HISTORY, OBJECT, AIM AND INTENT OF THE 13TH 14TH AND 15TH AMENDMENTS, AND OF THE CONTEMPORANEOUS LEGISLATION.

The measures culminating in the Civil Rights Bill and the Fourteenth and Fifteenth Amendments were introduced early in the first session of the thirty-ninth Congress, commencing December, 1865. The first of that series of measures, ending with the Fifteenth Amendment, and the act ef the 31st of May, 1870, enforcing that and the Fourteenth had, some time previously, become a part of the Constitution; for the Thirteenth, Fourteenth and Fifteenth Amendments to the Constitution of the United States, the Civil Rights Bill, and the Act of 31st May, 1870, as well as the subsequent legislation, must be considered as a whole in contemplating the change in the form of government following the late rebellion.

Only by a careful consideration of the state of the public mind, on the great question of the correlative powers of the National and State Governments respectively, at the breaking out of the rebellion; only by considering the theory of government as held by our fathers of the revolution and the manner in which and the extent to which their theories had been realized; only by considering the great cause of the war,

namely: the prevalence of the doctrine of extreme State rights and State sovereignty in one section of the country; only by taking into consideration these among other matters, can we safely conclude as to the extent and import of the legislation just alluded to; and only by this method of examination, can we determine what was the intent, scope and effect of the clause of the first section of the Fourteenth Amendment specially to be considered, or of the three amendments as forming part of one whole.

Government in a certain form, with certain restrictions and on certain principles, was supposed to have been established in 1789, by the adoption of the Constitution. Two parties, however, arose, each giving an opposite interpretation to that instrument, and without determining or even inquiring which was right; that party which contended for a narrowly restricted National Government, as to its powers and scope, and to the concentration of all other powers of government in the several State Governments, which were not specially prohibited them in the National or State Constitutions, so prevailed, that the judiciary had, to a considerable extent, coincided with these views, and the people, to a large majority in one section of the country, had imbibed the doctrines and come to consider them as fundamental.

The advocates of State sovereignty and the peculiar doctrines known under that appellation, claimed the right, without restriction or limit, for each State to control absolutely the rights and privileges of all persons

within its border, authorizing the reduction to or holding in servitude and absolute ownership, as slaves, a large portion of the population by another portion of the people, even in some communities the proportion thus held in bondage being largely in the majority. This large class had no voice in the matter of their rights and wrongs, and in many instances many of those not thus held had no voice, but the power of life and death and the rights of men were held and exercised by those only who were owners of the bondmen.

These passed laws regulating the rights of all the people, controlling the franchises and liberties of all, regulating the rights of labor, prescribing, in effect, to each class of citizens, the manner and conduct of their lives.

In addition to all this, these States and communities were represented in the councils of the nation in the same proportion, with a slight exception of two-fifths deduction of those held in bondage, as if all the people were on an equality and were possessed with and in the same exercise of rights, as were those communities in which no such inequalities existed.

Disguise it as we may, present it under whatever forms we choose, advance all the varied reasons the imagination can devise, this difference of opinion, of the interpretation of the Constitution, lays at the bottom of the terrible and bloody struggle which prevailed in the country from 1861 to 1865. The question which eloquence and logic had failed to settle was left to the arbitrament of arms. The question now is,

was that question settled by the contest? Opposition to the National Government, in its attempt to exercise the powers claimed by one set of interpreters, was effectually quelled, at least for the time, and the adoption of the three amendments—the thirteenth, fourteenth and fifteenth—to the Constitution, was, we insist, to effectually end the necessity of any further argument on the actual and relative powers of the National and State Governments. The interpretation which this Court may give to the extent and scope of these amendments, will determine whether the statesmen who framed those fundamental provisions accomplished their purpose, whether they have attained the end they most assuredly had in view, or whether new and other amendments will be necessary, enacted, perhaps, after another long and bloody war.

There has ever been a contest, since the first dawn of civilization, after the long night of the dark ages, for the enfranchisement of the masses, of the people. The contest has been unceasing between the usurpers of power, whether claimed as a divine right or otherwise, and those whose thoughts, and actions and lives they sought to control. The question involved in the contest in Holland, so graphically depicted by Motley in his "Rise of the Dutch Republic," and "History of the United Netherlands;" the continual struggle in England and in America, culminating in the declaration of the thirteen colonies on the fourth of July, 1776,

and the American Revolution, and again breaking out in the rebellion of 1861, was *as to the unrestricted right of every man to the fruits of his own labor, of the toil of his own hands, of the sweat of his own brow.*

Jefferson and his compeers in the Continental Congress proclaimed, "that all men were created equal; that they were endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness; that to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed."

The contest of the slave power, from the very foundation of the Government, was to maintain its ability to appropriate the labor of others, of its slaves, and to extend and perpetuate that power. This idea lay at the bottom of the doctrine of the sovereignty of the State over that of the Nation, and which even denied the rights of citizenship as a national right, and only as a consequence of State citizenship, and denied the right of any one to appeal to the Government of his country to protect him in those rights of life, liberty and property, which had been formally proclaimed his in 1776.

The legislation of Congress was stopped short in any attempt at relief; the executive was, for the greater portion of the time during the thirty years preceding the rebellion, acting under the prevailing idea of the want of power in the arm of the nation to afford re-

lief; and the Judiciary, under the doctrine of strict construction, interpreted the Constitution in favor of those who oppressed, and against those whose rights were curtailed by a local legislature, possessing the power to perpetuate itself. Those in power, thus arbitrarily held and exercised, as is always the case under similar circumstances, became arrogant and overbearing, and not content with its exercise within its circle, sought and claimed the right to extend its baneful effects over other communities. This attempt was resisted, and the result was the war of the rebellion.

The statesmen then in charge of the affairs of the nation, at the close of that rebellion, felt the necessity of putting an end to any future excuse of the same kind.

They proclaimed, under the sanction of large majorities of the loyal people, that from thenceforth slavery and involuntary servitude, except for crime, should cease; that the rights of every man to the fruits of his own labor should be guaranteed to him by an express provision of the Constitution of his country by the fundamental law of the land, and to which every State constitution and every State law must yield—the right of each man to himself exclusively, proclaimed in the Declaration of Independence, contended for in the American Revolution, sought to be provided for in Constitution of 1789, and now wrested from the usurpers, as was believed, by the Thirteenth Amendment, and secured as a result of the contest.

But it was found that something more was necessary than the enactment, even into the fundamental law, that each individual should be, without question, the sole owner of his own faculties, and entitled to the unrestricted use of the fruits of his own labor and toil. The same spirit, it was found, still prevailed which, before the rebellion, had deprived many of the fruits of their industry. There was something more needed. There should be a prohibition on the power of those who had previously been the oppressors from taxing the community, to pay the few who have suffered losses of this kind. The great question, in one of its branches, was again struck. It was proclaimed, what should constitute a citizen, and all citizens were proclaimed to be citizens of the United States, and as such incidentally of the States in which they should respectively reside. Over them, in all their rights of labor, was thrown the protecting ægis of the national government. No State could be permitted to pass any law abridging the privileges and immunities of the citizens, under penalty of nullity. And that each citizen might have the power to aid in the vindication of his rights, the Fifteenth Amendment was also passed and made part of the Constitution, giving to him the right of suffrage; and Congress was empowered to pass all necessary legislation to carry these several amendments into effect.

The history of these measures, in their progress through Congress, is interesting. The Thirteenth Amendment, passed to make certain and complete the

emancipation proclamation of President Lincoln, had then become a part of the organic law. The Thirty-ninth Congress, fresh from the people, assembled on the 4th of December, 1865. The war, so far as the strife of arms was concerned, was over. The situation had been partially, and was being more fully surveyed. The most terrible strife commenced on one side to perpetuate, as was well said by many, the power of "an oligarchy, aristocracy, caste and monopoly," or, rather, to make permanent and in form those principiples of government which supported the power; and met on the other side by those who believed that man, in the advance of the world, had ever been struggling for the overthrow of the power of every oligarchy. aristocracy, caste and monopoly; that the founders of our government and its governmental instititutions, the fathers of the revolution of 1776, made their whole efforts in the subversion of tyranny and oppression.

The side of right had prevailed; and the men who had almost sacrificed their lives in the cause of human liberty and freedom from oppression of caste and monopoly, determined that such measures should be taken as would secure to mankind the fruits which the immense sacrifice of life and treasure had placed within their reach.

On the second day of session, Stevens, of Pennsylvania, introduced into the House joint resolutions proposing amendments to the Constitution:

1st. In regard to the rebel debt.

2d. Providing for export duties.

3d. For apportioning representatives in Congress in accordance with the voting population.

4th. Proclaiming the equality of all men before the law, and declaring that "all national and State laws shall be equally applicable to every citizen, and no discrimination shall be made on account of race and color."—Cong. Globe, p. 10.

On the 20th December, Mr. Sumner presented to the Senate memorials from Massachusetts, Missouri, New York, New Jersey, Kentucky, Indiana, Illinois and Ohio, prefacing their introduction with remarks, and stating their substance to be a demand for "for security for the future, and which cannot be obtained by oaths," and in doing this, "to exact irreversible guaranteees, among which should be, 1st. The unity and sovereignty of the republic; 2d. Enfranchisement and equality of all men men before the law."—Cong. Globe, p. 88.

The civil rights bill, a concomitant measure, was introduced into the Senate January 5, 1866 (p. 129); reported by Committee on Judiciary January 11th (p. 184); stated and verbally amended January 12th (p. 211).

It will thus be seen that the people were alive to the necessity of further guarantees, in the form of constitutional amendments, and that their Senators and Representatives were not idle. A perusal of the extended debates in both houses, also shows that they spoke no uncertain sound. The object was to secure freedom to all men, and their right to the fruits of

their own labor. Recognizing the duty of all men to earn their bread by the sweat of their brow, they also recognized the correlative right, that each should have sole enjoyment of the undiminished fruits of his labor. The great question of labor, its duties and rights, runs through the whole discussion. On the 29th January, Senator Trumbull, in opening the debate on the civil rights bill, said, "any statute which is not equal to all, and which deprives any citizen of civil rights which are secured to other citizens, is, in fact, a badge of servitude which, by the Constitution, is prohibited." (Cong. Globe, p. 475.) And again, in reply to Davis, on February 2d, on the passage of the bill (p. 599), he said: "This bill (the civil rights bill) applies to white men as well as black men. It declares that all persons in the United States shall be entitled to the same civil rights; the right to the fruit of their own labor; the right to make contracts; the right to buy and sell, and enjoy liberty and happiness."—Cong. Globe, p. 599.

The interpretations of the Constitution, as heretofore interpreted, had been in a certain sense different from the construction placed upon it by Senator Trumbull, and the constitutionality of the civil rights bill was called in question. The leading statesmen therefore determined to put the question beyond dispute—beyond the possible unconstitutionality of the law, and beyond its repeal. Various projects of constitutional amendments were thereupon proposed. One was adopted by the House, another by the Senate, neither was satisfactory; though all showed manifestly that the

desire was the same—namely, to secure to all the inhabitants, beyond a chance of loss, the results of the bloody and costly struggle in behalf of freedom and the equal rights of all men before the law. Neither project was satisfactory, and a third was devised by a joint committee of both Houses, and passed in the form of the Fourteenth Amendment and contemporary legislation.

The first move, finally resulting in the features of the Fourteenth Amendment, mainly embodied in the second section, was made by Senator Sumner on the 6th of February. On that day he introduced a joint resolution for the purpose of "carrying out the guarantee of a republican form of government in the courts of the United States, and for enforcing the constitutional amendment for the prohibition of slavery." The words of the resolution are as follows: "*Be it resolved, etc.*, That there shall be no oligarchy, aristocracy, caste, or monopoly with peculiar privileges or powers, and there shall be no denial of right, civil or political, but all persons shall be equal before the law."

In his speech advocating his resolution he speaks of "that essential condition of a republican form of government—the equal rights of all." He said: "Our fathers announced the equal rights of all men;" that the Constitution, as they framed it, "guarantees a republican form of government." He then went on and insisted, as a proper close of the rebellion, and now that the fitting moment had arrived, that the govern-

ment of the United States "must declare that a State which, in the foundation of its government, sets aside the consent of the governed; which imposes taxation without representation; which discards the principle of equal rights; which lodges power exclusively with an oligarchy, aristocracy, caste or monopoly, cannot be recognized as a republican government, according to the requirements of American institutions." (Cong. Globe, pp. 674, 675 and 676.) He speaks of this as "a country which sets its face against all monopolies as unequal and immoral. If any monopoly deserves unhesitating judgment, it must be that which absorbs the rights of others and engrosses political power" (p. 684.) He insisted that it was "the duty of Congress to trample out the rebellion in its numerous assumptions as well as its arms." "That the rebellion began in two assumptions: first, the sovereignty of the States, with the pretended right of seccession; and second, with the superiority of the white race, with the pretended right of caste, oligarchy and monopoly."—Page 686.

As stated previously, the original propositions did not go to the extent of the Fourteenth Amendment. Senator Fessenden, in arguing the proposition, remarked that he "would prefer a distinct proposition, that all provisions in the constitutions or laws of any State making any distinction in any civil or political rights or privileges, should be held unconstitutional, inoperative or void, or words to that effect." (Cong. Globe, p. 704) The section immediately under consideration was added, or so modified as to meet his preference.

On the 26th February Mr. Bingham, in the House, for the joint committee, and as the leader in the House on the amendment, reported an amendment on the "Rights of Citizens." As his remarks clearly and fully expressed the opinions and reasons of the Committee, and the views of Congress in adopting the amendments, they are quoted from in extenso.

The words of the amendment as reported by him, and his remarks, are as follows (Cong. Globe, p. 1034 et seq.):

"The Congress shall have power to make all laws which shall be necessary and proper to secure to the citizens of each State all privileges and immunities of citizens in the several States, and to all persons in the several States equal protection in the rights of life, liberty and property."

He then proceeded to say that this is in the words of the second section of the 4th article and of a portion of the fifth amendment, and only adds the power to Congress to enforce, etc; and says: "If the grant of power had been originally conferred on the Congress of the nation, and legislation had been upon your statute books to enforce these requirments of the Constitution in every State, that rebellion which has scarred and blasted the land would have been an impossibility."

"It is impossible for mortal man to frame a formula of words more obligatory than those already in that instrument. * * * And, sir, it is equally clear by every construction of the Constitution, its continued

construction, legislative, executive and judicial, that these great provisions of the Constitution, this immortal bill of rights embodied in the Constitution, rested for its execution and enforcement hitherto upon the fidelity of the States. The House knows, the country knows, the civilized world knows, that the legislative. executive and judicial officers of eleven States within this Union, within the last five years, have utterly disregarded the behest."

The amendment was then proposed "by order of the Committee, for the purpose of giving to the whole people the care, in future, of the unity of the government which constitutes us one people, and without which American nationality would cease to be."

Further on in the debate the views we contend for were still further developed by the different speakers. Mr. Kelly, after referring to the debates in convention, and to the speeches of Ranpolph, Calhoun and others, remarking that this section (first of the Fourteenth Amendment) was already in the Constitution, in substance, said, yet, "Gentlemen point me to the decisions of the courts, and to the action of the States, for a period of eighty years, and say that it is not there now. I admit the facts;" but now "the people are up to the mark," and "though a gap of eighty years stands between this day and the great era of pristine constitutional truth, I hesitate not to say that the large collection of volumes which contain cases doubted, cases denied and cases overruled, will be swollen by all that has been done judicially in further-

ance of this great wrong, and that the people will yet assert, and that with judicial sanction, the original powers of the Constitution, dormant though they have been through that long period.

"This amendment will, in my judgment, but reinvigorate a dormant power. The aroused people will demand that all the powers of the Constitution be exercised, so that each State shall be guaranteed a republican government, and that the citizens of each State shall enjoy peaceably the privileges and immunities of citizenship in the several States."—Cong. Globe, p. 1063.

Mr. HALE at first (Cong. Globe, 1063) opposed the amendment because it made a change in the form of government, as "in effect a provision under which all legislation * * * affecting the individual citizen may be overridden, may be repealed or abolished." Interrupting him, Stevens (p. 1063) asks: "Does the gentleman mean to say, that under this provision Congress could interfere in any case where the legislation of a State was equal, impartial to all? Or is it not simply to provide, that where any State makes a distinction in the same law between different classes of individuals, Congress shall have power to correct such discrimination and inequality?"

Hale thought it went further. Further along, (p. 1065,) he remarked, that "it is claimed that this constitutional amendment is aimed simply and purely toward the protection of American citizens of African descent, in the States lately in rebellion."

Bingham, in reply, said, "that it is proposed as well to the thousands and tens of thousands of loyal white citizens of the United States, whose property has been wrested from them under confiscation, etc."

Hale then modified his statement as having the amendment "apply solely to the eleven States lately in rebellion."

"It is to apply to other States," replied Bingham.

Hale responded, "Then I will again modify my correction, and say that it was intended to apply to every State * * * which has failed to provide equal protection to life, liberty and property;" and thus the meaning was defined between them, and became the expression of the idea attached to the words by all parties in Congress, and was acquiesced in thereafter during the whole discussion. Subsequently, Bingham, in reply to Hale, (p. 1094,) said: "It confers upon Congress power to see to it, that the protection given by the laws of the States shall be equal in respect to life, liberty and property to all persons."

The debate in the House was not resumed until the 30th of April, when the report of the joint committee (second report) in lieu of the disagreeing measures of the two Houses, came up.

All matters of amendment and reconstruction were superseded by Report of "Joint Committee." These were—

1st. The Fourteenth Amendment;

2d. Bill restoring States in Rebellion;

3d. Ineligibility to office bill;

And made special order for May 8, 1866.

(Cong. Globe, p. 2469.)

STEVENS opened the discussion. He said:

"Our fathers had been compelled to postpone the principles of their great Declaration, and wait for their full establishment."

"The first section prohibits the States from abridging the privileges and immunities of citizens of the United States, or unlawfully depriving them of life, liberty or property, or of denying to any person within their jurisdiction the 'equal' protection of the laws."

These provisions "are all asserted, in some form or other, in our Declaration, or organic law. But the Constitution limits only the action of Congress, and is not a limitation on the States. The amendment supplies that defect, and allows Congress to correct the unjust legislation of the States, so far that the law which operates on one man shall operate *equally* upon all."

"Some answer, 'your civil rights bill secured the same thing.' That is partly true, but a law is repealable by a majority."

GARFIELD said (page 2462):

"The fourteenth amendment was to make the civil rights bill a part of the Constitution, to put it beyond the power of repeal, should the other party come into

power. It proposes to hold over every American citizen, without regard to color, the protecting shield of law."

RAYMOND, May 9, 1866, (page 2502,) gives a history of the first section:

1st. As a proposed amendment to the Constitution, proposed by Bingham—still pending,

2d. As the civil rights bill.

3d. In its present form, as first section fourteenth amendment.

That its *object* is, "to secure an absolute equality of civil rights in every State of the Union."

He opposed only the third section (the disfranchising section till 1870,) and which was afterwards stricken out.

He doubted the power of Congress to pass the civil rights bill, but was in favor of the principle and for the amendment, in order to make certain this absolute equality of civil rights."

BINGHAM (page 2542,) closing the debate, reiterates the same doctrine.

Of the debate in the Senate we quote but one paragraph: one from the speech of Judge Poland. He said, (page 2960,) the first section secures nothing but what was intended in the original provision in the Constitution, that "the citizen of each State shall be entitled to all the privileges. But the radical difference in the social systems of the several States and the great extent to which the doctrine of States rights or State sovereignty was carried * * * led to a

practical repudiation of existing provisions on the subject, and it was disregarded in many of the States. State legislation was allowed to override it."

The last clause in the first section is unobjectionable: "It is in the very spirit of our system of government, the absolute foundation upon which it was established. It is essentially declared in the Declaration of Independence. * * * * Notwithstanding this we know that still, laws exist * * * in direct violation of these principles."

The civil rights bill was an exhibition of the intention of Congress. "The power of Congress to do this has been duobted. * * * Certainly it seems desirable that no doubt should be left existing as to the power of Congress to enforce principles lying at the very foundation of all Republican Government."

As the result of this examination, the only conclusion to be arrived at, as to the intention of Congress in proposing the amendments, and especially the first section of the Fourteenth Amendment, and the interpretation universally put upon it by every member of Congress, whether friend or foe, the interpretation in which all were agreed, was, in the words of Mr. Hale, "that it was intended to apply to every State which has failed to apply equal protection to life, liberty and property;" or in the words of Mr. Bingham, "that the protection given by the laws of the States shall be equal in respect to life, liberty and property to all persons;" or in the language of Mr. Sumner, that it abolished "oligarchy, aristocracy, caste, *or monopoly with peculiar privileges and powers.*"

In other words, that the aim, object and intent was to make sure to all men those rights of life, of liberty, and of property, of the right to labor freely, and the enjoyment of the fruits of their own industry, which has been contended for in blood for centuries, and ever since the first contest for the rights of man began.

That labor, or the rights of labor and the enjoyment of the fruits of labor, is property in its highest sense, because it lies at the foundation, is the only true source of all property, is a proposition which calls for no discussion, and requires only to be stated to be admitted to be true. It is to vindicate these rights of property, secure the fruits of labor, in a useful and honest calling, that these plaintiffs now contend. Let us see how they are deprived, despoiled of their rights by the law which we contend violates the Constitution of the United States; by that law which we contend does not afford them equal protection, but the contrary.

The status of the plaintiffs in error in these several cases, are fully set forth in the brief submitted on the argument of the case one year ago. As there stated at length, (p. 1 et seq. of the brief,) they "were, prior to the first of June, 1869, engaged in the lawful and necessary avocation of procuring, and bringing to the parishes of Orleans, Jefferson and St. Bernard, animals suitable for human food, and of preparing and dressing such food for market; they had acquired skill, erected buildings, expended much capital in a business interesting to 300,000 inhabitants, and that more than 1000

persons were engaged therein." We could not, with propriety, do more in this brief, than refer to our original and supplemental brief on this point.

The whole case is there fully stated. The monopoly created by the act, is not denied by counsel for the defendants in error. The whole act, from beginning to end, is one of exclusiveness. It should be read in extenso.

CONCLUSION.

The arguments we have advanced in our briefs and orally have never been met. In three of the inferior courts of Louisiana, in its Supreme Court, in the U. S. Circuit Court, and in this Court, has the construction of the Fourteenth Amendment, and the contemporary legislation been fully discussed, and to the best of our limited ability. All the reply that has been vouchsafed, until the present re-argument, is included in three pages of printed brief, and less than thirty minutes of oral discussion. There must be something very barren in the point we have taken, or it must be absolutely unavoidable. If there is nothing in it, one would suppose it might be easily shown; if it is unanswerable, we would like to hope for an acknowledgement from the Court.

Referring to our full brief, and supplemental brief and points of last year, and the full brief upon the re-argument of the question in these cases, we finally and confidently submit the case of our clients, to the Supreme tribunal of the land, for its adjudication.