Lord Stowell. As late as 1827, twenty years after Great Britain had abolished the slave trade, six years before she was brought to the point of confiscating the property of her colonies which she had forced them to buy, a case was brought before that celebrated judge; a case known to all lawyers by the name of the slave Grace. It was pretended in the argument that the slave Grace was free, because she had been carried to England, and it was said, under the authority of Lord Mansfield's decision in the Sommersett case, that, having once breathed English air, she was free; that the atmosphere of that favored kingdom was too pure to be breathed by a slave. Lord Stowell, in answering that *legal* argument, said that, after painful and laborious research into historical records, he did not find anything touching the peculiar fitness of the English atmosphere for respiration during the ten centuries that slaves had lived in England. . . .

After that decision had been rendered, Lord Stowell, who was at that time in correspondence with Judge Story, sent him a copy of it, and wrote to him upon the subject of his judgment. No man will doubt the anti-slavery feelings and proclivities of Judge Story. He was asked to take the decision into consideration and give his opinion about it. Here is his answer:

"I have read, with great attention, your judgment in the slave case. Upon the fullest consideration which I have been able to give the subject, I entirely concur in your views. If I had been called upon to pronounce a judgment in a like case, I should have certainly arrived at the same result."

That was the opinion of Judge Story in 1827; but, sir, while contending, as I here contend, as a proposition, based

in history, maintained by legislation, supported by judicial authority of the greatest weight, that slavery, as an institution, was protected by the common law of these colonies at the date of the Declaration of Independence, I go further, though not necessary to my argument, and declare that it was the common law of North and South America alike. . .

Thus, Mr. President, I say that even if we admit for the moment that the common law of the nations which colonized this continent, the institution of slavery at the time of our independence, was dying away by the manumissions either gratuitous or for a price of those who held the people as slaves, yet, so far as the continent of America was concerned, North and South, there did not breathe a being who did not know that a negro, under the common law of the continent, was merchandise, was property, was a slave, and that he could only extricate himself from that status, stamped upon him by the common law of the country, by positive proof of manumission. No man was bound to show title to his negro slave. The slave was bound to show manumission under which he had acquired his freedom, by the common law of every colony. Why, sir, can any man doubt, is there a gentleman here, even the Senator from Maine, who doubts that if, after the Revolution, the different States of this Union have not passed laws upon the subject to abolish slavery, to subvert this common law of the continent, every one of these States would be slave States yet? How came they free States? Did not they have this institution of slavery imprinted upon them by the power of the mother country? How did they get rid of it? All, all must admit that they had to pass positive acts of legislation to accomplish this purpose. Without that legislation they would still be slave States. What, then, becomes of the

pretext that slavery only exists in those States where it was established by positive legislation, that it has no inherent vitality out of those States, and that slaves are not considered as property by the Constitution of the United States?

When the delegates of the several colonies which had thus asserted their independence of the British crown met in convention, the decision of Lord Mansfield in the Sommersett case was recent, was known to all. At the same time, a number of the Northern colonies had taken incipient steps for the emancipation of their slaves Here permit me to say, sir, that, with a prudent regard to what the Senator from Maine (Mr. Hamlin) yesterday called the "sensitive pocket-nerve," they all made these provisions prospective. Slavery was to be abolished after a certain future time—just enough time to give their citizens convenient opportunity for selling the slaves to Southern planters, putting the money in their pockets, and then sending to us here, on this floor, representatives who flaunt in robes of sanctimonious holiness, who make parade of a cheap philanthropy, exercised at our expense; and who say to all men: "Look ye now, how holy, how pure we are; you are polluted by the touch of slavery; we are free from it." . . .

Now, sir, because the Supreme Court of the United States says—what is patent to every man who reads the Constitution of the United States—that it does guarantee property in slaves, it has been attacked with vituperation here, on this floor, by Senators on all sides. Some have abstained from any indecent, insulting remarks in relation to the Court. Some have confined themselves to calm and legitimate argument. To them I am about to reply. To the others, I shall have something to say a little later.

What says the Senator from Maine (Mr. Fessenden)? He says:

"Had the result of that election been otherwise, and had not the (Democratic) party triumphed on the dogma which they had thus introduced, we should never have heard of a doctrine so utterly at variance with all truth; so utterly destitute of all legal logic; so founded on error, and unsupported by anything like argument, as is the opinion of the Supreme Court."

He says, further:

"I should like, if I had time, to attempt to demonstrate the fallacy of that opinion. I have examined the view of the Supreme Court of the United States on the question of the power of the Constitution to carry slavery into free territory belonging to the United States, and I tell you that I believe any tolerably respectable lawyer in the United States can show, beyond all question, to any fair and unprejudiced mind, that the decision has nothing to stand upon except assumption, and bad logic from the assumptions made. The main proposition on which that decision is founded, the cornerstone of it, without which it is nothing, without which it fails entirely to satisfy the mind of any man, is this: that the Constitution of the United States recognizes property in slaves, and protects it as such. I deny it. It neither recognizes slaves as property, nor does it protect slaves as property."

The Senator here, you see, says that the whole decision is based on that assumption, which is false. He says that the Constitution does not recognize slaves as property, nor protect them as property, and his reasoning, a little further on, is somewhat curious. He says:

"On what do they found the assertion that the Constitution recognizes slavery as property? On the provision of the Constitution by which Congress is prohibited from

passing a law to prevent the African slave trade for twenty years; and therefore they say the Constitution recognizes slaves as property."

I should think that was a pretty fair recognition of it. On this point the gentleman declares:

"Will not anybody see that this constitutional provision, if it works one way, must work the other? If, by allowing the slave trade for twenty years, we recognize slaves as property, then we say that at the end of twenty years we will cease to allow it, or may cease to do so, is not that denying them to be property after that period elapses?"

That is the argument. Nothing but my respect for the logical intellect of the Senator from Maine could make me treat this argument as serious, and nothing but having heard it myself would make me believe that he ever uttered it. What, sir! The Constitution of our country says to the South, "you shall count as the basis of your representation five slaves as being three white men; you may be protected in the natural increase of your slaves; nay, more, as a matter of compromise you may increase their number if you choose, for twenty years, by importation; when these twenty years are out, you shall stop." The Supreme Court of the United States says, "well; is not this a recognition of slavery, of property in slaves?" "Oh, no," says the gentleman, "the rule must work both ways; there is a converse to the proposition." Now, sir, to an ordinary, uninstructed intellect, it would seem that the converse of the proposition was simply that at the end of twenty years you should not any longer increase your numbers by importation; but the gentleman says the converse of the proposition is that at the end of the twenty years, after you have, under the guarantee of the Constitution, been adding by importation to the previous number of your slaves, then all those that you had before, and all those that, under the Constitution, you have imported, cease to be recognized as property by the Constitution, and on this proposition he assails the Supreme Court of the United States—a proposition which he says will occur to anybody.

Mr. Fessenden—Will the Senator allow me?

Mr. Benjamin—I should be very glad to enter into this debate now, but I fear it is so late that I shall not be able to get through to-day.

Mr. Fessenden—I suppose it is of no consequence.

Mr. Benjamin—What says the Senator from Vermont (Mr. Collamer), who also went into this examination somewhat extensively? I read from his printed speech:

"I do not say that slaves are never property. I do not say that they are, or are not. Within the limits of a State which declares them to be property, they are property, because they are within the jurisdiction of that government which makes the declaration; but I should wish to speak of it in the light of a member of the United States Senate, and in the language of the United States Constitution. If this be property in the States, what is the nature and extent of it? I insist that the Supreme Court has often decided, and everybody has understood, that slavery is a local institution, existing by force of State law; and of course that law can give it no possible character beyond the limits of that State. I shall no doubt find the idea better expressed in the opinion of Judge Nelson, in this same Dred Scott decision. I prefer to read his language. . . .

"Here is the law; and under it exists the law of slavery in the different States. By virtue of this very principle it cannot extend one inch beyond its own territorial limits. A State cannot regulate the relation of master and slave, of owner and property, the manner and title of descent, or

anything else, one inch beyond its territory. Then you cannot, by virtue of the law of slavery, if it makes slaves property in a State, if you please, move that property out of the State. It ends whenever you pass from that State. You may pass into another State that has a like law; and if you do, you hold it by virtue of that law; but the moment you pass beyond the limits of the slaveholding States, all title to the property called property in slaves, there ends. Under such a law slaves cannot be carried as property into the Territories, or anywhere else beyond the States authorizing it. It is not property anywhere else. If the Constitution of the United States gives any other and further character than this to slave property, let us acknowledge it fairly and end all strife about it. If it does not, I ask in all candor, that men on the other side shall say so, and let this point be settled. What is the point we are to inquire into? It is this: does the Constitution of the United States make slaves property beyond the jurisdiction of the States authorizing slavery? If it only acknowledges them as property within that jurisdiction, it has not extended the property one inch beyond the State line; but if, as the Supreme Court seems to say, it does recognize and protect them as property further than State limits, and more than the State laws do, then, indeed, it becomes like other property. The Supreme Court rests this claim upon this clause of the Constitution: 'No person held to service or labor in one State, under the laws thereof, shall, in consequence of any law or regulation therein, be discharged from such service or labor; but shall be delivered up on claim of the party to whom such service or labor may be due.' Now the question is, does that guarantee it? Does that make it the same as other property? The very fact that this clause makes provision on the subject of persons bound to service, shows that the framers of the Constitution did not regard it as other property. It was a thing that needed some provision; other property did not. The insertion of such a provision shows that it was not regarded as other

property. If a man's horse stray from Delaware into Pennsylvania, he can go and get it. Is there any provision in the Constitution for it? No. How came this to be there, if a slave is property? If it is the same as other property, why have any provision about it?"

It will undoubtedly have struck any person, in hearing this passage read from the speech of the Senator from Vermont, whom I regret not to see in his seat to-day, that the whole argument, ingeniously as it is put, rests upon this fallacy—if I may say so with due respect to him—that a man cannot have *title* in property wherever the law does not give him a *remedy* or *process* for the assertion of his title; or, in other words, his whole argument rests upon the old confusion of ideas which considers a man's right and his remedy to be one and the same thing. I have already shown to you, by the passages I have cited from the opinions of Lord Stowell and of Judge Story, how they regard this subject. They say that the slave who goes to England, or goes to Massachusetts, from a slave State, is still a slave, that he is still his master's property; but that his master has lost control over him, not by reason of the cessation of his *property,* but because those States grant no *remedy* to the master by which he can exercise his control.

There are numerous illustrations upon this point—illustrations furnished by the copyright laws, illustrations furnished by patent laws. Let us take a case, one that appeals to us all. There lives now a man in England who from time to time sings to the enchanted ear of the civilized world strains of such melody that the charmed senses seem to abandon the grosser regions of earth, and to rise to purer and serener regions above. God has created that man a poet. His inspiration is his; his songs are his by right

divine; they are his property so recognized by human law; yet here in these United States men steal Tennyson's works and sell his property for their profit; and this because, in spite of the violated conscience of the nation, we refuse to give him protection for his property. Examine your Constitution; are slaves the only species of property there recognized as requiring peculiar protection? Sir, the inventive genius of our brethren of the North is a source of vast wealth to them and vast benefit to the nation. I saw a short time ago in one of the New York journals, that the estimated value of a few of the patents now before us in this capital for renewal was $40,000,000. I cannot believe that the entire capital invested in inventions of this character in the United States can fall short of one hundred and fifty or two hundred million dollars. On what protection does this vast property rest? Just upon that same constitutional protection which gives a remedy to the slave owner when his property is also found outside of the limits of the State in which he lives.

Without this protection, what would be the condition of the Northern inventor? Why, sir, the Vermont inventor protected by his own law would come to Massachusetts, and there say to the pirate who had stolen his property, "Render me up my property or pay me value for its use." The Senator from Vermont would receive for answer, if he were the counsel of the Vermont inventor, "Sir, if you want protection for your property go to your own State; property is governed by the laws of the State within whose jurisdiction it is found; you have no property in your invention outside of the limits of your State; you cannot go an inch beyond it." Would not this be so? Does not every man see at once that the right of the inventor to his discovery, that

the right of the poet to his inspiration, depends upon those principles of eternal justice which God has implanted in the heart of man, and that wherever he cannot exercise them it is because man denies them the protection to which they are entitled?

Sir, follow out the illustration which the Senator from Vermont himself has given; take his very case of the Delaware owner of a horse riding him across the line into Pennsylvania. The Senator says: "Now, you see that slaves are not property like other property; if slaves were property like other property, why have you this special clause in your Constitution to protect a slave? You have no clause to protect the horse, because horses are recognized as property everywhere." Mr. President, the same fallacy lurks at the bottom of this argument, as of all the rest. Let Pennsylvania exercise her undoubted jurisdiction over persons and things within her own boundary; let her do as she has a perfect right to do—declare that hereafter, within the State of Pennsylvania, there shall be no property in horses, and that no man shall maintain a suit in her courts for the recovery of property in a horse; and where will your horse owner be then? Slaves, if you please, are not property like other property in this: that you can easily rob us of them; but as to the *right* in them, that man has to overthrow the whole history of the world, he has to overthrow every treatise on jurisprudence, he has to ignore the common sentiment of mankind, he has to repudiate the authority of all that is considered sacred with man, ere he can reach the conclusion that the person who owns a slave, in a country where slavery has been established for ages, has no other property in that slave than the mere title which is given by the statute law of the land where it is found. . . .