

Speech of Hon. H.H. Sibley, of Minn., before the Committee on Elections of the House of Representatives, Dec. 22, 1848.

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BEFORE THE COMMITTEE ON ELECTIONS OF THE HOUSE OF REPRESENTATIVES,
DEC, 22, 1848.

Mr. Chairman : Having been elected by the people of Wisconsin Territory to represent their interests, as a delegate in the Congress of the United States, I should consider myself as recreant to the trust reposed in me, by those who have honored me with their confidence, did I not take every proper means to secure my seat, and be thus placed in a position where I may render some service to my constituents. No question has been, or can be raised, with regard to the legality of the election. The certificate of the acting Governor is *prima facie* evidence of that fact. It remains then only to show, if possible, that the residuum of Wisconsin Territory, after the admission of the State; remained in the possession of the same rights and immunities which were secured to the people of the whole Territory by the organic law. In doing this I shall be as brief as the nature of the case will admit; but being convinced that a favorable report from your honorable committee is vitally important, I must be permitted to present all the facts bearing upon the case, and sustain by such arguments as I may, based upon the facts, the position assumed by those who sent me here.

The honorable gentleman from North Carolina, (Mr. Boyden ,) at your previous meeting, attempted to show that the act for the admission of the Slate of Wisconsin, was, *ipso faeto* , a repeal of the organic law of the Territory. 70 To support this proposition, he

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supposed a case in which all the population of a Territory should be included within the limits of a State, except a few individuals, or one man, who might elect one of their number or himself, as a delegate to Congress, and be entitled to admission, upon the principle assumed in the present case. Mr. Chairman, I meet this fairly, by another supposition by no means so improbable. It was seriously contemplated, by a respectable portion of the people, to ask Congress to make the Wisconsin river the northern boundary of the State of that name. If this had been done, some fifteen or twenty thousand inhabitants would have been left in precisely the same situation in which the present population of Wisconsin Territory now find themselves. Would Congress have refused, under such circumstances, to receive a delegate elected by the people, according to the provisions of the organic law? The case supposed is an extreme one. Congress has full power to prevent any abuse of such privileges. But when a large portion of a Territory is left without the boundaries of State, and no provision is made for repealing or modifying the organic law, does not that very fact, taken in connection with the obligation of a Government to afford to all its citizens the protection of law, make it perfectly clear that the residuum remains under the full operation of the same organic law? To suppose otherwise would be to maintain that a Government has the right, at pleasure, to deprive its citizens of all civil rights, a hypothesis repugnant to the spirit of our institutions and of the age.

The imprescriptable, inalienable birthright of the subject is laid down as one of the national rights of citizenship, of which none can be deprived without their consent. (*Payley's Phil. B. VI. chap. 3, Judge Iredell in Talbot vs. Janson, 3 Dall. Rep. 133.*) Vattel, in his *Law of Nations*, B. 1. chap. 2, thus lays down the rule: "If a nation is obliged to preserve itself, it is no less obliged carefully to preserve all its members." And, again: "The body of a nation cannot then abandon a province, a town, or even a single individual, who is a part of it, unless compelled to do it, by necessity, or indispensably obliged to do it for the strongest reasons, founded on the public safety."

Having thus shown that the point of international law, as received by all civilized countries, is clearly in our favor, I will merely quote a paragraph of the ordinance of 1787, as

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applicable to the country northwest of the Ohio river. This guarantees to all the inhabitants of that region, the possession of “the benefits of *habeas corpus* , and trial by jury, of a proportionate representation in the Legislature, and of judicial proceedings, according to the course of the common law. We are a part and parcel of the people to whom were secured these blessings, and a decision which would deprive us of the right to be represented on the floor of Congress, would virtually annul all these guarantees, and reduce society into its original elements.

I come now, Mr. Chairman, to the precedents cited in support of my claim, and to which the gentleman from North Carolina so strongly objects, inasmuch as, in his opinion, they do not cover the present case. They are those of Paul Fearing and George W. Jones . It is admitted that the former, elected as Delegate from the Northwest Territory, appeared and took his seat months after the passage of the act of Congress admitting Ohio into the Union, and before any other new Territorial organization had been effected. So far, then, Ohio had a perfect right to send a Representative and Senators to Congress. That she did not do so, affects in no manner the merits of the question. She only declined, for good and sufficient reasons, to exercise her undoubted right. During this state of things, Mr. Fearing was in his seat, not as the Representative of the sovereign 72 State of Ohio, but of the residuum of the Northwest Territory. This is a fact beyond contradiction or dispute. If Ohio had sent her Representatives, they would have been admitted without question. But it is said that Mr. Fearing's right to a seat was not formally passed upon by the House. But we know that the committee on elections reported favorably in his case, and the fact that he retained his station until the end of the session is good evidence that the House concurred with the Committee in opinion.

In the case of Hon. George W. Jones , now a United States Senator from Iowa, the circumstances, although not precisely similar, are sufficiently in point to give them authority as a precedent. Mr. Jones was elected the Delegate from the Territory of Michigan, and the State had previously formed a Constitution and sent its Senators and Representatives here to demand admission. True, the act of Congress admitting the State not having

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been yet passed, they were not formally received; but it is nevertheless equally true that Mr. Jones was elected by the people residing out of the limits of the State, and that he represented the interests of the residuum only. The inhabitants of the State of Michigan took no part in the election of that gentleman. Surely, one or the other of the above cited cases must be allowed to be an exact precedent, if both are not to be so considered.

Mr. Chairman, the *onus probandi* must rest upon those who deny the existence of a distinct Territorial Government in Wisconsin Territory. The fact that the organic law gave to that Territory certain privileges, among which was the right to elect a Delegate to Congress, is undeniable, and it is equally certain that no subsequent action of that body abrogated any portion of that law, or divested the people of any of these privileges. The conclusion is not to be controverted, that a law of Congress creating a temporary Government over a portion of the Territory of the United States, 73 must continue in force, unless repealed by the same legislative authority. The division of a Territory is not the destruction thereof. That portion formed into a State, and admitted as such, has commenced a new political existence; but the residuum not being in anywise affected thereby, remained under the operation of the old law. The sphere in which each moves is well defined, and there can be no collision between them. The very act establishing the Territorial Government of Wisconsin, provides that Congress shall have the right to divide it into two or more Territories at any time thereafter, if such a step should be deemed expedient or necessary. It did so virtually by the act admitting Wisconsin into the Union.

The honorable gentleman from North Carolina has fallen into a grievous error, when he asserts that during the first grade of Territorial Government, that in which the Legislative power was vested in the Governor and Judges, the Government has not granted them a Delegate in Congress; for Michigan was entitled to and represented by a Delegate, years before a Legislative council was vouchsafed to her. This can be ascertained by a reference to the Journals of Congress. But, sir, I do not conceive this question to have any bearing upon the case before you. The people of Wisconsin Territory are not present by their representative to argue any question of abstract right; but to appeal to this committee

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to protect them in the enjoyment of those immunities which are secured to them by the solemn sanctions of law. The Government of the United States, when it invited its citizens to emigrate to the Territory of Wisconsin by the formation of a temporary Government, must have intended to act in good faith towards them, by continuing over them the provisions of the organic law. Sixteen thousand acres of land have been purchased, for the most part, by *bona fide* settlers, the proceeds of which have gone 74 into your treasury. Taxed equally with other inhabitants of this Union for the support of the General Government, they are certainly entitled to equal privileges.

Sir, it is a fact that the inhabitants of the region I have the honor to represent, have always heretofore, since the establishment of a Territorial Government for Wisconsin, participated in the election of a Delegate, and have enjoyed all the rights and immunities secured to them by the organic law. It is equally a fact, that they have a full county organization, and form part of a judicial circuit. Congress was by no means ignorant of the existing state of things, when the State of Wisconsin was admitted, for there were lying at that time upon the tables of both Houses, petitions signed by hundreds of citizens living north and west of the St. Croix River, praying that they might not be included within the limits of the State, but suffered to enjoy the benefits of the Territorial Government. The region north and west of Wisconsin contains an area of more than 20,000 square miles, with a population nearly, if not quite, 6,000 souls. Can a proposition be seriously entertained to disfranchise and outlaw the people ? Sir, if it is determined that the Territory I have come here to represent has no claim to such representation on the floor of Congress, then will one branch of the law-making power have sanctioned a principle which will scatter all the restraints of law in that region to the winds. For either the Territorial organization is perfect and complete, or it has been entirely abrogated and annulled. The same authority which provides for the election of a Delegate, gives the power to choose other officers. All must stand or fall together. If we have no organization, as is contended by the honorable gentleman from North Carolina, then have our judicial and ministerial officers rendered themselves liable to future punishment for a usurpation of power. If a malefactor has been apprehended, or

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a debtor arrested, 75 the officers serving the writ will be visited hereafter with an action for false imprisonment. Our beautiful country will become a place of refuge for depraved and desperate characters from the neighboring States. The vast and varied agricultural and commercial interests of the country will be involved in ruin, and all security for life and property will vanish. But, sir, I do not believe that this committee will consent to give a decision involving such a train of evils, and such utter absurdities. Not a single good reason can be assigned for perpetrating so gross an outrage upon several thousand citizens of the United States, as to divest them, at one fell stroke, of all those blessings of a legal jurisdiction which they have hitherto enjoyed, and that without any consent or agency of their own.

Sir, there are certain fixed principles of law which cannot be annulled by sophistry, or destroyed by any system of special pleading. By these eternal and immutable maxims, are the duties of Governments and their citizens or subjects. defined, and their mutual and reciprocal obligations are not to be laid aside, or dispensed with by either. The action of all popular governments must be of a beneficial character to the governed. The one must protect, the other obey. The former is charged with the duty of throwing around its citizens the safeguards of law, while they on their part are bound to uphold the majesty of that law. Circumstances of extreme danger alone can for a moment absolve either from these imperative obligations. Whence then is derived the power of this Government to cast aside any portion of its citizens at will? Sir, when disfranchisement is visited by despotic Governments upon their people, it is to mete out to them the severest punishment which can be inflicted upon a community for political offences, short of actual extermination.

Sir, the case now before you for your action does certainly 76 present some novel features. It is the first time since the foundation of this Government that several thousand citizens Of the United States have been found supplicating and pleading, by their Representative, that they may not be deprived by Congress of all civil government, and thrust from its doors by a forced and constructive interpretation of a law of the land, which does not in fact bear even remotely upon the question. Sir, the wants and wishes of those

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who sent me here have now no advocate on the floor of Congress. These people have emigrated to the remote region they now inhabit under many disadvantages.

They have not been attracted thither by the glitter of inexhaustible gold mines, but with the same spirit which has actuated all our pioneers of civilization. They have gone there to labor with the axe, the anvil, and the plough. They have elected a Delegate, with the full assurance that they had a right to do so, and he presents himself here for admission. Sir, was this a question in which the consequences would be confined to me personally, the honorable members of this House would not find me here, day after day, wearying their patience by long appeals and explanations. But believing as I do, before God, that my case, and the question whether there is any law in the Territory of Wisconsin, are intimately and indissolubly blended together, I trust that the House of Representatives will, by its decision of the claim before it, establish the principle, which shall be as a landmark in all coming time, that citizens of this mighty Republic, upon whom the rights and immunities of a civil government have been once bestowed by an act of Congress, shall not be deprived of these without fault or agency of their own, unless under circumstances of grave and imperious necessity, involving the safety and well-being of the whole country.