper to do it, have just as much right to introduce slavery within their borders, as Virginia has to maintain the existence of slavery within hers. Then, sir, if in the struggle for power and empire between the two classes of States a decision in California has taken place adverse to the wishes of the Southern States, it is a decision not made by the General Government.

It is a decision respecting which they can utter no complaint toward the General Government. It is a decision made by California herself; which California had unquestionably the right to make under the Constitution of the United States. There is, then, in the first resolution, according to the observation which I made some time ago, a case where neither party concedes; where the question of slavery, neither its introduction nor interdiction, is decided in reference to the action of this Government; and if it has been decided, it has been by a different body—by a different power—by California itself, who had a right to make the decision.

Mr. President, the next resolution in the series which I have offered I beg gentlemen candidly now to look at. I was aware, perfectly aware, of the perseverance with which the Wilmot proviso was insisted upon. I knew that every one of the free States in this Union, without exception, had by its legislative body passed resolutions instructing their Senators and requesting their Representatives to get that restriction incorporated in any territorial government which might be established under the auspices of Congress. I knew how much, and I regretted how much, the free States had put their hearts upon the adoption of this measure. In the second resolution I call upon them to waive persisting in it. I ask them, for the sake of peace and in the spirit of mutual forbearance to other members of the Union, to give it up—to no longer insist upon it—to see, as they must see, if their eyes are open, the dangers which lie ahead, if they persevere in insisting upon it.

When I called upon them in this resolution to do this, was I not bound to offer, for a sur-



render of that favorite principle or measure of theirs, some compensation, not as an equivalent by any means, but some compensation in the spirit of mutual forbearance, which, animating one side, ought at the same time to actuate the other side? Well, sir, what is it that is offered them? It is a declaration of what I characterized, and must still characterize, with great deference to all those who entertain opposite opinions, as two truths, I will not say incontestible, but to me clear, and I think they ought to be regarded as indisputable truths. What are they? The first is, that by law slavery no longer exists in any part of the acquisitions made by us from the Republic of Mexico; and the other is, that in our opinion, according to the probabilities of the case, slavery never will be introduced into any portion of the territories so acquired from Mexico. Now, I have heard it said that this declaration of what I call these two truths is equivalent to the enactment of the Wilmot proviso.

I have heard this asserted, but is that the case? If the Wilmot proviso be adopted in territorial Governments established over these countries acquired from Mexico, it would be a positive enactment, a prohibition, an interdiction as to the introduction of slavery within them; but with regard to these opinions I had hoped, and I shall still indulge the hope, that those who represent the free States will be inclined not to insist—indeed it would be extremely difficult to give to these declarations the form of positive enactment. I had hoped that they would be satisfied with the simple expression of the opinion of Congress, leaving it upon the basis of that opinion, without asking for what seems to me almost impracticable, if not impossible—for any subsequent enactment to be introduced into the bill by which territorial Governments should be established.

And I can only say that the second resolution, even without the declaration of these two truths expressed, would be much more acceptable to me than with them—but I could not forget that I was proposing a scheme of arrangement and compromise, and I could not, therefore, depart from the duty which the preparation of such a scheme seems to me to impose, of offering, while we ask the surrender on one side of a favorite measure, of offering to the other side some compensation for that surrender or sacrifice. What are the truths, Mr. President? The first is, that by law slavery does not exist within the territories ceded to us by the republic of Mexico. It is a misfortune, sir, in the various weighty and important topics which are connected with the subject that I am now addressing you upon, that any one of the five or six furnishes a theme for a lengthened speech; and I am therefore reduced to the necessity, I think—at least in this stage of the discussion—of limiting myself rather to the expression of opinions, than going at any great length into the discussion of all these various topics.

Now, with respect to the opinion here expressed, that slavery does not exist in the territories ceded to the United States by Mexico, I can only refer to the fact of the passage of the law by the Supreme Government of Mexico abolishing it, I think in 1824, and to the subsequent passage of a law by the legislative body of Mexico, I forget in what year, by which they proposed—what it is true they have never yet carried into full effect—compensation to the owners of slaves for the property of which they were stripped by the act of abolition. I can only refer to the acquiescence of Mexico in the abolition of slavery, from the time of its extinction down to the time of the treaty by which we acquired these countries. But all Mexico, so far as I know, acquiesced in the non-existence of slavery. Gentlemen, I know, talk about the irregularity of the law by which that act was accomplished; but does it become us, a foreign power, to look into the mode by which an object has been accomplished by another foreign power, when she herself is satisfied with what she has done, and when, too, she is the exclusive judge whether an object which is local and municipal to herself has been or has not been accomplished in conformity with her fundamental laws? Why, Mexico upon this subject showed to the last moment, her anxiety in the documents which were laid before the country upon the subject of the negotiation of this treaty, by Mr. Trist.

In the very act, in the very negotiation by which the treaty was concluded, ceding to us the countries in question, the diplomatic representatives of the Mexican republic urged the abhorrence with which Mexico would view the introduction of slavery into any portion of the territory which she was about to cede to the United States. The clause of prohibition was not inserted in consequence of the firm ground taken by Mr. Trist, and his declaration that it was an utter impossibility to mention the subject.

I take it then, sir—and availing myself of the benefit of the discussions which took place on a former occasion on this question, and which I think have left the whole country under the impression of the non-existence of slavery within the whole of the territory in the ceded territories—I take it for granted that what I have said, aided by the reflection of gentlemen, will satisfy them of that first truth, that slavery does not exist there by law, unless slavery was carried there the moment the treaty was ratified by the two parties, and under the operation of the Constitution of the United States. Now, really, I must say that upon the



idea that *eo instanti* upon the consummation of the treaty, the Constitution of the United States spread itself over the acquired territory, and carried along with it the institution of slavery, the proposition is so irreconcilable with any comprehension or reason that I possess, that I hardly know how to meet it.

Why, these United States consist of thirty States. In fifteen of them there was slavery, in fifteen of them slavery did not exist. Well, how can it be argued that the fifteen slave States, by the operation of the Constitution of the United States, carried into the ceded territory their institution of slavery, any more than it can be argued on the other side that, by the operation of the same Constitution, the fifteen free States carried into the ceded territory the principle of freedom which they from policy have chosen to adopt within their limits? Why, sir, let me suppose a case. Let me imagine that Mexico had never abolished slavery there at all—let me suppose that it was existing in point of fact and in virtue of law, from the shores of the Pacific to those of the Gulf of Mexico, at the moment of the cession of these countries to us by the treaty in question.

With what patience would gentlemen coming from slaveholding States listen to any argument which should be urged by the free States, that notwithstanding the existence of slavery within those territories, the constitution of the United States abolished it the moment it operated upon and took effect in the ceded territory? Well, is there not just as much ground to contend that, where a moiety of the States is free, and the other moiety is slaveholding, the principle of freedom which prevails in the one class shall operate as much as the principle of slavery which prevails in the other? Can you come, amidst this conflict of interests, principles and legislation which prevails in the two parts of the Union, to any other conclusion than that which I understand to be the conclusion of the public law of the world, of reason, and justice—that the *status* of law, as it existed at the moment of the conquest or the acquisition, remains until it is altered by the sovereign authority of the conquering or acquiring power? That is the great principle which you can scarcely turn over a page of public law of the world without finding recognised, and everywhere established. The laws of Mexico, as they existed at the moment of the cession of the ceded territories to this country, remained the laws until, and unless, they were altered by that new sovereign power which this people and these territories come under, in consequence of the treaty of cession to the United States.

I think, then, Mr. President, that, without trespassing farther, or exhausting the little stock of strength which I have, and for which I shall have abundant use in the progress of the argument, I may leave that part of the subject, with two or three observations only upon the general power which I think appertains to this Government on the subject of slavery.

Sir, before I approach that subject, allow me to say that, in my humble judgment, the institution of slavery presents two questions totally distinct, and resting on entirely different grounds—slavery within the States, and slavery without the States. Congress, the General Government, has no power, under the Constitution of the United States, to touch slavery within the States, except in the three specified particulars in that instrument; to adjust the subject of representation; to impose taxes when a system of direct taxation is made; and to perform the duty of surrendering, or causing to be delivered up, fugitive slaves, that may escape from service which they owe in slave States, and take refuge in free States. And, sir, I am ready to say that if Congress were to attack, within the States, the institution of slavery, for the purpose of the overthrow or extinction of slavery, then, Mr. President, my voice would be for war; then would be made a case which would justify in the sight of God, and in the presence of the nations of the earth, resistance on the part of the slave States to such an unconstitutional and usurped attempt as would be made on the supposition which I have stated.

Then we should be acting in defence of our rights, our domicils, our property, our safety, our lives; and then, I think, would be furnished a case in which the slaveholding States would be justified by all considerations which pertain to the happiness and security of man, to employ every instrument which God or nature had placed in their hands to resist such an attempt on the part of the free States. And then, if unfortunately civil war should break out, and we should present to the nations of the earth the spectacle of one portion of this Union endeavoring to subvert an institution in violation of the Constitution and the most sacred obligations which can bind men; we should present the spectacle in which we should have the sympathies, the good wishes, and the desire for our success of all men who love justice and truth. Far different, I fear, would be our case—if unhappily we should be plunged into civil war—if the two parts of this country should be placed in a position hostile toward each other, in order to carry slavery into the new territories acquired from Mexico.

Mr. President, we have heard, all of us have read of the efforts of France to propagate—what, on the continent of Europe? Not slavery, sir; not slavery, but the rights of man;



and we know the fate of her efforts in a work of that kind. But if the two portions of this Confederacy should unhappily be involved in civil war, in which the effort on the one side would be to restrain the introduction of slavery into new territories, and on the other side to force its introduction there, what a spectacle should we present to the contemplation of astonished mankind! An effort not to propagate right, but I must say—though I trust it will be understood to be said with no desire to excite feeling—an effort to propagate wrong in the territories thus acquired from Mexico. It would be a war in which we should have no sympathy, no good wishes, and in which all mankind would be against us, and in which our own history itself would be against us; for, from the commencement of the revolution down to the present time, we have constantly reproached our British ancestors for the introduction of slavery into this country; and allow me to say that, in my opinion, it is one of the best defences which can be made to preserve the institution in this country, that it was forced upon us against the wishes of our ancestors, our own colonial ancestors, and by the cupidity of our British commercial ancestors.

The power then, Mr. President, in my opinion—and I will extend it to the introduction as well as the prohibition of slavery in the new territories—I think the power does exist in Congress, and I think there is that important distinction between slavery outside of the States and slavery inside of the States, that all outside is debatable, all inside of the States is undebatable. The Government has no right to touch the institution within the States; but whether she has, and to what extent she has the right or not to touch it outside of the States, is a question which is debatable, and upon which men may honestly and fairly differ, but which, decided however it may be decided, furnishes, in my judgment, no just occasion for breaking up this happy and glorious Union of ours.

Now, I am not going to take up that part of the subject which relates to the power of Congress to legislate either within this District—(I shall have occasion to make some observations upon that when I approach the resolution relating to the District)—either within this District or the territories. But I must say, in a few words, that I think there are two sources of power, either of which is, in my judgment, sufficient to warrant the exercise of the power, if it was deemed proper to exercise it, either to introduce or to keep out slavery outside the States, within the territories.

Mr. President, I shall not take up time, of which already so much has been consumed, to show that, according to my sense of the Constitution of the United States, or rather according to the sense in which the clause has been interpreted for the last fifty years, the clause which confers on Congress the power to regulate the territories and other property of the United States conveys the authority.

Mr. President, with my worthy friend from Michigan—and I use the term in the best and most emphatic sense, for I believe he and I have known each other longer than he and I have known any other Senator in this hall—I cannot concur, although I entertain the most profound respect for the opinions he has advanced upon the subject, adverse to my own; but I must say, when a point is settled by all the elementary writers of our country, by all the departments of our Government, legislative, executive and judicial—when it has been so settled for a period of fifty years, and never was seriously disturbed until recently, that I think, if we are to regard any thing as fixed and settled under the administration of this constitution of ours, it is a question which has thus been invariably and uniformly settled in a particular way. Or are we to come to this conclusion that nothing, nothing on earth is settled under this constitution, but that every thing is unsettled?

Mr. President, we have to recollect it is very possible—sir, it is quite likely—that when that Constitution was framed, the application of it to such territories as Louisiana, Florida, California and New Mexico was never within the contemplation of its framers. It will be recollected that when that Constitution was framed the whole country northwest of the river Ohio was unpeopled; and it will be recollected also, that the exercise and the assertion of the power to make governments for territories in their infant state, are, in the nature of the power, temporary, and to terminate whenever they have acquired a population competent for self-government. Sixty thousand is the number fixed by the ordinance of 1787. Now, sir, recollect that when this Constitution was adopted, and that territory was unpeopled, is it possible that Congress, to whom it had been ceded by the states for the common benefit of the ceding State and all other members of the Union—is it possible that Congress had no right whatever to declare what description of settlers should occupy the public lands?

Suppose they took up the opinion that the introduction of slavery would enhance the value of the land, and enable them to command for the public treasury a greater amount from that source of revenue than by the exclusion of slaves, would they not have had the right to say, in fixing the rules, regulations, or whatever you choose to call them, for the govern-



ment of that territory, that any one that chooses to bring slaves may bring them, if it will enhance the value of the property, in the clearing and cultivation of the soil, and add to the importance of the country? Or take the reverse:—Suppose Congress might think that a greater amount of revenue would be derived from the waste lands beyond the Ohio river by the interdiction of slavery, would they not have a right to interdict it? Why, sir, remember how these settlements were made, and what was their progress. They began with a few. I believe that about Marietta the first settlement was made.

It was a settlement of some two or three hundred persons from New England. Cincinnati, I believe, was the next point where a settlement was made. It was settled perhaps by a few persons from New Jersey, or some other State. Did those few settlers, the moment they arrived there, acquire sovereign rights? Had those few persons power to dispose of these territories? Had they even power to govern themselves—the handful of men who established themselves at Marietta or Cincinnati? No, sir, the contemplation of the Constitution no doubt was, that, inasmuch as this power was temporary, as it is applicable to unpeopled territory, and as that territory will become peopled gradually, insensibly, until it reaches a population which may entitle it to the benefit of self-government, in the mean time it is right and proper that Congress, who owns the soil, should regulate the settlement of the soil, and govern the settlers on the soil, until those settlers acquire number and capacity to govern themselves.

Sir, I will not farther dwell upon this part of the subject; but I said there is another source of power equally satisfactory, equally conclusive in my mind as that which relates to the territories, and that is the treaty-making power—the acquiring power. Now, I put it to gentlemen, is there not at this moment a power somewhere existing either to admit or exclude slavery from the ceded territory? It is not an annihilated power. This is impossible. It is a subsisting, actual, existing power; and where does it exist? It existed, I presume no one will controvert, in Mexico prior to the cession of these territories. Mexico could have abolished slavery or introduced slavery either in California or New Mexico. That must be conceded. Who will controvert this position? Well, Mexico has parted from the territory and from the sovereignty over the territory; and to whom did she transfer it? She transferred the territory and the sovereignty of the territory to the Government of the United States.

The Government of the United States, then, acquires in sovereignty and in territory over California and New Mexico, all, either in sovereignty or territory, that Mexico held in California or New Mexico, by the cession of those territories. Sir, dispute that who can. The power exists or it does not; no one will contend for its annihilation. It existed in Mexico. No one, I think, can deny that. Mexico alienates the sovereignty over the territory, and her alliance is the Government of the United States. The Government of the United States, then, possesses all power which Mexico possessed over the ceded territories, and the Government of the United States can do in reference to them—within, I admit, certain limits of the Constitution—whatever Mexico could have done. There are prohibitions upon the power of congress within the constitution, which prohibitions, I admit, must apply to Congress whenever she legislates, whether for the old States or for new territories; but, within those prohibitions, the powers of the United States over the ceded territories are co-extensive and equal to the powers of Mexico in the ceded territories, prior to the cession.

Sir, in regard to this treaty-making power, all who have any occasion to examine into its character and to the possible extent to which it may be carried, know that it is a power unlimited in its nature, except in so far as any limitation may be found in the Constitution of the United States; and upon this subject there is no limitation which prescribes the extent to which the powers should be exercised. I know, sir, it is argued that there is no grant of power in the constitution, in specific terms, over the subject of slavery any where; and there is no grant in the Constitution to Congress specifically over the subject of a vast variety of matters upon which the powers of Congress may unquestionably operate. The major includes the minor. The general grant of power comprehends all the particulars and elements of which that power consists. The power of acquisition by treaty draws after it the power of government of the country acquired.

If there be a power to acquire, there must be, to use the language of the tribunal that sits below, a power to govern. I think, therefore, sir, without, at least for the present, dwelling farther on this part of the subject, that to the two sources of authority in Congress to which I have referred, and especially to the last, may be traced the power of Congress to act in the territories in question; and, sir, I go to the extent, and I think it is a power in Congress equal to the introduction or exclusion of slavery. I admit the argument in both its forms; I admit if the argument be maintained that the power exists to exclude slavery, it necessarily



follows that the power must exist, if Congress choose to exercise it, to tolerate or introduce slavery within the territories.

But, sir, I have been drawn off so far from the second resolution—not from the object of it, but from a particular view of it—that it has almost gone out of my recollection. The resolution asserts—

“That as slavery does not exist by law, and is not likely to be introduced into any of the territory acquired by the United States from the Republic of Mexico, it is inexpedient for Congress to provide by law either for its introduction into or exclusion from any part of the said territory; and that appropriate territorial Governments ought to be established by Congress in all of the said territory, not assigned as the boundaries of the proposed state of California, without the adoption of any restriction or condition on the subject of slavery.”

The other truth which I respectfully and with great deference conceive to exist, and which is announced in this resolution, is, that slavery is not likely to be introduced into any of these territories. Well, sir, is not that a fact? Is there a member who hears me that will not confirm the fact? What has occurred within the last three months? In California, more than in any other portion of the ceded territory, was it most probable, if slavery was adapted to the interests of the industrial pursuits of the inhabitants, that slavery would have been introduced. Yet, within the space of three or four months, California herself has declared, by a unanimous vote of her convention, against the introduction of slavery within her limits. And, as I remarked on a former occasion, this declaration was not confined to non-slaveholders.

There were persons from the slaveholding States who concurred in that declaration. Thus this fact which is asserted in the resolution is responded to by the act of California. Then, sir, if we come down to those mountain regions which are to be found in New Mexico, the nature of its soil and country, its barrenness, its unproductive character, every thing which relates to it, and everything which we hear of it and about it, must necessarily lead to the conclusion which I have mentioned, that slavery is not likely to be introduced into them.—Well, sir, if it be true that by law slavery does not now exist in the ceded territories, and that it is not likely to be introduced into the ceded territories—if you, Senators, agree to these truths, or a majority of you, as I am persuaded a large majority of you must agree to them—where is the objection or the difficulty to your announcing them to the whole world? Why should you hesitate or falter in the promulgation of incontestable truths? On the other hand, with regard to Senators coming from the free States, allow me here to make, with reference to California, one or two observations.

When this feeling within the limits of your States was gotten up; when the Wilmot proviso was disseminated through them, and your people and yourselves attached themselves to that proviso, what was the state of facts? The state of facts at that time was, that you apprehended the introduction of slavery there. You did not know much—very few of us now know much—about these very territories. They were far distant from you. You were apprehensive that slavery might be introduced there. You wanted as a protection to introduce the interdiction called the Wilmot proviso. It was in this state of want of information that the whole North blazed up in behalf of this Wilmot proviso. It was under the apprehension that slavery might be introduced there that you left your constituents. For when you came from home, at the time you left your respective residences, you did not know the fact, which has only reached us since the commencement of the session of Congress, that a constitution had been unanimously adopted by the people of California, excluding slavery from their territory.

Well, now, let me suppose that two years ago it had been known in the free States that such a constitution would be adopted; let me suppose that it had been believed that in no other portion of these ceded territories would slavery be introduced; let me suppose that upon this great subject of solicitude, negro slavery, the people of the North had been perfectly satisfied that there was no danger; let me also suppose that they had foreseen the excitement, the danger, the irritation, the resolutions which have been adopted by Southern Legislatures, and the manifestations of opinion by the people of the slaveholding states—let me suppose that all this had been known at the North at the time when the agitation was first got up upon the subject of this Wilmot proviso—do you believe that it would have ever reached the height to which it has attained? Do any one of you believe it? And if, prior to your departure from your respective homes, you had had an opportunity of conferring with your constituents upon this most leading and important fact—of the adoption of a constitution excluding slavery in California—do you not believe, Senators and Representatives coming from the free States, that if you had the advantage of that fact told in serious, calm, fire-side conversation with your constituents, they would not have told you to come here and to settle all these agitating questions without danger to this Union?



What do you want? What do you want who reside in the free States? You want that there shall be no slavery introduced into the territories acquired from Mexico. Well, have not you got it in California already, if admitted as a state? Have not you got it in New Mexico, in all human probability, also? What more do you want? You have got what is worth a thousand Wilmot provisos. You have got nature itself on your side. You have the fact itself on your side. You have the truth staring you in the face that no slavery is existing there. Well, if you are men: if you can rise from the mud and slough of party struggles and elevate yourselves to the height of patriots, what will you do? You will look at the fact as it exists. You will say, this fact was unknown to my people. You will say, they acted on one set of facts, we have got another set of facts here influencing us, and we will act as patriots, as responsible men, as lovers of unity, and above all of this Union. We will act on the altered set of facts unknown to our constituents, and we will appeal to their justice, their honor, their magnanimity, to concur with us on this occasion, for establishing concord and harmony, and maintaining the existence of this glorious Union.

Well, Mr. President, I think, entertaining these views, that there was nothing extravagant in the hope in which I indulged when these resolutions were prepared and offered—nothing extravagant in the hope that the North might content itself even with striking out as unnecessary these two declarations. They are unnecessary for any purpose the free States have in view. At all events, if they should insist upon Congress expressing the opinions which are here asserted, they should limit their wishes to the simple assertion of them, without insisting on their being incorporated in any territorial Government which Congress may establish in the territories.

I pass on from the second resolution to the third and fourth, which relate to Texas and allow me to say, Mr. President, that I approach the subject with a full knowledge of all its difficulties; and of all the questions connected with or growing out of this institution of slavery, which Congress is called upon to pass upon and decide, there are none so difficult and troublesome as those which relate to Texas, because, sir, Texas has a question of boundary to settle, and the question of slavery, or the feelings connected with it, run into the question of boundary. The North, perhaps, will be anxious to contract Texas within the narrowest possible limits, in order to exclude all beyond her to make it a free territory; the South, on the contrary, may be anxious to extend those sources of Rio Grande, for the purpose of creating an additional theatre for slavery; and thus, to the question of the limits of Texas, and the settlement of her boundary, the slavery question, with all its troubles and difficulties, is added, meeting us at every step we take.

There is, sir, a third question, also, adding to the difficulty. By the resolution of annexation, slavery was interdicted in all north of  $36^{\circ} 30'$ ; but of New Mexico, that portion of it which lies north of  $36^{\circ} 30'$  embraces I think about one third of the whole of New Mexico east of the Rio Grande; so that you have free and slave territory mixed, boundary and slavery mixed together, and all these difficulties are to be encountered. And allow me to say, sir, that among the considerations which induced me to think it was necessary to settle all these questions, was the state of things that now exists in New Mexico, and the State of things to be apprehended both there and in other portions of the territories. Why, sir, at this moment—and I think I shall have the concurrence of the two Senators from that state when I announce the fact—at this moment there is a feeling approximating to abhorrence on the part of the people of New Mexico at the idea of any union with Texas.

Mr. RUSK. Only, sir, on the part of the office-seekers and army followers, who have settled there, and attempted to mislead the people.

Mr. CLAY. Ah! Sir, that may be, and I am afraid that New Mexico is not the only place where this class composes a majority of the whole population of the country.—  
[Laughter.]

Now, sir, if the questions are not settled which relate to Texas, her boundaries, and so forth, and to the territory now claimed by Texas and disputed by New Mexico—the territories beyond New Mexico which are excluded from California—if these questions are not all settled, I think they will give rise to future confusion, disorder and anarchy there, and to agitation here. There will be, I have no doubt, a party still at the North crying out, if these questions are not settled this session, for the Wilmot proviso, or some other restriction upon them, and we shall absolutely do nothing, in my opinion, if we do not accommodate all these difficulties and provide against the recurrence of all these dangers.

Sir, with respect to the state of things in New Mexico, allow me to call the attention of the Senate to what I consider as the highest authority I could offer to them as to the state of things there existing. I mean the acts of their convention, unless that convention happens to have been composed altogether of office-seekers, office-holders, and so forth. Now, sir, I call your attention to what they say in depicting their own situation.



Mr. UNDERWOOD, at Mr. CLAY's request, read the following extract from instructions adopted by the convention, appended to the journal of the convention of the territory of New Mexico, held at the city of Santa Fé, in September, 1849.

"We, the people of New Mexico, in convention assembled, having elected a delegate to represent this territory in the Congress of the United States, and to urge upon the Supreme Government a redress of our grievances, and the protection due to us as citizens of our common country, under the constitution, instruct him as follows: That whereas, for the last three years we have suffered under the paralyzing effects of a government undefined and doubtful in its character, inefficient to protect the rights of the people, or to discharge the high and absolute duty of every Government, the enforcement and regular administration of its own laws, in consequence of which, industry and enterprise are paralyzed and discontent and confusion prevail throughout the land. The want of proper protection against the various barbarous tribes of Indians that surround us on every side has prevented the extension of settlements upon our valuable public domain, and rendered utterly futile every attempt to explore or develop the great resources of the territory.

"Surrounded by the Utahs, Camanches, and Apaches, on the North, East and South, by the Navajos on the West, with Jicarillas within our limits, and without any adequate protection against their hostile inroads, our flocks and herds are driven off by thousands, our fellow-citizens, men, women and children, are murdered or carried into captivity. Many of our citizens, of all ages and sexes, are at this moment suffering all the horrors of barbarian bondage, and it is utterly out of our power to obtain their release from a condition to which death would be preferable. The wealth of our territory is being diminished. We have neither the means nor any adopted plan by Government for the education of the rising generation. In fine, with a government temporary, doubtful, uncertain, and inefficient in character and in operation, surrounded and despoiled by barbarous foes, ruin appears inevitably before us, unless speedy and effectual protection be extended to us by the Congress of the United States."

There is a series of resolutions, Mr. President, which any gentleman may look at, if he chooses; but I think it is not worth while to take up the time of the Senate in reading them.

That is the condition, sir, of New Mexico. Well, I suspect that to go beyond it, to go beyond the Rio Grande to the territory which is not claimed by Texas, you will not find a much better state of things. In fact, sir, I cannot for a moment reconcile it to my sense of duty to suffer Congress to adjourn without an effort, at least, being made to extend the benefits, the blessings of government to those people who have recently been acquired by us.

Sir, with regard to that portion of New Mexico which lies east of the Rio Grande, undoubtedly if it is conceded to Texas, while she has two parties, disliking each other as much as those office-holders and office-seekers alluded to by the Senator from Texas, if they could possibly be drawn together and governed quietly, peaceably, and comfortably, there might be a remedy, so far as relates to the country East of the Rio Grande; but all beyond it—Deseret and the North of California—would be still open and liable to all the consequences of disunion, confusion and anarchy, without some staple government emanating from the authority of the nation of which they now compose a part, and with which they are but little acquainted. I think, therefore, that all these questions, difficult and troublesome as they may be, ought to be met—met in a spirit of candor and calmness, and decided upon as a matter of duty.

Now, these two resolutions which we have immediately under consideration propose a decision of these questions. I have said, sir, that there is scarcely a resolution in the series which I have offered that does not contain some mutual concession or evidence of mutual forbearance, where the concession was not altogether from the non-slaveholding to the slaveholding states.

Now, with respect to this resolution proposing a boundary for Texas, what is it? We know the difference of opinion which has existed in this country with respect to that boundary. We know that a very large portion of the people of the United States have supposed that the western limit of Texas was the Nueces, and that if did not extend to the Rio Grande. We know, by the resolution of annexation, that the question of what is the western limit and the northern limit of Texas was an open question—that it has been all along an open question. It was an open question when the boundary was run, in virtue of the act of 1838, marking the boundary between the United States and Texas. Sir, at that time the boundary authorised by the act of 1838 was a boundary commencing at the mouth of the Sabine and running up to its head, thence to Red River, thence westwardly with Red



River to, I think, the hundredth degree of west longitude. Well, sir, that did not go so far as Texas now claims, and why? Because it was an open question. War was yet raging between Texas and Mexico; it was not foreseen exactly what might be her ultimate limits. But, sir, we will come to the question of what was done at the time of her annexation.

The whole resolution which relates to the question of boundary, from beginning to end, assumes an open boundary, an unascertained, unfixed boundary to Texas on the West. Sir, what is the first part of the resolution? It is that "Congress doth consent that the territory properly included within and rightfully belonging to the Republic of Texas may be erected into a new State." Properly including—rightfully belonging to. The resolution specifies no boundary. It could specify none. It has specified no western or northern boundary for Texas. It has assumed in this state of uncertainty what we know in point of fact existed. But then the latter part of it: "Said state to be formed subject to the adjustment of all questions of boundary that may arise with other Governments, and the constitution thereof," &c. That is to say, she is annexed with her rightful and proper boundaries, without a specification of them; but inasmuch as it was known that these boundaries at the west and the north were unsettled, the Government of the United States retained to itself the power of settling with any foreign nation what the boundary should be.

Now, sir, it is impossible for me to go into the whole question and to argue it fully. I mean to express opinions or impressions, rather than to go into the entire argument. The western and northern limit of Texas being unsettled, and the Government of the United States having retained the power of settling it, I ask, suppose the power had been exercised, and that there had been no cession of territory by Mexico to the United States, but that the negotiations between the countries had been limited simply to the fixation of the western and northern limits of Texas, could it not have been done by the United States and Mexico conjointly? Will any one dispute it? Suppose there had been a treaty of limits of Texas concluded between Mexico and the United States, fixing the Nueces as the western limit of Texas, would not Texas have been bound by it? Why, by the express terms of the resolution she would have been bound by it; or if it had been the Colorado or the Rio Grande, or any other boundary, whatever western limit had been fixed by the joint action of the two powers, would she have been binding and obligatory upon Texas by the express terms of the resolution by which she was admitted into the Union. Now, sir, Mexico and the United States conjointly, by treaty, might have fixed upon the western and northern limits of Texas, and if the United States have acquired by treaty all the subjects upon which the limits of Texas might have operated, have not the United States now the power solely and exclusively which Mexico and the United States conjointly possessed prior to the late treaty between the two countries? It seems to me, sir, that this conclusion and reasoning are perfectly irresistible. If Mexico and the United States could have fixed upon any western limit for Texas, and did not do it, and if the United States have acquired to themselves, or acquired by the treaty in question, all the territory upon which the western limit must have been fixed, when it was fixed, it seems to me that no one can resist the logical conclusion that the United States now have themselves a power to do what the United States and Mexico conjointly could have done.

Sir, I admit it is a delicate power—an extremely delicate power. I admit that it ought to be exercised in a spirit of justice, liberality, and generosity toward this the youngest member of the great American family.—But here the power is. Possibly, sir, upon that question—however I offer no positive opinion—possibly, if the United States were to fix it in a way unjust in the opinion of Texas, and contrary to her rights, she might bring the question before the Supreme Court of the United States, and have it there again investigated and decided. I say possibly, sir, because I am not one of that class of politicians who believe that every question is a competent and proper question for the Supreme Court of the United States. There are questions too large for any tribunal of that kind to try; great political questions, national territorial questions, which transcend their limits; for such questions their powers are utterly incompetent. Whether this be one of those questions or not, I shall not decide; but I will maintain that the United States are now invested solely and exclusively with that power which was common to both nations—to fix, ascertain, and settle the western and northern limits of Texas.

Sir, the other day my honorable friend who represents so well the State of Texas said, that we had no more right to touch the limits of Texas than we had to touch the limits of Kentucky. I think that was the illustration he gave us—that a state is one and indivisible and that the General Government has no right to sever it. I agree with him, sir, in that where the limits are ascertained and certain, where they are undisputed and indisputable. The General Government has no right, nor has any other earthly power the right, to interfere with the limits of a State whose boundaries are thus fixed, thus ascertained, known, and recognised.—The whole power, at least, to interfere with it is voluntary. The extreme of



may be put—one which I trust in God may never happen in this nation—of a conquered nation, and of a constitution adapting itself to the state of subjugation or conquest to which it has been reduced; and giving up whole states, as well as parts of states, in order to save from the conquering arms of the invader what remains. I say such a power in case of extremity may exist. But I admit that, short of such extremity, voluntarily, the General Government has no right to separate a state—to take a portion of its territory from it, or to regard it otherwise than as integral, one and indivisible, and not to be affected by any legislation of ours. But, then I assume what does not exist in the case of Texas, and these boundaries must be known, ascertained, and indisputable. With regard to Texas, all was open, all was unfixed; all is unfixed at this moment, with respect to her limits west and north of the Nueces.

But, sir, we gave fifteen millions of dollars for this territory that we bought, and God knows what a costly bargain to this now distracted country it has been! We gave fifteen millions of dollars for the territory ceded to us by Mexico. Can Texas justly, fairly, and honorably come into the Union and claim all that she asserted a right to, without paying any portion of the fifteen millions of dollars which constituted the consideration of the grant by the ceding nation to the United States? She proposes no such thing. She talks, indeed, about the United States having been her agent, her trustee. Why, sir, the United States was no more her agent or her trustee than she was the agent or trustee of the whole people of the United States. Texas involved herself in war—(I mean to make this no reproach—none—none—upon the past)—Texas brought herself into a state of war, and when she got into that war, it was not the war of Texas and Mexico, but it was the war of the whole thirty United States and Mexico; it was a war in which the Government of the United States, which created the hostilities, was as much the trustee and agent of the twenty-nine other states composing the Union as she was the trustee and agent of Texas. And, sir, with respect to all these circumstances—such, for example, as a treaty with a map annexed, as in the case of the recent treaty with Mexico; such as the opinion of individuals highly respected and eminent, like the lamented Mr. Polk, late President of the United States, whose opinion was, that he had no right, as President of the United States, or in any character otherwise than as negotiating with Mexico—and in that the Senate would have to act in concurrence with him—that he had no right to fix the boundary; and as to the map attached to the treaty, it is sufficient to say that the treaty itself is silent from beginning to end on the subject of the fixation of the boundary of Texas. The annexation of the map to the treaty was a matter of no utility, for the treaty is not strengthened by it; it no more affirms the truth of any thing delineated upon that map in relation to Texas than it does any thing in relation to any other geographical subject that composed the map.

Mr. President, I have said that I think the power has been concentrated in the Government of the United States to fix upon the limits of the State of Texas. I have said also that this power ought to be exercised in a spirit of great liberality and justice; and I put it to you, sir, to say, in reference to this second resolution of mine, whether that liberality and justice have not been displayed in the resolution which I have proposed. In the resolution, what is proposed? To confine her to the Nueces? No, sir. To extend her boundary to the mouth of the Rio Grande, and thence up that river to the southern limit of New Mexico; and thence along that limit to the boundary between the United States and Spain, as marked under the treaty of 1819.

Why, sir, here is a vast country. I believe—although I have made no estimate, about it—that it is not inferior in extent of land, of acres, of square miles, to what Texas east of the river Nueces, extending to the Sabine, had before. And who is there can say with truth and justice that there is no reciprocity, nor mutuality, no concession in this resolution, made to Texas, even in reference to the question of boundary alone? You give her a vast country, equal, I repeat, in extent nearly to what she indisputably possessed before; a country sufficiently large, with her consent, hereafter to carve out of it some two or three additional states when the condition of the population may render it expedient to make new states. Sir, is there not in this resolution concession, liberality, justice? But this is not all that we propose to do. The second resolution proposed to pay off a certain amount of the debt of Texas. A blank is left in the resolution, because I have not heretofore been able to ascertain the amount.

Mr. Foote. Will the honorable Senator allow me to suggest that it may be agreeable to him to finish his remarks to-morrow? If such be the case, I will move that the Senate now go into Executive session.

Mr. Clay. I am obliged to the worthy Senator from Mississippi; I do not think it possible for me to conclude to day, and I will yield with great pleasure if—

Mr. Foote. I now move—



Mr. CLAY. If the Senator will permit me to conclude what I have to say in relation to Texas, I will then cheerfully yield the floor for his motion.

I was about to remark that, independently of this most liberal and generous boundary which is tendered to Texas, we propose to offer her in this second resolution a sum which the worthy Senator from Texas thinks will not be less than three millions of dollars—the exact amount neither he nor I can furnish, not having the materials at hand upon which to make a statement. Well, sir, you get this large boundary and three millions of your debt paid. I shall not repeat the argument which I urged upon a former occasion, as to the obligation of the United States to pay a portion of this debt, but was struck the other day, upon reading the treaty of limits, first between the United States and Mexico, and next the treaty of limits between the United States and Texas, to find, in the preamble of both those treaties, a direct recognition of the principle from which I think springs our obligation to pay a portion of this debt, for the payment of which the revenue of Texas was pledged before her annexation. The principle asserted in the treaty of limits with Mexico is, that whereas by the treaty of 1819, between Spain and the United States, a limit was fixed between Mexico and the United States, Mexico comprising then a portion of the possessions of the Spanish Government, although Mexico was at the date of the treaty severed from the crown of Spain, yet she, as having been a part of the possessions of the crown of Spain when the treaty of 1819 was made, was bound by that treaty as much as if it had been made by herself instead of Spain—in other words, that the severance of no part of a common empire can exonerate either portion of that empire from the obligations contracted when the empire was entire and unsevered. And, Sir, the same principle is asserted in the treaty of 1828, between Texas, and the United States. The principle asserted is, that the treaty of 1828 between Mexico and the United States having been made when Texas was a part of Mexico, and that now Texas being dissevered from Mexico, she nevertheless remains bound by that treaty as much as if no such severance had taken place. In other words, the principle is this—that when an independent power creates an obligation or debt, no subsequent political misfortune, no subsequent severance of the territories of that power, can exonerate it from the obligation that was created while an integral and independent power; in other words, to bring it down and apply it to this specific case—that, Texas being an independent power, and having a right to make loans and to make pledges, having raised a loan and pledged specifically the revenues arising from the customs to the public creditor, the public creditor became invested with a right to that fund; and it is a right of which he could not be divested by any other act than one to which his own consent was given—it could be divested by no political change which Texas might think proper to make. In consequence of the absorption or merging of Texas into the United States, the creditor, being no party to the treaty which was formed, does not lose his right—he retains his right to demand the fulfilment of the pledge that was made upon this specific fund, just as if there had not been any annexation of Texas to the United States.

That was the foundation upon which I arrived at the conclusion expressed in the resolution—that the United States having appropriated to themselves the revenue arising from the imports, which revenue had been pledged to the creditor of Texas, the United States as an honorable and just power ought now to pay the debt for which those duties were solemnly pledged by a power independent in itself, and competent to make the pledge. Well, sir, I think that when you consider the large boundary which is assigned to Texas—and when you take into view the abhorrence, for I think I am warranted in using this expression—with which the people of New Mexico East of the Rio Grande will look upon any political connexion with Texas—and when, in addition to this, you take into view the large grant of money that we propose to make, and our liberality in exonerating her from a portion of her public debt, equal to that grant—when we take all these circumstances into consideration, I think I have presented a case in regard to which I confess I shall be greatly surprised if the people of Texas themselves, whether they come to deliberate upon these liberal offers, hesitate a moment to accede to them.

I have now got through with what I had to say in reference to this resolution, and if the Senator from Mississippi wishes it, I will give way for a motion for adjournment.

On motion of Mr. Foote the farther consideration of the resolution was postponed, and on motion,

The Senate adjourned.

WEDNESDAY, Feb. 6.

Mr. CLAY. Mr. President, if there be in this vast assembly of beauty, grace, elegance and intelligence any who have come here under an expectation that the humble individual who now addresses you means to attempt any display, any use of ambitious language, any extraordinary ornament or decoration of speech, they will be utterly disappointed. The season of



the year, and my own season of life, both admonish me to abstain from the use of any such ornaments; but, above all, Mr. President, the awful subject upon which it is my duty to address the Senate and the country forbids my saying anything but what pertains strictly to that subject, and my sole desire is to make myself, in seriousness, soberness and plainness, understood by you and by those who think proper to listen to me.

When, yesterday, the adjournment of the Senate took place, at that stage of the discussion of the resolutions which I had submitted which related to Texas and her boundary, I thought I had concluded the whole subject, but I was reminded by a friend that perhaps I was not sufficiently explicit on a single point, and that is, the relation of Texas and the Government of the United States, and that portion of the debt of Texas for which I think a responsibility exists on the part of the Government of the United States.

Sir, it was said that perhaps it might be understood, in regard to the proposed grant of three millions, or whatever may be the sum when ascertained, to Texas, in consideration of the surrender of her title to New Mexico this side of the Rio Grande, that we granted nothing—that we merely discharged an obligation which existed upon the Government of the United States, in consequence of the appropriation of the imports receivable in the ports of Texas while she was an independent power. But that is not my understanding, Mr. President. As between Texas and the United States, the obligation on the part of Texas to pay her portion of the debt referred to, is complete and unqualified, and there is, as between these two parties, no obligation on the part of the United States to pay one dollar of the debt of Texas. On the contrary, by an express stipulation in the resolutions of admission, it is declared and provided that in no event do the United States become liable or charged with any portion of the debt or liabilities of Texas.

It is not, therefore, for any responsibility which exists to the state of Texas, on the part of the Government of the United States, that I think provision ought to be made for that debt. No such thing. As between those two parties, the responsibility on the part of Texas is complete to pay the debt, and there is no responsibility on the part of the United States to pay one cent. But there is a third party, who was no party to the annexation whatever—that is to say, the creditor of Texas, who advanced the money on the faith of solemn pledges made by Texas to him, to reimburse the loan by the appropriation of the duties received on foreign imports; and he, and he alone, is the party to whom we are bound, according to the view which I have presented of the subject. Nor can the other creditors of Texas complain that provision is made only for a particular portion of the debt, leaving the residue of the debt unprovided for, by the Government of the United States, because, in so far as we may extinguish any portion of the debt of Texas under which she is now bound, in so far will it contribute to diminish the residue of the debts of Texas, and leave the funds derived from the public lands held by Texas, and what other resources she may have, applicable to the payment of these debts, with more effect than if the entire debt, including the pledged portion as well as the unpledged portion, was obligatory upon her, and she stood bound by it. Nor can the creditors complain, for another reason.

Texas has all the resources which she had when an independent power, with the exception of the duties receivable in her ports upon foreign imports, and she is exempted from certain charges, expenditures and responsibilities which she would have had to encounter if she had remained a separate and independent power: for example, she would have had to provide for a certain amount of naval force and for a certain amount perhaps of military force, in order to protect herself against Mexico or against any foreign enemy whatever. But by her annexation to the United States she became liberated from all these charges, and, of course, her entire revenues may be applicable to the payment of her debts, those only excepted which are necessary to the support and maintenance of the Government of Texas.

With this explanation upon that part of the subject, I pass to the consideration of the next resolution in the series which I have had the honor to submit, and which relates, if I am not mistaken, to this District.

“*Resolved*, That it is inexpedient to abolish slavery in the District of Columbia, while that institution continues to exist in the State of Maryland, without the consent of that state, without the consent of the people of the District, and without just compensation to the owners of slaves within the District.”

Mr. President, an objection at the moment was made to this resolution, by some honorable Senator on the other side of the body, that it did not contain an assertion of the unconstitutionality of the exercise of the power of abolition. I said then, as I have uniformly maintained in this body, as I contended for in 1838, and ever have done, that the power to abolish slavery within the District of Columbia has been vested in Congress by language too clear and explicit to admit, in my judgment, of any rational doubt whatever. What, sir, is the language of



the Constitution? "To exercise exclusive legislation, in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States and the acceptance of Congress, become the seat of the Government of the United States." Now, sir, Congress, by this grant of power, is invested with all legislation whatsoever over the District. Not only is it so invested, but it is exclusively invested with all legislation whatsoever over the District.

Can we conceive of human language more broad and comprehensive than that which invests a legislative body with exclusive power, in all cases whatsoever, of legislation over a given district of territory or country? Let me ask, sir, is there any power to abolish slavery in this District? Let me suppose, in addition to what I suggested the other day, that slavery had been abolished in Maryland and Virginia—let me add to it the supposition that it was abolished in all the States in the Union; is there any power then to abolish slavery within the District of Columbia, or is slavery planted here to all eternity, without the possibility of the exercise of any legislative power for its abolition? It cannot be invested in Maryland, because the power with which Congress is invested is exclusive. Maryland, therefore, is excluded, and so all the other States of the Union are excluded. It is here, or it is nowhere.

This was the view which I took in 1838, and I think there is nothing in the resolution which I offered on that occasion incompatible with the view which I now present, and which the resolution contains. While I admitted the power to exist in Congress, and exclusively in Congress, to legislate in all cases whatsoever, and consequently in the case of the abolition of slavery in this District, if it is deemed proper to do so, I admitted on that occasion, as I contend now, that it is a power which Congress cannot, in conscience and good faith, exercise while the institution of slavery continues within the state of Maryland. The case, sir, is a good deal altered now from what it was twelve years ago, when the resolution to which I allude was adopted by the Senate.

Upon that occasion Virginia and Maryland both were concerned in the exercise of the power; but, by the retrocession of that portion of the District which lies south of the Potomac, Virginia became no more interested in the question of the abolition of slavery within the residue of the District than any other slaveholding State in the Union is interested in its abolition. The question now is confined to Maryland. I said on that occasion that, although the grant of power is complete, and comprehends the right to abolish slavery within the District, yet it was a thing which never could have entered into the conception of Maryland or Virginia that slavery would be abolished here while slavery continued to exist in either of those two ceding States. I say, moreover, what the grant of power itself indicates, that, although exclusive legislation in all cases whatsoever over the District was vested in Congress within the ten miles square, it was to make it the seat of Government of the United States. That was the great, prominent, substantial object of the grant, and that, in exercising all the powers with which we are invested, complete and full as they may be, yet the great purpose—that of the cession having been made in order to create a suitable seat of Government—ought to be the leading and controlling idea with Congress in the exercise of this power.

And it is not necessary, in order to render it a proper and suitable seat of Government for the United States, that slavery should be abolished within the limits of the ten miles square. And inasmuch as at the time of the cession—when, in a spirit of generosity, immediately after the formation of this constitution—when all was peace, and harmony, and concord—when brotherly affection and fraternal feeling prevailed throughout this whole Union—when Maryland and Virginia, in a moment of generous impulse, and with feelings of high regard toward the members of this Union, chose to make this grant, neither party could have suspected that, at some distant future period, upon the agitation of this unfortunate subject, their generous grant without equivalent was to be turned against them, and that the sword was to be uplifted as it were, in their bosoms, to strike at their own hearts; thus this implied faith, this honorable obligation, this necessity and propriety of keeping in constant view the great object of cession. Those were considerations which in 1832 governed me, as they now influence me, in submitting the reasons which I have submitted to your consideration.

Now, as then, I do not think Congress ought ever, as an honorable body, acting *bona fide* in good faith, and according to the nature and purposes and objects of the cession at the time it was made—and, looking at the condition of the ceding States at that time, Congress cannot, without the forfeiture of all those obligations of honor which men of honor and nations of honor respect as much as if found literally in so many words in the bond itself—Congress cannot interfere with the institution of slavery in this District without the violation of all these obligations, not in my opinion less sacred and less binding than if inserted in the constitutional instrument itself.

Well, sir, what does the resolution propose? The resolution neither affirms nor disaffirms the constitutionality of the exercise of the power of abolition in this District. It is silent upon the subject. It says it was inexpedient to do it but upon certain



are these considerations? Why, first, that the State of Maryland shall give its consent; in other words, that the State of Maryland shall release the United States from the obligation of the implied faith which I contend is connected with the act of cession by Maryland to the United States. Well, sir, if Maryland, the only State now that ceded any portion of the territory which remains to us, gives us her full consent; in other words, if she releases Congress from all obligations growing out of the cession, with regard to slavery, I consider it is removing one of the obstacles to the exercise of the power, if it were deemed expedient to exercise the power. But it is removing only one of them. There are two other conditions which are inserted in this resolution. The first is the consent of the people of the District.

Mr. President, the condition of the people of this District is anomalous. It is a condition in violation of the great principles which lie at the bottom of our own free institutions, and all free institutions, because it is the case of a people who are acted upon by legislative authority, and taxed by legislative authority, without having any voice or representation in the taxing or legislative body. The Government of the United States, in respect to the people of this District, is a tyranny, an absolute Government—not exercised hitherto, I admit, and I hope it never will be exercised, tyrannically or arbitrarily; but it is in the nature of all arbitrary power, because, if I were to give a definition of arbitrary power, I would say that it is that power which is exercised by an authority over our people who have no voice, no representation in the assembly whose edicts or laws go forth to act upon the unrepresented people to whom I have referred.

Well, sir, that being their condition, and this question of the abolition of slavery affecting them in all the relations which we can imagine—of prosperity, society, comfort, peace, and happiness—I have required as another condition, upon which alone this power should be exercised, the consent of the people of the District. But, sir, I have not stopped there. This resolution requires still another and a third condition, and that is, that slavery shall not be abolished within the District of Columbia, although Maryland consents, although the people of the District themselves consent, without the third condition of making compensation to the owners of the slaves within the District. Sir, it is immaterial to me upon what basis this obligation to compensate for the slaves who may be liberated by the authority of Congress is placed. There is a clause in the constitution of the United States, of the amendments to the constitution, which declares that no private property shall be taken for public use, without just compensation being made to the owner of the property.

Well, I think, in a just and liberal interpretation of that clause, we are restrained from taking the property of the people of the District, in slaves, on considerations of any public policy, or for any conceivable or imaginable use of the public, without a full and fair compensation to the people of this District. But, without the obligation of any constitutional restriction, such as is contained in the amendment to which I refer—without that, upon the principles of eternal justice itself, we ought not to deprive those who have property in slaves, in this District, of their property, without compensating them for their full value. Why, sir, no one of the European powers, Great Britain, France, or any other of the powers which undertook to abolish slavery in their respective colonies, has ever ventured to do it without making compensation. They were under no obligation arising out of any written or other constitution to do it, but under that obligation to which all men ought to bow with homage—that obligation of eternal justice, which declares that no man ought to be deprived of his property without a full and just compensation for its value.

I know it has been argued that the clause of the constitution which requires compensation for property taken by the public, for its use, would not apply to the case of the abolition of slavery in the District, because the property is not taken for the use of the public. Literally, perhaps, it would not be taken for the use of the public; but it would be taken in consideration of a policy and purpose adopted by the public, as one which it was deemed expedient to carry into full effect and operation; and, by a liberal interpretation of the clause, it ought to be so far regarded as taken for the use of the public, at the instance of the public, as to demand compensation to the extent of the value of the property.

If that is not a restriction as to the power of Congress over the subject of slavery in the District, then the power of Congress stands unrestricted, and that would not be a better condition for the slaveholder in the District than to assume the restriction contained in the amendment. I say it would be unrestricted by constitutional operation or injunction. The great restrictions resulting from the obligations of justice would remain, and they are sufficient to exact from Congress the duty of ascertaining, prior to the abolition of slavery, the value of the property in slaves in the District, and of making full, fair and just compensation for that property.

Well, Mr. President, I said yesterday there was not a resolution, except the first, (which contained no concession by either party,) that did not either contain some mutual concession



by the two parties, or did not contain concessions altogether from the North to the South.

Now with respect to the resolution under consideration. The North has contended that the power exists under the constitution to abolish slavery. The South, I am aware, has opposed it, and most, at least a great portion of the South, have contended for the opposite construction. What does the resolution do? It asks of both parties to forbear urging their respective opinions, the one to the exclusion of the other, but it concedes to the South all that the South, it appears to me, upon this subject, ought in reason to demand, in so far as it requires such conditions as amount to an absolute security for property in slaves in the District; such conditions as will probably make the existence of slavery within the District coeval and coextensive with its existence in any of the States out of and beyond the District. But, sir, the second clause of this resolution provides "that it is expedient to prohibit within the District the trade in slaves bought into it from States or places beyond the limits of the District, either to be sold therein as merchandise or to be transported to other markets."

Well, Mr. President, if the concession be made that Congress has the power of legislation, and exclusive legislation, in all cases whatsoever, how can it be doubted that Congress has authority to prohibit what is called the slave trade in the District of Columbia? Sir, my interpretation of the constitution is this; that, with regard to all parts of it which operate upon the States, Congress can exercise no power which is not granted, or which is not a necessary implication from a granted power. That is the rule for the action of Congress in relation to its legislation upon the States, but in relation to its legislation upon this District, the reverse. I take it to be the true rule that Congress has all power over the District which is not prohibited by some part of the Constitution of the United States; in other words, that Congress has a power within the District equivalent to, and co-extensive with, the power which any State itself possesses within its own limits. Well, sir, does any one doubt the power and the right of any slaveholding State in this Union to forbid the introduction, as merchandise, of slaves within their limits? Why, sir, almost every slaveholding State in the Union has exercised its power to prohibit the introduction of slavery as merchandise.

It was in the constitution of my own State; and, notwithstanding all the excitement and agitation upon the subject of slavery which occurred during the past year in the State of Kentucky, the same principle is incorporated in the new constitution. It is in the constitution, I know, of Mississippi. That State prohibits the introduction of slaves within its limits as merchandise. I believe it to be in the constitution or in the laws of Maryland—in the laws of Virginia—in the laws of most of the slaveholding States. It is true that the policy of the different slaveholding States upon this subject has somewhat vacillated—they sometimes adopted it and sometimes excluded it—but there has been no diversity of opinion, no departure from the great principle, that every one of them has the power and authority to prohibit the introduction of slaves within their respective limits, if they choose to exercise it. Well, then, sir, I really do not think that this resolution, which proposes to abolish that trade, ought to be considered as a concession by either class of the States to the other class.

I think it should be regarded as a common object, acceptable to both, and conformable to the wishes and feelings of both; and yet, sir, in these times of fearful and alarming excitement—in these times when every night that I go to sleep and awake up in the morning, it is with the apprehension of some new and fearful and dreadful tidings upon this agitating subject—I have seen in the act of a neighboring State, among the various contingencies which are enumerated, upon the happening of any one of which delegates are to be sent to the famous convention which is to assemble at Nashville in June next, that among other substantive grounds for the appointment of delegates to that convention—of delegates from the State to which I refer—one is, that if Congress abolish the slave trade in the District of Columbia, that shall be cause for a convention—in other words, it is cause for considering whether this Union ought to be dissolved or not. Is it possible to portray a greater extent of extravagance to which men may be carried by the indulgence of their passions?

Sir, the power exists; the duty, in my opinion, exists; and there has been no time—as I may say, in language coincident with that used by the honorable Senator from Alabama—there has been no time in my public life when I was not willing to concur in the abolition of the slave trade in this District. I was willing to do it when Virginia's portion of the District was retroceded, that lying South of the Potomac. There is still less ground for objection to doing it now, when the District is limited to the portion this side of the Potomac, and when the motive or reason for concentrating slaves here in a depot, for the purpose of transportation to distant foreign markets, is lessened with the diminution of the District, by the retrocession of that portion to Virginia.

Why should slave-traders who buy their slaves in Maryland or Virginia, come here with their slaves in order to transport them to New Orleans or other Southern markets? Why not transport them from the States in which they are purchased? Why are the feelings of citizens here outraged by the scenes exhibited, and



ness, of manacled human beings, not collected at all in our own neighborhood, but brought from distant parts of neighboring States? Why should they be outraged? And who is there, that has a heart, that does not contemplate a spectacle of that kind with horror and indignation? Why should they be outraged by a scene so inexcusable and detestable as this?

Sir, it is no concession, I repeat, from one class of States or from the other. It is an object in which both of them, it seems to me, should heartily unite, and which the one side as much as the other should rejoice in adopting, inasmuch as it lessens one of the causes of inquietude and dissatisfaction which are connected with this District. Abolish the slave-trade in this District; re-assert the doctrine of the resolution of 1838, that by an implied assent on the part of Congress slavery ought not to be abolished in the District of Columbia, while it remains in the State of Maryland; re-assert the principle of that resolution, and adopt the other healing measures—or other similar or more healing measures—for I am not attached to any thing that is the production of my own hand, if any thing better should be offered by any body else—adopt the other healing measures which are proposed, and which are required by the distracted condition of the country, and I venture to say that, as we have had peace and quiet for the last twenty years, since the termination of the Missouri controversy, we shall have, in all human probability, peace for a longer period to come upon this unhappy subject of slavery.

The next resolution is:

“That more effectual provision ought to be made by law, according to the requirement of the Constitution, for the restitution and delivery of persons bound to service or labor in any State, who may escape into any other State or Territory in the Union.”

Now, Mr. President, upon that subject I go with him who goes farthest in the interpretation of that clause in the Constitution. In my humble opinion, sir, it is a requirement by the Constitution of the United States which is not limited in its operation to the Congress of the United States, but extends to every State in the Union and to the officers of every State in the Union; and I go one step farther; it extends to every man in the Union, and devolves upon them all an obligation to assist in the recovery of a fugitive from labor who takes refuge in or escapes into one of the free States. And, sir, I think I can maintain all this by a fair interpretation of the Constitution. It provides—

“That no person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.”

It will be observed, Mr. President, that this clause in the Constitution is not among the enumerated powers granted to Congress, for, if that had been the case, it might have been urged that Congress alone could legislate to carry it into effect; but it is one of the general powers, or one of the general rights secured by this Constitutional instrument, and it addresses itself to all who are bound by the Constitution of the United States. Now, sir, the officers of the General Government are bound to take an oath to support the Constitution of the United States. All State officers are required by the Constitution to take an oath to support the Constitution of the United States; and all men who love their country and are obedient to its laws, are bound to assist in the execution of those laws, whether they are fundamental or derivative. I do not say that a private individual is bound to make the tour of his State in order to assist an owner of a slave to recover his property; but I do say, if he is present when the owner of a slave is about to assert his rights and endeavor to obtain possession of his property, every man present, whether he be an officer of the General Government or the State Government, or a private individual, is bound to assist, if men are bound at all to assist in the execution of the laws of their country.

Now what is this provision? It is that such fugitives shall be delivered upon claim of the party to whom such service or labor may be due. As has been already remarked in the course of the debate upon the bill upon this subject which is now pending, the language used in regard to fugitives from criminal offences and fugitives from labor is precisely the same. The fugitive from justice is to be delivered up, and to be removed to the State having jurisdiction; the fugitive from labor is to be delivered up on claim of the party to whom such service is due. Well, has it ever been contended on the part of any State that she is not bound to surrender a fugitive from justice, upon demand from the State from which he fled? I believe not. There have been some exceptions to the performance of this duty, but they have not denied the general right; and if they have refused in any instance to give up the person demanded, it has been upon some technical or legal ground, not at all questioning the right of the State to which he fled, or the obligation to deliver him up as intended



I think, then, Mr. President, that with regard to the true interpretation of this provision of the Constitution there can be no doubt. It imposes an obligation upon all the States, free or slaveholding; it imposes an obligation upon all officers of the Government, State, or Federal; and, I will add, upon all the people of the United States, under particular circumstances, to assist in the surrender and recovery of a fugitive slave from his master.

There has been some confusion, and, I think, some misconception, on this subject, in consequence of a recent decision of the Supreme Court of the United States. I think that decision has been entirely misapprehended. There is a vast difference between imposing impediments and affording facilities for the recovery of fugitive slaves. The Supreme Court of the United States has only decided that all laws of impediment are unconstitutional. I know there are some general expressions in the opinion to which I have referred—the case of Maryland against Pennsylvania—that seem to import otherwise; but I think, when you come attentively to read the whole opinion, and the opinion pronounced by all the judges, especially if you take the trouble of doing what I have done, to converse with them as to what their real meaning was, you will find that the whole extent of the authority which they intended to establish was that any laws of impediment enacted by the States were laws that were forbidden by the provision of the Constitution to which I refer; that the General Government had no right, by an act of the Congress of the United States, to impose obligations upon State officers not imposed by the authority of their own Constitution and laws. It is impossible the decision could have been otherwise. It would have been perfectly extrajudicial. The Court had no right to decide the question whether the laws of facility were or were not unconstitutional.

The only question before the Court was the law of impediment passed by the Legislature of Pennsylvania; and if they had gone beyond the case before them, and undertaken to decide upon a case not before them, a principle which was not fairly comprehended within the case before them, it would be what the lawyers term an *obiter dictum*, and is not binding either on that Court itself or any other tribunal. I say it was not possible that, with the case before the Court of a law for giving facility to the holder of the slave to recover his property again, it was utterly impossible that any tribunal should pronounce a decision that such aid and assistance, rendered by the authority of the State, under this provision of the Constitution of the United States, is unconstitutional and void. The Court has not said so, or if they have said so, they have transcended their authority and gone beyond the case which was before them. Laws passed by States, in order to assist the General Government, so far from being laws repugnant to the Constitution, would every where be regarded as laws carrying out, enforcing, and fulfilling the Constitutional duties which are created by that instrument.

Why, sir, as well might it be contended that if Congress were to declare war—and no one will doubt that the power to declare war is vested exclusively in Congress; no State has the right to do it—no one will contend seriously, I apprehend, that after the declaration of war it would be unconstitutional on the part of any of the States to assist in the vigorous and effective prosecution of that war; and yet it would be just as unconstitutional to lend their aid to the successful and glorious termination of the war in which we might be embarked, as it would be to assist in the performance of a high duty which addresses itself to all the States and all the people of all the States.

Mr. President, I do think that that whole class of Legislation, beginning in the Northern States and extending to some of the Western States, by which obstructions and impediments have been thrown in the way of the recovery of fugitive slaves, is unconstitutional, and has originated in a spirit which I trust will correct itself when those States come calmly to consider the nature and extent of their federal obligations. Of all the States in this Union, unless it be Virginia, the State of which I am a resident suffers most by the escape of their slaves to adjoining States.

I have very little doubt, indeed, that the extent of loss to the State of Kentucky, in consequence of the escape of her slaves is greater, at least, in proportion to the total number of slaves which are held within that commonwealth, even than in Virginia. I know full well, and so does the honorable Senator from Ohio know, that it is at the utmost hazard, and insecurity to life itself, that a Kentuckian can cross the river and go into the interior to take back his fugitive slave to the place from whence he fled. Recently an example occurred even in the city of Cincinnati, in respect to one of our most respectable citizens. Not having visited Ohio at all, but Covington, on the opposite side of the river, a little slave of his escaped over to Cincinnati. He pursued it; he found it in the house in which it was concealed; he took it out, and it was rescued by the violence and force of a negro mob from his possession—the police of the city standing by and either unable to afford the assistance which



free States. I think they fail in fulfilling a great obligation, and the failure is precisely upon one of those subjects which in its nature is the most irritating and inflaming to those who live in the slave States.

Now, sir, I think it is a mark of no good neighborhood, of no kindness, of no courtesy, that a man living in a slave State cannot now, with any sort of safety, travel in the free States with his servants, although he has no purpose whatever of stopping there longer than a short time. And on this whole subject, sir, how has the legislation of the free States altered for the worse within the course of the last twenty or thirty years? Why, sir, most of those States, until within a period of the last twenty or thirty years, had laws for the benefit of sojourners, as they were called, passing through or abiding for the moment in the free States, with their servants. Sir, I recollect a case that occurred during the war. My friend, Mr. Cheeves, of South Carolina, instead of going home in the vacation, went to Philadelphia, taking his family servants with him. Some of the abolitionists of that city took out a habeas corpus, seized the slaves, and the question was brought before the Supreme Court of the State of Pennsylvania, where it was argued for days.

It was necessary, during the progress of the arguments, to refer to a great variety of statutes passed from time to time by the Legislature of Pennsylvania, on behalf of the sojourner, guarantying and securing to him the possession of his property during his temporary passage or abode within the limits of that commonwealth. Finally, the court gave their opinion *seriatim*—each judge his separate opinion, until it came to Judge Breckenridge to deliver his, who was the youngest judge, I think, on the bench. During the progress of the delivery of their opinions they had frequently occasion to refer to the acts passed for the benefit of sojourners; and each of the judges who preceded Mr. Breckenridge always pronounced the word “sudgener.” When it came to Judge Breckenridge to deliver his opinion, he said, “I agree in all that my learned brethren have pronounced upon this occasion, except in their pronunciation of the word ‘sojourner.’ They pronounced it ‘sudgener;’ but I call it ‘sojourner.’” [Laughter.] Well, now, sir, all these laws in behalf of these sojourners through the free States are swept away, except I believe in the State of Rhode Island.

Mr. DAYTON. And New Jersey

Mr. CLAY. Aye, and in New Jersey. I am happy to hear it; but in most of the large States, in most, if not all, of the New England States, these laws have been abolished, showing the progressive tendency of bad neighborhood and unkind action on the part of the free States toward the slaveholding States.

Mr. President, I do not mean to contest the ground—I am not going to argue the question, whether, if a man carries his slave voluntarily into the free States and he is not a fugitive, whether that slave, by the voluntary action of the master, does or does not become instantly entitled to his freedom. I am not going to argue that question. I know what the decision has been at the North, but I mean to say it is unkind, it is unneighborly, it is not in the spirit of fraternal connexion which exists between the members of this confederacy, to execute a strict legal principle in the way suggested, even supposing it to be right so to do. But where there is no purpose of permanent abode, no intention of settling finally and conclusively, and planting his slaves within the commonwealth, it is but right, and a proof of good neighborhood and kind and friendly feeling, to allow the owner of the slave to pass with his property unmolested through your State.

Allow me to say upon the subject, though it is perhaps going farther into detail than is necessary, that of all the exercise of power of those who attempt to seduce from their owners their slaves, there is no instance in which it is exercised so injuriously to the objects of their charity and benevolence as in the case of the seduction of family slaves from the service of their owner. The slaves in a family are treated with all the kindness that the children of the family receive. Everything which they want for their comfort is given them with the most liberal indulgence; and, sir, I have known more instances than one where, by this practice of the seduction of family servants from their owners, they have been rendered wretched and unhappy in the free States; and in my own family, a slave who had been seduced away, addressed her mistress and begged and implored of her the means of getting back from the state of freedom to which she had been seduced, to the state of slavery in which she was so much more happy; and in the case to which I have referred the means were afforded her, and she returned to the State of Kentucky to her mistress.

Then, Mr. President, I think that the existing laws upon the subject, for the recovery of fugitive slaves, and the restoration and delivering of them up to their owners, being found inadequate and ineffective, it is incumbent on Congress—and I hope hereafter, in a better state of feeling, when more harmony and good-will prevail among the members of this confederacy, that the free States themselves as a part of their duty also—to



more effective, and I shall go with the Senator from the South who goes farthest in making penal laws and imposing the heaviest sanctions for the recovery of fugitive slaves, and the restoration of them to their owners.

Mr. President, upon this part of the subject, however, allow me to make an observation or two. I do not think the States, as States, ought to be responsible for all the misconduct of particular individuals within those States. I think that the States are only to be held responsible when they act in their sovereign capacity. If there are a few persons, indiscreet, mad, if you choose—fanatics, if you choose so to call them—who are for dissolving this Union, as we know there are some at the North, and for dissolving it in consequence of the connexion which exists between the free and slaveholding States, I do not think that any State in which such madmen as they are to be found, ought to be held responsible for the doctrines they propagate, unless the State itself adopts those doctrines.

Sir, there have been, perhaps, mutual causes of complaint; and I know, at least I have heard, that Massachusetts, for some of her unfriendly laws on the subject of the recovery of fugitive slaves, urges as the motive for the passage of those laws the treatment which a certain minister of hers experienced in Charleston, some years ago. Mr. Hoar, I think, is the name of the individual who was sent to South Carolina to take care of the free negroes of Massachusetts that might pass to Charleston in the vessels of Massachusetts. I think it was a mission that it was hardly worthy of Massachusetts to create. I think she might have omitted to send Mr. Hoar upon any such mission; but she thought it right to send him, and he went there for the purpose of asserting, as he said, the rights of those free people of color before the courts of justice, and of testing the validity of certain laws in South Carolina with regard to the prohibition of free negroes from coming into her ports. I believe that was the object, that was the purpose of his mission. He went there to create no disturbance, as I understand, except so far as asserting those rights and privileges, in the sense in which Massachusetts held them, might create disturbance. He was virtually driven out of Charleston, as I believe he or some other emissary of the same kind was driven out of New Orleans. I do not mean to say whether it was right or wrong to expel him. What I mean to say is, that Massachusetts, or some of her citizens, has said, that, after finding this treatment towards those whom she chooses to consider citizens, on the part of South Carolina, she determined on that course of legislation by which she has withdrawn all aid and assistance for the recovery of fugitives, and interposes obstacles; and then she pleads the treatment of Mr. Hoar as an apology. I think that furnished her with no sufficient apology. If South Carolina treated her ill, it is no reason why she should ill treat Kentucky and Virginia, and other slaveholding States that had done her no wrong. But she thought so.

I mention both cases—the case of the expulsion of Mr. Hoar from Charleston, and the passage of the laws of Massachusetts—not by way of approbation of either, but to show that there have been, unhappily, mutual causes of agitation, furnished by one class of States as well as by the other; though, I admit, not in the same degree by the slave States as by the free States. And I admit, also, that the free States have much less cause for anxiety and solicitude on this subject of slavery than the slave States, and that far more extensive excuses, if not justification, ought to be extended to the slave than the free States, on account of the difference of the condition of the respective parties.

Mr. President, passing from that resolution, I will add only a single observation, that when the bill comes up to be finally acted on, I will vote most cordially and heartily for it.

Mr. DAVIS, of Massachusetts. Will the honorable Senator permit me to interrupt him for a moment? I want to say one word in behalf of the state of Massachusetts, with his permission.

Mr. CLAY. Certainly, certainly.

Mr. DAVIS. I have never, although most likely he may have, heard the apology stated by the honorable Senator for passing the law to which he has referred; but on the contrary I have always understood that the law which Massachusetts had, for restoring fugitive slaves, was repealed because the courts below, as they understood it, had pronounced their law unconstitutional. That is the ground which they took; whether they were wise in the legislation they adopted I shall not undertake to say. But I wish to say one word in regard to the mission, as it is termed by the honorable Senator from Kentucky, to South Carolina.

If I call the facts to my recollection correctly, they are these. We are the owners of much shipping; we employ many sailors, and among them we employ free colored men, men whom we in Massachusetts acknowledge to be citizens of the United States and citizens of the commonwealth, and entitled to the rights of citizens. These citizens were taken from our vessels when they arrived in South Carolina, and were held in custody till the vessels sailed again. This our citizens complained of, whether justly or unjustly, that it was an encroachment, in the first place, upon the rights of citizens, and, in the next place, that it was a great inconvenience.



the State, to some suitable and proper person, who was a citizen of South Carolina, to test the right to hold her citizens in custody in this way, in the courts of the State, or in the courts of the United States. If I remember rightly, that was declined by one or more citizens of South Carolina. Then the mission, to which the honorable Senator refers, was instituted, and the termination of it I believe he has correctly stated.

I wish it to appear that Massachusetts had no aggressive purpose whatever, but simply wished that the judiciary should decide the question existing between them. She wanted nothing more, asked nothing more.

Mr. CLAY. Mr. President, I hear with much pleasure this explanation. I have been informed, however, by an eminent citizen of Massachusetts, whose name it is unnecessary to mention—he is not a member of this body—that the motive for the repeal of these laws, or for the passage of these laws, at least one of the motives, was the treatment of Mr. Hoar in Charleston. However, I am glad to hear that it proceeded from another cause, and that is what I conceive to be a misconception of what the true opinion of the judges of the Supreme Court was. When the true exposition of that opinion comes to be known in Massachusetts, I trust that the Legislature of that State will restore the laws facilitating the recovery of fugitive slaves, which she repealed in consequence of that misconception.

Mr. President, I have a great deal yet to say, and I shall, therefore, pass from the consideration of this seventh resolution with the observation, which I believe I have partly made before, that the most stringent provision upon this subject which can be devised will meet with my hearty concurrence and co-operation, in the passage of the bill which is under the consideration of the Senate. The last resolution declares—

“That Congress has no power to prohibit or obstruct the trade in slaves between the slaveholding States; but that the admission or exclusion of slaves brought from one into another of them depends exclusively upon their own particular laws.”

This is a concession, not, I admit, of any real constitutional provision, but a concession from the North to the South of what is understood, I believe, by a great number at the North, to be a constitutional provision. If the resolution should be adopted, take away the decision of the Supreme Court of the United States on this subject, and there is a great deal, I know, that might be said on both sides, as to the right of Congress to regulate the trade between the States, and, consequently, the trade in slaves between the States; but I think the decision of the Supreme Court has been founded upon correct principles, and I trust it will forever put an end to the question whether Congress has or has not the power to regulate the intercourse and trade in slaves between the different States.

Such, Mr. President, is the series of resolutions which in an earnest and anxious desire to present the olive branch to both parts of this distracted, and at the present moment unhappy country, I have thought it my duty to offer. Of all men upon earth I am the least attached to any productions of my own mind. No man upon earth is more ready than I am to surrender any thing which I have proposed, and to accept in lieu of it any thing that is better; but I put it to the candor of honorable Senators on the other side and upon all sides of the House, whether their duty will be performed by simply limiting themselves to objections to any one or to all of the series of resolutions that I have offered. If my plan of peace, and accommodation, and harmony, is not right, present us your plan. Let us see the counter project. Let us see how all the questions that have arisen out of this unhappy subject of slavery can be better settled, more fairly and justly settled to all quarters of the Union, than on the plan proposed in the resolutions which I have offered. Present me such a scheme, and I will hail it with pleasure, and will accept it without the slightest feeling of regret that my own was abandoned. Sir, while I was engaged in anxious consideration upon this subject, the idea of the Missouri compromise, as it has been termed, came under my review, was considered by me, and finally rejected as in my judgment less worthy of the common acceptance of both parts of this Union than the project which I have offered for your consideration.

Before I enter into a particular examination, however, of that Missouri compromise, I beg to be allowed to correct a great error which is prevailing, not merely in this Senate but throughout the whole country, in respect to my agency in the Missouri compromise, or rather in respect to the line of 36 deg. 30 min., which was established in 1820 by an act of Congress. I do not know whether any thing has excited more surprise in my mind, as to the rapidity with which important historical transactions are obliterated and pass from the mind, than when I understood everywhere that I had been the author of the line of 36 deg. 30 min., which was established upon the occasion of the admission of Missouri into the Union. It would take too much time to go over the whole of that important era in the public affairs of the country. I shall not do it, although I have got ample materials before me derived from a careful examination of the journals of both houses. I will not occupy



or not, it did not originate in the house of which I was a member.

It originated in this body, as those who will cast their recollection back, and I am sure the honorable Senator from Missouri, (Mr. Benton,) more correctly than any body else, must bring to his recollection the fact that at the Congress when the proposition was first made to admit Missouri—or rather to allow her to hold a convention and frame a constitution and decide whether she should or should not be admitted into the Union—the bill failed by a disagreement between the two houses, the House insisting on and the Senate dissenting from the provisions contained in the ordinance of 1787. The House insisting on the interdiction of slavery, and the Senate rejecting the proposition of the interdiction of slavery, the bill fell through; it did not pass at that session of Congress. At the next session it was renewed, and at the time of its renewal Maine was knocking at our door to be admitted into the Union. In the House there was a majority for the restriction as to slavery in Missouri; in the Senate there was a majority opposed to all restriction. In the Senate, therefore, in order to carry through the Missouri bill, or the provision for her admission—or rather authorizing her to determine the question of her admission—that bill was coupled with the bill for the admission of Maine. They were connected together, and the Senate said to the House, “You want a bill for the admission of Maine passed, but you shall not have it, unless you take along with it a bill for the admission of Missouri also.” There was a majority, a very large one, in the Senate, for coupling both together.

Well, sir, the bill went through all the usual stages of disagreement of committees of conference, and there were two committees of conference on the occasion before the matter was finally settled. And it was finally settled to disconnect the two bills—to admit Maine separately, without any connection with Missouri, and to insert in the Missouri bill a clause proposed in the Senate of the United States by Mr. Thomas, Senator from Illinois, restricting slavery north of the line 36 deg. 30 min., and leaving it open south of that line, either to admit it or not to admit it. Well, sir, the bill finally passed. The committees of conference of the two houses recommended the detachment of the two cases, and the passage of the Missouri bill with the clause 36 deg. 30 min. in it; and so it passed, so it went to Missouri, so it for a moment quieted the country, by means of the introduction of the clause 36 deg. 30 min. You will find, I repeat, sir, if you will take the trouble to look at the journals, that on as many as three or four different occasions Mr. Thomas in every instance presented the proposition of 36 deg. 30 min. It was finally agreed to; and I take occasion to say that among those who voted for the 36 deg. 30 min. were the majority of the Southern members—my friend from Alabama, (Mr. King,) in the Senate, Mr. Pinckney, from Maryland, and indeed the majority of the Southern Senators voted in favor of the line 36 deg. 30 min.; and the majority of the Southern members in the other house, at the head of whom was Mr. Lowndes himself, voted also for that line. I have no doubt I did also; but, as I was Speaker of the House at the time, and the journal does not show how the Speaker votes except in the case of a tie, I was not able to ascertain, by a resort to the records, how I did vote; but I have very little doubt that I voted, in common with my other Southern friends, for the adoption, in a spirit of compromise, it is true, of the line 36 deg. 30 min.

Well, sir, so the matter ended in 1820. During that year Missouri held her convention, adopted her constitution, sent her delegates to Congress, seeking to be admitted into the Union; but she had inserted a clause in her constitution containing a prohibition of free people of color from that State. She came here with her constitution containing that prohibition, and immediately the Northern members took exception to it. The flame which had been repressed during the previous session now burst forth with double violence throughout the whole Union. Legislative bodies all got in motion to keep out Missouri, in consequence of her interdiction of free people of color from within her limits. I did not arrive at Congress that session till January, and when I got here I found both bodies completely paralyzed in consequence of the struggle to exclude Missouri from the Union on account of that prohibition.

Well, sir, I made the first effort in the House to settle it. I asked for a committee of thirteen, and a committee of thirteen was granted to me, representing all the old States of the Union. The committee met. I presented to them a resolution, which was adopted by the committee and reported to the House—not unlike the one to which I will presently call the attention of the Senate—and we should have carried it in the House but for the votes of Mr. Randolph, of Virginia, Mr. Edwards, of North Carolina, and Mr. Burton, of North Carolina—two of the three, I believe, no longer living. These three Southern votes were all cast against the compromise which was prepared by the committee, or rather by myself, as chairman of the committee of thirteen, and defeated it.

Well, sir, in that condition the thing remained for several days. The greatest anxiety pervaded the country—the public mind was unsettled—men were unhappy—the



have been adopted, I believe, but when it came to the vote of yeas and nays, unfortunately then—more unfortunately then, I hope, than now, if there should be occasion for it now—there were few Curtiuses and Leonidases willing to risk themselves for the safety and security of their country. I endeavored to avail myself of that good feeling, as far as I could; and, after a few days had elapsed, I brought forward another proposition; a new one, perfectly unpractised in this country, either before or since, as far as I know.

I proposed a joint committee of the two houses; that of the House to consist of twenty-three members, (the number of the Senate committee I do not recollect,) and that this committee should be appointed by ballot; for at that time Mr. Taylor, of New York, was in the chair, and Mr. Taylor was the very man who had first proposed the restriction upon Missouri. He proposed that she should only be admitted on the principle of the ordinance of 1787; I proposed therefore, that the committee be appointed by ballot. Well, sir, my motion was carried by a large majority; and members came to me from all quarters of the House, and said, "Whom, Mr. Clay, do you want to have with you on the committee?" I made out my list of twenty-three members, and I venture to say that that happened on that occasion which will hardly ever happen again, eighteen of the twenty-three were elected on the first ballot, and the remaining five on my list having the largest number of votes, but not the majority, I moved to dispense with any farther balloting, and that these five should be added to the eighteen, thus completing the committee of twenty-three. One or two gentlemen, Mr. Livermore, of New Hampshire, and one or two others, declined to serve on the committee; and, very much to my regret, and somewhat to my annoyance, the lamented Mr. Randolph and another person were placed in their situation—I forget whether done by ballot or by the Speaker; it is enough to say they were put on the committee.

Well, sir, the Senate immediately agreed to the proposition, appointed its committee, and we met in this hall on the Sabbath day, within two or three days of the close of the session, when the whole nation was waiting with breathless anxiety for some final and healing measure upon the distracting subject which occupied our attention. We met here on that day, and, accordingly, the moment we met, Mr. Randolph made a suggestion which I knew would be attended with the greatest embarrassment and difficulty. He contended that over the two committees of the two houses the chairman of the House committee had a right to preside, and he was about to insist at some length that the two committees should be blended together, and that I should preside over both. I instantly interposed, and said that I did not think that was the correct mode, but that the chairman of the committee of each house should preside over his own committee, and that when the committee of one house matured and adopted a proposition, it should be submitted to the other committee, and if agreed to by them, it should then be reported to the two houses, and its adoption recommended. That course was agreed upon, and Mr. Holmes, I believe, of Maine, presided over the committee of the Senate, and I presided over the committee of the House. I did then, what I have protested I would not do at this session, took too much the lead in the discussion.

I brought forward the proposition which I will refer to presently; and I did more, I took the trouble to ascertain the views of each member of the committee—I polled the committee, if I may use the expression. I said, now, gentlemen, we do not want a proposition carried here by a simple majority and reported to the House, there to be rejected. I am for something practical, something conclusive, something decisive upon this agitating question, and it should be carried by a good majority. How will you vote, Mr. A.? how will you vote, Mr. B.? how will you vote, Mr. C.? and I polled them in that way. Well, sir, to my very great happiness, a sufficient number responded affirmatively, that they would vote for the proposition, to enable me to know that, if they continued to vote that way in the two houses, of which I had not a particle of doubt in the world, the proposition would be carried in the two houses. Accordingly, it having been agreed upon by both committees, and reported to their respective houses, it was finally adopted.

This joint resolution for the admission of Missouri was passed in 1821. (I find I have been furnished with one which was proposed, but not adopted. The right one is contained in the statutes at large; I have seen it there.)

Well, sir, the resolution was finally adopted. I can state, without reading it, what its provisions are. It declares that, if there be any provision in the Constitution of Missouri, incompatible with the Constitution of the United States, Missouri shall forbear to enforce the repugnant provisions of her constitution, and that she shall by some solemn and authentic act declare that she will not enforce any provisions of her constitution which are incompatible with the constitution of the United States; and upon her passage of such a solemn and authentic act, the President of the United States—who was at that time Mr. Monroe—shall make proclamation of the fact; and thereupon, and without any farther legislation of Congress, Missouri shall be admitted into the Union.



During the discussion which took place in the House at that time, from day to day, and from night to night—for the discussions frequently ran into the night—we who were for admitting Missouri into the Union said to our brethren from the North, “Why, gentlemen, if there be any provision in the Constitution of Missouri which is repugnant to the constitution of the United States, it is a nullity. The Constitution of the United States, by virtue of its own operation—its own self-operation—vacates it. Any tribunal on earth, before which the question may be brought, must pronounce the Constitution of the United States paramount, and must pronounce invalid the repugnant provisions of the constitution of Missouri.” Well, sir, the argument was turned, and twisted, and used in every possible variety of form. All was in vain. An inflexible majority stood out to the last against the admission of Missouri; and yet the resolution—

Mr. UNDERWOOD. I have it here.

Mr. CLAY. If you will read it, I shall be obliged to you.

Mr. UNDERWOOD read the resolution as follows:

Resolution providing for the admission of the State of Missouri into the Union on a certain condition.

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That Missouri shall be admitted into this Union on an equal footing with the original States in all respects whatever, upon the fundamental condition that the fourth clause of the 26th section of the third article of the Constitution, submitted on the part of said state to Congress, shall never be construed to authorise the passage of any law, and that no law shall be passed in conformity thereto, by which any citizen of either of the States of this Union shall be excluded from the enjoyment of any of the privileges and immunities to which such citizen is entitled under the Constitution of the United States: Provided, That the Legislature of the said state, by a solemn public act, shall declare the assent of the said State to the said fundamental condition, and shall transmit to the President of the United States, on or before the fourth Monday in November next, an authentic copy of the said act; upon the receipt whereof the President, by proclamation, shall announce the fact; whereupon, and without any farther proceeding on the part of Congress, the admission of the said State into the Union shall be considered as complete.*

[Approved March 2, 1832.]

Mr. CLAY. There is the resolution, sir, and you see it is precisely what I have stated. After all this excitement throughout the country, reaching to such an alarming point that the Union itself was supposed to be in the most imminent peril and danger, the parties were satisfied by the declaration of an incontestable principle of Constitutional law, that when the Constitution of a State is violative in its provisions of the Constitution of the United States, the constitution of the United States is paramount, and the constitution of the State in that particular is a nullity and void. That was all. They wanted something as a justification, and this appeared, at least, a justification of the course they took. There is a great deal of language there of a high-sounding character—that it shall be a fundamental act, a solemn act, an authentic act; but, after all, when you come to strip it of its verbiage, it is nothing but the announcement of the principle that the Constitution of the United States is paramount over the local Constitution of any one of the States of the Union.

Mr. President, I may draw from that transaction in our history which we are now examining, this moral; that now, as then, if we will only suffer our reason to have its scope and sway, and to still and hush the passion and excitement that has been created by the occasion, the difficulty will be more than half removed, in the settlement, upon just and amicable principles, of any questions which unhappily divide us at this moment.

But, sir, I wish to contrast the plan of accommodation which is proposed by me with that which is offered by the Missouri compromise line being extended to the Pacific ocean, and to ask of gentlemen from the South, and gentlemen from the North, too, which is most proper, which most just, and to which there is the least cause of objection.

Now, sir, what was done by the Missouri line? Slavery was positively interdicted North of that line. The question of the admission or exclusion of slavery South of that line was not settled. There was no provision that slavery should be introduced or established South of that line. In point of fact, it existed in all the territory South of the line of 36 deg. 30 min., embracing Arkansas and Louisiana. It was not necessary then, it is true, to insert a clause admitting slavery at that time. But, sir, if there is a power to interdict, there is a power to admit; and I put it to gentlemen from the South, are they prepared to be satisfied with the line of 36 deg. 30 min., interdicting slavery to the North of it, and giving them no guaranty for the possession of slavery South of that line? The honorable Senator from Mississippi told us the other day that he was not prepared to be satisfied with that compromise line. He told us, if I understood him rightly, that nothing short of a positive introduction



30 would satisfy him. Well, is there any body who believes that you could get twenty votes in this body, or a proportional number in the other House, to a declaration in favor of the recognition of slavery south of the line of  $36^{\circ} 30'$ ? It is impossible. All that you can get, all that you can expect to get, all that was proposed at the last session, was action on the north of the line, and non-action as regards slavery south of that line. It is interdicted on one side, without any corresponding provision for its admission on the other side of the line of  $36^{\circ} 30'$ .

Now, sir, when I came to consider the subject, and to compare the provisions of the line of  $36^{\circ} 30'$ .—the Missouri compromise line—with the plan which I propose for the accommodation of this question, what said I to myself? Why, if I offer the line of  $36^{\circ} 30'$ ., interdicting slavery north of it, and leaving the question open south of that line, I offer that which is illusory to the north; I offer that which will deceive them, if they suppose that slavery will be introduced south of that line. It is better for them, I said to myself—it is better for the whole South, that there should be non action on both sides, than that there should be action interdicting slavery on one side, without action for the admission of slavery on the other side of the line. Is it not so? What, then, is gained by the South, if the Missouri line is extended to the Pacific, with an interdiction of slavery north of it? Why, sir, one of the very arguments which have been most often and most seriously urged by the South has been this, that we do not want you to legislate upon the subject at all; you ought not to touch it; you have no power over it. I do not concur, as is well known from what I have said upon this occasion, in this view of the subject. But that is the Southern argument. We do not want you to legislate at all on the subject of slavery; but if you adopt the Missouri line and extend it to the Pacific, and interdict slavery north of that line, you do legislate upon the subject of slavery, and you legislate without a corresponding equivalent of legislation on the subject of slavery south of the line. For, if there be legislation interdicting slavery north of the line, the principle of equality would require that there should be legislation admitting slavery south of the line.

Sir, I have said that I never could vote for it, and I repeat that I never can, and never will vote for it; and no earthly power shall ever make me vote to plant slavery where slavery does not exist. Still, if there be a majority—and there ought to be such a majority—for interdicting slavery north of the line, there ought to be an equal majority—if equality and justice be done to the South—to admit slavery south of the line. And if there be a majority ready to accomplish both of these purposes, though I cannot concur in the action, yet I would be one of the last to create any disturbance, I would be one of the first to acquiesce in such legislation, though it is contrary to my own judgment and my own conscience. I think, then, it would be better to keep the whole of these territories untouched by any legislation by Congress on the subject of slavery, leaving it open, undecided, without any action of Congress in relation to it; that it would be best for the South, and best for all the views which the South has, from time to time, disclosed to us as correspondent with her wishes.

I know it may be said with regard to these ceded territories, as it is said with regard to California, that non-legislation implies the same thing as the exclusion of slavery. That we cannot help. That Congress is not reproachable for. If nature has pronounced the doom of slavery upon those territories—if she has declared, by her immutable laws, that slavery cannot and shall not be introduced there, whom can you reproach but nature or nature's God? Congress you cannot; Congress abstains; Congress is passive; Congress is non-active in regard to the subject of slavery south and north of the line; or rather Congress, according to the plan which proposes to extend no line, leaves the entire theatre of these territories untouched by legislative enactment, either to exclude or admit slavery.

Well, sir, I ask again—if you will listen to the voice of calm and dispassionate reason—I ask of any man from the South to rise and tell me if it is not better for his section of the Union that Congress should remain passive, on both sides of any ideal line, than that it should interdict slavery on one side of the line and be passive in regard to it on the other side of the line.

Sir, I am taxing both the physical and intellectual powers which a kind Providence has bestowed upon me, too much—too much by far—though I beg to be permitted, if the Senate will have patience with me, to conclude what I have to say, for I do not desire to trespass another day upon your time and patience, as I am approaching, though I have not yet nearly arrived at, the conclusion.

Mr. MANGUM. If the Senator will permit me, I will move an adjournment.

Mr. CLAY. No, sir, no; I will conclude. I think I can get on better to-day than I shall be able to do if the subject be postponed.

Sir, this Union is threatened with subversion. I want, Mr. President, to take a very rapid course of public measures in this Union presently. I want, however, before I



the sun of heaven has shone that has exhibited so much of prosperity? At the commencement of this Government our population amounted to about four millions; it has now reached upward of twenty millions. Our territory was limited chiefly and principally to the border upon the Atlantic ocean, and that which includes the southern shores of the interior lakes of our country.

Our country now extends from the Northern provinces of Great Britain to the Rio Grande and the Gulf of Mexico on one side, and from the Atlantic ocean to the Pacific on the other side—the largest extent of territory under any Government that exists on the face of the earth, with only two solitary exceptions. Our tonnage, from being nothing, has risen in magnitude and amount so as to rival that of the nation who has been proudly characterized “the mistress of the ocean.” We have gone through many wars—wars too with the very nation from whom we broke off in 1776, as weak and feeble colonies, and asserted our independence as a member of the family of nations. And, sir, we came out of that struggle, unequal as it was—armed as she was at all points, in consequence of just having come out of her long struggles with other European nations, and unarmed as we were at all points, in consequence of the habits and nature of our country and its institutions—we came, I say, out of that war without any loss of honor whatever—we emerged from it gloriously.

In every Indian war—and we have been engaged in many of them—our armies have triumphed; and without speaking at all as to the causes of the recent war with Mexico, whether it was right or wrong, and abstaining from any expression of opinion as to the justice or propriety of the war, when once commenced all must admit that, with respect to the gallantry of our armies, the glory of our triumphs, there is no page or pages of history which record more brilliant successes. With respect to one commander of an important portion of our army I need say nothing here; no praise is necessary in behalf of one who has been elevated by the voice of his country to the highest station she could place him in, mainly on account of his glorious military career. And of another, less fortunate in many respects than some other military commanders, I must take the opportunity of saying, that for skill, for science, for strategy, for ability and daring fighting, for chivalry of individuals and of masses, that portion of the American army which was conducted by the gallant Scott, as the chief commander, stands unrivalled either by the deeds of Cortez himself, or by those of any other commander in ancient or modern times.

Sir, our prosperity is unbounded—nay, Mr. President, I sometimes fear that it is in the wantonness of that prosperity that many of the threatening ills of the moment have arisen. Wild and erratic schemes have sprung up throughout the whole country, some of which have even found their way into legislative halls; and there is a restlessness existing among us which I fear will require the chastisement of Heaven to bring us back to a sense of the immeasurable benefits and blessings which have been bestowed upon us by Providence. At this moment—with the exception of here and there a particular department in the manufacturing business of the country—all is prosperity and peace, and the nation is rich and powerful. Our country has grown to a magnitude, to a power and greatness, such as to command the respect, if it does not awe the apprehensions, of the powers of the earth, with whom we come in contact.

Sir, do I depict with colors too lively the prosperity which has resulted to us from the operations of this Union? Have I exaggerated in any particular her power, her prosperity, or her greatness? And now, sir, let me go a little into detail with respect to sway in the councils of the nation, whether from the North or the South, during the sixty years of unparalleled prosperity that we have enjoyed. During the first twelve years of the administration of the Government Northern counsels rather prevailed; and out of them sprang the Bank of the United States, the assumption of the State debts, bounties to the fisheries, protection to our domestic manufactures—I allude to the act of 1789—neutrality in the wars of Europe, Jay’s treaty, the alien and sedition laws, and war with France. I do not say, sir, that these, the leading and prominent measures which were adopted during the administrations of Washington and the elder Adams, were carried exclusively by Northern counsels—they could not have been—but mainly by the ascendancy which Northern counsels had obtained in the affairs of the nation. So, sir, of the later period—for the last fifty years.

I do not mean to say that Southern counsels alone have carried the measures which I am about to enumerate. I know they could not exclusively have carried them, but I say that they have been carried by their preponderating influence, with the co-operation, it is true—the large co-operation in some instances—of the Northern section of the Union. And what are those measures? During that fifty years, or nearly that period, in which Southern counsels have preponderated, the embargo and other commercial restrictions of non-intercourse and non-importation were imposed; war with Great Britain, the Bank of the United States overthrown, protection enlarged and extended to domestic manufactures—I allude to the passage of the act of 1815 or 1816.



Louisiana acquired, Florida bought, Texas annexed, war with Mexico, California and other territories acquired from Mexico by conquest and purchase, protection superseded, and free trade established, Indians removed West of the Mississippi, and fifteen new States admitted into the Union. It is very possible, sir, that in this enumeration I may have omitted some of the important measures which have been adopted during this later period of time—the last fifty years—but these I believe to be the most prominent ones.

Now, sir, I do not deduce from the enumeration of the measures adopted by the one side or the other any just cause of reproach either upon one side or the other; though one side or the other has predominated in the two periods to which I have referred. These measures were, to say the least, the joint work of both parties, and neither of them have any just cause to reproach the other. But, sir, I must say, in all kindness and sincerity, that least of all ought the South to reproach the North, when we look at the long list of measures which, under her sway in the counsels of the nation, have been adopted; when we reflect that even opposite doctrines have been from time to time advanced by her; that the establishment of the Bank of the United States, which was done under the administration of Mr. Madison, met with the co-operation of the South—I do not say the whole South—I do not, when I speak of the South or the North, speak of the entire South or the entire North; I speak of the prominent and larger proportion of Southern and Northern men. It was during Mr. Madison's administration that the Bank of the United States was established. My friend, whose sickness—which I very much deplore—prevents us from having his attendance upon this occasion, (Mr. Calhoun,) was the chairman of the committee, and carried the measure through Congress. I voted for it with all my heart. Although I had been instrumental with other Southern votes in putting down the Bank of the United States, I changed my opinion and co-operated in the establishment of the Bank of 1816. The same bank was again put down by Southern counsels, with Gen. Jackson at their head, at a later period. Again, with respect to the policy of protection. The South in 1815—I mean the prominent Southern men, the lamented Lowndes, Mr. Calhoun, and others—united in extending a certain measure of protection to domestic manufactures as well as the North.

We find a few years afterward the South interposing most serious objections to this policy, and one member of the South, threatening on that occasion, a dissolution of the Union or separation. Now, sir, let us take another view of the question—and I would remark that all these views are brought forward not in a spirit of reproach, but of conciliation—not to provoke, or exasperate, but to quiet, to produce harmony and repose, if possible. What have been the territorial acquisitions made by this country, and to what interests have they conduced? Florida, where slavery exists, has been introduced; Louisiana, or all the most valuable part of that State—for although there is a large extent of territory north of the line  $36^{\circ} 30'$ , in point of intrinsic value and importance, I would not give the single State of Louisiana for the whole of it—all Louisiana, I say, with the exception of that which lies north  $36^{\circ} 30'$ , including Oregon, to which we obtained title mainly on the ground of its being a part of the acquisition of Louisiana; all Texas; all the territories which have been acquired by the Government of the United States during its sixty years operation have been slave territories, the theatre of slavery, with the exception that I have mentioned of that lying north of the line  $36^{\circ} 30'$ .

And here, in the case of a war made essentially by the South—growing out of the annexation of Texas, which was a measure proposed by the South in the councils of the country, and which led to the war with Mexico—I do not say all of the South, but the major portion of the South pressed the annexation of Texas upon the country—that measure, as I have said, led to the war with Mexico, and the war with Mexico led to the acquisition of those territories which now constitute the bone of contention between the different members of the Confederacy. And now, sir, for the first time after the three great acquisitions of Texas, Florida, and Louisiana have been made and have redounded to the benefit of the South—now, for the first time, when three territories are attempted to be introduced without the institution of slavery, I put it to the hearts of my countrymen of the South, if it is right to press matters to the disastrous consequences which have been indicated no longer ago than this very morning, on the occasion of the presentation of certain resolutions—even extending to a dissolution of the Union. Mr. President, I cannot believe it.

Mr. UNDERWOOD. Will the Senator give way for an adjournment?

Mr. CLAY. Oh, no; if I do not weary the patience of the Senate, I prefer to go on. I think I can begin to see land. I shall soon come to the conclusion of what I have to say. Such is the Union, and such are the glorious fruits which are now threatened with subversion and destruction. Well, sir, the first question which naturally arises, is, supposing the Union to be dissolved for any of the causes or grievances which are complained of, how far will dissolution furnish a remedy for those grievances? If the Union is to be dissolved for any



lumbia; or because fugitive slaves are not restored, as in my opinion they ought to be, to their masters. These, I believe, would be the causes, if there be any causes which can lead to the dreadful event to which I have referred. Let us suppose the Union dissolved; what remedy does it, in a severed state, furnish for the grievances complained of in its united condition? Will you be able at the South to push slavery into the ceded territory? How are you to do it, supposing the North, or all the States north of the Potomac, in possession of the navy and army of the United States? Can you expect, I say, under these circumstances, that if there is a dissolution of the Union you can carry slavery into California and New Mexico? Sir, you cannot dream of such an occurrence.

If it were abolished in the District of Columbia and the Union were dissolved, would the dissolution of the Union restore slavery in the District of Columbia? Is your chance for the recovery of your fugitive slaves safer in a state of dissolution or of severance of the Union than when in the Union itself? Why, sir, what is the state of the fact? In the Union you lose some slaves and recover others; but here let me revert to a fact which I ought to have noticed before, because it is highly creditable to the courts and juries of the free States. In every instance, as far as my information extends, in which an appeal has been made to the courts of justice to recover penalties from those who have assisted in decoying slaves from their masters—in every instance, as far as I have heard, the court has asserted the rights of the owner, and the jury has promptly returned an adequate verdict on his behalf. Well, sir, there is then some remedy while you are a part of the Union for the recovery of your slaves, and some indemnification for their loss. What would you have, if the Union was severed? Why, then the several parts would be independent of each other—foreign countries—and slaves escaping from one to the other would be like slaves escaping from the United States to Canada. There would be no right of extradition, no right to demand your slaves; no right to appeal to the courts of justice to indemnify you for the loss of your slaves. Where one slave escapes now by running away from his master, hundreds and thousands would escape if the Union were dissevered—I care not how or where you run the line, or whether independent sovereignties be established. Well, sir, finally, will you, in case of a dissolution of the Union, be safer with your slaves within the separated portions of the States than you are now? Mr. President, that they will escape much more frequently from the border States no one will deny.

And, sir, I must take occasion here to say that, in my opinion, there is no right on the part of any one or more of the States to secede from the Union. War and dissolution of the Union are identical and inevitable, in my opinion. There can be a dissolution of the Union only by consent or by war. Consent no one can anticipate, from any existing state of things, is likely to be given, and war is the only alternative by which a dissolution could be accomplished. If consent were given—if it were possible that we were to be separated by one great line—in less than sixty days after such consent was given war would break out between the slaveholding and non-slaveholding portions of this Union—between the two independent parts into which it would be erected in virtue of the act of separation. In less than sixty days, I believe, our slaves from Kentucky, flocking over in numbers to the other side of the river, would be pursued by their owners. Our hot and ardent spirits would be restrained by no sense of the right which appertains to the independence of the other side of the river, should that be the line of separation. They would pursue their slaves into the adjacent free States; they would be repelled, and the consequence would be that, in less than sixty days, war would be blazing in every part of this now happy and peaceful land.

And, sir, how are you going to separate the States of this Confederacy? In my humble opinion, Mr. President, we should begin with at least three separate Confederacies. There would be a Confederacy of the North, a Confederacy of the Southern Atlantic slaveholding States, and a Confederacy of the valley of the Mississippi. My life upon it, that the vast population which has already concentrated and will concentrate on the head-waters and the tributaries of the Mississippi will never give their consent that the mouth of that river shall be held subject to the power of any foreign State or community whatever. Such, I believe, would be the consequences of a dissolution of the Union, immediately ensuing; but other Confederacies would spring up from time to time, as dissatisfaction and discontent were disseminated throughout the country—the Confederacy of the lakes, perhaps the Confederacy of New England, or of the Middle States. Ah, sir, the veil which covers these sad and disastrous events that lie beyond it, is too thick to be penetrated or lifted by any mortal eye or hand.

Mr. President, I am directly opposed to any purpose of secession or separation. I am for staying within the Union, and defying any portion of this confederacy to expel me or drive me out of the Union. I am for staying within the Union and fighting for my rights, if necessary, with the sword, within the bounds and under the safeguard of the Union. I am for vindicating those rights, not by being driven out of the Union harshly and unceremoniously by any portion of this confederacy.



and defend myself, defying all the power on earth to expel me or drive me from the situation in which I am placed. And would there not be more safety in fighting within the Union than out of it? Suppose your rights to be violated, suppose wrong to be done you, aggressions to be perpetrated upon you, can you not better vindicate them—if you have occasion to resort to the last necessity, the sword, for a restoration of those rights—within, and with the sympathies of a large portion of the population of the Union, than by being without the Union, when a large portion of the population have sympathies adverse to your own? You can vindicate your rights within the Union better than if expelled from the Union, and driven from it without ceremony and without authority.

Sir, I have said that I thought there was no right on the part of one or more States to secede from the Union. I think so. The Constitution of the United States was made not merely for the generation that then existed, but for posterity—unlimited, undefined, endless, perpetual posterity. And every State that then came into the Union, and every State that has since come into the Union, came into it binding itself, by indissoluble bands, to remain within the Union itself, and to remain within it by its posterity forever. Like another of the sacred connexions, in private life, it is a marriage which no human authority can dissolve or divorce the parties from. And if I may be allowed to refer to some examples in private life, let me say to the North and to the South, what husband and wife say to each other. We have mutual faults; neither of us is perfect; nothing in the form of humanity is perfect; let us, then, be kind to each other—f forbearing, forgiving each other's faults—and above all, let us live in happiness and peace together.

Mr. President, I have said, what I solemnly believe, that dissolution of the Union and war are identical and inevitable; that they are convertible terms; and such a war as it would be, following a dissolution of the Union! Sir, we may search the pages of history, and none so ferocious, so bloody, so implacable, so exterminating—not even the wars of Greece, including those of the Commoners of England and the revolutions of France—none, none of them all would rage with such violence, or be characterized with such bloodshed and enormities as would the war which must succeed, if that event ever happens, the dissolution of the Union. And what would be its termination? Standing armies, and navies, to an extent stretching the revenues of each portion of the dissevered members, would take place. An exterminating war would follow—not, sir, a war of two or three years duration, but a war of interminable duration—and exterminating wars would ensue, until, after the struggles and exhaustion of both parties, some Philip or Alexander, some Cæsar or Napoleon, would arise and cut the Gordian knot, and solve the problem of the capacity of man for self-government, and crush the liberties of both the severed portions of this common empire. Can you doubt it?

Look at all history—consult her pages, ancient or modern—look at human nature; look at the contest in which you would be engaged in the supposition of war following upon the dissolution of the Union, such as I have suggested; and I ask you if it is possible for you to doubt that the final disposition of the whole would be some despot treading down the liberties of the people—the final result would be the extinction of this last and glorious light which is leading all mankind, who are gazing upon it, in the hope and anxious expectation that the liberty which prevails here will sooner or later be diffused throughout the whole of the civilized world. Sir, can you lightly contemplate these consequences? Can you yield yourself to the tyranny of passion, amid dangers which I have depicted in colors far too tame of what the result would be if that direful event to which I have referred should ever occur? Sir, I implore gentlemen, I adjure them, whether from the South or the North, by all that they hold dear in this world—by all their love of liberty—by all their veneration for their ancestors—by all their regard for posterity—by all their gratitude to Him who has bestowed on them such unnumbered and countless blessings—by all the duties which they owe to mankind—and by all the duties which they owe to themselves, to pause, solemnly to pause at the edge of the precipice, before the fearful and dangerous leap is taken into the yawning abyss below, from which none who ever take it shall return in safety.

Finally, Mr. President, and in conclusion, I implore, as the best blessing which Heaven can bestow upon me, upon earth, that if the direful event of the dissolution of this Union is to happen, I shall not survive to behold the sad and heart-rending spectacle.