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HON. JAMES H. HAMMOND,

OF SOUTH CAROLINA,

ON THE

RELATION OF STATES;

DELIVERED

IN THE SENATE OF THE UNITED STATES,

MAY 21, 1860.



WASHINGTON:

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The Senate having under consideration the resolutions submitted by Mr. DAVIS on the 1st of March, relative to the relations of the States, and the rights of persons and property in the Territories, and the duty of protecting slave property in the Territories, when a necessity for so doing shall exist—Mr. HAMMOND said:

Mr. PRESIDENT: I feel reluctant to trespass on the time of the Senate, and to follow with a dry constitutional argument the able, eloquent, and stirring speech of the Senator from Georgia; but I have a few words to say, and I may as well go on this afternoon.

If I understand it aright, the precise question before the Senate is simply this: have the territorial governments established by Congress the power to define and declare what shall be and what shall not be property within the territorial boundaries? Those who advocate the resolution offered by the Senator from Mississippi deny that the Territories have such power. Those who oppose the resolutions maintain that they have. Both parties will agree, of course, that the power to define and declare what is property is supreme and uncontrollable; in short, what we call sovereign. Certainly no other power can do it; since, in that case, the really supreme power could at once reverse any such declaration, and without a proper definition of property agreed upon by the controlling power of a Government, there could be no civil Government at all; for civilized government, however far it may reach, is organized on property, and never has existed, and never can exist long without defining by law or established usage what is property.

We have no history of the origin of human association and political government that gives us any full or clear account. The Bible and other ancient books give us hints, which suggest thoughts, that enable us to form conceptions of these matters, which are, perhaps, sufficient for all our practical purposes. A roving family, grown into a tribe, finding pleasant waters, fine soil, and sweet

air, that have not been appropriated, arrests its wanderings, drives down its stakes, claims this delightful region as its own, constitutes it property, and, dividing it out, organizes a government, and, by the right of eminent domain, of usage, and its physical power, establishes a sovereignty. That sovereignty is good so long as it can be maintained against all assaults. If it sustains itself, in time it grows great; it becomes over-populous; it sends out emissaries to discover other similarly-endowed lands; it obtains them by first discovery, by purchase, or by conquest; it colonizes them with its surplus population, but, holding the eminent domain, it holds its colonies in strict subordination to its own will, and maintains sovereignty over them. The colonies also grow. In time they demand sovereignty for themselves. It is wisely conceded, or, by a successful rebellion, it is conquered by the colonies, and each becomes sovereign. Such, I take it, has been the almost unvarying history of the origin and progress of human association and political organization.

Thus the thirteen colonies, which became the United States of America in 1787, were planted long previously by Great Britain. In 1776 they proclaimed themselves to be sovereign and independent States. Great Britain refused to concede to their demands; but, after a long and bloody war, they achieved their independence, and were acknowledged as sovereign States.

When the present constitutional Union was established, many States were entitled, by charters and grants from the former mother country, to large areas of territory still wild and unpeopled. These they all surrendered to the new General Government, for the purpose, mainly, of creating a fund to pay off the war debt of the Revolution. Subsequently we have acquired, by purchase, Louisiana and Florida; by annexation, Texas; and by conquest and purchase, our Pacific coast. To every one of these large acquisitions, every inch of which, Texas excepted, became the common property of each and all of the States—of whom the General Government was the trustee—large numbers of our citizens flocked, seeking to better their fortunes, not only unrestrained, but very rightly encouraged, by this Government. By the Constitution of the United States, Congress was empowered “to dispose of and make all needful rules and regulations respecting the territory and other property of the United States.” This was a very vague and indefinite grant of power; but it was, by unanimous consent, construed to mean that Congress might establish a suitable provisional government for each Territory so soon as the number of inhabitants required that law and order should be enforced, and the property of the United States, as well as peace and justice, preserved there, by the intervention of the Federal Government. It was considered a “needful regulation,” and nothing more.

Yet these adventurers, few or more, squatting on land they do not own, but which belongs to all the States, and of which they do not squat on more than a small portion within the limits as-

signed them, are those into whose hands the opponents of these resolutions demand that *sovereignty* throughout their whole border shall be surrendered. Why, they are but voluntary exiles who have been allowed to seek homes in a wilderness not discovered, purchased, or conquered by them, but still the property of the States, and whom, in their yet unfinished term of social infancy and political pupillage, the great agent, the States, has kindly undertaken to protect; giving them judges, Governors, and a sort of Legislature—all subject, however, to be withdrawn at any moment—and the whole system supported from the Treasury of the States. Yet it is said that such Territories are sovereignties, and such people sovereigns, and that such an organization can assume the high and sovereign function of defining and declaring what is and what is not property, and thereby forbid a large proportion of the citizens of the States, who really own the lands, from entering such Territories with their rightful property.

It is said here, by those who advocate this extraordinary doctrine, that adventurers going, for instance, to Pike's Peak, Nevada, or Arizona, and organizing for themselves provisional governments, without recognition from this Government, would not be entitled to the rights of sovereigns. To this the Senator from Mississippi (Mr. DAVIS) very pointedly and justly answered, that perhaps they were the very people who, from the absolute necessity of the case, would be justified in exercising, for a time, sovereign power. And I will add, if they could sustain themselves in their organization against all attacks, they would become permanently and rightfully sovereign. But that gangs of adventurers, intruding into a domain that belongs to others, squatting on its choicest lands, and when increased to such numbers that they cannot keep the peace among themselves, petitioning then to the agents of the true owners of the soil, and receiving, at the owners' charge and cost, ample protection, should immediately thereafter proceed to exercise the high and supreme sovereign right of deciding what is and what is not property on that domain, and exercise it in a way to exclude the people of nearly half the States from their Territory, is clearly absurd. It is a proposition not merely anomalous in every feature, not only unknown to history, but utterly opposed to truth, to reason, to justice, to honor, and to common honesty. It is called "squatter sovereignty." The name describes it. It can never achieve a more respectable cognomination.

I have endeavored to show, rather by statement than by argument, that our territorial organizations—called governments by courtesy, but which really are only corporations, that may be dissolved at the will of the Federal Government—cannot declare what is property in the Territories, and are not sovereign. It is said, nevertheless, that they are sovereign, because of a certain natural and inherent right of any population organized under any form of government to regulate their own affairs. Nothing could be more vague, uncertain, metaphysical, and shadowy,

than such a proposition as this. If man has any natural or inherent rights—which I deny, regarding all the rights to which a being born so helpless as man, may attain to be purely conventional, and such as other men allow him—I should suppose that those rights belonged to him as an individual, rather than as a member of any social or political system. It seems to me clear that we must be born with whatever is natural or inherent to us, and that we can receive no accession of rights of that character from any social or political organization; but that, on the contrary, such rights, whatever they may be, must be in no small degree restrained and diminished by any organization formed for the good of the whole. Such, in fact, is the case. Individual rights—no individual pretensions, passions, and desires, mistaken for rights—are just what governments are instituted to control and regulate. But if any such natural or inherent rights could possibly exist, they are conceded when the settler on the public domain, asking the protection of this Government, agrees to be governed by such an organic law as Congress may offer him—which he does for the substantial consideration of protection. If he, by himself, or in conjunction with his fellow-settlers, had any such rights, they are entirely surrendered when they come under the Constitution and the laws of this Confederation. Their immediate local governments, having no other foundation than the vague power of Congress to make “needful rules and regulations” for such a population to set itself up as a sovereign people; and such a corporation to demand to exercise any sovereign power, especially the great central sovereign power of declaring what is property, is, I repeat it, with due deference, simply absurd, and would, I think, be agreed to by no human being of ordinary intelligence who was not misled by his passions, prejudices, or interests. Why, the Federal Government itself, save in one or two instances where the power has been conferred on it, cannot declare what is or what is not property. That is a power reserved by the sovereign States, and by them alone can be exercised; and it is by this reservation that they prove their sovereignty. What each State declares to be property, the General Government is bound, in all its Departments, to regard as property, and protect as property; and so, under the Constitution, every other State is bound to regard and protect it; and each and every State has a right to demand that, whatever it has, by its sovereign fiat, declared to be property, shall most especially be recognized and protected as such on the territorial soil of which it is part owner.

But another great power has been granted to Congress which bears directly on this question. Though it can only make “needful rules and regulations for the territory,” &c.—note that the word is “territory,” not *territories*—showing that the whole scope of the grant of power was to regulate property only, yet, this Government, not sovereign itself, can, as it were, create a sovereign, by the expressly and constitutionally recorded will of

the sovereign States. It is authorized to "admit new States." All "STATES" are sovereign. They can define and establish property, and your Territories, when they are admitted as States, may do it also. In that we all agree. And it seems to me very strange that the Territories, when a few short years will enable them to attain the high position of sovereign States in this Confederation, should wish to snatch at sovereignty before their time. It was not so of old. It can only be explained by referring to the progress of demagoguery in these degenerate days of the Republic, and to the insane desire to destroy one section of this Union. But this is beside the argument. If the framers of the Constitution had supposed that in granting the power to the General Government "to dispose of, and make needful rules and regulations, respecting the territory and other property of the United States," they conferred the power to establish in such Territory political governments, endowed with the sovereign power to define what is and what is not property, then they would have stultified themselves by the additional grant of power to "admit new States." The Territories would be States at once, and with, perhaps, great advantage over the other States. The power "to make needful rules," &c., has from the first been stretched so far as to authorize each Territory to send a Delegate to the House of Representatives. What obstacle is there, then, but the mere will of Congress, to sending one also to the Senate—nay, two—and to the House as many as the different political and other interests of the different sections of a Territory might be supposed to require? Thus they would have ample opportunity to attend to all their wants here, and share in all the honors of the Government except the very highest, while their government, in all its branches, would be carried on at the cost of the General Government, and they would be protected by the arms of the United States. More than this: as the Federal Constitution does not authorize Congress to define property, if the definition given to it by each sovereign State is not to prevail in the Territories, then, if they can exclude or confiscate one kind of property, they can exclude or confiscate any kind of property. Thus the coal and iron of Pennsylvania, the cotton and woollen manufactures of New England, the grain and provisions of the Northwest, in short, the staples and manufactures, and even shipping of every section, might be declared not to be property in a Territory, and as the major includes the minor proposition, might be confiscated or heavily taxed. And if it is agreed that the Territories shall not be bound to consider as property what the sovereign States, or any one of them, declares to be property, then much less will the States themselves be bound to respect it; and that agreed on, this "more perfect Union" of these States will subside into a condition not at all better than that of the old Confederacy, if, in fact, so good.

I will not pursue the subject further. The Senate is weary of it, the country is weary of it, and I, myself, am so weary of it that I

have not listened or read, when it was the topic, for months. I have presented it now, briefly, and in only one point of view; and even that I do not fully carry out. I have said enough, and probably nothing not familiar to every one who has heard all that has been said here, which I have not. In every aspect of this new doctrine—and there are many I have not touched—it has appeared to me an illegitimate and dangerous excrescence on our republican system—the offspring of an unsound, morbid, and licentious spirit of mobocracy, well calculated, in fact, if successfully persisted in, sure—to destroy the genuine spirit of our political institutions.

It was not my intention to have intruded upon the Senate any remarks upon the subject; but the Senator from Illinois, in his speech the other day, made some allusions to my State which I thought should be corrected. He asked not to be interrupted, and afterwards promised to make the corrections in the report of his speech. I do not doubt that he has done so; but what he said has gone forth from the reporters, and cannot be corrected fully by any omissions in his speech. On this account I felt bound to make the corrections myself; and the other remarks I have made occurred to me.

When South Carolina voted for General Cass, in 1848, after his celebrated letter to Judge Nicholson, she put upon that letter the interpretation then universal in the South, that he meant to say that a Territory, when it came to frame a constitution, and ask admission as a State, might declare what should be property within its limits. We did not intend to vote to sustain squatter sovereignty.

The compromise measures of 1850, which the Senator says contained this doctrine, had not a friend, so far as I know, in South Carolina. The proposition there was that the State should secede in consequence of them. The issue made was whether the State should secede alone, or refuse to do so without the coöperation of one or more other States. Mr. Rhett, who took his seat in the Senate some months after the passage of those measures, led the party in favor of a separate secession of the State. He was defeated. Not by those in favor of the compromise measures or of squatter sovereignty, which never had the slightest foothold in South Carolina, but by the coöperationists, who would not go out of the Union without a single State approving and sustaining.

The Kansas and Nebraska act, of which the Senator claims to be the author, and I believe was, met the approbation of South Carolina; but it was interpreted in the same way as the Nicholson letter. So far, therefore, as South Carolina has acted, she has not done the least thing to support these new doctrines in regard to sovereignty; and I think I can assure the Senator from Illinois she never will.