From the Lexington Observer.

MR. BENTON ON THE DRED SCOTT CASE.

To George Robertson, Esq., Ex-Chief Justice, &c. Lexington, Ky.

Dear Sir: I have read with infinite gratification your publications in the *National Intelligencer*, on the decision of the Supreme Court on the Missouri Compromise act, and concur with you most heartily, as you will soon see in the 6th volume of the Abridgment of the Debates of Congress, now in the press (the Messrs. Appleton of New York); and also in an 'Examination' which I have made of the same branch of the decision in a thin octavo of 200 pages, likewise now in the same press, and quickly to appear. This decision—that part of it which relates to the nullity of the Compromise act, and to the self-extension of the Constitution to Territories—is the heaviest political blow that ever fell upon my heart, and left me in a state of total impossibility of remaining silent under it. I view it as you do—as dreadfully wrong in itself, and entirely extra-judicial, and of no more weight than the opinion of any half dozen equally respectable citizens coming to the same conclusion, (in much part,) upon inconsistent, incompatible, and contradictory reasons. That compromise act was a political enactment, made by the political power, for political reasons, and these reasons among the largest that ever influenced human legislation—no less than to reconcile a divided and distracted country, and to prevent our sacred Union from splitting asunder. As such political enactment, the Court had no right to judge it; even if the question had come fairly before it—which it did not; for the Judiciary cannot judge political questions, neither of right nor in fact; for these questions depend upon considerations of policy which the Judiciary cannot touch, and not upon the interpretation of phases, to which the court is confined. The same of the self-extension of the Constitution to Territories: it was a political question as to where that Constitution should extend; and it was limited by its own words to States; and has been so acted upon by every Congress, and by all authorities, (State and Federal, Legislative, Executive and Judicial,) from the commencement of the Federal Government to the present day. And I venture the assertion that there has not been one single member of Congress, in the seventy years in which Congresses have been held, who has not voted for objects in the Territories (local internal improvements, for example) which they would not vote for in a State; and upon the express ground that the Constitution did not extend to Territories. The ordinance of 1787 was the Territorial Constitution, given to Territories as a sovereign gives a charter to his subjects; and as such was made in concert with the Constitution, as you well say, and indispensable to the formation of the Constitution; and as such was provided for—doubly provided for—in the new Government; first, by the clause in the Constitution which devolves all the '*engagements*' of the Congress of the Confederation upon the new Federal Congress; and, secondly, by the act of the new Congress of Aug. 7, 1789—the eighth act passed by the first Congress under Washington—adapting that ordinance to the new Constitution, and adopting it in every word which it contained as a law of the new Government.

You will see in the Abridged Debates (the notes as well as the text) that full justice is done to yourself and to all the patriotic men who acted with you in that great measure of reconciliation and pacification; and also in my 'Examination' of the Court's opinion—that part of it which I deem political and extra-judicial, and *obiter dicta*. As for what concerned the individuals before the Court as parties in the record, I have nothing to say. That part was judicial; and whether rightfully or wrongfully gotten hold of and decided, I left it alone; for it was the decision of the tribunal of highest resort; and the peace and good order of society require all questions of personal rights to be settled and done with. But in this political decision, in which the Supreme Court acted upon a question beyond its jurisdiction, and lugged it in as a tail to a question of negro freedom, and in which it decided upon a view of the Constitution, which had no more to do with it than the adventures of Robinson Crusoe, and then reversed the action of the Government for seventy years, and made a new Constitution in all that relates to Territorial legislation: in such case I have felt it to be my duty, as one of the few survivors of the old school, to raise my voice against it, and to appeal to the candid intelligence of my fellow-citizens to come to the defence of our Constitution, such as our fathers made it, and as it was administered for two generations.

I mean what I say, when I say the Supreme Court had as well been looking into Robinson Crusoe as looking into the Constitution of the United States to find the power of Congress to legislate for Territories; for it is not there, but in the ordinance of '87, adopted by the Constitution and by the first Congress under Washington, and in their right as sovereign proprietors, having a right to govern what they have a *right* to acquire, and becomes their duty under the State cession acts, and under the treaties of cession. The 'needful rules and regulation clause,' as the Court said, gave no power to govern the Territories; it only applied to property, and that the property of the United States—its territory, *id est*, land, and its other property, *id est*, personal estate. It conferred no powers of government, and that for the reason known to everybody at the time, and to nobody (hardly) now, *videlicet:* because the government of the Territories was provided for in another place—namely, in the ordinance of 1786, and protected by a clause in the Constitution, and adopted by Congress August 7th, 1789, and in the right of sovereign proprietors. The court looked in the wrong place to find the power of Congress to legislate for Territories.

I was breaking down under the appalling attack which fell upon me when I was writing the 'Examination,' and had to leave some heads unfinished, and also to add some part after I had given up this world. My physician, Dr. May, saw with astonishment that I rose from what he knew I considered the bed of death, (and which he feared to be so,) and went to my table and wrote. I was adding something to the 'Examination,' and could hardly refrain from a postscript: 'This is my political testament, written with a dying hand.' Well! I did not die, but I have to; and will die upon the truth and justice of what I wrote.

Among the heads sketched, but not filled up, are the Florida Territorial transactions of 1821, in which Gov. Jackson, commissioned with the power of a Captain-General and Intendant of Cuba, under an act of Congress continuing temporarily the Spanish system of Government in that Territory, and in which he found occasion to act up to the letter of the law and commission, uniting in himself the supreme, civil, military, executive, and judicial functions, using the military for his arm, and his own fiat for authority, sending Gov. Callava to the calaboose, and having Judge Fromentin brought before him at the point of the bayonet for issuing a writ of *habeas corpus* in behalf of the imprisoned Governor; and laying divers others by the heels for complicity in Callava's fault, to wit, refusing to deliver up, and intending to carry off judicial records on which depended redress to orphan children who had been despoiled of their father's property for fifteen years; and all which actings and doings of Gov. Jackson, exercising over Florida the powers of a Captain-General and Intendant of Cuba, were approved expressly by the Monroe administration, (and you know who composed that administration,) and impliedly sanctioned by each House of Congress in their refusal to act upon the complaints of the incarcerated officers; and all upon the ground that the Constitution of the United States did not extend to a Territory, and that no act of Congress had carried into Florida any of its provisions—any habeas corpus act, any jury trial, or any warrant, general or special, or any security against seizure of persons, search of houses, or capture of papers and effects. This head, growing out of the transactions in Florida, so recent in date, and so up to the exigency of our argument, was merely named and sketched in the 'Examination,' but afterward well developed in the forthcoming sixth volume of the Abridgment.

In the same 'Examination' will be seen the manner in which the act abrogating the Missouri Compromise was passed, and the objects for which it was passed, and of which it was only the first step and the wedge; whereof the good people of the United States are at present profoundly ignorant, for telegraph reporting has about killed all popular knowledge of Congress proceedings, confining their reports to *results*, too brief and meager to show how Congress acts; and yet this is almost the only report of Congress doings which the people will read in this go-ahead age of steam and electricity.

It is a long time since we saw each other; and what is called politics have sadly run down since that time, and especially in the last Presidential term, presenting but little for the attraction of any man who has nothing but the public good in view; but here is a question of a new kind, national and elevated, on which all who are for the Constitution as our fathers made it, and as they administered it in their day and generation, and as the next generation administered it, (and that without distinction of party or default of a man,) may come together and stand. For one, I can give no political aid or comfort to any man or party, in any future election, who shall uphold the opinion of the Supreme Court in declaring the nullity of the Missouri Compromise; and in decreeing the self-extension of the Constitution to Territories, carrying slavery with it, and preventing Congress and the people of the Territory from saying yea or nay to its introduction or repulsion.

I am now well recovered, and working as usual, and expect to finish the Abridgement next Summer, and then to add another volume to the two of the Thirty Years' View, bringing it down to 1860, if I live that long; at all events, to the time of the Pierce Administration, if we must call by his name an Administration in which he was inoperative, and in which nullifiers, disunionists and renegades used his name and his power for their own audacious and criminal purposes.

Respectfully,

THOMAS H. BENTON.

Washington, Nov. 1, 1857