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Twentieth Congress.

HOUSE OF REPRESENTATIVES,  
JAN 22, 1828.

The Case of D'Auterive.

The House having again resumed the bill for the relief of Marigny D'Auterive, and

The question being on the amendment proposed by Mr. GURLEY,

Mr. BRYAN, of North-Carolina, rose, in reply to Mr. MARTINDALE, and said: Coming, as I do, from a State, much of the wealth of whose citizens consists of the kind of property, the nature and extent of which is now under the consideration of the House, I should feel myself negligent, if not culpable, were I to permit the question to be taken without endeavoring to vindicate and establish what I deem to be the rights of my constituents—rights which cannot be impugned without a violation of the rights of the States, and the sacred injunctions of our Federal Constitution.

From a very early period of the history of America, we find the rights of property recognised and used over these persons—nay, sir, from the earliest records, both sacred and profane, we find a state of slavery established and sanctioned. By the usages of ancient warfare, the vanquished in battle became the slaves of the victors, and their right even of putting them to death, was admitted, and too often practised. The institution of slavery may even be said to have mitigated the horrors of war, and by arraying the avenger of the conqueror against the appetite of revenge, to have often staid the fatal blow. We find, sir, in confirmation of this position, that, among the aborigines of this country, where the practice of enslaving their captives did not prevail, that they were very generally put to death, by the most cruel tortures. But, Mr. Speaker, I will not detain the House with an idle display of research into ages that have long gone by, but will confine myself more strictly to the state of slavery, as existing among us.

Its origin may be imputed to the cupidity of the mother country, who, looking upon her colonies, more as the means of enriching herself, than of contributing to the happiness of mankind, introduced those persons into her colonies, as an article of traffic. It was urged as an argument in justification of the measure, that it was an act of humanity to these unfortunate beings, as they had been taken captive by more powerful tribes, in their own land, and that their conquerors would put them to death, unless they could be sold, and thus more advantageously disposed of. I have no doubt, Mr. Speaker, that this argument was well-founded in numerous instances. We learn from the authentic narratives of early travellers, that those native tribes of Africa were highly savage and ferocious, delighting in blood—they still are so—and I do not hesitate to avow, as my firm belief, that the negro slaves of the State I have the honor in part to represent, are much more happy—more blessed with intellectual and natural advantages—more amply furnished with all that makes this life happy—and more especially, sir, (and this should go very far towards reconciling their real friends to their situation) infinitely better provided with the means of Christian instruction and education, than the descendants of their African progenitors who have remained in the land of their fathers. But, sir, be their situation what it may, our country, the United States, are innocent partakers with them, of the disadvantages of their condition.

It is matter, sir, of historical fact, that the Colonial Legislatures passed acts to prevent the iniquitous traffic which bro't them to our shores. During our Colonial dependence, these acts had not the force of laws till sanctioned by the King of England—that sanction was refused, inasmuch as it would deprive his subjects of a gainful traffic. Do we not know, sir, that Great Britain also actually insisted upon being permitted to supply the Spanish Colonies with slaves, and that this right was guaranteed to her by the solemnities of treaty stipulations? What was the conduct, on the other hand, of this country, as soon as she was emancipated from British dominion? Among our first acts, were those prohibiting the further introduction of slaves; and the Federal Constitution itself, that imperishable monument of human wisdom, contains an article empowering Congress to abolish this odious traffic. This power has been liberally exercised, and America has earnestly engaged in the noble contest of extricating those wretches who can quaff with exultation the tears of human misery. Congress has declared all

engaged in it to be pirates—the enemies of the human race; and has condemned its perpetrators to an ignominious death. Britain, though, now stands forth the champion of freedom. There would be much more justice in her charity, as is more than insinuated by one of her most eminent jurists, (Lord Stowell,) if she bore the expense also of being charitable. It has always been, Mr. Speaker, an easy matter to raise a hue and cry about charities of various kinds, but there is a sad falling off in the number of the shouters when they have to pay for it.

Having thus briefly endeavored to dispose of the general subject, and to wipe off from the American escutcheon the unjust stigma of originating or perpetuating this state of society, I shall advert to the case immediately before us.

The report of the Committee states, that the slave, horse, and cart, of this man (Marigny D'Auterive) were impressed by the Commander of the American forces, to aid in throwing up breastworks for the defence of New Orleans, and that the necessity was so urgent as to justify the act; that the slave lost an arm and an eye from the fire of the enemy, and whilst engaged in the service of the United States. They report a bill making compensation for the horse and cart, and the time of the slave; but it is contended that the master is not entitled to remuneration for the damage done to his slave—done in the manner and to the extent I have stated.

The General Government is invested by the Constitution with the power of making war—this is a high and mighty—a sovereign power. In its exercise they have a right to employ the intellectual and physical resources of the country, to the extent necessary for the defence and protection of the persons and property of the citizens: for this duty of the Government is the correlative of its right to the allegiance of its citizens, and is most emphatically the great object of all Government's. In the exercise of this power and duty, it has been the universal practice, upon emergencies similar to that stated in the report, for the Government to exercise its right of eminent domain by impressing private property for public use, upon the admitted principle that a part may be sacrificed for the preservation of the whole, which is the same principle, Sir, that justifies the throwing goods overboard from a ship, for the preservation of the lives of the crew. The Constitution of the United States sanctions this principle, if indeed it needed any sanction, by providing that private property shall not be taken for public use without just compensation.

But, say gentlemen opposed to this claim, slaves are not to be regarded altogether as other property—in this case the slave is to be regarded as a person—and the owner is no more entitled to be compensated for his injury, and consequential loss of service, than would a Northern master be for the loss of the service of his apprentice under similar circumstances. And the honorable gentleman from New York, (Mr. MARTINDALE,) who has just taken his seat, has defined any Southern gentleman to point out a distinction between the two cases. Sir, to my mind, and I think to the mind of any reasonable man, the distinction is most obvious. The apprentice is a freeman—a citizen—he owes allegiance to the Government—is a member of the body politic, and, as such, the Government is bound to protect him. These propositions are not true of the slave. The apprentice is simply bound, by contract, to serve his master; the law enables him, or others in his behalf, to enter into this contract of service; but he is still liable, in almost all the States, to do military duty before the age of twenty-one years. The sovereign has a right to his services, on account of his being a citizen; and, as was well observed by my honorable friend from Massachusetts, (Mr. EVERETT) the act of Congress renders him competent to make the contract of enlistment simply by removing the disability of infancy. But, Sir, a slave has far greater disabilities than those of infancy or apprenticeship—he labors under a total want of capacity to contract; and this Government cannot confer upon him that power, because that would be conferring upon him one of the most important social rights of freemen. The gentleman from New York has farther contended, that this slave was employed as a person in throwing up entrenchments, which was military duty—and so, Sir, was the horse employed in transporting the earth, which was just as much military duty as throwing it up; and this, according to the argument of the honorable gentleman, would make the horse a military person, and perhaps capable of enlistment.

The honorable gentleman strongly contends that slaves are not property, because the owner cannot do as he pleases with them. He cannot, says he, take away their lives—the slave has a right,

says he, to his life; and this is urged as a triumphant distinction between him and mere property, which is said to be the mere creature of the owner's will, to do as he pleases with it. Sir, This argument is really almost ludicrous, and better suited to a County Court than to this grave deliberative assembly. Let us pursue it, Sir, to some of its consequences. Does the gentleman need to be told, that, in England, and in some States of the American Union, excessive cruelty to animals, to horses for instance, is punishable by indictment at common law? I suppose, according to the honorable gentleman's doctrine, because the law there would restrain the owner from cutting his horse's throat in the street, out of sheer malignity, therefore, he could have no property in him. This is the legitimate deduction from his premises. Property, Sir, as has been said by the honorable gentleman from Virginia, (Mr. RANDOLPH,) is the creature of the law; whether of the natural or social law, is not material here to be ascertained—its enjoyment therefore may be modified by law. I will not do my constituents, Mr. Speaker, the injustice to urge, as an abstract question, whether slaves are property—powers far superior to mine in argument, would only shake the foundation upon which this right is based, by attempting to fortify it. I will only refer, Sir, as matter of history, to several eminent instances in which it has been clearly recognised by Federal authority. The other day, sir, in looking over the secret Journal of Domestic Affairs, of the Continental Congress, I discovered a report, and resolutions accompanying it, which seem to me to be perfectly conclusive upon this question. The report was made on the 29th March, 1779. It will be recollected, Sir, that, during the war of the Revolution, the British enlisted slaves as troops—and that the period I have mentioned, was one of great gloom and despondency in the South; and then, if ever, as the enemy were enlisting the slaves of the Southern planter, the Continental Congress might have found strong arguments for combating him with the same species of force—especially, as, by refraining from doing so, the slaves were not only lost to the owner, but were added to the military force of the enemy. The proceedings of Congress on this occasion, display that combination of wisdom and prudence, for which that body was so justly renowned. The report states that the delegation of South Carolina, in Congress, had represented the distressed state of the country, the desertion of their negroes to the enemy, and that those who still remained, were exposed to their artifices and temptations; that, if they were embodied, this desertion might be prevented, and they might be rendered formidable to the enemy, &c. Whereupon, "Resolved, That it be recommended to the States of South Carolina and Georgia, if they shall think the same expedient, to take measures for raising a force of this description. By another resolution, it was declared that Congress will make provision for paying the proprietors of such negroes, &c. a full compensation for the property, &c."—Secret Journal, page 107—8. I do not know, Sir, whether the recommendation of Congress was adopted. I presume not. It is not at all material to the purpose for which I have quoted the Journal, to ascertain that fact. The report and resolutions show conclusively the sense of the Continental Congress—that the slaves, even with the example of the enemy justifying, I might say enforcing it, were not to be employed without the consent of the local authorities—and if employed with that consent, that the owners were to receive full compensation for the property—thus evincing the caution and the justice of the Congress of that day, and deciding, as I contend, Sir, the very principle of compensation now before the House. It is indeed a much stronger case than the one now under consideration; for it might be contended, with much more force, that the slaves would, in that case, have been employed as persons.

Pursuing these historical illustrations, Sir, we find in the British Treaty of 1783, which closed the war of independence, provision is made by the 7th art. against "the destruction or carrying away of any negroes, or other property of the American inhabitants." In the secret debates of the convention of 1787, which framed the present Constitution of the United States, slaves were unequivocally admitted to be property, and objections were made, on that precise ground, to their being enumerated in the population of the Southern States, and estimated in the ratio of representation at three-fifths of their actual number; a distinguished member of the Convention from Massachusetts contending, that the cattle of New England might be represented with as much propriety. In the Convention

of Massachusetts which adopted the Constitution, the same objection was also made. If we consult the history of the legislation of this gov't, it will appear no less clearly that they are regarded as mere property; they are, as such, subjected to the direct tax; their assessment and valuation are provided for—and they are sold as property under the laws and judicial proceedings of the United States. When a burden is to be borne by the property of the citizens, gentlemen are willing to consider them as property; when they are to be paid for, having been seized and injured in the public service, then it is most convenient to call them persons.

The honorable gentleman from New York is entitled to credit for having discovered "a new thing" when he contends that slaves are not property, because their owners are only entitled to their services; or, in his own language, that they are to be regarded as "means of acquiring property, and not as property." I would be glad to know, Sir, in what consists the value of any kind of property, if it is not in being the means of acquiring property; that, Sir, is its great and most ordinary use. If this argument be true, a man is not entitled to his own ideas, because they are often used as the means of acquiring property; and intellect, the noblest and most peculiar kind of property, must no longer be regarded by its possessor as his own. As slaves have never been considered as military persons, so, Mr. Speaker, have they never been considered as civil persons, if I may use the phrase. I will ask any gentleman from a Southern State, if he has ever known them called out to assist the civil authority, as a part of the posse comitatus? Has a Sheriff ever been known to summon his neighbor's slaves to assist him in the execution of process? Can he go upon a plantation where the owner's negroes are at work, and command them to attend and aid him in his official duty? No, Sir, this is too monstrous to be thought of; and yet the argument of the honorable gentleman, if followed, leads inevitably to this conclusion. I am happy, Sir, to be able to say, that the honorable gentleman from New York is the only member of this House who has contended that slaves are not property. I do not believe that he can find a second on this floor; and I, with cheerfulness, add my testimony to that of the honorable gentleman from South Carolina, (Mr. McDUFFIE) and the honorable gentleman from Virginia, (Mr. ARCHER) in favor of the just and liberal views of our Northern brethren. Their sentiments, so frankly avowed in this debate, must have a powerful tendency to repress any improper emotions in the bosoms of those who are afflicted with this kind of property; and to quell any spirit of insubordination in the slaves themselves.

When this debate originated, Mr. Speaker, I confess I felt much regret, believing that it would create much unnecessary excitement and waste of time. I have endeavored to discuss the question, Sir, with calmness. I am, Sir, no advocate of slavery in the abstract. I agree entirely with my honorable friend from South Carolina, (Mr. DRAYTON) that it is a great evil; and I believe, too, Sir, that the owner is rather more to be pitied than the slave. I must do my constituents the justice, and it is mere justice, to say that their slaves are treated with a degree of mildness, and attention to their wants, much more indicative of good and generous feeling than of a desire to make the most of their property. The slave, Sir, is generally happier than the master; while his owner is "spinning his brains" for the support of his family, or torturing his ingenuity, and tossing his aching head upon his pillow, to provide "ways and means" for the payment of his debts, or performance of his contracts, the slaves, released from all these cares, well fed, well clothed, and performing moderate labor, enjoys that tranquility of mind, and health of body, which form every important item in the sum of human happiness.

If the Southern States are to be purified from this moral pestilence, it will not, it cannot be by fulminating edicts, or mawkish harangues, against their right of property. Passion and enthusiasm have rarely given good counsel. There are many intelligent and patriotic citizens of the South, who would be willing to adopt a system for the cure of this malady, provided wholesome medicine, suited to the Constitution, be used. The consent of the owner, and the emigration of the freed man, should be, and must be, indispensable in any system. Sir, several of my constituents have shown the most earnest and sincere zeal in promoting the objects of the Colonization Society; and, sir, how have they shown it? Not by clamor and intemperance; but by good deeds—by being charitable at their own costs. They have emancipa-

ted their slaves, and provided the means of transporting them out of the Union. This is what may be called an *actuating* faith. I have been anticipated, Mr. Speaker in several arguments which had occurred to me, and which I should have offered, had I been more fortunate in my efforts to obtain the floor. They have been presented, sir, by honorable gentlemen, much more forcibly and eloquently than my lips could have uttered them. I know too well, I trust, sir, how much is due from me to the courtesy of the House, to wear it with an elaborate argument upon a subject which has already been so much canvassed. I had declined troubling the House with any remarks of mine upon this question, but was called up by the novel and extraordinary doctrine of the gentleman from New York, which, as a faithful representative of my constituents, I could not permit to pass without protest, and an attempt to refute them. As to the other question which has been raised in this case, whether the damage done to the slave was direct or consequential, I really do consider that to be a mere law quibble, and am reminded by it, sir, of the learned and acute shibboleth, so gravely uttered in Courts—'yclep'd Courts of Justice when they are engaged in ascertaining, not whether a suitor has suffered injustice from his neighbor, but whether he should have brought an action of trespass or case. I rejoice, sir, that here, at least, we can do substantial justice. D'Auterive's property has been forcibly taken for public use—it has been injured in the public service. Reason, Justice, and the Constitution, unite in saying, "that private property shall not be taken for public use, without just compensation." They all say, pay him what is just—and so I hope we shall say. I feel no difficulty about my vote, sir. I have arrived at my conclusion without passion, and I shall adhere to it with quite as much firmness and inflexibility as if I had invoked the furies of discord and disunion, or endeavored to array before this House the distorted spectres of fancy.

I am admonished, Mr. Speaker, by the lateness of the hour, that I have sufficiently imposed upon the patience of the House. I concluded, sir, by expressing my lively gratitude for the attention which the House has been pleased to bestow upon my remarks, (undeserving as they have been.)

[When Mr. Bryan had concluded, the House adjourned.]

## NEW GOODS.

JOHN L. DURAND, has just received a new and elegant assortment of READY MADE CLOATHING.—

ALSO,  
Gentlemen's fine Beaver Hats,  
Imitation do. do.  
Gentlemen's fine Shoes,  
do. Pumps,  
Ladies' Morocco Shoes,  
do. Boots,  
together with a large assortment of coarse Shoes, all of which will be sold very low for cash.

Feb. 2, 1828—'14 '20.

## LOST.

SOMETIME in August, 1825, a judgment, dated the February preceding, for the sum of thirteen dollars and forty-two cents, payable to Daniel Shackelford, and transferred by him to John Snead, against Silas S. Stevenson. All persons are cautioned from trading for said judgment, as payment will only be made to the subscriber to whom it was passed by Mr. Snead.

ANDREW H. RICHARDSON.  
Craven Co. Jan. 19, 1828—'12 '15.

## CURE FOR RHEUMATISM.

An additional supply of  
**POLADELPHUS,**  
OR INDIA EXTRACT,  
Just received, from the proprietor, and for sale, by the dozen or single Box, at the Book Store of  
THOMAS WATSON.  
December 15.

North-Carolina Apple Brandy, &c.  
THE subscriber offers for sale 10 bls. Gates County APPLE BRANDY; Also, 100 bushels Mattamuskeet OATS; and 3-36 gallons TIN OIL STANDS.  
JNO G. KINCEY.  
Newbern, Jan. 18, 1828.

**GARDEN SEEDS.**  
AN assortment of fresh GARDEN SEEDS, just received and for sale by  
WILLIAM SANDERS.  
January 12th,—511. 16.