ENABLING ACT

(February 26, 1857)

11 U. S. Statutes at Large, 166-67; 34 Congress, II sess., ch. 60

Chap. LX.–An Act to authorize the People of the Territory of Minnesota to form a Constitution and State Government, preparatory to their Admission in the Union on an equal footing with the original States.

Be it enacted by the senate and house of representatives of the United States of America in Congress assembled, That the inhabitants of that portion of the territory of Minnesota which is embraced within the following limits, to wit: Beginning at the point in the centre of the main channel of the Red River of the North, where the boundary line between the United States and the British possessions crosses the same; thence up the main channel of said river to that of the Bois des Sioux River; thence [up] the main channel of said river to Lake Travers; thence up the centre of said lake to the southern extremity thereof; thence in a direct line to the head of Big Stone Lake; thence through its centre to its outlet; thence by a due south line to the north line of the state of Iowa; thence east along the northern boundary of said state to the main channel of the Mississippi River; thence up the main channel of said river, and following the boundary line of the state of Wisconsin, until the same intersects the Saint Louis River; thence down said river to and through Lake Superior, on the boundary line of Wisconsin and Michigan, until it intersects the dividing line between the United States and the British possessions; thence up Pigeon River, and following said dividing line to the place of beginning–be and they are hereby authorized to form for themselves a constitution and state government, by the name of the state of Minnesota, and come into the union on an equal footing with the original states, according to the federal constitution.

Sec. 2. And be it further enacted, That the said state of Minnesota shall have concurrent jurisdiction on the Mississippi and all other rivers and waters bordering on the said state of Minnesota, so far as the same shall form a common boundary to said state and any other state or states now or hereafter to be formed or bounded by the same; and said river and waters, and the navigable waters leading into the same, shall be common highways, and forever free, as well to the inhabitants of said state as to all other citizens of the United States, without any tax, duty, impost, or toll, therefor.

Sec. 3. And be it further enacted, That on the first Monday in June next, the legal voters in each representative district, then existing within the limits of the proposed state, are hereby authorized to elect two delegates for each representative to which said district may be entitled according to the apportionment for representatives to the territorial legislature, which election for delegates shall be held and conducted, and the returns made, in all respects in conformity with the laws of said territory regulating the election of representatives; and the delegates so elected shall assemble at the capitol of said territory on the second Monday in

July next, and first determine, by a vote, whether it is the wish of the people of the proposed state to be admitted into the Union at that time; and if so, shall proceed to form a constitution, and take all necessary steps for the establishment of subject to the approval and ratification of the people of the proposed state.

Sec. 4. And be it further enacted, That in the event said convention shall decide in favor of the immediate admission of the proposed state into the union, it shall be the duty of the United States' marshal for said territory to proceed to take a census or enumeration of the inhabitants within the limits of the proposed state, under such rules and regulations as shall be prescribed by the secretary of the interior, with the view of ascertaining the number of representatives to which said state may be entitled in the congress of the United States; and said state shall be entitled to one representatives and such additional representatives as the population of the state shall, according to the census, show it would be entitled to according to the present ratio of representation.

Sec. 5. And be it further enacted, That the following propositions be, and the same are hereby offered to the said convention of the people of Minnesota for their free acceptance or rejection, which, if accepted by the convention, shall be obligatory on the United States and upon the said state of Minnesota, to wit:

First. That sections numbered sixteen and thirty-six in every township of public lands in said state, and where either of said sections, or any part thereof, has been sold or otherwise been disposed of, other lands, equivalent thereto and as contiguous as may be, shall be granted to said state for the use of schools.

Second. That seventy-two sections of land shall be set apart and reserved for the use and support of a state university, to be selected by the governor of said state, subject to the approval of the commissioner of the general land-office, and to be appropriated and applied in such manner as the legislature of said state may prescribe for the purpose aforesaid, but for no other purpose.

Third. That ten entire sections of land, to be selected by the governor of said state, in legal subdivisions, shall be granted to said state for the purpose of completing the public buildings, or for the erection of others at the seat of government, under the direction of the legislature thereof.

Fourth. That all salt springs within said state, not exceeding twelve in number, with six sections of land adjoining, or as contiguous as may be to each, shall be granted to said state for its use; the same to be selected by the governor thereof within one year after the admission of said state, and when so selected, to be used or disposed of on such terms, conditions, and regulations as the legislature shall direct: Provided, That no salt spring or land, the right whereof is now vested in any individual or individuals, or which may be hereafter confirmed or adjudged to any individual or individuals, shall, by this article, be granted to said state.

Fifth. That five per centum of the net proceeds of sales of all public lands lying within said state, which shall be sold by congress after the admission of the said state into the union, after deducting all the expenses incident to the same, shall be paid to said state, for the purpose of making public roads and internal improvements, as the legislature shall direct: Provided, The foregoing propositions herein offered, are on the condition, that the said convention which shall form the constitution of said state shall provide, by a clause in said constitution, or an ordinance, irrevocable without the consent of the United States, that said state shall never interfere with the primary disposal of the soil within the same, by the United States, or with any regulations congress may find necessary for securing the title in said soil to bona fide purchasers thereof; and that no tax shall be imposed on lands belonging to the United States, and that in no case shall non-resident proprietors be taxed higher than residents.

Approved February 26, 1857.

APPENDIX

HOW MINNESOTA BECAME A STATE *

BY

PROF. THOMAS F. MORAN.

I. PASSAGE OF THE ENABLING ACT IN THE HOUSE OF REPRESENTATIVES, FOR THE ADMISSION OF MINNESOTA TO THE UNION AS A STATE.

During the first great epoch of our national history, from 1789 to 1861, the motives governing the admission of new states were too often based upon policy and expediency rather than justice. The partisan or sectional advantages or disadvantages likely to accrue were scrutinized with much greater care than the constitutional and legal requisites

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[MLHP: This paper was published first in volume 8 Collections of the Minnesota Historical Society 148-184 (1898). Only the first part is posted here; the part on debates in Congress on the Act of Admission is posted as an appendix to that legislation on the MLHP. The article has been reformatted; page breaks added; original spelling and punctuation have not been changed. It is a companion to the article on The Act of Admission, which also contains Moran's account of how the obstacles to its passage were overcome. The Enabling Act should be read first.]

for admission. It would hardly be safe to assert that even in these latter days the admission of a State is entirely free from the taint of partisanship; but during the first seventy years of our national existence there was one burning issue, concerning which the opposing parties were fearfully in earnest, and which, though repeatedly tempered by compromises, gained in intensity as time went on and rendered unbiased political action well-nigh impossible.

At the time of the adoption of the Constitution seven of the thirteen States had abolished slavery; in the remaining six that institution still existed in varying degrees of vigor. A glance at the list of States in the order of admission reveals the fact that a slave-holding State alternates with a non-slaveholding one, and that very rarely are two of the same character admitted in succession. This order is, by no means, accidental, but is the result of a succession of compromises.

The object was to maintain, in so far as possible, an equilibrium in Congress, but particularly in the Senate, between the opponents and advocates of slavery. So jealously was [149] this fictitious balance maintained that after the admission of Wisconsin in 1848, and until the advent of California in 1850, there were fifteen States in which the institution of slavery was fostered and the same number in which it was prohibited by law. California was admitted as a free State as part of the Compromise of 1850, and the equilibrium thus destroyed was never restored. The great contest which had abated for the moment was renewed with increased vigor by the Kansas-Nebraska Act of 1854; and when, in 1856, Minnesota applied for admission to the Union the two contending forces were striving in every possible way to gain the mastery over disputed Kansas. Such auspices as these were by no means favorable for the admission of a State, and for months and even years the "Kansas question" and other political obstacles hung like a millstone about the neck of Minnesota. Her transition to statehood was not destined to be an easy one.

On December 24, 1856, Henry M. Rice, Delegate from the Territory of Minnesota, introduced a bill to authorize the people of that Territory to form a constitution and State government with a view to their admission into the Union. The bill was referred to the Committee on Territories, of which Galusha A. Grow of Pennsylvania was chairman.

On January 31, 1857, Mr. Grow reported a substitute which differed from the bill of Mr. Rice in two particulars.

The substitute, which afterward became the "Enabling Act" of Minnesota, defined the boundaries[1] of the proposed state as they now exist. Mr. Rice's bill named the Big Sioux river as the western boundary of the southern half of the State instead of a line due south from the outlet of Big Stone lake to the north line of the State of Iowa as specified in the committee's substitute. The substitute thus cut off a narrow strip of territory estimated by Mr. Grow to contain between 500 [150] and 600 square miles. The Territory of Minnesota, according to the Act of March 3, 1849, extended on the west to the Missouri and White Earth rivers, thus embracing a large part of the present States of North and South Dakota.[2]

The bill reported by Mr. Grow further provided that Minnesota should have concurrent jurisdiction over the Mississippi river and all other waters forming a common boundary between herself and any other present or future State of the Union, and that the said river and navigable waters leading into the same should be common highways free both to inhabitants of Minnesota and to other citizens of the United States, without payment of tax, duty, impost, or toll. This provision was not contained in Mr. Rice's bill. The two bills were practically identical aside from the two particulars mentioned.

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[1] "Beginning at the point in the center of the main channel of the Red river of the North, where the boundary line between the United States and the British possessions crosses the same; thence up the main channel of said river to that of the Bois des Sioux river; thence up the main channel of said river to Lake Travers; thence up the center of said lake to the southern extremity thereof; thence in a direct line to the head of Big Stone lake; thence through its center to its outlet; thence by a due south line to the north line of the State of Iowa; thence east along the northern boundary of said State to the main channel of the Mississippi river; thence up the main channel of said river, and following the boundary line of the State of Wisconsin, until the same intersects the Saint Louis river; thence down said river to and through Lake Superior, on the boundary line of Wisconsin and Michigan, until it Intersects the dividing line between the United States and the British possessions; thence up Pigeon river and following said dividing line, to the place of beginning." Congressional Globe, vol. 43, appendix, p. 402.

[2] For the territorial boundaries of Minnesota see Neill's History of Minnesota, pp. 402 and 493. There are two rivers tributary to the Missouri and known as White Earth. One is in the present State of South Dakota, while the other flows from the north into the Missouri in the northwestern part of North Dakota, about sixty miles east of the Montana line. The latter is the one mentioned in fixing the boundaries of the Territory of Minnesota.

Each of them alike provided that on the first Monday in June (1857) delegates were to be chosen to meet at the capital on the second Monday in July. These delegates were, first of all, to determine by vote whether or not the people of the proposed State wished to be admitted into the Union; if so, they were to draft a constitution and take all necessary steps for establishing a State government. In case of decision for immediate admission, the United States Marshal was to take a census of the inhabitants of the proposed State in order to determine its representation in the House of Representatives.

In addition to the above provisions, several propositions were made, which, if accepted by the people of Minnesota, were to be binding on the State and the national government alike. It was thus proposed that sections sixteen and thirty-six in every township of public land in the State be granted for the use of schools; that seventy-two sections of land be reserved for the support of a State University; that ten sections of land be devoted to the completing of the public buildings of the State or for the erection of others at the capital; that all the salt springs in the State, not exceeding twelve in number, with six sections of contiguous land, be granted for State use, this, however, with the proviso that no individual rights in the springs were to be abrogated; and that five per cent, of the sales of all public lands within the State be granted to the State for internal improvements.[3]

In commenting upon the boundaries of the proposed State, John S. Phelps, of Missouri, called attention to the fact that the Ordinance of 1787 provided that not less than three nor more than five states should be formed from the Northwest Territory.[4] Since five States had already been formed, he urged that it would be a violation of the ordinance to incorporate a part of that Territory in a new State as Mr. Grow proposed to do.[5] He thought it inconsistent that this provision of the

[3] Congressional Globe, vol. 43, appendix, pp. 402-3. Such were the main provisions of the bill reported by Mr. Grow. It did not differ essentially from enabling acts previously passed and so was presented to the House with very little comment.

[4] Article 5 of the Ordinance of 1787. Journals of Congress, vol. 12, p. 62.

[5] Mr. Phelps did not intend this as an objection to the passage of the bill. He was in favor of its passage and voted for it; but he wished to twit Mr. Grow with a violation of that ordinance hitherto held sacred and inviolable by the Pennsylvania member. Mr. Phelps himself considered the ordinance as having no binding force whatever on Congress.

ordinance should be violated while the article [6] prohibiting slavery should be so strenuously insisted upon. Mr. Grow thought no violence would be done to the spirit of the ordinance. He could see no violation of compact in incorporating in adjacent territory a little "gore of land" left outside of the organized States. Mr. Garnett of Virginia made an unsuccessful attempt to sidetrack the bill by laying it on the table. Mr. Boyce of South Carolina said there could be no objection to the admission of Minnesota in case her population was sufficient. Mr. Grow replied that trustworthy estimates placed the population between 175,000 and 200,000 inhabitants.[7] There was very little debate. Mr. Grow forced a vote under the "whip and spur of the previous question," and the bill was passed by a vote of 97 to 75, as follows:

	Americans	Republicans	Democrats	Whigs	Unionist	Total
Yeas	7	38	29	23	—	97
Nays	24	4	28	18	1	75

[152] The bill provided that those qualified to vote at territorial elections should be allowed to vote for delegates to the State constitutional convention. This meant that aliens with certain specified qualifications could exercise the right of suffrage on an equality with citizens of the United States. During the call of the yeas and nays some of the members of the "National American" or "Know Nothing" party, as well as southern members, took occasion to explain that their opposition to the bill was due to this alien suffrage feature. Alien suffrage was contrary to the vital principle of the National American party; and aliens were, as a rule, opposed to slave labor. It will be seen by glancing at the table that the Republicans were practically unanimous in favor of the bill, only four of them voting against it. Of these four, Ezra Clark of Connecticut was elected as an "American" Republican; and Oscar F. Moore of Ohio, although elected to the 34th Congress as a Republican, disclosed evidence of "American" sympathies and was the

[6] Art. 6. Ibid., p. 63.

[7] According to the last apportionment, the States were allowed one representative for 93,420 inhabitants.

candidate of the American party for the next Congress. The votes of the Democratic and Whig parties were quite evenly divided. According to the tenets of the American party their entire vote should be cast against the bill, but the northern Americans were placed between two fires. They would gladly vote to admit a free State, but the alien suffrage feature was very objectionable; as a result, seven of them voted in the affirmative and eight in the negative.[8] Although the vote as a whole was not strictly sectional, the bulk of the support of the bill came from the North and of the opposition from the South.[9] [153]

II. THE ENABLING ACT IN THE SENATE.

Having passed the House, the bill went to the Senate on February 2, 1857, and was referred to the Committee on Territories, of which Stephen A. Douglas of Illinois was chairman. On February 18, Mr. Douglas reported the bill back to the Senate without amendment, and on the 21st it came up for consideration. Mr. Douglas explained the provisions of the bill as Mr. Grow had done in the House. Asa Biggs of North Carolina offered an amendment providing that only citizens of the United States be allowed to vote for delegates to the State constitutional convention. The whole of the vigorous contest in the Senate was made on the principle contained in this amendment. The discussion was protracted by grace of senatorial courtesy nearly to the end of the session. The bill as passed by the House permitted alien suffrage as instituted by the territorial legislature, and against this feature the senators from the slave-holding states made a vigorous but unsuccessful crusade. Mr. Douglas wished the bill to pass the Senate without amendment, as he considered a re- commitment to the House at that late date meant defeat for the measure as far as that Congress was concerned.

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[8] Six of these negative votes came from New England, and two from New York.

[9] Eighty-five of the ninety-seven votes cast in favor of the bill came from the North, and forty-eight of the seventy-five votes in opposition came from the South. Some familiar names are found among the members voting on the bill.

On the affirmative were Schuyler Colfax, afterward vice president of the United States during Grant's first term; William H. English, afterward candidate for the vice-presidency with Hancock at the head of the ticket; Justin S. Morrill of Vermont, now the "father of the Senate;" C. C. Washburne of Wisconsin, E. B. Washburne of Illinois, and Israel Washburne, Jr., of Maine. These Washburnes were brothers and members of a family which has since become prominently identified with the industrial and political life of Minnesota.

Mr. Biggs took the floor in behalf of his amendment. He disclaimed being "tainted with 'Know Nothingism,' " but held that in the formation of organic law suffrage should be restricted to citizens of the United States. He argued that the principle embodied in his amendment was found in the Oregon bill, and that it would be manifestly unjust to allow aliens to vote in Minnesota while in Oregon suffrage was restricted to citizens of the United States. Inasmuch as the Oregon bill had not yet come before the Senate but was still in the hands of the Committee on Territories, the absurdity of making it a precedent was apparent and Mr. Douglas was not slow to perceive and emphasize it. This same question of alien suffrage had been exhaustively discussed during the Kansas-Nebraska controversy; and though the present discussion was little more than threshing over some of the old straw of the famous Act of 1854, yet the senatorial flails plied with almost ceaseless activity and with unabated vigor. [154]

In reply to Mr. Biggs, Mr. Douglas went into the history of the matter. The Act of March 3, 1849, he said, under which the Territory of Minnesota was organized, provided that the qualifications of voters should be fixed by the territorial legislature, provided only that none but citizens of the United States, and those who had declared on oath their intention to become such, should exercise the right of suffrage. Acting under the authority thus conferred, the legislature of the Territory had prescribed that citizens of the United States, and other persons who had resided in the Territory for one year and had declared their intention to become citizens, could vote in case they possessed certain other qualifications not necessary to be specified here. Mr. Douglas contended that this arrangement had proved satisfactory in every respect and should be left intact. Mr. Biggs held that the uniform practice was to allow none but citizens to vote, while Mr. Douglas correctly maintained that there was no uniform rule in regard to the matter. He further contended that it would be unjust and a breach of good faith on the part of Congress to exclude any from voting for delegates to the State constitutional convention who had hitherto exercised the right of suffrage under the laws of the Territory.

Mr. Brodhead of Pennsylvania held that the right to vote pertained to citizenship, and denied the power of Congress to make any but

citizens voters. The Constitution, he said, had given Congress the power "to establish a uniform rule of naturalization." This Congress had done, and it would be an infraction of the law of Congress and of the Constitution to permit aliens to vote. He held, too, that the Ordinance of 1787 provided for citizen suffrage exclusively. To this Mr. Pugh of Ohio objected, and Mr. Brodhead quoted from the ordinance to fortify his position. In so doing, however, he read a clear and decided provision for alien suffrage.[10] The result must have been to stultify completely that portion of his argument, yet he seems to have gone bravely on.

Senator Brown of Mississippi followed with an able argument against alien suffrage. A State, he held, can confer the [155] elective franchise upon whom it pleases; but it is for Congress to say whether or not aliens shall vote for delegates to the State constitutional convention. He argued, not for the unconstitutionally, but for the inexpediency, of allowing aliens to vote. He disclaimed any sympathy with the Know Nothings. "I despise their doctrines as much as anybody does," was his emphatic assertion. As a matter of public policy, he contended, alien suffrage is dangerous. "There may be," he said, "in this Territory Norwegians who do not read one word of English. . . . What a mockery, and what a trifling with sacred institutions is it to allow such people to go to the polls and vote!" [11]

John Bell of Tennessee, afterward the presidential candidate of the so-called Constitutional Union party,[12] followed with a remarkable argument, remarkable alike for the political and constitutional heresies which it contained and the tenacity with which he clung to them. His friends and foes, although at variance in the main, were almost unanimous in opposing the main issue of his argument. Mr. Bell took issue with Mr. Brown and declared that the State had not the sole power to fix the qualifications of her voters. This right to regulate suffrage inside of the State had been held, both before and since, to be

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[10] "Provided also, That a freehold of fifty acres of land in the district, having been a citizen of one of the states, and being resident in the district, or the like freehold and two years' residence in the district, shall be necessary to qualify a man as an elector of a representative." Congressional Globe, vol. 43, p. 809; quoted from the Ordinance of 1787. Journals of Congress, vol. 12, p. 60.

[11] Cong. Globe, vol. 43, p. 810.

[12] The resurrected wreck of the American or Know Nothing party.

within the undisputed province of the individual States;[13] and, in taking his remarkable stand, Mr. Bell was treading upon the State rights corns of many of his fellow senators, an imposition not slow to be resented. When informed of the fact that alien suffrage was permitted by law in Virginia, his ready answer was that in that case Virginia was violating the Constitution of the United States. If this be true, no less than fifteen states are in like manner violating the Constitution to-day.[14] [156]

Mr. Mason, of Virginia, correctly held that when a State was once admitted she had full control over the qualifications of her electors. He was, however, in favor of the amendment, proposed by Mr. Biggs. There was danger, he thought, that some provision might be inserted into the constitution of the new State favorable to aliens, but prejudicial to the interests of the State and Nation.

Mr. Biggs then cited precedents to prove his case. He said that the Enabling Act for Ohio restricted the right of voting for members of the State constitutional convention to "male citizens of the United States."[15] Such certainly was not the case. Section 4 of this Act, after specifying the conditions under which citizens of the United States may vote, provided that "all other persons having, in other respects, the legal qualifications to vote for representatives in the General Assembly of the Territory, be, and they are hereby, authorized to choose representatives to form a convention." [16] The Ordinance of 1787 authorized alien suffrage in the Territory and the Enabling Act extended that privilege to voting for delegates to the State constitutional

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[13] Constitutional Law, T. M. Cooley, p. 261.

[14] The power of naturalization resides in Congress exclusively; but State legislation has operated, in effect, so as practically to appropriate that power for the several States. Many of the State legislatures, by various laws, have bestowed upon aliens the most important attributes of citizenship. According to State law an alien can reside here without hindrance; and in many States he can "hold, convey, and transmit," real estate to his descendants. The privilege of voting is given to him in fifteen States. When an alien enjoys these important attributes of citizenship, there is but little distinction between him and a citizen. "Indeed, as the suffrage would seem particularly to belong to citizens, and as the voter for representatives in the State legislature may vote for representatives in Congress also, it would seem that there might be some question whether a State could confer upon an alien this high privilege. It is a question, however, which has never been made." Cooley, p. 80. Inasmuch as the question has never been adjudicated, the presumption is that the prevailing practice is constitutional.

[15] Cong. Globe, vol. 43, p. 812.

[16] Annals of Congress, 7th Congress, 1st Session, p. 1349.

convention. Mr. Biggs further stated that the enabling acts for Indiana and Illinois entitled citizens of the United States to vote for representatives to a constitutional convention; all of which is true, but it is not the whole truth. These two enabling acts provided for alien suffrage in almost the exact words quoted above from the Ohio Act.[17]

Mr. Douglas cited the law in the cases of Illinois and Indiana; and Mr. Biggs revived his former absurdity of making a precedent of the Oregon bill, which was still in the hands of the Committee on Territories.

Isaac Toucey of Connecticut argued against the amendment. In his opinion the electoral qualifications should remain as specified by the territorial legislature.

William H. Seward of New York maintained that the constitutionality of alien suffrage was settled long ago. Texas, he said, was admitted to the Union without having a single citizen of the United States.[18] The right of suffrage, he ar-[157]-gued, should be co-extensive with the obligation to submit to, support, and defend the government. As a matter of public policy, too, it was best, in his opinion, to allow alien suffrage in new States, because the population of these States is composed largely of aliens.

Mr. Butler of South Carolina thought that the time had passed for questioning the right of a State to prescribe the qualifications of her electors; yet he was not in favor of allowing any but citizens of the United States to participate in the organization of a new State.

Henry Wilson of Massachusetts, the "Natick cobbler," must have found it extremely difficult to voice in the Senate the sentiments of his varied constituency, inasmuch as he owed his election to a coalition of Democrats, National Americans, and Free Soilers. Yet there was no equivocating on his part, and when he had finished his terse and vigorous speech, there could be no doubts in the mind of any one regarding his position. He pronounced emphatically against alien

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[17] Annals of Congress, 14th Congress, 1st Session, p. 1841

[18] In the "Joint Resolution for annexing Texas to the United States," nothing is said of the qualifications of electors. (U. S. Statutes at Large, vol. 5, p. 797.)

suffrage, and while declaring the principle of the Biggs amendment to be just, politic, and expedient, he announced his intention to vote against it; and, in giving his reasons for this apparent inconsistency, he gave utterance, no doubt, to the thought which was uppermost in the minds of many of his more politic, but less candid, colleagues from the North. "Minnesota," he declared, "will come into the Union robed in the white garments of freedom; and I can give no vote that shall put in jeopardy her immediate admission into the sisterhood of free Commonwealths."[19] In his opinion, the passage of the amendment would operate to postpone indefinitely the admission of the State.

Mr. Crittenden of Kentucky argued that it was against the spirit of the Constitution to allow aliens to vote. He insisted that allowing an alien to vote was practically the same as making him a citizen, which is clearly not the case. An alien possessing the privilege of suffrage, simply, lacks some very important attributes of citizenship. "By conferring on an alien the highest prerogative of citizenship, do you not, in effect, for all political purposes make him a citizen?" Taking the word "political" in its restricted sense, Mr. Crittenden's [158] question is clearly entitled to an affirmative answer; but there are privileges of citizenship other than political ones. An alien might be allowed to vote in a State, and yet not have the privilege of permanently residing there or of acquiring, holding, or transmitting real estate. This is not a probable case, but is theoretically possible. These privileges, it is true, are frequently granted to aliens and operate partially to obliterate the distinction between an alien and a citizen; but the State can never, without the power to naturalize, which it does not possess, grant to an alien "all the privileges and immunities" which the Constitution guarantees to the citizens of each state.[20] Making an alien a voter is certainly not making him a citizen; but it must be admitted that, by the grace of State legislation, the difference is in many cases not very marked.

Clement C. Clay, Jr., of Alabama, called Mr. Seward to task for his statement that suffrage should be co-extensive with the duty of obedience to government. In that case, he argued, the privilege of suffrage should be extended to both sexes, to infants, to blacks and reds as well as whites, in short, to all races, all ages, and all sexes. He

[19] Cong. Globe, vol. 43, p. 813.
[20] Constitution, Art. IV., Sec. 1, 01. 1.

announced his intention to support the amendment, but disclaimed any sectional prejudice and disavowed even the slightest sympathy for the Know Nothing party.

Mr. Adams of Mississippi denied the constitutional power of Congress or the States to confer the elective franchise upon aliens. There is, he said, no decision of the United States Supreme Court affirming the right of either to do so. The simple answer to this is that no such decision is essential. In the absence of adjudication, the statutes conferring the privilege of suffrage are presumed to be valid. Such is the general rule regarding all statutes whose constitutionality has never been tested. [21]

After being thus thoroughly discussed in all its bearings, the amendment was passed by a vote of 27 to 24; the southern senators, as a rule, voting in the affirmative, and those from the North in the negative.[22] [159]

After the amendment of Mr. Biggs was thus disposed of, Senator George W. Jones of Iowa, at the instance of citizens of Minnesota then in Washington, offered an amendment permitting the people of Minnesota to decide by vote whether the proposed State should have the boundaries specified in the bill or should embrace only that portion of the Territory lying south of the forty-sixth parallel.[23] The amendment met with but little favor and was speedily rejected.

The bill was then passed by a vote of 47 to 1, John B. Thompson of Kentucky casting the solitary negative vote. It was very evident, however, that this disposition of the bill was by no means satisfactory to its friends. The bill as amended would have to be returned to the

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[21] Cooley, p. 154.

[22] Twenty-three of the affirmative votes were cast by southern senators, and the remaining four by northern men. These four votes were cast by John R. Thomson (Dem.) of New Jersey, Solomon Foot (Rep.) of Vermont, Richard Brod head, Jr. (Dem.), of Pennsylvania, and Hamilton Fish (Whig) of New York. Robert Toombs of Georgia was the only man from the South voting in the negative. Lewis Cass, Stephen A. Douglas, and William H. Seward, are found among the "nays;" while Judah P. Benjamin, John J. Crittenden, and the eccentric Sam Houston, together with James M. Mason and John Slidell, afterward conspicuous in the "Trent Affair," appear among the "yeas."

[23] The 46th parallel is a little above the line dividing the Dakotas. It crosses the center of Morrison county a few miles north of Little Falls.

House for consideration, and as the session was to expire in ten days it was not at all probable that the bill could be passed.

Accordingly, John P. Hale of New Hampshire at once gave notice that he would in due time move to reconsider the vote by which the bill was passed. On February 24 he did so, explaining that his intention was to reach and reconsider the amendment of Mr. Biggs.

Breezy Mr. Thompson of Kentucky, being the only senator who voted against the bill, thought it incumbent upon him to define his position. This he proceeded to do entertainingly and candidly, if not logically. He thought the bill was improved by the amendment of Mr. Biggs, but should not be passed either amended or not amended. "I am against the bill," he said, with or without amendments. I am against it *veils et remis*, teeth and toenails, throughout." Our domain, he held, was being extended too much with no strong central government to hold it from breaking asunder; "for state rights is the great doctrine of the day." He charged that Minnesota was to be brought into the Union prematurely and hastily, merely to satisfy the ambition of politicians. He quoted from a letter written[24] some years before by Gouverneur Morris to Henry W. Livingston, to the effect that Con-[160]-gress did not have the power to admit a State formed from territory not belonging to the United States at the time of the adoption of the Constitution. The letter further stated that the writer had always held that, should Canada or Louisiana[25] be acquired, they should be governed as provinces and have no voice in the federal councils. Adherence to this doctrine would, of course, exclude Texas, Florida, and those States organized in the Louisiana purchase and the Mexican cession. Here Mr. Thompson gave utterance to a reason for opposing the admission of the new State which others of his Southern colleagues, doubtless, entertained but were too politic to express.

"Whenever the State of Minnesota," he said, "shall be admitted, we shall have in this body two additional voices against what I think are the best interests of the country. I am not, as a southern man, going to vote to help them to bludgeon us. I am not going to put into their hands the club with which to cleave down a brother. When they are admitted,

[24] Cong. Globe, vol. 43, p. 849.
[25] The date of the letter was December 4, 1803.

they will, like all new States, be continually asking for public lands for schools; for alternate sections of land for roads; and we shall have propositions for lighthouses, for harbors, and for lake defenses; and we shall be told about the adjacency of the Canada border and the necessity of protection. When a Minnesota senator lands here with all the pomp and circumstance of a bashaw with three tails, with the aristocratic gravity of an English Chancellor of the Exchequer, he will open his budget, and unfold proposition after proposition for roads, for canals, for lighthouses, for improvements of various kinds. You will find, after admitting Minnesota, that, like the name of many a Tommy in an old man's will, the name of Minnesota, the youngest child, will occur oftener on the statute book and the proceedings of this body, than the name of the Lord God in the twentieth chapter of Exodus. Then Minnesota, like California, now the youngest State, will be the presiding genius and divinity of the proceedings of Congress. I do not want representatives here from Minnesota for their votes, or their power, or what they will do after they get here." [26] [161]

Such were the breezy and candid, but, at the same time, cynical and narrow views of the senator from Kentucky. Continuing in a more sanguinary mood, he said: "These Minnesota men, when they get here and see my friend from Michigan [Cass] and my friend from Iowa [Jones] struck down,[27] will grapple up their bones from the sand, and make handles out of them for knife blades to cut the throats of their Southern brethren. I want no Minnesota senators."[28] He declaimed violently against further acquisition of territory. "I know," he says, "some men talk about annexing Canada and all New France; but I hope that, when they come in, we shall go out. I do not wish to have any more of Mexico annexed, unless you annex it by a treaty so controlling its regulations and municipal institutions as to erect it into a slave State. The equilibrium in the Senate is destroyed already. There is now an odd number of States, and the majority is against the slave-holding States.[29] I want no hybrid, speckled mongrels from Mexico, who are free-state people. It is bad enough to have them from New

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[26] Cong. Globe, vol. 43, p. 849.

[27] Cass was retired at the close of that session, and Jones two years later.

[28] Cong. Globe, vol. 43, p. 850.

[29] There were at this time thirty-one States, of which sixteen were non-slaveholding. California was admitted last.

England, christianized and civilized as they are. . . . . My notion of governing the territories, is, that they ought to be governed by a proconsul, and pay tribute to Caesar. I would not puff them up with treasury pap or plunder in the way of public lands, like an Austrian horse that is sleek and bloated with puff, instead of real fat and strength, by putting arsenic in his food. Are you to stall-feed the people in these Territories? No, sir. I would treat them differently. Like boys that get too big for their breeches, they ought to have rigid discipline administered to them; they ought to be made to know their place, and constrained to keep it. We are told of there being two hundred thousand people in Minnesota. I don't care if there are five hundred thousand. The greater part of Minnesota is situated in the Louisiana purchase. This, it seems to me, under the treaty of Louisiana, is incontestably slave territory, and should remain in territorial form until free-soilism dies out." [30]

Senator Thompson further launched into an eloquent defense of the Supreme Court, which had been called by Senator John P. Hale of New Hampshire the "palladium of slavery," [162] and asserted that whenever these revered and venerable expounders of the Constitution are taunted or plucked by the beard, it is done by a barbarian Gaul invading the sacred precincts of the Capitol. He added: "Though they may sit, as the Roman senator did, in the forum, when his beard was plucked, recollect that then came the price of the freedom of Rome; it was first the sword and then the foot of Brennus in the scales that measured out justice, or what purported to be justice, between parties." [31]

Some senators, he said, seem to think that these Territories are as a matter of right entitled to admission as States under certain circumstances. Such, he held, is not the case; the Constitution says that new states may be admitted, but there is no obligation upon Congress in the matter. What census shows us that there are 200,000 people in Minnesota? "I suppose it is like every new country which is settled up. A man goes there, seizes a favorable locality, lithographs a plan of a city, makes out harbors and roads, and sends a flying fraud all over the country; and then comes to Congress to get appropriations

[30] Cong. Globe, vol. 43, p 850.
[31] Cong. Globe, vol. 43, p. 850.

and a new State made. The moment you admit a senator from this State, he will be as most of these men are (I say nothing about anybody personally), arrogant, assuming, pretentious, Free-soilish, and Democratic. He will set himself up as the emblem of representative wisdom, like Pallas from the brain of Jove, full-grown and panoplied for armor and public plunder. He will ask for all manner of appropriations you can imagine. The territorial delegates annoy us enough in the lobbies now, and I do not want to have Senators here from these places." [32]

After delivering himself of these petulant and dyspeptic views, Mr. Thompson entered upon an elaborate defense of the institution of slavery, asserting that a man had as much right to own a negro as he had to own a black horse or a black dog. Returning to the matter under discussion, he declared that the electoral vote of Minnesota would be cast against the best interests of the South; that her senators would oppose southern interests in voting upon contested seats; and that their general coarse would be prejudicial to the section from which he came. Commenting upon public opinion in the new [163] States, he said, "Such are the avaricious and exorbitant demands of the new State people, that if General Washington were to die to-day, he being from an old State, the new States would not give a piece of land two feet by six in which to inter him." [33]

Continuing, he ventilated his ideas anew upon territorial government. "Instead of taking in partnership and full fellowship all these outside Territories and lost people of God's earth, I would say, let us take them, if we must do it, and rule them as Great Britain rules Afghanistan, Hindostan, and all through the Punjab, making them work for you as you would work a negro on a cotton or sugar plantation."[34] He rebuked Senator Butler of South Carolina for conceding too much to the North. These northern men, he said, are of that same race which overran the Roman empire, and "will they not be attracted by the sunny fields of the South? When by poverty and want they get as hungry, and ferocious, and desperate, as their own prairie wolves, and when they come down, as they eventually will, to invade the South,

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[32] Ibid., p. 850.
[33] Cong. Globe, vol. 43, p. 851.
[34] Ibid., p. 851

and divide off your fields, you may have some Virgil to sing over it; but I say that by your conduct in this case you are leading to a course by which you will shiver your own household gods on your own hearth-stones, and you will not be masters in your own country. Do you want these Sclaves, and Germans, and Swiss, and all mixed up nations of that sort, with their notions of government, unfitted it would seem by inheritance and instinct for free government, to swarm up in these northern latitudes, and eventually come down upon the South? First, I do not wish them there; next, I do not wish them to outvote us."[35] Mr. Thompson concluded his remarks with a eulogy upon the narrow and bigoted doctrines of the National American party.

Mr. Douglas took occasion to reply to some of the arguments of Mr. Thompson, leaving the absurdities of the latter's remarks unnoticed; because he preferred to consider them, as he said, rather the outcome of humor than of malice. Mr. Douglas was of the opinion that is was clearly the duty of Congress to admit a State into the Union when that State [164] possessed the qualifications requisite for such admission. Especially was this true, he held, of States formed out of the Louisiana purchase, since, according to the treaty by which Louisiana was acquired, the inhabitants of that territory were entitled to admission as soon as they were prepared for it.[36]

Mr. Thompson asked by what clause in the Constitution a Territory is entitled to admission because she has a certain number of inhabitants. In reply, Mr. Douglas held that when a Territory had population enough, according to the ratio of representation, to entitle her to one representative in Congress, she was then entitled to admission. If not then, the treaty might remain nugatory forever. He held that there was no moral right to vote against the admission of a State because of her politics or her institutions. He proclaimed that he had never hesitated to vote for the admission of a slave state because by so doing he was increasing the power and votes of the South, and denied that any senator could properly vote against the admission of a free State

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[35] Ibid., p. 851.

[36] That part of the treaty of April 30, 1803, referred to by Mr. Douglas, is found in its Article III., which is as follows: "The inhabitants of the ceded territory shall be incorporated in the Union of the United States, and admitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States." (U. S. Statutes at Large, vol. 8, pp. 200-202.).

because the institutions of the North were not acceptable to him. He contended that since Nature had made more of this country adapted to free than to slave labor, it was folly and worse than folly to attempt to maintain an equilibrium between the free and slave states in the Senate. He argued that it was necessary to organize new States and Territories to accommodate our ever increasing population, which would continue to increase in spite of the senator from Kentucky. (Mr. Thompson was a bachelor.)

In commenting upon the suffrage question, Mr. Douglas said that he considered the qualifications laid down by the legislature of the Territory as entirely satisfactory. He pointed out the fact that, before an alien could vote in Minnesota, he would have to turn his back upon the haunts of the eastern cities, build a home in the wilderness or on the prairie, and remain there for a certain specified time. He apprehended no abuse of the privilege of suffrage from such men as these; but admitted that greater stringency should prevail upon the seaboard. He argued against any necessity for uni-[165]-formity in electoral qualifications in the various states.[37] During the course of his remarks, Mr. Douglas took occasion to reply [38] to some flings made by Mr. Thompson derogatory to the character of the people of Minnesota, and stated in conclusion that his object in urging a reconsideration was to reach the "odious amendment" of Mr. Biggs.

Mr. Green of Missouri, who had voted for the Biggs amendment, announced his intention of changing his vote, not because he did not believe in the principle of the amendment, but because he considered that Congress would be doing an injustice in excluding from the privilege of suffrage many who had exercised that right under territorial laws. For this change of opinion Mr. Green was destined to be severely arraigned.

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[37] Hamilton's opinion on the idea of uniformity in conferring the elective franchise is interesting in this connection. "To have reduced the different qualifications in the different States to one uniform rule, would probably have been as dissatisfying to some of the States as it would have been difficult to the Convention." (Federalist, No. 52.)

[38] "I do not believe that there is a State in this Union, whose people have a higher character for intelligence, for sobriety, for obedience to the law, for loyal principles, for everything that affects the Union and the Constitution, than the people of Minnesota." Congressional Globe, vol. 43, p. 854.

Mr. Adams of Mississippi insisted that, in excluding aliens from voting for delegates to the State constitutional convention, Congress was depriving them of no privilege which they had ever possessed. He also claimed that the House had not noticed the alien suffrage feature of the bill, else its passage would have been more stubbornly contested.[39] In conclusion, Mr. Adams disclaimed any political or sectional prejudice.

At this juncture, the head of the breezy Mr. Thompson of Kentucky appeared above the troubled surface long enough to pay his respects to the arguments advanced by some of his opponents. By way of introduction, he complimented the ability of Mr. Seward and professed admiration for that power which enabled him, while representing New York, to carry New England in one pocket and Ohio in the other. He wittily described the contest which he said would take place between the Republicans and Democrats for the foreign vote in the various States, and interpreted their zeal in behalf of alien suffrage as a sop to the foreign vote. There was doubtless some truth in this latter assertion. [166]

Mr. Bayard of Delaware antagonized alien suffrage. He asserted that to allow an alien to vote was repealing the naturalization laws, which is clearly not so. Suffrage is not all of citizenship. Even according to Mr. Bayard himself, suffrage is but the "first and best" prerogative of citizenship. Mr. Butler again spoke, prophesying dire calamities from allowing aliens to vote. "I know, sir," he said, "that this Confederacy is to run its course. I believe it will tread the path and run the hazards of all republics; and I believe we cannot restrain it. . . . . Let it run." [40]

The motion to reconsider the vote by which the bill was passed was carried February 24, 1857, by a vote of 35 to 21.

Mr. Biggs thereupon argued strenuously for the principle contained in his amendment, and declared that "by a fair construction" no enabling act passed by Congress authorized alien suffrage; which position, as

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[39] During the call of the yeas and nays in the House, some members explained that their hostility to the bill was due to the alien suffrage feature. The matter, however, was not discussed; in fact, Mr. Grow pushed the bill to a vote, and allowed very little discussion on any feature of it.

[40] Cong. Globe, vol. 43, p. 859.

shown by the above extracts from the enabling acts, is entirely untenable. Though Minnesota was clearly destined to be a non-slaveholding State, he would favor its admission with his amendment, notwithstanding the fact that the equilibrium between the North and South would then be entirely destroyed.

Mr. Brown wanted to know the cause of what he characterized as a marvelous change of sentiment on the part of the Senate. Has foreign influence crept in and taken possession of the Senate? he asked. Robert Toombs thought the eloquence of his friend, Mr. Brown, extraordinary and unnecessary, and begged to be excused from being alarmed at what he deemed imaginary evils. In speaking of alien suffrage, he said: "It was the practice of our forefathers; it has worked well; it violates no part of the Constitution of the country." [41]He was against the amendment because he did not want to take away privileges conferred by the territorial legislature.

Sam Houston of Texas added a word in favor of the Biggs amendment; and Mr. Crittenden spoke in a like strain. The Senate was then forced to adjourn for lack of a quorum.

Early upon the following day, February 25, Mr. Douglas pressed the bill upon the attention of the Senate. Upon motion of Mr. Green, the vote on the Biggs amendment was reconsidered, the vote for reconsideration being 31 to 21. [167]

Mr. Biggs charged that some malign influence had been brought to bear upon the Senate, which, he said, was swayed and controlled by foreign influence, until its deliberations had degenerated into a scramble for alien votes.

Mr. Brown, in a remarkably explicit and concise speech, took issue with Mr. Bell regarding his ideas upon alien suffrage. Mr. Brown held it to be bad policy to allow unnaturalized foreigners to vote, but within the undoubted province of the States to do so. In bewailing the waning influence of the old States, he said: "The two votes of the good old mother of States and statesmen ought not to be borne down by the

[41] Ibid., p. 863.

votes of two others brought here on such a basis." [42] Still deprecating what he terms the power of foreign influence in the Senate, he declared that, "Some strange phantasy has come over the spirit of our dream."

Mr. Bell reiterated the views which he previously expressed; and in a long and labored argument, in which he held it contrary to the naturalization laws for States to admit aliens to the privilege of suffrage, he persistently confused the prerogatives of the voter and the citizen. Robert Toombs furnished a full and complete refutation to his elaborate, argument in two short, simple sentences. "I wish," said Toombs, "to correct the senator in a statement. He does not distinguish between the right of suffrage and citizenship." Mr. Bell asked Mr. Brown if the people of New York could allow Canadians to vote in their State, after a brief residence; or if, in like manner, the people of Texas could constitutionally permit Mexicans to vote in Texas. Mr. Brown replied emphatically and correctly in the affirmative.[43]

The amendment of Mr. Biggs was then rejected, the vote for it being 24 yeas to 32 nays. The bill was then passed, as it came from the House, by a vote of 31 to 22; and was signed on the same day, February 25, 1857, by the president *pro tempore*.

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[42] Cong. Globe, vol. 43, p. 874.

[43] Although the above are extreme cases and not likely ever to occur, since they are contrary to sound public policy, the constitutional right of the State so to act can hardly be questioned. ■

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