

DOCUMENTS

OF THE

SENATE OF THE STATE OF NEW-YORK.

EIGHTIETH SESSION.—1857.

VOLUME IV.—No. 111 to No. 170.



ALBANY:

C. VAN BENTHUYSEN, PRINTER TO THE LEGISLATURE

1857.

State of New-York.

No. 158.

IN SENATE, APRIL 9, 1857.

REPORT

Of Joint Committee of Senate and Assembly relative to a certain decision of the Supreme Court of the United States in the case of Dred Scott.

The joint committee of the Senate and Assembly appointed to consider and report what measures, (if any,) the Legislature of this State ought to adopt, to protect the constitutional rights of her citizens against the serious and alarming doctrines of the Supreme Court of the United States in the decision of the case of Dred Scott, respectfully

REPORT

That they entered upon the discharge of their duty under a deep sense of the importance of the subject committed to their consideration. They could not fail to see that the sovereignty of our State, the constitutional rights of her citizens, the protection of her free labor, her great commercial, manufacturing and agricultural interests, her extensive educational system, and the morals of her citizens, were all assailed and put in jeopardy by the unconstitutional, sectional, and pro-slavery doctrines announced by the majority of the judges of the supreme court of the United States in the decision of the case mentioned; for those doctrines will bring slavery within our borders against our will, with all its unhallowed, demoralizing, and blighting influences.

Your committee have not been able to obtain authenticated copies of the opinions of the five pro-slavery judges, who formed the majority of the court, and proclaim the unconstitutional doctrines which have so justly alarmed the people of this State. They have, however, abundant evidence of their contents and the principles they announce.

There was only one question before the court for adjudication, and that was whether Dred Scott was a citizen of the United States. No judge of the court had a right, and far less was it his duty, to discuss, decide, or even express an opinion, on any other question or subject. Not only judicial decorum, but numerous decisions of that very court, forbade him to express opinions on any question, besides the one directly before him. Yet the five pro-slavery judges, disregarding official decorum and established precedents, after deciding the case before them, proceeded to discuss and express opinions on five other constitutional questions of vital importance to the free States of this Union.

First. They express the opinion, that if a master brings his slave into a free State for a temporary sojourn, the slave does not become free. This is in direct contradiction to a cherished principle of the common law, that when a slave places his foot on free soil, he becomes a freeman—a principle dear to the heart of every enlightened citizen of the free States of our Union—and a principle which has been recognized by the courts of all those States, by the courts of most of the slave States, and by the supreme court of the United States itself.

Second. They express the opinion that the ordinance of 1787, the Magna Charta of freedom in all the States formed out of the territory north-west of the Ohio, is inoperative and void. An opinion which astonishes the intelligence of the country, and is in direct opposition to the action of the General and State governments from their institution.

Third. They declare that the act of Congress admitting the State of Missouri into the Union, known as the Missouri compromise, was unconstitutional and void, and thereby give the sanction of their names and of the court, to the unmitigated breach of plighted national faith, accomplished by the repeal of that act.

Fourth. They discuss and express the opinion that the clause in the Constitution of the United States, which declares that "the

Congress shall have power to dispose of and make needful rules and regulations respecting the territory, or other property belonging to the United States," only applies to the territory which belonged to the United States when the Constitution was adopted, and confers no authority on Congress to pass laws regulating the territories acquired since; and thus they deny to Congress the power to exclude slavery from them, or to authorize a territorial government to exclude it; while every well informed person in the country knows that every territory which the United States has acquired since the adoption of the Constitution, has been governed by the laws of Congress. The power of Congress over those territories, and the authority to prohibit slavery in them, has never been doubted or questioned, till the promulgation of the opinions of the majority of the court in this case of Dred Scott.

Fifth. They declare it to be their opinion that slavery is not a local institution. They hold that it is not confined to the limits of the State, by the laws of which it is created, but may be carried beyond them into the territories of the United States. This opinion is in direct opposition to at least three solemn decisions of the supreme court of the United States, and to the decisions of the courts of all the free States, and to the decisions of the courts of most, if not all, of the slave states of our Union. It is contrary to one of the fundamental principles of the common law, viz., that every man has an inalienable right to his liberty, and that it can only be taken from him by a statute of the State in which he lives; and every tyro in the profession of the law knows that the statute of a State has no force beyond its limits.

It follows as a direct consequence of this doctrine, that a master may take his slave into a free State without dissolving the relation of master and slave; and your committee cannot but be alarmed and shocked at the apprehension that some future decision of the pro-slavery majority of the supreme court will authorize a slave driver, as threatened by the devotees of slavery, to call the roll of his manacled gang at the foot of the monument on Bunker Hill, reared and consecrated to freedom.

The proposition which the majority of the court laid down in deciding the question legitimately before them, viz: that no man of the African race, descended however remotely from a slave, is a citizen of the United States, though born a freeman and his ancestors for many generations before him also freemen; and though 99 parts out of 100 of the blood which runs in his veins, is

Anglo-Saxon, and his skin whiter, his heart purer, and his heart clearer than those of the judge who outlaws him; and though his father may have fallen in the battle at New-Orleans, on the glorious 8th of January, at the call of our Jackson; or his grandfather served with honor, or died in battle under our Washington, is a violation of the sacred principles announced in our Declaration of Independence, hostile to the spirit of our institutions, and the age in which we live, a departure from the liberal doctrines of the common law, and opposed to the weight of judicial authority in this country and England.

Your committee have no hesitation in expressing the opinion, that this decision is erroneous, and ought to be overruled; and they believe it will be overruled as soon as the free States have their just representation on the bench of that court.

The attention of your committee was arrested by a proposition noted by Chief Justice Taney in the opinion he delivered, as the organ of a majority of the court, in the following words: "*They (the colored race) had no rights which white men were bound to respect.* Your committee cannot forbear to characterize this proposition as *inhuman, unchristian, atrocious*,—disgraceful to the judge who uttered it, and to the tribunal which sanctioned it.

The most censurable part of the conduct of these five pro-slavery judges yet remains to be stated, and it is this. The five constitutional questions above stated, which were not involved in the point before the court for decision, and upon which in violation of judicial decorum and established precedents, they volunteered opinions, have within the last two years become political and party questions, have divided the two great political parties of the country, and that division, unfortunately, has assumed a sectional character. These five judges are all located in the pro-slavery section, and identified with the pro-slavery party. Under such circumstances, if true manly delicacy did not, a decent respect for the feelings and opinions of the friends of free institutions should have restrained them from uttering a single word not necessary to the decision of the question before them. Yet how widely different was their conduct! They volunteered against decorum and precedent, to identify themselves and our great national court, with a sectional party, and to bring down this high tribunal from the lofty place it has hitherto filled in the reverential respect of the nation, to the arena of party and sectional strife. They have destroyed the confidence of the people

in the court by stamping upon it a black mark of sectionalism and partizanship. They have, moreover, placed themselves and the court they control, in the front rank of pro-slavery propagandism and offensive aggression upon the rights of the free States.

Your committee cannot omit to notice in this connection, the *time* selected by these five judges for taking ground officially with the pro-slavery party of the country. That time was strikingly propitious to protect them from impeachment, and accomplish their purpose. A new pro-slavery sectional administration was just being inaugurated, and consequently had the whole patronage of the federal government to aid in screening these partizan judges from merited punishment, and produce acquiescence in their ultra, pro-slavery, unconstitutional doctrines. The fate of Kansas, too, was then impending, and these doctrines if carried out, would consign her to the deadly embrace of slavery. Your committee reluctantly admit the thought that the national ermine was used to cover and effect such an unhallowed purpose; but they have seen too many evidences of the desperate acts to which pro-slavery fanaticism leads men subject to its influence, to lay aside the fearful apprehension that our national court has been brought under its dominion.

The supreme court of the United States was established by our forefathers, to secure a fair and enlightened exposition of the Constitution, and an independent and impartial adjudication of constitutional questions, and thereby preserve the rights of the several States and the citizens thereof. The influence and power of the court having now been marshaled on the side of pro-slavery propagandism, and against the right of the citizens of the free States, it no longer accomplishes the purpose of its institution. The safety and peace of the nation require its reorganization, so as to admit into it a fair and equal representation from the free States, according to the ratio of population between the free and slave States, which can and ought promptly to be done by act of Congress. Until this measure is accomplished, it is manifestly the duty of this State to take and maintain a firm stand against the encroachments of slavery, and keep this direful evil out of her borders.

To this end your committee announce and recommend the adoption of the proposition, that slavery shall never pollute the free soil of the Empire State, let the consequences be what they may. And in making this declaration, we place the Empire

State on the republican doctrines of 1798, known as "the Virginia resolutions," which were acquiesced in by the great republican party of that day, and are in the following words :

Resolved, That this assembly doth explicitly and peremptorily declare that, it views the powers of the Federal Government as resulting from the compact, to which the States are parties, as limited by the plain sense and intention of the instrument constituting that compact; as no further valid than they are authorized by the grants enumerated in that compact; and that in case of a deliberate palpable, and dangerous exercise of other powers not granted by the said compact, the States who are the parties thereto, have the right, and are in duty bound, to interpose for arresting the progress of the evil, and for maintaining within their respective limits, the authorities, rights and liberties appertaining to them."

To carry into effect this proposition, your committee recommend the adoption of the resolutions herewith presented; and the passage of an act entitled "An act to secure freedom to all persons within this State," herewith also presented.

SAMUEL A. FOOT,
EDWARD M. MADDEN,
M. LINDLEY LEE,
JOHN T. HOGEBOOM,
JOHN H. WOOSTER,
HENRY W. BECKWITH.

ALBANY, *April 8, 1857.*