

## MEMORIAL

OF

H. D. JOHNSON,

*Delegate from the Territory of Nebraska, claiming for the people of that Territory the right to legislate for themselves on the subject of slavery, and that Congress should leave the question to the decision of their own choice.*

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FEBRUARY 20, 1854.—Ordered to lie on the table and be printed.

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*To the Senate and House of Representatives:*

At an election held in that country known as Nebraska, north of the fortieth degree of north latitude, on the 11th day of October last, I had the honor to receive quite a large number of votes (a certificate of such fact having been referred to the Committee on Elections in the House of Representatives some time in December last) as delegate from that Territory, to represent the interests and make known the wants of that country before the national legislature.

No law being in existence authorizing that election, and none giving to that Territory any representation here, of course the people in thus selecting me as their agent to urge upon you the early consideration of their wants, did not claim for me a privilege equal to that of a legal representative upon the floor of the House, but they expected me to use all honorable means to seek an early organization of said Territory.

Finding the rules of Congress regulating the access of persons other than members to the halls of that body confined to privileged classes, and not being myself one of the privileged few, I have not as free access to gentlemen composing the Senate and House of Representatives as I could wish, without intruding myself upon them in their hours of retirement; and to thus intrude I feel a great reluctance, knowing as I do that those hours of respite from official duties are necessary to enable them to rest and be prepared for each day's laborious sitting.

Therefore, in order to discharge my duty faithfully, in bringing before you the object of my mission, and at the same time to avoid a system of personal perforation which is always unpleasant, I beg leave, most respectfully, to solicit in this public manner your *early* and earnest attention to the subject alluded to.

It is true that the subject is already before you, and in the hands of able, zealous, and faithful gentlemen; this fact does not, however, prevent me from thus appealing to you for action, prompt and effectual action.

I fear from present indications, that there exists, unfortunately, a disposition to expend much time in debate—debate however eloquent, learned and interesting, yet still useless, perhaps, and foreign to the true question at issue.

Is it necessary and right to extend the laws and protection of the United States over Nebraska? that is the present question.

Nebraska, whose limits are defined in the bill pending in the Senate, includes an extent of country from east to west of about eight hundred miles, and about six hundred from north to south.

There are within the limits which it is proposed and believed will first be settled, 7,050 Indians—occupying in the aggregate a region of country covering 32,250 square miles, or about 20,640,000 acres of land, being about three thousand acres to each man, woman, and child therein.

Although the most of this land is rich and productive, being well adapted to the production of corn, wheat, oats, potatoes, &c., as well as different kinds of fruits, I am well satisfied that not one thousand acres are now in cultivation in the region last alluded to, although frequent attempts have been made to induce the Indians to cultivate the soil.

Those, therefore, who sympathize with the “poor Indian,” need not be alarmed, as the organization of this country will result in benefit to the Indians; so say the Indian agents, and their opinion is sustained by the Commissioner of Indian Affairs, as well as the experience of all persons acquainted with their circumstances.

There are within these limits several great routes of travel, upon which annually pass, at a moderate estimate, from forty to fifty thousand American citizens, carrying with them their property, valued at many millions of dollars.

Within this vast region of country cannot be found one single person authorized to arrest a criminal or enforce a law; nor are there any within a reasonable distance who can enforce a United States law in punishment for crimes committed within these limits.

The consequence is that those laws are in fact a dead letter, and the result is that the lives and property of those who live in and travel through the country are unsafe and wholly unprotected.

If it be true, as is patriotically held, that a Koszta, upon foreign soil, can justly claim and is entitled to receive, protection from the strong arm of this government, are not the seven thousand Indians who are natives, and the fifty thousand whites who are citizens of and upon American soil, entitled to the same protection within our own limits? surely that which is so freely granted to adopted, should not be withheld from native citizens.

Quite a considerable portion of this country is now of but trivial importance and but little value to the Indian tribes roaming over it. The game being driven off by the great tide of emigration continually flowing through that region, the Indians are willing to dispose of these lands, which would, if settled upon and brought into cultivation, be of vast importance to the people—affording, at the same time, a market to the settler for the products of his farm, and the settlers affording protection to the emigrants and the government mails, thus proving an ad-

vantage to the government in diminishing her expenses, as, in event of a settlement of that country, the present military posts kept up by government could be abandoned, and still another advantage would accrue to the country, in the early increase of the national treasure, derived from the sales of lands within the Territory.

The Indian tribes would be benefitted by the settlement of the country, as the purchase of their lands would produce them something upon which to subsist; in their present condition they have neither game, provisions, money or annuities. They are perishing by hunger and pinched by want, and will so continue until they become extinct, unless preserved by some new plan. I here allude particularly to the tribes inhabiting the Platte valley.

As regards the question of slavery, in Nebraska, allow me to remark: I think the philanthropist need not be alarmed, as I believe there has never been, nor do I suppose there ever will be, a single slave residing in the Territory of which I am writing.

I am free to admit that, at the outset, I thought it would have been as well to remain silent on this subject, saying nothing in the bill, and leaving the adjustment of it to the future; but as it has since been demonstrated that, had such course been pursued, the result would have been the same—the present agitation would have been raised. It is vain to hope for quiet on this question, I now see, until it is definitely settled. I am, therefore, willing that it should be openly met, and at once.

Let, therefore, I pray you, this question be now disposed of. No temporizing, no slight applications of inefficient remedies will suffice. Apply, at once, if you please, a prompt, effectual, and constitutional remedy.

Amongst the powers expressly granted to Congress by the Constitution, are “to borrow money, lay taxes, regulate commerce,” &c.; but none to create or abolish slavery. The power is further granted, “to make all laws which shall be necessary and proper for carrying into execution” the powers thus granted, “and all other powers vested by this Constitution in the government of the United States,” &c.

“The Congress shall have power to dispose of and make all needful rules and regulations respecting the *territory* and *other property* belonging to the United States.” Again:

“This Constitution, and the laws of the United States, which shall be made in pursuance thereof,” &c., “shall be the supreme law of the land.”

Article 9, of amendments to the Constitution, provides that “the enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people.”

Article 10 provides that “the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people.”

Now, any attempt, by the Congress, to legislate upon the subject of slavery, pre-supposes a right so to do; it is, therefore, legitimate to inquire by what authority such legislation is attempted, and the extent of such power?

When, therefore, the 8th section of the act of 1820, which provides that “slavery and involuntary servitude,” &c., “shall be, and is

hereby, forever prohibited" in the Territory therein named, is quoted as a valid objection to this bill, the question naturally presents itself: "Is that act the supreme law of the land?"

It is not; unless Congress had power, by virtue of its express, vested, or implied grants, to enact a law either creating or abolishing, or limiting or extending slavery. If that power is not among the rights of Congress, it certainly is one of those rights not to be *denied* to, or disparaged in, the people, as at the time of the adoption of the Constitution slavery existed and was recognized. And this right is one of those "*reserved* to the States or to the people."

To admit that Congress has power to *prohibit* slavery by special or general enactment, is to admit a right to control that question; and if you admit the right to control, that very moment you grant the power of Congress to establish slavery within the territories. This is undoubted; because the right to act once conceded, the power to act as Congress may see proper is, of course, implied. I would ask the anti-slavery men: Are you willing to admit this power in Congress?

If I am correct in these positions, and right when I deny the right of Congress to *create* or *abolish* slavery within the Territories, it follows that section eight of the act of 1820, is *void*, and is not the supreme law of the land, because not enacted in pursuance of the provisions of the Constitution.

To repeal a void act would be but folly; but to declare that the principle embodied in that act shall not prevail in Nebraska, would be consistent—because it is plain, and leaves no doubt as to the meaning of the legislature on that point.

Believing that the people who now live, and those who may hereafter settle in Nebraska, are, and will be, capable of deciding for themselves, and that the spirit of democracy and the Constitution guarantee to them the exclusive right to so decide in this respect. I therefore choose that the subject be left to them.

Let us have a territorial government for Nebraska. Give to us officers, United States laws, and a chance to legislate upon questions of internal policy—under Congressional supervision while a Territory—and trust to our intelligence, wisdom, and patriotism to form for ourselves a republican constitution, when we seek admission as a State.

But, above all, do not deny to us the right—so dear to every American heart—*that* right, for which so much patriot blood has been shed—the right of self-government.

Respectfully, &c.,

H. D. JOHNSON,  
*Delegate from Nebraska.*

WASHINGTON, February 2, 1854.