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# The North Carolinian.

"CHARACTER IS AS IMPORTANT TO STATES AS IT IS TO INDIVIDUALS; AND THE GLORY OF THE STATE IS THE COMMON PROPERTY OF ITS CITIZENS."

BY WM. H. BAYNE. FAYETTEVILLE, SATURDAY, JULY 22, 1848. VOL. 9—NO. 491.

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State of North Carolina, Cumberland county.

Court of Pleas & Qu. Sessions, June Term, 1848.

James B. Burroughs, David Burroughs, Louisa Burroughs; et al,
versus
D. G. McRae and J. W. Powers, administrators of Zed. Burroughs, Elizabeth Burroughs, Joshua Burroughs, et al.

Petition for account and distribution.

It appearing to the satisfaction of the Court; that the defendants Elizabeth Burroughs and Joshua Burroughs are not inhabitants of this State, it is ordered by the Court that publication be made for six weeks, in the North Carolinian, notifying the said Elizabeth and Joshua to be and appear at our Court of Pleas and Quarter sessions to be held for the county of Cumberland, at the Court House in Fayetteville, on the first Monday in September next, and plead, answer or demur to the petition, or judgment pro confesso will be rendered, and the cause set for hearing ex parte as to them.

Witness, John McLaurin, clerk of said court, at office, the first Monday in June, A. D., 1848.

490-6t JOHN McLAURIN.



## SPEECH OF HON. A. W. VENABLE, OF NORTH CAROLINA,

*In the House of Representatives, June 1, 1848, in committee of the whole, upon the power of Congress to legislate upon the subject of Slavery in the Territories.*

Mr Venable said:

Mr Chairman: The extent to which Congress may exercise legislative authority over the territories of the United States, has become a subject of most absorbing interest. It is felt to be so in every portion of our country—has been the source of deep feeling and agitating debate, and will continue to excite and disturb the repose of the country until definite action shall fix a conclusion for the popular mind.

* * * * * *

This subject, Mr Chairman, has become one of great practical importance, and I avail myself of this occasion to present my views to the committee and the country—to assert the rights of my constituents and the State which I in part represent, to the common property of all the people of all the States. A convention recently held at Raleigh, speaking the sentiments of the Democracy of North Carolina, most distinctly asserted their opposition to the doctrines recently made prominent, by their tendency to restrict the occupation of the territorial possessions of the United States to those citizens who reside in States where slavery does not exist. The clear and temperate but decided manner in which their determination to resist such opinions is expressed, admonish me of the propriety of urging their wishes upon this House; whilst I assure you that their conclusions are not referable to impetuosity in action, nor have they been rash in their adoption. Their history is that of a quiet, reflecting people, never involved in the vortex of high party impulse—patient of wrongs, when the remedy was to be seen in the fundamental laws of the country—devoted to the Union and the Constitution—ready to make sacrifices where prudence or patriotism required them, but never willing to abandon either their principles or their rights; always ready to assert them as patriots should, but always expecting that enlightened statesmanship, and the high sense of justice which should characterize their fellow-citizens who were called to legislate for our common country, would accord to them what was due, and remedy or remove any cause of complaint.

In asking the indulgence of the committee whilst I endeavor to argue this question, I sincerely hope that I may be believed when I declare that my purpose is not to agitate but to compose—to pour oil on the waters which have been troubled—to present no useless and distracting issues, nor to place our friends in the north and west in a false position before their constituents. We desire no sacrifices of the kind; we only ask for the guarantees of the Constitution; and we feel assured that we shall not ask in vain. I trust, sir, that I shall be able to present such a view of this question, that all of us may at least acquiesce in taking a position which secures the honor of all, and does equal justice to all; that a good understanding may be established, and peace and good-will be restored to our deliberations. The heirs of a common inheritance, won by the sacrifices and the valor of ancestors, or accumulated by the progress of our own greatness, should never descend from their high station to wrangle about the partition, or permit folly to estrange those who ought to be bound together by the most sacred bonds.

With this view, sir, I declare that we are content to abide the Missouri compromise; not that we believe that Congress had any right to annex any such condition, or to enact any such law; but the compromise having been made and acquiesced in for near thirty years, there is no purpose entertained by any southern statesman to disturb it now. If this compromise would adjust this difference, if it would compose this trouble, we are content to abide it, and the renewal of its operation recognized by the laws admitting Texas into the Union, and adjusting its territorial limits. In doing this, and entering our protest as to the power of Congress to make the compromise, we say to our fellow citizens of the non-slaveholding States, We have made large concessions; we have given up a large territory, to which our slaveholders cannot remove; we have consented to make it exclusively yours; whilst we have placed no restriction to prevent you from the occupation of the territories to which we are permitted to come. This concession abridges our rights, without the promise of a consideration; it enlarges yours, without any equivalent being paid by you; yet, for peace, harmony, and good-will, we have acquiesced, and will continue to acquiesce; and are now willing that the same parallel of latitude may be recognized until it reach the Pacific shore, if that is the last concession which shall be demanded. And here let me ask gentlemen, when, in the history of our national progress, did any southern statesman invade the institutions of the North? When were demands made for peculiar or exclusive privileges, from which any other citizens of our common country were excluded? If this be true, we ask that the offensive doctrine of the Wilmot proviso be withdrawn from the Oregon bill; that this obstruction be removed from the progress of that measure. The whole country is above the parallel of 36 deg. 30 min, and is within the spirit and meaning of the act of 1820. Why do they seek to annex this feature to the bill? Is it to obtain another precedent—to shake the chains in our faces, and teach the South the humiliating truth that they are powerless whenever a bare majority of votes can be obtained here? Can any good result from this policy, either in the advance of national prosperity or the cultivation of kind and patriotic feelings in our great family? Permit me, sir, to say, with all respect, in such a work as this, demagogues find their proper occupation, agitators their appropriate employment. The petty politician, whose horizon is circumscribed by the events of a single campaign, whose little heart is filled to overflowing with but small success, may labor in such a cause with ardor and with zeal; but the elevated statesman, the high-souled patriot, whose enterprise is his country's glory, whose vision, extending to future ages, looks through the vista, and realizes all of happiness, prosperity, and renown, which union, and love, and concert among his countrymen shall secure, will frown upon the first effort to mar the harmony and destroy the confidence of his countrymen in each other. His reward will be rich: it will be the gratitude of posterity. I trust, sir, that the Oregon bill will be passed; that it will not be delayed by this unnecessary proviso; that the cry of distress, which reaches us from the miseries of savage warfare, may be forever hushed, by sending promptly a territorial government and a military force to their immediate relief.

I have said thus much, sir, in passing, in relation to the Missouri compromise and its legitimate results, as tendering one platform on which we all can stand, both North and South: the South, indeed, shorn of some of her privileges, but willing to concede them for tranquility and repose; yielding, but with a *protestando*; acquiescing in, but not approving, the means, or acknowledging the right to enact it. But, sir, the consummation of a peace with Mexico, (which, I suppose, may now be considered a fixed fact,) presents this question in an interesting and practical position before us, involving most important results, and leading directly to the development of the policy to be adopted in relation to the territories of the United States. We are called upon to meet the question directly, and to decide whether the Wilmot proviso shall be brought to bear upon the territorial acquisitions of the Mexican war, or in what other manner this vexed question is to be settled.

And here, sir, permit me to say, that I adopt the doctrine of non-intervention on the part of Congress in its fullest extent. As I deny the right of Congress to legislate slavery into existence in any territory of the United States, so I also deny the right to forbid it. I adopt the language of the resolution of the late Baltimore Convention, as meeting my approbation: "That all efforts of the abolitionists, or others, to induce Congress to interfere with questions of slavery, or to take incipient steps thereto, are calculated to lead to the most alarming and dangerous consequences, and that all such efforts have an inevitable tendency to diminish the happiness of the people, and to endanger the stability and permanence of the Union, and ought not to be countenanced by any friend of our political institutions." Language which most strikingly illustrates the folly, as well as the deplorable consequences, of assuming the right of Congress to interfere with this relation—a declaration which, if adopted and sustained in good faith, in all its intent and meaning, must forever remove from all our deliberation and intercourse this exasperating difficulty. If the right of Congress to legislate in the premises be granted, then the whole question is settled. There is no limit but their discretion, no safety but the clemency of a majority. But, sir, the framers of that instrument were wise men, whose profound sagacity and immaculate virtue, combined with a patriotism unsurpassed in all human history, qualified them to guard the infancy of the nation which sprung into existence by their prowess, as well as to provide for the development of that greatness which they distinctly foresaw. No aspect of the future escaped their observation, no contingency which might arise was omitted in their provisions; and it is to this Constitution that we refer to adjust this question and fix the principles on which, I trust, we may all agree.

The extent of legislative power over the territories of the Unted States, which may be constitutionally exercised by Congress, is to be found in the third section of the fourth article of the Constitution, which provides that "Congress shall have power to dispose of and make all needful rules and regulations respecting the territory and other property of the U. States; and nothing in this constitution shall be so construed as to prejudice the claims of the U. States or of any particular State." The clear and unquestionable meaning of which must be, that territory is regarded as property, and the rules and regulations referred to are such as shall be necessary to make the territories and other property available. Any rule not needful for this purpose is contrary to the intent and meaning of the provision. No person can suppose that the words "dispose of" can have any meaning by which Congress shall have power to waste, to cede away, or otherwise render the territories of the U. States unavailable for the great purpose of supplying the national treasury, and ministering to the wants of the people of the U. States. Any other construction of those words might transfer the treaty-making power to Congress, and give authority to cede away the public domain. It is true, that the power to acquire territory implies the power to govern it when acquired; but it is also true, that such government must be in accordance with the Constitution. But Congress does not acquire territory. The people of the United States acquire it, and have the right to govern it, and have limited Congress, as their trustee, in the name of Government, by the Constitution. Congress could have no power to establish religion or to create titles of nobility in the territories, because expressly denied by the Constitution; and when the laws of the United States are extended over a territory, it must be understood that the Constitution and laws are so extended, and that nothing repugnant to the Constitution can be in force as a law. I know that it is asserted, and that by southern statesmen, that Congress has unlimited power of legislation over the territories; but it this be true, then Congress may by law, commit the entire government of the persons and property in territories to the will of a single individual, and thus present the anomaly of a despotism created and sustained by the Constitution itself,—a conclusion, so monstrous as only to require the annunciation to carry home the conviction of its fallacy to every mind. (See note A, Appendix.) There can be no doubt of this proposition, that whatever was property when the Federal Government came into existence, under our Constitution, so far as that Government is concerned, must ever remain property. The States, as sovereigns, alone can alter the rights of things within their own jurisdiction, and that by virtue of their sovereignty. The Federal Government is therefore bound to consider as property all that was so considered at its adoption, and the Constitution guaranties the enjoyment of that property in tranquillity and security to all the holders, so far as the laws of the United States are operative in the premises. And this is true whenever that property is placed under the jurisdiction of the laws of the United States. Now, the territories are the public domain, the common property of all the citizens of all the States—acquired by the expenditure of the common purse, or purchased by the valor of our people, without reference to geographical distinctions, or domestic municipal regulations. It follows, then, that in the territories of the United States, even before an organized government is instituted, the Constitution and laws recognize the right of property; for none can for a moment assume that the territories of the United States are without law, or that it is necessary that a temporary government should exist to bring them under the operation of law. (See note B.) The Government is bound to protect them from invasion and injury, because they are the property of the United States. Then the question arises—what is the effect of the organization of a territorial government upon the rights of property amongst the inhabitants of the territory so placed under organic law? If the previous reasoning be correct, before such organization all the citizens of the United States had an equal right to go into the territories, and carry with them those subjects recognized as property by the Constitution. If this right be either weakened or destroyed, it must be from the effect of territorial organization. In order to give that effect, that organization must communicate the attribute of sovereignty, or be itself the act of a sovereign power. We then inquire, is the Congress of the United States sovereign? or as to what subjects is it sovereign? No one can claim sovereignty, *per se*, for a delegated authority. So far as power is delegated, so far is its operation final and complete, and no further. The Constitution, with abundant caution, guards this point, by declaring, that whatever power is not expressly ceded by the States in that instrument, is reserved to the State respectively and the people of the States· thus declaring that the Federal Government is a mere trustee for the sovereign States of this Confederacy, with well-defined and strictly limited powers. If, then, all the citizens of all the States had a right to go with their property upon the public domain before territorial organization; if Congress must regard as property whatever was so regarded by the States adopting it, then it follows that a territorial organization can give Congress no powers which it did not before possess under the Constitution. If Congress does not possess the power, then no relation created by law with the *habitans* of a territory does communicate that power to either party.

It has been said, with much plausibility, that territorial legislatures have exercised powers denied to Congress under the Constitution; that they have granted bank charters and created corporations; that they have borrowed money upon the faith of the territorial government, and exercised other acts of sovereignty. Conceding the accuracy of this statement of facts, nothing is proved but that the territorial government did what Congress disapproved of, and that which they were not authorized to do. The creation of a corporation is one of the highest acts of sovereignty, for it is creating a legal owner to property invested with the rights of a person—an authority denied to Congress, because not specified in the powers of which this Federal Government is a trustee. It assumes, that under territory and accepted by the inhabitants, the powers of Congress are enlarged, and that by the approbation of such an act of a territoral legislature, Congress may, by implication, charter a bank, which it could not do directly by its own action. Debts contracted by a Territory upon its faith and credit are of no legal obligation upon the people of that Territory after it has become a State. And if Congress have transcended their power in legislating for any territory, the argument derived from this usurpation is met by the maxim, that an evil usage must be abolished. I am aware there must arrive a time when the power of complete sovereignty shall be exercised, which time, I shall be able to show, is fixed by the Constitution itself. Much, sir, may be learned by a reference to facts, as well as the practice of the Government.

When settlers occupied so much of the public domain as to render it manifest that there would be a demand for the lands, an organic law has been tendered to the habitans, i or l r that, under a civil organization, land offices and other facilities for the sale of land & transfer of titles should be made. In these organic laws, Congress has repudiated the idea of sovereignty in the Territories, by reserving the right of reviewing, and repealing if necessary, the laws enacted by the territorial legislature. When the inhabitants of a Territory accept the organic law with all its conditions, the government is then organized, and continues until it expires, *ex vi termini*, in the sovereignty of the State to be formed out of said Territory. Now, the creation of this territorial organization and the existence of this temporary government gave no *jus accrescendum* either to this local legislature, the people of the Territory, or to Congress. The laws of the United States, for the protection of persons and property, were extended over them; but it was a government consistent with and according to the Constitution—a government limited by the Constitution, and possessing no authority beyond its grants. So that the right to govern is not in this case a right of absolute sovereignty, but of sovereignty qualified by the provisions of fundamental law. The decision of the Supreme Court, declaring that the right to acquire territory implies the right to govern it when acquired, is predicated upon the assumption that the government to be administered must be according to the constitution of the U. S. They sustain rather than conflict with the conclusion to which I have arrived. The question then arises, at what time does the right accrue, and to whom, to decide upon and fix the domestic institutions and the municipal law of the territories? And who is invested with that authority? It will be seen, by reference to the same section of the Constitution referred to, as controlling the power over territories, that "Congress may admit new States into the Union." A reference to the Madison Papers will enlighten us as to this provision. A proposition was made to authorize Congress to form new States out of the territories belonging to the United States, which was rejected, and the provision above quoted was adopt-