RALEIGH STAR & N. CAROLINA GAZETTE.

THOS. J. LEMAY, Editor and Proprietor.] "North Carolina—Powerful in intellectual, moral and physical resources—the land of our sires and the home of our affections." [THREE DOLLARS a Year, in Advance.

VOL. 39. RALEIGH, N. C., WEDNESDAY, AUG. 30, 1848 No. 25

SPEECH OF HON. G. E. BADGER,

On the Compromise Bill, delivered in the U. Senate, July 26, 1848.

The Senate having under consideration the bill to establish the territorial governments of Oregon New Mexico, and California:

Mr Badger said: I am very sorry hat my honorable friend who reported this bill (Mr. CLAYTON,) felt himself compelled, by considerations of duty, under the influence of which I know he always acts, here and elswhere, to press the measure through the Senate, and to prevent, so far as depended on his action and influence, a full, ample, and thorough investigation of the subject in all its bearings. What is the character of the measure? It is a proposal to setle a most difficult and anxiously considered subject upon a plan entirely novel—one heretofore proposed by no one, and, so far as is known, thought of by no one. It is a measure of immense importance, relating, as it does, to a subject in itself of vast concern and complicated by many incidental difficulties. Now it does seem to me, that when the gentlemen composing the committee, after the various diversities of opinion among themselves, which were stated by my friend from Delaware, (Mr. CLAYTON,) at last hit upon and concluded to present, as a compromise, a measure before unknown and unconjectured, it was due to the importance of the occasion—the high, solemn, and lasting interest at stake—and, in an eminent degree, due to this body itself that instead of being introduced to us with a significant notification that it was to be pressed through in hot haste—

Mr CLAYTON, (in his seat.) Nothing of the kind.

Mr BYDGER. I will show there was though perhaps it was not intended. I was about to say, when interrupted by the Senator that in these circumstances instead of such announcement being made to the Senate, we should have been informed that the committee, unable to agree upon any thing else, and acting from the best motives, had thought proper to present a new and unheard of plan of pacification on this momentous question; that they desired no haste; that on the contrary, they invoked from every member of the Senate the fullest scrutiny, that they not only wished and hoped, but demanded, as due to themselves, the Senate and the country, the application on the part of every member of the body, of his best understanding to this subject, and a full, deep, thorough and searching investigation of the plan presented in all its parts and bearings; that full time should be afforded to enable Senators both to reflect and to debate; and that, so far from the usual order of the Senate being reversed and this question pressed upon a weary and exhausted Senate—motions to adjourn after a continued sitting of seven and eight hours, resisted, and the yeas and nays demanded—no opportunity for deliberation and discussion would be withheld.

My honorable friend from Delaware, (Mr CLAYTON,) says that no intention was announced to press this measure through in haste. If by that he means that no such terms were used he is undoubtedly correct. But, in point of fact how stands the matter? My friend announced that he would *press* this bill upon the consideration of the Senate. It was first called up, if I recollect aright, on Saturday afternoon; and after a long and laborious session, my honorable friend resisted a motion for adjournment, and on the yeas and nays, voted against it. The Monday after was spent in the consideration of the bill, and precisely the same result took place. My honorable friend in charge of the bill to whom its friends naturally looked for the course they ought to pursue upon motions for adjournment still declined to adjourn. Yes, after a session of full seven hours, nearly eight, I may add, when my honorable friend from Kentucky, (Mr UNDERWOOD,) rose to address the Senate, himself a member of the committee; when many Senators were exhausted and some prostrated; and when even I, with a constitution of iron, and youth besides on my side felt some respite to be necessary a motion to adjourn was carried, upon the yeas and nays against the vote of my friend from Deleware. The proceeding was, in my opinion unfortunate [illegible] unfortunate—though I attribute nothing of impropriety of intention to the gentleman, or those who acted with him.

Mr CLAYTON. It is very extraordinary that the gentlemen does not recollect that when the Senator from Maryland, (Mr JOHNSON,) who was exhausted and unwell, desired the Senate to adjourn, I, in opposition to the wishes of the friends of the bill expressed a desire that the motion might succeed, and gave it my support. That the gentleman calls "hot haste."

Mr. BADGER. Unfortunately the honorble gentleman confounds two different cases. I know that the gentleman assented to the motion to adjourn last evening for the accommodation of my friend from Maryland; but how was it, when my friend from Kentucky, (Mr. UNDERWOOD,) *who was supposed to be opposed to the bill*, desired an adjournment for *his* accomodation? It was to this case that I referred. Allow me, sir, to add what I was about to say when interrupted by the honorable gentleman, that I regard his course as peculiarly unfortunate with regard to such a bill as this. The great end and object of the bill, as avowed by the gentleman and the committee, is to pacify the public mind, to settle this agitating subject, and to restore harmony to the country. How? Only by its moral power. You cannot change the opinion, or settle the discontents of free America, by the mere force of law.—On occasions of this kind it is all important that the moral influence which accompanies a measure, should be as extensive as possible in its operation; and therefore, I think there should have been shown no disposition to cut off any gentleman from a discussion of the question, by pressing a vote here until the physical energies of the Senate should be broken down, and the members be compelled by exhaustion to submit. This is the long session, and the Senate have refused to fix any day for its termination; and, therefore, there is no excuse in my judgment, for the course which has been pursued. The session, it is true, has been a very long one and the weather is very hot and exhausting. I am as anxious as any gentleman to return to my home and my children but I see no reason why this great and important measure should be hurried through the Senate. If indeed, the Senate had passed the resolution from the House, and the House had adopted its amendment fixing the final day of adjournment for the 31st, we should have stood in a very different condition. In that case, I should myself have given a silent vote or should at most have made a very brief statement of the grounds upon which I have formed an opinion adverse to the passage of the bill. But under present circumstances, with an unlimited session before us I feel justified in presenting my views fully and at large. I shall undertake to show that this compromise measure which my honorable friend has reported and recommends, involves a total and absolute surrender on the part of the South of whatever rights, feelings or interest we may have in the subject, without any advantage being gained thereby to us or to the country.

Mr President, on the first day of June, in this present year of salvation one thousand eight hundred and forty eight a speech was delivered by an honorable member of the other House representing a district in my own State, which I find in a pamphlet published in this city and entitled, "Speech of Hon. A. W. Venable, of North Carolina, in the House of Representatives, June 1 1848," and headed, "Slavery in the Territories." In this speech are some remarks in reference to myself and I read them because as the Senate will see, they have an immediate connexion with the subject under consideration. The passage will be found [on important subjects I like to be precise] on the 7th page, near the foot of the left hand column, and is in these words:

"A distinguished Senator of my own State, (Mr BADGER,) a gentleman of high attainments and extended reputation in a recent speech on the Oregon bill admitted the right of Congress to legislate for the exclusion of slavery in the Territories, but placed the South upon the principle of expediency and the sense of justice of the Federal Legislature."

Now to those who are curious in such matters, it may be somewhat interesting to learn that in this speech, distributed in North Carolina about the middle of this month,* and delivered as stated on its face, on the *first* day of June, reference is made in the passage which I have read, to some remarks submitted by me in the Senate upon the *second* day of the same month of June, My first impression was, that the gentleman was incorrect in his chronology; but before committing myself on this point, I thought I would follow the example commended to us by the Senator from Mississippi, (Mr FOOTE,) several times this session, and have a peep at the dictionary to ascertain what this word "chronolgy" means. I found that I was mistaken in my first notion, for the definition of "chronology" is satisfied by arranging events according to the proper *year*: and therefore, the gentleman was guilty of no violation of *chronology* when he represented himself as referring on the *first* of June to what was said on the *second*, both days being in the same *year*. Some persons, on reading this reference in the speech to my remarks and finding, from the proceedings and debates of the Senate, that I had not said one word on the subject until after the speech was made, might suppose that a slight inaccuracy had crept in, and that those remarks were not made at all in the House of Representatives, on the *first* of June, which refer *as a past event*, to a speech of mine made on the *second* of June but were inserted for the first time in the *printed* speech in the month of *July*. But I draw no such inference. The whole matter may be satisfactorily explained without any such uncharitable supposition. In ancient times, when the prophetic spirit decended upon a man the seer, "rapt into future times," often saw events with such force and distinctness, that, in prophetic strain he spoke of them as past already. Again: This is the age of progress. In the olden time it was said that "coming *events* cast their *shaddows* before;" and now in the mighty improvements of the day, amidst the wonders of steam and electricity it may well be, that "coming *words* cast their *sounds* before!" And thus it happened that my colleague of the House, in the dark hour of midnight, had his spirit troubled with a vision so clear of the atrocity which I should commit on the *second* of June, that it became impressed upon his mind as a *past* event and, as such, he alluded to it on the *first*. And then his patriotic horror, in this clear foresight or *forehearing* of my offence impelled him to make a pious appeal to heaven in these words, immediately following those which I have quoted:

"Gracious heaven! are we reduced to this! Is our only, our last hope, the verdict of a jury whose interest, whose feelings and whose organization fix that verdict against us!"

And a little after, still refering to me, he exclaims—

"And do southern statesmen sound the first note of retreat? Does the flag fall first in their hands!"

Now, as I intend to advance again that atrocious sentiment which, delivered by me on the *second* day of June, awakened the prophetic horror of my colleague of the House on the *first* and as his speech no doubt with the kindest feelings toward me was circulated extensively in the State of North Carolina, the Senate will see why I have made this reference and that it is demanded of me, as a matter of respect and grateful consideration to him, that I should state the grounds on which my opinion rests; an opinion by the expression of which I have, according his phrase, "sounded the first note of retreat" from a position which I have never assumed and thrown down a flag which I never raised.

In order to a full understanding of my views it is necessary that I should go back a little in the argument, and show that this Government has a right to acquire territory and whence that right is derived Upon this point different opinions have been expressed. My friend from Massachusetts, (Mr. DAVIS,) in a very able speech on this subject, treated this as a *casus omissus* in the Constitution, held the power to acquire an assumed one, and the right to govern as a consequence merely of the acquisition. In my opinion, the power to acquire territory is expressly conferred upon the Government of the United States by the Constitution. The President, by and with the advice and consent of the Senate, has power to make treaties.—Congress has power to declare war. The Constitution specifies no particular kind of treaties, as included in or excluded from the grant. Nor does it specify the purpose for which war is to be waged, or the manner in which it is to be concluded, but leaves these as necessary incidents to the treaty making and war making powers respectively. Again, the Constitution has not only omitted any express restriction upon the treaty-making power, but declares that "all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land." Whatever limitations, therefore may from the necessity of the case be inferred as for instance, that a treaty cannot be made to destroy the Government or the Constitution, or any integral part of them, or to introduce any new element of political power—it is certain that the treaty-making power is subject to no express limitation whatever. When the Constitution was formed, various kinds of treaties were known among nations; and all these were undoubtedly included in the granted power. Among these were treaties of cession, by which the United States might acquire as well as cede territory.—The power is a large one and the limitations upon it whatever they may be, have not yet been defined or applied. The extent of this power may be judged from a few instances furnished by the history and practice of the nation.

First By treaty the President and Senate can exercise a power expressly confered upon Congress. For example, they can regulate commerce, and confer citizenship. Again, by treaty the United States can exercise a power not conferred upon the General Government at all but undoubtedly reserved to the States. Of this examples are found in the treaties with France and the Netherlands, by which the subjects of those powers were enabled to succeed to the inheritance of lands in the United States without becoming naturalized, and thereby the laws of the States excluding aliens from the succession where repealed and abrogated. Again, by treaty the United States can set up a demand for a debt which has been by due course of law paid and satisfied This was done with regard to the British debts which had been rightfully confiscated by State authority during the Revolutionary war, and the amount paid into the treasuries of the respective States. And again, by treaty the United States may acquire authority to erect judicial tribunals and confer judicial power within the territory of a foreign and independent nation. Of this we have an example in the bill now on our table—to erect such tribunals and confer such power—to be exercised in the empire of China. It seems therefore, to follow necessarily, as well from the express grant of power as from the practice of the Government that the President and Senate, by treaty, may acquire territory for the United States. When that acquisition is made, by the exercise of the power thus granted the Constitution confers expressly upon Congress the power to legislate for the government of the territory so acquired.—For it confers on Congress the power "to make all laws necessary and proper for carrying into execution" the "powers vested by this Constitution in the Government of the United States, or in any department or officer thereof." To my understanding it is therefore plain that by the treaty-making power we have express authority; and, by the provision I have cited, Congress has express authority to legislate for it when acquired. Now, sir, upon this power, what are the restrictions, and where are they to be found? There are plainly none in the Constitution itself. It is one thing for us to think that certain restraints upon the exercise of this power would be convenient, would at this particular time be reasonable, would subserve the interests of that section of the country in which we happen to live, or, if you please, the general interests of the whole; and it is another and very different thing to show an actual restriction upon the power itself. The former relates to a just and proper mode of exercising authority and addresses itself to those in whom the power is vested. The other implies an actual exclusion of the power, which leaves nothing for the exercise of discretion at all, The honorable Senator from Virgina, (Mr HUNTER,) remarked that although it seemed to him an absurdity to deny Congress the power to govern the territory yet that power must be exercised in subordination to some general rule given in the Constitution.—He undertook to specify one case, and certainly it was a very unhappy illustration of the rule he had laid down. He remarked that Congress was bound to establish over a territory a republican form of government, Why sir, what has been heretofore the action of Congress? What do we propose to do by this very bill? Establish a *republican* form of government!—Why, the President and Senate are to send four men to New Mexico and five to California who without the previous request or subsequent sanction of the people there are to exercise legislative, executive and judicial powers over them. Is *this* republican? Is this what the Constitution calls a republican government? A government in which the people governed do not elect their governors, and do not exercise the smallest restraint, control, or influence over them. Sir it is preposterous to call such as institution republican. How, then do gentleman make out that from this general power of Government, conferred without qualification, is excepted the power of excluding the institution of slavery? Slavery, as it exists under the Constitution of the United States, is a State institution. It exists in the States which allow it as a State institution, under their laws. It does no exist as an institution of the United States. It is not an institution that owes its origin to any law of the United States, by which slavery is introduced or established. Nor is it recognised by the Constitution of the United States, otherwise than as a state institution. The only reference to it in that instrument is the simple provision by which persons bound to service or labor in one State, "under the laws thereof," and escaping into another, shall be delivered up on complaint of the party to whom such service or labor may be due, Where, then, do gentlemen find ground for the conclusion that, although Congress has power to govern these territories in every other particular, it has no power to govern them in regard to this particular institution? If the conclusion were right, would it not follow that to introduce slavery is as much beyond the power of Congress as to exclude it?

Mr President, the opinions I have expressed do not depend on any reasoning of my own, but, without refering to the precedents which have been furnished by the past history of the Government, are fully sustained by the solemn and considerate judgment of the Supreme Court of the United States, in the case so often refered to. (American Insurance Company *vs.* Canter, 1 *Pet.*,) both as to the source from which the right of acquisition is derived, and the nature and extent of the power over what is acquired. In delivering the opinon of the court in that case Chief Justice Marshall says:

"The Constitution confers *absolutely* on the Government of the Union the powers of making treaties; consequently that Government possesses the powers of acquiring territory either by conquest or by treaty. If it be ceded by the treaty, the ceded territory becomes a part of the nation to which it is annexed, either on the terms stipulated in the treaty of cession or on such as its new master shall impose. Perhaps the power of governing a Territory belonging to the United States which has not, by becoming a State, acquired the means of self government may result necessarily from the facts that it is not within the jurisdiction of any particular State, and is within power and jurisdiction of the United States. The right to govern may be the inevitable consequence of the right to acquire territory. Whichever may be the source whence the power is derived, *the possession of it* is unquestioned."

Mr Justice Johnson, in his opinion, delivered in the same case, when in the circuit court, thus expresses himself:

"The right, therefore, of acquiring territory is altogether incidental to the treaty making power and perhaps to the power of admitting new States into the Union; and the government of such acquisitions is of course left to the legislative power of the Union as far as that power is uncontroled by treaty. By the latter we acquire either positively *ex sub modo*, and by the former dispose of acquisitions so made; and in case of such acquisitions, I see nothing in which the power acquired over the ceded territories can vary from the power acquired under the law of nations by any other government over acquired or ceded territory."

Now, sir, here is if I can understand it, a clear decided opinion of the court, delivered by the eminent man who at that time presided over its deliberations, and who was himself the embodiment of all judicial excellence—that under the treaty and war-powers the United States have under the Constitution, the right to acquire territory; that they acquire it upon the same terms as any other nation; and it is subject, in their hands, to such terms and conditions as they may deem proper to impose, subject only to such restrictions, if any, as may be contained in the treaty of session.—Now, how do we expect, after this decision to procure from the Supreme Court of the United States an adjudication that, independently altogether of legislation by Congress, the instant any territory b comes ours, the institution of slavery exists there by the mere force of the Constitution of the United States? Gentlemen say that every American citizen has a right to *go* into the newly acquired territory. It is needless to examine that for no one proposes to exclude them. But it is another and different question, whether he has a right to carry a slave there, and because the slave was recognised as *property* in the State from which he came, to insist that, therefore, such slave shall be recognised as *property* in the territory to which he goes.

The affirmative of the question cannot in my opinion, be maintained. Suppose, which is not at all unlikely, that within a few years we should follow the example of Great Britain, and procure the cession of some station or post within the dominions of the Emperor of China, in order more effectually to promote our commerce and protect our citizens in that country, could it be maintained that instantly upon the cession from the nature of our Constitution itself, negro slavery would spring up and become a recognised institution there?—This would seem to be absurd. Yet it stands upon the same arguments, applying with equal force upon which rests the alleged constitutional propagation of slavery into these Mexican territories. Sir, the inquiry must present itself, whether slavery was an institution of the territory before in point of fact any slave was carried there by one of our citizens. If so, then the slave carried would be recognised as propriety in the territory by force of its own institution and not that of the State from which the slave was brought. Thus, in my own State, though in point of fact, there were not a single slave to be found to day still slavery would be a recognised institution of the State; and the man who should go there with his slave to morrow, would not carry any new institution with him, but would merely carry there a recognised subject of property under the existing law.

Now, it seems to me, that the gentlemen whose opinions I oppose must maintain one of two things; either that by force of the Constitution of the United States the moment territories are acquired slavery becomes there a recognised institution, or else that whether it will be an institution of the territory or not depends upon the fact whether or not a slave shall be carried there; that when carried the law of slavery springs up and when removed the law ceases, Now, sir, this latter proposition seems to me an absurdity. The law which recognises slavery must exist, or not exist independently of the conduct of individuals; and as in my judgment the Constitution does not of itself establish slavery where it did not exist we must in order to ascertain its existence or non-existence after our acquisition resort to the previous law. There seems to be some doubt, as I collect from the remarks of honorable Senators on this subject what was the state of the law in the territories acquired from Mexico. By some it is alleged that all slavery was absolutely prohibited; by some that a species of slavery called *Peon* servitude, existed under certain modifications, about which gentlemen are not agreed; but it is conceded on all hands, that African slavery, as recognised in certain States of the Union was not an institution recognised in these Mexican territories.

Now, I hold, upon this concession, that the law in Mexico not having recognised slavery as it exists with us, such slavery stands prohibited in Mexico until it shall be allowed by law. Nothing, I apprehend, [illegible] a territory, whether it forms a part or the whole of a foreign nation—whether subdued by arms or ceded by treaty—no laws are repealed except those which are inconsistent with the relations which the subjugated people bear to their new sovereign; that such acquisition implies only a change of dominion and allegiance—a transfer of legislative authority and executive control, and that all laws not *necessarily* inconsistent therewith, remain in full force until the new sovereign shall modify alter, or abolish them. On this subject Vattel thus expresses himself:

The fundamental regulation that determines the manner in which the public authority is to be executed, is what forms the *Constitution of the State*. In this is seen the form in which the nation acts, in quality of a body politic, how and by whom the people are to be governed, and what are the rights and duties of the Governor." "The laws are regulations established by public authority, to be observed in society" "The laws made directly with a view to the *public* welfare are *political laws*, and in this class those that concern the body itself, and the being of the society, the form of government, the manner in which the public authority is to be exerted; those in a void, which together form the *Constitution* of the State, are the *fundamental laws*. The *civil laws* are those that regulate the rights and conduct of the citizens among themselves."

Chief Justice Marshall, in delivering the opinion of the court, in the case to which I have before referred, speaking of the effect produced by the cession of territory, says:

"On such transfer of territory it has never been held that the relations of the inhabitants with each other undergo *any* change. Their relations with their former sovereign are dissolved, and new relations are created between them and the government which has acquired their territory. The same act which transfers their country, transfers the allegiance of those who remain in it, and the law which may be determined *political* is *necessarily* changed; although that which regulates the intercourse and general conduct of individuals remains in force until altered by a newly created power of the State."

And again, in the same opinion, he says:

"It has been already stated that all the laws which were in force in Florida, while a province of Spain, those excepted which were political in their character, *which concerned the relations between the people and their sovereign*, remained in force until altered by the Government of the United States. Congress recognises this principle by using the words 'laws of the territory now in force therein.'"

Now, it is here manifest, that of the laws of a ceded territory, none are abrogated by the cession except those which are called political, and that those only are called political which concern the relations between the people and their sovereign; that these are "necessarily changed," because inconsistent with the new relations between the territory and its new sovereign; that the necessity of the case alone produces any change; and that all other laws, whether described as the *municipal* laws, the civil laws, or the laws regulating "the rights and conduct of the citizens among themselves," remain in force until altered by the new sovereign.

Now, sir, it is agreed by all the writers on national law, by all judges who have treated upon this subject, that slavery owes its existence to positive law, to municipal law, that, independently of law authorizing it, it does not exist anywhere; from which it necessarily follws that, whether African slavery be expressly prohibited in these territories or not, it does not exist, unless by their law it be allowed, which no one pretends. Whether it shall be introduced, or its exclusion continued, depends, in my judgment, upon the will of Congress. If nothing be done by Congress it remains excluded, and their power over the subject is complete and perfect. It seems to me that some confusion has resulted in the views of gentlemen upon this subject, from the fact that we heretofore have not made acquisitions of territory except with a view to the formation of States; but we have just as much power to acquire territory, and keep it in perpetual pupilage, as we have to bring it into the Union as a State. Our right to acquire springs out of the treaty power and the war power, and when we acquire we are to decide for ourselves what shall be done with what has become ours by cession or by conquest.—If we should obtain that *El Dorado* of some gentlemen, the Island of Cuba, would we be bound to admit it into the Union? By no means. We should have a right to keep it as a territory—a province—and regulate it as we please. And if we deemed it best for the interest of the United States, we might rightfully so keep it, even, to use an extravagant phrase, "to the last syllable of recorded time." The constitutional restrictions were intended to protect us against our own Government; they were intended to regulate us among ourselves, to define and distribute the powers which exist between the United States and the several States, and to secure to the States and to the people powers not granted to the United States. There is not an article which looks to the restraint of power, except as it is to be exercised over us; not an article designed to shorten our hands or diminish the aggregate of our power in acting externally upon foreign territory. Therefore, I hold that, among those subjects falling within the constitutional power of Congress, is the entire regulation of of such territory as we may acquire, to make such laws for it as we may think best, and to give it a political organization such kind, and with such restraints and limitations, as we may prescribe. Within this power is included the introduction or exclusion of slavery, according to our own judgment, entirely independent and irrespective of the wishes of the people of the territory, or any body else. My friend from Ohio (Mr. CORWIN) in his speech yesterday, stated that I was the only gentleman sustaining the same relation to the subject, upon the floor, who entertained this opinion. Since that remark was made, my friend from Kentucky, (Mr UNDERWOOD,) has expressed the same opinion, and I hazard nothing in saying that the honorable Senator from Missouri, (Mr. BENTON,) now in my eye, than whom no man is more capable of forming a sound judgment, holds the same opinion without qualification. If I do him injustice, I hope he will say so. The opinion is by no means novel. Why, sir, when the bill admitting Missouri passed the House, it contained an express provision, as a fundamental condition on which that state was to be admitted, that slavery should be excluded. When the bill came into the Senate that provision was stricken out and

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*After this speech was made I was informed by Mr VENABLE that it was mistaken in supposing his speech to have been first circulated in July; that it was, in fact, circulated in June; and I add this correction in justice as well to him as to myself.