

Senator Trumbull's Review of the Veto.

We published in full last week the Veto Message of President Johnson upon the Civil Rights Bill. It is just that our readers should also see the arguments adduced in favor of the measure, and we therefore publish the following abstract of the speech of Senator Trumbull of Illinois, defending the bill and reviewing the reasons which the President in his veto urges against it:

Mr. President: I fully share with the President of the United States in the regret expressed that he was unable to sign the bill to protect all persons in the United States in their civil rights, and secure the means of their vindication. I regret it on my own account, because the just expectations raised when this bill was presented to the President, before its introduction into the Senate, have been disappointed. I regret it on the President's account, because it is calculated to alienate him from those who elevated him to power, and would gladly have rallied around his administration to sustain him in the principles upon which he was elected. But above all, sir, I regret it for liberty's sake, to secure which to ourselves and our posterity, this government was founded. Yet if the bill is unconstitutional, or unjust to the whole people, I would not have had the President approve it. That the principles are not unjust to the whole, or any portion of the people, nor unconstitutional, I shall endeavor to show by a candid and dispassionate examination of the President's various objections.

He begins these objections with the very first lines of the bill, which declare that "All persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are citizens of the United States."

The bill originally introduced did not contain this provision. It was believed by myself and many others that all native born persons since the abolition of slavery were citizens of the United States. This was the opinion of Mr. Bates, the Attorney General during Mr. Lincoln's administration, the opinion adopted by his administration and acted upon since by all departments of the executive government, including the Secretary of State, who has issued passports to persons of color, recognizing them as citizens. It was the opinion expressed by Mr. Marah when Secretary of State that all persons born in the United States were citizens of the United States—not referring of course to slaves—slavery at that time existing in the country. The President does not object to this declaration in the bill as unconstitutional, and he does, however, say that it does not purport to declare or confer any other right of citizenship than federal citizenship. It does not purport to give these classes of persons any status as citizens of States, except that which may result from their status as citizens of the United States. The power to confer the right of State citizenship is just as exclusively with the several States as the power to confer the right of federal citizenship is with Congress. We all know that no State has authority to make a citizen of the United States. The Constitution of the United States vests in Congress the sole power of naturalization, and it may make a citizen of a foreigner, but it is true that when a person becomes a citizen of the United States he is not also a citizen of every State where he may happen to be? On this point I will refer to a decision pronounced by the Supreme Court of the United States, delivered by Chief Justice Marshall, the most eminent jurist who ever sat upon an American bench. In the case of *Gassies vs. Balena*, reported in Sixth Peters, the Chief Justice, in delivering the opinion of the court, says: "The defendant in error is alleged in the proceedings to be a citizen of the United States, naturalized in Louisiana, residing there." This is equivalent to an averment that he is a citizen of that State. A citizen of the United States, residing in any State of the Union, is a citizen of that State. The President next tells us that the right of Federal citizenship thus to be conferred on the several excepted races before mentioned is now for the first time proposed to be given by law. This is not a misapprehension of the law, but a mistake in fact, as will appear by reference to which I shall call the attention of the Senate, and which will show that the President's facts are as bad as his law. [Here Mr. Trumbull read extracts from Wheaton's International Law, showing that by various treaties, resolutions and acts of Congress, Frenchmen and Spaniards, Mexicans and Indians have at various times been made citizens of the United States, and among them some of the persons mentioned in the bill.]

And yet, said Mr. Trumbull, the President tells us that the right of Federal citizenship is now for the first time proposed to be given by law. "If," says the President—"as is claimed by many, all persons who are native born already are by virtue of the Constitution citizens of the United States, the passage of the pending bill cannot be necessary to make them such." That is true. But is the President to learn now for the first time that rule, to be found in the very horn-books of the law, that an act declaring what the law is is one of the most common of acts passed by the legislative bodies? When there is any question as to what the law is, and for greater certainty, it is the most common thing in the world to pass a statute declaring it. My opinion is such was the opinion of the Attorney General; such was the opinion of the President and the Secretary of State; such was the opinion of Mr. Lincoln's administration in all its departments; such I believe to be the prevailing opinion in the United States, that all native born persons, not subject to a foreign power, are, by virtue of their being so, citizens of the United States. Some dispute this, and therefore, certainly, it is proper to pass this law; and the fact of its being a declaratory law is not a valid reason for disapproving it by a President.—But if such is not the law, says the President, "the grave question presents itself whether, when eleven of the thirty-six States are unrepresented in Congress at the present time, it is sound policy to make our entire colored population, and all other excepted classes, citizens of the United States." This is a standing objection in all the veto messages of the President—not urged, it seems, against all bills, (for the President tells us in his message that he has signed some forty bills.) It is a general objection which he makes applicable alike to all bills; and if there is anything in it no bill can pass the Congress of the United States till these States are represented here. Sir, whose fault is it that eleven States are not represented? By what fault of theirs is it that twenty-five States, which have stood by the Union and by the Constitution, are to be deprived of their right to legislation if the reason assigned is a good one? Now, it has been a good one all the time for the last five years, if the fact that some States have rebelled against the Government is to take from the Government the right to legislate. Then the criminal is to take advantage of his crime—the innocent are to be punished for the guilty.

Within a few days the President has issued a proclamation—not of peace, as the Senator from Nevada (Mr. Stewart) seemed to suppose—not a proclamation declaring that the rebellion is over—but that in certain States it is over. The President does not tell us that Texas, one of the States that was in rebellion, is in a condition to be represented here; and if we are to wait for these eleven States before legislation, must we not wait for Texas? These States which have undertaken to reorganize have not yet been recognized as having a republican form of government entitling them to representation. The Representatives chosen by most of them are persons fresh from the rebel armies. Are we to abstain from all necessary legislation until these States shall be admitted to representation which insist on thrusting into Congress men whose hands are dripping with the blood of loyal men? Is the Vice President of the Rebel Confederacy—is his colleague (one of the Senators in the Rebel Congress)—to come here to legislate for the loyal people of this country? Sir, the men who organized a government that carried on a four years' war against us, as the result of which this nation had to expend more than three thousand million dollars, and as a consequence of which more than a quarter of a million of patriot heroes have laid down their lives upon the battle-field and in army hospitals—are those men to come here to legislate for the loyal people of this country?

But the President tells us that the bill in effect proposes a discrimination against large numbers of intelligent, worthy and patriotic foreigners, and in favor of the negro. Is that true? What is the bill? It declares that there shall be no distinction in civil rights between any other race or color and the white race.—Is that a discrimination in favor of the negro and against the foreigners—a bill the only effect of which is to preserve equality of rights? But perhaps it may be replied to this that the bill proposes to make a citizen of every person born in the United States, and therefore it discriminates in that respect against the foreigner. Not so. Foreigners are all upon the same footing, whether black or white. The white child who is born in the United States a citizen is not to be presumed at its birth to be the equal intellectually with the worthy, intelligent and patriotic foreigner who emigrates to this country.

playing the mere politician in sending a veto message to the Congress of the United States.

The President also makes some other allusions in this veto message of a similar character. For instance, he speaks of the impropriety of marriages between whites and blacks, and then he goes on to say: "I do not say that this bill repeals State laws on the subject of marriage between the two races." Then for what purpose is it introduced into the message? Not surely as an *ad captandum* argument to excite prejudice—the argument of a demagogue and a politician.—Mr. Johnson could not do that, having condemned such quibbles in Mr. Buchanan.

The President further says: "If it be granted that Congress can repeal all State laws discriminating between whites and blacks on the subjects covered by this bill, why, it may as well, may not Congress repeal in the same way all State laws discriminating between the two races on the subject of suffrage and office? If Congress can declare by law who shall hold lands—who shall testify—who shall have capacity to make a contract in a State—then Congress can by law also declare who, without regard to color or race, shall have the right to sit as a juror or as a judge—to hold any office, and finally to vote in every State and territory of the United States. Perhaps the best answer I could give to this would be the answer of Andrew Johnson himself. He undertook to reorganize State governments in the disloyal States. When he did so to whom did he extend the right of suffrage? The blacks? No, sir; but he extended the right of suffrage to those who were authorized to vote under the laws of those States before the rebellion; and when urged to allow loyal blacks to vote, what was his answer? That he had no power. It was unconstitutional. But he has claimed and exercised the power to protect colored persons in their civil rights, and if it carries not with it the right of suffrage, what becomes of the position which he assumed when he extended civil rights to the negroes—that he had no constitutional power to extend to them the right to vote—that it was a right vested in the Senate with which he could not interfere? But sir, the granting of civil rights does not, and never did, in this country carry with it political privileges. A man may be a citizen in this country without a right to vote or without a right to hold office. The right to vote and to hold office in the States depends upon the legislation of the various States. The right to hold certain offices under the federal government depends upon the Constitution of the United States. The President must be a natural born citizen, and a Senator or Representative must be a citizen of the United States for a certain number of years before he is eligible to a seat either in this or the other House of Congress. So that the fact of being a citizen does not necessarily qualify a person for an office, nor does it necessarily authorize him to vote. Women are citizens; children are citizens; but they do not exercise the elective franchise by virtue of their citizenship. Foreigners, as is stated by the President in this message, before they are naturalized are protected in the rights enumerated in this bill, but because they possess those rights in most, if not all the States, that carries with it no right to vote.

But sir, what rights do citizens of the United States have? To be a citizen of the United States carries with it some rights, and what are they? They are those inherent, fundamental rights which belong to free citizens or freemen in all countries—such as the rights enumerated in this bill—and they belong to them in all the States of the Union. The right of American citizenship means something. It does not mean in the case of a foreigner that when he is naturalized he is to be left entirely to the mercy of State legislation. He has a right, when duly naturalized, to go into any State of the Union and to reside there, and the United States Government will protect him in that right. It will protect a citizen of the United States, not only in any of the States of the Union, but it will protect him in foreign lands. Mr. Marcy, when Secretary of State, held that a citizen in a foreign country was entitled to the same protection that was extended by that government to its own citizens. These rights belonging to the citizen, and known as natural rights, are defined by leading legal authorities. What are they? The right of personal security, the right of personal liberty, the right to acquire and enjoy property. These are declared to be inalienable rights, belonging to every citizen of the United States as such, no matter where he may be. How is it that every person born in these United States owes allegiance to the government? Everything that he is or has—his property and his life—may be taken by the Government of the United States in its defense or to maintain the honor of the nation; and can it be that our ancestors struggled through a long war, and set up this government, and that the people of our day have struggled through another war, with all its sacrifices and all its desolation, to maintain it at last, that we have got a government which is all powerful to command the obedience of the citizen, but has no power to afford him protection? Is that all that this boasted American citizenship amounts to? Go tell it, sir, to the father whose son was starved at Andersonville, or the widow whose husband was slain at Mission Ridge, or the little boy who leads his sightless father through the streets of your city, made blind by the winds and the sand of the Southern coast, or the thousand other mangled heroes to be seen on every side, that this government in defense of which the son and the husband fell—the father lost his eyes and the others were crippled—had the right to call these persons to its defense, but has no right to protect the survivors or their friends in any right whatever, in any of the States. Sir, it cannot be. Such is not the meaning of American citizenship. This Government which would go to war to protect its meanness—I will not say citizen—inhabitant, if you please—in any foreign land, whose rights were unjustly encroached upon, has certainly some power to protect its own citizens in their own country. Allegiance and protection are irrevocable rights.

Mr. Trumbull went on to review the remainder of the bill, to combat the objections of the President, and to show the necessity for legislation. He then said in conclusion:

Mr. President. I have now gone through this veto message, replying with what patience I could command to its various objections to the bill. Would that I could stop here—that there was no occasion to go farther; but justice to myself—justice to the State whose Representative I am—justice to the people of the whole country, in legislation for whose behalf I am called to participate—justice to the Constitution I am sworn to support—justice to the rights of American citizenship—it secures, and to human liberty, now imperiled—require me to go further. Gladly would I refrain from speaking of the spirit of this message—of the dangerous doctrines it promulgates—of the inconsistencies and contradictions of its author—of his encroachments upon the constitutional rights of Congress—of his assumption of unwarranted powers which, if asserted in, and not checked by the people, must eventually lead to a subversion of the Government and the destruction of liberty. Congress, in the passage of the bill under consideration, sought no controversy with the President, so far from it, the bill was proposed with a view to carry out what men supposed to be the views of the President, and was submitted to him before its introduction into the Senate. I am not about to relate private declarations of the President; but it is right the American people should know that the controversy, which exists between him and Congress in reference to this measure is of his own seeking. Soon after Congress met, it became apparent that there was a difference of opinion between the President and some members of Congress in regard to the condition of the rebellious States and the rights to be secured to freedmen. The President in his annual message, had denied the Constitutional power of the general Government to extend the elective franchise to negroes, but he was equally decided in the assertion of the right of every man to life, liberty and the pursuit of happiness. This was his language. "But while I have no doubt that now, after the close of the war, it is not competent for the general government to extend the elective franchise in the several States, it is equally clear that good faith requires the security of the freedmen in their liberty and their property." There were some members of Congress who expressed the opinion that in the reorganization of the rebellious States the right of suffrage should be extended to the colored man, though this was not the prevailing sentiment of Congress. All were anxious for a reorganization of the rebellious States, and their admission to participation in the Federal Government as soon as these relations could be restored with safety to all concerned.

Feeling the importance of harmonious action between the different departments of the government, and an anxious desire to sustain the President, for whom I have always entertained the highest respect, I had frequent interviews with him during the early part of the session. Without mentioning anything said by him, I may with safety say that, acting from considerations I have stated, that the passage of a law by Congress securing equality in civil rights when denied by statute for freedmen and all other inhabitants of the United States would do much to relieve anxiety in the North—to induce the Southern States to secure those rights by their own action, and thereby remove many of the obstacles to an early reconstruction, I prepared the bill substantially as it is now returned with the President's objections. After the bill was introduced and printed, a copy was furnished him; and at a subsequent period, when it was reported that he was hesitating about signing the Freedmen's Bureau bill, he was informed of the condition of the Civil Rights bill, then pending in the House, and a hope expressed that if he had objections to any of its provisions he would make them known to its friends, that they might be remedied—if not destructive of the measure; that there was believed to be no disposition on the part of Congress—and certainly none on my part—to have a bill reported to him which he could not approve. He never indicated to me—nor so far as I know, to any of my friends—the least objection to any of the provisions of the bill till after its passage. And how could he consistently with himself? The bill was framed, as was supposed, in entire harmony with his views, and certainly in harmony with what he was then, and has since then been doing in protecting freedmen in their civil rights all through the rebellious States. It was strictly limited to the protecting freedmen in their civil rights belonging to every freedman—the right of every American citizen—and carefully avoided interfering with political rights or private rights of any kind. The bill neither confers nor abridges the rights of any one, but simply declares that in civil rights there shall be an equality among all classes of citizens, and that all alike shall be subject to the same punishment. Each State—so it does not abridge the great fundamental rights belonging under the Constitution to all citizens—may grant or withhold such civil rights as it pleases. All that is required in that in this respect law shall be impartial. And yet this is the bill now returned with

the President's objections—and such objections! What are they? That in all our history—in all our experience as a people living under political and State laws—no such system as that contemplated by the details of this bill has ever before been proposed or adopted. Have I not already shown in the action of the President himself, through Gen. Sickles, declaring that all laws shall be applicable alike to all inhabitants, and in the various acts of Congress a precedent for every provision of this bill?

The details of this bill, says the President, establish for the security of the colored race safeguards which go infinitely beyond any that the General Government has ever provided by the white race. With what truth this can be said of a bill which declares that the civil rights, and the punishment, of all races, including of course the colored, shall be the same as those of white persons, let an intelligent public judge. They—the details—says the President, interfere with the legislation of the States, to which the status of its citizens exclusively belong—an observation and assumption of power by the general government which, if acquiesced in, must sap and destroy our federative system of limited powers and break down the barriers which preserve the rights of the States. It is another step, or rather stride, toward centralization and the concentration of all legislative powers in the national government. All this is said by a President who, by his own fiat, issued through General Howard, set aside an act of the legislature of Mississippi, and by another order, through General Ferry, an act of the Virginia legislature, and forbade any magistrate or civil officer from attempting to execute it; also, through General Canby, ordered the State Courts in his Department to suspend all suits against persons charged, with offenses for which white persons were not punished. And we all know the penalty which would have been visited upon State judges or officers for violations of any of these orders. A President, who after vetoing a provision of the Freedmen's Bureau bill because it secured the occupation of lands under Maj. Gen. Sherman's order for a period of three years, himself issued an order within less than thirty days afterward, through H. W. Smith, Asst. Adjt. General, directing that grants of land to the freed people, in compliance with General Sherman's special field order No. 15, dated January 16, 1865, will be regarded as good and valid. Well may we exclaim, in view of these acts of the President, in his own language, when discussing a veto of President Buchanan: "Oh, consistency! thou art a jewel much to be admired, but seldom to be found." In view of these facts, who is it that is breaking down the barriers of the States and making strides toward centralization? Is it Congress by the passage of this bill, or the President, who, without law, is arrogating to himself far greater powers than any conferred by this bill? Let it not be said that the President exercises these vast powers by virtue of the war powers. He told us in his annual message that the war was over; and whether over or not no incidental powers are vested by the Constitution in the President—either as President or Commander-in-Chief of the army. That instrument gives power to make all laws necessary and proper for carrying into execution all powers vested by the Constitution in the Government of the United States, or in any department or office thereof. The President is required, in carrying out his powers, to act in obedience to law—the very thing which he refuses to do.

He says the tendency of this bill must be to reawaken the spirit of rebellion. What assumption in one who denies the authority to punish those who violate United States laws under color of State authority? A doctrine from which the rebellion sprung, and in entire harmony with the declaration of Mr. Buchanan that there was no power to coerce a State. But, sir, out of the mouth of Senator Andrew Johnson I will prove that President Andrew Johnson has violated the spirit of the Constitution if not its letter, in vetoing this bill. It will be remembered the bill passed both Houses of Congress by more than a two-thirds majority—the vote passed the Senate being 33, nays 12; and in the House, yeas 111, nays 38. I will read from the remarks of Senator Andrew Johnson on the veto of the Homestead by Mr. Buchanan: "The President of the United States presumes—yes, sir, I say presumes—to dictate to the American people and to the two Houses of Congress in violation of the spirit if not the letter, of the Constitution whether a measure shall not become a law. Why do I say this? I ask, is there any difference in the spirit of the Constitution whether a measure is sanctioned by a two-thirds vote before its passage or afterwards? When a measure has been vetoed by the President, the Constitution requires that it shall be re-considered and passed by a two-thirds vote in order to become a law. But here in the teeth of the Executive there was a two-thirds vote in favor of this bill. The vote was 36 to 2 in this body. The two Houses have said this measure is constitutionally right. In the other House—reflecting the popular sentiment of the nation—the vote was 112 to 51—ten more than the two-thirds majority which the Constitution requires; and when there is a two-thirds vote for a measure, I say it is against the spirit of the Constitution for the Executive to say "No, you shall not have this measure; I will take all the chance of vetoing it." Apply this method to the facts connected with this bill and then say who violated the spirit of the Constitution.

The bill in no manner interferes with the municipal regulations of any State, which protects all in their rights of person and property. It could have no operation in Massachusetts, New York, Illinois—most of the States of the Union. How preposterous, then, to charge that unless some State can have and exercise the right to punish somebody, or to deny somebody a civil right, on account of his color, that its rights as a State will be destroyed. It is manifest that unless this bill can be passed nothing can be done to protect the freedmen in their liberty and their rights. Whatever may have been the opinion of the President at one time as to "good faith requiring the security of the freedmen in their liberty and their property," it is now manifest from the character of his objections to this bill that he will approve no measure that will accomplish the object that the second clause of the constitutional amendment gives. Of this power there can be no question. Some have contended that it gives the power even to confer the right of suffrage. I have not thought so, because I have never thought suffrage any more necessary to the liberty of a freedman than of a non-voting white, whether child or female, but his liberty under the Constitution he is entitled to, and whatever is necessary to secure it to him he is entitled to have, be it the ballot or the bayonet. If the bill now before us—and which goes no further than to secure civil rights to the freedmen—cannot be passed, then the Constitutional amendment declaring freedom to all the inhabitants of the land is a cheat and a delusion.

I cannot better conclude what I have to say than in the language of Mr. Johnson on the occasion of the veto of the Homestead Bill, where, after stating the fact that because the President was inconsistent, and changed his opinion with reference to a great measure and a great principle, it is no reason why a Senator or Representative who had acted understandingly should change his opinion, he said: "I hope the Senate and House of Representatives, who have sanctioned the bill by more than a two-thirds majority, will according to the Constitution, exercise their privilege and power and let the bill become a law of the land, according to the high behest of the American people!"